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Judgment: approved by the Court for handing down | *Delivered:* **03/05/12**
*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION

IN THE MATTER OF THE INSOLVENCY (NI) ORDER 1989

IN THE MATTER OF DEMESNE INVESTMENTS

Between:

QUINN FINANCE

First Applicant;

- and-

IRISH BANK RESOLUTION CORPORATION LIMITED

Second Applicant;

- and-

QUINN HOTELS PRAHA AS

Third Applicant;

- and-

LYNDHURST DEVELOPMENT TRADING SA

First Respondent;

- and-

DMYTRO ZAITSEV

Second Respondent;

-and-

OLEKSANDR SERPOKRYLOV

Third Respondent;

JUDGMENT: RECUSAL

McCLOSKEY J

Introduction

[1] The court is seised of a contempt motion brought by the Plaintiffs against Lyndhurst Development Trading SA ("*Lyndhurst*"), Dmytro Zaitsev ("*the second Respondent*") and Oleksandr Serpokrylov ("*the third Respondent*"). In the course of hearing the contempt motion, a recusal application has been made by the Respondents, which I hereby determine. This judgment is given on the same date as the court's judgment in the substantive claim brought by the Plaintiffs/Applicants against the first-named Respondent (Lyndhurst) and two other Defendants under Article 367 of the Insolvency (Northern Ireland) Order 1989. While the Plaintiffs are pursuing other claims against the Defendants in the substantive action, the balance of those claims will stand adjourned. Furthermore, by agreement amongst the parties, the uncompleted contempt hearing is also to be adjourned. In these circumstances, it was submitted by Mr. Lockhart QC on behalf of the Respondents that the court should defer its determination of the recusal application. Having considered this submission, I have formed the view that the court should pronounce its ruling at this stage. Any challenge to the composition of a court is a grave matter and the court, being master of its own procedure, will be the arbiter of the timing of its ruling. Furthermore, I observe that the recusal application is complete. I have, accordingly, determined to rule upon it at this stage.

The Proceedings

[2] The subject matter of the Plaintiffs' claims is two assigned loan agreements and two related "supplementary loan agreements" (described hereinafter as "*the impugned transactions*"). The Plaintiffs make the case that these assignments were unlawful and seek relief accordingly, under Article 367 of the Insolvency (Northern Ireland) Order 1989 and otherwise. Lyndhurst, the first-named Respondent hereto, is one of three Defendants in the main proceedings. The other two Defendants are **Demesne Investments Limited** ("*Demesne*") and **Innishmore Consultancy Limited** ("*Innishmore*"). The second and third Respondents to the contempt application are not parties to the main proceedings. In the present contempt application, they are alleged to have been acting as Lyndhurst's agents.

The Mareva Injunction

[3] The impetus for the contempt motion is an order of this court, in the form of a Mareva injunction, made by me on 23rd December 2011. I shall describe this as "*the injunction*". It was made *ex parte* on the application of the Plaintiffs and is directed to Lyndhurst only, in the following terms:

> "*… The first Defendant including its directors and officers and servants or agents or any of them …*".

For convenience, I shall describe "*directors and officers and servants or agents*" as "*Lyndhurst's agents*".

By the terms of the injunction, Lyndhurst and its agents were restrained from:

(a) Taking any steps to assign, sell or otherwise transfer or deal in any way whatsoever with any of the assigned loan agreements and/or any judgment of any court arising therefrom.

(b) Without prejudice to (a), assigning the legal or beneficial interest in any of the assigned loan agreements or, alternatively, charging, encumbering or otherwise dealing with or devaluing or taking any steps calculated or intended to prevent or obstruct the Plaintiffs from applying to the court in order to set aside the impugned assignments (from the second Defendant to the third Defendant and then from the third Defendant to the first Defendant).

(c) Seeking to rely upon, demand payment or otherwise enforce any of the assigned loan agreements, to include seeking to enforce the said loan agreements against 'Univermag Ukraina' ("*Univermag*") or otherwise from receiving payment of any monies pursuant to their terms.

(d) Discharging, using, paying out or otherwise dealing with any monies remitted to the first Defendant on foot of any of the assigned loan agreements.

The injunction further mandated that Lyndhurst and its agents retain and hold any monies remitted or paid to Lyndhurst or its agents on foot of any of the assigned loan agreements. The latter are described and particularised in an appendix to the injunction. In the usual way, the injunction further provided that Lyndhurst could apply to the court at any time to vary or discharge its terms, upon giving 48 hours minimum advance notice to the Plaintiffs' solicitors. Finally, the injunction specified that the case would be reviewed by the court on 30th December 2011 and again on 5th January 2012.

[4] Under the umbrella "The Effect of this Order", the injunction further provided:

> "*…[2] A defendant who is a corporation and which is ordered not to do something must not do it itself or by its directors, officers, employees or agents or in any other way …*

> *[4] The terms of this order will affect the following persons in a country or state outside the jurisdiction of this court:*
>
> > *(a) The first Defendant including its directors and officers and servants or agents or agent appointed by power of attorney*".

The injunction further recited the affidavits which the court had considered prior to making the order, identifying each deponent and the date of each affidavit. It also recorded the following undertaking given to the court by the Plaintiffs:

> "*If the court later finds that this order has caused loss to the first Defendant and decides that the first Defendant should be compensated for that loss, the Plaintiffs will comply with any order the court may make.*"

Under the rubric "Service of this order and of the documents", the injunction provided:

> "*The court grants leave to serve this order outside the jurisdiction of Northern Ireland by electronic communication for any legitimate and bona fide purpose*".

The first substantive paragraph in the injunction was entitled "Notice to the First Defendant" and stated:

> "*(1) This order prohibits you from doing the acts set out in this order. You should read it all carefully. You are advised to consult a solicitor as soon as possible. You have a right to ask the court to vary or to discharge this order.*
>
> *(2)* ***If you disobey this order you may be found guilty of contempt of court and may be sent to prison or fined or your assets may be seized***."

[My emphasis].

The next succeeding paragraph is couched in the following terms:

> "*An application was made on 22nd December 2011 by counsel for the Plaintiff to the judge. The judge heard the application and read the affidavits referred*

to in Schedule 1 and accepted the undertaking in Schedule 2 at the end of this Order".

The form and appearance of the injunction are in accordance with the customary formality and solemnity. Furthermore, the first page of the injunction bears the formal stamp of the Court of Judicature of Northern Ireland; records that the matter was heard in the High Court of Justice in Northern Ireland, Chancery Division; recites the Insolvency (NI) Order 1989; identifies the assigned judge; and bears the date of the hearing (23rd December 2011).

