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Event: CFI 020/2014 GFH Capital Limited v David Lawrence Haigh
Date: 15 September 2014
Duration: 03:28:06
Present: Justice Sir David Steel - Judge
Andrew Bodnar - Claimant Counsel
Robert Lawson QC - Defendant Counsel

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CLERK: All rise.

(14 seconds of silence)

Good morning all. We are here today for the hearing in the matter of CFI 020/2014 before Justice Sir David Steel. The Claimant, GFH Capital Limited, is represented by Gibson, Dunn & Crutcher LLP. Lead counsel is Andrew Bodnar, assisted by Sana Merchant.

The Defendant, David Lawrence Haigh, is represented by Stephenson Harwood Middle East LLP. Lead counsel is Robert Lawson(?) QC, assisted by Rovine Chandrasekera and Shiraz Sethi.

JUSTICE SIR DAVID STEEL: Right. Good morning or good afternoon. Right.

ROBERT LAWSON: Good afternoon.

JUSTICE SIR DAVID STEEL: As I understand it, there are quite a few applications, at least, in the air. Some lack of clarity as to which are effective.

ROBERT LAWSON: Yes.

JUSTICE SIR DAVID STEEL: But there is one presumably that has to be taken first if it is still alive and that is the application to be heard in private.

ROBERT LAWSON: Yes. That is not going to be proceeded with at this stage. My friend and I have had an opportunity to speak about it and I have explained the basis of the application and (Several inaudible words) to another occasion because the matters should not arise in the context of the discussion that we are going to have before you today. So another day (Inaudible).

JUSTICE SIR DAVID STEEL: All right. Well, I think there is some difficulty in what I call "putting off" the point. If this is an application to be heard in private there is some difficulty in bringing the curtain down halfway through.

ANDREW BODNAR: Would Your Honour excuse me for a moment? Okay.

ROBERT LAWSON: Your Honour, if we have a few minutes with you I could explain and perhaps put that in a way that will (Overspeaking)

JUSTICE SIR DAVID STEEL: Well, I think it was simply a warning shot across the (Inaudible).

ROBERT LAWSON: Yes. Yes.

JUSTICE SIR DAVID STEEL: I confess a degree of difficulty in identifying how, when the matter comes back in some other context for the determination of some different issue, it can then be suggested that the entire hearing should be imposed when the earlier hearings have not been. I can see that there may well be then conceivably some need to ensure that confidential information is not transmitted outside the court but that is a quite different point.

ROBERT LAWSON: Yes. It relates to certain information and the disclosure of certain information and my friend and I agreed that the information concerned does not need to be disclosed at this stage and it is a matter that can be dealt with as and when (Overspeaking)

JUSTICE SIR DAVID STEEL: What I am saying is, again, I am having some difficulty in --

ANDREW BODNAR: Perhaps, Your Honour --

JUSTICE SIR DAVID STEEL: -- identifying how an application can be not in private one day and then in private the next simply because there is some confidential information.

ANDREW BODNAR: It may be easiest if we invite Your Honour to sit in private for a few moments and bring Your Honour into the fold, as it were, so you know what the information is because we take the view it is completely irrelevant to any issue in the proceedings so far.

JUSTICE SIR DAVID STEEL: Right. Well, if I need to understand it perhaps we need to go into chambers, as one might say, because I do not want to waste time on this.

ANDREW BODNAR: Quite, Sir. Yes.

JUSTICE SIR DAVID STEEL: I have, in a sense, indicated my initial reaction to the concept of reverting, or not even reverting. Bringing the privacy curtain down halfway through a case, but there it is. If that is what you have agreed can in some way be anticipated, so be it, but it would be a surprising outcome. I will put it down (Inaudible).

ROBERT LAWSON: Your Honour, we hear what you say and we will take that on advisement (Overspeaking)

JUSTICE SIR DAVID STEEL: Okay. Well, let us forget that. So nobody has to leave the court. Now what are we on to?

ROBERT LAWSON: So there were three applications before you. My application to vary. My friend's application for a letter of request (Overspeaking) High Court(?) and then, thirdly, my application for disclosure (Overspeaking) shorthand. The letter of request application is one that I do not oppose and therefore it will be dealt with in a very short order.

There has been a narrowing of issues to some extent on the variation order and would hope that we can deal with that in a very short order and there is perhaps more argument about the application for disclosure but I am confident it can be dealt with relatively briefly at this stage and therefore at the time we had a (Several inaudible words) purposes.

JUSTICE SIR DAVID STEEL: Right. So which do you want to take first? The letter of request, you say, is not challenged (Overspeaking) and then what the form of order is agreed.

ANDREW BODNAR: We might have overlooked actually drafting an order. It is a very short order that the court directs a letter of request of the issues. The draft letter is before Your Honour.

JUSTICE SIR DAVID STEEL: Yes. Just remind me where it is.

ANDREW BODNAR: Well, the easiest place to find it is in bundle 4 and it is behind divider 35.

JUSTICE SIR DAVID STEEL: Behind which?

ANDREW BODNAR: Divider 35.

JUSTICE SIR DAVID STEEL: Okay. Yes, I see. This presumably is -- there is some template for this, is there?

ANDREW BODNAR: It is a standard template of the (Several inaudible words) Rules of the DIFC.

JUSTICE SIR DAVID STEEL: Okay. And this will be addressed to who?

ANDREW BODNAR: It will be addressed to the Dubai Courts. We will identify the precise person in due course.

JUSTICE SIR DAVID STEEL: Well, I think it is probably necessary to -- I want to have a complete letter before I sign it off or certainly before a registrar signs it.

ANDREW BODNAR: Oh, absolutely. We would not expect the registrar to issue the letter without it.

JUSTICE SIR DAVID STEEL: Okay. Right, and so you are drafting a form of order.

ANDREW BODNAR: Yes.

JUSTICE SIR DAVID STEEL: I think the formal order should identify the addressee with some precision.

ANDREW BODNAR: Yes.

JUSTICE SIR DAVID STEEL: Okay? Right, well, we will deal with that when that draft is ready. Thank you. Now what do you want to do? Variation or disclosure?

ROBERT LAWSON: Variation.

JUSTICE SIR DAVID STEEL: Okay.

ROBERT LAWSON: Just because it came first in time. Your Honour, the Plaintiff's documents and skeleton argument goes on (Inaudible) very great length as to the basis of its substantive claim and why it says it has a strong prima facie case against the Defendant, such as the justifying the freezing(?) order continue.

JUSTICE SIR DAVID STEEL: Right.

ROBERT LAWSON: I am not intending to deal with that today because in my submission it is just not relevant, certainly for the variation application. I am going to keep myself very much to the narrow issues that are in dispute. This is of course not an application to discharge --

JUSTICE SIR DAVID STEEL: But there is no application to discharge either this --

ROBERT LAWSON: No (Overspeaking)

JUSTICE SIR DAVID STEEL: -- injunction or the London injunction as I understand
(Overspeaking) there is another one in Guernsey.

ROBERT LAWSON: Yes. Well, there is (Inaudible) an order (Inaudible) of that. Yes,
the London is merely a piggy-back injunction, if I can call it that,
and dealing with aspects (Overspeaking)

JUSTICE SIR DAVID STEEL: So, I am not too clear about this. I am sorry. Has there
been an inter-parties hearing in either of those jurisdictions?

ROBERT LAWSON: There has been in London.

JUSTICE SIR DAVID STEEL: Yes.

ROBERT LAWSON: My friend --

JUSTICE SIR DAVID STEEL: And no application to discharge?

ROBERT LAWSON: No.

JUSTICE SIR DAVID STEEL: No.

ROBERT LAWSON: And there was no challenge in that jurisdiction to the
arguability(?) of the case that had been forward by
(Overspeaking)

JUSTICE SIR DAVID STEEL: So the proposition that there is a prima facie case is
common ground.

ROBERT LAWSON: It is one that is not disputed.

JUSTICE SIR DAVID STEEL: All right.

ROBERT LAWSON: That is the way (Inaudible).

JUSTICE SIR DAVID STEEL: Well, the Court has accepted it in London?

ROBERT LAWSON: Yes, because I did not seek to challenge it in the same way as I
do not (Overspeaking)

JUSTICE SIR DAVID STEEL: Anyway, when was that granted in London?

ROBERT LAWSON: (Several inaudible words)

JUSTICE SIR DAVID STEEL: Yes, so --

ANDREW BODNAR: 13 August, Your Honour.

JUSTICE SIR DAVID STEEL: So over a month ago.

ROBERT LAWSON: About a month.

JUSTICE SIR DAVID STEEL: All right. Okay. Right.

ROBERT LAWSON: I do not want to, in my submissions, address things that will be relevant to the substantive dispute although I would like to come back to that in dealing with the application for disclosure in due course.

JUSTICE SIR DAVID STEEL: Yes. Understood.

ROBERT LAWSON: It is perhaps worth pointing out that the time for a Defence in this action has not yet arisen. As you will have seen from the skeleton argument, my client is currently in custody where he has been so since May and no Defence is due from him until such time as after he is released.

JUSTICE SIR DAVID STEEL: So, what is the basis for that?

ROBERT LAWSON: That is the order of the Court.

JUSTICE SIR DAVID STEEL: So, the order is that he must serve a Defence, what?
Within 14 days of release, or what?

ANDREW BODNAR: Three weeks.

ROBERT LAWSON: Three weeks.

ANDREW BODNAR: Three weeks.

ROBERT LAWSON: Three weeks of release. It is relevant, My Lord, to say that because my friend's constant refrain will be that we have not served a Defence and we ought to do so. I mentioned custody because that is relevant to (Inaudible).

JUSTICE SIR DAVID STEEL: Well, as I understand your client was going to provide an Affidavit with a full Defence in support of the application for disclosure, that is what he says.

ROBERT LAWSON: It has been suggested in correspondence that would happen, yes.

JUSTICE SIR DAVID STEEL: Yes.

ROBERT LAWSON: It is a very difficult task to get instructions because of the fact that he is in custody and visits to (Overspeaking)

JUSTICE SIR DAVID STEEL: Yes, but presumably that was made on instructions.

ROBERT LAWSON: It was made with hope that that will be the position and it has not proved possible. Of course, Your Honour, any Defence put before this Court should be fully and properly particularised. There is no point putting forward a bland document that will

merely give rise to a complaint that it is bland. A request for information, a suggestion that it is suspicious and then arguments about what disclosure should be given in light of the breadth of the allegation.

Of course, one can see my friend is already lighting(?) himself up to say the allegations are far too broad and disclosure should not be given if he pleaded like this as a fishing expedition. I want to avoid that. I want to have a proper --

JUSTICE SIR DAVID STEEL: Well, we will have to come to that but what you are asking for is pre-Defence disclosure.

ROBERT LAWSON: When we come to that, yes, I will, My Lord, come to that in due course. For the purposes of the Defence, all I want to do at the moment is explain the difficulties that we had in producing a Defence with the particularity that should be expected of this court, and, in my submission, that the fact that there is none yet cannot realistically just be held against my client.

My Lord, if I follow the order of my skeleton argument as to the matters sought to be varied, the first topic is living expenses and you will see, as I said at paragraph 10 of my skeleton argument. It is paragraph 64 of Mr Bodnar's rather longer document, that it is agreed that paragraph 9, sub-paragraph 1 of the order, ie the freezing order, and I use it as a defined term, be amended so that

the amount for living expenses be changed from \$2,500 per month to \$250 per week.

ANDREW BODNAR: \$2,050.

ROBERT LAWSON: Sorry, \$2,050. Ever hopeful to increase it. My friend, in his skeleton argument, makes a point that that does not mean that we get a payment of that sum. He is absolutely right and we do not seek to vary the order in respect. It makes clear that he can have that provided he explains the sources and the question of sources is not a matter that I put forward in the application that I made.

The next order is an issue between us in relation to the fact that as it currently states, the order is only effective when the Defendant is not in custody. You will see on the second line it says that he has the expenses if not in custody. My application is to remove the words, "if not in custody", and that is resisted. It is unclear from my friend's skeleton argument whether he resists it totally in principle or just in amount.

In the Defendant's submission it is unrealistic and unjust to suggest that he has no living expenses ongoing for the time that he remains in custody and, Your Honour, you have the evidence in relation to that as identified in my skeleton argument. It consists in two parts. I was not going to turn it up unless I need

to. It is paragraphs 11 and 12 of skeleton argument, but to say this, that inevitably there are some expenses that have been incurred for sustenance whilst in prison and my client refers in particular to his need both for food because of his health condition, and for the costs of phone cards so that he can communicate with the outside world and we include with that, his lawyers.

Also there are living expenses in the wider sense of ongoing costs which are fixed incurred in respect of life and examples of that would be such things as mortgage payments. What we have seen from the evidence referred to in paragraphs 11 and 12 of my skeleton argument is that the expenses that the Defendant has in fact incurred are substantially more, or incurs per week more than the \$2,050 which are the sum that he is currently entitled to when not in prison, even in circumstances when he is.

In my submission, at the very least, he should be allowed that amount also for such time as he is in custody in the same way as when he is not. There is then a further issue between us as to the amount to which Mr Haigh is entitled to per week. The current sum is, as I have said, \$2,050 and I seek to raise it to \$5,000 per week. **The argument therefore, My Lord, is between whether he is entitled to \$8,200 or \$20,000.**

Now, I have already referred to the evidence as set out in paragraphs 11 and 12 of my skeleton and, Your Honour, I hope that you have had the opportunity to read the passages of the statements and underlying documents exhibited to that to which it refers. I accept it could be more complete than it is, but that is the evidence that we are able to get given the difficulties in communicating with our client.

As I have said, they show that his ongoing expenses are much more than the \$2,050 that the order says that he is entitled to in the (Inaudible) whilst in prison. There is a generic complaint of my friend that it is an awful lot of money. My Lord, it is not so for a man who, until his incarceration, was earning a considerable sum of money and the fact that he was so can be seen in Exhibit 11 to the first Affidavit served in relation to this which shows that his earnings from the Claimant was in excess of £750,000 per year.

Your Honour, I do not know whether I need to turn that up. It is in volume 1, tab 2 and it is at page, if you will forgive me, 83, using the document at the top, where you will see a letter written by a Desiree Edwards, office manager of the Claimant, saying just that. (Inaudible).

"A savvy bonus and stock option package is rolled within our group, including reaching (Overspeaking)

JUSTICE SIR DAVID STEEL: So sorry. You said bundle 1?

ROBERT LAWSON: Bundle 1, tab 2.

JUSTICE SIR DAVID STEEL: So which set of bundles?

ROBERT LAWSON: Oh, sorry. Stephenson Harwood bundle (Inaudible).

JUSTICE SIR DAVID STEEL: Yes. Tab 2, page eighty --

ROBERT LAWSON: Tab 2, page 83, using the numbering at the top.

JUSTICE SIR DAVID STEEL: Yes. I have to say that threw me from time to time. I am
trying to read this. Right.

ROBERT LAWSON: What I read to you is the second paragraph.

JUSTICE SIR DAVID STEEL: Yes, okay.

ROBERT LAWSON: So you will see, not surprising that he has ongoing expenses of a
fixed nature, of a (Overspeaking)

JUSTICE SIR DAVID STEEL: So, but that is a total of salary, bonus and stock option?

ROBERT LAWSON: Yes, including working for Leeds United FC(?) there is some
involvement to do with that club relevant to this.

JUSTICE SIR DAVID STEEL: Yes.

ROBERT LAWSON: Now, it is correct, as my friend says in his skeleton argument, that \$5,000 a week would not meet all of the Defendant's actual requirements as stated in our evidence, which is absolutely correct. The accusation is made on a realistic basis and therefore the sum sought as permissible expenditure is a conservative amount to at least help alleviate the extreme financial predicament he finds himself in. It is, in my submission, relevant to note, as I have said in paragraph 12 that it is an amount that he has sought pretty much in the same terms since the outset. I said that by reference to the email relied upon for a slightly different purpose of my friend in Stephenson Harwood, volume 2 at page 686.

JUSTICE SIR DAVID STEEL: Which? Top or bottom?

ROBERT LAWSON: Top, and, Your Honour, going to always be at the top, he said, hopefully.

JUSTICE SIR DAVID STEEL: Okay.

ROBERT LAWSON: You will see here, and this is an email sent from the Defendant's previous lawyers to Gibson Dunn and the paragraph that I rely upon is the last full paragraph, "He proposes that". You will see

there that the proposal is \$4,768 per week. I say that to show
(Overspeaking)

JUSTICE SIR DAVID STEEL: Let me understand that. I do not know (Several inaudible
words) partly the mortgage --

ROBERT LAWSON: Yes, well, you will see the (Overspeaking)

JUSTICE SIR DAVID STEEL: -- partly of credit cards --

ROBERT LAWSON: Well, those --

JUSTICE SIR DAVID STEEL: -- and partly of chiller (Inaudible), whatever they may be.

ROBERT LAWSON: I am assuming that means air conditioning but I have not
actually --

JUSTICE SIR DAVID STEEL: Air conditioning.

