Neutral Citation Number: [2016] EWHC 1048 (Comm)

Case No: CL-2013-000683

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 06/05/2016

Before:

MR JUSTICE LEGGATT

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Between:

Kazakhstan Kagazy PLC	**Claimants**
(and others)	
- and -	
(1) Baglan Abdullayevich Zhunus	**Defendants**
(Formerly Baglan Abdullayevicj Zhunussov)	
(2) Maksat Askaruly Arip	
(3) Shynar Dikhanbayeva	

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Paul Lowenstein QC and David Head QC (instructed by **Peters & Peters Solicitors LLP**) for the **First Defendant**
Paul McGrath QC and Anna Dilnot (instructed by **Cleary Gottlieb Steen & Hamilton LLP**) for the **Second and Third Defendants**

Hearing date: 7 April 2016
Further written submissions filed: 8 and 15 April 2016

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE LEGGATT

Mr Justice Leggatt:

A. INTRODUCTION

1. Mr Arip and Ms Dikhanbayeva, the second and third defendants in this action ("D2" and "D3"), have applied for permission to bring a claim for contribution against the first defendant ("Mr Zhunus") who has reached a settlement with the claimants. D2 has also applied for a worldwide freezing injunction against Mr Zhunus. This is my judgment on these applications after an oral hearing followed by further written submissions. The second application raises a question of wider significance as to when a freezing injunction may be granted in aid of a contribution claim.

The parties

2. The first claimant, a company registered in the Isle of Man, ("C1") is the ultimate parent company of the second to seventh claimants ("C2" to "C7"), each of which is incorporated and carries on business in Kazakhstan. C2 directly or indirectly owns C3 to C7. The principal businesses of the group (the "KK group") are the manufacture of paper and packaging, recycling of waste paper and logistics.

3. Between 2003 and 2009 Mr Zhunus and D2 were, respectively, the chairman of the board and chief executive officer of C2. Until C1 was incorporated in 2007, they each indirectly owned 50% of the shares of C2. When C1 was incorporated, they each indirectly owned 50% of its shares. They were also, respectively, the chairman of the board and chief executive officer of C1 until April 2008. Following a public offering and flotation of shares in C1 on the London Stock Exchange in July 2007, Mr Zhunus and D2 each retained an interest in 23.9% of the shares of C1 until September 2009, when those shareholdings were sold.

4. D3 was the finance director of C2 at all material times.

The claims against the defendants

5. These proceedings were commenced on 2 August 2013. The three main claims pleaded in the particulars of claim are, in summary, as follows:

    i) The claimants allege that, between 2005 and 2009, the defendants dishonestly caused C2, C3 and C4 to make payments to a purportedly independent construction company, Arka-Stroy LLP, for the development of a logistics centre and industrial park in Kazakhstan. It is alleged that only a minimal amount of construction work was actually done, that Arka-Stroy LLP was secretly controlled by the defendants and that much of the money was paid out to entities controlled by them. The claimants allege that the group has thereby suffered losses equivalent to around US$102 million.

    ii) The claimants allege that in 2008 and 2009 the defendants committed a similar fraud involving payments purportedly made for construction work by C6, which resulted in a further loss of some US$14 million.

    iii) A third claim, added by amendment in 2015, involves allegations that the defendants used nominee companies to acquire land plots cheaply from

farmers in Kazakhstan which were then re-sold to C2, ostensibly for development, at highly inflated prices, resulting in a loss of some US$44 million.

6. Mr Zhunus served a defence on 27 January 2014. In summary, he asserted that his role in the KK group was essentially a non-executive and not a managerial one, that he was not responsible for the relevant transactions, that he at all times acted honestly and in what he believed to be the best interests of the group, and that he did not receive any illicit payments.

7. D2 and D3 served their defence on 6 February 2015. In summary, they largely admit that they were involved in the decisions to enter into the relevant transactions but assert that these were commercial decisions taken in what were perceived to be the best interests of the KK group at the time and not in furtherance of any fraudulent scheme. D2 and D3 deny that there was any fraud or that they personally benefitted from the transactions.

8. All the claims are governed by the law of Kazakhstan, which has a three year limitation period. Each of the defendants has alleged that the claims are time-barred on the basis that the claimants knew or ought to have known of the material facts more than three years before this action was commenced.

9. At the same time as serving his defence, Mr Zhunus served a contribution notice on D2 and D3. Those defendants did not, however, serve a contribution notice on Mr Zhunus when their defence was served.

The freezing injunctions

10. When they commenced these proceedings on 2 August 2013, the claimants applied without notice for a freezing order against Mr Zhunus and D2. Such an order was made freezing their assets worldwide up to an amount of £100 million – which was later reduced to £72 million.

11. On the return date, the freezing injunction against Mr Zhunus was replaced by equivalent undertakings given by him to the court. D2, on the other hand, applied to discharge the injunction against him, arguing that the claimants had no good arguable case because of his limitation defence. That argument was rejected by Judge Mackie QC sitting as a judge of this court and also, on an appeal, by the Court of Appeal.[1]

12. There has since been another challenge to the freezing orders, in which this time Mr Zhunus took part. In August 2015 all three defendants applied for summary judgment based on new evidence which was said to demonstrate that the claimants had knowledge of the material facts by 1 August 2010 (i.e. more than three years before this action was begun), with the consequence that the claimants had no real prospect of succeeding on their claims against the defendants. In the alternative, D2 applied for the freezing injunction against him to be discharged and Mr Zhunus applied to be released from his equivalent undertakings on the ground that there was no good arguable case that the claims were brought before the limitation period had expired.

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1 See [2013] EWHC 3618 (Comm) and on appeal [2014] EWCA Civ 381.

13. In a judgment given on 27 October 2015 those applications were dismissed by Judge Waksman QC,[2] who also gave directions to trial. The trial has been listed to commence in April 2017, with a time estimate of 12 weeks.

Settlement between the claimants and Mr Zhunus

14. The claimants have now settled their claims against Mr Zhunus on the terms of a deed dated 10 February 2016. A copy of the settlement deed was disclosed after I had heard oral argument on these applications (leading to further written submissions). The basic structure of the settlement is that Mr Zhunus has paid a sum of money in full and final settlement of all claims against him and has also agreed to co-operate with the claimants in specified ways which include giving standard disclosure of relevant documents and, if so requested, giving evidence in these proceedings.