The Evidence

[5] I shall, firstly, provide a brief summary of the affidavit evidence considered by the court *ex parte* when making the injunction. This evidence included, in particular, an affidavit sworn by Robert Dix, who describes himself as a director and the chairman of Quinn Finance, an unlimited company incorporated in Ireland. He is also a director of other companies belonging to the Quinn International Property Group ("*the Group*"). One of these companies is Demesne, while another is Quinn International Property Management Limited ("*QIPM"*). He explains that until 14th April 2011 the Group was under control of members of the Quinn family, financed by borrowings from Irish Bank Resolution Corporation Limited ("*IBRC*") or its predecessor. As part of the financing arrangements, IBRC held securities over certain assets of the Group, together with certain share charges. Quinn Finance operated as a treasury vehicle for other members of the Group, arranging loans and finance for them as and when necessary. Demesne is registered in Northern Ireland and is a wholly owned subsidiary of Quinn Finance. Members of the Group have properties in various foreign jurisdictions, including the Ukraine. As part of a comprehensive review of the assets, liabilities and financial viability of members of the Quinn Group, it was established that Demesne's principal assets and liabilities were, respectively, debts due to it by other companies in the Group and vice versa. As of 31st March 2011, one of the debts due to Demesne was in the sum of almost £29,000,000, owing by Univermag, a company registered in the Ukraine and the owner of a shopping centre in Kiev with an estimated value of USD63,000,000.

[6] Enter Innishmore: the latter is described as a company registered in Northern Ireland. Its sole director and legal owner of the entire issued share capital is Peter Quinn, a nephew of Sean Quinn. On 6th April 2011, Demesne purportedly assigned to Innishmore its rights under a series of loan agreements. As a result, Innishmore became a creditor of Univermag. This impugned assignment is not documented in the books or records of Demesne, while its consideration is unstated. The individuals who executed this impugned assignment were Sean Quinn (on behalf of Demesne) and Peter

Quinn (On behalf of Innishmore). The authenticity of this impugned assignment is challenged by the Plaintiffs. The next protagonist in the affair is **Lyndhurst**, a company registered in the British Virgin Islands. On 7th October 2011, Innishmore purportedly assigned to Lyndhurst the Univermag debts. The effective assignor was the aforementioned Peter Quinn, while Mr. Zaitsev purported to act as attorney for Lyndhurst. It is asserted that the first of these assignments, from Demesne to Innishmore, involved a deprivation of assets for something considerably less than their true value, making it impossible for Demesne to repay its financial liabilities of some £51,000,000 to Quinn Finance. It is claimed that IBRC will, in consequence, suffer a significant detriment. In short, it is contended that the assets of Demesne have been severely depleted to the detriment of its creditors, including Quinn Finance. The Plaintiffs' case is that these transactions have been executed for the purpose of placing assets beyond the reach of Demesne's creditors. The Plaintiffs impugn two assignments of debt and two related "supplementary loan agreements". It is contended that no rational commercial explanation for any of the impugned transactions is evident.

The Plaintiffs' Statement of Claim

[7] Based on the outline of the evidence provided above, the case made in the Plaintiffs' Statement of Claim is, succinctly, as follows:

(a) On 6th April 2011, Demesne purportedly assigned its right to the Univermag debt of some £29,000,000 for no consideration. The parties to this assignment were Demesne, Innishmore and Univermag. This assignment cannot be traced in the books and records of Demesne.

(b) On 26th September 2011, Univermag and Innishmore purported, by a supplementary loan agreement, to vary the terms of the original loan agreement (dated 24th October 2006).

(c) By a second assignment dated 7th October 2011, Innishmore purported to assign the Univermag debt to Lyndhurst.

(d) By a further supplementary loan agreement dated 4th November 2011, the parties whereto were Innishmore, Lyndhurst and Univermag, a further variation of the original loan agreement was effected so as to entitle Lyndhurst to demand repayment of the Univermag debt before the repayment date.

(e) Mr. Zaitsev, purportedly acting as Lyndhurst's attorney, executed the second assignment and second supplementary loan agreement on their behalf.

(f) Pursuant to this series of transactions, Lyndhurst brought proceedings against Univermag in the Kiev Commercial Court, seeking judgment in the amount of an alleged debt of some USD45,000,000. These proceedings, coupled with the injunction made by this court on 23rd December 2011, are described in greater detail in other places in this judgment.

(h) On 23rd December 2011, the Kiev Commercial Court duly granted to Lyndhurst the judgment it was seeking.

[8] The Plaintiffs attack the impugned transactions on the following grounds:

(i) The first assignment was illicitly backdated to 6th April 2011.

(ii) The first assignment was not validly executed on behalf of Demesne, as Sean Quinn was no longer a director of this company and lacked authority in consequence.

(iii) Further, or alternatively, Sean Quinn executed the first assignment in breach of his fiduciary duty to Demesne to safeguard its property, a breach of which Innishmore and Lyndhurst had, or should have had, knowledge.

(iv) The first assignment being void, the second assignment and supplementary loan agreements were necessarily void in consequence.

(v) Alternatively, the second assignment and second supplementary loan agreement are void as the purported execution by Peter Quinn was not on behalf of Innishmore, a matter whereof Lyndhurst had actual or constructive knowledge.

(vi) Further, or alternatively, the impugned transactions are liable to be set aside under Article 367 of the Insolvency (Northern Ireland) Order 1989 ("*the 1989 Order*").

The Substantive Relief Sought

[9] In the prayer in the Statement of Claim, the following relief is sought:

(i) An order declaring the first assignment void, on one or more of the three grounds adumbrated above.

(ii) An order declaring the second assignment void.

(iii) An order declaring the supplementary loan agreements void.

(iv) Alternatively, an order pursuant to Article 367 of the 1989 Order setting aside the impugned transactions and declaring them null, void and of no effect.

(v) An order declaring that Demesne is solely entitled to the benefit of all rights purportedly transferred by the impugned transactions.

(vi) An Order declaring that all rights purportedly held by Lyndhurst pursuant to the impugned transactions are held on trust for Demesne.