ANDREW BODNAR: It is certainly how we understood it, Your Honour.

ROBERT LAWSON: Yes.

JUSTICE SIR DAVID STEEL: So air condition in his apartment, right?

ROBERT LAWSON: One would assume that it is in relation to the Dubai apartment
(Overspeaking)

JUSTICE SIR DAVID STEEL: So, what are we focusing on?

ROBERT LAWSON: I am sorry?

JUSTICE SIR DAVID STEEL: What he needs when he is in custody or what does he
use when he is not in custody?

ROBERT LAWSON: It is both. There are certain things that he needs in custody to do
with the fact that he (Overspeaking)

JUSTICE SIR DAVID STEEL: Can we focus on that? Right, you say that, for what it is
worth, say that he has asked for \$5,000 as from the end of June.

ROBERT LAWSON: Yes.

JUSTICE SIR DAVID STEEL: Right.

ROBERT LAWSON: Yes, and I would say it is merely the consistency of position is the
only point that I am making. As to what he asks for in custody, I
need to go to the Exhibits to my first statement for that and it is
Exhibit RBC11, I think. No, it is RPC9.

JUSTICE SIR DAVID STEEL: So where do you want me to go?

ROBERT LAWSON: Well, it if Your Honour wants to see it, it is in Stephenson Harwood volume 1, and it is in tab 2 and it is on page 79, at the top.

JUSTICE SIR DAVID STEEL: Thank you.

ROBERT LAWSON: I do not take you, Your Honour, as I need to you to recover(?) your evidence to explain that the Defendant has some health issues --

JUSTICE SIR DAVID STEEL: All right.

ROBERT LAWSON: -- and that is relating to the stomach, and that is explained or the justification for some of the matters set out --

JUSTICE SIR DAVID STEEL: This is a schedule prepared by Stephenson Harwood?

ROBERT LAWSON: Yes.

JUSTICE SIR DAVID STEEL: Yes.

ROBERT LAWSON: On instruction, having spoken to the Defendant.

JUSTICE SIR DAVID STEEL: Okay.

ROBERT LAWSON: Then, if you turn over two pages to page 81, you will see the ongoing expenses, if you like, outside prison.

JUSTICE SIR DAVID STEEL: Right. What, even when he is in custody these are the ongoing monthly (Overspeaking) and liabilities?

ROBERT LAWSON: Yes.

JUSTICE SIR DAVID STEEL: All right.

ROBERT LAWSON: So, there I should say "monthly" and I do not know how you are with conversion tables, My Lord, but I am probably poor on Dirhams but according to XE.com, the figure of AED 950,450 for daily expenses is worth about \$2,500 and the figure for the monthly expenditure of AED 154,000 is approximately \$42,000 or £26,000.

JUSTICE SIR DAVID STEEL: Yes.

ROBERT LAWSON: So, considerably more than I seek and I say that because my friend will take pot shots at various items and say they are not necessary, but they are. My client has both a residence in Dubai and one in London that have been retained and obviously has fixed expenses in relation to those and indeed Council Tax on the property that he owns in Penzance, which is referred to in the evidence.

So there is considerable expenditure and, as matters stand, he is not able to have any expenditure on any of these sums. That is why we seek a more realistic sum. I do not seek to challenge at risk the fact that paragraph 9.1 of the Order says that we have to explain where the funds are going to come from in order to be able to meet the allowances that are permitted. That is (Inaudible).

JUSTICE SIR DAVID STEEL: Right, but, I mean, do you want to deal with the points that Mr Bodnar makes about the items on page 17 which he describes as difficult to justify? I mean, let us take medicine, why does he need \$500 a week on medicine? It is a really astonishing sum?

ROBERT LAWSON: The evidence --

JUSTICE SIR DAVID STEEL: I mean, what is he buying?

ROBERT LAWSON: I cannot give you the specifics.

JUSTICE SIR DAVID STEEL: You cannot tell me?

ROBERT LAWSON: What I can say is that he is on various medications.

JUSTICE SIR DAVID STEEL: Yes, but \$500 a week? That is \$100 a day. All right, if you cannot tell me, so be it. Then food, water and toiletries, another \$500. That's slightly more understandable in terms of food, although (Inaudible) where is he buying this food from?

ROBERT LAWSON: It is being bought from outside and being brought in to him, as I understand it.

JUSTICE SIR DAVID STEEL: Oh, I see. So he is entitled to buy food from outside?

ROBERT LAWSON: Yes.

JUSTICE SIR DAVID STEEL: Well, that perhaps is more understandable.

ROBERT LAWSON: As you may have observed, he is being held in custody in a police station.

JUSTICE SIR DAVID STEEL: Yes.

ROBERT LAWSON: The move to the prison having been unsatisfactory in terms of communication in particular.

JUSTICE SIR DAVID STEEL: But when you say, "food", I mean, he is just buying groceries or is he sending out to La Petite Maison?

ROBERT LAWSON: One (Overspeaking)

JUSTICE SIR DAVID STEEL: Well, I hope that does not sound too flippant but there is a considerable difference between buying food, you know, in tins and so on if you are going to eat and we do not spend that sort of money on our groceries. Though, to be sending out, as he may be entitled to, for what I call "quality food" from a quality supplier -

ROBERT LAWSON: It is not a life of luxury and it is not haute cuisine.

JUSTICE SIR DAVID STEEL: Well, it is quite a high figure for food and water and toiletries, but perhaps less striking than the medicines.

ROBERT LAWSON: Yes.

JUSTICE SIR DAVID STEEL: Then, we have got --

ROBERT LAWSON: Credit cards?

JUSTICE SIR DAVID STEEL: Medical care. Private medical care. Well, how is that coming in? I mean, what? Doctors are coming to prison, are they?

ROBERT LAWSON: Yes.

JUSTICE SIR DAVID STEEL: I mean, this is on the assumption that he had got his medicines. What else is happening?

ROBERT LAWSON: There is a doctor in the prison but he has to go out to specialists, Your Honour.

JUSTICE SIR DAVID STEEL: What?

ROBERT LAWSON: He has to go out to specialists or he is allowed to go out to specialists.

JUSTICE SIR DAVID STEEL: What, he is allowed out with guards to a specialist, is he?

ROBERT LAWSON: Yes. To Rashid Hospital where (Overspeaking)

JUSTICE SIR DAVID STEEL: Sorry, I forgot to ask. I mean, he is not here. Why is he not here?

ROBERT LAWSON: Because he is in custody.

JUSTICE SIR DAVID STEEL: Well, if he can go out to get medical assistance, surely he can come to court?

ROBERT LAWSON: Apparently the police, and this is onshore, would not allow it or will not allow it, I should say.

JUSTICE SIR DAVID STEEL: I am sorry. Say that again?

ROBERT LAWSON: The police in Dubai, it is onshore, will apparently not allow it, this being a civil court and it being unrelated to any criminal proceedings.

JUSTICE SIR DAVID STEEL: Again, help me a bit about that. You say that he is entitled to request to leave the prison in custody to go and see a doctor, but not to come to court. Is that really so?

(18 seconds of silence)

ROBERT LAWSON: He has to obtain special permission to go for medical purposes and it is given on that basis but --

JUSTICE SIR DAVID STEEL: Well, I have no doubt he would ask for special permission to come to court and have an opportunity, no doubt, to have a consultation with his lawyers.

ROBERT LAWSON: It would be lovely to see, without doubt, but we have not been so far able --

JUSTICE SIR DAVID STEEL: Is there any evidence in support of that in the documents?

ROBERT LAWSON: No. There is not.

JUSTICE SIR DAVID STEEL: It just makes me slightly surprised, the proposition that he needs AED 1,000 a month to attend on doctors yet he is apparently barred from coming to court, which seems to be rather more important.

ROBERT LAWSON: Well, it is and, Your Honour, quite frankly, we would love to have him out so that we could take proper instructions because it is hampering very much the preparation of the Defence, and were it possible to extricate him for even a limited amount of time it is something that we would seize with much, much, enthusiasm.

JUSTICE SIR DAVID STEEL: It might have been of some interest to the court if there were some evidence, particularly documentary evidence, in support of the proposition that a request was made for him to come here and it was refused, but a request to attend on a doctor is allowed. It is strange, is it not? Anyway, there it is. You cannot help (Overspeaking)

ROBERT LAWSON: I cannot help, Your Honour, and there it is, I think is the answer. It is --

JUSTICE SIR DAVID STEEL: Now, you said (Inaudible) he has lost 30 kilos which is --

ROBERT LAWSON: Yes, lost lots (Overspeaking)

JUSTICE SIR DAVID STEEL: -- couple of stone in old money.

ROBERT LAWSON: Yes.

JUSTICE SIR DAVID STEEL: Actually, more than a couple of stone. It is four stone.

ROBERT LAWSON: Yes. I think it is fair to say he was rather large when he went in.
(Several inaudible words).

JUSTICE SIR DAVID STEEL: Well, he must have been pretty large and so his clothes
are too big for him. What, he wears normal, civilian clothes in
there, does he?

ROBERT LAWSON: Yes.

JUSTICE SIR DAVID STEEL: Yes.

ROBERT LAWSON: Yes.

JUSTICE SIR DAVID STEEL: All right.

ROBERT LAWSON: And then phone cards. Well, that is how he communicates with
the outside world (Inaudible) the family and that is how the legal
representatives have communicated with him (Overspeaking)

JUSTICE SIR DAVID STEEL: Again³⁰, I need some help(?) about that. He needs phone cards. That presumably is, what, a card which you can use to make an outgoing call on a landline, correct?

ROBERT LAWSON: Yes.

JUSTICE SIR DAVID STEEL: But I thought that he could hardly make any outgoing calls because there were so many people using the phone and that he could not contact his lawyers, except for very, very, brief, short, periods of time.

ROBERT LAWSON: Yes. So (Overspeaking)

JUSTICE SIR DAVID STEEL: Is he really going to spend \$500 a week on phone cards?

ROBERT LAWSON: It is, in part, for his use and, of course, he has to, or he finds it useful to move up the queue if he procures cards for other inmates so they can use them for their benefit(?) and (Overspeaking)

JUSTICE SIR DAVID STEEL: Oh, I see. These are gifts to other inmates to jump the queue?

ROBERT LAWSON: Well, in addition to his own expenses. The answer is --

JUSTICE SIR DAVID STEEL: Well, I think he might be a bit more frank about it. Okay, that is what you say.

ROBERT LAWSON: Well, there is the difficulty that in terms of physically being able to see him, all that has been possible are very short visits. I think it is twice a week, which usually last for five minutes and if the lawyers are lucky, they ask for a little bit longer. They take place in a common room in the police station on a table where there are guards (Overspeaking)

JUSTICE SIR DAVID STEEL: All right. I am not (Overspeaking)

ROBERT LAWSON: It is very difficult to (Overspeaking)

JUSTICE SIR DAVID STEEL: I am not on that point at the moment. I am more on the point of what possible use he has for \$500 worth or telephone cards per week. Well, when, as I understand it, one of his main complaints is that he is unable to communicate by telephone, or at least on any regular basis.

ROBERT LAWSON: He is unable to communicate as he would wish but such communication as he is able to do with the outside world is in that amount.

JUSTICE SIR DAVID STEEL: Yes. This is \$500 for him alone. He has got another \$250 for handing out to others. So that is not the answer, is it? So what is he spending \$500 of telephone calls on?

ROBERT LAWSON: He can make calls but they are only for short periods of time. So he has to make lots of calls to be able to make any substantial progress of any conversation with anybody.

JUSTICE SIR DAVID STEEL: Well, he is only ringing in Dubai, is he not?

ROBERT LAWSON: Well, I would assume he is also ringing his family in the UK as well.

JUSTICE SIR DAVID STEEL: Maybe he is ringing his family as well.

ROBERT LAWSON: His main place of residence was in the UK, not in --

JUSTICE SIR DAVID STEEL: Then, there is laundry. What, he is sending out laundry, is he?

ROBERT LAWSON: Yes.

JUSTICE SIR DAVID STEEL: Yes, and reading material. What is that?

ROBERT LAWSON: What, reading material?

JUSTICE SIR DAVID STEEL: What? Papers and books and so on? Okay.

ROBERT LAWSON: I cannot be more precise. That is what I know.

JUSTICE SIR DAVID STEEL: Yes. I approach that list with a bit of a long spoon. I put it a bit higher than that. Right, now that is weekly expenses while incarcerated.

ROBERT LAWSON: Yes.

JUSTICE SIR DAVID STEEL: And then what?

ROBERT LAWSON: Then you have the monthly --

JUSTICE SIR DAVID STEEL: The schedule of ongoing monthly commitments, you say these are incurred(?) while incarcerated or not?

ROBERT LAWSON: Yes.

JUSTICE SIR DAVID STEEL: Yes.

ROBERT LAWSON: Ongoing monthly commitments and liabilities.

JUSTICE SIR DAVID STEEL: Right. So, let us understand this (Overspeaking)

ROBERT LAWSON: So, you will see the top is Dubai.

JUSTICE SIR DAVID STEEL: What about the two credit cards? How is he spending, in prison, £20,000 a month on credit cards?

ROBERT LAWSON: I think that refers to debts that he has already (Overspeaking)

JUSTICE SIR DAVID STEEL: Oh, I see.

ROBERT LAWSON: What you will see (Overspeaking)

JUSTICE SIR DAVID STEEL: He is paying off debts on credit cards?

ROBERT LAWSON: Yes. If you look at the -- and it is Schedule 1 --

JUSTICE SIR DAVID STEEL: It is not bills various. This is one bill.

ROBERT LAWSON: Yes. He has on --

JUSTICE SIR DAVID STEEL: So, what is the debt on his credit card?

ROBERT LAWSON: Well, Schedule 1 figure, Citibank credit card. That is for the draft order, is 125,000 dirhams.

JUSTICE SIR DAVID STEEL: Sorry. What are you looking at?

ROBERT LAWSON: I am looking at Schedule 1 to the draft order.

JUSTICE SIR DAVID STEEL: Just give me a page reference.

ROBERT LAWSON: I am looking at somewhere else and I will do that. It is page 99 (a) to 99 (b) of -- that is interesting, in Exhibit 2.

JUSTICE SIR DAVID STEEL: Sorry?

ROBERT LAWSON: In Exhibit 2 of Volume 1. Sorry, of Stephenson Harwood, Volume 1. It is right at the back of tab 2. It is a schedule of the payments --

JUSTICE SIR DAVID STEEL: Oh, I see.

ROBERT LAWSON: -- requested from the £200,000 sterling fee held. We will come back to that in due course. Sorry. I was reading (Overspeaking)

JUSTICE SIR DAVID STEEL: This schedule is of what?

ROBERT LAWSON: That is a schedule of what he wants to make payment for out of the £200,000 currently held in the Stephenson Harwood client account.

JUSTICE SIR DAVID STEEL: (Several inaudible words). This is not an order, it is a draft order?

ROBERT LAWSON: It is a draft order, yes. It is a draft (Overspeaking)

JUSTICE SIR DAVID STEEL: It is the order you are asking for, is it?

ROBERT LAWSON: It is, yes. This is the order I am asking for. Schedule 1 actually refers to item 7, which is the £200,000 but that is the credit card figure that we have in there.

JUSTICE SIR DAVID STEEL: Oh, I get you. I see. Citibank £125,000 and HSBC ...

ROBERT LAWSON: You will see there is the mortgage arrears there of 37,000 dirhams, as well.

JUSTICE SIR DAVID STEEL: Sorry. I am not seeing mortgage arrears. Where are they?

ROBERT LAWSON: I am on schedule 1, just above ADCD, mortgage payments at --

JUSTICE SIR DAVID STEEL: That, you say, is HSBC, is it?

ROBERT LAWSON: No. That is ADCD.

JUSTICE SIR DAVID STEEL: No. I was just asking where the HSBC credit card is.

ROBERT LAWSON: It is not there.

JUSTICE SIR DAVID STEEL: Right.

ANDREW BODNER: I have to say, your Honour, we had understood this schedule to be a schedule of requested one-off payments and that the table to which my learned friend is referring a few moments ago, the on-going monthly liabilities, was, as your Honour understood it, somewhere in the region of £20,000 a month in credit card bills, whilst in custody.

ROBERT LAWSON: Absolutely right, my friends. The schedule 1 is one-off payments but I was merely explaining what the credit (Overspeaking)

JUSTICE SIR DAVID STEEL: This is what you want to use the £200,000 for?

ROBERT LAWSON: Yes, to pay off the credit card bill, amongst other things. We will come back to that in due course.

JUSTICE SIR DAVID STEEL: Well, now I am beginning to understand. So, this has got nothing to do with monthly expenses. This is one-off payments that you want to --

ROBERT LAWSON: Schedule 1 is.

JUSTICE SIR DAVID STEEL: -- deal with --

ROBERT LAWSON: Schedule 1 is. Yes.

JUSTICE SIR DAVID STEEL: -- by using the £200,000 --

ROBERT LAWSON: Yes.

JUSTICE SIR DAVID STEEL: -- in the Stephenson Harwood account.

ROBERT LAWSON: Yes.

