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Case No: HC-2014-00535

**IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION**

Royal Courts of Justice
7 Rolls Building
Fetter lane
London
EC4N 1NL,
15th February 2016

B e f o r e :

The Hon Mr Justice Henry Carr

Between:

**MR PERETZ WINKLER
ARZAL FINANCE CORP**

Claimants

- and -

**(1) ANGELA SHAMOON
(2) ALEXANDRA SHAMOON
(3) PHILIPPE GRUMBACH**

Defendants

**MR SIMON COLTON, MS STEPHANIE WOOD (instructed by PCB Litigation
LLP) for the Claimants**

**MR DANIEL JOWELL QC, MR TONY SINGLA (instructed by Quinn
Emanuel Urquhart & Sullivan UK LLP) for the First and Second Defendants
MR MICHAEL MCPARLAND (instructed by Kingsley Napley LLP) for the
Third Defendant**

Hearing dates: 13-15, 18-19 January 2016

HTML VERSION OF JUDGMENT

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Introduction

1. On 29th May 2009, Mr Sami Shamoon ("Mr Shamoon"), a very successful Israeli businessman, passed away. He was known in his lifetime as one of the wealthiest men in Israel. He left a large and valuable estate. In June 2012, an Israeli judge recorded that its estimated value was about 1.7 billion new Israeli Shekels, which is approximately US \$1 billion. The First Defendant ("Mrs Angela Shamoon") is his widow and the Second Defendant ("Ms Alexandra Shamoon") is his only daughter. The First Claimant ("Mr Winkler") is a Certified Public Accountant who was, amongst other things, the Chief Financial Officer and manager of the Yakhin Hakal Group of Israeli companies, which were owned or controlled by Mr Shamoon. Mr Winkler is the sole beneficial owner of the Second Claimant ("Arzal").
2. Mrs Angela Shamoon and Ms Alexandra Shamoon are the residuary legatees under Mr Shamoon's will which is dated 19th December 2007. Ms Alexandra Shamoon's share of Mr Shamoon's estate is subject to a private trust created under Israeli Trusts Law 5739-1979. This directed that if, as was the case, Ms Alexandra Shamoon was not yet 35 years old at the time of Mr Shamoon's death, both the specific monetary bequest made to her in the will and her interest in the remainder of the estate would be held on trust for her benefit until she reached the age of 35. This will happen on the 26th November 2019, until when Ms Alexandra Shamoon receives a monthly allowance.
3. Mr Shamoon made a number of monetary bequests in his will, including a bequest to Mr Winkler of US \$30,000. However, the Claimants allege that they are entitled to 1% of the shares in Ainsbury Properties Limited ("Ainsbury") and 12.5% of the shares in Placido Investments Inc ("Placido"). Both Ainsbury and Placido are British Virgin Islands ("BVI") companies, and the shares in dispute ("the Shares") are currently registered in the name of Mr Shamoon and are managed and controlled by the Administrator of Mr Shamoon's estate. The Shares are worth tens of millions of dollars.
4. In particular, Mr Winkler claims that in about 2008, Mr Shamoon contemplated transferring a part of Ainsbury's holding in another company called B. Gaon Holdings Limited ("Gaon") to Mr Winkler. However, following advice from the Third Defendant ("Mr Grumbach"), Mr Winkler claims that Mr Shamoon decided instead to give 1% of Ainsbury to Mr

Winkler and instructed Mr Grumbach to transfer these shares. Furthermore, Mr Winkler claims that in April 2009, shortly before his death, Mr Shamoon decided to transfer to Mr Winkler 12.5% of the shares in Placido in order to incentivise Mr Winkler to be involved in the business of the Yakhin Hakal Group after Mr Shamoon's death. Mr Winkler claims that Mr Shamoon directed Mr Grumbach to register Mr Winkler as owner of 12.5% of Placido.

5. By this claim, the Claimants seek declarations against Mrs Angela Shamoon and Ms Alexandra Shamoon to establish that Mr Winkler is entitled to 1% of the shares in Ainsbury and that Arzal, alternatively Mr Winkler, is entitled to 12.5% of the shares in Placido. Orders are also sought that Mrs Angela Shamoon and Ms Alexandra Shamoon should "take all necessary steps" to ensure that Mr Winkler, in the case of the Ainsbury shares, and Arzal or alternatively Mr Winkler, in the case of the Placido shares, is registered as owner, or their proceeds transferred, "at the earliest opportunity". As against Mr Grumbach, it is claimed that he negligently failed to transfer the legal title in the Shares, and so, if the Claimants' claim for registration of the legal title in the Shares fails, their value is claimed from Mr Grumbach.
6. There have been a very large number of claims in the Israeli courts against Mr Shamoon's estate. In February 2015, Mr Reicher, the current Administrator of the estate, told the Israeli Court that more than 300 court applications had been filed in Israel, involving more than 30 litigants, since the start of the administration of the estate in Israel in 2009. One such application was made in Israel by Mr Winkler himself. In particular, Mr Winkler brought proceedings in April 2014 in Israel against the Administrator of Mr Shamoon's Estate, and against Mrs Angela Shamoon and Ms Alexandra Shamoon as the beneficiaries of the remainder rights under Mr Shamoon's will. By this application, he asked the Israeli Court to direct that the Shares, which are all assets within Mr Shamoon's estate, should be transferred into the ownership of Mr Winkler, by requiring the Administrator of the estate to remove his objections to having the shares transferred into Mr Winkler's name.
7. The Israeli Court dismissed Mr Winkler's application on 2nd June 2014. It ruled that the summary process of asking the Court to give instructions to the Administrator of the estate was not suitable where there was a dispute between the parties as to the ownership of the shares in question. Instead the Court directed that Mr Winkler "... is obliged to file a suitable claim to the competent court...". I have no doubt that the Israeli judge dismissing the summary process intended that the "competent court" would be an Israeli court. However, Mr Winkler did not bring such proceedings in Israel, but instead issued the Claim Form in these proceedings on the 8th October 2014. In contrast to the proceedings in Israel, the Administrator was not made a defendant to these proceedings.

The applications before the Court

8. Mrs Angela Shamoon applies for an order under CPR Part 11 setting aside the Claimants' purported service of the Claim Form on her within the jurisdiction on the basis that she is not domiciled in the UK for the purposes of Article 59

of the Brussels Regulation 44/2001 ("the Brussels Regulation"), and was not therefore served at her "usual or last known residence" within CPR 6.9(2). The Brussels I Recast Regulation (1215/2012) ("the Brussels Recast Regulation") has no application to this case.

9. Alternatively, and in the event that the Court holds that she was validly served within the jurisdiction, Mrs Angela Shamoon applies for an order declaring that the Court does not have jurisdiction, or, alternatively should not exercise its jurisdiction in respect of the claim against her on the basis that:
 - i. The claim relates to succession and therefore falls outside the scope of the Brussels Regulation (pursuant to Article 1(2)(a) thereof); and
 - ii. Pursuant to the common law rules, the English Court has no jurisdiction in respect of the claim and in any event England is not the natural forum for the claim.
10. Ms Alexandra Shamoon accepts that she is domiciled in the UK for the purposes of the Brussels Regulation. However, she applies for an order on essentially the same basis as that set out above, contending, in particular, that the claim relates to succession and therefore falls outside the scope of the Brussels Regulation.
11. The Claimants claim that the applications of Mrs Angela Shamoon and Ms Alexandra Shamoon should be dismissed. Alternatively, the Claimants apply for permission to serve Mrs Angela Shamoon out of the jurisdiction ("the Protective Application"). The Claimants seek permission from the Court to serve Mrs Angela Shamoon out of the jurisdiction in Israel pursuant to CPR 6.36 and 6.37, on the basis that she is a "necessary or proper party", within the meaning of CPR PD 6B paragraph 3.1(3), to the claim against Ms Alexandra Shamoon, who would thus operate as an "anchor defendant".
12. Mr Grumbach also challenges jurisdiction under CPR Part 11. In particular, he is a Swiss lawyer, domiciled in Switzerland, and the Claimants seek to establish the jurisdiction of the English Court under Article 6(1) of the Lugano Convention 2007 ("the Lugano II Convention"). Mr Grumbach claims that there is no proper basis for the exercise of jurisdiction, on the basis *inter alia* that Article 6(1) is inapplicable to the facts of this case.

The agreed list of issues

13. The parties agreed a list of issues which are raised by these multiple applications, and the structure of this judgment shall follow the agreed list. As indicated below, certain contentions, if successful, are determinative of the matter, so that other issues would not then require determination. However, the parties have asked me to determine all issues between them, which I am prepared to do given that (a) they were fully argued and (b) it may be of assistance if this case is considered by the Court of Appeal. The issues are as follows:

i. *Submission*: whether Mrs Angela Shamoon and Ms Alexandra Shamoon have, by their conduct in the proceedings to date, submitted to the jurisdiction of the English Court.

ii. *Succession*

a) Whether the claim against Mrs Angela Shamoon and Ms Alexandra Shamoon falls within the "succession" exception in Article 1(2)(a) of the Brussels Regulation or Lugano II Convention.

b) If so, whether pursuant to the common law rules the English Court has jurisdiction in respect of the claim against Mrs Angela Shamoon and Ms Alexandra Shamoon.

iii. *Domicile*: whether Mrs Angela Shamoon was domiciled in the UK at the time that the claim was issued and served on her.

iv. *Claimants' Protective Application*

a) Does the claim fall within the jurisdictional gateway in CPR PD 6B paragraph 3.1(3)? In particular:

1. Is there a real issue between the Claimants and Ms Alexandra Shamoon? In particular, is there a realistic prospect of success in relation to the causes of action against Ms Alexandra Shamoon based upon:

- The Claimants' allegation that Mr Winkler obtained an equitable proprietary interest in the Ainsbury Shares before Mr Shamoon's death?
- The Claimants' allegation that the Claimants (or one of them) obtained an equitable proprietary interest in the Placido Shares before Mr Shamoon's death?
- The allegation that Mr Winkler has an entitlement by way of proprietary estoppel to the Ainsbury Shares based on representations made by Ms Alexandra Shamoon after Mr Shamoon's death?
- The allegation that the Claimants (or one of them) have an entitlement by way of proprietary estoppel to the Placido Shares based on representations made by Ms Alexandra Shamoon after Mr Shamoon's death?

2. If there is a real issue between the Claimants and Ms Alexandra Shamoon, is it reasonable for the English Court to try that issue?

b) Insofar as necessary, do the claims (equivalent to those alleged in iv(a)(1) above) against Mrs Angela Shamoon have a reasonable prospect of success (CPR 6.37(1)(b))?

v. *Application by Mr Grumbach*: Does the English Court have jurisdiction in respect of the claim against Mr Grumbach?

14. Before considering these multiple issues, I should express my gratitude to all Counsel for the excellent quality of their skeleton arguments and oral presentations.

Submission to the jurisdiction of the English Court

15. If the Claimants were to succeed on this aspect of their case, then this would determine the matter as against Mrs Angela Shamoon and Ms Alexandra Shamoon. Their application under CPR Part 11 would fail and the Claimants'

Protective Application would not arise. However, this is a case where it has been repeatedly stated on behalf of these Defendants, that, by taking particular steps, they were not submitting to the jurisdiction. If the Claimants are correct, Mrs Angela Shamoon and Ms Alexandra Shamoon will be deemed to have submitted to the jurisdiction, whilst straining every muscle not to do so.

The relevant facts

16. The procedural history relevant to this aspect of the case is as follows. On 8th October 2014 the Claim Form was issued. PCB Litigation LLP ("PCB Litigation"), solicitors for the Claimants, under cover of letters dated 13th November 2014, sent the Claim Form and other documents to Mrs Angela Shamoon and Ms Alexandra Shamoon, respectively, at the addresses of two London flats, namely Flat 6 and Flat 3, 35, Hyde Park Gate, London SW7 5DN ("Flat 6" and "Flat 3"). The Particulars of Claim were enclosed with those letters.
17. Due to a mistaken belief that no Particulars of Claim had been served, on 16th December 2014, an application was made on behalf of Mrs Angela Shamoon and Ms Alexandra Shamoon to strike out the claim under CPR 3.4(2)(c) ("the Procedural Strike Out Application"). I was told that Ms Alexandra Shamoon had tried to fax the documents to Mrs Angela Shamoon, who had passed them to their solicitors, Quinn Emanuel Urquhart & Sullivan LLP ("Quinn Emanuel"), and the Particulars of Claim had been omitted. The precise reasons for the error are not important, as it is common ground that it was an innocent mistake.
18. The Procedural Strike Out Application made clear that no submission to the jurisdiction was being made. The Application Notice stated:

"Nothing in this application should be taken as a submission by Mrs Angela Shamoon and Ms Alexandra Shamoon to the jurisdiction of the English Courts. They make no such submission, and this application is made expressly without prejudice to their rights to object to the English Court's jurisdiction, in the event that this claim were to be continued, which rights remain fully reserved."
19. Furthermore, Paragraph 5 of Mr Gerbi's witness statement, served in support of the Procedural Strike Out Application, stated that:

"It should be made expressly clear that, by making this Application, neither the First nor Second Defendant is to be taken to have submitted to the jurisdiction of the English Court. They make no such submission, and this Application is made expressly without prejudice to their rights to object to the English Court's jurisdiction, in the event that this claim were to be continued, which rights remain fully reserved."
20. Although it is difficult to imagine that, in the light of these statements, there could be any doubt about the matter, the Procedural Strike Out Application

was served under cover of a letter dated 16th December 2014 from Quinn Emanuel, which stated that:

"As the Application makes clear, our clients do not by this Application make any submission to the jurisdiction of the English Courts and fully reserve their rights, including to object to the English Court's jurisdiction."