Certain other forms of consequential and ancillary relief are sought. I make clear that, at this stage of the proceedings, the determination of the court is confined to the Plaintiffs' claim under Article 367 of the 1989 Order. I have acceded to the Plaintiffs' request that, at this juncture, the court adjudicate on this claim only, adjourning the balance of the Plaintiffs' claims for future adjudication, in the event that they are pursued. Furthermore, no adjudication of the Plaintiffs' case against Innishmore is required, as this Defendant has consented to the Plaintiffs' entitlement to relief under Articles 367 and 369 of the 1989 Order. The only other Defendant who had actively contested the claim was Lyndhurst. On the morning of trial, the court acceded to an application moved by Lyndhurst's Belfast solicitors and made an order pursuant to RCC Order 67, Rule 5 terminating their representation of Lyndhurst in this, the main, action (though not in the adjourned contempt proceedings). I refer to the court's separate judgment in the Plaintiffs' substantive action under Article 367 of the 1989 Order [MCCL 8486], given on the same date as the present judgment.

The Contempt Motion

[10] The contempt motion is grounded by certain affidavits sworn on behalf of the Plaintiffs. The first is an affidavit of a solicitor in the firm of Dublin solicitors instructed by the second-named Plaintiff ("*IBRC*"), containing an averment that at 3.20am on 23rd December 2011 the injunction was served by fax on Lyndhurst, exhibiting the fax transmission confirmation. The urgent circumstances in which the injunction was sought *ex parte* and duly made are expounded in the affidavit of Mr. McCord, a partner in the Belfast firm of solicitors (Tughans) instructed on behalf of IBRC:

> "*Part of the urgency of the Plaintiff's application for an injunction was to restrain the first Defendant*

> *from seeking to enforce the assigned loan agreements by using them to pursue a claim against* [Univermag] *in the sum of USD45,231,641.09 before the Commercial Court of Kyiv. This case was due to be heard by the Kyiv court on the morning of 23rd December 2011."*

The next member of the *dramatis personae* is one Arsen Miliutin, who has sworn two affidavits. He describes himself as a Ukrainian citizen and the IBRC's attorney in that jurisdiction. He avers that he received the injunction by e-mail in the early morning of 23rd December 2011 and continues:

> *"The same day I visited the Commercial Court of Kyiv intending to participate in the hearing of case No. 35/465 Lyndhurst Development Trading SA v PJSC Univermag Ukraina "on collection of the amount of US Dollars 45,231.641.09 before Judge Litvinova MF scheduled for 10.00 am Kyiv time. I also submitted the motion through the secretariat of the court asking IBRC to be engaged into the mentioned case as a third party and the proceedings to be suspended until the present case is resolved in Northern Ireland.*
>
> *Before the hearing started, in the hall of the court I saw Mr. Dmytro Zaitsev the representative of Lyndhurst Development Trading SA (hereinafter referred to as Lyndhurst). I approached him and asked whether his name was indeed Dmytro Zaitsev and whether he was indeed a representative of Lyndhurst. He confirmed this replying "yes". I told him that I was acting as attorney for IBRC and informed him about the Order and that according to the Order Lyndhurst including its Directors and Officers and servants and agents were restrained from collecting the amount claimed before the commercial Court of Kyiv in case No. 35/465. I also proposed him to accept the copy of the Order including translation into Ukrainian and a cover letter signed by myself. He refused to accept asking me a question, which makes me think he did not care to comply with the Order whatsoever. "where is Northern Ireland and where am I?"*
>
> *After the hearing started, it appeared that Lyndhurst was represented by two attorneys: Mr. Dmytro Zaitsev and Mr. Serpokrylov O.V. After that I was*

asked by Judge Litvinova M.E. to explain the submitted motion. I read in a loud voice my motion with the relevant reference to the Order and the restraining of Lyndhurst including its Directors and Officers and servants and agents from collecting the payment of the amount claimed before the Commercial Court of Kyiv in case No. 35/465. So I asked judge to grant my motion by engaging IBRC as a third party and suspending the proceedings until the present case is resolved in Northern Ireland.

After that judge Litvinova M.E. gave my motion including the copy of the Order and translation into Ukrainian to Mr. Zaitsev. Mr. Serpokrylov, as well as to the counsel for PJSC Univermag "Ukraina" (hereinafter referred to as Univermag) and proposed them to comment. They were reading the documents for around 10 minutes. After that they told that the Order was not properly certified and they saw no reason go engage IBRC to the proceedings and nothing prevented them to pursue the case No. 35/465.

After that I announced to everyone that (i) the Order was issued on 23 December 2011 and it was impossible to present a certified copy: (ii) the Order may be presented certified should the court grant a proper adjournment: (iii) according to the Order it may be served by electronic means of communication: (iv) by not complying with the Order Messrs. Zaitsev and Serpokrylov may be held criminally liable before the law enforcing bodies of Northern Ireland. Having heard the last phrase. Messrs. Zaitsev and Serpokrylov laughed and Mr. Zaitsev said "thanks for reminding".

After that the judge made a short break. In the court hall Mr. Zaitsev told me to serve the Order to the representative of Demesne Investments Limited who was also present, which I understood was an irony.

After the hearing was renewed Judge Litvinova ME refused to grant my motion and proceeded to the merits of the dispute."

In his second affidavit, in which he rejoins to the Respondents' affidavits, Mr. Miliutin describes some of the events in greater detail. In this he avers that he

warned the second and third-named Respondents about potential criminal liability, continuing:

> "*I said so directly to them, to the judge and to everybody in the court room …*
>
> *I noticed* [the second and third-named Respondents] *both laughed (the laughter may as well correctly be described as grin) …*
>
> *The judge basically followed the demands of the Lyndhurst's representatives. According to the law the judge cannot pass a judgment unless Plaintiff supports his claims…*
>
> *Both* [the second and third-named Respondents] *supported the claim and asked the judge to fully satisfy it. Their position is clearly heard on the court record and there is no place for them to deny that.*"

[11] Exhibited to Mr. Miliutin's affidavits is an official court record of the hearing in Kiev on 23rd December 2011. There is no challenge to the authenticity or accuracy of this record. The transcript contains certain noteworthy passages. It records that, at the beginning of the Kiev Commercial Court hearing, Mr. Miliutin applied for permission on behalf of IBRC to intervene. He did so on the following basis:

> "*The decision in this case may affect the rights and obligations of* [IBRC] *with regard to* [Univermag]".