JUSTICE SIR DAVID STEEL: Correct?

ROBERT LAWSON: That is what schedule 1 is.

JUSTICE SIR DAVID STEEL: So, we can forget about that.

ROBERT LAWSON: Yes. You were merely asking (Overspeaking)

JUSTICE SIR DAVID STEEL: Let us come back to the monthly liabilities.

ROBERT LAWSON: All I was thinking --

JUSTICE SIR DAVID STEEL: We can forget the credit cards because they are going to
be paid off out of the £200,000?

ROBERT LAWSON: Well, the Citibank ones and -- yes. As I said, the amount in total
is substantially more than the sum being requested. Therefore,

whilst one may say that some of these items are not necessary, are avoidable or should not be made, one can still reach a reducible minimum, a figure of \$5,000 per week. As I said, that is not a surprising figure when one considers the --

JUSTICE SIR DAVID STEEL: Well, it depends how --

ROBERT LAWSON: (Several inaudible words) this gentleman before his incarceration.

JUSTICE SIR DAVID STEEL: Let us go back to page 81. Mortgage, that is the mortgage on the Dubai property, is it?

ROBERT LAWSON: Yes.

JUSTICE SIR DAVID STEEL: That you are asking and ideally it is agreed, it should be sold?

ROBERT LAWSON: Yes.

JUSTICE SIR DAVID STEEL: So --

ROBERT LAWSON: But, of course, the mortgage --

JUSTICE SIR DAVID STEEL: Allowing a bit more to outstand on the mortgage does not matter very much. It will just come out of the proceeds of sale. Yes or no? (Overspeaking) in a couple of months, would it?

ROBERT LAWSON: One would hope so. What we are trying to avoid is a foreclosure and fore-sale which will produce a lower yield that if it was done -
-

JUSTICE SIR DAVID STEEL: Well, if there is an order of the court to sell it, it is unlikely that the bank is going to intervene and sell it itself. Indeed, it might be in contempt if it tried to do so.

ROBERT LAWSON: One would hope not.

JUSTICE SIR DAVID STEEL: Then electricity --

ROBERT LAWSON: Yes.

JUSTICE SIR DAVID STEEL: All right. That is another thing.

ROBERT LAWSON: There are, of course --

ANDREW BODNAR: (Overspeaking). Long term contracts that one would have to take, things that do not cease to exist just because one is (Overspeaking)

JUSTICE SIR DAVID STEEL: Whilst he is in custody, he does not need TV and all that.

ANDREW BODNAR: As I said, there are long-term commitments that one makes by way of contract and, as we all know your Honour, the people cannot afford to waive the contracts without incurring penalty payments. Therefore, of course, he is not watching his TV in his apartment in Dubai whilst he is in prison but that does not mean that his contract (Overspeaking)

JUSTICE SIR DAVID STEEL: So, which contract are we talking about? It says "Council Tax". Is it talking about London?

ANDREW BODNER: Sorry, not in the London section.

JUSTICE SIR DAVID STEEL: Oh, I see. I follow.

ANDREW BODNER: Yes. He advised the first four entries and then you are going to London. As I said, the defendant's main place of residency was in the UK, not least because of the work that he was doing for the claimant in relation to Leeds United Football Club. Therefore, he has living expenses in two locations.

JUSTICE SIR DAVID STEEL: I think he can probably live without a gym membership.

ROBERT LAWSON: Well, that goes back to my point about long-term contracts. I am sure --

JUSTICE SIR DAVID STEEL: Well, I am sure -- what is the gym going to do? Sue for the (Inaudible)? Salary and travel. Oh, that is the PA. That is almost the biggest item of all. PR media. What is that?

ROBERT LAWSON: He has been using media PR agents. I do not push that one very heavily in the (Several inaudible words).

JUSTICE SIR DAVID STEEL: I think that must be ... company registration in secretary(?) -- what is that?

ROBERT LAWSON: I cannot explain for you. There is no evidence --

JUSTICE SIR DAVID STEEL: I mean --

ROBERT LAWSON: Your Honour. This is my evidence. I have not got everything(?).

JUSTICE SIR DAVID STEEL: Well, what I am trying to indicate is, I have, again, approached this with a pretty long spoon.

ROBERT LAWSON: Your Honour. It is the second spoon. I have noticed the cutlery drawer is becoming full! That is the evidence that I have and put before you. As I said --

JUSTICE SIR DAVID STEEL: Where did the 2,000 figure come from?

ANDREW BODNAR: 2,000?

JUSTICE SIR DAVID STEEL: The present allowance.

ANDREW BODNAR: It came by agreement.

JUSTICE SIR DAVID STEEL: It came by agreement? Oh, I see.

ANDREW BODNAR: It came by agreement on this basis. The friend put forward mortgage payments shown over costs and I think one other item. We did not believe -- we did not necessarily wish to agree it. It is at page -- it is the Gibson Dunn bundles, volume 3, divider 30, page 979.

JUSTICE SIR DAVID STEEL: Volume 30? Divider 30, page ...?

ANDREW BODNAR: 979.

JUSTICE SIR DAVID STEEL: Oh sorry, we looked at this a bit earlier in another
(Overspeaking)

ANDREW BODNAR: That amounts equates to \$2,050 a week.

JUSTICE SIR DAVID STEEL: I am sorry. You have slightly lost me. The question I asked is where does the 2,000 come from and you said it was an agreed figure.

ANDREW BODNAR: Page 983.

JUSTICE SIR DAVID STEEL: I am looking at page 979.

ANDREW BODNAR: Yes. If your Honour turns to page 983 --

JUSTICE SIR DAVID STEEL: Oh, 983. Okay. So in response to that analysis of his requirements --

ROBERT LAWSON: Yes. The request was then made for \$5,000.

JUSTICE SIR DAVID STEEL: Asked for \$5,000. Then, alternatively \$2,500, \$2,000.

ROBERT LAWSON: \$2,050.

JUSTICE SIR DAVID STEEL: Yes.

ANDREW BODNAR: At least as an interim measure rather than having left the argument and we have needed to return to court, we simply inserted that figure.

JUSTICE SIR DAVID STEEL: So, you accepted that figure and that is what went in the order?

ANDREW BODNAR: If he was -- yes. So long as he was not incarcerated.

JUSTICE SIR DAVID STEEL: Yes. Okay. Well, there it is so far as it goes. Right.

Now --

ROBERT LAWSON: Your Honour, I was going to move on to the Dubai apartment, if I may.

JUSTICE SIR DAVID STEEL: Sorry. Now you are moving on to ..?

ROBERT LAWSON: The Dubai apartment.

JUSTICE SIR DAVID STEEL: Just hang on a moment, would you?

(30 seconds of silence)

So, if he has got all these expenses, why he is only asking for \$5,000?

ROBERT LAWSON: He is trying to be realistic, your Honour.

JUSTICE SIR DAVID STEEL: In what sense being realistic?

ROBERT LAWSON: Well, in the sense that there has to be a figure that is both attractive to this court and to which my friend cannot take too serious an objection, and therefore --

JUSTICE SIR DAVID STEEL: Then how is he going to pay these sums?

ROBERT LAWSON: He is in difficulty and has to beg forbearance from various people until such time as he can remedy his current predicament.

JUSTICE SIR DAVID STEEL: I mean the big items here, the mortgage, the payment to a partner, the PA and PR. That is 50 per cent of these items, all of them look somewhat doubtful, to put it mildly. Okay. Anyway, you want to move on now to the sale of the apartment, to which there is, I understand, no objection.

ROBERT LAWSON: There is no objection in principle, is the way that it is written. I have been discussing this with my friend. I am not quite sure where we are. I think that we are in agreement bar one point about the search order. It is --

JUSTICE SIR DAVID STEEL: That is really a preliminary point, is it not?

ROBERT LAWSON: Well --

JUSTICE SIR DAVID STEEL: You cannot start the sale until there has been a search, if there is to be a search.

ROBERT LAWSON: Yes. There is.

JUSTICE SIR DAVID STEEL: Presumably the apartment is full of stuff.

ROBERT LAWSON: I think full is an over-statement. It has stuff in it and the reason for that is, as I have said, the defendant's primary place of residence was in England and had been for a long time. So, it is not as full as one would expect of a primary residence.

JUSTICE SIR DAVID STEEL: He must have furniture?

ROBERT LAWSON: He must have furniture, yes. I do not think it falls within the framework of personal possessions.

JUSTICE SIR DAVID STEEL: He must have personal possessions.

ROBERT LAWSON: Yes, of course. To some extent but, as I have said, his main residency was in England so it does have things in it, yes.

JUSTICE SIR DAVID STEEL: So, what is the suggestion about the search order?

ANREW BODNAR: Well, the position is quite simply this. That we wrote, some time ago, and I can turn up the date, asking what jurisdiction there was to undertake a search on shore, which is where this apartment is. We made clear our position that we would consent to the switch, pending the answer to that question. That question has never been answered. So, matters are basically at a pause.

JUSTICE SIR DAVID STEEL: Has there been a challenge to the search order?

ANDREW BODNAR: No. There has not been appealed. It has not been rightly set aside. The order that says (Several inaudible words). I am looking in -- I think it is my friend's bundle 2, tab 11 and it is bottom number 647.

(10 seconds of silence)

You will see the order:

"Defendant must admit the following persons, the search party to enter the premises mentioned so that they can search et cetera, et cetera."

So, all that has happened is that a letter has been written in response to that by those currently instructed by the defendant asking what jurisdiction there is to execute a search order on shore. That is one to which no reply has ever been received. So, neither side have moved the matter forward. It is as simple as that.

JUSTICE SIR DAVID STEEL: Well, presumably they are saying, "Well, if you want to sell the flat, you will (Several inaudible words)".

ROBERT LAWSON: Well, presumably they will say that and it is obviously a matter that needs to be resolved. (Several inaudible words).

JUSTICE SIR DAVID STEEL: Well, the only way you will get it resolved is if you make an application to the court that challenges the search. I think they may be in a slight difficulty in making an application to Dubai courts to enforce the search. I do not know. There is a stand-off at the moment. You are the man who wants to avoid foreclosure and he wants to sell this and get some money in, which may or may not resign to his benefit. I do not know. So, on the basis, it may be said by the other side, "Well, if you want --"

ROBERT LAWSON: Your Honour, may I (Inaudible) instructions very briefly on one point, which I think will (Inaudible)?

JUSTICE SIR DAVID STEEL: If there is nothing there, I cannot think it matters very much.

ROBERT LAWSON: Fine. I am trying to cut through the way out of it. I do not have instructions on that point, particularly now because of lack of access to my client. The way it can be dealt is by saying upon the defendant committing X, Y and Z, there be an order for sale.

JUSTICE SIR DAVID STEEL: Yes. I think that is right.

ROBERT LAWSON: I will put that forward as evidence.

JUSTICE SIR DAVID STEEL: It sounds as if that may well be a total waste of time from the claimant's point of view. I do not know. If you are right that all it has got is some furniture in, but ...

ROBERT LAWSON: Yes. It may well be. (Overspeaking)

JUSTICE SIR DAVID STEEL: They have laid their suspicions, no doubt.

ROBERT LAWSON: Yes. Well, it may be why they have not proceeded with any (Inaudible).

JUSTICE SIR DAVID STEEL: Quite.

ROBERT LAWSON: So, yes.

JUSTICE SIR DAVID STEEL: Anyway, you say the subject of that condition --

ROBERT LAWSON: Subject of that, it is agreed that the money --

JUSTICE SIR DAVID STEEL: -- you are agreed what? That there should be --

ROBERT LAWSON: The proceeds should go into court. That it should be -- and I understand to be agreed now, that it should be marketed by a reputable agent and it can then stand by an independent lawyer to be agreed between the parties and that both persons be put

on notice of the freezing order. I understand my friend accepts both of those.

JUSTICE SIR DAVID STEEL: So, where will the money go?

ROBERT LAWSON: it will be paid into court.

JUSTICE SIR DAVID STEEL: It will be paid into court.

ROBERT LAWSON: We will, of course, provide, when we can, an updated figure for the mortgage so that it can be shown that what is paid into court is the (Overspeaking)

JUSTICE SIR DAVID STEEL: Is the equity. Yes. I understand. Well, the car, you know, it is probably worth a few pounds, no doubt.

ROBERT LAWSON: Every little helps. Yes.

JUSTICE SIR DAVID STEEL: So, what you will do again, go to a reputable Lexus dealer, will you?

ROBERT LAWSON: Yes. There has been no discussion of (Inaudible). It has just been said (Inaudible) the sale can be done. Obviously we want to maximise the proceeds of sale and therefore we will --

JUSTICE SIR DAVID STEEL: Anyway, you understand there is really no problem about that.

ROBERT LAWSON: I understand there to be no problem at all with the Lexus. There we are. So, that leads, in relation to the £200,000, where it can be spent. There is an issue that was raised that I do not think that we need to deal with and I will look at my friend in that regard, about whether the claimant has a proprietary interest to those rights. A very interesting legal question.

JUSTICE SIR DAVID STEEL: Well, as I understand it, he contends it is arguable they do.

ROBERT LAWSON: Yes.

JUSTICE SIR DAVID STEEL: Are you challenging that?

ROBERT LAWSON: I challenge that it is a proprietary interest. To give you a snapshot of the answer or the position, is that there was a loan made to Leeds United Football Club --

JUSTICE SIR DAVID STEEL: I do not want to go into this unless I have to beside this point, but are you saying that he has no good arguable case that there was a proprietary interest in the £200,000?

ROBERT LAWSON: Proprietary, no. He has an equitable claim --

JUSTICE SIR DAVID STEEL: Let me put the question again and make sure I have got a clear answer. Are you saying in Mr Bodnar's submission that his clients have a proprietary interest in the £200,000, is not arguable?

ROBERT LAWSON: Yes.

JUSTICE SIR DAVID STEEL: You are?

ROBERT LAWSON: I do not think it matters (Overspeaking)

JUSTICE SIR DAVID STEEL: Do I have to decide that?

ROBERT LAWSON: I do not think so because of the discussion that we have had which I hope I will faithfully reflect now. Some items in question that I do not think one needs to deal with, in that the £200,000 which came via a few firms of solicitors of Stephenson Harwood. Mishcon De Reya being the first recipient from a third party and there is no dispute for that. It is being currently held in Stephenson Harwood's current account on the undertaking that it may be used for the purposes of legal expenses, provided there is an agreement as to the expenses concerned. I paraphrase that that is it.

JUSTICE SIR DAVID STEEL: So, the parties are now agreed that £200,000 --

ROBERT LAWSON: As I understand it --

JUSTICE SIR DAVID STEEL: -- can remain with Stephenson Harwood and can be used for legal expenses in respect of which the bills or invoices would be presented to the claimant's solicitors for agreement?

ROBERT LAWSON: Well, I do not know whether the word "agreement" is necessarily that.

JUSTICE SIR DAVID STEEL: All right. For review.

ROBERT LAWSON: What my friend, yes, has asked is that the invoices be provided to them. I understand his position to be that provided that those invoices are provided to him, and that they show expenditure of £200,000 or more --

ANDREW BODNAR: Rather than my learned friend looking across and reciting my position, perhaps it would assist if I specifically set out what the claimant's stance is in relation to the £200,000. We were asked for agreement that £200,000 of money, which was repaid in full over the loan repayment, the loan to Leeds United, could be transferred to Stephenson Harwood to be used in accordance for legal expenses and disbursements in these proceedings.

JUSTICE SIR DAVID STEEL: Either way, you are asking for it to be paid on a great number of different --

ANDREW BODNAR: Well, that is --

JUSTICE SIR DAVID STEEL: That is history.

ANDREW BODNAR: Well, no. It appears to be history. The undertaking was that the money would be held by Stephenson Harwood on account and would be used only for the purpose of meeting legal expenses, which would be agreed, such agreement not to be unreasonably withheld.

JUSTICE SIR DAVID STEEL: Now, legal expenses anywhere in the world or ...

ANDREW BODNAR: The undertaking was not restricted. Our position is this, we made a proprietary claim. Your Honour has seen how we put it.

JUSTICE SIR DAVID STEEL: Yeah.

ANDREW BODNAR: I do not need to get beyond a good argument (Inaudible) here. However, in order to progress this matter and to avoid Mr Haigh saying, "I have no access to lawyers or liberty" or anything, we have made £200,000 available.

JUSTICE SIR DAVID STEEL: Yes. I understood that from your skeleton.

ANDREW BODNAR: We do not expect to be making any further money available until the matters which I have -- which I intend to address your Honour on, are addressed. If that money has been used for things which have not progressed the litigation, then that is too bad for the defendant. He made a choice. So, we have agreed money could be used for legal expenses. It would be wrong of me now to stand up to say we have changed our minds.

JUSTICE SIR DAVID STEEL: No.

ANDREW BODNAR: We are concerned about how quickly this level of fees has been incurred. We are also concerned that what we received was not a breakdown of expenses in connection with this litigation. Two items of legal expenditure, certain expert reports and the request that the rest of the balance of the funds be used to meet personal expenditure of the defendant. (Overspeaking)

JUSTICE SIR DAVID STEEL: Yes. I understood you were fine about that. You are saying that it can only be used for legal expenses.