15. Pursuant to a consent order dated 15 March 2016, all further proceedings between the claimants and Mr Zhunus in this action have been stayed on the terms of the settlement deed except for the purpose of carrying those terms into effect, and the undertakings freezing the assets of Mr Zhunus have been discharged.

The present applications

16. In late January or early February 2016 D2 and D3 became aware that Mr Zhunus was in settlement discussions with the claimants. That prompted them to apply for permission to serve a contribution notice on Mr Zhunus.

17. D2 then applied for a worldwide freezing order against Mr Zhunus in an amount of £72 million. To hold the position until the applications are determined, Mr Zhunus has given temporary undertakings to the court in similar terms to the undertakings discharged by the consent order, with cross-undertakings from D2 replacing those previously given by the claimants.

The Contribution Act

18. Section 1 of the Civil Liability (Contribution) Act 1978 provides as follows:

> "**Entitlement to contribution.**
>
> (1) Subject to the following provisions of this section, any person liable in respect of any damage suffered by another person may recover contribution from any other person liable in respect of the same damage (whether jointly with him or otherwise).
>
> (2) A person shall be entitled to recover contribution by virtue of subsection (1) above notwithstanding that he has ceased to be liable in respect of the damage in question since the time when the damage occurred, provided that he was so liable immediately before he made or was ordered or agreed to make the payment in respect of which the contribution is sought.

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[2] See [2015] EWHC 3059 (Comm).

> (3) A person shall be liable to make contribution by virtue of subsection (1) above notwithstanding that he has ceased to be liable in respect of the damage in question since the time when the damage occurred, unless he ceased to be liable by virtue of the expiry of a period of limitation or prescription which extinguished the right on which the claim against him in respect of the damage was based.
>
> (4) A person who has made or agreed to make any payment in bona fide settlement or compromise of any claim made against him in respect of any damage (including a payment into court which has been accepted) shall be entitled to recover contribution in accordance with this section without regard to whether or not he himself is or ever was liable in respect of the damage, provided, however, that he would have been liable assuming that the factual basis of the claim against him could be established.
>
> …
>
> (6) References in this section to a person's liability in respect of any damage are references to any such liability which has been or could be established in an action brought against him in England and Wales by or on behalf of the person who suffered the damage; but it is immaterial whether any issue arising in any such action was or would be determined (in accordance with the rules of private international law) by reference to the law of a country outside England and Wales."

19. Section 2(1) of the Act provides that, in any proceedings for contribution under section 1, the amount of the contribution recoverable from any person "shall be such as may be found by the court to be just and equitable having regard to the extent of that person's responsibility for the damage in question".

Procedure for claiming contribution

20. Pursuant to CPR 20.6(1), a defendant who has filed an acknowledgement of service or a defence may make an additional claim for contribution or indemnity against a person who is already a party to the proceedings by (a) filing a notice containing a statement of the nature and grounds of his additional claim, and (b) serving the notice on that party. Pursuant to r.20.6(2), a defendant may file and serve such a contribution notice without permission if he files and serves it with his defence; otherwise the permission of the court is needed.

21. In this case, as already mentioned, D2 and D3 did not file and serve a notice claiming contribution from Mr Zhunus when they served their defence. They therefore need permission to do so.

B. THE CONTRIBUTION APPLICATION

22. In support of their application for permission, the following points were made by Mr McGrath QC and Ms Dilnot on their behalf. Had D2 and D3 filed and served a contribution notice with their defence, they would have been entitled to pursue the claim as of right without permission. The fact that Mr Zhunus has now settled with the claimants does not prevent D2 and D3 from claiming contribution from him, nor does it affect the merits of their claim. Although there has been delay (of approximately one year from when the defence was served) in bringing the contribution claim, this has caused no relevant prejudice to Mr Zhunus. In these circumstances, there is no proper basis for objecting to the application for permission. Furthermore, it is far more efficient to resolve the contribution claims of D2 and D3 against Mr Zhunus at the trial that has already been fixed to begin in April 2017 rather than at a separate and subsequent trial.

23. The application is opposed by Mr Zhunus on two principal grounds. First, his counsel argued that the draft contribution notice does not set out the grounds of the proposed claim with adequate particularity in circumstances where allegations of fraud and other serious wrongdoing are made against Mr Zhunus. Second, Mr Lowenstein QC and Mr Head QC submitted that the claim for contribution which D2 and D3 seek to make against Mr Zhunus is incapable of being established because the case previously made against Mr Zhunus by the claimants is no longer being pursued and contradicts the case which D2 and D3 themselves advance.

The lack of particularity argument

24. I am not impressed by the first ground on which the application is opposed. The allegations made against Mr Zhunus on which D2 and D3 say in the draft contribution notice that they will rely have already been pleaded by the claimants in the amended particulars of claim. Although the defence served by Mr Zhunus contained complaints that the particulars of claim are inadequately particularised, no application has ever been made to strike them out; and having read the amended particulars of claim and further information provided by the claimants in response to a request made by Mr Zhunus, I cannot see that such an application would have had any real prospect of success.

25. Counsel for Mr Zhunus submitted that D2 and D3 should be required to plead a more detailed case than the claimants have done because, while the current beneficial owners of the claimants have no direct knowledge of the transactions alleged to have been fraudulent, that cannot be said of D2 and D3 who were, on their own admission, intimately involved in the transactions. I do not accept, however, that particulars of claim which are sufficient to satisfy the requirements of the Civil Procedure Rules – in particular, CPR 16.4(1)(a) and 16PD 8.2 – when served by the claimants can nevertheless be said to be insufficient to do so when relied on by another party. At most, additional knowledge of that other party could be relevant to a request to provide further information – though this raises the question, which I will consider soon, of whether D2 and D3 are themselves making the allegations pleaded by the claimants.

26. I also see no merit in complaints by Mr Zhunus that the draft contribution notice fails to explain the basis of his alleged liability for the same damage as D2 and D3 or the

grounds on which it is said to be just and equitable that he should pay contribution having regard to his responsibility for such damage. (Although not strictly relevant, I observe in passing that Mr Zhunus' own contribution notice is no more forthcoming on these matters.) The case pleaded in the amended particulars of claim is that the same losses were caused by the fraud and breaches of duty allegedly committed by each of the three defendants. Particulars of that case are therefore sufficient to explain the basis of the alleged liability of Mr Zhunus for the same damage as D2 and D3. Paragraph 7 of the draft contribution notice sets out matters relied on as going to the extent of Mr Zhunus' responsibility for the damage. Beyond that, what apportionment is just and equitable is, in my view, a matter for argument when relevant facts have been found. It is not a matter on which it is either normal or necessary to elaborate in the contribution notice.