Mr. Miliutin then adverted to the injunction:

> "*So, on 23rd December 2011, which is today, Justice McCloskey of the High Court of Justice in Northern Ireland initiated judicial proceedings upon the claim of* [IBRC] *and others –v- …* [the named Defendants]*… with respect to agreement dated 7th October 2011 between* [Innishmore] *and* [Lyndhurst] *…* [and] *… agreement dated 6th April 2011 between* [Innishmore, Demesne and Univermag]. *…*
>
> *On 23rd December 2011, that is today, based upon application of* [IBRC] *Justice McCloskey of the High Court of Justice in Northern Ireland issued an injunction order that, inter alia, restrained*

> [Lyndhurst] *its directors and officers and servants or agents from taking steps to collect the aforementioned amount from* [Univermag] *…*".

Mr. Miliutin applied for orders permitting IBRC to intervene and staying the Ukranian proceedings pending the judgment in this jurisdiction in the substantive proceedings. He continued, per the court record:

> "*As an exhibit to the application a copy of the order is attached. I have received it today. The said injunctive order is with translation. A duly certified copy from Northern Ireland can be provided if the court adjourns the proceedings for the relevant period.*"

At this juncture, the copy injunction was examined by the second-named Respondent. He then addressed the court, opposing the application. He submitted, *inter alia*, that the available version of the order was in electronic form and not certified by IBRC's representative. He further pointed out that the application for the judgment debt preceded the injunction. The third-named Respondent then addressed the court, submitting that "*… a simple copy sent by e-mail cannot be adequate evidence of the fact that this order was made as such …*". He expressed his support for the submissions already made. Interestingly, the attorney representing Univermag also opposed the IBRC application to intervene, quite explicitly. He adverted to the Code of Commercial Procedure of the Ukraine, suggesting that thereby a third party may become involved "*… if the judgment may affect its rights and obligations …*" and submitting that this test was not satisfied. The second-named Respondent then highlighted a clause in the impugned assignments to the effect that disputes between the parties thereto would be resolved according to Ukrainian law.

[12] According to the transcript, Mr. Miliutin, responding, stressed the clause in the injunction authorising electronic service and he continued:

> "*… in accordance with the order, if this order is not complied with by the representatives, authorised persons or directors of Lyndhurst … these persons may be subject to criminal prosecution by the law enforcements bodies in Northern Ireland.*"

The second-named Respondent then made a lengthier submission to the court, reiterating his opposition to the intervention application and formally requesting judgment in the amount of USD45,231,641. The third-named Respondent continued:

> "*I fully support the statements contained in the law suit …*
>
> *Based on this, we ask the court to grant the claims of the Claimant against the Respondent in the amount specified in the Statement of Claim.*"

The outcome of the hearing in the Commercial Court of Kiev on 23rd December 2011 is documented in the written judgment of the court dated 27th December 2011. In short, as appears from the following excerpts, Lyndhurst's application for judgment against Univermag was granted:

> "*As it is established by the court and as the circumstances of the case show, the Respondent did not timely* [sic] *return the claimant the loan amount of USD43,000,000 and did not pay in full the interest for using the loan in the amount of USD2,231,641.09 …*
>
> *Taking into account the above, the court considers that the stated claims on recovery of debt from the Respondent under the loan in the amount of USD43,000,000 and the charged interest in the amount of USD2,231,641.09 are reasonable and shall be satisfied in full.*"

The judgment further records that it shall not take effect until expiry of the time limit for appealing.

[13] Following the hearing in the Ukraine Commercial Court on 23rd December 2011, the next material development was a letter dated 28th December 2011 from the second-named Respondent to the Chancery Office of the High Court. In this letter, the author refers to the injunction and highlights in particular the provision therein for forthcoming review hearings on 30th December 2011 and 5th January 2012. This letter requests an adjournment for a minimum period of four weeks. It contains the following passage:

> "*We note that restrains* [sic] *imposed by the order as well as appointed dates for latter consideration <u>were not</u> any how communicated to the company earlier that* [sic] *24th December 2011. Accordingly, presently neither the company nor its officers, agents of* [sic] *legal advisors have had a chance to review the case materials, yet aware of legal facts of the matter or make any other reasonable preparations for the court hearing …*".

Appended to this letter were copies of (a) the injunction and (b) a document entitled "General Power of Attorney", purportedly signed by a director of Lyndhurst, Mr. Spyrides and purporting to appoint the second-named Respondent as the company's attorney, in demonstrably broad terms. The suggestion that the injunction was not served on Lyndhurst until 24th December 2011 is contradicted by an affidavit to the effect that personal service was effected at Lyndhurst's registered office in the British Virgin Islands at 11.47am on 23rd December 2011. To this letter is exhibited a signed written confirmation of service of the injunction on Lyndhurst.

[14] In resisting the application to commit him for contempt, the second-named Respondent has sworn two affidavits. He describes himself as "*a representative and attorney*" for Lyndhurst, pursuant to the aforementioned Power of Attorney dated 11th July 2011. In his second affidavit (but not his first) he describes himself as an economist and not a lawyer. In the course of the two affidavits, he makes the following claims and assertions:

(a) The proceedings in Kiev Commercial Court were initiated on 7th December 2011, based on a failure by Univermag to satisfy a demand issued to them <u>just two days previously</u>.

(b) (By implication) he attended a preliminary hearing in court on 12th December 2011.

(c) The next hearing date was 21st December 2011, when the court considered three intervention applications, including one on behalf of IBRC. The hearing was adjourned to 23rd December 2011.

(d) On 23rd December 2011, the deponent, accompanied by the third-named Respondent, whom he describes as "*a lawyer representing Lyndhurst*", attended court.

(e) Before the hearing began, an unidentified male alerted him to something which was not clear to him. At the hearing, Mr. Miliutin applied for intervention on behalf of IBRC, unsuccessfully. Judgment was awarded to Lyndhurst.

(f) When the deponent left the court on 23rd December 2011, he had neither read nor received a copy of the injunction. A Lyndhurst representative e-mailed it to him on 28th December 2011. He is adamant that neither he nor the third-named Respondent read the order on 23rd December 2011.

(g) He was aware of the injunction, in general terms only, by virtue of what Mr. Miliutin said to him and represented to the court on 23rd December 2011.

(h) He has never been Univermag's attorney: while his name "*appears*" in a draft Power of Attorney to this effect, this was a clerical error.

In his second affidavit, the second-named Respondent acknowledges that he *did* read the injunction at the court hearing on 23rd December 2011, suggesting that he had only three minutes to do so and that this was insufficient. This acknowledgment (in paragraph 16) flatly contradicts the averments in his first affidavit (paragraph 14 especially).