ANDREW BODNAR: Quite.

JUSTICE SIR DAVID STEEL: If it is already being used, then it must be, in a sense, credited to that?

ANDREW BODNAR: Yes. Well --

JUSTICE SIR DAVID STEEL: It must mean you --

ANDREW BODNAR: -- it is dependent on his lawyers how they make use of that money. The reason there is no (Several inaudible words) there is no reason to be releasing any more for it until certain events have occurred. If the defendant is in a weak position, for example, in relation to the evidence before your Honour, as for his assets and his expenditure, well, he has had £200,000 made available to him to ensure that he was not in such a weak position and your Honour should have no sympathy.

That is our position. If the position now, notwithstanding the draft order, is that that schedule attached to which my learned friend took your Honour a few moments ago, can be jettisoned and the money (Overspeaking)

JUSTICE SIR DAVID STEEL: That is what I understood.

ANDREW BODNAR: Then there is lack of (Inaudible) fees.

ROBERT LAWSON: The position is, to be clear, that so far the £200,000 has not been used at all. It is just sitting in the account because the two sides have not been able to come to terms. My friend has been asking for invoices and we have been reluctant to provide information

because we think that the matters are privileged. That is where the problem has raised. I understand the lock chat(?) had been broken to the extent that my friend is content that I do spend that money, provided I spend it on legal expenses.

JUSTICE SIR DAVID STEEL: Quite. I mean, how much has been incurred so far?

ROBERT LAWSON: In excess of £200,000. You have got to understand that we are fighting in four different jurisdictions.

JUSTICE SIR DAVID STEEL: I apologise but -- so, in effect, the money has gone.

ROBERT LAWSON: Yes. This will --

JUSTICE SIR DAVID STEEL: It has been already subsumed by legal expenses incurred to date.

ROBERT LAWSON: There are intended destinations for it in relation to costs that have already been incurred, yes.

JUSTICE SIR DAVID STEEL: Legal costs? Yes.

ROBERT LAWSON: Yes. Legal costs.

JUSTICE SIR DAVID STEEL: So, you will tell the claimant's instructing solicitors what sum is being paid for what, will you?

ROBERT LAWSON: We are prepared to give them the invoices that we will be discharging with the money.

JUSTICE SIR DAVID STEEL: Right.

ROBERT LAWSON: (Several inaudible words). The invoices and not the narratives supporting.

JUSTICE SIR DAVID STEEL: What, because it might disclose privileged information?

ROBERT LAWSON: Yes. We have got this to view. As we said in correspondence, we are quite happy to show it to you, your Honour.

JUSTICE SIR DAVID STEEL: Yeah, well I am not happy to look at something if they cannot look at it.

ROBERT LAWSON: It is not something, in my submission, you need to view, you need to look at (Overspeaking)

JUSTICE SIR DAVID STEEL: Well, to some extent I have to rely upon Messrs Stephenson Harwood --

ROBERT LAWSON: Absolutely.

JUSTICE SIR DAVID STEEL: -- not to divert this matter for a purpose which is --

ROBERT LAWSON: Indeed.

JUSTICE SIR DAVID STEEL: -- even if it has already been incurred, ie if the money has actually been used for some purpose.

ROBERT LAWSON: No. The money has not been used. Liabilities have been incurred. The money is still sitting --

JUSTICE SIR DAVID STEEL: Right, well that is that from your point of view. Thank you very much.

ROBERT LAWSON: So that cuts through the question of proprietary if we use it in that way.

JUSTICE SIR DAVID STEEL: Right.

ROBERT LAWSON: So, that takes me to the end of my application to vary and leaves us with the disclosure, which perhaps should be dealt with when (Inaudible).

JUSTICE SIR DAVID STEEL: Yeah. Perhaps we can try and deal with this first. Yes. Yes, Mr Bodnar.

ANDREW BODNAR: So, your Honour has seen a very long skeleton. I apologise for the length but it does have the merit that your Honour has seen

precisely how we put the case and how we have been able to summarise, I hope, large volumes of material in, I hope, readily digestible format.

JUSTICE SIR DAVID STEEL: No. I am very grateful to you. Thank you.

ANDREW BODNAR: My learned friend does not challenge the proposition that we had with arguable gain.

JUSTICE SIR DAVID STEEL: Right.

ANDREW BODNAR: Although he said he does not challenge that we have an equitable claim, he challenges whether we have a proprietary claim. There is a nice distinction between communal tracing and equitable tracing. In terms of whether we have a proprietary interest, whether it be legal or equitable, a distinction, we say, without a difference. I have set out three possible bases on which we did, which we say we do have proprietary --

JUSTICE SIR DAVID STEEL: Well, I am not going to decide that.

ANDREW BODNAR: No. In our submission, the strength of the case and the fact that there is, at very least, a possibility that we are talking about our money, should influence everything that your Honour is asked to decide. That must be its starting point. The second thing that should influence your Honour is that Mr Haigh has had some four

months to set out, at least in our client, his answer to this case. As your Honour noted, everyone was informed that a disclosure application would be made supported by an affidavit from Mr Haigh setting out, in full, the nature of his defence.

A disclosure application has been made. It is not supported by any evidence from Mr Haigh, much less an affidavit setting out, in full, the nature of his defence. Your Honour has seen in my skeleton argument the history of what we say has been somewhat evasive information provided by Mr Haigh. Can I take your Honour to a document which is a late addition to the Gibson Dunn bundle? It is volume 5, line 41, essentially the back bundle.

JUSTICE SIR DAVID STEEL: Yeah.

ANDREW BODNAR: This is a written statement from Mr Plumtree of Gibson Dunn who exhibits two documents. If I can invite you to turn to page 1672, your Honour sees there an unsigned but, we understand, approved witness statement, approved by a Jemma Louise Martel-Welsh(?), we believe, on 6 June. This is a statement made in the company's court in London and it was in support of the application which led to the payment of £950,000-odd, from a third party to Mishcon De Reya (Inaudible) solicitors, £200,000 of which is now in Stephenson Harwood's client account.

This witness statement, paragraph 16 of it, 1674 page number, Ms Martel-Welsh, who is not part of the legal team, says, and this is early June:

"It has not been possible in light of the arrest by the authority in Dubai of Mr Haigh, to obtain information from him concerning the allegations against him or to obtain access to his bank statements to show the source of funding of the loans."

We have done that in part. Your Honour has seen the schedule that we prepared, which shows quite clearly some £480,000 of the money used to make the loan to Leeds United, most certainly was our money because it went direct from the Cooperative Bank accounts:

"I have, however, maintained contact with Mr Haigh for a short period since Friday, 23 May."

So, he is able to speak to people as he chooses. "During our conversations, Mr Haigh has confirmed that --" then your Honour sees various matters. At paragraph 16.4:

"He does not have any interest in bank accounts held with NatWest, Putney or Cooperative, Manchester."

That appears to be the instructions that Mr Haigh gave to Ms Martel-Welsh. Now, your Honour asked about company secretarial services. Ms Martel-Welsh is a director of Fiducian(?) Services Company in Geneva, which has subsidiaries in (Inaudible), which in turn own the Guernsey company, Small

Capital(?) through which Mr Haigh the loan to Leeds United, into which the now £150,000 has nominally been repaid. So, it appears that Mr Haigh, even at the very outset, simply denied having any involvement in the events which give rise to the claim.

Your Honour has seen the skeleton argument. His second position was he could not recall whether he opened the bank accounts, or not, but that if he did, and any money was inadvertently paid into his bank accounts, then he accepted it failed to be repaid. No actual offer has been made to that effect.

His current position, so far as it can be discerned from his witness statement appears to be that he knew about the money going into his bank accounts and he was fully entitled to it. So, the fact that his defence has been evolving from a bear denial of any involvement to the, admittedly, still only very general indication that he may have been involved but it was legitimate, with no indication of how it comes about that money was paid into his accounts with false references.

There is another factor that your Honour should take into account in deciding whether variation should be permitted to the extent of what we say will turn out to be our money. Your Honour has seen the so-called disclosure made by Mr Haigh in paragraph 29 of his witness statement. That was a document four months in the making. It was a document which Mr Haigh was ordered to

serve and file as soon as reasonably practical, whilst he was detailed. It is dated the 4 September, the same day on which he applied to this court for authority to spend £200,000 (Inaudible) 2 million dirhams, of what, we say, is our money, immediately and \$5,000 per week going forwards.

In our skeleton argument, I have set out a number of concerns that we have in relation to whether that disclosure is accurate. Before turning to that, your Honour will have noted not a single detail, not a single supporting document, not a single thing that could not have been provided if Mr Haigh was so minded, several weeks ago, at the very least. It would not have taken very long to take the instructions necessary to compile that list even if Mr Haigh may have had to have inserted somebody else's phone card more than once to give those instructions.

The explanations provided are either totally absent or appear to be false. We know Mr Haigh received £600,000 towards the end of February of this year. We know because there is new (Inaudible) in Mr Plumtree's witness statement, which was the first document, confirming £600,000 payment to be made to Mr Haigh's bank account. Even allowing for the expenditure which he says he has. Even if that had been met in full for the entirety of the period between the receipt of that money and his arrest, and what appears to have been a de facto freezing of his bank accounts by the banks and, since then, the actual freezing

of his accounts by order of this court, it still would not begin to reach the level of £600,000. Not a word about where that money has gone.

The account into which it was paid, if Mr Haigh's disclosure is accurate, has no more than, I think, £17,000 in it. Not a word. The one instance where there is a clear explanation offered is that £57,000 of what you say was our money, was paid into his flatmate's bank account and paid out again. The explanation offered is that that money was, in fact, paid at the direction of Mr Haigh and was used to meet the costs of the rent, which my client's had agreed to meet. The document trail is listed in my skeleton argument. I do not go to it unless I am asked to. What is said is that £57,000 was paid in and £57,000 was used to meet the rent. What we are able to show is that GFH paid £49,000 in rent for Mr Haigh about five months after this payment was made.

The payment reference, and it was a payment reference out of Gibson Dunn's client account, was Project Raphael. The recipient is named Raphael. The payment reference out has a reference Raphael. The estate agent, who was Knight Frank, asked for payment to be made, payment reference Knight Frank Client Account and for the reference to be paid so they could marry it with their tenant. So, it appears that that single

explanation is quite simply false. Where that money has gone, we know not.

As for the balance, and your Honour has seen from the schedule, if one strips out money from the Coop Guernsey account, somewhere in the region of £1.9 million deposited into various accounts, not explained. £1.2 million, I believe it is, just over, deposited into Mr Haigh's HSBC account or accounts. That would be in addition to the £600,000 deposited at the end of February. Not a word of where that money has gone. So, your Honour can be quite satisfied that Mr Haigh has so far failed to comply with the order of Mr John Chadwick and that he has had more than a reasonable opportunity to do so.

In fairness the defendant does not appear to hide what he is doing. He is simply, as said in Mr Chandrasekera's second witness statement, this witness statement was put before the court because if it had not been, we would have said he has made no disclosure whatsoever. So, he has only chosen to go on record at all because he has no doubt realised that if he did not say anything at all, this court would give him short shrift in asking to spend what may be our money. Now that, in my submission, is the background against which your Honour considers the expenditure of £200,000 and the request for \$5,000 a week going forwards.

Even without a proprietary claim, we would submit, in the circumstances, we would be quite entitled to say Mr Haigh should draw on the resources which it appears he had until very recently and which remain wholly unaccounted for. Your Honour knows on one view of the law, we would be entitled to take that position, even as regards legal costs and to say not one penny to Mr Haigh. We have not taken that approach. We feel pragmatic. What we can say is this. We made £200,000 available for the purpose of legal fees. We expected that with £200,000 available, the defendant would be able, at the very least, to give proper disclosure of his assets and set out at least, in general, the nature of his defence. When I say "in general", I mean with sufficient particularity for the court to understand what it is that is being said on his bona fide position. What possible answer he has. That has not happened.

I would like the claimant's position to be quite clear, less it become an issue again. We have agreed £200,000. If that £200,000 has been applied to obtaining experts reports, indeed there is some indication that the claimant intends to retain PwC to conduct an audit of my client, in instructing legal counsel to attend in London to not resist the making of a freezing order in London and in generally fishing for some form of a defence for this man, well that, in my submission, is too bad for Mr Haigh. That is how he has chosen to use his money. However, your

Honour may think it is rather telling that with £200,000 one has invoices for experts but barely a word from Mr Haigh himself.

We would perhaps note, had the application been pursued in relation to personal expenses, that we do have a proprietary claim, Mr Haigh has failed to make a proper disclosure, and we should not be required to meet those expenses from our funds. That, in my submission, also informs the position going forwards. Your Honour has seen the reference in my skeleton argument to **Fitzgerald and Williams**.

JUSTICE SIR DAVID STEEL: Sorry. Seen what?

ANDREW BODNAR: The reference in my skeleton argument to **Fitzgerald and Williams**.

JUSTICE SIR DAVID STEEL: Yes.

ANDREW BODNAR: It is a well-settled principle. Until a defendant establishes that he does not have anything else to pay for to meet his expenses, he should not be allowed to use what may turn out to be the claimant's money. That, in my submission, is a starting point. In any event, as your Honour has observed, (Several inaudible words) what it is sought to spend the money on, beggars belief and makes no sense and appears to give the impression of a man almost living in a hotel, rather than a police station. It is

worth bearing in mind that although only a small amount is asked for per week in clothing, I think it equates to something of the order of £4,000 a year for a clothing allowance for a man in custody.

Your Honour has indicated you will approach both of these with a very long spoon, and rightly so. So, in my submission, there is nothing between the parties as to whether Stephenson Harwood can apply £200,000 to legal expenses. We do say it is remarkable what it has produced. We are concerned with the speed with which it has been expended. The bills are, in fact, far in excess of £200,000, which I believe was an indication. We would say very firmly, not one penny more until Mr Haigh explains himself properly. So far as living expenses are concerned, we simply say, not one penny until Mr Haigh explains his asset position. Even once he does, proper explanations for the expenditure that he sees to make. So, unless I can (Overspeaking). Unless I can assist you any more.

JUSTICE SIR DAVID STEEL: No. That is enough. I am thinking. Shall we finish or would you like a break? What would suit you?

ROBERT LAWSON: I am entirely in your hands. I was not going to say anything in reference to application to vary because it would be repetitious. So, if that is all my friend --

JUSTICE SIR DAVID STEEL: That is all on the variation, is that?

ROBERT LAWSON: I think --

JUSTICE SIR DAVID STEEL: That is it. So, what we are left with is the disclosure application.

ROBERT LAWSON: Yeah.

JUSTICE SIR DAVID STEEL: Okay. Well, I think what I will do, I will give a short judgement on the variation issue and then we will take a break, if we may. Then come back and deal, if it rises, the disclosure application. This is an application by the defendant, David Lawrence Haigh, for a variation of a freezing order that was granted by the Deputy Chief Justice, Sir John Chadwick, against him at the instigation of the claimant, GFH Capital Limited. There is no application to set aside that freezing order, either here or in London where a similar order has been made by a judge of the commercial court.

The primary outstanding issue that is raised by the defendant relates to the amount of money which the existing order permits him to spend on personal expenses during the course of the currency of the freezing order. The situation is slightly unusual in that Mr Haigh is in custody and, as I understand it, will remain in custody for a considerable period of time, unless there are some

significant changes of circumstance. The fact that Mr Haigh is in custody may explain why he is not here to assist his solicitors and counsel in the hearing of this application. I say may explain that because, as I understand it, he has from time to time, left the police station where he has been held in custody, no doubt in the company of police officers, for the purposes of attending upon doctors and medical staff in relation to on-going treatment for a stomach related illness.

I confess some degree of surprise that if he was permitted to do that, he was, as I am told by the representatives of the defendant, not allowed to come to this court. The fact that he is not here is not only unfortunate in that he is unable to assist the court with regard to the issues with which it is initially faced, but it would perhaps overcome the problem which is a vast persistently by the defendant's representatives that they have difficulty in obtaining instructions from their client, given his position, his situation of being in custody and not readily available save for short periods of time and not easy to contact by telephone.

Now, the sum of money which is presently permitted as "living expenses" under the term of the order is the sum of, in USD 2,050 per week. This figure appears to have been put forward as an alternative by Mr Haigh or his representatives to the original request for the sum of \$5,000 per week. Having been put forward as an alternative, it appears to have been

accepted by the claimant and that is how that figure comes to be present in the form of order. Despite that apparent agreement, now the defendant asserts that that figure is very much too little. He seeks an order to increase the figure to USD 5,000 per week against the background of asserting that his actual living expenses are almost in order of magnitude, greater than that.

At the heart of the application are two schedules prepared by his solicitors. One to identify what it was said to be his weekly expenses while incarcerated and the other to identify what is said to be his on-going monthly commitments and liabilities, both whilst incarcerated and otherwise. These schedules are somewhat eyebrow-raising. For the sake of example, the weekly expenses are said to be attributable to purchase of medicine, amounts to no less than \$500 per week or very nearly \$100 a day. That is said to be attributable to purchase medicines in the form of protein, vitamins and supplements.