27. I therefore reject the argument that the draft contribution notice fails to give adequate particulars of the allegations on which D2 and D3 wish to rely. In my view, it contains a sufficient statement of the nature and grounds of the proposed claim. Had the claimants not settled their claims against Mr Zhunus, I would have accepted Mr McGrath's submission that there is no proper basis for objecting to the application to file and serve the notice.

The no factual case argument

28. The second argument made on Mr Zhunus' behalf, however, is in my view well founded. The fundamental difficulty which D2 and D3 face is that, following the settlement between the claimants and Mr Zhunus, they cannot base a claim for contribution against Mr Zhunus on the case pleaded against him in the amended particulars of claim unless they are prepared to advance that case themselves – which, for understandable reasons, they are not presently willing to do.

29. It is not objectionable in principle for a claimant to advance an alternative case based on another party's version of what happened which the claimant denies: see e.g. Binks v Securicor Omega Express Ltd [2003] 1 WLR 2557; Bleasdale v Forster [2011] EWHC 596 (Ch), para 26. That is often the approach taken when a defendant / Part 20 claimant denies liability in the main action but makes a claim to recover contribution from another party in the event of being found liable to the claimant. There would have been no difficulty in D2 and D3 adopting such an approach when the claimants were pursuing claims both against them and against Mr Zhunus. In broad outline the claimants have alleged (1) that the defendants caused them to make payments which resulted in loss and (2) that in causing the claimant companies to make those payments each of the defendants acted dishonestly (or otherwise wrongfully). D2 and D3 can, without any inconsistency, deny the second of those propositions whilst also advancing an alternative case to the effect that, if the claimants succeed in establishing both propositions, they (D2 and D3) are entitled to recover contribution from Mr Zhunus based on his share of responsibility for the losses caused.

30. That approach is no longer available, however, following the settlement between the claimants and Mr Zhunus. The fact that Mr Zhunus has been released from any liability to the claimants does not prevent D2 and D3 from claiming contribution from him – as is clear from section 1(3) of the 1978 Act. It is also true, as Mr McGrath emphasised, that the claims made by the claimants against Mr Zhunus have not been

discontinued, but only stayed. Nor have the claimants applied to amend the particulars of claim so as to delete any of the allegations pleaded against him. However, the effect of the settlement and stay of the proceedings is that the claimants are no longer pursuing, and are prevented from pursuing, the claims which they have pleaded against Mr Zhunus.[3]

31. This is not a case in which it is necessary to decide whether Mr Zhunus would, but for the settlement, have been liable to the claimants in order to determine whether D2 and/or D3 are liable to the claimants. No conspiracy is alleged and D2 and D3 are not said to have been accessories or secondary parties to wrongs committed by Mr Zhunus. Each defendant is alleged to be liable on the basis of his or her own acts or omissions. It follows that the facts alleged in the particulars of claim which accuse Mr Zhunus of fraud and other wrongdoing are no longer facts in issue in the proceedings.

32. In these circumstances D2 and D3 cannot now piggy-back on the case made by the claimants against Mr Zhunus in order to establish that Mr Zhunus is liable to the claimants for the simple reason that the claimants are not now making any case against Mr Zhunus.

33. The liability of Mr Zhunus to the claimants will only once again be in issue if D2 and D3 make it so for the purpose of a contribution claim. That would require them positively to assert and assume the burden of proving as their own case the case which the claimants have pleaded and were previously advancing against Mr Zhunus, including allegations that Mr Zhunus acted fraudulently (or committed other wrongdoing). Understandably given the nature of their own factual case, D2 and D3 have not done this in their draft contribution notice.

The draft contribution notice

34. Until it was revised shortly before the hearing of the applications, paragraph 4 of the draft contribution notice stated that D2 and D3 will seek contribution from Mr Zhunus if either of D2 and D3 is found liable to the claimants and Mr Zhunus is held liable for the same damage. The latter condition, however, is incapable of being met when the claimants have settled their claims against Mr Zhunus and the proceedings between them are stayed. No doubt in recognition of this fact, a revised draft of this paragraph has been produced. Paragraph 4 of the draft notice now states that D2 and D3 will seek contribution from Mr Zhunus if either of D2 and D3 is found liable to the claimants "on the basis of conduct which, notwithstanding any settlement between the claimants and Mr Zhunus, has been alleged by the claimants to have been carried out jointly by Mr Zhunus, [D2] and/or [D3]." However, this reformulation does not overcome the difficulty. A finding that D2 and D3 are liable to the claimants on the basis of such conduct on their part would not be sufficient to establish an entitlement to recover contribution from Mr Zhunus. To establish such an entitlement, it would also have to be shown (1) that Mr Zhunus carried out the conduct in question jointly with D2 and/or D3 and (2) that in doing so he acted dishonestly (or otherwise wrongfully).

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[3] The settlement deed provides that in certain circumstances, if Mr Zhunus is found to have been in material breach of obligations under the deed, the stay may be lifted and the claims against him revived. But that does not affect the position unless and until such an event occurs.

35. Paragraphs 5 and 6 of the draft contribution notice go on to plead that D2 and D3 "will rely" on the facts and matters alleged in the amended particulars of claim and in the amended reply to Mr Zhunus' defence, including but not limited to certain specified matters. Those alleged facts and matters include allegations that Mr Zhunus caused the claimants to enter into transactions which resulted in losses and that in doing so Mr Zhunus acted fraudulently. It is not explained, however, exactly how D2 and D3 will rely on the allegations. The statement that they will do so is clearly not intended to mean that D2 and D3 will themselves seek to prove the truth of all the allegations pleaded in the amended particulars of claim and reply, since some of those allegations are flatly inconsistent with their own factual case (and in particular with their case that the transactions in question were entered into for *bona fide* commercial reasons and not in furtherance of any fraudulent scheme). If what is meant, however, is that D2 and D3 will rely on the facts alleged in the amended particulars of claim and reply if and in so far as the claimants succeed in proving them, the problem again arises that such conditional reliance cannot now found a contribution claim as the claimants are no longer pursuing their case against Mr Zhunus.