21. On 4th December 2014 applications for judgment in default were made on behalf of the Claimants against Mrs Angela Shamoon and Ms Alexandra Shamoon, on the basis that they had not filed Acknowledgements of Service by 1st December 2014. Default judgments were entered on 19th December 2014. On 22nd December 2014 it was confirmed that the Procedural Strike Out Application would not be pursued and Acknowledgements of Service were filed on behalf of Mrs Angela Shamoon and Ms Alexandra Shamoon. On both Acknowledgements of Service, there was an express statement of intention to contest the jurisdiction.
22. The Claimants initially refused to consent to the default judgments being set aside. Accordingly, on 23rd December 2014, Mrs Angela Shamoon and Ms Alexandra Shamoon applied, *inter alia*, to set aside the default judgments pursuant to CPR Part 13 ("the Set Aside Application"). By a Consent Order sealed on 2nd February 2015 the default judgments were set aside and retrospective extensions of time to file Acknowledgements of Service and to file (amongst other possible applications) jurisdictional challenges, were granted. As with the Procedural Strike Out Application, it was repeatedly stated, both in the Application and in the evidence, that there was no submission to the jurisdiction. For example, Mrs Angela Shamoon stated at paragraph 5 of her statement in support of the Set Aside Application:

"I would like to make clear that by making this witness statement in support of the application, I do not submit to the jurisdiction of the English Court. Being resident in Israel (as I explain in more detail below), I make no such submission and this witness statement and application are made expressly without prejudice to my right and intention to object to the English Court's jurisdiction, and also to the validity of the purported service on me of the claim documents by the Claimants."

23. By a letter dated 14th January 2015 PCB Litigation proposed on behalf of the Claimants that:

"Without prejudice to our clients' contention that your clients have, by their conduct, already submitted to the jurisdiction of the English Court, any application by your clients to challenge jurisdiction be made within 14 days of the consent order setting aside default judgment."

Accordingly, within 14 days of the Consent Order, by an Application Notice dated 16th February 2015, Mrs Angela Shamoon and Ms Alexandra Shamoon applied to set aside service of the Claim Form pursuant to CPR Part 11.

24. On 20 January 2015, Mrs Angela Shamoon and Ms Alexandra Shamoon made a Request for Further Information of the Particulars of Claim. The letter accompanying the Request stated that:

"We enclose by way of service on your clients Part 18 Requests for Further Information and Clarification of the Particulars of Claim which are being made for the purpose of their challenge to the jurisdiction of the English Court, and expressly (and self-evidently) without any submission to such jurisdiction being made. These Requests, and your clients' answers to the same, are reasonable, necessary and proportionate in order to enable our clients to prepare their application challenging jurisdiction."

This was reiterated at the beginning of the Request:

"This is a Request for Further Information of the Particulars of Claim pursuant to CPR Part 18 dated 20 January 2015. It is served on behalf of Mrs Angela Shamoon and Ms Alexandra Shamoon for the purpose of their challenge to the jurisdiction of the English Court which they intend to bring pursuant to CPR Part 11 and is reasonably necessary and proportionate in order to resolve the issues that arise on that application.

By making this Request for Further Information neither Mrs Angela Shamoon nor Ms Alexandra Shamoon submits or is taken to have submitted to the jurisdiction of the English Court. Rather, the purpose of this Request is to assist the Court in resolving Mrs Angela Shamoon and Ms Alexandra Shamoon' applications contesting jurisdiction."

Legal issues

25. Article 2(1) of the Brussels Regulation provides as follows:

"Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State."

26. This is a fundamental objective of the Brussels Regulation, as reflected in Recital 11:

"The rules of jurisdiction must be highly predictable and founded on the principle that jurisdiction is generally based on the defendant's domicile and jurisdiction must always be available on this ground saving a few well-defined situations in which the subject matter of the litigation or the autonomy of the parties warrants a different linking factor."

27. Article 24 provides that:

"Apart from jurisdiction derived from other provisions of this regulation, a court of a member state before which a defendant enters an appearance shall have jurisdiction. This rule shall not apply where appearance was entered to contest the jurisdiction..."

28. The Jenard Report on the Brussels Convention [1979] OJ C59/1 sheds light on the purpose of Article 24 (then Article 18). In particular, the commentary on Article 18 states that:

"Article 18 governs jurisdiction implied from submission. If a defendant domiciled in a Contracting State is sued in a court of another Contracting State which does not have jurisdiction under the Convention, two situations may arise: the defendant may either, as he is entitled to do, plead that the court has no jurisdiction under the Convention, in which case the court must declare that it does not have jurisdiction; or he may elect not to raise this plea, and enter an appearance. In the latter case, the court will have jurisdiction."

29. From this, it appears that the Article is concerned with cases where a defendant has voluntarily elected to submit to the jurisdiction of the court of a Contracting State in which he is not domiciled, rather than contesting the jurisdiction of that court. This is reinforced by a further characterisation in the Jenard report of Article 18 as "jurisdiction by submission."

30. The Jenard Report continues:

"Unlike the case of conventions based on indirect jurisdiction, the defendant may, by virtue of the Convention, rely on its provisions in the court seised of the proceedings and plead lack of jurisdiction. It will be necessary to refer to the rules of procedure in force in the state of the court seised of the proceedings in order to determine the point in time up to which the defendant will be allowed to raise this plea, and to determine the legal meaning of the term 'appearance'."

Thus, it appears that the question of whether the defendant has entered an appearance is to be determined in accordance with the relevant national procedural rules.

31. As a matter of European law, any objection to jurisdiction must be raised before filing a defence on the merits; Case C-150/80 *Elefanten Schuh GmbH v Pierre Jacqmain* [1981] ECR 1671 at [17]. However, in *Harada Ltd (trading as Chequepoint UK) v Turner* [2003] EWCA Civ 1695 at [29] Simon Brown LJ held that the Court does not have jurisdiction, even if the defendant makes submissions on the merits, provided that the challenge to jurisdiction is made before, or at the same time as, the argument on the merits. He explained at [32] that the rationale of Article 18 was to allow the merits to be contested without prejudice to the question of jurisdiction, provided that the jurisdictional objection has not been delayed until after, under national procedural law, there has been a submission to the jurisdiction.
32. The Court of Appeal considered the phrase "enters an appearance" in Article 24 of the Brussels Regulation in *Deutsche Bank AG London Branch v Petromena ASA* [2015] 1 WLR 4225. Floyd LJ held that whether an appearance has been entered is to be decided as a matter of national procedural law, provided that the result is consistent with the effective operation of the Convention. He said at [21]-[22]:

"21. Professor Briggs and Mr Rees QC, in *Civil Jurisdiction and Judgments* (5th edn. 2009) ("Briggs and Rees"), while recognising that "enters an appearance" may have an autonomous meaning, go on to say at paragraph 2.83 that precisely how and when the entering of an appearance takes place is governed by rules of local procedural law, provided always that these rules do not impair the effectiveness of the Convention. That view is consistent with the general approach of the ECJ to procedural rules: see Case 365-88 *Kongress Agentur Hagen GmbH v Zeehaage BV* [1990] ECR I-1845 cited by Simon Brown LJ in *Harada Limited (trading as Chequepoint) v Turner* [2003] EWCA Civ 1695 at [30]. Thus national law must not contain rules which compel a defendant to enter an appearance and thereby submit to the jurisdiction in order to protect his position on the merits. Such rules would impair the operation of the Convention.

22. It is therefore to national procedural rules that one must look, in the first instance, to determine whether an appearance has been entered. Once one has determined that question as a matter of national procedural law, it is necessary to ask whether the result is consistent with the effective operation of the Convention."

33. Floyd LJ explained at [32]-[33] that there are two different ways in which a defendant might submit to the jurisdiction. The first, which he categorised as "common law waiver", requires the doing of an act inconsistent with maintaining a challenge to the jurisdiction. Such a waiver must clearly convey an unequivocal renunciation by the defendant of his right to challenge the jurisdiction. The second, which he categorised as a "statutory form of submission" is where the national procedural rules provide that a particular act shall be treated as a submission.

34. At paragraph 2.87 of *Civil Jurisdiction and Judgments* 6th ed. (2015) Prof. Briggs summarises the position in respect of Article 26 of the Recast Brussels Regulation. In my judgment this applies equally to Article 24 of the Brussels Regulation:

"What is required of [the defendant] is that he makes his contest to the jurisdiction at the first opportunity which is given to him under the procedural law of the Court seised, and not, as happened in *Elefanten Schuh*, as decidedly late afterthought. It is difficult to believe that this provision should now give rise to any practical difficulty. If the plea to object to the jurisdiction is made at the first practical opportunity and no later than the time for filing the first defence, and in accordance with the procedural rules of the Court or tribunal concerned, neither concurrently entering a defence on the merits, nor taking procedural steps, such as applying for an extension of time to make the jurisdictional challenge, or seeking discovery of documents in order to demonstrate the facts which show the Court not to have jurisdiction, in the course of the adjudication upon the jurisdictional plea, will prejudice the position of the defendant. By contrast, taking further voluntary steps, not themselves consistent with the original and continuing intention to challenge the jurisdiction, but which deal instead with the merits of the claim, will be liable to forfeit the protection of Article 26, and will amount to the entering of an appearance."

The Claimants' submissions

35. First, Mr Colton submits that there are two distinct elements to Article 24 of the Brussels Regulation. The court will have jurisdiction under the first sentence of the Article if the defendant "enters an appearance". However a qualification is added: even if a party has entered an appearance, that does not confer jurisdiction if the appearance was "entered to contest the jurisdiction". Secondly, he submits that a defendant will lose the right to contest jurisdiction under Article 24 if, before he contests jurisdiction, he enters an appearance for any other purpose. In particular, he submits that a defendant loses the right to contest jurisdiction if he makes submissions on the substance of the claim before contesting jurisdiction.
36. Thirdly, Mr Colton pointed to the terms of CPR Part 11(1)-(5):
- "(1) A defendant who wishes to –
(a) dispute the Court's jurisdiction to try the claim; or
(b) argue that the Court should not exercise its jurisdiction
may apply to the Court for an order declaring that it has no such jurisdiction or should not exercise any jurisdiction which it may have.
(2) A defendant who wishes to make such an application must first file an acknowledgment of service in accordance with Part 10.
(3) A defendant who files an acknowledgment of service does not, by doing so, lose any right that he may have to dispute the Court's jurisdiction.
(4) An application under this rule must –
(a) be made within 14 days after filing an acknowledgment of service; and
(b) be supported by evidence.
(5) If the defendant –
(a) files an acknowledgment of service; and
(b) does not make such an application within the period specified in paragraph (4),
he is to be treated as having accepted that the Court has jurisdiction to try the claim."
37. Relying on CPR Part 11(2), Mr Colton submits that until a defendant has filed an acknowledgement of service, he has not challenged the jurisdiction under national procedural rules. Once he has filed the acknowledgement of service, a defendant has entered an appearance within the meaning of Article 24. According to this argument, the defendant does so even if he indicates in the acknowledgement of service that he intends to contest the jurisdiction of the Court. At that stage he must rely on the second sentence of Article 24.
38. Fourthly, Mr Colton submits that a defendant can also enter an appearance by making an application to the Court or by otherwise invoking the jurisdiction of the Court, and he contends that this has occurred in the present case. It is alleged that Mrs Angela Shamoon and Ms Alexandra Shamoon entered an appearance in these proceedings before they challenged jurisdiction, and did so in a manner that was not necessary in order to contest the jurisdiction of the Court. In particular it is alleged that they entered an appearance without challenging the jurisdiction by (a) issuing the Procedural Strike Out

Application; (b) issuing the Set Aside Application and/or (c) serving the Request for Further Information.

Assessment

39. I reject the Claimants' submissions for the following reasons. I do not accept that a defendant who wishes to contest the jurisdiction "enters an appearance" within the meaning of Article 24 by filing an acknowledgement of service which expressly indicates his intention to contest the jurisdiction. In support of his argument, Mr Colton relies on [186] of the judgment of Andrew Smith J. in *Maple Leaf Macro Volatility Master Fund v Rouvroy* [\[2009\] EWHC 257 \(Comm\)](#):

"In my judgment, the defendants entered an appearance within the meaning of the Brussels Regulation in respect of the claims originally brought by Maple Leaf when they acknowledged service of these proceedings. They did not thereby lose the right to challenge the jurisdiction: they had the right to do so under the CPR. To that extent the defendants did not unconditionally enter an appearance by the filing of the acknowledgment of service. They made this explicit by expressing their intention to challenge jurisdiction on the form, but it would have been the case in any event: see the judgment of Mr. Michael Briggs QC in *IBS Technologies (PVT) Ltd v APM Technologies SA*, unreported, 7 April 2003."

40. The first sentence, taken in isolation, could support the Claimants' proposition. However, I consider from the rest of the citation that Andrew Smith J considered that the defendant did not unconditionally enter an appearance by the filing of an acknowledgement of service, because of the explicit statement of intention to challenge jurisdiction on that form.
41. In *Antonio Gramsci Shipping Corp v Reoleto Ltd* [2012] EWCH 1887 (Comm); [2012] Lloyd's Rep 365. Teare J recorded at [65] that it was common ground that:

"in determining whether there has been an appearance pursuant to Art. 24 of the Brussels regulation it is appropriate to consider whether there has been a submission to the jurisdiction in accordance with the local law, in this case, English law."