Secondly, a similar figure is advanced for the purchase of food, water and toiletries. No doubt some money has to be expended on medicine and the basic necessities of life in the form of food and water but both those figures cry out for some justification. There is then a figure in respect of on-going treatment in the form of visiting outside doctors and medical staff in the sum of \$250 a week. I have already made my observation that it sounds surprising if he is permitted to go out to see doctors, he is not

permitted to come to court, but there it is. One can assume that some expenses of a medical kind will, no doubt, be incurred. It then says that he has lost no less than four stone while incarcerated and therefore needs to buy further clothes or new clothes for which he wishes to have something like \$150.

Then there is a very strange item, phone cards. In order to make a couple of calls to family members and legal representatives, he wishes to have no less than \$500 worth a week of phone cards. This, despite the fact that both he and those acting for him insist that there are the greatest difficulties in making use of the telephone in the police station. Even if he had his own personal landline there, it stretches the imagination somewhat that he would incur \$500 worth of calls to legal representatives in Dubai, even allowing for additional costs of calling family members in other jurisdictions.

At one stage it was suggested that the reason why the figure was so high is because some of the cards were being allocated to other inmates so that he would get priority on the phone. That does not work because he has another claim for \$250 a week to purchase phone cards for other people. He spends, he said, 250 dirhams on laundry and 700 dirhams on books each week. The total that is advanced is the sum of 9,250 dirhams, which is equivalent to about USD 2,500. I am bound to say that my reaction is that I am wholly unpersuaded that the weekly

expenses that he is incurring, while incarcerated, are anything like as much as that.

There is then a schedule of on-going monthly commitments and liabilities which stretches the imagination almost to breaking point. There is a claim in respect of the mortgage on his property in Dubai but that property, he has agreed, should be sold and one cannot help feeling that those monthly commitments will terminate very soon. If, in the meantime, there is a failure to pay a mortgage instalment, that is unlikely to be of any significance. Indeed, one of the schedules that he has produced demonstrates that he already has failed to pay 37,000 dirhams worth of mortgage payments, ie two months' worth.

He then makes claims, as if the property was still occupied, in respect of electricity, TV and cleaners. Then he turns to the United Kingdom and puts forward a range of expenses, including £1,000 a month on telephone, £500 a month on electricity, water and heating, £3,000 a month for payments to a partner, nearly about \$10,000 "PR/Media", 30,000 dirhams a month for a PA, for salary and travel, £1,000 a month for gym membership. One can go on. On top of which, despite the fact that one of them is already massively overdrawn, he is suggesting he wants to spend £2,000 on his two credit cards, despite the fact he is in custody.

Mr Bodnar, who appears for the claimant, who has produced an elaborate and helpful skeleton argument which spells out in some detail the background to this case and the extent to which the claimant's feel justified in asserting, with some confidence, that Mr Haigh has been guilty of serious fraud and in respect of which, there is no challenge that they have a good prima facie case, says correctly that where, as here, the claimant's justifiably advanced an assertion that Mr Haigh, the defendant, has effectively stolen their money and that they are in a position to trace it or treat the money or its equivalent as having a proprietary interest in it, is the circumstance in which the court should be very careful before allowing the defendant to spend money which is, in effect, the claimant's. That point, in my judgement, is well made.

It may be that there are more elaborate and helpful explanations for some of the figures that have been put before the court but I confess that Mr Haigh, despite the difficulties in communication with his solicitor, has taken a considerable time to say very little about his circumstance, let alone about the complaints that are being made against him. The court would need to be persuaded that the figure that is presently available to him as permissible living expenses, is clearly too low. The burden is on him to satisfy the court that it is clearly too low and needs, at least on his case, to be more than doubled. I confess I am wholly unpersuaded that the existing allowance of \$2,050 per week is

inappropriate, certainly while Mr Haigh is in custody. No doubt the defendant, when he emerges from custody, currently if he thinks appropriate, come back to the court and ask for a higher figure. If he does, he will need to produce more convincing material than he has so far.

So, I refuse the application to vary the completing order to increase the living expenses.

ROBERT LAWSON: Your Honour, may I just make a point?

JUSTICE SIR DAVID STEEL: Yes.

ROBERT LAWSON: He does not get \$2,050 whilst he is in custody. You need to deal with that point. The way you have just spoken, suggests --

JUSTICE SIR DAVID STEEL: I am so sorry. Presently it is \$2,050 per week.

ROBERT LAWSON: When he is not in custody.

JUSTICE SIR DAVID STEEL: You are quite right. Let me rephrase what I have just said. The present order is that he is entitled, when not in custody, to expend living expenses in the region of \$2,050 per week. I am not persuaded from the material presently available that if and when he emerges from custody, that is a figure which is inappropriate. If he wishes to come back to the court in due

course to challenge that figure, he will need to produce much more convincing material in respect of his living expenses incurred whilst a free man. The only outstanding question is whether some allowance should be accorded to him in respect of expenses incurred whilst in custody. The defendant puts the court in a very difficult position. The court accepts that some expenses will be incurred of a personal character, whilst in custody, including no doubt, some payments for food and medicine and for phone cards. It may be one or two other items such as laundry, reading materials and so on.

I have already said that I regard that the weekly expenses schedule while incarcerated was wholly incredible. I, effectively, are left in the unhappy position of simply having to plump for a figure which is a fair figure, whilst he is incarcerated. I have come to the conclusion that a fair figure while he is incarcerated is \$500 a week. To that extent, I vary the order, the freezing order in respect of living expenses. There is, as I understand it, effectively an agreement in respect of sale of a flat against an undertaking that the some opportunity for a search to be open to the claimant's and that thereafter the flat should be put in the hands of a reputable estate agent and a conveyance handled by a reputable, independent lawyer. That the monies, (Inaudible) to the mortgage, be paid into court. Similarly there was an agreement about the defendant's car, the Lexus 454.

Lastly there was an application to use a figure of £200,000 held in the defendant's solicitor's client account. I will not go into the history of where that money comes from. The claimant, recognising perhaps the reality of ensuring that the defendant has some legal representation, despite the fact claiming that it has a proprietary interest in that money, has agreed that it should be permitted to be expended on legal expenses, either expenses so far incurred or future legal expenses against the provision by the defendant's solicitors of a letter explaining how much has been expended and on what. They are not obliged to produce the full fee note which would contain privileged material but I think they ought to provide materials so that the claimant can be satisfied that the money has, indeed, been expended on genuine legal expenses.

Right, now that covers what we have dealt with so far. Correct? There is then the question of disclosure. Shall we take a short break, perhaps, and come down at -- well, let's take three quarters of an hour. We will come back at 2.45 pm. Okay? We will deal with that. Thank you.

CLERK: All rise.

(Break)

(12 seconds of silence)

CLERK: All rise.

(16 seconds of silence)

JUSTICE SIR DAVID STEEL: Yes.

ROBERT LAWSON: So, takes me to my disclosure application.

JUSTICE SIR DAVID STEEL: Yes.

ROBERT LAWSON: It is short notice, but my apprentice has been able to produce a skeleton quite briefly. The debate is relatively narrow and it is a matter of argument at this stage, rather than evidence so we can deal with it now. Your Honour, I do not whether you have had an opportunity to look at the particulars of the claim in this matter, but it is --

JUSTICE SIR DAVID STEEL: Yes.

ROBERT LAWSON: I can perhaps summarise, to start with, the essence of the claim against me as having two evidents(?). The first that false invoices were created or procured by the Defendant and the second evident is that payments were made pursuant to those invoices to accounts which are held by or controlled by the Defendant. So that is the case, in essence.

So far today we have been focusing upon, and certainly in my friend's submissions, on the second part of that, where the payments ended up. But it is equally important (Several inaudible words) serious allegations to remember firstly that the invoices were false, which I think is not seriously disputed by anyone one, but they were created by or procured by the Defendant. And perhaps it is worth looking at the particulars of the claim, which are in Gibson Dunn bundle 1, tab 2, to see what is said. There are a number of distinct parts of this and I want you to look at the first one, which is the Lincoln Associates case, which I do, and you will see materially beginning on paragraph 12, page 8, bottom:

"The Defendant created, or caused to be created, invoices purporting to have been raised by Lincoln Associates."

And then we have on each occasion the invoice created by or procured by the Defendant was approved for payment by the Defendant using a stamp bearing his name. On a number of occasions the Defendant also signed the invoice and then they were false. Subparagraph 14, 15:

"On each occasion the Defendant knew that the invoice be false when he approved them for payment. On each occasion the Defendant created or caused the invoice to be created himself. On each occasion the Defendant knew that the bank account details on the false invoices were both not bank accounts operated by Lincoln Associates. On each occasion the Defendant knew that the invoices did not reflect the sums properly due to Lincoln Associates and less payments made."

And we can note at 18 perhaps, "The Defendant procured authorisation for some of the payments". Nineteen, "The Defendant infers that the accounts were operated by or on behalf of the Claimant". That is the other two. And then we can see the allegations at 20 - 22:

"The creation of false invoices particularised or procuring their creation, their approval for payment and procuring of the payments particularised above constituted a breach of the Defendant's contractual duty to act at all times in the best interest of the Claimant. Further, alternatively [and then the same wording] constituted a breach of the Defendant's contractual duty to act honestly towards the Claimant."

Twenty-two:

"Further alternatively constituted a breach of the Defendant's fiduciary duty to act, at all times, in the best interests of the Claimant."

And that is the theme that is then followed through in relation to each of the vehicles for the (Inaudible). So it is very important to that case that a fraud is being perpetrated by the Defendant, ie that what was being done by way of the false invoicing was not done with the knowledge or consent of anybody else who was in the Claimant company. Because, of course, if it was done with their knowledge and connivance and consent, it is very difficult to argue that it was in breach of his duty to act honestly towards that company. It is not in their best interests.

JUSTICE SIR DAVID STEEL: Well it depends who it was, does it not?

ROBERT LAWSON: Well --

JUSTICE SIR DAVID STEEL: And with the secretary helping him.

ANDREW BODNAR: Potentially, sir.

ROBERT LAWSON: Potentially, sir, and I agree, my Lord, that those sort of questions are (Inaudible) and need to be examined in due course. Now, my friend has made much of the fact that I have not produced yet a Defence and he makes much of the fact, as he did in opening, that the strength of his prima facie case is such that it should infect your attitude to any applications made by my client before the Court, the gist of what he said in his speech this morning, if I can call it that? And I paint that as background for the disclosure application, because in order to put before the Court a meaningful defence we need to be able to plead with particularity against those allegations and, in short, the disclosure that we seek in the three categories, all are designed to assist us in that capacity.

My friend has said over time the answer that the Defendant has given to the allegations against him has changed and I have to accept that if one looks through the correspondence there is an element in truth in that. It is, in part, at least, a product of the extreme difficulty that we have taking proper instructions from our client. It is, of course, something that we are trying to rectify. We

are not in a position to put forward a defence with any meaningful particularity at this stage. And my friend says he wants a defence with meaningful particularity, as so he should. We need that so that the issues can be drawn properly and the debate can then be focused and adjudicated justly and fairly. And we say it is important, in that context, not to forget the first part of the case that is against us. I am able to indicate, on instruction, that the summary of the Defendant's position is this, that the "fake invoices" were not created or procured by the Defendant. They were created by others at the Claimant for its purposes and it was part --

JUSTICE SIR DAVID STEEL: What, for the company's purposes?

ROBERT LAWSON: For the company's purposes. It was part of the normal modus operandi of the Claimant's Dubai office to use invoices of this nature. That the payments made to accounts of the Defendant, pursuant to this scheme, were intended by the Claimant to be used by the Defendant in furtherance of GFH's commitments, obligations and business generally and in relation to the Defendant. And that this was done with a reconciliation, as between the Claimant and the Defendant, being done periodically. Thirdly, that the use to which the monies were put by the Defendant from such accounts as were under his control was to make payments on this basis.

Now I am not in a position, currently, to be able to particularise further and, indeed, to stow(?) where those papers have been (Inaudible), but if that is my client's case, and if it is proved to be correct, that it was all done in the interests and for the benefit and the connivance of the Claimant, then the claim will fail. Albeit, of course, that there will be a reconciliation that has to be done, because it maybe that some money is due back, because it is, for example, more than we were entitled to beyond our expenditure, by way of remuneration. I mention it now, because, in particular, it brings into focus, very much, the first limb of the case as I put it, which, very much, relies upon the fact that the false invoices were created by or procured by the Defendant. And, of course, it is implicit of that without knowledge or consent of the Claimant more generally. And my client's case has consistently been that he did not create or procure them, and one of the reasons he is able to say that with great confidence is because he spent most of his time in England, looking after Leeds United, and all of this was done in July. And I mention it now, because the theme of the extortion(?) invoices, there is one that one sees not only very heavily in the statement of case, but in the witness statements that have been produced in order to get the Freezing Order. And it is right to say that they are pleaded on that basis and that they are exhibited as being fraudulent devices of my client. Your Honour, the rules of this Court state, and I have conveniently lost (Inaudible), at 28.5, that --

ANDREW BODNAR: Very conveniently lost my copy.

ROBERT LAWSON: -- I am entitled to inspect (Several inaudible words).

JUSTICE SIR DAVID STEEL: Sorry, would you say that again?

ROBERT LAWSON: 28.5.

JUSTICE SIR DAVID STEEL: Yes.

ROBERT LAWSON:

"A party may inspect a document mentioned in a statement of case, a witness statement, a witness summary or an affidavit."

The first part of my application in particular is made on that basis.

What I see by way of that is inspection of original documentation which is relied upon in the pleading and in the affidavit, and I will explain exactly what they are in a second, because it comes out of the correspondence very, very clearly. The rules do not specify when that inspect can or cannot take place and certainly there is nothing in it which suggests that it is not possible to do so as part of the pleadings. For obvious reasons it may be something that is relied upon before the (Inaudible) and the Defendant may wish to inspect the original document before it responds with its statement of case dealing with that issue, so that the statement of case will be properly focused and the full context of the allegation made. And that is our situation.

What we ask for, by my first limb, is to look at original documents in circumstances where my friend says the copies upon which he relies produce a strong primary case of case. And, so, I turn to that first head(?), which I can call "Original invoices and bank transfers" and, for this purpose, could I turn to bundle 3?

JUSTICE SIR DAVID STEEL: Of ...?

ROBERT LAWSON: Of Stephenson Harwood's bundle, sir. Because there really should be no argument about the documents at all and I can demonstrate that by reference to the correspondence. If you turn to --

JUSTICE SIR DAVID STEEL: Let us take it slightly (Inaudible). First of all, you say this is an application to documents referred to in pleadings. Can I just see that? You are just saying because the word "invoice" (Overspeaking)

ROBERT LAWSON: I can show you, yes, all the fake invoices. I was meant to do it by way of letter, because it is conveniently set out in the letter precisely what we are looking for, but they are all of the invoices which are the ones you relied upon as being fake in the pleading. But the reason I have done it this way is because it is easier to look at the letter to see whether encapsulated in a few lines than anywhere else.

JUSTICE SIR DAVID STEEL: All right.

ROBERT LAWSON: So, that is why, and I expect(?) to deal with it this way.

JUSTICE SIR DAVID STEEL: Page where?

ROBERT LAWSON: And tab 7 is our application.

JUSTICE SIR DAVID STEEL: Yes.

ROBERT LAWSON: And the exhibits to it is where I was going to go.

JUSTICE SIR DAVID STEEL: Yes.

ROBERT LAWSON: The original request is a letter of 4 August which is page 824.

(Overspeaking)

JUSTICE SIR DAVID STEEL: I am not sure if you need to read it from the
correspondence. You tell me what you want.

ROBERT LAWSON: Pardon? Well, in summary, it is this, your Honour. There has
been an agreement to provide the documents. They have not
been provided and what we now seek is an Order that we can,
indeed, inspect them within seven days and --

JUSTICE SIR DAVID STEEL: So, it is an agreement to produce the originals?

ROBERT LAWSON: Yes.

JUSTICE SIR DAVID STEEL: (Several inaudible words) provided the documents.

ROBERT LAWSON: No, the originals (Several inaudible words).

JUSTICE SIR DAVID STEEL: You say there was an agreement to provide the originals?

ROBERT LAWSON: Yes.

JUSTICE SIR DAVID STEEL: Yes, all right. Well, let us see that.

ROBERT LAWSON: Yes. So, if one goes to the exhibit and one starts at RPC 1, letter of 4 August?

JUSTICE SIR DAVID STEEL: Yes.

ROBERT LAWSON: You will see in numbered paragraph 1:

"Your client bases its claim before the DIFC Court on a series of alleged fake invoices submitted to various third party providers. These were appended to the first affidavit of Jinesh Patel dated 26 May 2004."

And then we carry on:

"These fake invoices were also key and pivotal to your obtaining a Freezing Order from the DIFC Court and also being able to show --"

JUSTICE SIR DAVID STEEL: I am sorry, I thought it was common ground that a very large number of these invoices were fake?