36. Positive allegations are made by D2 and D3 in paragraph 7 of the draft contribution notice that Mr Zhunus had an active role in managing the KK group and was involved in approving all major transactions including those which are the subject of the claims in these proceedings. But the allegations made in paragraph 7 notably do not include any allegation that Mr Zhunus acted dishonestly in approving the transactions in question. No doubt that is because it is D2 and D3's case that the transactions were proper commercial transactions. Nor is there any assertion that conduct of Mr Zhunus caused loss to the claimants or that Mr Zhunus received any illicit payments at the expense of the claimants.

37. The final paragraph of the draft notice pleads that, in the event that any of the claimants establishes liability against the defendants for the damage alleged, responsibility for such damage lies (to an extent to be determined by the court) with Mr Zhunus. This formulation faces the same impediment, however, as the original version of paragraph 4 in that such an event will not occur as the claimants are not seeking to establish liability on the part of Mr Zhunus.

38. Accordingly, the draft contribution notice suffers from the flaw that it does not advance a factual case of fraud or other wrongdoing by Mr Zhunus. It is necessary for D2 and D3 to advance such a case if they wish to claim contribution from Mr Zhunus because no such case is being advanced by the claimants which D2 and D3 can adopt as an alternative to their primary position. The claim for contribution which D2 and D3 are applying for permission to make is therefore bound to fail.

Is the deficiency remediable?

39. Mr McGrath made it clear that the deficiency in the draft contribution notice is not the result of any inaccuracy in drafting but of a deliberate decision by D2 and D3 not to advance the allegations of fraud previously made by the claimants against Mr Zhunus. In the course of argument I asked what would happen if Mr Zhunus were to give evidence at trial and say, in accordance with his pleaded defence, that he at all times acted honestly. I asked whether D2 and D3 would challenge such evidence. The answer given was that counsel for D2 and D3 would put to Mr Zhunus the allegations of fraud and other wrongdoing pleaded in the amended particulars of claim so as to

give him an opportunity to respond to the allegations, but would do so without adopting the allegations on behalf of their clients. This, as it seems to me, encapsulates the untenable nature of D2 and D3's position. It cannot be right to require Mr Zhunus to take part in a trial in order to respond to a case which no one is actually making against him. As D2 and D3 do not adopt the claimants' allegations of fraud and other wrongdoing by Mr Zhunus and the claimants are no longer making that case themselves, there is at present no case against Mr Zhunus that he can be called on to answer.

40. As a fall-back position, Mr McGrath urged that, even if the view is taken that the proposed contribution claim cannot or should not be dealt with at the same trial as the claims against D2 and D3 and must instead be dealt with at a separate and subsequent trial, the court should still permit D2 and D3 to file and serve a contribution notice at this stage. I do not accept, however, that the matter is solely one of case management under CPR 20.9. I do not think it right to permit D2 and D3 to commence a claim for contribution against Mr Zhunus when neither they nor the claimants are currently making a factual case against Mr Zhunus which, if proved, would potentially entitle D2 or D3 to recover contribution from him. For D2 and D3 to commence proceedings under CPR Part 20 in these circumstances would, as I see it, be an improper use of the court's process – in the same way as it is an abuse of process for a claimant to commence or continue proceedings which the claimant has no present intention of pursuing: see Grovit v Doctor [1997] 1 WLR 640; Arbuthnot Latham Bank Ltd v Trafalgar Holdings Ltd [1998] 1 WLR 1426; Solland International Ltd v Clifford Harris & Co [2015] EWHC 3295 (Ch).

Timing of the application

41. I should make it clear that the flaw which I consider fatal to the proposed contribution claim does not depend on its timing. Had D2 and D3 filed and served a contribution notice in the form now put forward either as of right with their defence or subsequently with permission, they would still have faced exactly the same difficulty as they do now after the claimants had settled their claim against Mr Zhunus. D2 and D3 could not following the settlement have maintained their claim for contribution without amending the notice to make allegations themselves of fraud or other wrongdoing against Mr Zhunus. Without such amendments, their claim would now be struck out. As it is, their application for permission to file and serve a contribution notice must be refused.

Mr Zhunus' contribution claim

42. The above conclusion and reasoning are also not affected by the fact that Mr Zhunus still has a claim for contribution against D2 and D3. His claim does not face the same difficulty as theirs. In order to recover contribution from D2 and D3 if they are held liable to the claimants, Mr Zhunus does not need to establish that he is or ever was liable to the claimants himself. Pursuant to section 1(4) of the Contribution Act, it is enough for him to point to the fact that he would have been liable in respect of the same damage assuming that the factual basis of the claim made against him could be established.

43. Mr Zhunus can therefore wait to see whether the claimants succeed at the trial of their claims against D2 and D3. If they do, Mr Zhunus will be entitled to recover

contribution from D2 and D3 in such amount (if any) as the court considers just and equitable having regard to the extent of their responsibility for the damage in question. If, however, D2 and D3 are found to have defrauded the claimants, there will at that point be nothing to inhibit them from alleging that Mr Zhunus was also fraudulent and launching a claim for contribution against him on that basis. Should such a claim be made, it seems to me that there would then need to be a second trial to determine the truth of the allegations made by D2 and D3 against Mr Zhunus before the court could fairly apportion responsibility and decide questions of contribution between Mr Zhunus on the one hand and D2 and D3 on the other.

44. In view of this possibility, although the question does not presently arise for decision, I cannot at the moment see that there is any scope for dealing with the contribution claim made by Mr Zhunus at the hearing fixed for next April even if he continues to pursue that claim.

C. D2's APPLICATION FOR A FREEZING INJUNCTION

45. In view of my decision on the first application, it would be possible to deal shortly with the application made by D2 for a freezing injunction against Mr Zhunus. Two significant points of principle were raised, however, on which I have received full and helpful submissions. As these points are of wider significance and in case the matter goes further, I will address them.

The absence of precedent

46. The researches of counsel did not identify any report of a case in which a defendant to a fraud claim has asked the court to grant a freezing injunction against a co-defendant. Counsel for D2 suggested that this is unsurprising as in such a case the claimant will ordinarily have obtained such relief at the outset of the proceedings; but they argued that there is no reason either in principle or as a matter of the court's discretion why a defendant should not be granted such relief. They further submitted that the criteria for a freezing injunction are fulfilled in the present case, as the existence of a good arguable case against both D2 and Mr Zhunus has been confirmed by the judgment of Judge Waksman QC, and the court has likewise previously found there to be a real risk of dissipation of assets by Mr Zhunus. Moreover, that risk has only increased as Mr Zhunus is no longer resident in England, as he was at the start of the proceedings, and is again residing in Kazakhstan.