42. Similarly, in *Future New Developments limited v B&S Patente und Marken GmbH* [2014] EWCH 1874 (IPEC) HH Judge Hacon recorded at [18] that:

"If the proceedings before this Court were considered in isolation, B&S did not enter an appearance. In the acknowledgement of service the box for challenging the jurisdiction was crossed and within 14 days of filing the acknowledgement B&S made its application disputing the Court's jurisdiction supported by evidence pursuant to CPR 11(4)."

43. I consider that in both those cases, the parties were right to accept that the filing of an acknowledgement of service with an express indication of an

intention to challenge jurisdiction does not constitute the entry of an appearance within the meaning of Article 24. CPR 11(2) requires an acknowledgement of service to be filed in order to challenge jurisdiction. By doing so, the defendant does not sacrifice any of his rights under the Regulation. National procedural rules must not be construed as compelling the defendant to enter an appearance, as this would be contrary to the objects of the Regulation. The question of whether a defendant has entered an appearance depends on whether there has been a submission to the jurisdiction in accordance with the local law.

44. Furthermore, I do not accept that this question is answered by asking whether the defendant has done more than is *required* or is *necessary* in order to challenge jurisdiction. Rather, the Court must be satisfied that the defendant has unequivocally renounced his right to challenge the jurisdiction.
45. There is no question of statutory submission in the present case. Therefore, the issue is whether there has been a waiver of the right to challenge jurisdiction (see *Deutsche Bank* (supra)). The relevant test for submission to the jurisdiction was set out by Lord Collins in *Rubin & Anor v Eurofinance SA and Ors* [\[2012\] 3 WLR 1019](#):

"The general rule in the ordinary case in England is that the party alleged to have submitted to the jurisdiction of the English Court must have "taken some step which is only necessary or only useful if" an objection to jurisdiction "has actually been waived, or if the objection has never been entertained at all."

46. Applying these principles to the acts relied on by Mr Winkler, it is clear that none of them amount to a submission to the jurisdiction. In respect of the Procedural Strike Out Application, the Set Aside Application and the Request for Further Information, Mrs Angela Shamoon and Ms Alexandra Shamoon have consistently made clear that such steps were without prejudice to their jurisdictional challenge. This is the very opposite of an unequivocal renunciation of such a challenge.
47. The Procedural Strike Out Application was based upon a mistaken belief that the Claimants failed to serve the Particulars of Claim. It makes no difference to the Claimants' argument that this belief was mistaken. Even if the Claimants had failed to serve the Particulars of Claim within the time specified by the rules, on the Claimants' case, a Strike Out Application by Mrs Angela Shamoon and Ms Alexandra Shamoon would still have amounted to a submission to the jurisdiction, where it was made before the Acknowledgement of Service was filed, since it would not have been a step which was necessary in order to challenge jurisdiction. This approach would lead to an absurd result.
48. It would be equally absurd if a defendant who wished to challenge jurisdiction was unable to set aside a judgment in default which had been obtained against it without submitting to the jurisdiction. The fact that the Set Aside Application was allowed by consent shows that it was justified.

49. Finally, the express purpose of the Request for Further Information was to obtain greater clarity as to the precise nature of the claim in connection with Mrs Angela Shamoon and Ms Alexandra Shamoon's intended jurisdiction challenge. The questions were asked because of arguments concerning succession and *forum conveniens* which Mrs Angela Shamoon and Ms Alexandra Shamoon's legal advisers anticipated, rightly, would arise in the course of the jurisdictional challenge. None of the requests were answered by the Claimants. Given that the purpose of the Request was repeatedly made clear, as was the fact that it was not to be taken as constituting a submission to the jurisdiction, I do not consider that its service had the unintended effect alleged by the Claimants.
50. In the circumstances I have come to the clear conclusion that Mrs Angela Shamoon and Ms Alexandra Shamoon have not submitted to the jurisdiction pursuant to Article 24 of the Brussels Regulation.
51. In the Claimants' skeleton argument, it was submitted that if I were to conclude that the claim relates to "succession", and therefore falls outside the scope of the Brussels Regulation, Mrs Angela Shamoon and Ms Alexandra Shamoon had, by their conduct, submitted to the jurisdiction of the English Court in accordance with domestic English rules. I am not sure that this submission was pursued by Mr Colton at the hearing. If it was, I reject it. In *Hewden Stuart Heavy Cranes Ltd. v Leo Gottwald Kommanditgesellschaft* [1992] WL 12678542, Lloyd LJ applied the observation of Denning LJ in *Re Dulle's Settlement* (No.2) [1951] Ch 842, which was quoted with approval by Lord Fraser in *Williams & Glyn's Bank Plc v Astro Dinamico Companie Naviera S.A.* [1984] 1 W.L.R. 438:

"I cannot see how anyone can fairly say that a man has voluntarily submitted to the jurisdiction of a court, when he has all the time been vigorously protesting that it has no jurisdiction."

52. In my judgment, the observation of Denning LJ is applicable to the case before me. Mrs Angela Shamoon and Ms Alexandra Shamoon have clearly not submitted to the jurisdiction of the English Court under English domestic rules.

Whether the claim falls within the "succession" exception

Legal Principles

53. Article 1 of the Brussels Regulation provides as follows:

"1. This Regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters.

2. The Regulation shall not apply to:

(a) the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession;

- (b) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;
- (c) social security;
- (d) arbitration."

54. Article 1(2)(a) of the Lugano II Convention is in the same terms as Article 1(2)(a) of the Brussels Regulation. I shall refer to the Brussels Regulation, but my reasoning is equally applicable to the Lugano II Convention.
55. Mr Jowell QC, who appeared for Mrs Angela Shamoon and Ms Alexandra Shamoon, made certain preliminary points in respect of the exceptions in Article 1(2)(a)-(d), which I accept. First, where a claim raises several issues, the question for the Court is whether the principal subject-matter of the claim falls within one of the exceptions. This test is applied to ascertain whether a claim falls within the exclusive jurisdiction provision in Article 22; *JP Morgan Chase Bank NA v Berliner Verkehrsbetriebe* [2012] QB 199 at [90] and *Ferrexpo v Gilson* [2012] 1 Lloyd's Rep 588 at [145]. This was the approach taken specifically in relation to the "succession" exception by Rattee J in *In re Hayward* [1997] Ch 45 at 53H and by Carr J (for the avoidance of doubt, Mrs Justice Sue Carr) in *Sabbagh v Khoury and others* [\[2014\] EWHC \(Comm\) 3233](#) at [276].
56. Secondly, the European Court of Justice has made clear that in assessing whether a claim is a "civil or commercial matter" within the meaning of Article 1(1) of the Regulation, what matters is the substance and not the form of the claim: see e.g. Case C-292/05 *Lechouritou v Germany* [2007] ECR I-1719 at [40]-[41] where the Court emphasised the need to look beyond the pleadings. In my judgment, the same is true in respect of Article 1(2)(a) in that the Court needs to look at the substance of the claim in order to decide if its principal subject matter falls within the succession exception.
57. Mr McParland, who appeared on behalf of Mr Grumbach, submits that Article 1(2) contains exclusions from the scope of the Brussels Regulation. He submits that there is a distinction between exclusions and exceptions. Whereas exceptions, such as Article 22 of the Brussels Regulation, are to be construed strictly and not given an interpretation broader than that required by their objective, there is no reason to apply this to exclusions. Mr McParland drew attention to pages 10 and 11 of the Jenard Report, which indicate why the matters specified in Article 1(2)(a) were excluded from the scope of the Brussels Convention. In summary, it was considered that difficulties resulting from a disparity between the various systems of law, in particular regarding the rules of conflicts of laws, together with a concern that courts might refuse to recognise foreign judgments, justified the exclusion of, *inter alia*, claims where the principal subject matter of the proceedings concerned wills and succession. Since this was a case of exclusion from the scope of the Convention, rather than derogation from a right granted by it, Mr McParland submits there was no reason to construe the exclusion narrowly.
58. This was not the view taken by Carr J in *Sabbagh*. At [255]-[257] she said:

"255. The Brussels Regulation provides a comprehensive code of jurisdiction for the courts of the member states of the European Union. The general rule is that all civil and commercial matters are subject to the Brussels Regulation and that, pursuant to Article 2, defendants should be sued at the place of their domicile.

256. It was submitted for Sabbagh that where other Articles exclude or provide exceptions to this general principle, they must be construed strictly and not given an interpretation broader than is required by their objective: see for example Case C-292/08 *German Graphics Graphische Maschinen GmbH v van der Schee* [2010] ILPr 1 (at paragraphs 23 to 25) ("German Graphics"). The Defendants rejected this, at least in relation to Article 1(2), on the basis that German Graphics was a case in respect of insolvency where, unlike succession, the scope of insolvency proceedings is specifically defined (see in particular Article 2) and Annex A of Council Regulation (EC) No 1346/2000 on insolvency proceedings ("the Insolvency Regulation").

257. I am not persuaded that the statements in German Graphics are not of more general application than simply in the insolvency context. The statement (in paragraph 23) to the effect that Article 1(1) of the Brussels Regulation should be broad in its scope was a general one (see for example the comments made to similar effect in the context of Article 22 in *JP Morgan NA v Berliner Verkehrsbetriebe* [2012] QB 199 ("BVG") addressed below). But in any event my findings below do not depend on whether a narrow or a broad approach to construction is taken."

59. Mr McParland is correct in his submission that since Carr J's findings did not depend upon whether a narrow or broad approach to construction is taken, I am not bound to follow her reasoning. However, I agree with Carr J that the statements of the CJEU in *German Graphics* are not confined to the insolvency context and indicate that the exclusions in Article 1(2) should not be broadly interpreted. This is consistent with the objective that "civil and commercial matters" referred to in Article 1(1) should be broadly interpreted, in accordance with the second, seventh and fifteenth recitals to the Brussels Regulation. In addition, and in common with Carr J, I consider that my findings in the present case do not depend upon whether a narrow or a broad approach to interpretation is taken.

Article 1(2)(a)

60. The phrase "wills and succession" is not defined within the text of the Brussels Regulation. The need for a uniform application of EU law requires that this phrase should be given an autonomous interpretation. Furthermore, when interpreting this phrase, it is necessary to consider the broader, systematic context of EU private international law of which it forms part.
61. Accordingly, any autonomous definition of "wills and succession" must be consistent with the scope of Regulation (EU) No 650/2012 ("the Succession Regulation"). Although the United Kingdom has opted out of the Succession Regulation, it is an important interpretative aid. Matters which are included within the scope of the Succession Regulation are excluded from the scope of

the Brussels Regulation. This is the effect of the exclusion in Article 1(2)(a), seen in the overall context of the relevant Regulations.

62. Article 3.1(a) of the Succession Regulation defines "succession" as:

"succession to the estate of a deceased person and covers all forms of transfer of assets, rights and obligations by reason of death, whether by way of voluntary transfer under a disposition of property upon death or transfer through intestate succession."

63. Recital (9) to the Succession Regulation states that:

"The scope of this Regulation should include all civil-law aspects of succession to the estate of a deceased person, namely all forms of transfer of assets, rights and obligations by reason of death, whether by way of a voluntary transfer under a disposition of property upon death or a transfer through intestate succession."

64. The applicable law designated under either Article 21 or 22 of the Succession Regulation provides that it "... shall govern the succession as a whole" (Article 23 (1)). The concept of "succession as a whole" includes, in particular:

- i. "the sharing out of the estate": Article 23(j);
- ii. "the disposable part of the estate, the reserved shares and other restrictions on the disposal of property upon death as well as claims which persons close to the deceased may have against the estate or the heirs": Article 23(h);
- iii. "any obligation to restore or account for gifts, advancements or legacies when determining the shares of the different beneficiaries": Article 23(i).

65. Accordingly, the "wills and succession" exclusion in Article 1(2)(a) of the Brussels Regulation applies to civil law claims where the principal subject matter of the claim is "... succession to the estate of a deceased person", which covers "all forms of transfer of assets, rights and obligations by reason of death". "Succession" claims includes any "sharing out of the estate"; "claims which persons close to the deceased may have against the estate or the heirs"; and "any obligation to restore or account for gifts when determining the shares of the different beneficiaries".

Application to the facts of the present case

66. The relief sought by the Claimants in this claim includes:

- i. A declaration that Mr Winkler is entitled to 1% of the shares in Ainsbury;
- ii. A declaration that Arzal, alternatively Mr Winkler, is entitled to 12.5% of the shares in Placido;
- iii. An order that Mrs Angela Shamoon and Ms Alexandra Shamoon take all necessary steps to ensure that Mr Winkler is registered as owner of the Ainsbury Shares, or their proceeds transferred to him, "at the earliest opportunity";

- iv. An order that Mrs Angela Shamoon and Ms Alexandra Shamoon take all necessary steps to ensure that Mr Winkler is registered as owner of the Placido Shares, or their proceeds transferred to him, "at the earliest opportunity";
- v. Alternatively, "the value of the Ainsbury Shares and/or Placido Shares".