ROBERT LAWSON: Yes. The point is that the (Overspeaking)

JUSTICE SIR DAVID STEEL: Now your client says he had nothing to do with it.

ROBERT LAWSON: Yes. And --

JUSTICE SIR DAVID STEEL: I do not know if it will be about pleading that.

ROBERT LAWSON: Yes. And, as you say --

JUSTICE SIR DAVID STEEL: Why does he have to see the original as opposed to the copy?

ROBERT LAWSON: Because (Overspeaking)

JUSTICE SIR DAVID STEEL: What is going to nudge his memory?

ROBERT LAWSON: It is not his memory that we are seeking to nudge. Can I --

JUSTICE SIR DAVID STEEL: (Overspeaking) no, I just need to see where we are going.

ROBERT LAWSON: I am trying to say (Overspeaking)

JUSTICE SIR DAVID STEEL: Yes, but the Defendant is saying, "I did not connive in the production of these documents. I accept they're fake, but somebody else faked them"?

ROBERT LAWSON: Yes.

JUSTICE SIR DAVID STEEL: He can see the copy documents. It is manifest from them, at least according to your own expert evidence, that they were, in large, part fake, because somebody had transposed a photocopy of your client's signature onto the document.

ROBERT LAWSON: Yes.

JUSTICE SIR DAVID STEEL: And your client says, "I did not do that. I did not instruct anybody to do it. It is nothing to do with me". Now, why does he need to see the original?

ROBERT LAWSON: You pre-empt in part what I say. The expert says he needs to see the originals to --

JUSTICE SIR DAVID STEEL: In respect of some of them, yes.

ROBERT LAWSON: Well, no. He says in respect of all of them. If you turn over the page it is neatly summarised.

JUSTICE SIR DAVID STEEL: Assume that the --

ROBERT LAWSON: He accepts --

JUSTICE SIR DAVID STEEL: -- expert says, "I don't know".

ROBERT LAWSON: Well, what he says --

JUSTICE SIR DAVID STEEL: Your client says, "I do know --"

ROBERT LAWSON: Well, he has --

JUSTICE SIR DAVID STEEL: That is not me.

ROBERT LAWSON: But it goes to the wider allegation of connivance within the Claimant as a whole.

JUSTICE SIR DAVID STEEL: Why?

ROBERT LAWSON: If he is a different jurisdiction from the (Overspeaking)

JUSTICE SIR DAVID STEEL: Well, that is his evidence. (Overspeaking)

ROBERT LAWSON: Then it must have been done by others. Exactly. Those being(?) documents relied upon in the pleadings and if you wish to go to the paragraph, for example, it will be, but it is not limited to, that the invoices contained in ... and I will get you the right paragraph. Paragraph 12.

JUSTICE SIR DAVID STEEL: Of?

ROBERT LAWSON: The particulars of claim.

JUSTICE SIR DAVID STEEL: Sorry.

ROBERT LAWSON: There are four sets. What has happened is the pleadings received(?) in essentially four sizes, "The false invoices", and then the false invoices are then exhibited to the (Overspeaking)

JUSTICE SIR DAVID STEEL: Yes, there is no doubt they pleaded them. They are referred to in the pleading. I do not see any quarrel about that and you are entitled to see the documents referred to in the pleadings and you have seen them in copy 4.

ROBERT LAWSON: Yes, and we say that the copies show that they suggest mass fabrication.

JUSTICE SIR DAVID STEEL: Yes.

ROBERT LAWSON: And we should be entitled to test that proposition and see what we can learn from the originals to assist us with making a full(?) pleading.

JUSTICE SIR DAVID STEEL: For the life of me I cannot understand what your client could possibly learn from looking at the originals.

ROBERT LAWSON: Well, with greatest respect --

JUSTICE SIR DAVID STEEL: I mean, it may be --

ROBERT LAWSON: -- your Honour, it --

JUSTICE SIR DAVID STEEL: He may be entitled to them, I do not know, but I am just wondering what on earth this is all about.

ROBERT LAWSON: Well, the handwriting expert has said that he wishes to see with that precise purpose. It is speculation for you or I (Overspeaking)

JUSTICE SIR DAVID STEEL: But your client does not need your expert to tell him what he wrote.

ROBERT LAWSON: But he did not write it, that is the whole point.

JUSTICE SIR DAVID STEEL: What?

ROBERT LAWSON: He did not write them, that is the point.

JUSTICE SIR DAVID STEEL: Sorry.

ROBERT LAWSON: But if he --

JUSTICE SIR DAVID STEEL: Quite.

ROBERT LAWSON: If he did not produce them then the question is how they came to produce and by whom and he wishes to inspect them to assist in his case in showing that they were produced by other people within the Claimant organisation. (Overspeaking)

JUSTICE SIR DAVID STEEL: How does he contemplate that looking at the original, rather than a copy, will help him determine whether someone else did?

ROBERT LAWSON: Your Honour, very easy question to answer. Without reference to the document he is not able to know and that is where I am caught in a hideous position. It is said against me that I cannot plead with particularity. When I ask for documents to do just that it is said I cannot have the documents. There is an element of having your cake and eat it.

JUSTICE SIR DAVID STEEL: I think (Overspeaking)

ROBERT LAWSON: It is circumstances where my client has been in prison now for three months and, of course, does not wish to be there. It is not in his interests to delay matters. Quite the reverse.

JUSTICE SIR DAVID STEEL: Just help me. I am sorry. I am obviously being very slow this afternoon. Your client says he did not create or procure any false invoice and he is going to say that if these invoices are fake, and his own expert suggests at least some of them are, that was the work of someone else, which, by definition, it must be.

ROBERT LAWSON: Yes. Someone else --

JUSTICE SIR DAVID STEEL: He was not about, so he could not have done it. So someone else in the company must have done it. I do not see how a stranger could have done it. Looking at the original will not tell him who did it, will it?

ROBERT LAWSON: I do not know, because I have not seen them.

JUSTICE SIR DAVID STEEL: Well, what possible piece of material could emerge from examining the originals as opposed to the copies could help him identify who the author was?

ROBERT LAWSON: Without seeing the original it is impossible to answer that question.

JUSTICE SIR DAVID STEEL: Well, give me one possibility.

ROBERT LAWSON: Without seeing the documents it is impossible to answer the question. The originals of the documents are not (Overspeaking)

JUSTICE SIR DAVID STEEL: All he was (Inaudible) at least in respect, I think, the 47 of them, is that somebody has Xerox copied his signature and transposed it onto the document. And, so, on that basis, anybody could have done it (Several inaudible words). But I fear you may be wasting your time.

ROBERT LAWSON: Well, it is particularly --

JUSTICE SIR DAVID STEEL: But, at the moment, I am absolutely (Several inaudible words) suggest that you cannot plead the defence until you see the originals. I just do not understand it at all. He is going to plead. It does not matter whether the originals are blue or black. He did not do it, therefore it must be someone else and no one would have the motive to do it other than someone in the company, who had some seniority, who was pursuing a plan or style of business which necessitated the production of false invoices, but, which, no doubt, your client can plead, because he must know about it.

ROBERT LAWSON: Your Honour, it is said that there is a strong prima facie case against me that my client committed a fraud on this company.

JUSTICE SIR DAVID STEEL: Well I have no doubt they will say --

ROBERT LAWSON: This throws that allegation into doubt.

JUSTICE SIR DAVID STEEL: Well, I am not sure about that.

ROBERT LAWSON: And, in those circumstances, I am entitled to see the originals pursuant to rule 28.5 for the purposes not only of my defence, but for defending myself against the suggestion that there is a strong prima facie case against me (Several inaudible words).

JUSTICE SIR DAVID STEEL: But in every case there are occasions when it is necessary to look at the original, and usually that emerges after disclosure.

ROBERT LAWSON: Yes.

JUSTICE SIR DAVID STEEL: And while I can identify the reason for looking at it, because a (Inaudible) expert wants to find out whether the signature is indeed a signature of the person who is said to have signed it, now by looking at the original this is not going to help on that. It is just going to show that somebody copied it. That is your own evidence.

ROBERT LAWSON: Your Honour, I cannot say what the originals will yield, but I can say I am entitled to it and I can say that the request to inspect them has been agreed.

JUSTICE SIR DAVID STEEL: Right, well, let us just see that.

ROBERT LAWSON: Yes, which is what I was going to take you through. Very briefly, in the letter that we were in, that is at page 824, you have seen the overview. There is reference on page 825 of the handwriting report and then (c)(1):

"In the circumstances we demand your urgent confirmation that all original fake invoices will be delivered and produced to the Court without delay. We request such confirmation by the close of business on Tuesday, 5 August, with an undertaking that the originals have been delivered to the Court by the close of business on 7 August. If we do not receive such confirmation undertaking we will proceed to make an urgent application."

And then if one then turns over to the response to that. I should say it is at 828. It does not respond is the simple point. There is then a chaser, which is at 824. This is on the 6th. And then Gibson Dunn reply properly in a letter of the 6th in response to that, which is at 837. And it says in the first paragraph:

"We note in addition to you querying the urgency and relevance of your request, our letter sought clarification in respect of your aspects (Inaudible - reading from document) request. In particular, we noted that while your letter refers to false invoices your expert's report largely concerns fund transfers. Again, we ask you to confirm which documents are requested. [And I can drop down to the last sentence of this paragraph] It is for that

reason that the top urgency you suggest attached to your request is wholly absent."

And then turning over the page, penultimate paragraph:

"Notwithstanding the above, and solely to avoid the cost of an application, no matter how misconceived and upon clarification of which invoices and fund transfer documents it is you seek, our client is prepared to make available, for inspection at its offices, such of those documents as in our client's custody power or control."

And you will then see that clarification is given the next day by Stephenson Harwood in their letter 7 August at page 840, and it is the particularity I was going to take you to, numbered paragraph 2, which sets out precisely what the documents are. So, it is the invoices and transfer forms exhibited to affidavits as set out therein. And there is a further question 5 asking for confirmation of whether the originals exist or not and, if so, whether or not it is in your client's possession and for it to be inspected. That is relevant to subsequent correspondence. And you will see the response for that of the same day, Gibson Dunn at 843, and 844, fourth paragraph, is the important one, half-way down:

"As we made clear, we do not accept your request for production in relation (Overspeaking)

JUSTICE SIR DAVID STEEL: I am sorry. 844?

ROBERT LAWSON: 844.

JUSTICE SIR DAVID STEEL: Yes, I see. Yes.

ROBERT LAWSON: Start of the paragraph(?) and five lines down.

"Make it clear we do not accept your request for production in relation to several hundred pages of documents bears the urgency you suggest."

JUSTICE SIR DAVID STEEL: Are there really several hundred cases of invoices and transfer forms?

ANDREW BODNAR: This is in response to a different letter. This is in response to stage 2 of my friend's application.

ROBERT LAWSON: Well, that has not yet been made. (Overspeaking)

JUSTICE SIR DAVID STEEL: How many documents are we are talking about in transfers and (Overspeaking)

ROBERT LAWSON: Well, there are 47 invoices, I think. Is that correct?

JUSTICE SIR DAVID STEEL: Right.

ROBERT LAWSON: And then some bank's (Overspeaking)

JUSTICE SIR DAVID STEEL: Presumably only 47 transfers?

ROBERT LAWSON: Well, there cannot be more than 47 transfers.

JUSTICE SIR DAVID STEEL: No.

ROBERT LAWSON: Well, there can be actually if it was split into parts, I think.

JUSTICE SIR DAVID STEEL: Right.

ROBERT LAWSON: We are probably talking probably (Overspeaking)

JUSTICE SIR DAVID STEEL: Okay, right, so far you say they --

ROBERT LAWSON: The point there, my Lord, is relevant to what comes up.

"Mr Jinesh Patel, the SEO of our client, is presently travelling on business. Further Mr Bijou(?) Matthews, our client's in-house accountant, is on annual leave, returning on 17 August. We will update you in relation to your request in due course."

I mention that as a timestamp, because, of course, it is a month ago since Mr Bijou came back to the office. 846 you will see Stephenson Harwood paragraph 1 --

JUSTICE SIR DAVID STEEL: Yes.

ROBERT LAWSON: -- saying the request remains the same, answers the point my friend made, and then the summary, last paragraph on 847:

"Accordingly I ask you to confirm your agreement to access the said original documents by the 14th, by close of business tomorrow."

And then the 11th, one sees the response at 849, which is at the bottom of the page:

"Your second letter suggests that the request contained in your letter 7 August repeated in May(?) in your letter of the 4th that is (Inaudible - reading from document) your original request which our client agreed was for inspection of original documents."

So, I can see the agreement and then there is talking about further documents all the way along and then there is a further exchange.

JUSTICE SIR DAVID STEEL: Well we have now moved on to a rather wider look.

ROBERT LAWSON: We have. If one goes down to 13 August, 857, original documents, that is what we are talking about.

JUSTICE SIR DAVID STEEL: Yes.

ROBERT LAWSON:

"As confirmed by our letter of the 7th, we do not consider your request for production in relation to several hundred pages bears the urgency you suggest. Mr Patel and Mr Matthews are not available to provide access to the requested documents by the 14th. As you know, our client has agreed to make available for inspection such of those requested documents as are in within its custom power and control. We will update you on this matter in due course."

And we then repeatedly thereafter said, "Can we see them?" We have never been given the opportunity to inspect those

documents, even though it has been agreed that we can see them. And, of course, it may be that there was a justification delaying it until Mr Matthews came back from holiday, but he has been back at the desk for a month now and there is no reason on earth why the original of documents, which were appended to exhibits used, could not be produced in that month.

And all we ask by the first limb of our application is an Order that we can inspect the originals in seven days from now. And I repeat again, there is an element of hypocrisy in what my friend says. He repeatedly makes great play of the fact that we have not served a defence and yet when we ask for documents for him, which he has agreed to provide, he prevaricates and does not answer.

JUSTICE SIR DAVID STEEL: Can we just see what your expert says, page 874, in the summary?

ROBERT LAWSON: Yes.

JUSTICE SIR DAVID STEEL: He says:

"There is conclusive evidence of mass fabrication of documents by transposing signatures from, presumably, genuine documents onto various other documents. That happened with 47 of the questioned documents."

ROBERT LAWSON: Yes.

JUSTICE SIR DAVID STEEL: Now, I do not what proportion that is. Forty-seven out of what?

ROBERT LAWSON: I have not counted up. If you --

JUSTICE SIR DAVID STEEL: Anyway, the remaining sets of documents --

ROBERT LAWSON: If you turn back to page 872 it would be --

JUSTICE SIR DAVID STEEL: I see.

ROBERT LAWSON: -- the documents referred to in numbered paragraphs 1 and 2 and 3. I did start counting paragraph 1, which has more than 47.

JUSTICE SIR DAVID STEEL: (Several inaudible words). Those are the documents you are after, are they? Anyway, so be it. I (Overspeaking) exhibit.

ROBERT LAWSON: Yes, they are. If you look at the copies (Overspeaking)

JUSTICE SIR DAVID STEEL: Anyway, there are (Inaudible) is 47, which are unquestionably not genuine, by reason of transposition of a signature.

ROBERT LAWSON: Your Honour, can I just say one thing?

JUSTICE SIR DAVID STEEL: The remaining sets do not bear matchable (Inaudible) signatures. The vast majority are of a similar nature. There is evidence associating the production of any these unnatural (Several inaudible words) documents. In these circumstances only the production of the original pen-on-paper signatures will prove whether any of the copy documents exist in an original form, as opposed to having been fabricated with transposed signatures.

ROBERT LAWSON: Now, your Honour, our documents --

JUSTICE SIR DAVID STEEL: Well that might be of some interest to the Claimant, but why do you need it?

ROBERT LAWSON: I need it to support --

JUSTICE SIR DAVID STEEL: Well, I don't see (Several inaudible words) you need it to make sure your client does not say something which is inconsistent with his own expert evidence. Anyway, there it is. You say they have agreed to produce these and they have not.

ROBERT LAWSON: Clearly so. They have agreed to produce it. All they have said in answer to it is, "It does not have the top urgency you suggest", which they said a month ago.

JUSTICE SIR DAVID STEEL: Well, I think what they are saying is, for the life of me, they cannot see how it is necessary to look at them in order to plead your defence, and I see some force in that, but maybe I have missed the point.

ROBERT LAWSON: Well, your Honour, my friend --

JUSTICE SIR DAVID STEEL: (Overspeaking) these copies. You must know which he --

ROBERT LAWSON: These are documents upon which the Claimant has (Inaudible).

JUSTICE SIR DAVID STEEL: Right. They are saying --

ROBERT LAWSON: It has the originals of those documents(?).

JUSTICE SIR DAVID STEEL: They are saying these documents led to the transposition amount.

ROBERT LAWSON: Yes.