47. Counsel for Mr Zhunus offered a different explanation for the absence of precedent for D2's application. They argued that the court has no jurisdiction to grant a freezing injunction in support of a cause of action which is contingent only, and that any claim by D2 for contribution from Mr Zhunus is and will remain merely contingent unless and until his own liability to the claimants (which he denies) is established. They further submitted that such an eventuality would in practice involve a finding that D2 acted fraudulently and the court should refuse to grant a freezing injunction in aid of a claim which is premised on the fraud of the applicant.

48. I will consider at once the second of these arguments because its consequence, if correct, would be that a defendant to a fraud claim can never obtain a freezing injunction in aid of a Part 20 claim.

Clean hands

49. Counsel for Mr Zhunus emphasised that, realistically, D2 will only be entitled to recover contribution if he is found to have acted dishonestly. They accepted that such a finding would not bar D2 from being awarded contribution under the Act but submitted that the grant of a worldwide freezing injunction in relation to such a contribution claim is a different matter altogether. They argued that D2 cannot be said to have "clean hands" in applying for such relief and that as a matter of discretion the court should refuse to grant it.

50. In my view, this argument is misconceived. It is clear law that a person who has been found by the court to have acted fraudulently is entitled to recover contribution from another party to the fraud in such amount as is appropriate to achieve a just and equitable distribution of the financial burden of liability: see Dubai Aluminium Co Ltd v Salaam [2003] 2 AC 366. As Lord Nicholls observed in that case (at para 60), the Contribution Act "casts upon the court the task of adjudicating upon a just and equitable distribution of the burden of liability between all manner of wrongdoers". It would be inconsistent with the policy of the Act and calculated to undermine it if the court refused to grant ancillary relief to a putative wrongdoer where such relief is necessary to make an order for the payment of contribution effective.

51. Nor does the principle that a person must come to equity with "clean hands" prevent or inhibit the court from granting a freezing injunction. This principle does not mean that equity will deny relief to anyone found to have done something bad. The court is not concerned with the general conduct of the applicant. To justify the refusal of equitable relief the applicant's misconduct must be connected with the relief sought. Thus, the doctrine of "clean hands" is simply an aspect of the principle that abuse of the court process can lead to the court refusing a remedy which would otherwise have been granted: see Royal Bank of Scotland plc v Highland Financial Partners [2012] EWHC 1278 (Comm), paras 176-179. In the present case the frauds of which D2 is accused have nothing to do with the way in which the present proceedings have been conducted by D2.

52. The case of Rasu Maritima SA v Perusahaan [1978] QB 6, on which counsel for Mr Zhunus relied, does not in my view assist their argument. That case was decided when the procedure of granting freezing injunctions was in its infancy, and confirmed that the discretion to grant such an injunction is not confined to cases so plain that the applicant is entitled to summary judgment but is available whenever the claimant can show a "good arguable case". Having examined the strength of the claimant's case, Lord Denning MR did not think "it would be proper in this case to intervene to assist one side or the other" and felt "tempted to say 'a plague on both your houses'". That remark was made in the light of evidence which suggested that the contract on which the claim was based was procured by corruption and that the individual who made it on the defendant's behalf was acting in breach of trust and beyond his lawful powers. I do not, however, read Lord Denning's remark as meaning that it would be improper to grant an injunction to a claimant suspected of fraud, but rather that, on the material available, the claimant could not show that it had a better argument than the defendant and therefore could not demonstrate a "good arguable case". This was in any event only one of a number of considerations which led the Court of Appeal to conclude that on the facts of that particular case an injunction should not be granted. The

decision cannot be taken as authority for expanding the concept of "clean hands" to embrace alleged misconduct which forms part of the underlying dispute.

53. I conclude that the fact that D2 will only be entitled to recover contribution from Mr Zhunus if he, as well as Mr Zhunus, is found to have acted fraudulently does not provide any reason to refuse D2's application for a freezing injunction.

The no cause of action argument

54. I turn to the argument that the court cannot grant such an injunction because D2 does not have an existing cause of action and will not do so unless and until he has been held liable (or has agreed) to pay compensation to the claimants.

55. This argument is founded on a line of cases which derive from *dicta* in Siskina (Owners of cargo lately laden on board) v Distos Compania Naviera SA (The Siskina) [1979] AC 210, 256, where Lord Diplock said:

> "A right to obtain an interlocutory injunction is not a cause of action. It cannot stand on its own. It is dependent upon there being a pre-existing cause of action against the defendant arising out of an invasion, actual or threatened by him, of a legal or equitable right of the plaintiff for the enforcement of which the defendant is amenable to the jurisdiction of the court. The right to obtain an interlocutory injunction is merely ancillary and incidental to the pre-existing cause of action. It is granted to preserve the status quo pending the ascertainment by the court of the rights of the parties and the grant to the plaintiff of the relief to which his cause of action entitles him, which may or may not include a final injunction."

56. What the House of Lords actually decided in The Siskina was that, to come within a rule of court which enabled a foreign defendant to be sued in England "if in the action … an injunction is sought ordering the defendant to do or refrain from doing anything within the jurisdiction",[4] the injunction sought had to be part of the substantive relief claimed in the action and not merely ancillary to a claim for substantive relief. Thus, a freezing injunction could only be granted against a defendant who was independently amenable to the territorial jurisdiction of the English court, and could not itself found such jurisdiction. It was not necessary to this conclusion to decide that the cause of action in aid of which a freezing injunction is sought must already have accrued before an injunction can be granted. Nevertheless, Lord Diplock's reference to a "pre-existing" cause of action was taken in subsequent cases to lay down such a requirement: see Siporex Trade SA v Crundel Commodities Ltd [1986] 2 Lloyd's Rep 428, 436; Steamship Mutual Underwriting Association v Thackur Shipping Co Ltd [1986] 2 Lloyd's Rep 439; Veracruz Transportation Inc v VC Shipping Co Inc (The Veracruz) [1992] 1 Lloyd's Rep 353; Zucker v Tyndall Holdings Plc [1992] 1 WLR 1127.