[15] The third-named Respondent has sworn one affidavit. In this he describes himself as "*a lawyer practising in Ukraine as a sole practitioner*", one of whose clients is the second-named Respondent. His affidavit contains the following claims and assertions:

(a) He attended the Kiev Commercial Court hearing on 23rd December 2011 "*to provide assistance to* [the second-named Respondent]".

(b) He was "*acting for Lyndhurst Development Trading SA … pursuant to the Power of Attorney which* [the second-named Respondent] *issued to me, though I realised a few weeks later that it had not been certified by a notary and was therefore not valid*".

(c) (In terms) in the course a recess during the Kiev Commercial Court hearing, he was neither shown nor did he read the injunction.

(d) He submitted to the Kiev Court that, to his knowledge, there had been no breach of the rights of IBRC or the other Plaintiffs.

(e) He did not understand everything that Mr. Miliutin said in court.

(f) He suggested to the judge that, in the absence of an (unspecified) "*certificate*" there was an irregularity in Mr. Miliutin's application.

(g) "*I could not understand how the order could have been made in Northern Ireland the same day which was two hours behind Ukraine time*".

(h) Mr. Miliutin did state in court that non-compliance with the injunction by the second and third-named Respondents could expose them to criminal liability.

The Hearing of the Contempt Motion

[16] The three Respondents to the contempt motion have been represented by solicitor and counsel (both senior and junior) throughout the greater part of these proceedings. At the stage when the affidavit evidence of all parties was complete, Mr. Lockhart QC (appearing with Ms Simpson, of counsel), representing all Respondents, informed the court that the second and third-named Respondents would not be attending the hearing in this court as they were fearful of the possible sanction of imprisonment. The court made two interlocutory orders. The first was an order that the second and third-named Respondents, together with Mr. Miliutin (on behalf of IBRC), be cross-examined on their affidavits. The second was an order authorising a live television link with the Ukraine, to give effect to the first-mentioned order. The court also approved the engagement of interpreters and stenographers. As a result, the hearing before this court had the following distinctive elements:

(i) The aforementioned live television link with the Ukraine.

(ii) The engagement of an interpreter (jointly appointed by the Plaintiffs and the Respondents).

(iii) The engagement of a stenographer in this court (also at the Plaintiffs' expense)

(iv) The attendance at the hearing, via the live television link facility, at a location in the Ukraine of a cast consisting of the second and third-named Respondents; a London solicitor apparently representing their interests; an interpreter engaged on their behalf; and three representatives of IBRC.

As the hearing progressed, transcripts were prepared overnight by the very efficient stenographers.

The Recusal Application

[17] This application materialised on the third day of hearing of the contempt motion. It was mounted on behalf of all three Respondents. In substance, it was based on complaints about how I had conducted the hearing to date. Its essence can be gleaned from the following passages in the skeleton argument of Mr. Lockhart QC and Ms Simpson:

- The transcript will show that the judge has conducted what could be perceived as a separate examination of the witness following on from intensive cross examination of the witness by the plaintiffs' leading counsel This separate questioning lasted for an exceptionally long time and went well beyond what one would normally expect in the hearing of a contempt summons, albeit involving a serious and grave matter and with due allowance given for translation and clarification;

- In permitting, as is entirely proper, further cross examination arising out of the Judge's questioning the length of the further questioning by leading Counsel (14.19pm -15.03pm) for the Plaintiff combined with substantial further interrogation of the witness by the judge (15.03-15.38pm) (16.04-16.27pm) gives rise to a concern that the judge is adopting an inappropriately inquisitorial approach to the contempt summons which departs from the normal adversarial framework.

- The conclusion of further questioning by Mr Moss QC arising out of the judge's initial questioning (11.16-13.20pm) was followed not, as one would anticipate, by the opportunity for the defendant's junior counsel Miss Simpson to ask similar questions arising out of the initial questioning by the judge but by a further extended period of questioning by the judge (16.04-16.27pm) followed by a further opportunity for Mr Moss QC to ask a question (p88) before Miss Simpson was invited to ask any questions.

- Various themes have been rigorously and exhaustively investigated by the judge, which were not initially raised in cross-examination **or** which do not feature in the affidavit of Mr Oleksandr Serpokrylov; For example, the identity of Mr Serpokrylov's client, the extent of the previous relationship between Mr Zaitzev and Mr Serpokrylov; the document purporting to represent Mr Serpokrylov's power of attorney; the exchange of pleadings; the experience of Mr Serpokrylov;

- The witness was pressed on a number of occasions by the judge as to whether he was giving a truthful answer (pp 26, 30, 45) and the pointing out of previous inconsistencies are usually more appropriate to a proper cross examination rather than a judicial clarification.

- The Judge has imposed additional strictures on those witnesses giving evidence from the Ukrainian part of the Belfast Court,

which go beyond what would normally be required of a witness giving evidence.

[18] Mr. Lockhart QC and Ms Simpson also advanced the following submissions:

- The Judge should ask questions of witnesses or counsel only when it is necessary to clear up or develop any points that may have been overlooked or left obscure or in doubt. See ***Jones v National Coal Board*** 1957 2AER 155

- The judge should not himself conduct the examination of witnesses (see ***R v Cain*** [1936] 25 CR App Rep 204);

- If the judge examines a witness "he so to speak enters into the arena and is liable to have his vision clouded by the dust of conflict" (see ***Yuill v Yuill*** [1945] page 15 at 20 per Lord Greene MR);

- It is for the advocates each in his turn to examine the witnesses and not for the judge to take it on himself lest by doing so he appears to favour one side or the other. Per Lord Denning in ***Jones v National Coal Board*** supra at 159F

- There is a risk that if a judge's interventions take the form of lengthy interrogation of a witness he will be unable properly to evaluate and weigh the evidence. ***Southwark LBC v Kofi-Adu*** [2006] EWCA Civ 281;

- It is recognized that a judge may ask a witness any question which he considers necessary. He may at any time recall a witness who has already given evidence to ask him further questions. It is further accepted that the older authorities which set out the principles of permissible judicial intervention must be viewed through the prism of Order 1 Rule 1 (1) of the Rules of the Supreme Court (Northern Ireland) 1980 and the overriding objective of the court to deal with cases justly. Previous case law will be, at most, persuasive in terms of giving effect to the new provisions and *"it is necessary to concentrate on the intrinsic justice of a particular case in the light of the overriding objective of the rules"*

Bearing in mind the absence of formality in applications of this kind (in particular, by conventional practice, there is no formal motion or grounding affidavit), the court enquired whether the application had been made on the instructions of the second and third-named Respondents or either of them. In

response, Mr. Lockhart QC candidly stated that direct counsel/client consultations with the second and third-named Respondents have been extremely limited. The instructions to counsel to move the recusal application emanated from the London firm of solicitors who are described as the solicitors representing all three Respondents and who, apparently, engaged the Northern Ireland firm on record for these parties. The recusal application was opposed by Mr. Moss QC, Mr. Horner QC and Mr. Dunlop (of counsel) representing the Plaintiffs.