JUSTICE SIR DAVID STEEL: You say, well, your client had nothing to do with it; so be it. They may well say in response in an attack on that, "Well, crikey, if he had nothing to do with it why on earth was the money being paid into his account?" Your answer to that apparently is, "Well, there is a system that is operating in this company where money is paid into employees' accounts for the benefit of the

company at some point". Again, that all can be pleaded. You must be able to describe what is clearly a rather remarkable method of business in your client's company? I still do not understand why seeing the original will help him identify what has happened. There it is.

ROBERT LAWSON: Your Honour --

JUSTICE SIR DAVID STEEL: Right, those are the invoices, okay, and the transfer documents.

ROBERT LAWSON: As I said, it has been --

JUSTICE SIR DAVID STEEL: Now, is there anything else you want?

ROBERT LAWSON: Well, yes, there are two other categories and I am just going to deal with these very --

JUSTICE SIR DAVID STEEL: Yes.

ROBERT LAWSON: -- very briefly, if I may? The second category is the request which is made in exhibit 16, so this is page 906, which is a letter dated 14 August. So, after that period and, therefore, not the new documents which are being referred to.

JUSTICE SIR DAVID STEEL: Yes, I have got that.

ROBERT LAWSON: Your Honour, if I could invite you to read this letter and before you do that I explain -- well, no, it says there,

"The Sajat Agar(?) report was relied upon to have changed the Freezing Order request."

I will ask you to read that.

(19 seconds of silence)

JUSTICE SIR DAVID STEEL: Yes.

ROBERT LAWSON: So, that is the request.

JUSTICE SIR DAVID STEEL: Well, that is a very wide mouth there in respect of
(Several inaudible words) not to request a disclosure at all.

ROBERT LAWSON: Your Honour, I accept that. I accept that it is right, but these are, nevertheless --

JUSTICE SIR DAVID STEEL: But, again, why do you need these?

ROBERT LAWSON: Well, I say that I am entitled to under rule 28.5.

JUSTICE SIR DAVID STEEL: Well, your entitlement maybe on disclosure, I have no idea, but why you need them to plead a defence?

ROBERT LAWSON: Because it will assist me in able to providing the particularity that is desired by the Court and with the absence of which would be a subject of complaint from my friend.

JUSTICE SIR DAVID STEEL: Well, it may be.

ROBERT LAWSON: There is of course --

JUSTICE SIR DAVID STEEL: Maybe he will re-invite you to further particularise the defence when it arrives. I have no idea.

ROBERT LAWSON: Which makes the whole episode --

JUSTICE SIR DAVID STEEL: Well, I am afraid that is common enough.

ROBERT LAWSON: It is common enough and should be avoided. Courts should try to avoid unnecessary ...

JUSTICE SIR DAVID STEEL: I think courts should try and avoid the expense of pre-defence disclosure, unless it really is necessary, but, anyway, you want access to original copies of the Lincoln Associates invoices (Several inaudible words). You have asked for the original copies. You are saying that is already agreed, as I understand it.

ROBERT LAWSON: That is, the rest of it is not. Your Honour, it is relevant here to remember the predicament of my client. He does not have access to documents, because he is sitting in prison. We do not have access to the Claimant's document, because he is no longer in the employment of the Claimant.

JUSTICE SIR DAVID STEEL: (Overspeaking)

ROBERT LAWSON: And, therefore, when one talks about policies and procedures of GFH --

JUSTICE SIR DAVID STEEL: But why do you need access to the copies of the bank statements provided to Sajat Agar?

ROBERT LAWSON: Because they are relied upon, as evidence, to say that there is a strong prima facie case against me and as my friend said at the
(Overspeaking)

JUSTICE SIR DAVID STEEL: Well it impeded a case about it and they will produce the disclosure, no doubt, in due course.

ROBERT LAWSON: As my friend said again this morning, this strong case is such that it should affect the way that you view any application that is made before the Court. How can I fight that obligation that that
(Overspeaking)

JUSTICE SIR DAVID STEEL: This is a request in order to bolster an application to set aside.

ROBERT LAWSON: No, it has made for both purposes, because someone --

JUSTICE SIR DAVID STEEL: The answer to my question is "yes"?

ROBERT LAWSON: To an extent, but it also (Overspeaking)

JUSTICE SIR DAVID STEEL: The answer to my question is "yes", is it?

ROBERT LAWSON: No, it is not, because it is also required for the purposes of the defence. The Sajat report --

JUSTICE SIR DAVID STEEL: And I think you are, if I may say so, being pretty coy. I did ask you one of the reasons for this request --

ROBERT LAWSON: One of the reasons, yes, but is that the reason? No, which is why I answered "no" and that is the point that I was (Overspeaking)

JUSTICE SIR DAVID STEEL: For this individual's interview, copies of the interview transcript, copies of --

ROBERT LAWSON: Your Honour, that is as far as I (Inaudible) that request at this stage. The third request is --

JUSTICE SIR DAVID STEEL: There is another one, is there? Right.

ROBERT LAWSON: Yes.

JUSTICE SIR DAVID STEEL: Yes.

ROBERT LAWSON: Is at page 928, 10 August.

JUSTICE SIR DAVID STEEL: Yes?

ROBERT LAWSON: And the relevance of --

JUSTICE SIR DAVID STEEL: (Overspeaking)

ROBERT LAWSON: -- the request in each respect is stated in the column on the right-hand side of pages 2 and onwards, and if you have not done it I invite you to (Overspeaking)

JUSTICE SIR DAVID STEEL: Sorry, I have not read this. Well, I am very glad I have not. It looks horribly like the beginnings of a Redfern Schedule.

ROBERT LAWSON: It does and that would be (Overspeaking)

JUSTICE SIR DAVID STEEL: And that is exactly what it is, is it not?

ROBERT LAWSON: Well, it is not, but I can see why you say that. These are, bar item 4 on page 931, I think, all requests for documents in between the 1st --

JUSTICE SIR DAVID STEEL: What is the basis for asking for these? They are not referred to in the pleadings or in the statement.

ROBERT LAWSON: Yes, they are, as made clear in the second column. Exactly where they are always (Overspeaking)

JUSTICE SIR DAVID STEEL: Some of them are repetitious.

ROBERT LAWSON: They are all referred to if one looks, so, yes, they all are and the reason why this is necessary is because I have said that my client is in prison without access to documents. This is a --

JUSTICE SIR DAVID STEEL: Well, let us take item 6.

ROBERT LAWSON: Bear with me a minute. Yes?

JUSTICE SIR DAVID STEEL: Are you saying that is referred to in the pleadings?

ROBERT LAWSON: Well, it says paragraphs 27, 29, 30, 32, 33, 50, 52 and 59 of the particulars of claim.

JUSTICE SIR DAVID STEEL: There is evidence of Gibson Dunn making payments to
inboxes. That is not a reference to any document. And this is all
this --

ROBERT LAWSON: What is asked for is documents, if one looks at the --

JUSTICE SIR DAVID STEEL: This is almost absurd. Yes, okay, that is category 3,
although there is an overlap between all three, is there?

ROBERT LAWSON: I am sorry?

JUSTICE SIR DAVID STEEL: There is an overlap between all three requests.

ROBERT LAWSON: Yes, sir.

JUSTICE SIR DAVID STEEL: Right, okay.

ROBERT LAWSON: Yes, there is an overlap, but it is fair to say that (Overspeaking)

JUSTICE SIR DAVID STEEL: Can I come back to my original question?

ROBERT LAWSON: Yes.

JUSTICE SIR DAVID STEEL: What is the difficulty your client has in saying that he did
not sign nor did he obtain the signature of nor did he obtain the
fraudulent production of any invoice?

ROBERT LAWSON: He can make a generalised statement of that --

JUSTICE SIR DAVID STEEL: Well, he can say more than that?

ROBERT LAWSON: Well, he will be able to say more about it, as he did in terms of the modus operandi (Overspeaking)

JUSTICE SIR DAVID STEEL: Yes, I was coming to that, but that is all he can say, "That has nothing to do with me. These documents are not mine. These were created by someone else. I have no idea who", and that is all he can plead, is it not?

ROBERT LAWSON: Well, it would assist the Court if he was to plead with particularity and go further than that.

JUSTICE SIR DAVID STEEL: But what kind of particularity?

ROBERT LAWSON: Well, without having the documents (Overspeaking)

JUSTICE SIR STEEL: Yes, but what (Inaudible). Give me a guess.

ROBERT LAWSON: Your Honour --

JUSTICE SIR DAVID STEEL: Well, "I recognise the habits of a particular individual" or "I know the sort of person who goes round copying signatures" or

what? I just do not see where he is going and there is nothing to stop him spelling out, in detail, what he understood to be the policy of the company. He does not need to see these documents to spell that out. Indeed it will not help him at all, will it?

ROBERT LAWSON: It is difficult to know the answer without seeing the originals, my Lord, indeed without (Overspeaking)

JUSTICE SIR DAVID STEEL: Well, that is --

ROBERT LAWSON: The difficulty he has, he has no access (Overspeaking)

JUSTICE SIR DAVID STEEL: What is the magic of the originals?

ROBERT LAWSON: All of the documents are held by the Claimants. The complainants complain he has not served the defence. They say that any defence must have particularity and yet when we see documents that we say will assist in obtaining particularity the answer is we cannot have them. Now that (Several inaudible words) is trying to have your cake and eat it.

JUSTICE SIR DAVID STEEL: Well, so be it, I understand. Well, I think I understand the point.

ROBERT LAWSON: Well, I cannot expand further without going round in circles and, therefore, (Overspeaking)

JUSTICE SIR DAVID STEEL: Thank you very much. Well, Mr ...

ANDREW BODNER: Right. Your Honour will have noted that when we said we agreed to the inspection of invoices and payment instructions, we did so on the basis of avoiding the cost of a hearing, no matter how misconceived, but we seem to have failed in that, because the response to ascertain, "Well if you really must inspect the originals", and, with respect, we entirely concur with Your Honour as to the relevance of it, but if we really must inspect than rather the spend the money on having an argument before your Honour come and inspect them, but we are here having an argument before your Honour.

JUSTICE SIR DAVID STEEL: Well they complained that having made the offer you reneged on it.

ANDREW BODNAR: Well, there may come a time when the inspection of these documents is relevant, but recently (Overspeaking)

JUSTICE SIR DAVID STEEL: No, but I (Overspeaking) and say, "Look, you offered to show us these documents" and then you went through the antics of saying, "Well, the people who have got them are on holiday or are rather busy".

ANDREW BODNAR: Well, your Honour --

JUSTICE SIR DAVID STEEL: There was not really any difficulty in showing them, for the life of me, I cannot see why, the original invoices and transfer documents. It is generally about 80 documents.

ANDREW BODNAR: Well your Honour has been painted a picture of prevarication, because your Honour was not taken to the dates. This process began on 4 August.

JUSTICE SIR DAVID STEEL: Right.

ANDREW BODNAR: That was five weeks ago, with the request, this (Several inaudible words) demand. It is as well perhaps, since my learned friend took you through the evidence, through the letters, to perhaps (Several inaudible words).

JUSTICE SIR DAVID STEEL: Right, it started on 4 August, that is right, and then you say, "Well come and see me if you really think it is a good, useful exercise".

ANDREW BODNAR: Rather than saying, "If you really think it is a useful exercise," we will say, "Well, rather than having a hearing (Overspeaking)

JUSTICE SIR DAVID STEEL: Perhaps (Overspeaking). Where is the --

ANDREW BODNAR: The response to say, "Well come and have a look at them", was the second being told about the third category of documents. A very long list, essentially for all of the Claimant's records.

JUSTICE SIR DAVID STEEL: On 10 August?

ANDREW BODNAR: Yes, that was 10 August, so six days afterwards, it became abundantly clear that it was not a simple question of inspecting originals of invoices and payment instructions referred to (Overspeaking)

JUSTICE SIR DAVID STEEL: So that is written, as it so happens, on the same day as page 846?

ANDREW BODNAR: Yes.

JUSTICE SIR DAVID STEEL: Which is rather bizarre. Yes?

ANDREW BODNAR: And then came the third time, 14 August, second category.

JUSTICE SIR DAVID STEEL: Yes.

ROBERT LAWSON: That is incorrect. The letter at 849 is written in respect of both letters, as it makes clear in its first (Inaudible).

ANDREW BODNAR: Yes.

JUSTICE SIR DAVID STEEL: So, what have I got wrong?

ANDREW BODNAR: The letter of 11 August, which accepts that the original request has been agreed as a reply to (Overspeaking)

JUSTICE SIR DAVID STEEL: Yes, I followed that. What I meant was the Stephenson Harwood letter repeating the request for the original invoices is dated 10 August. And the same day they sent what I call the Redfern Schedule.

ROBERT LAWSON: Yes.

MALE SPEAKER 1: Yes.

MALE SPEAKER 2: Yes.

ANDREW BODNAR: So, that is what was (Overspeaking)

JUSTICE SIR DAVID STEEL: You say that that rather overtook events.

ANDREW BODNAR: Well, yes, it did rather take over events and the third (Several inaudible words) was 14 August, because PwC it transpires -- in fact, the PwC report. Your Honour may have seen the PwC report.

JUSTICE SIR DAVID STEEL: Now I am approaching this page.

ANDREW BODNAR: The 14th is the last (Overspeaking)

ROBERT LAWSON: 906.

JUSTICE SIR DAVID STEEL: I have found the 13th, but then we go back in time
(Several inaudible words) 22nd. Where is the --

ANDREW BODNAR: Page 906.

JUSTICE SIR DAVID STEEL: 906? Yes, right, I have got it. Thank you.

ANDREW BODNER: Yes. So --

JUSTICE SIR DAVID STEEL: So, that is category 3, did you say?

ANDREW BODNER: Yes, that is the first of the Agar(?). It is now my learned friend.

ROBERT LAWSON: Category two.

ANDREW BODNER: Category 2. I am sorry, yes. Learned friend says that the Sajat Agar report is a document relied on by the Claimant. In fact I am not sure I ever actually refer (Several inaudible words) to it, because we went through the original documents. In fact, did I

say "original"? I mean the source documents. This category is actually, now we know, because the application came -- this category of documents is actually a list of items and exercises which PwC suggests that somebody, who is tasked with conducting the forensic investigation into a fraud from start to finish and presenting the report, might be expected to carry out.

Now, there is a separate chronology as to what has been happening in parallel, but it is worth remembering, just to finish this story, 14 August is when the final request for disclosure comes, 4 September application for urgent funding, rapidly followed by this application. Now, the parallel chronology is happening in London, because the letter of request was issued by this Court I believe towards the end of July.

JUSTICE SIR DAVID STEEL: The letter of request in relation to the London bank?

ANDREW BODNAR: Yes.

JUSTICE SIR DAVID STEEL: Yes.

ANDREW BODNAR: 6 August. Yes, (Several inaudible words). It is 6 August. We took ourselves to the Commercial Court as soon as it was delivered and we issued the appropriate application, together with a Part A claim for a section 25 (Inaudible). So, that

application to give effect to the letter of request came on for
Mr Justice (Inaudible) on 13 August.

JUSTICE SIR DAVID STEEL: Right.

ANDREW BODNAR: An Order was made ordering The Co-operative and NatWest to
disclose the identity of the whole result and the history of dealing
on the relevant accounts.

JUSTICE SIR DAVID STEEL: Yes.

ANDREW BODNAR: We submit it is no coincidence that Mr Haigh was woken up to all
of the issues around documentation just at the time when it has
become abundantly clear that the banks are going to tell a rather
clearer picture. Now, your Honour, there is a schedule attached
to my skeleton --

JUSTICE SIR DAVID STEEL: Yes (Overspeaking).

ANDREW BODNAR: -- argument.

JUSTICE SIR DAVID STEEL: Yes.

ANDREW BODNAR: It is difficult perhaps in places to follow.

JUSTICE SIR DAVID STEEL: Why am I looking at it?

ANDREW BODNAR: Your Honour is looking at it because what it is it is actually a document prepared by me. It has printed rather badly, but it is a document which tries to put the history of dealing on The Co-operative account in chronological order.

JUSTICE SIR DAVID STEEL: Right.

ANDREW BODNAR: And what that shows is that there is neither rhyme nor reason to the dates on the invoices, but every single payment into Mr Haigh's Co-operative bank account is specifically about 24 hours (Overspeaking)

JUSTICE SIR DAVID STEEL: (Overspeaking) unless it is material you will use I have no doubt. It is (Several inaudible words) suggestion that Mr Haigh was not responsible for these transfers.

ANDREW BODNAR: Yes.

JUSTICE SIR DAVID STEEL: Your primary point being is it is his bank account. I struggle to see why anybody else would run around trying to make sure he had lots of money in his bank.

ANDREW BODNAR: Well, yes, some --

JUSTICE SIR DAVID STEEL: But his answer to that, and again this is a (Several inaudible words), it is not remotely surprising, because my company spent most of their time putting money into their employees' accounts for some strange purpose in order to conduct their affairs or their tax affairs or something in a secretive manner.