57. The case which illustrates this position most starkly is The Veracruz, which involved a contract for the sale of a ship. The seller gave a contractual notice of its intention to

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[4] See RSC O.11 r.1(1)(i), now CPR PD 6B, para 3.1(2).

deliver the ship to the buyer. The purchase price was payable on delivery but there was evidence that the ship was not going to be delivered in the condition warranted by the seller and that costly repairs would be needed to bring the ship into that condition. The seller was a Liberian company with no other asset apart from the ship and its proceeds of sale. The buyer applied for an injunction which would take effect as soon as the price was paid to freeze the relevant portion of the proceeds in the seller's hands. There was an obvious likelihood that a judgment against the seller for damages for breach of warranty would be unenforceable unless the injunction was granted. Nevertheless, the Court of Appeal held that the court had no power to grant a freezing injunction because at the time of the application the buyer's cause of action had not yet arisen. It is difficult to see any merit in this result, which the Court of Appeal felt bound by authority to reach. Sir John Megaw lamented that fact when he said (at 361) that he saw "no valid reason, in logic or practical convenience in the interest of justice why jurisdiction should not exist" but considered that "we are precluded from so deciding on this question of technical jurisdiction".

58. As Lord Scott observed in Fourie v Le Roux [2007] 1 WLR 320 at para 30, the law has not stood still since The Siskina. Amongst other developments, the grant of a freezing injunction is no longer dependent upon the applicant having a right to claim substantive relief from the defendant in England. Pursuant to section 25 of the Civil Jurisdiction and Judgment Act 1981, the High Court in England and Wales now has power to grant interim relief where proceedings have been or are to be commenced in another jurisdiction. Moreover, it is now settled law that a freezing injunction may be granted against a person against whom no cause of action lies if that person is closely related to a party against whom the applicant does have a cause of action: see TSB Private Bank International SA v Chabra [1992] 1 WLR 231; Mercantile Group (Europe) AG v Aiyela [1994] QB 366; Yukong Line Ltd of Korea v Rendsburg Investments Corp [2001] 2 Lloyd's Rep 113, para 37. Further, in Fourie v Le Roux the House of Lords rejected the notion that the court lacks jurisdiction to grant a freezing injunction in the absence of proceedings in which substantive relief is sought, treating the need for such proceedings only as a matter of good practice relevant to the exercise of the court's discretion. In the light of these developments, and for reasons mentioned later, it seems to me that The Veracruz and the other cases in that line of authority are ripe for reconsideration. Nevertheless, those cases have not been overruled. As the law currently stands, therefore, this court may not grant a freezing injunction unless the applicant has an accrued cause of action. So the question becomes: on a claim under the Contribution Act when does the claimant's cause of action accrue?

When does a cause of action for contribution accrue?

59. Counsel for Mr Zhunus submitted that a cause of action accrues only when the person claiming contribution is held liable in respect of the damage or makes or agrees to make a payment in compensation for the damage in question. This submission was founded on section 10 of the Limitation Act 1980, which provides:

> "(1) Where under section 1 of the Civil Liability (Contribution) Act 1978 any person becomes entitled to a right to recover contribution in respect of any damage from any other person, no action to recover contribution by virtue of that right shall be

> brought after the expiration of two years from the date on which that right accrued.
>
> (2) For the purposes of this section the date on which a right to recover contribution in respect of any damage accrues to any person (referred to below in this section as "the relevant date") shall be ascertained as provided in subsections (3) and (4) below.
>
> (3) If the person in question is held liable in respect of that damage—
>
> (a) by a judgment given in any civil proceedings; or
>
> (b) by an award made on any arbitration;
>
> the relevant date shall be the date on which the judgment is given, or the date of the award (as the case may be).
>
> ...
>
> (4) If, in any case not within subsection (3) above, the person in question makes or agrees to make any payment to one or more persons in compensation for that damage (whether he admits any liability in respect of the damage or not), the relevant date shall be the earliest date on which the amount to be paid by him is agreed between him (or his representative) and the person (or each of the persons, as the case may be) to whom the payment is to be made."

60. In Aer Lingus plc v Guildacroft Ltd [2006] 1 WLR 1173 the Court of Appeal held that section 10(3) refers to a judgment or award which ascertains the quantum of the claim and does not merely establish liability for an amount to be assessed. Accordingly, for the purposes of section 10 of the Limitation Act, a right to recover contribution in respect of any damage accrues when the person claiming contribution is ordered to pay or pays or agrees to pay an amount of money in compensation for the damage.

61. Counsel for Mr Zhunus submitted that, as D2 has not been held liable or agreed to pay any compensation to the claimants, he does not have any presently constituted cause of action for contribution against Mr Zhunus, but only a contingent claim. D2 therefore has no basis on which to apply for a freezing injunction.

62. D2's stance started from the premise that the Contribution Act creates a cause of action in its own right, the ambit of which is to be discerned from its terms: Virgo Steamship Co SA v Skaarup Shipping Corporation (the "Kapetan Georgis") [1988] 1 Lloyd's Rep 352, 357. Mr McGrath submitted that the elements of the cause of action are to be found in section 1(1) of the Act read together with section 1(6). The combined effect of these provisions is that a person whose liability has been or could be established in an action brought against him in England and Wales by a claimant who has suffered damage is entitled to recover contribution from any other person

whose liability in respect of the same damage has been or could be established in such an action. Mr McGrath submitted that there is a good arguable case that this test is met in the present case, and D2 therefore has an existing statutory right to recover contribution from Mr Zhunus.

63. I am not persuaded by either of these arguments. Taking D2's argument first, for reasons given by Hobhouse J in RA Lister Ltd v Thomson (Shipping) Ltd (The Benarty)(No 2) [1987] 1 WLR 1614, 1621-22, I think it clear that section 1(6) of the Contribution Act is concerned with the definitional question of what counts as a liability for the purpose of a contribution claim and not with the time at which a right to recover contribution arises. In Cooperative Retail Services Ltd v Taylor Young Partnership Ltd [2000] 2 All ER (Comm) 865 the Court of Appeal did not take issue with that analysis but disagreed with the view of Hobhouse J on the further question of the time at which the test of liability specified in section 1(1) and (6) of the Act has to be satisfied. In The Benarty (No 2) Hobhouse J had thought that the relevant time was when the damage occurred. In the Cooperative case the Court of Appeal rejected that view and decided that the relevant time is when contribution is being sought[5] – a decision affirmed by the House of Lords: see [2002] 1 WLR 1419, paras 52-60. That decision does not, however, address the question of when a person is entitled to seek contribution.