Governing Principles

[19] I had occasion to consider, and rehearse *in extenso*, the governing principles in ***R –v- Jones*** [2010] NICC 39 and ***Re Belfast International Airport's Application*** [2011] NIQB 34. The first of these decisions contains the following passages:

> ***"Governing Principles***
>
> *[6] While the importance of judge and jury being entirely impartial is a longstanding feature of the common law, it has been reinforced by Article 6 ECHR, in an era of sophisticated technology and mass communication. In the contemporary setting, the modern jury is in some ways the antithesis of its predecessor of several centuries ago, as highlighted by Campbell LJ in* ***Regina –v- Fegan and Others*** *[unreported]. See also* ***Regina –v- McParland*** *[2007] NICC 40, paragraph [20] especially. I consider that the modern law differs in no material respect from the pronouncement of Maloney CJ almost a century ago, in* ***Regina –v- Maher*** *[1920] IR 440:*
>
> > *'The rule of law does not require it to be alleged that either A or B or any number of jurors are so affected, or will be so affected; but if they are placed under circumstances which make it reasonable to presume or apprehend that they may be actuated by prejudice or partiality, the court will not, either on behalf of the prosecutor or traverser, allow the trial to take place in that county …* ***It is a wise and jealous rule of law to guard the purity of justice that it should be above all suspicion****'".*

[Emphasis added].

Thus perceptions are all important: the terms of the immutable rule that justice should not only be done but should manifestly and undoubtedly be seen to be done are familiar to all practitioners. These principles apply to both trial by judge and jury and trial by judge alone.

[7] In considering whether the composition of any court or tribunal poses any threat to the fairness of a given trial, the test to be applied is that of apparent bias, as articulated by the House of Lords in ***Porter –v- Magill*** *[2002] 2 AC 357 : would a fair-minded and informed observer conclude that, having regard to the particular factual matrix, there was a real possibility of bias? In* ***Regina –v- Mirza*** *[2004] 1 AC 1118, the question formulated by Lord Hope was whether a juror had "knowledge or characteristics which made it inappropriate for that person to serve on the jury": see paragraph [107]. Bias, in my view, connotes an unfair predisposition or prejudice on the part of the court or tribunal, an inclination to be swayed by something other than evidence and merits".*

The extensive treatise of this topic in the judgment of Lord Bingham MR in ***Locabail –v- Bayfield Properties*** [2000] 1 All ER 65 contains the following notable passage:

"[25] *It would be dangerous and futile to attempt to define or list the factors which may or may not give rise to a real danger of bias. Everything will depend on the facts, which may include the nature of the issue to be decided….*

The mere fact that a judge, earlier in the same case or in a previous case, had commented adversely on a party or witness, or found the evidence of a party or witness to be unreliable, would not without more found a sustainable objection. In most cases, we think, the answer, one way or the other, will be obvious. But if in any case there is real ground for doubt, that doubt should be resolved in favour of recusal. We repeat: every application must be decided on the facts and circumstances of the individual case.

In ***R –v- Jones***, this court observed:

> "[9] … *there will always be a risk in every litigation context that some recusal applications are made on flimsy, though superficially attractive, grounds and are granted without rigorous scrutiny by an overly sensitive and defensive tribunal…*
>
> [10] *It is trite that where an application of this kind is made, an asserted risk to the fairness of the trial which is flimsy or fanciful will not suffice. However, the converse proposition applies with equal force. The court is required to make an evaluative judgment based on all the information available. This requires, in the words of Lord Mustill, the formation of "what is essentially an intuitive judgment" (**Doody –v- Secretary of State for the Home Department** [1993] 3 All ER 92, p. 106e). In making this judgment, the court will apply good sense and practical wisdom. Ultimately, the court's sense of fairness, as this concept has been explained above, and its grasp of realities and perceptions will be determinative.*"

I also refer to the following passage in ***Jones***:

> "[17] *In every context, the test for apparent bias requires consideration of a possibility, applying the information known to and attributes of the hypothetical observer. Some reflection on the attributes of this spectator is appropriate. It is well established that the hypothetical observer is properly informed of all material facts, is of balanced and fair mind, is not unduly sensitive and is of a sensible and realistic disposition. Such an observer would, in my view, readily discriminate between a once in a lifetime jury and a professional judge. The former lacks the training and experience of the latter and is conventionally acknowledged to be more susceptible to extraneous factors and influences. Moreover, absent actual bias (a rare phenomenon), the proposition that a judge will, presumptively, decide every case dispassionately and solely in accordance with the evidence seems to me unexceptional and harmonious with the policy of the common law.*"

I refer also to the judgment of Lord Phillips CJ in ***Smith –v- Kvaerner Cementation Foundations and Bar Council*** [2006] 3 All ER 593, and the following passage in particular:

"[28] *…vi) Without being complacent nor unduly sensitive or suspicious, the observer would appreciate that professional judges are trained to judge and to judge objectively and dispassionately. This does not undermine the need for constant vigilance that judges maintain that impartiality. It is a matter of balance. In* ***Locabail*** *, paragraph 21, the court found force in these observations of the Constitutional Court of South Africa in* ***President of the Republic of South Africa & Others v South African Rugby Football Union & Others*** *1999 (7) BCLR (CC) 725, 753:−*

'The reasonableness of the apprehension [for which one must read in our jurisprudence "the real risk"] must be assessed in the light of the oath of office taken by the judges to administer justice without fear or favour, and their ability to carry out that oath by reason of their training and experience. It must be assumed that they can disabuse their minds of any irrelevant personal beliefs or pre−dispositions. At the same time, it must never be forgotten that an impartial judge is a fundamental prerequisite for a fair trial'

vii) Moreover, in this particular case, the charge of impartiality has to lie against the tribunal and this tribunal consisted not only of its chairman but also of two independent wing−members who were equal judges of the facts as the chairman was. Their impartiality is not in question and their decision was unanimous."