67. The Claimants submit that the present proceedings do not fall within the "wills and succession" exception. They contend that the claims are principally concerned with the question whether, as a matter of BVI law, the Claimants have acquired a beneficial interest in the Placido and Ainsbury shares as a result of the conduct of Mr Shamoon and Mr Grumbach. Any such rights, according to the Claimants, arose under general law, accrued, for the most part, before Mr Shamoon's death, and do not arise under any special rule of Israeli succession. They further submit that the proceedings are concerned with whether a proprietary estoppel can be established against Mrs Angela Shamoon and Ms Alexandra Shamoon, a question which is unconnected to any wills and succession issue; and whether Mr Grumbach is liable in negligence in BVI law for failing to take steps necessary to register the Shares in the name of the Claimants either before or after Mr Shamoon's death. They further submit that there is no reason to consider that the proper administration of justice requires these proceedings to be pursued in Israel.
68. I do not accept these submissions for the following reasons. First, the Claimants are, in reality, claiming to be entitled to succeed to the estate of a deceased person, and in particular to the legal ownership of property that forms part of Mr Shamoon's estate. Mrs Angela Shamoon and Ms Alexandra Shamoon are only sued because they are the heirs of Mr Shamoon, who are ultimately due to receive the shares in Placido and Ainsbury as residual legatees under the will when the administration of the estate is complete. They are effectively sued in their capacity as beneficiaries under Mr Shamoon's will, and the object of the proceedings is to frustrate the claims of Mrs Angela Shamoon and Ms Alexandra Shamoon to succeed to the Shares under the terms of the will.
69. Secondly, Mrs Angela Shamoon and Ms Alexandra Shamoon are not the owners of the relevant shares, which are currently within the control of the Israeli Administrator of the estate, and are subject to distribution in accordance with the terms of the will. The Claimants' claims are therefore being brought when the succession process of "sharing out of the estate" has still not yet been completed by the Administrator in Israel. The claims in the present proceedings are a recast of Mr Winkler's Israeli application from April 2014, and the pleadings in both proceedings are based on the same facts. Mr Colton accepted that if the proceedings had been brought against the Administrator, they would fall within the "wills and succession exception". Bringing the proceedings against parties who do not own the relevant shares is an obvious device, which does not alter the substance of the claim.
70. Thirdly, the question that I am concerned with does not depend upon whether the claim arises under Israeli law or BVI law, but whether or not the principal subject matter of the claim concerns succession. Similarly, it does not depend

on the Claimants' estoppel claim, which is merely a legal mechanism through which the Claimants assert an entitlement to succeed to a share of the estate.

71. Fourthly, there is evidence from Mr Reicher, the Administrator of the estate, that he will not be able to disburse any of the disputed shares which he currently holds, including the shares claimed by the Claimants, until the Israeli Family Court has decided whether these shares are part of the estate or not. He explains that whilst he would have full regard to any decision of the English Court, it would not be right, or even lawful, under Israeli law, to surrender his duty to resolve for himself the issue of ownership of the Shares. To that end, he has commenced a claim before the Israeli Family Court seeking a declaration that Mr Winkler has no right to any of the Shares. I have also considered expert evidence from Prof. Shilo, an expert in Israeli law, who points out that it was the duty of the Administrator to commence such proceedings. In the circumstances, there is good reason to consider that the proper administration of justice requires the Claimants' claims to be pursued in Israel and not in England. Otherwise there is a clear risk of irreconcilable judgments between the English Court and the Israeli Court.
72. For these reasons, I conclude that this claim is excluded from the Brussels Regulation and the Lugano II Regulation as its principal subject matter is "succession" within the meaning of Article 1(2)(a). In particular, it is a claim whose object is "succession to the estate of a deceased person" which includes "all forms of transfer of assets, rights and obligations by reason of death". It is a succession claim which concerns "sharing out of the estate"; and it is a claim within the definition of "succession as a whole" in Article 23 of the Succession Regulation, as a claim whose principal subject matter concerns "the disposable part of the estate, the reserved shares and other restrictions on the disposal of property upon death": Article 23(h); and an "obligation to ...account for gifts, ...when determining the shares of the different beneficiaries": Article 23(i).

Whether England is the natural and convenient forum

73. Dicey, Morris & Collins, *The Conflict of Laws* 15th Edition) states at Rule 146 that:

"The High Court has jurisdiction to determine the succession of the property of any person if, but only if, there is a properly constituted representative of the estate before the court."

74. In the present case, there is no properly constituted representative of the estate before the court, because the Administrator has not been made a party to the claim. Furthermore, Mr Colton accepted that if I were to conclude that the sound administration of justice requires that this case should be dealt with in Israel, he could not then submit the England is the natural and convenient forum. In my view it is clear that Israel is available as a forum for the resolution of this dispute and is more appropriate than England. I shall elaborate briefly why this is so. I shall apply the familiar legal principle

established by the House of Lords in *Spiliada Maritime Corporation v Consulex Ltd* [\[1987\] AC 460](#).

75. There is no doubt that Israel is available as a forum where the question of the Claimants' entitlement to the Shares can be determined. This is clear from the fact that Mr Winkler himself originally decided to pursue such a claim in Israel, and from the existence of Mr Reicher's claim for the declaratory relief, which is currently pending before the Israeli Court. Prof. Shilo has confirmed in his expert evidence that Israel is an available forum. Mr Reicher's evidence confirms that Mr Winkler will have his day in court in Israel and he will be able to argue all of his claims to the Shares in full, and that the Administrator will not claim any limitation or other legal bar to prevent Mr Winkler from pursuing his claim.
76. Furthermore, there is no doubt that Israel is the natural forum for this claim. Mr Shamoon's estate is situated in Israel and is being administered in Israel under the supervision of the Israeli family court. The main witnesses all live in Israel and the alleged promises or representations which give rise to the claim had been made in Israel. Furthermore, all of the other numerous claims against the estate, including claims by non-Israeli claimants, have been brought before the Israeli courts. By contrast, the only connection which this claim has to England (subject to the issue of Mrs Angela Shamoon's domicile, which I address below) is the domicile of Ms Alexandra Shamoon, who lives in London. However, the trust holds any entitlement that she has to the Ainsbury and Placido Shares until she is 35. This is a private trust under Israeli law which is under the administration of a trustee located in Switzerland. Accordingly, Israel is an available forum which is clearly and distinctly more appropriate for the resolution of this dispute than England.

Domicile of Mrs Angela Shamoon

77. Since I have determined that this is a claim to succession which falls outside the scope of the Brussels Regulation and the Lugano II Regulation, it is not necessary to consider whether Mrs Angela Shamoon is domiciled in the UK and consequently, whether she was validly served within the jurisdiction at Flat 6. However, since I heard full arguments on the issue and the parties asked me to decide it, I shall do so.

Legal principles

78. The issue is whether the Claimants can show a good arguable case that Ms Alexandra Shamoon was resident within the jurisdiction the time at which the Claim Form was served; *Canada Trust v Stolzenberg (No 2)* [\[2002\] AC 1](#). There was a dispute as to whether the Claimants need to show that they have a better argument, or a much better argument, on the material available. In my judgment, "good arguable case" in this context means "much the better argument". This was the test applied by Waller LJ in the Court of Appeal in *Canada Trust*, in a passage approved by Lord Steyn in the House of Lords, with whom the other members of the House agreed. Waller LJ stated as follows ([\[1998\] 1 WLR 547](#) at page 555):

"'Good arguable case' reflects in that context that one side has a much better argument on the material available. It is the concept which the phrase reflects on which it is important to concentrate, i.e. of the court being satisfied or as satisfied as it can be having regard to the limitations which an interlocutory process imposes that factors exist which allow the court to take jurisdiction."

79. This test was applied by the Court of Appeal in *Lady Christine Brownlie v Four Seasons Holdings Incorporated* [2105] EWCA Civ 665. Arden LJ said at [23]:

"...when looking for 'the much better argument' the court is concerned with the question of relative plausibility. But there is also an absolute standard to be met. The words used by Waller LJ, namely a 'much better argument', mean more than that, on the material available, the case is arguable. There must be some substance to it: since we are deciding a question of jurisdiction, the evidence must achieve an acceptable level of quality and adequacy. However, the standard to be attained is not that of succeeding on a balance of probabilities because there is no trial: see per Flaux J in *Erste Group Bank AG v JSC (VMZ Red October)* [2013] EWHC 2926 (Comm)."

80. However, my decision on this issue does not depend on such fine points of distinction. If I were to ask whether the Claimants had the better argument on the material available in respect of Ms Alexandra Shamoona's residence, I would reach the same conclusion.

81. Pursuant to Article 59 of the Brussels Regulation, the question of whether an individual is domiciled in a particular member state is to be determined by reference to the domestic law of that member state. The relevant definition of domicile is contained in Schedule 1 to the Civil Jurisdiction and Judgments Order 2001/3929. Paragraph 9(2) provides that:

"(2) An individual is domiciled in the United Kingdom if and only if—
(a) he is resident in the United Kingdom; and
(b) the nature and circumstances of his residence indicate that he has a substantial connection with the United Kingdom."

82. An individual is resident in the United Kingdom if it is "a settled or usual place of abode" which connotes "some degree of permanence or continuity": *Bank of Dubai Limited v Fouad Haji Abbas* [1997] IL Pr 308 per Saville LJ at [10]-[11].

83. In *Yugraneft v Abramovich* [2008] EWHC 2613 (Comm) Christopher Clarke J (as he then was) considered this issue in the context of an individual who owned multiple properties throughout the world, including valuable residential property in London. His judgment reflects the fact that such wealthy individuals may own property in a number of different jurisdictions, without being resident in such jurisdictions. He concluded at [487]:

"487 I am not persuaded that Yugraneft has much the better of the argument on whether at the date of the issue of the claim form Mr Abramovich was

resident in England and Wales. On the contrary it appears to me that, despite his ownership of Chelsea and his property in Lowndes Square, he was resident in Russia and not in England. Purchases of expensive property in England which, in the case of a man of ordinary wealth, would suggest settlement here, may have no such significance to someone for whom money is no object."

84. Christopher Clarke J considered, amongst other factors, the number of days spent by Mr Abramovich in England over a number of years. He stated that the most relevant year to consider is the year in which the claim form is issued [468], although I do not understand this to exclude consideration of earlier years.

85. In summary, it was held that Mr Abramovich was not resident in the UK since he was a Russian taxpayer whose non-resident status had never been challenged by the Inland Revenue; his visits to London almost exclusively related to his ownership of Chelsea football club, in respect of which he had no executive function; and at the date when the claim form was issued and served he had divorced his wife and chiefly saw his children in Russia or on holidays outside England.

86. My attention was also drawn to the guidance given by the Supreme Court in *R (Davies) v Revenue and Customs Commissioners* [\[2011\] UKSC 47](#); [\[2011\] 1 WLR 2625](#), as to the appropriate approach where a former UK resident claims to have ceased to be resident for tax purposes. Lord Wilson said at [20]:

"It is therefore clear that, whether in order to become non-resident in the UK or whether at any rate to avoid being deemed by the statutory provision still to be resident in the UK, the ordinary law requires the UK resident to effect a distinct break in the pattern of his life in the UK. The requirement of a distinct break mandates a multifactorial inquiry. In my view however the controversial references in the judgment of Moses LJ in the decision under appeal to the need in law for "severance of social and family ties" pitch the requirement, at any rate by implication, at too high a level. The distinct break relates to the pattern of the taxpayer's life in the UK and no doubt it encompasses a substantial *loosening* of social and family ties; but the allowance, to which I will refer, of limited visits to the UK on the part of the taxpayer who has become non-resident, clearly foreshadows their continued existence in a loosened form. "Severance" of such ties is too strong a word in this context."

87. In the present case, the Claimants allege that Mrs Angela Shamoon has repeatedly lied on oath as to (amongst other things), residency, and has conspired with several of her advisers to avoid payment of tax in the United Kingdom. These are allegations of the utmost seriousness and the question arises as to how they are to be dealt with in an application of this nature, and in the absence of cross-examination. On the one hand, basic notions of fairness require that anyone accused of such serious misconduct should be challenged in cross-examination before his or her evidence is stigmatised as untrue. On the other hand, the Court is not required to accept evidence which is obviously incredible simply because it is contained in a witness statement. Lewison LJ

considered this question in *Calland v Financial Conduct Authority* [2015] EWCA Civ 192 at [29]:

"In evaluating the prospects of success of a claim or defence the judge is not required to abandon her critical faculties. As Potter LJ put it in *E D & F Man Liquid Products Ltd v Patel* [2003] EWCA Civ 472, [2003] CP Rep 51 at [10]: "It is certainly the case that under both rules, where there are significant differences between the parties so far as factual issues are concerned, the court is in no position to conduct a mini-trial: see per Lord Woolf MR in *Swain v Hillman* [2001] 1 All ER 91 at 95 in relation to CPR 24. However, that does not mean that the court has to accept without analysis everything said by a party in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporary documents. If so, issues which are dependent upon those factual assertions may be susceptible of disposal at an early stage so as to save the cost and delay of trying an issue the outcome of which is inevitable: see the note at 24.2.3 in Civil Procedure (Autumn 2002) Vol 1 p.467 and *Three Rivers DC v Bank of England (No.3)* [2001] UKHL/16, [2001] 2 All ER 513 per Lord Hope of Craighead at paragraph [95]."

88. This approach was adopted by the Court of Appeal in *Lady Christine Brownlie v Four Seasons Holdings Incorporated* (supra) in the context of an application to set aside permission to serve proceedings out of the jurisdiction. Arden LJ said at [24]:

"In any event, the court is not bound to accept a witness statement which is inherently defective, and certainly should not do so if it conflicts with other incontrovertible evidence or is unreliable for some other tangible reason, or, as Christopher Clarke J (as he then was) put it in *Cherney v Deripaska* [2008] EWHC 1530 at [44], "wholly implausible".

89. Accordingly, in my overall assessment of the "residency" issue I will evaluate if the witness statements conflict with other incontrovertible evidence or are, for any reason, wholly implausible.

