Neutral Citation Number: [2025] EWHC 1355 (KB)

Case No: QB-2022-000681

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 04/06/2025

Before :

MRS JUSTICE STACEY

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Between :

CRAFT DEVELOPMENT SCI (suing by its provisional administrator Mr Ngoua Elembe Hiob, pursuant to an appointment by the High Court of Douala, Cameroon, Judgment 200/CIV of 8 March 2021)	**Claimant**
- and –	
(1) ACTIS LLP (a firm) **(2) ACTIS AFRICA REAL ESTATE FUND 3 aka Actis Africa Real Estate 3 LP (a firm)** **(3) ACTIS AFRICA REAL ESTATE 3A LP aka Actis Africa Real Estate Fund 3 (a firm)** **(4) ACTIS AFRICA REAL ESTATE 3 CO-INVESTMENT SCHEME LP aka Actis Africa Real Estate Fund 3 (a firm)** **(5) ACTIS AFRICA REAL ESTATE 3C LP aka Actis Africa Real Estate Fund 3 (a firm)** **(6) ACTIS GP LLP (a firm)**	**Defendants**

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Mr Barry Coulter (instructed by **Mirande Nasah Solicitors**) for the **Claimant**
Ms Zoe O'Sullivan KC, Mr Charles Holroyd (instructed by **Charles Russell Speechlys LLP**) for the **Defendants**

Hearing dates: 13 May 2025

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Approved Judgment

This judgment was handed down remotely at 11.00am on 4 June 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MRS JUSTICE STACEY

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1. This is an application by the defendants (collectively "Actis") for security for costs issued on 24 October 2024 under CPR 25.26. It is common ground that the claimant is a shell company that is impecunious and thus there is reason to believe that it will be unable to pay Actis' costs if ordered to do so, the condition set out in CPR 25.27(b)(ii) therefore applies. The issue is whether the court "is satisfied, having regard to all the circumstances of the case, that it is just to make" a security for costs order. If so, the amount of security to be ordered is also to be determined and the logistics of how it should be provided to be decided.

2. The underlying dispute was helpfully summarised by Morris J in his judgment on a preliminary issue of 6 March 2024 in these proceedings ([2024] EWHC 484 (KB) at [3]-[9]). The claimant ("Craft") is a Cameroonian company with two shareholders: a majority shareholder (Mr Mathurin Jidouc Kamdem ("Mr Kamdem") owner of either 51% or 75% of its shares (the amount is in dispute between the parties) and a minority shareholder, Mr Valère Tchumtchoua Tohouo ("Mr Tchumtchoua")[1] who holds either a 49% or 25% shareholding, depending on whose evidence is preferred.

3. The defendants (collectively "Actis") are a group of companies involved in global investment in sustainable infrastructure and a London based private equity fund, the Africa Real Estate Fund 3 (the colloquial term used to refer to the Second, Third and Fourth Defendants). In its particulars of claim Craft claims damages from Actis for breach of contract, procuring breach of contract, unlawful means conspiracy and fraud relating to a joint venture for a development project in the capital of Cameroon, Douala ("the Douala Mall").

4. It is said that in November 2015 the First and Sixth Defendants caused the Second and Third Defendants to sign a Letter of Intent with Craft ("the LOI") to establish a joint venture concerning the purchase of land in Douala for the development of Douala Mall which is a shopping mall, business and leisure complex. Craft had obtained a "Promesse de Vente" (option to purchase) the land for the development of Douala Mall with a deposit of approximately $500,000 paid by Mr Tchumtchoua. But instead of forming a joint venture with Craft, Actis formed a joint venture with a company or group of companies wholly owned by Mr Kamdem, MatK Limited, and other companies which had acquired the Promesse de Vente from Craft. Whether and the extent to which any consideration was paid to Craft is in dispute. The land was subsequently purchased and developed without any involvement of the Claimant or Mr Tchumtchoua, although he has received at least some of the deposit money he had put up for the Promesse de Vente back from Craft. The Douala Mall opened in 2020.