ANDREW BODNAR: Well it is also the case, certainly with regards to Co-op accounts, that is the only analysis we have done so far, where it is possible to do (inaudible). As regards to Co-op accounts there are also emails from Mr Haigh's email account 24 hours and 48 hours before (Overspeaking)

JUSTICE SIR DAVID STEEL: The merit of the case, I think we have dealt with that. You have had a good arguable case and I do not think you have to do better than that --

ANDREW BODNAR: No, but, your Honour --

JUSTICE SIR DAVID STEEL: -- despite the denial of being involved with these invoices.

ANDREW BODNAR: And the defence, as articulated by my learned friend.

JUSTICE SIR DAVID STEEL: But I am sure you will have taken a note of that.

ANDREW BODNAR: Well, we have, and although he was good enough to indicate it to me outside Court before we came in, it is, in effect, the first time we have heard it. And it is perhaps surprising that Mr Haigh delivered the Court of a 12-page witness statement.

JUSTICE SIR DAVID STEEL: Which makes no mention of it.

ANDREW BODNAR: Yes.

JUSTICE SIR DAVID STEEL: Yes.

ANDREW BODNAR: And even if it is his defence, even on its (Overspeaking)

JUSTICE SIR DAVID STEEL: I think you have spent enough time on this. What is the objection now? For what it is worth, showing them the original invoices?

ANDREW BODNAR: No, but this (Overspeaking)

JUSTICE SIR DAVID STEEL: (Overspeaking) I cannot see what they are going to learn from it.

ANDREW BODNAR: Quite.

JUSTICE SIR DAVID STEEL: You know, if they will not spend some of their rather scarce legal resources on it perhaps they should.

ANDREW BODNAR: Of course we had to spend some legal resources as well, as we supervised it.

JUSTICE SIR DAVID STEEL: Well you want to stand over them, I suppose.

ANDREW BODNAR: And it is not the biggest cost in the world, but it is a cost issue.

JUSTICE SIR DAVID STEEL: Yes, I saw that.

ANDREW BODNAR: That part of it is a cost issue, as do categories 2 and 3
(Overspeaking)

JUSTICE SIR DAVID STEEL: Well, what you are saying is that you are happy with that so long as they pay the cost of the exercise?

ANDREW BODNAR: (Several inaudible words)

JUSTICE SIR DAVID STEEL: But there is not much point in you doing that, because they have not got any money to pay you, except your money.

ANDREW BODNAR: Exactly, sir.

JUSTICE SIR DAVID STEEL: So you say.

ANDREW BODNAR: Yes, so they say. As regards to categories 2 and 3, we say, "No". In my estimation the case actually revolves to something fairly straightforward, because although in fact a total of 18 categories of document to sort when we (Inaudible) it all up, because even the request, they are not for individual documents. Each one of the requests is category, a much wider category. But, ultimately, in my submission Mr Haigh has four questions to address his mind to. Firstly, were funds paid by or on behalf of the Claimant held or controlled by the Defendant? And the answer is "yes". And, if so, why? Now that is the question of why Mr Haigh is receiving money into Mr Haigh's bank account.

JUSTICE SIR DAVID STEEL: Well he says he has an explanation.

ANDREW BODNAR: He says he does, but, as your Honour has pointed out, he does not need our records to tell us.

JUSTICE SIR DAVID STEEL: No.

ANDREW BODNAR: Second question, did he give instructions for those payments to be made, did he not create a document? Did he give instructions for those payments to be made? As I say there is an email (Several inaudible words) Co-op about this, on almost all occasions (Several inaudible words) emails from Mr Haigh saying make this payment. My learned friend referred to Lincoln Associates.

There are other suppliers, where there were no payment authorities at all, because the money came from Gibson Dunn's private account on the strength of an email instruction from Mr Haigh, or at least from Mr Haigh's email account. So, if, in fact, those two are bogus, it means that not only has somebody fabricated invoices and fabricated payment instructions and chosen to fabricate no less than, I think, 25 variations on his signature in doing so, they have also hacked into his email account and fabricated emails to cover the reason for the payment.

JUSTICE SIR DAVID STEEL: Well, you know, sir, that is all part of the scheme.

ANDREW BODNAR: Well, he may say, he may say, but to give your Honour a flavour of just how sophisticated a conspiracy this must be if it is true, but he does not need any documents to say whether he gave instructions for payments to be made or not.

The third question he has to address is did he have any involvement in the creation or procuring of internal authorisations for making the payments. That is the transfer forms. Now, if the answer is "no" then he does not need any documents, as, as your Honour has said, the pleading is, "I did not know". If the answer is "yes" can you just say so. If the answer is "I don't know" it carries with it a recognition (Several inaudible words),

but "I don't know" is the only conceivable reason why he might need to look, to remind himself.

And then the fourth question, did the Defendant have any involvement, because the case is not pleaded on the basis that he, himself, created it. He created or procured. Did the Defendant have any involvement in the creation or procuring of invoices which are, on any view, fraudulent? They must be fraudulent because the purport to come from third party suppliers and they receive payment for jobs that were not done, they were not raised by their suppliers and there should not be many cases payable to Mr Haigh's (several inaudible words).

JUSTICE SIR DAVID STEEL: I am very, very disappointed (Several inaudible words) of Court. £800,000 I think you get.

ANDREW BODNAR: £1.2 million.

JUSTICE SIR DAVID STEEL: £1.2 million.

ROBERT LAWSON: Your Honour, they would not notice that in fact.

JUSTICE SIR DAVID STEEL: Yes, okay. Well, I understand that. Can I just ask you one last question, if I come back to Mr Rovine(?)? I detect a further air of unreality here. You were saying there is no obligation, either because it has been agreed or it is a matter of

rule, I do not know, for the defendant to produce a defence until he is out of custody, or three weeks out of custody.

ANDREW BODNAR: No, Your Honour. That also has a history.

JUSTICE SIR DAVID STEEL: Oh dear. Perhaps I should never have stirred it up.

ANDREW BODNAR: No. The defendant has been asserting his complete inability to give meaningful instructions since the start of this case. On 17 June it was pointed out that the defence was due in the very near future, the particulars having been served, I think, on 23 May or thereabouts. (Overspeaking)

JUSTICE SIR DAVID STEEL: Sorry, say that again? I am so sorry.

ANDREW BODNAR: The particulars of the claim were served in May --

JUSTICE SIR DAVID STEEL: Yes.

ANDREW BODNAR: -- and a defence, of course, would therefore be due some time in mid-June, so, when we came back for the return date for Sir John Chadwick. (Several inaudible words). Yes, so the defence was due on 23 June. Mr Haigh was due to have a reconsideration of his detention, what in the United Kingdom we call a bail hearing, on 23 June. Now, it was possible, of course, that he would be granted bail.

JUSTICE SIR DAVID STEEL: All right. Well, I gather he has been granted bail, but he cannot pay it. Is that the problem?

ANDREW BODNAR: Well, it has been suggested that if he is able to put up a bond of AED 15 million, which is the value of the fraud, then he may be granted bail.

JUSTICE SIR DAVID STEEL: All right.

ANDREW BODNAR: That is a reason for you, and I know you have seen the reference to the permission in the freezing order to allow Mr Haigh to post a bail bond to secure his liberty. Of course if Mr Haigh were going to be granted his liberty on 23 June, then it would be very easy for him to plead a defence within three weeks thereafter. If not, well, we would review the position depending on the view of the court, once it is known whether Mr Haigh would get bail or not, and also, once the letter of request had been actioned, because of course, Your Honour appreciates the significance of evidence that Mr Haigh owns or controls account.

JUSTICE SIR DAVID STEEL: Well, I cannot see why that has much play on whether he pleads his case or not.

ANDREW BODNAR: No, and to be honest, the direction was more a pragmatic one. It certainly was not a rule of practice in this court.

JUSTICE SIR DAVID STEEL: So the direction was what?

ANDREW BODNAR: The direction was that Mr Haigh was to file a defence within three weeks of his release from custody.

JUSTICE SIR DAVID STEEL: Well, if he does not post bail, presumably that means until his trial, or perhaps, if he is convicted, at the end of his trial.

ANDREW BODNAR: Theoretically, and of course we have always approached this question on the basis that there will come a time, and it appears (Several inaudible words) right because Mr Haigh appears to be engaging in the proceedings in any event, that there would come a time when we would revisit that direction once Mr Haigh's position was known. Of course on 17 June, a bail hearing being intended on 23 June, there was not a great deal of point --

JUSTICE SIR DAVID STEEL: Well, the present position is he is in custody. He has been offered bail but has not posted an appropriate bond --

ANDREW BODNAR: Yes.

JUSTICE SIR DAVID STEEL: -- so he will remain in custody, in principle, until either he is released or there is a trial, and he is acquitted or he is convicted and may be imprisoned, and at the end of that?

ANDREW BODNAR: Quite so.

JUSTICE SIR DAVID STEEL: Yes. So that is why that was some air of unreality in this case, but there it is.

ANDREW BODNAR: Well, there is an air of unreality in simply saying that Mr Haigh may file a defence at his leisure, or three weeks after his release
(Overspeaking)

JUSTICE SIR DAVID STEEL: Well, that is the order of the courts, you said, though?

ANDREW BODNAR: It is at the moment, and we have always reserved our position in relation to that. When I say the words "filing a defence", in an ideal world Mr Haigh would actually file a defence, properly so described, verified by a statement of truth and lodged with the court, and we say he is more than able to do so. At the very least one might have expected this disclosure application to be supported by an affidavit that set out some detail.

JUSTICE SIR DAVID STEEL: Well, that was promised.

ANDREW BODNAR: It was, and it has not appeared anywhere. So in my submission, this is really a blatant fishing expedition to see whether there is anything that can be noted. One of the subcategories of document, Your Honour saw a reference to exhibits NB1 - 6, it is suggested that they also are forged signatures, but they are

genuine documents in the sense that they are actual retainer letters for suppliers to provide services which were in fact provided, so there is nothing fraudulent about the document itself.

JUSTICE SIR DAVID STEEL: All right. Well, thank you.

ANDREW BODNAR: Sir, yes, in my submission it is a blatant fishing expedition. The defendant should put forward his defence before re-engagement, Sir.

JUSTICE SIR DAVID STEEL: Yes. Thank you. Any more? No. This is an application for a relatively wide-ranging level of disclosure, at a stage when no defence has been filed, and indeed on the face of it, no defence is due. It is put forward on the basis, on behalf of the defendant, that it is not possible to plead a properly particularised defence until this disclosure is made available. At the heart of the request for the disclosure was a request to see the originals of certain documents, which the defendant himself, or at least his own forensic adviser, declares to be manifestly forged, forged by virtue of the transposition of his signature from a genuine document onto the transfers and invoices.

The defendant has put forward the proposition that since these invoices were referred to in the pleadings, that they should be produced, and indeed they have been, copies have been

furnished to the defendant and his legal team, but what is said is that it is inadequate, that it is necessary to see the originals. The basis for that appears to be that the expert, speaking solely from his own perspective, would like to see the originals in order to test whether his preliminary views about the nature of the signatures is correct. The process of seeking to assist the expert is rather by the by. What is suggested by the defendant is that he needs to see the originals in order to formulate a proper response to the allegation that he either obtained, wrote or procured these invoices and transfers himself.

Now, on his behalf, for the first time this afternoon, an indication of what his defence is going to be has been outlined. What is said is that he did not create, and certainly did not procure any of these invoices or transfers. They were created by someone else in the defendant company for the purposes of the company, and indeed it is submitted, suggested that this was the normal method of operation within the claimant company, and although it is accepted, at least now it is accepted, that payments in respect of these invoices and transfers went into accounts held by the defendant, that that was an intentional transfer on the claimant's behalf, because that is the way they conducted their business, and that in due course there would have been a reconciliation between the claimant and the defendant, and the claimant themselves were responsible for how the money was deployed out of the defendant's accounts.

Now, as I said, despite the fact that this application for disclosure was heralded by a letter in which those acting for him again promised to produce an affidavit or statement which indicated the nature of the defence that was going to be advanced, in fact the application was made without the support of any such witness statement or affidavit. What is said is that the claimants had promised, in correspondence, to furnish an opportunity to the defendant and his expert to examine the originals of the transfers and invoices if it was so desired, although I am bound to say, speaking for myself, it is difficult to see what possible lesson can be derived by the defendant in looking at the invoices, because he says in terms that they were not anything to do with him, and if he looks at them, he will not be any the wiser in formulating his defence. He is not going to be helped in supporting his case if he did not sign or forge these documents, or helped in respect of his case that the whole thing was a scheme by the claimants themselves, by anything that the expert may have to say.

But for the fact that the claimants, at one stage, or their adviser has agreed that there should be an opportunity to examine the originals, and I understand why they reneged on that somewhat, because it was immediately followed by some very wide-ranging requests for disclosure, which in my judgment are wholly unjustified, I feel that the opportunity that was originally afforded to the defendant should be provided again, a changed and that the

defendant, or rather the defendant's legal advisers and his expert, if so advised, should have an opportunity within the next ten days, to examine the original transfer certificates and the original invoices.

So far as the remaining application for very wide-ranging disclosure before service of the defence, I refuse it. It seems to me to put the cart before the horse. There is no good ground for reversing the usual sequence of pleading and disclosures, since the whole point of pleading is to identify what issues the disclosure should go to, and therefore I refuse this application, save for the limited extent which I have indicated, namely that the defendant should have an opportunity of examining the original invoices and transfers. All right. That has covered the ground, has it?

ANDREW BODNAR: It has. Your Honour, we have drafted a form of audit of the letter of request --

JUSTICE SIR DAVID STEEL: Oh yes.

ANDREW BODNAR: -- which contains a name.

JUSTICE SIR DAVID STEEL: Has anybody seen it? Has anybody else seen it?

ANDREW BODNAR: It has just been disclosed.

JUSTICE SIR DAVID STEEL: Thank you.

ANDREW BODNAR: So Your Honour sees that we have identified that (Overspeaking)

JUSTICE SIR DAVID STEEL: All right, and what is exhibited to this will be the letter of request, will it?

ANDREW BODNAR: Quite so, which we have (Overspeaking)

JUSTICE SIR DAVID STEEL: Yes. The letter of request will be signed by the registrar, presumably?

ANDREW BODNAR: It does have to be signed by the registrar and issued by the court, but issues to us. We have also --

JUSTICE SIR DAVID STEEL: Well, this will be issued by the court rather than initialled by me, as I understand it.

ANDREW BODNAR: Yes.

JUSTICE SIR DAVID STEEL: Is that right? Yes. Yes, are you happy with that? Yes. Yes.

ANDREW BODNAR: We have got a copy of the letter of request properly --

JUSTICE SIR DAVID STEEL: All right, well perhaps I had better see that.

ANDREW BODNAR: -- and I believe we also have a copy of it in Arabic if the court would like it, but it is not addressed (Overspeaking)

JUSTICE SIR DAVID STEEL: It will have to go in Arabic, will it not?

ANDREW BODNAR: It will, yes. This one is not addressed yet, so perhaps if we undertake to provide that to the court either later today or first thing tomorrow.

JUSTICE SIR DAVID STEEL: All right. Well, I will leave you to make sure you furnish an authenticated translation into Arabic. This, as I understand it, is in the appropriate form. It identifies the addressee, which I think is satisfactory, and ... Yes, thank you. Thank you very much.

ANDREW BODNAR: Then, Your Honour, you have seen that we seek an order for costs in the case so far as the letter of request is concerned.

JUSTICE SIR DAVID STEEL: All right. I do not think that that will be opposed.

ANDREW BODNAR: So far as the balance of the applications, in essence the only success that the defendant has enjoyed has been that which we offered to him some considerable time ago. The structure of the selling of the Dubai apartments(?) suggested on 17 July,

acceptance of the importance of complying with the search order happened in court. The nature of the defence was spelled out for the first time during the court hearing, so on balance, in my submission, this is an appropriate case, and Your Honour has described evidence filed by the defendant as stretching credulity to breaking point, and disclosure requests being made which were wholly wrong. In my submission, although it may be that in the long run we will have difficulty (Overspeaking)

JUSTICE SIR DAVID STEEL: It is all rather academic, is it not?

ANDREW BODNAR: -- my submission is the defendant should pay the costs of today, be assessed if not approved.

ROVINE CHANDRASEKERA: We shield(?) the case. There has been some success at the application for disclosure has succeeded in part. That should never have come before the court. My friend has just been dragging his feet, so certainly the costs should be mine in relation to that. The other two matters took very little time. As to variation, we have not been given a fair description. There has been progress made which has not been possible because of the intransigent position of the claimant, and therefore balancing matters in the round, the appropriate order should be costs in the case.

Of course, if my friend is so right with his prima facie as he tells us he is, then in due course he will get his costs, but that is for another day.

JUSTICE SIR DAVID STEEL: I fear whatever I see is somewhat academic since the ability to enforce an order of costs is likely to be very limited indeed. The defendants have had some measure of success in relation to the one request for disclosure, some additional funding while the defendant is in custody in order for disposal of his house and his car, and maybe other matters, but by and large it has been the claimant's day, in my view, and I order that the defendant should pay 75 per cent of the claimant's costs, all right? Thank you very much. Is that it?

CLERK: All rise.