Application to the facts

The evidence of Mrs Angela Shamoon

90. The witness statements of Mrs Angela Shamoon contain a detailed account of the background to her move to Israel, her connections to Israel until the time of Mr Shamoon's death in 2009, and her life in Israel since that date. The following is a summary of that evidence.
91. Mrs Angela Shamoon was born in the UK in 1950 and met her late husband, Mr Shamoon, in 1977 in London. Mr Shamoon was born in Iraq in the early 1930s and fled to Israel in the early 1950s. He served in the Israeli army in the 1950s and had a strong affinity for Israel. Mr and Mrs Shamoon were married in 1978 in Israel, according to Jewish law. Following their wedding they divided their time between Iran, which was their main base, South Africa, and

on occasion, the UK. In September 1978 they were forced to leave Iran due to the pending revolution and moved to London, where they stayed in Flat 6 for a number of years. Flat 6 was owned by an offshore entity in which Mr Shamoon had an indirect interest. In 1982 the Shamoons moved to a larger property in Holland Park Road which they rented from a company in which Mr Shamoon had an indirect interest. They did not use Flat 6 between 1982 and 1996, during which period it was either vacant or rented out.

92. In 1984 Mr Shamoon obtained indefinite leave from the UK Home Office to remain in this country as a refugee. At this time the Shamoons' main base was in London. Their only daughter, Ms Alexandra Shamoon, went to nursery and primary school in London. However, Mr Shamoon considered Israel to be a natural base for re-establishment. He identified with the culture and community in Israel and wanted to be a fully integrated part of a group to whom he was ethnically and spiritually bound. In 1988 the Shamoons purchased land in Israel and commenced a substantial project to build a property in Rishpon. This took until about the end of 1997 to complete.
93. In 1991 Mr Shamoon purchased an Israeli group of companies known as the Yakhin Hakal Group, which carried on a significant business in the manufacture of agricultural and industrial goods and products and held leasehold rights covering large tracts of land in Israel. Over the years, Mr Shamoon invested over US \$100 million in the Yakhin Hakal Group. From 1992 Mr Shamoon's trips to Israel became increasingly frequent, although at this time Mrs Angela Shamoon and Ms Alexandra Shamoon largely remained in the UK.
94. From August 1996 Ms Alexandra Shamoon was enrolled at an American International School in Israel and was educated and brought up predominantly in Israel. She only returned to London to live when she was an adult, in 2002/2003. Over the ensuing years Mr Shamoon continued to build up his business interests in Israel mainly through the Yakhin Hakal Group. The Yakhin Hakal Group came to be legally owned by Mr and Mrs Shamoon, and Mrs Angela Shamoon was appointed a director.
95. In 2002 the Shamoons decided to move their home in Israel from the Rishpon property to a set of apartments close to Tel Aviv. Two apartments were joined into one and were registered in Mr Shamoon's name ("Apartment 4750"). The Shamoons started using Apartment 4750 as their home in Israel in 2002. This is where Mrs Angela Shamoon lives now and her evidence is that it has been her only usual residence since at least 2009.
96. The Shamoons also kept property available for periods when they were in London. The Holland Park property had been sold in the early 2000s and they used Flat 6 for a short period, until about November 2003. After that, they started to use an apartment at 149 Park Lane that was rented to various tenants between about 2004 and 2008. From early 2005 the Shamoons visited London less frequently and only partly used the apartment at 149 Park Lane. Mrs Angela Shamoon terminated the lease on this apartment in June 2009 after Mr Shamoon's death.

97. Mrs Angela Shamoon's evidence is that by the time Mr Shamoon died in 2009, their lives were rooted firmly in Israel and their extensive business and philanthropic activities and their personal and social connections were in very large part in Israel. During the final years of his life, Mr Shamoon stayed mainly in Apartment 4750 in Israel and his visits to the UK to receive medical treatment became less frequent from 2007 onwards as his health deteriorated.
98. Since Mr Shamoon's death in May 2009, Mrs Angela Shamoon's evidence is that she has spent very little time in the UK, and of the days spent in the UK, a large majority concerned a HMRC investigation into Mr Shamoon's estate which has now concluded, as well as visits to her father, who died in August 2012. When visiting the UK since 2009, Mrs Angela Shamoon has generally used Flat 6 as a place to stay. However, over the years of their marriage, the Shamoons owned, or enjoyed the use of, multiple properties all over the world including properties in South Africa, France and the USA. Mrs Angela Shamoon's evidence is that Flat 6 is just another property which could be used on occasion as a place to stay, effectively as a replacement for a hotel or staying with friends and family. Flat 6 is not legally registered in her name and she has a licence from a Lichtenstein entity, Mirex Anstalt, to use Flat 6 on the infrequent occasions that she is in the UK.
99. Mrs Angela Shamoon's evidence is that she spends the vast majority of her time in Israel, where she is resident. Israel is the centre of her business affairs and charitable activities. She is a director and chairman of the board of the Yakhin Hakal Group which is a full-time job requiring her presence in Israel. While she continues to hold a British passport, she obtained permanent Israeli residence from the beginning of 2009 and was formally granted Israeli nationality in April 2013 and also has an Israeli passport.
100. This evidence, in my judgment, is detailed and credible. It is an account of a changing pattern of life and a gradual loosening of ties with the UK, and is supportive of a "distinct break" by 2009. It is corroborated by other evidence to which I refer below.

Day Count

101. In the light of Mrs Angela Shamoon's account, it is relevant to consider the number of days that she spent in the UK in recent years, as compared with the number of days that she spent in other countries, including the duration of such visits. Mr Hodgson-Barker, a Chartered Tax Adviser who has made various witness statements in these proceedings, prepared a schedule which sets out the relevant information taken from a number of objectively verifiable sources.
102. During the course of the hearing, tables setting out the relevant day count were agreed between the legal advisers of the parties. I set out first the table for the year preceding the service of the Claim Form (8 October 2013 to 8 October 2014), as this is most relevant to Mrs Angela Shamoon's residency at that date:

Country	Total Number of Days	Number of Visits	Longest Visit in Days	Average Length of Visits in Days
Israel	280	8 / 9	98	35 / 31.1
UK	23	5	11	4.6
France	18	4	9	4.5
South Africa	15	1	15	15
Greece	11	1	11	11
Switzerland	5	1	5	5
Turkey	4	1	4	4
Germany	3	1	3	3
Italy	2	1	2	2
Isle of Man	2	1	2	2
(Flying)	2	-	-	-

103. It can be seen that the vast majority of Mrs Angela Shamoon's time during this period was spent in Israel (over 280 days), where she claims to be resident, as compared to only 23 days in the UK. She owns properties in many countries in the world and also spent a significant amount of time in France, South Africa and Greece, where she is not alleged to be resident. Her longest visit to Israel was 98 days, as compared with a longest visit of 11 days to the UK. The average length of her visits to Israel was over 30 days, compared with an average length of visits to the UK of 4.6 days. This provides an indication of the quality of the visits as well as their duration.

104. Obviously, an individual can be resident in more than one jurisdiction. However, these figures provide strong support for Mrs Angela Shamoon's evidence that she was resident in Israel during this period, and that her property in the UK, as with her property in other countries, was used by her, essentially, as a hotel during brief visits.

105. The agreed day count for the period from 2009-2013 is as follows:

	Total Number of Days in Israel	Longest Stay in Israel in Days	Total Number of Days in the UK	Longest Visit to the UK in Days	Total Number of Days in Other Countries	Longest Visit to Another Country in Days	Total Number of Flying Days
2013	244	39	43	9	75	15 (Turkey)	3
2012	198	64	65	9	98	20 (France)	5

2011	235	44	33	10	89	46 (Croatia)	8
2010	205	74	108	14	49	17 (Turkey)	3
2009	262	62	84	25	19	13 (Turkey)	0

106. This data, in my judgment, provides strong support for the claim of Mrs Angela Shamoon that she made a distinct break in 2009 when she left the UK to reside in Israel. Since then, her trips to the UK have been short, intermittent and infrequent. By contrast, she has in every year spent the majority of days in Israel.

The Position of the UK and Israeli Tax Authorities

107. From 2009 onwards, Mrs Angela Shamoon has been considered by the Israeli Tax Authority to have been a resident of Israel and has accordingly been subject to tax there as a new immigrant.

108. In paragraphs 7 to 9 of his first statement, Mr Hodgson-Barker explained that, after the death of Mr Shamoon, there was an HMRC investigation into his estate, which required full disclosure on the part of the representatives of the estate, including Mrs Angela Shamoon. This investigation lasted over two years. At the end of the investigation, HMRC accepted that Mr Shamoon was not a UK tax resident at the date of his death, in the tax year of his death, nor in the preceding tax year. Mr Hodgson-Barker states at paragraph 9:

"Although the investigation concerned Mr Shamoon's estate, it also indirectly involved the affairs of Angela Shamoon. HMRC did not make an express judgment as to Mrs Shamoon's tax position (to my knowledge) as part of the investigation as this was not the purpose of the investigation. However, HMRC accepted evidence throughout the investigation, which I and my team were involved in preparing and which I have no reason to doubt was anything other than fulsome and correct, that Angela Shamoon was physically present with her husband for the vast majority of the period under assessment and, therefore, were inclined to agree that if one were non-UK resident for a given tax year then this would be the same for both of them."

109. Accordingly, from 2009 onwards, Mrs Angela Shamoon has been tacitly accepted by HMRC to be non-resident in the UK for tax purposes. She is not treated as resident in the UK for tax purposes either before or after the entry into force of the statutory residence test on 6 April 2013 and her non-resident status in recent years has not been challenged by HMRC.

The Quality of Mr Winkler's evidence

110. Mr Winkler chose to make very serious allegations against Mr Hodgson-Barker, which were refuted by Mr Hodgson-Barker and have now

been withdrawn. In particular, in his second witness statement at [89], Mr Winkler said:

"Angela describes the work of Mr Hodgson-Barker as a "*forensic review*", but it is nothing of the sort. It is the work of a man paid to help Angela argue that she is not resident in the UK, limited to a review of Angela's own manipulated day count, using only the supporting evidence which Angela has chosen to provide and accepting instructions from Angela which are factually wrong. As Mr Hodgson-Barker states himself, his conclusions rely on information collected and supplied by Angela's personal assistant, rather than any kind of independent investigation."

111. A similar allegation was made by Mr Winkler against Mr Mackenzie, a Chartered Accountant who was part of a team that advised Mrs Angela Shamoon in connection with the HMRC enquiry. At paragraph 58.3 of his second witness statement, Mr Winkler suggested that Mr Mackenzie had encouraged Mrs Angela Shamoon to reduce her day count in England, in order to mislead the UK tax authorities. Again, this allegation, which was entirely without foundation, was not pursued at the hearing.

112. Mr Jowell QC described this as a tendency on behalf of Mr Winkler to make wild allegations, unsupported by evidence, which have turned out to be demonstrably false. I consider that this submission is entirely justified. When evaluating the credibility attack on Mrs Angela Shamoon, and in particular Mr Winkler's allegation that, in response to the HMRC enquiry, Mrs Angela Shamoon "fabricated evidence to support her claim not to be a resident", (Winkler (1) [62]), I shall bear in mind that Mr Winkler has made serious allegations against a number of individuals which are wholly without foundation.

113. Furthermore, until Mr Winkler began proceedings in Israel in 2014, he actively assisted the Shamoons' UK tax advisers by providing information to them to support the claim that Mr Shamoon (and therefore Mrs Angela Shamoon who lived with him) was resident in Israel and not in the UK. For example, by a letter dated 5th April 2011, Mr Winkler provided to Mr Mackenzie a list of dates from 2005 to 2009 in which Mr Shamoon was in Israel. Between 2005 in 2008 the least number of days that he specified was 222 and the most was 279. He also specified that in the five months before he passed away, Mr Shamoon spent 149 days in Israel in 2009. Mr Winkler said in this letter:

"Please find hereunder the list of the days Mr Sami Shamoon was in Israel - take into consideration that this is a list of his days in Israel ONLY - the days that he was not in Israel he could have been in any one of the following countries: London, New York, Cannes, Turkey etc..."

114. This letter is clearly inconsistent with Mr Winkler's evidence on this application. At paragraphs 64 and 66 of his first witness statement, Mr Winkler said:

"64. As someone who was close to Sami, managing most of his business and personal issues, I can state that the centre of Sami's life until a couple of months prior to his death was undoubtedly in England."

"66. Sami not only lived in England with his entire family, including Alexandra and Angela, but also managed his worldwide business from there, including the Yakhin Hakal Group, by instructing managers and directors, such as Mr Grumbach and me, to act on his behalf, on a regular basis."

115. Mr Winkler tried to explain this inconsistency at paragraph 61 of his second statement. He said:

"61. Similarly Angela claims that I knew that Sami was not resident in England when he died. She quotes documents where I put forward arguments to support this position, but this was just advocacy to help her to reduce taxes that Sami's estate would have to pay, which I sent out Angela's request and under her explicit instructions. As Angela knows, but does not mention, the arguments which I suggested were not even accepted by HMRC; HMRC decided that Sami was resident in the UK from 2004/5 to 2007/8 inclusive."

116. This evidence ignores that HMRC accepted that Mr Shamoon was not resident in the UK in 2008/9. More significantly, Mr Winkler's evidence that this was "just advocacy" to help Mrs Angela Shamoon to reduce taxes is most unsatisfactory. He is an accountant. If, as he said in his first witness statement on this application, he knew that Mr Shamoon was resident in the UK, his letter of 5th April 2011 would have been a clear misrepresentation, made with the intention of deceiving HMRC. On the material before me I find that the position is much more straightforward. Mr Winkler knew Mr Shamoon was resident in Israel when he died, and his evidence on this application is obviously implausible, being inconsistent with documents that he himself wrote.