Also noteworthy is the statement in ***Re Medicaments (etc.)*** [2001] 1 WLR 700:

"[86] *The material circumstances will include any explanation given by the judge under review as to his knowledge or appreciation of those circumstances. Where that explanation is accepted by the applicant for review it can be treated as accurate. Where it is not accepted, it becomes one further matter to be considered from the viewpoint of a fair−minded observer. The court does not have to rule whether the explanation should be accepted or rejected. Rather it has to decide whether or not the fair−minded observer would consider that there was a real danger of bias notwithstanding the explanation advanced."*

[20] Furthermore, it has been said that while the properly informed hypothetical observer is presumptively aware of the legal tradition and culture of the United Kingdom, he will be neither complacent nor unduly sensitive or suspicious. I also draw attention to the words of Lord Hope in ***Gillies –v- Secretary of State for Work and Pensions*** [2006] 1 WLR 751 :

> "[17] *The fair-minded and informed observer can be assumed to have had access to all the facts that were capable of being known by members of the public generally, bearing in mind that it is the appearance that these give rise to that matters, not what is in the mind of the particular judge or tribunal member who is under scrutiny. It is to be assumed … that the observer is neither complacent nor unduly sensitive or suspicious when he examines the facts that he can look at. It is to be assumed too that he is able to distinguish between what is relevant and what is irrelevant and that he is able when exercising his judgment to decide what weight should be given to the facts that are relevant*".

There is one further consideration worthy of highlighting which, in my view, has not been sufficiently emphasized in the leading cases in this field. It is that no litigant has a right to select or dictate the composition of the court or tribunal in the litigation in which he is involved. The corollary of this is that in every case where a question is raised about the impartiality of the judge or tribunal, a point of substance is necessary and the objection must be substantiated. I consider that this flows from the statement of Laws LJ in ***Her Majesty's Attorney General –v- Pelling*** [2006] 1 FLR 93:

> "[18] *In determining such applications, it is important that judicial officers discharge their duty to do so and do not, by acceding too readily to suggestions of appearance of bias, encourage parties to believe that by seeking the disqualification of a judge they will have their case tried by someone thought to be more likely to decide the case in their favour*".

I consider that in determining applications of this kind, the court must always take into account the presumed independence and impartiality of the presiding judge and the statutory judicial oath. The court must also be alert to purely tactical or technical objections to its composition, motivated by a desire on the part of the moving party to delay the final outcome or to secure some other improper benefit or advantage. Fundamentally, any application

of this *genre* which is not based on legitimate and *bona fide* grounds clearly constitutes an abuse of the process of the court.

Decision

[21] The central focus of the recusal application relates to the interventions and questioning of the third-named Respondent by the presiding judge during the hearing of the contempt motion which, at this juncture, has been of two days' duration. The determination of the moving parties' complaint and, hence, this application must be influenced by certain material features of how the evidence of the third-named Respondent was elicited and the manner in which he gave his evidence during two days of questioning. These are, principally, the following:

(a) The factor of interpretation and an interpreter. One particular dimension of this has been occasional disputes about the interpreter's translation of certain replies made by the third-named Respondent. Furthermore, the third-named Respondent interrupted the interpreter several times. In consequence of these matters, positive judicial intervention was inevitable and plainly appropriate.

(b) By reason of the limited quality of the video link and the requirement for interpretation, assessment of the witness's demeanour presented a substantial and constant challenge. The court has sought to address this by, *inter alia*, appropriate interventions and questioning of the witness.

(c) Some of the witness's replies to counsels' questions were unclear or unintelligible: this provided the impetus for further clarification questions from the court.

(d) Some of the witness's answers to questions did not properly or fully address the question posed: this too stimulated appropriate clarification questions from the court.

(e) On other occasions, the witness made replies *prima facie* inconsistent with earlier answers or other materials, such as his affidavit: this prompted the court to explore certain discrete issues by further questions.

(f) At certain stages of the hearing, the court's questioning of the witness stimulated answers which begged further questions, with a resulting spiralling effect. A paradigm example is provided by the questions generated by paragraph 2 of the witness's affidavit, in which he avers:

> "*I attended the hearing on 23rd December 2011 at the Kiev Commercial Court to provide assistance to Mr. Zaitsev. I was acting for Lyndhurst Development Trading SA pursuant to the Power of Attorney which Mr. Zaitsev issued to me, though I realised a few weeks later that it had not been certified by a notary and was therefore not valid*".

(g) The questions of the witness by the court directed to this discrete issue were stimulated by, firstly, the consideration that the cross-examination of the witness had not explored this issue in any depth. Secondly, these averments are, on their face, unsatisfactory and incomplete, crying out for further exploration. Thirdly, the materiality of these averments is beyond dispute. Fourthly, in circumstances where the third-named Respondent's credibility is plainly in issue, to a significant extent, the propriety of judicial exploration of these averments seems to me unassailable. Fifthly, if these averments had not been explored in depth by the court, an inference adverse to the third-named Respondent would have been a real possibility: accordingly, elementary fairness dictated that he be given the opportunity to deal fully with the subject matter.

(h) Generally, in many instances, I adjudged the third-named Respondent's replies to questions to be sufficiently unclear, incomplete or unsatisfactory to stimulate a clear requirement for further questioning by the court.

(i) On one discrete occasion during the latter stages of this party's evidence, he was cautioned by the court that, given that he had taken a solemn oath to tell the truth, a particular series of replies he was making were unsatisfactory. I consider that this is to be properly viewed as a clear illustration of fairness to the third-named Respondent: the court alerted him clearly to obvious shortcomings in how he was giving one particular piece of evidence and afforded him an opportunity for rectification, of which he duly availed. A failure on the part of the court to have articulated this particular concern would have been plainly unfair to the third-named Respondent. Furthermore, this isolated event seems to me to be plainly embraced by Lord Bingham's proposition that "*the mere fact that a judge, earlier in the same case or in a previous case, had commented adversely on a party or witness, or found the evidence of a party or witness to be unreliable, would not without more found a sustainable objection …*" [***Locabail*** *supra*].

(j) In the interests of fairness to the third-named Respondent and in the absence of any request to do so, the court proactively permitted re-examination of him by his own counsel in circumstances wherein, strictly, there was no right to re-examine as there had been no examination-in-chief.

(k) During the course of the hearing, the court did not hesitate to publicly reproach Mr. Miliutin, the moving parties' principal witness (seated in the public gallery of the courtroom), that his conduct was having a distracting effect and would have to cease immediately.