64. Section 10 of the Limitation Act does address that question. But as is made expressly clear by the opening words of sub-section (2), this statutory provision is concerned solely with when a right to recover contribution accrues for the purposes of limitation. That date might turn out to coincide with the date when a cause of action accrues for the purpose of enabling a claimant to apply for a freezing injunction, but I cannot see any reason in principle why those dates should necessarily be the same. I therefore do not accept the submission made by counsel for Mr Zhunus that section 10 of the Limitation Act "is the beginning and end of the matter".

65. It is, I think, a mistake to suppose that the question "when does a cause of action accrue?" is one which has a single, established meaning. Its meaning may vary depending on the context and the purpose for which the question is being asked. The question is capable of meaning "when is a person entitled to commence proceedings claiming particular relief?" It can also mean "when does time begin to run for the purpose of calculating the time limit for bringing such a claim?" A third possible meaning is "when does a right to be granted the relief arise?" For many kinds of claim these dates will coincide. For example, where the claim is one for damages in tort, the claimant's cause of action accrues in all three senses at the time when the claimant suffers a loss as a result of the defendant's wrongful act or omission. Where the claim is for contribution, however, the three dates may diverge.

66. This may be illustrated by considering the contribution claim made in the present case by Mr Zhunus. Pursuant to CPR 20.6(1), Mr Zhunus was entitled to commence proceedings claiming contribution from D2 and D3 when he did on 27 January 2014 by serving a contribution notice with his defence. Under section 10 of the Limitation Act, the date on which time began to run for the purpose of limitation was 10

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[5] The Court of Appeal left open whether this meant the time when proceedings are begun for the purpose of claiming contribution or the time when the judge adjudicating upon such a claim decides whether or not to order contribution: see para 47.

February 2016, when the settlement deed was executed under which Mr Zhunus agreed to make a payment to the claimants. It is clear from section 2 of the Contribution Act, however, that Mr Zhunus will not have a right to be paid a contribution under the Act unless and until the court makes a finding that it is just and equitable to require D2 and/or D3 to pay a contribution to Mr Zhunus and has determined the amount of that contribution.

Which date is relevant in applying for a freezing injunction?

67. It is thus necessary to ask which meaning is apposite and hence which date is relevant in the context of an application for a freezing injunction. In so far as this court is precluded by authority from granting an injunction unless the applicant has a "pre-existing cause of action" for substantive relief, in what sense should this requirement be understood? Is it sufficient that the applicant is entitled to commence proceedings claiming such relief – so that an application to strike out the claim on the ground that it is premature would fail? Or is it necessary to show that time has begun to run for the purpose of limitation? Or must the right to receive the relief claimed already have arisen?

68. It has been unnecessary to decide these questions in any of the cases which have held that a "pre-existing cause of action" is needed. In The Veracruz, for example, at the time when the buyer applied to the court for a freezing injunction the breach of contract threatened by the seller had not yet occurred. The buyer therefore did not have a right to be paid damages by the seller; nor had the limitation period for an action founded on contract begun; nor was the buyer entitled to commence proceedings claiming any substantive relief. Hence no cause of action had accrued in any of the three senses which I have identified. Where the claim is one for contribution, however, it is necessary to disentangle the different possible meanings of the cause of action requirement.

69. Of the possible meanings mentioned, I have already stated that I can see no reason why the ability to apply for a freezing injunction should be linked to the date when time begins to run for the purpose of limitation. To determine which of the two other possible dates is more apposite, consideration needs to be given to the mischief at which the remedy is aimed.

70. The purpose of a freezing injunction is to make a judgment of the court effective by preventing the party to whom the injunction is directed from dealing with assets in a way that would frustrate attempts to enforce the judgment. The judgment in aid of which the injunction is sought is usually one which the applicant is hoping to obtain in the future. Although a freezing injunction may be granted (or continued) after judgment has been given, its utility as a remedy depends on its availability not only before judgment, but even before the defendant has been served with proceedings.

71. In deciding whether it is appropriate to grant a freezing injunction in aid of a prospective judgment, the relevant questions are in principle whether there is a sufficient likelihood that the judgment will be obtained and, if so, whether there is a sufficient risk that, in the absence of an injunction, its enforcement would be frustrated. The likelihood of obtaining a judgment depends, first of all, on the applicant bringing (if it has not already brought) proceedings in which substantive relief is claimed and, secondly, on there being a sufficient prospect that the claim for

such relief will succeed. The test used to judge the prospect of success is whether the applicant has a good arguable case. But, as Mr Lowenstein rightly pointed out, the court in applying that test is in principle looking forward to the potential outcome of a hypothetical future trial (just as it does when deciding whether to grant summary judgment). There is no reason why it should be necessary to show – to the standard of a good arguable case or at all – that, at the time of applying for an injunction, the applicant is already entitled to receive the substantive relief claimed.

72. In the context of a claim for contribution, such a requirement would negate the purpose of a freezing injunction and deprive the remedy of any real efficacy because it would make it impossible to apply for a freezing injunction before the court had given a judgment assessing the amount of the contribution payable by the person from whom the contribution is sought (see paragraph 66 above).

73. By contrast, a requirement that there are, or at least are about to be, proceedings for substantive relief on foot before the court will grant a freezing injunction is a reasonable and desirable requirement to insist upon before the court will interfere with the respondent's freedom to deal with its assets however it wishes. The importance of this safeguard was underlined by the House of Lords in Fourie v Le Roux [2007] 1 WLR 320. Lord Bingham (at para 3) described as "by no means the least important" safeguard for the defendant the requirement "that the claimant should identify the prospective judgment whose enforcement the defendant is not to be permitted, by dissipating his assets, to frustrate." He continued:

> "The claimant cannot of course guarantee that he will recover judgment, nor what the terms of the judgment will be. But he must at least point to proceedings already brought, or proceedings about to be brought, so as to show where and on what basis he expects to recover judgment against the defendant."

74. It is implicit that the proceedings should, when brought, be proceedings that the applicant for an injunction is entitled to bring, and not proceedings that could be immediately struck out. Once it is accepted, however, that the court has power to grant a freezing injunction before proceedings have been commenced, there seems no reason why the court should not grant an injunction even if the right to bring proceedings for substantive relief has not yet arisen, provided that there is sufficiently strong reason to anticipate that the right is about to arise. To reach that sensible result, however, would require the line of authority epitomised by The Veracruz to be overruled. So long as the requirement to have an existing cause of action remains, it seems to me that the best (or least unjustifiable) interpretation of that requirement is that the applicant should have a right to commence proceedings claiming the substantive relief in aid of which the injunction is sought.