Additional points made by the Claimants

117. Numerous points were relied on to attack the credibility of Mrs Angela Shamoon. I will only deal with what I regard as the main points. In my judgment, all of these attacks had no merit whatsoever.
118. Mr Winkler claims that Mrs Angela Shamoon has multiple business interests in the UK. He claims that she was actively involved in running a UK company known as Buckingham & Lloyds Ltd prior to its dissolution in 2014. He refers to a number of other holding companies and entities (most of which are offshore) that own properties in London and which he claims are controlled *de facto* by Mrs Angela Shamoon. Even if these allegations were true, they would not lead me to conclude that she was a UK resident, when considered in the light of all the other evidence to which I have referred. Many non-UK residents are involved in UK companies or off-shore companies with UK interests.
119. However, Mrs Angela Shamoon has provided a detailed account which refutes these allegations. To the extent that she holds an interest in properties

in England, these are relatively minor assets in the context of her overall wealth and in any event they are passive investments which do not require executive management or operation. Although she was a director of Buckingham & Lloyds Ltd for a period, she did not make any material business decisions in that capacity. Although certain Companies House documents refer to Mrs Angela Shamoon as resident in England, she says that she is not even sure that she saw them at the time. As to the other companies and entities, these are managed by independent directors to whom she is careful to ensure that she only ever gives suggestions, as opposed to instructions. I see no reason to doubt this evidence.

120. The Claimants also allege that Mrs Angela Shamoon's evidence about her attendance at the offices of the Yakhin Hakal Group is untruthful. Given the agreed day count of the time that she spent in Israel in the years 2009-2014, it is irrelevant whether she spent these days at the Yakhin Hakal Group or elsewhere in Israel. Mrs Angela Shamoon provided a log of her entries and exits to and from the offices of the Yakhin Hakal Group. Mr Colton suggested that there was an inconsistency between a few days in this log and the evidence of Mr Hodgson-Barker, which showed that Mrs Angela Shamoon had been in Turkey and not Israel on those days. I was concerned that this specific allegation, which appeared to be a suggestion that the log had been fabricated, was raised for the first time at the hearing, and no opportunity had been given to Mrs Angela Shamoon to investigate and explain the issue in evidence. Mr Colton accepted that it could be explained by an innocent mistake in the log. On that basis, it clearly does not suggest that Mrs Angela Shamoon is lying in her evidence, which is the case that Mr Winkler seeks to advance.

121. Mr Winkler relies on an Affidavit filed by Mrs Angela Shamoon in a case that she brought in Israel ("the Marital Rights case") and on the terms of the first instance judgment in that case.

122. In her affidavit Mrs Angela Shamoon referred to the fact that she "*resided in and maintained*" apartments in London (i.e. Flat 6), France, and Israel. Mrs Angela Shamoon has explained in her evidence on this application that this was not intended to mean that she actually resided in Flat 6 but merely that she stayed there when she visited London, as was the case with her property in France. This is obviously correct, as Mrs Angela Shamoon was seeking to draw a distinction in her Affidavit between properties around the world which are available for her use and others which are rented out to third parties.

123. In the first instance judgment in the Marital Rights case, the Israeli Court described Mrs Angela Shamoon as being a "*resident*" of England. However, as explained by Ms Peres, the lawyer who acted for Mrs Angela Shamoon in that case, this was due to a misconception on its part as to the basis on which the estate could be liable to pay inheritance tax in the UK. In addition, there is contemporaneous evidence that the reference in the Marital Rights judgment was considered to be an error by Mrs Angela Shamoon and her advisers at the time it was delivered. In an email dated 9th November 2012

Mr Nelson Colaco wrote to Mr Winkler stating that the reference in the Martial Rights judgment to Mrs Angela Shamoon being resident in England was not correct because she had in fact been resident in Israel since at least 1st January 2009.

124. Mr Winkler claims that Mrs Angela Shamoon was repeatedly advised by Mr Mackenzie until at least 2012 that she was tax resident in the UK, and relies upon a number of emails sent by Mr Mackenzie between May 2011 and October 2012. This suggestion is refuted by both Mr Mackenzie and Mr Hodgson-Barker, who explain that Mr Winkler has misinterpreted the emails. To the extent that Mr Mackenzie referred to Mrs Angela Shamoon as being tax resident in the UK, he was merely expressing a preliminary view based on information provided to him which he was taking at face value and had not been scrutinised by him. I see no reason to doubt this evidence.

125. Mr Winkler points to an email dated 22nd March 2011 from Mrs Angela Shamoon to Mr Mackenzie in which she stated that "eventually (within the next two years max.) I want to live my life in England". This indicates that she was not resident in England in March 2011. Furthermore, her evidence shows that she has not relocated to England. Her witness statements and the agreed day count show that she has spent more time in Israel and less time in England since 2011 than before that year.

126. At paragraph 61 of his first witness statement, Mr Winkler accused Mrs Angela Shamoon of falsely claiming to be Mr Shamoon's wife, including in sworn evidence given to the Israeli Court. He said that they were divorced in 1988 in Nevada USA. He cited this as "a good example of her willingness to omit unhelpful facts where it suits her purposes."

127. Mrs Angela Shamoon responded to this allegation at paragraph 41 of her third witness statement. She explained that Mr Shamoon needed a divorce paper to assist him in his application for a Portuguese passport, which he wished to obtain for business reasons. The Shamoons knew that under Jewish law, which was the law governing their marriage, and under Israeli law, the divorce granted in Nevada would not be recognised and would not be binding. She pointed out that, as Mr Winkler well knows, the Shamoons continued to live as husband and wife from 1988 until his death in 2009. Subsequent to 1988 he repeatedly referred to her as his wife and made various declarations and signed other legal documents to that effect. For example, Mr Shamoon referred to Mrs Angela Shamoon as his wife in his will, made in November 2007. The Shamoons treated each other as husband and wife in all contexts and for all purposes until the time of his death. Mrs Angela Shamoon says that the "divorce" was never spoken about by them, and that she had put it out of her mind as it had no effect on the existence of her marriage.

128. In my view, Mr Jowell QC is correct to describe this as one of a number of scandalous allegations raised by Mr Winkler in his evidence. It is irrelevant to the issues which I have to consider. It is regrettable that the allegation was persisted with at the hearing. Since it has been raised in public it is important to record that, on the evidence before me, it appears that the

Shamoons were a devoted couple. This allegation should never have been raised by Mr Winkler.

Conclusion

129. I have reached the clear conclusion that Mrs Angela Shamoon's evidence that she has been resident in Israel and not in the UK since 2009 is entirely credible. The attack on her honesty, and on the integrity of her advisers, has caused a great deal of evidence to be served and will undoubtedly have caused a great deal of costs to be spent. In my judgment, the credibility attack should never have been raised.

The merits of the claim

130. The merits of the claim are relevant to the Claimants' Protective Application to serve Mrs Angela Shamoon out of the jurisdiction. This would only arise if I had decided (a) that the Defendants' succession argument should be dismissed and (b) that Mrs Angela Shamoon was not domiciled in the UK at the date of service of the Claim Form. Given that I have decided that the Defendants' succession argument is correct, I do not need to consider the Protective Application. Nonetheless, at the request of the parties and in case this matter goes further, I will deal with this issue.

The conditions which the Claimants need to satisfy

131. Permission is sought to serve Mrs Angela Shamoon with the Claim Form out of the jurisdiction on the basis that:
- i. There is a real issue between the Claimants and Ms Alexandra Shamoon which it is reasonable for the Court to try and that Mrs Angela Shamoon is a necessary or proper party to the claim against Ms Alexandra Shamoon: CPR 6.37(1)(a), 6.37(2), and PD 6B paragraph 3.1(3).
 - ii. The claim against Mrs Angela Shamoon has a reasonable prospect of success: CPR 6.37(1)(b).
 - iii. England is the proper place for the Claimants to bring the claim: CPR 6.37(3).
132. In considering the first condition, I shall apply the principles summarised by Lord Collins in *Nilon Limited v Royal Westminster Investments SA and others* [\[2015\] UKPC 2](#) at [15]:
- "(1) The necessary or proper party head of jurisdiction was anomalous, in that, by contrast with the other heads, it was not founded upon any territorial connection between the claim, the subject matter of the relevant action and the jurisdiction of the English courts.
- (2) Caution must always be exercised in bringing foreign defendants within the jurisdiction under that head, and in particular it should never become the practice to bring in foreign defendants as a matter of course, on the ground that the only alternative requires more than one suit in more than one different jurisdiction.

- (3) The fact that the defendant within the jurisdiction (D1 or the "anchor defendant") is sued only for the purpose of bringing in the party outside the jurisdiction (D2) is not fatal to the application for permission to serve D2 out of the jurisdiction, but it is a factor in the exercise of the discretion.
- (4) The action is not properly brought against D1 if it is bound to fail.
- (5) If a question of law arises on the application which goes to the existence of jurisdiction, the court will normally decide it, rather than treating it as a question of whether there is a good arguable case.
- (6) The question of the merits of the claim is relevant to the question of whether the claim against D1 is "bound to fail" and to the question whether there is a "serious issue to be tried" in relation to the claim against D2; and there is no practical difference between the two tests, and they in turn are the same as the test for summary judgment.
- (7) In considering the merits of the claim, whether the claim against D1 is bound to fail on a question of law should be decided on the application for permission to serve D2 (or to discharge the order), but it would not normally be appropriate to decide a controversial question of law in a developing area, particularly because it is desirable that the facts should be found so that any further development of the law should be on the basis of actual and not hypothetical facts.
- (8) The question whether D2 is a proper party is answered by asking: "supposing both parties had been within the jurisdiction would they both have been proper parties to the action?"

133. I will consider first whether there is a real issue between the Claimants and Ms Alexandra Shamoon and, if so, that it is reasonable for the English Court to try that issue. It is sufficient for Mrs Angela Shamoon if the Claimants fail to surmount either of these hurdles against the anchor defendant, and furthermore, many of the points apply equally to the claims against each of them. If I decide that Ms Alexandra Shamoon's jurisdiction challenge should be dismissed, so that the trial against her will take place in this jurisdiction in any event, then Mrs Angela Shamoon does not deny that England would be the proper place for the claim against her to be brought.

Relevant facts

134. In respect of the Ainsbury shares, the Claimants plead at paragraph 7 of the Particulars of Claim that, in or about 2008, Mr Shamoon contemplated transferring a part of Ainsbury's holding in Gaon to Mr Winkler in order to incentivise him to continue to take the business forward. However, Mr Shamoon decided instead to give 1% of Ainsbury to Mr Winkler and transferred the equitable title in the Ainsbury shares to Mr Winkler. It is inferred that Mr Shamoon instructed Mr Grumbach to register the transfer of legal title in the Ainsbury shares to Mr Winkler at this time. I accept that the Claimants have shown a serious question to be tried that Mr Shamoon decided to give Mr Winkler 1% of Ainsbury and directed Mr Grumbach, as director of Ainsbury, to carry out the transfer. This is supported by the evidence of Mr Grumbach on this application (see for example Grumbach (2) paragraph 5).

135. In respect of the Placido shares, it is pleaded at paragraph 9 of the Particulars of Claim that, in or about April 2009, when he was close to his death, Mr Shamoon discussed with Mrs Angela Shamoon who would be capable of leading the Yakhin Hakal Group in the years ahead. It is alleged that following that discussion he concluded that the only person capable of taking the business forward was Mr Winkler. It is alleged that Mr Shamoon decided to transfer to Mr Winkler 12.5% of the shares in Placido in order to make sure that he would have an incentive to be personally involved in the business of the Yakhin Hakal Group after Mr Shamoon's death. It is further alleged at paragraph 10 that Mr Shamoon directed Mr Grumbach to take care of all necessary formalities to register Mr Winkler as owner of 12.5% of Placido. I accept that the Claimants have shown an arguable case that, shortly before he died, Mr Shamoon verbally informed Mr Grumbach that he wished to transfer 12.5% of the shares in Placido to Mr Winkler. This is supported by the evidence of Mr Grumbach on this application (see for example Grumbach (2) paragraph 11).

136. However, the following facts are also clear. At the time that Mr Shamoon passed away, legal (registered) ownership of the Shares remained with Mr Shamoon. Furthermore, no consideration was given by either of the Claimants in exchange for Mr Shamoon's alleged promise to transfer the Shares. The Claimants' case is that Mr Winkler was entitled to the Shares, whether or not he chose to take the business forward, or to continue to be involved with the Yakhin Hakal Group after the death of Mr Shamoon.

137. In addition, by a signed letter dated 1st November 2007, sent to Mr Grumbach and Mr Daniel Lack, Mr Shamoon gave the following instructions:

"I the undersigned, Sami Shamoon Adulnabi, holder of Portuguese Passport No. h 754544 hereby instruct you, expressly and in writing, that prior to engaging in any activity and/or commitment and/or payment and/or bank transfer, and/or waiver and/or charge of any kind and/or any instruction regarding property and all bills and/or monies and/or trusts and/or shares in my companies, registered directly or indirectly in my name and/or to my benefit - and which lie under your care, you must obtain my express written and executed consent, as well as oral (live or via telephone) confirmation from myself personally.

I am hereby cancelling all prior instructions for transactions which do not have my written authorisation and telephone confirmation."

138. Originally, Mr Winkler claimed in his evidence that this letter was never sent. However the fax transmissions have since been produced and it is no longer contested that the letter was sent by Mr Shamoon and received by Mr Grumbach. Accordingly, it is clear that Mr Shamoon left instructions not to transfer any property or shares without his express written and executed consent.