[22] It is appropriate to highlight certain other material considerations. The first is that this is a trial by judge alone, without a jury. The second is that this is a trial before a professional, full time judge who has taken the statutory judicial oath of office. The third is that while these are adversarial proceedings, they are not exclusively so. In this instance, the context is one in which the application to be determined asserts, in substance, a grave misuse of the process of this court. Insofar as this has given rise to something of an inquisitorial element, this, in my view, is both unsurprising and unobjectionable. Fourthly, an evaluation of the veracity and credibility of the evidence of the second and third-named Respondents will be a critical element in the court's determination of this contempt application. Fifthly, judicial interventions and questioning of parties and witnesses in any form of litigation must be seen in their particular context. In the present instance, the unusual context is constituted by the series of considerations which I have highlighted in the present and preceding paragraphs.

[23] In the exercise of its inherent jurisdiction, the High Court regulates its own procedure. It does so with a view to ensuring, *inter alia*, that hearings are conducted in an orderly fashion. As the present case has demonstrated, this control assumes greater importance and prominence where the hearing involves live link television and interpreters. Sir I. H. Jacob's illuminating essay "The Inherent Jurisdiction of the Court" [Volume 53, Current Legal Problems 1970, p. 23], begins with the proclamation:

> "*The inherent jurisdiction of the* [High] *Court may be invoked in an apparently inexhaustible variety of circumstances and may be exercised in different ways. This peculiar concept is indeed so amorphous and ubiquitous and so pervasive in its operation that it seems to defy the challenge to determine its quality and to establish its limits*".

Continuing, the author suggests that the juridical basis of the High Court's inherent jurisdiction is rooted in "*… the very nature of the court as a superior court of law*" [p. 27]. He continues:

> "*For the essential character of a superior court of law necessarily involves that it should be invested with* ***a power to maintain its authority and to prevent its process being obstructed and abused ...***
>
> *The juridical basis of this jurisdiction is therefore the authority of the judiciary to uphold, to protect and to fulfil the judicial function of administering justice according to law in a regular, orderly and effective manner*".

[Emphasis added].

Developing this theme, the author suggests that the inherent jurisdiction of the High Court to control its own process embraces powers to regulate its process and proceedings; to prevent abuses of its processes; and to compel observance of its process. Simultaneously, the author cautions against an unduly mechanistic approach, suggesting that the overarching touchstone is "*the needs of the court to fulfil its judicial functions in the administration of justice*" [p. 33]. I refer also to the reflections of Carswell J in ***Braithwaite -v- Anley Maritime Agencies*** [1990] NI 63, at pp. 69-70 especially, in passages which include a tribute to Sir I. H. Jacob as "*one of the foremost authorities on matters of procedure*".

[24] Where an application of the present kind is concerned, the ultimate barometer against which the conduct of the hearing by the court is to be measured is that of *fairness*. This means fairness to all parties. An assessment of fairness in the present context must also take into account the triangular nature of contempt proceedings. The question of whether the authority of the court has been abused is not a private *inter-partes* issue. Rather, it engages other interests, including in particular the public interest in the due administration of justice. In a passage belonging to the context of an earlier litigation culture and era, Denning LJ, having emphasized that a judge is not a mere passive umpire, continued:

> "*His object above all is to find out the truth and to do justice according to law …*
>
> *The judge's part in all this is to hearken to the evidence, only himself asking questions of witnesses when it is necessary to clear up any point that has been overlooked or left obscure; to see that the advocates behave themselves seemly and keep to the rules laid down by law; to exclude*

> *irrelevancies and discourage repetition; to make sure by wise intervention that he follows the points that the advocates are making and can assess their work; and at the end to make up his mind where the truth lies …*
>
> *There is one thing to which everyone in this country is entitled and that is a fair trial at which he can put his case properly before the judge.*"

(***Jennings –v- National Coal Board*** [1957] 2 All ER 155, pp. 159 and 161).

Clearly, in every non-jury trial, absent some compelling reason to the contrary, there can be no objection to the presiding judge taking reasonable steps to ensure that a witness's evidence is as complete and comprehensible as possible. Where the advocates decline to pursue or probe doubts, obscurities or inadequacies arising out of a witness's evidence, the judge may well have a duty to do so, dictated by elementary fairness. Context is everything.

[25] The present application is founded on an assertion of apparent bias. This particular doctrine gives primacy to perceptions, being a reflection of the immutable rule that justice should not only be done but should manifestly and undoubtedly be seen to be done. The application of the governing test requires the court to view the full equation through the lens of the hypothetical fair-minded and fully informed observer. As stated in ***R –v- Jones*** [2010] NICC 39:

> "[10] *It is trite that where an application of this kind is made, an asserted risk to the fairness of the trial which is flimsy or fanciful will not suffice. However, the converse proposition applies with equal force. The court is required to make an evaluative judgment based on all the information available. This requires, in the words of Lord Mustill, the formation of 'what is essentially an intuitive judgment' (**Doody –v- Secretary of State for the Home Department** [1993] 3 All ER 92, p. 106e). In making this judgment, the court will apply good sense and practical wisdom. Ultimately, the court's sense of fairness, as this concept has been explained above, and its grasp of realities and perceptions will be determinative.*"

Fairness being the ultimate and overarching barometer, I consider that there are no immutable rules or principles. In the questioning of the third-named Respondent (whether by cross-examination or by the court or by re-examination), innumerable replies have been made giving rise to doubts,

obscurities and uncertainties which, in fairness to all parties, particularly the third-named Respondent, the court could not possibly ignore. The hypothetical room became progressively filled with elephants, almost to bursting point, none of which could realistically or fairly be ignored. The court reacted accordingly and, in my view, was at all times measured, balanced and impartial. Ultimately, the question to be posed is whether, in the mind of the fair-minded and fully informed observer, there is a real possibility that this court will not approach its task of making the necessary findings of fact and determining all relevant issues with an open, objective and judicial mind (to borrow the words of Lord Bingham in ***Locabail***, paragraph [25]). I have reflected carefully on the measured submissions of Mr. Lockhart QC and Ms Simpson. Having done so, I conclude that this application has no merit and I dismiss it accordingly. If, ultimately, the outcome of the contempt proceedings (if pursued to completion) is not to the Respondents' liking, they will, of course, be at liberty to ventilate this issue further, if so advised, should an appeal eventuate.

Disposal

[26] I dismiss the recusal application. The contempt motion stands adjourned and will be reviewed by the court in due course.