75. I conclude that, once the right to make a claim for contribution under CPR Part 20 has arisen, the cause of action in the relevant sense has accrued and there is nothing to inhibit the court from granting a freezing injunction in aid of the claim in an appropriate case. I accordingly consider that it is in principle open to a Part 20 claimant to apply for a freezing injunction in aid of a claim for contribution at any time after a contribution notice has been filed and served as of right under CPR

20.6(2)(a) or the court has given permission to file and serve a contribution notice under CPR 20.6(2)(b).

Quia timet relief

76. I have reached this conclusion without referring to a line of authority rightly brought to the court's attention by counsel for Mr Zhunus, though not relied on by D2, which has built on the equitable jurisdiction of the court to lend assistance in advance to a person who has a right of indemnity by granting *quia timet* relief before that person has suffered any loss. This jurisdiction was explained by Cozens-Hardy MR in Re Richardson ex p Governors of St Thomas's Hospital [1911] 2 KB 705 at 709, as follows:

> "It is settled at common law that, given a contract of indemnity, no action could be maintained until actual loss had been incurred. … In equity that was not the view taken. Equity has always recognized the existence of a larger and wider right in the person entitled to indemnity. He was entitled, in a Court of Equity, if he was a surety whose liability to pay had become absolute, to maintain an action against the principal debtor and to obtain an order that he should pay off the creditor and relieve the surety. Another way in which the indemnity was often worked out in the Court of Chancery was by ordering a fund to be set apart to meet the liability as and when it arose. So that in the view of the Court of Equity it was not necessary for the person entitled to the indemnity to be ruined by having to pay the full amount in the first instance. He had full power to take proceedings under which that fate might be averted, and he might substantially protect himself and secure his position by coming to the Court."

77. This jurisdiction was invoked in Rowland v Gulfpac Ltd [1999] 1 Lloyd's Rep Bank 86, where directors of the defendant company (Gulfpac) claimed a right to be indemnified by Gulfpac against any liability incurred in proceedings pending against them in the courts of Idaho. The directors applied for a freezing injunction to prevent Gulfpac from transferring all its assets to its parent company in return for $1 under a reorganisation plan, thereby leaving itself unable to indemnify the directors. Rix J held that the directors had failed to show a good arguable case that the indemnity clause in their contracts with Gulfpac covered any liability incurred in the Idaho proceedings. He also accepted that, even if the clause had covered such liabilities, no cause of action had yet arisen and that in these circumstances a freezing injunction could not be granted under the Mareva jurisdiction. The judge nevertheless considered that the court could in principle have granted an injunction under the equitable jurisdiction that I have mentioned to grant *quia timet* relief. He said (at 98):

> "What is needed is a sufficiently clear right to an indemnity even if the cause of action at law is not yet complete, together with a clear indication that the indemnifier is going to ignore his obligations."

78. The equitable jurisdiction was exercised in Starlight Shipping Co v Allianz Marine [2012] 1 Lloyd's Rep 162, where the claimant (along with other companies) had commenced proceedings against the defendant insurers in Greece in clear breach of a settlement agreement. By a clause of the settlement agreement the claimant had agreed to indemnify the insurers against any claims that might be brought against the insurers by some of the other companies which had brought the Greek proceedings. Burton J held that the insurers were entitled to a mandatory injunction requiring the claimant to set up a fund from which indemnification could be made if the Greek proceedings were successful. Recently, in International Energy Group Ltd v Zurich Insurance plc [2015] UKSC 33, [2015] 2 WLR 1471 at paras 87-88, Lord Mance referred to the Gulfpac and Starlight Shipping cases and accepted, in circumstances where it was unnecessary to examine it further, "the fairness of the thinking behind this first instance authority".

79. In Papamichael v National Westminster Bank [2002] 1 Lloyd's Rep 332 this thinking was applied to a contribution claim. The brief facts were that money deposited by the claimant with the defendant bank was used by the claimant's former husband (P) as collateral for foreign exchange trading. The trading resulted in losses. The claimant brought an action claiming the return of her deposit, maintaining that she had not authorised its use as collateral for P's trading. The bank disputed her claim but also made a Part 20 claim against P. The Part 20 claim included claims for a contractual indemnity and for contribution under the 1978 Act.

80. Judge Chambers QC considered that the bank was precluded in principle from obtaining a freezing injunction in respect of the indemnity "and perhaps contribution" claims against P as it did not have an accrued cause of action (para 52). However, he thought it justifiable to grant an injunction over P's assets in aid of those claims "in order to prevent the jurisdiction of the court from being stultified" (para 88). The judge based this conclusion on the equitable jurisdiction to grant *quia timet* relief invoked in the Gulfpac case.

81. Whatever may have been the position on the facts of the Papamichael case, I doubt whether it would often be possible to justify granting *quia timet* relief in the context of a claim for contribution. Generally at least, *quia timet* relief is only granted where there is clear evidence that the defendant threatens or intends to injure a clear right of the claimant. (As Rix J put it in the Gulfpac case (at 99), "equity will lend a hand, in advance of the appropriate time at law, to prevent injustice, where the right is clear and the danger is clear too".) In the context of a claim for contribution, the relevant threat would be a refusal or failure by the Part 20 defendant to pay a judgment for contribution in favour of the Part 20 claimant. Where such a judgment is contingent on the Part 20 claimant being held liable to the claimant and on the Part 20 defendant's liability to the claimant also being established, it may well be difficult for the Part 20 claimant to demonstrate a sufficiently clear threat (or to do so without undermining its own defence). For the reasons I have given, however, I do not think that it is necessary to justify the grant of an injunction on this basis where a Part 20 claim has been validly commenced. Since that was the situation in the Papamichael case, the bank in my view had an existing cause of action in the requisite sense. It therefore seems to me that the judge was entitled to grant a freezing injunction in that case without the need to resort to the equitable jurisdiction to grant *quia timet* relief.

Conclusion

82. If D2 had adopted the case previously advanced by the claimants against Mr Zhunus and thereby obtained permission to bring a claim for contribution, a freezing injunction could, in my view, properly have been granted against Mr Zhunus in order to prevent a judgment on that claim from being frustrated. As I have refused permission to bring a contribution claim, however, D2 cannot point to proceedings which have been or are about to be brought by him against Mr Zhunus. So there is no prospective judgment in such proceedings which Mr Zhunus might thwart. Accordingly, D2's application for a freezing injunction against Mr Zhunus must also be refused.