139. I now turn to the various ways in which it was argued that there was a serious question to be tried as against Ms Alexandra Shamoon.

Re Rose claim

140. The general principle is that equity will not complete an imperfect gift. This principle, and certain exceptions to it, are explained in *Snell's Equity* (33rd ed.) [24-006]:

"The gift of the legal interest in the property will not be complete until the donor has completed all the formalities necessary to vest the legal interest in the donee. The gift may, however, be treated as complete in equity at an earlier point in the transaction when some of those remaining steps are still unfulfilled. It has been held that if the donor has taken all the steps that lie exclusively in his power, according to the nature of the property given, to vest the legal interest in the property in the donee, then the gift will be complete in equity. The gift will not fail even if something remains to be done by the donee or some third person."

141. A summary of the relevant principles was provided by Briggs J (as he then was) in *Curtis v Pulbrook* [\[2011\] EWHC 167 \(Ch\)](#) at [43]:

"Miss Angus very properly treated me to a full citation of the two most recent authorities bearing upon this question, namely *Pennington v. Waine* [\[2002\] 1 WLR 2075](#) and *Zeital & anr v. David Norman Kaye & ors* [\[2010\] EWCA Civ 159](#). In *Pennington v. Waine*, Arden LJ (with whom Schiemann LJ agreed) identified three routes by which, in the context of a defective voluntarily transfer of shares, the court might avoid the rigorous application of the principle that equity will not compel the completion of an imperfect gift, in the absence of a valid declaration of trust. She described all three as methods whereby a court of equity might temper the wind to the shorn lamb. The first is where the donor has done everything necessary to enable the donee to enforce a beneficial claim without further assistance from the donor: see paragraphs 55 to 56 and *Rose v. Inland Revenue Commissioners* [\[1952\] Ch 499](#). The second is where some detrimental reliance by the donee upon an apparent although ineffective gift may so bind the conscience of the donor to justify the imposition of a constructive trust: see paragraph 59. The third is where by a benevolent construction an effective gift or implied declaration of trust may be teased out of the words used: see paragraphs 60 to 61, apparently based upon *Choithram International SA v. Pagarani* [\[2001\] 1 WLR 1](#). On its facts, *Pennington v Waine* appears to have been an example of a sufficient detrimental reliance by the donee, who had agreed to become a director of the subject company upon an assumption that he had received an effective gift of qualifying shares in it: see paragraphs 64 and 66."

142. In the present case, relying on *Rose v Inland Revenue Commissioners* (supra), the Claimants assert that Mr Shamoon did everything necessary to transfer the Ainsbury and Placido shares to Mr Winkler before his death. However, in respect of the Placido shares, there is no suggestion that any document was signed or created by Mr Shamoon prior to his death in which he instructed the transfer of (or even recorded any intention to transfer) any of the Shares to the Claimants.

143. In respect of the Ainsbury shares, it was suggested that such a document did exist, and it was in the possession of Mr Grumbach. In particular, the Claimants relied on a note of a meeting dated 27th July 2009 with the then Administrator, Mr Gottsegen, and prepared by Mr Grumbach. Under the heading "Ainsbury Properties Ltd", the note states that:

"Mr GRUMBACH indicated that Mr. Sami SHAMOON instructed him to undertake the necessary steps in order to transfer 1% of the shares in the company to Mr WINKLER.

These instructions have been given orally by Mr SHAMOON and they have also been confirmed in writing. The written instructions are kept in a safe and will be transmitted to the interim executor as soon as he has obtained the recognition in Switzerland of the "*order of appointment of provisional executor*" rendered by the Family Court Kfar Saba on June 18 2009."

144. If there was no more evidence which addressed that issue, I would have held that there was a serious issue to be tried as to whether Mr Shamoon had given such written instructions in respect of the Ainsbury shares. However, Mr Grumbach addressed this note at paragraph 27 of his second witness statement. He said:

"In my note of the meeting dated 27 July 2009 it says that the written instructions from Mr Shamoon relating to the transfer of 1% of the Ainsbury shares to Mr Winkler are kept in a safe. However, the written instructions signed by Mr Shamoon in fact relate to the transfer of shares in the company B. Gaon Holdings Limited. A copy and translation appears at page 2 of PAG2. The note of that meeting did not specify that the instructions were in respect of B. Gaon Holdings Limited, not Ainsbury, because it was later that Mr Shamoon instructed me to transfer 1% of the shares in Ainsbury to Mr Winkler instead. As I have mentioned above, when the instructions changed I asked Mr Shamoon to send written confirmation of this instruction, but he did not."

145. Accordingly Mr Grumbach not only explained that a mistake had arisen in the note, and the reasons for the mistake, but also exhibited the written instructions from Mr Shamoon, which do not concern a transfer of shares in Ainsbury. In the circumstances I do not consider that it is arguable that some other document exists which would show, contrary to the evidence of Mr Grumbach, that Mr Shamoon did send written confirmation of his instructions in respect of Ainsbury.

146. In my judgment, it is clear on the evidence that a written instrument of transfer was required in order to transfer the shares in Placido and Ainsbury. Although Article 34 of Placido's Articles of Association and Article 15 of Ainsbury's Articles of Association contemplate that the directors may accept such evidence of a transfer of shares as they consider appropriate, Section 54 of the BVI Business Companies Act 2004 provides as follows:

"Registered shares are transferred by a written instrument of transfer signed by the transferor and containing the name and address of the transferee.

The instrument of transfer shall also be signed by the transferee if registration as a holder of the share imposes a liability to the company on the transferee. The instrument of transfer of a registered share shall be sent to the company for registration."

147. Mr Evans, an expert in BVI law, explains in his report that this provision is mandatory and takes precedence over the Articles of Association of Placido and Ainsbury. This is, in particular, because Section 11 of the 2004 Act provides that "The memorandum and articles of a company have no effect to the extent that they contravene or are inconsistent with this Act". This is not challenged by Mr Webster, the Claimants' expert on BVI law.

148. Since I have found that there is no evidence that Mr Shamoon created or signed any instrument (or other document) of transfer relating to the Shares prior to his death, I conclude that the Claimants' allegation that Mr Shamoon did "everything necessary" to effect the transfer of the Shares prior to his death is unsustainable, and does not raise any serious question to be tried. Indeed the position is considerably worse for the Claimants. I have found that Mr Shamoon left instructions not to transfer any property or shares without his express written and executed consent. In the circumstances, there is no seriously arguable case that equity should intervene to complete an imperfect gift, contrary to the donor's express instructions.

Express declaration of trust

149. In his skeleton argument, Mr Colton submitted that an alternative way of characterising Mr Shamoon's dealings with the Placido and Ainsbury shares is as an express declaration of trust. He relied in particular on the following passage in the judgment of Arden LJ in *Pennington v Waine* (supra) at [60]:

"equity has tempered the wind to the shorn lamb by applying a benevolent construction to words of gift. As explained above an imperfect gift is not saved by being treated as a declaration to trust. But where a court of equity is satisfied that the donor had an intention to make an immediate gift, the court will construe the words used as words effecting a gift or declaring a trust if the words can fairly bear that meaning..."

He submitted that although the words used by Mr Shamoon in his instructions to Mr Grumbach to transfer the Shares are not presently known to the Claimants, it is clear that Mr Shamoon intended for the equitable title to pass to Mr Winkler immediately. He submitted that Mr Shamoon understood the difference between legal and beneficial ownership, and he would have expected the transfers of the shares to be a 'done deal' once he gave the instructions for them to be transferred, even without them having been registered.

150. Mr Jowell QC submitted that this claim was not open to the Claimants as it had not been pleaded. Furthermore, the Claimants had declined to answer a Request for Further Information as to whether they were alleging an express declaration of trust, and the solicitors for Mrs Angela Shamoon and Ms

Alexandra Shamoon had proceeded on the basis that this was not being alleged. Whilst there is considerable force in the submission, Mr Jowell QC very properly confirmed that the evidence would not be any different if an express trust had been pleaded. If I considered that this raised a serious question to be tried I would have given the Claimants an opportunity to apply to amend the pleadings following this judgment.

151. In order to evaluate this claim it is necessary to look at the judgment of Arden LJ in *Pennington v Waine* in more detail. After the passage cited by the Claimants, the judgment continues:

"But where a court of equity is satisfied that the donor had an intention to make an immediate gift, the court will construe the words which the donor used as words effecting a gift or declaring a trust if they can fairly bear that meaning and otherwise the gift will fail. This point can also be illustrated by reference to *T Choithram International SA v Pagarini* [\[2001\] 1 WLR 1](#)

...

[61] Accordingly the principle that, where a gift is imperfectly constituted, the court will not hold it to operate as a declaration of trust, does not prevent the court from construing it to be a trust if that interpretation is permissible as a matter of construction, which may be a benevolent construction. The same must apply to words of gift. An equity to perfect a gift would not be invoked by giving a benevolent construction to words of gift or, it follows, words which the donor used to communicate or give effect to his gift."

152. Accordingly, the Court needs to find that the donor had the intention to make an immediate gift, and will only hold that there is a declaration of trust if the words used by the donor are capable of bearing that meaning, and evincing that intention. Arden LJ illustrated the distinction between words which can be construed as a declaration of trust, as opposed to an imperfect gift, at [53] of her judgment:

"[53] The principle that equity will not assist a volunteer has been lucidly explained in *Maitland, Lectures on Equity* (1909), p 73:"

"I have a son called Thomas. I write a letter to him saying 'I give you my Blackacre estate, my leasehold house in the High Street, the sum of £1,000 Consols standing in my name, the wine in my cellar'. This is ineffectual—I have given nothing—a letter will not convey freehold or leasehold land, it will not transfer Government stock, it will not pass the ownership in goods. Even if, instead of writing a letter, I had executed a deed of covenant—saying not I do convey Blackacre, I do assign the leasehold house and the wine, but I covenant to convey and assign—even this would not have been a perfect gift. It would be an imperfect gift, and being an imperfect gift the court will not regard it as a declaration of trust. I have made quite clear that I do not intend to make myself a trustee, I meant to give. The two intentions are very different—the giver means to get rid of his rights, the man who is intending to make himself a trustee intends to retain his rights but to come under an onerous obligation. The latter intention is far rarer than the former. Men often mean to give things to their kinsfolk, they do not often mean to constitute themselves trustees. An imperfect gift is no declaration of trust. This is well

illustrated by the cases of *Richards v Delbridge* LR 18 Eq 11 and *Heartley v Nicholson* (1875) LR 19 Eq 233."

153. In the present case, all of the statements relied on by the Claimants (and set out in paragraph 195 of the Claimants' skeleton argument) are consistent with an intention on the part of Mr Shamoon to make an outright gift, and inconsistent with a declaration of trust. They refer to the Shares having been "transmitted" or "assigned" to Mr Winkler or to Arzal.
154. Mr Winkler has no knowledge of the words used by Mr Shamoon in his verbal instructions to Mr Grumbach, and so he relies on the account given by Mr Grumbach as the best evidence of what was said. Mr Grumbach's evidence is consistent with an intention to make an outright gift, and lends no support to the suggestion that Mr Shamoon intended to declare himself a trustee. At paragraphs 19 to 21 of his second statement, Mr Grumbach states that Mr Shamoon "verbally instructed me to transfer 12.5% of the shares in Placido to Mr Winkler" and that "he also gave me instructions for the transfer of 1% of the shares in Ainsbury. I asked him to confirm his instructions in writing, however Mr Shamoon did not confirm his instructions to me in writing."
155. Finally, the proposition that Mr Shamoon made an oral declaration of trust is inconsistent with the terms of his letter dated 1st November 2007 which makes clear that no such trust would have been intended to take effect unless there was written and executed consent by Mr Shamoon.
156. In the circumstances I conclude that there is no evidence that Mr Shamoon intended to constitute himself as a trustee of the Shares. Accordingly the claim of an express declaration of trust does not raise any serious question to be tried.

Proprietary estoppel claim

157. In *Thorner v Major* [\[2009\] UKHL 18](#), [\[2009\] 1 WLR 776](#), Lord Walker stated at [29] that a claim in proprietary estoppel:
- "is based on three main elements... a representation or assurance made to the claimant; reliance on it by the claimant; and detriment to the claimant in consequence of his reasonable reliance."
158. The Claimants allege that, following Mr Shamoon's death, Mrs Angela Shamoon and Ms Alexandra Shamoon, over the course of several years, made consistent and repeated representations to Mr Winkler that the Placido and Ainsbury shares were his, and assured Mr Winkler that they would ensure those shares were registered in his and/or Arzal's name as soon as it was possible for them to do so. The general response of Mrs Angela Shamoon and Ms Alexandra Shamoon is that they were repeatedly advised (wrongly) that property rights in the Shares had transferred to Mr Winkler prior to Mr Shamoon's death. In fact, no such transfer had occurred. Accordingly, even to the extent (which they do not accept) that either of them could have been said

to have made any of the alleged representations, it is clear that they were made on a false basis. This became clear to Mrs Angela Shamoon when she learned of the letter dated 1st November 2007 wherein Mr Shamoon instructed Mr Grumbach not to transfer any shares without his express written and executed consent. From her perspective that made absolutely clear that no transfer of the Shares was made by Mr Shamoon to Mr Winkler during Mr Shamoon's lifetime. I shall now consider the strength of the proprietary estoppel claim as against the anchor defendant, Ms Alexandra Shamoon.

The trust structure

159. Ms Alexandra Shamoon it is not the owner of any of the Shares. She stands to inherit them through a protective trust, when, in 2019, she reaches the age of 35. Mr Winkler attempted to suggest in his evidence that Mrs Angela Shamoon and Ms Alexandra Shamoon are already in complete control of the trust property and that the trust is a sham. There was no proper basis for this allegation and it is strongly refuted by the witness statement of Mario Scholtz, the chairman of Contreva Management AG ("Contreva"). Contreva is the current nominated trustee of the trust established under Mr Shamoon's will, having been appointed by the Israeli family court on 1st January 2015. Mr Scholtz was named in the Israeli court order as the relevant person in charge of the trust within Contreva. Mr Scholtz confirms in his evidence that:

"Alexandra has no control over the assets of the Trust until she turns 35 and the Trust comes to an end. Until then, and save for payment of the monthly stipend, all matters relating to the management and use of the Trust assets is in the sole control of the trustee."

Sensibly, Mr Colton confirmed at the hearing that it was not part of his case that the trust was a sham.

160. In *Thorner v Major* (supra) at [61] Lord Walker made clear that it was a necessary element of proprietary estoppel that the assurances given to the claimant should relate to "identified property owned (or, perhaps, about to be owned) by the defendant." At the time of the alleged representations Ms Alexandra Shamoon did not own the Shares nor was she about to own them. The purpose of this type of trust structure is to protect young and vulnerable beneficiaries from unwise promises that they may choose to make. For example, if an ultimate beneficiary were to promise to purchase a Ferrari in return for tickets to a concert once he or she came into an inheritance, the trust is designed to ensure that predators cannot take advantage of such a promise.

161. In these circumstances, Mr Winkler, who at all material times knew of the trust, could not legitimately have relied upon any alleged representations of Ms Alexandra Shamoon to the effect that she would transfer the Shares to him after they were distributed by the Administrator. The power to dispose of or transfer the Shares will lie only with her trustee who is not bound by whatever statements Ms Alexandra Shamoon is alleged to have made. Furthermore, I do not consider it arguable that the Court should make an order that Ms Alexandra Shamoon should restore property that she neither owns nor

controls, or that she should account to the Claimants for the value of property that she has never received.

Alleged representations by Ms Alexandra Shamoon

162. There is a wholly unparticularised allegation at paragraph 35(1) of the Particulars of Claim that Ms Alexandra Shamoon represented to Mr Winkler that he was entitled to both the Ainsbury Shares and the Placido Shares "in numerous meetings and conversations throughout the period 2009 to 2013". It seems most unlikely that a person in the position of Ms Alexandra Shamoon would have any reason to make such oral representations and there is no evidence to support this claim. Ms Alexandra Shamoon addresses this allegation at paragraph 27 of her third statement and states that:

"I do not believe I ever made any such representations and I do not understand on what basis Mr Winkler can even allege that I have done so."

163. The Claimants also rely upon four documents as constituting written representations by Ms Alexandra Shamoon, pleaded at paragraphs 21, 22, 23, and 25 of the Particulars of Claim. Ms Alexandra Shamoon explains in her evidence that, until they were shown to her in these proceedings, she had not even seen three of the four documents, and there is no proper evidence to the contrary. In any event, none of these documents contain the alleged representation by Ms Alexandra Shamoon to Mr Winkler.

164. The only pleaded document that Ms Alexandra Shamoon had seen prior to this litigation is a letter dated 23 October 2009 from Mr Winkler to Mr Grumbach. This was signed by Mrs Angela and Ms Alexandra Shamoon beneath a statement that they had "*no objection*" to Mr Grumbach effecting the transfer of the Placido shares to Arzal as soon as possible. Ms Alexandra Shamoon addresses this document in her third statement at paragraph 37a.:

"This letter was signed pursuant to what my mother and I had been led to believe by Mr Grumbach and Mr Winkler. I believe it was signed by me in Israel. In the circumstances as I have explained them, it was perfectly natural for me to say I had no objections to this transfer. I thought I was merely attending to a formality based on what Mr Grumbach and Mr Winkler told me and that was needed in connection with what my late father had apparently decided and so instructed Mr Grumbach to do. This letter was also subject to the (missing) consent of the administrators of the estate."

165. In my view, the statement that Ms Alexandra Shamoon had "no objection" to the transfer cannot even arguably be interpreted as meaning that she promised or represented to Mr Winkler (to whom the letter was not even addressed) that he would receive 12.5% of Placido shares when she became entitled to them in 2019, nearly a decade in the future from when the letter was written.

166. In my judgment, the Claimants have not shown that there is a serious question to be tried that Ms Alexandra Shamoon made any relevant representation to Mr Winkler.

Alleged detrimental reliance

167. Substantial detrimental reliance is required to establish proprietary estoppel. In *Gillett v Holt* [\[2001\] Ch 210](#) Robert Walker LJ said at 232E-F:

"The overwhelming weight of authority shows that detriment is required. But the authorities also show that it is not a narrow or technical concept. The detriment need not consist of the expenditure of money or other quantifiable financial detriment, so long as it is something substantial. The requirement must be approached as part of a broad inquiry as to whether repudiation of an assurance is or is not unconscionable in all the circumstances."

168. Three forms of detrimental reliance are pleaded in the Particulars of Claim. First, in relation to the Placido shares, it is alleged that Mr Winkler "*took care of the payment of the fees to incorporate and maintain Arzal in good standing*" (paragraph 37(3)). The fees referred to amount to a total of US \$1,450. This could not constitute substantial detrimental reliance to support a claim to shares worth tens of millions of dollars. In any event, the claim is factually incorrect. Mrs Angela Shamoon explained at paragraph 190a.-b. of her third statement that these fees were not paid by Mr Winkler. They were paid by a company within the Yakhin Hakal Group. This is now accepted.

169. Secondly, the Claimants allege that Mr Winkler "undertook additional tasks for Angela and Alexandra, for no additional payment. In particular, he dealt with Angela's and Alexandra's personal tax affairs, questions as to their residential status, their finances and their private matters" (Particulars of Claim paragraph 37(1)). Mrs Angela Shamoon accepts that Mr Winkler assisted both herself and Ms Alexandra Shamoon after the death of Mr Shamoon, but this was no more than he had been doing during Mr Shamoon's lifetime as part of his duties in his role as an employee of the Yakhin Hakal Group, for which he was compensated by his salary.

170. Finally, the Claimants allege that Mr Winkler "did not pursue a claim against Mr Shamoon's estate for registration of the Ainsbury Shares or the Placido Shares in his name" (Particulars of Claim paragraph 37(2)). This alleged forbearance does not constitute detrimental reliance, given that Mr Winkler brought a claim against Mrs Angela Shamoon and Ms Alexandra Shamoon in Israel in 2014 and has brought the current proceedings. There is no evidence of substantial prejudice resulting from any delay.

171. In my judgment, the Claimants have not shown that there is a serious question to be tried that Mr Winkler has suffered substantial detriment in reliance on any representation allegedly made by Ms Alexandra Shamoon.

Is England the proper place for the Claimants to bring the claim against Ms Alexandra Shamoon

172. If I had concluded that the Claimants had shown a real issue to be tried as against Ms Alexandra Shamoon, I would have concluded that it would not have been reasonable for that issue to be tried in this jurisdiction. Both threshold requirements have to be met for permission to serve out of the jurisdiction to be granted; see *Erste Group Bank AG (London) v JSC (VMZ Red October)* [2015] EWCA Civ 379 per Gloster LJ at [37]-[38]. As I have already explained, I consider that Israel, and not England, is the natural forum for resolution of this dispute.

Does the English Court have jurisdiction in respect of the claim against Mr Grumbach?

173. In the light of my conclusions set out above, the answer to this question is that the English Court does not have jurisdiction in respect of the claim against Mr Grumbach, for the following reasons.

174. First, since I have held that the English Court has no jurisdiction at common law over Mrs Angela Shamoon and Ms Alexandra Shamoon in respect of the claims against them, there is clearly no jurisdiction over Mr Grumbach as there is no anchor defendant domiciled in England and Wales.

175. Secondly, since I have held that the Claimants' primary claims against Mrs Angela Shamoon and Ms Alexandra Shamoon are claims that fall within the 'wills and succession' exception to the Brussels Regulation and the Lugano II Convention, the Claimants cannot rely upon article 6(1) of the Lugano II Convention to claim jurisdiction over Mr Grumbach, who is domiciled in Switzerland. The relevant claims fall outside the scope of the Lugano II Convention.

176. However, I heard additional argument that, even if Article 6(1) of the Lugano II Convention was available as a potential source of ancillary jurisdiction over Mr Grumbach, it was not expedient for the claims against him to be heard and determined with the claims against Mrs Angela Shamoon and Ms Alexandra Shamoon, as there was no risk of irreconcilable judgments resulting from separate proceedings.

177. Art 6(1) of the Lugano II Convention provides that:

"A person domiciled in a State bound by this Convention may also be sued:
1. where he is one of a number of defendants, in the courts for the place where any one of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgements resulting from separate proceedings."

178. A detailed analysis of the jurisprudence from the European Court of Justice, as well as domestic decisions, concerning the equivalent Article in the Brussels Regulation, is set out by Jay J in *Ian Shannon v Global Tunnelling Experts UK Limited and others* [2015] EWHC 1267 at [19]-[39]. For my purposes, it is sufficient to note that Jay J concluded that "it is not possible to articulate a composite set of principles which unify, or harmonise, the

decisions of the ECJ in this area", but the cases emphasise the need for the Court to assess whether there is, on the facts, a risk of irreconcilable judgments if there are separate proceedings. This necessary condition was emphasised by the CJEU in *Cartel Damage Claims (CDC) Hydrogen Peroxide SA v Akzo Nobel NV and others (Evonik Degussa GmbH and others intervening)* (Case C-352/13) [2015] 3 WLR at [20]:

"Therefore, in order for article 6(1) of Regulation No 44/2001 to apply, it is necessary to ascertain whether, between various claims brought by the same applicant against various defendants, there is a connection of such a kind that it is expedient to determine those actions together in order to avoid the risk of irreconcilable judgments resulting from separate proceedings: see *Freeport plc v Arnoldsson* (Case C-98/06) [2008] QB 634; [2007] ECR I-8319, para 39, and *Land Berlin v Sapir*, para 42. In that regard, in order for judgments to be regarded as irreconcilable, it is not sufficient that there be a divergence in the outcome of the dispute, but that divergence must also arise in the context of the same situation of fact and law: see *Freeport plc v Arnoldsson*, para 40; *Painer's case* [2011] ECR I-12533, para 79; and in *Land Berlin v Sapir* [2013] CEC 947, para 43."

179. In the present case, the claim against Mr Grumbach is brought as an alternative to the claim against Mrs Angela Shamoon and Ms Alexandra Shamoon, on the hypothesis that the claim against the Shamoons is unsuccessful. The basis of the claim against Mr Grumbach is summarised at paragraph 173 of the Claimants' skeleton argument:

"If, as a result, the Claimants have lost out either because:

- (1) They have beneficial title to shares as a result of Sami's instructions, but for any reason are unable to vindicate their rights to the shares to the full extent as a result of Mr Grumbach's failure to ensure that the necessary formalities were completed to bring about the transfer of legal title, whether before or (in the case of Ainsbury, assuming he did have a written instrument of transfer) after Sami's death, or
 - (2) They have no title to the shares, but would have done so but for Mr Grumbach's negligence in failing to take the necessary steps to give effect to Sami's intended gift of the shares to them,
- then it is fair, just and reasonable for Mr Grumbach to compensate them for this."

180. So there does not appear to be here any risk of irreconcilable judgments. If an English Court dismissed the claim against Mrs Angela Shamoon and Ms Alexandra Shamoon, and a Swiss Court allowed the claim against Mr Grumbach, those judgments are, on the Claimants' own case, entirely consistent. Nonetheless, Mr Colton submitted that there was a risk of irreconcilable judgments on the basis that the English Court might dismiss the claim against the Shamoons, and a Swiss court might consider that the claim against the Shamoons should have been allowed, and therefore dismiss the claim against Mr Grumbach. I do not consider that this is a realistic possibility, and no circumstances were put forward to suggest any reason to believe that this might happen.

181. In the circumstances I accept Mr McParland's submission that, even if Article 6(1) of the Lugano II Convention was available as a potential source of ancillary jurisdiction over Mr Grumbach, it would not be expedient for the claims against him to be heard and determined with the claims against Mrs Angela Shamoan and Ms Alexandra Shamoan, as there is no risk of irreconcilable judgments resulting from separate proceedings.

Conclusions

182.

- i. Mrs Angela Shamoan and Ms Alexandra Shamoan have not submitted to the jurisdiction of the English Court.
- ii. The claim against Mrs Angela Shamoan and Ms Alexandra Shamoan falls within the "succession" exception in Article 1(2)(a) of the Brussels Regulation and the Lugano II Convention.
- iii. Pursuant to the common law rules the English Court does not have jurisdiction in respect of the claim against Mrs Angela Shamoan and Ms Alexandra Shamoan.
- iv. Mrs Angela Shamoan was not domiciled in the UK at the time that the claim was issued and served on her.
- v. The Claim does not fall within the jurisdictional gateway in CPR PD 6B paragraph 3.1(3) In particular:
 - a) There is no real issue between the Claimants and Ms Alexandra Shamoan. In particular, there is no realistic prospect of success in relation to the causes of action against Ms Alexandra Shamoan.
 - b) Even if there had been a real issue between the Claimants and Ms Alexandra Shamoan, it would not have been reasonable for the English Court to try that issue.
- vi. The English Court does not have jurisdiction in respect of the claim against Mr Grumbach