5. Subsequently Mr Tchumtchoua arranged for the appointment of a provisional administrator over Craft, Mr Hiob, in order to bring an action against the defendants who are English entities in the courts of England and Wales.

[1] Although Mr Tchumtchoua is referred to as Mr Valère in the pleadings and the earlier judgment, it is understood that this is his first name and that the correct form of address is Mr Tchumtchoua which has been adopted in this judgment.

Litigation history and chronology

6. Proceedings in England and Wales were issued on 1 March 2022 in the name of Craft, suing by Mr Hiob in his capacity as provisional administrator of Craft. Prior to the issuing of proceedings in this country, Mr Hiob's appointment was challenged in Cameroon by Mr Kamdem. The challenge was unsuccessful in both the High Court of Wouri (judgment dated 8 March 2021) and the Court of Appeal in Cameroon (21 January 2022). A further appeal has been filed at the Supreme Court of Cameroon. The filing of the appeal in the Supreme Court has no impact on whether or not Mr Hiob has acquired authority to litigate on behalf of Craft. I was not told whether permission has been granted, or if it is required under the Cameroonian Supreme Court rules of procedure. There was a suggestion that the Supreme Court may have stayed the appeal. The litigation in Cameroon concerning Mr Hiob's appointment and unsuccessful attempts by Mr Kamdem to place Craft into liquidation and have it struck off the register of Cameroonian companies has been helpfully set out in the Morris J judgment in some detail.

7. The proceedings in this country commenced once the Court of Appeal in Cameroon had upheld the lower court's decision endorsing Mr Hiob's appointment as provisional administrator. Particulars of claim were filed on 28 March 2022.

8. In a strike out application filed on 31 May 2022, Actis challenged the authority of Mr Hiob to act for Craft in these proceedings (which was the preliminary issue and application determined by Morris J). On 28 June 2022 Master McCloud made directions for the strike out application and trial of the preliminary issues identified. The hearing before Morris J took place on 22-24 November 2022 and three further dates in late April 2023 with a reserved judgment handed down on 6 March 2024. The reason for the hiatus between November 2022 and April 2023 was because there was an issue as to whether Craft had been struck off the register of companies in Cameroon, but Mr Tchumtchoua then successfully in applied to the Cameroonian Court that it was not struck off either because it never been struck off or ordered its reinstatement. For the purpose of this application the reasons and the detail is unimportant although it may become so at trial. Morris J dismissed Actis' application, refused to strike out the claim and ordered Actis to make a payment of £144,000 to Craft on account of costs pending detailed assessment on the standard basis.

9. A defence was then filed on 3 May 2024 and a reply on 13 June 2024. Actis made a request for security for costs to be provided on 22 July 2024 and after fruitless correspondence, issued an application on 25 October 2024. A Case Management Conference ("CMC") was held on 10 January 2025 and adjourned part-heard for lack of time to 24 February 2025 when directions for trial were made and a trial window from May to July 2026 was identified. Disclosure was ordered to take place by 11 April 2025. It was initially hoped that the security for costs application could be dealt with on 24 February 2025 but time did not permit and it was adjourned, firstly to 17 March 2025 and then to 13 May 2025.

10. Disclosure by list has taken place, witnesses of fact statements are due to be exchanged at the end of June and supplemental witness statements at the end of July. Both sides have permission to rely on three experts each on the areas of: Cameroonian law; asset/land valuation; and, accountancy/share valuation. Expert reports are to be exchanged and directions agreed for joint meetings between the respective experts in

their three fields of expertise, followed by service of a joint memoranda and any supplemental reports to be served on various dates over this summer and early autumn.

Issues in the application

11. It is agreed that Craft is impecunious and as such would be unable to pay any defendant's costs from its own funds if ordered to do so and that CPR 25.27(b)(ii) is engaged. The applicable law as to whether it would be just for the court to exercise its discretion was agreed and not in dispute and set out below insofar as is necessary.

12. The evidence before me consisted of an agreed bundle of documents containing the third, fourth and fifth witness statements and exhibits of Ben Moore (25 October 2024, 12 March and 29 April 2025 respectively), solicitor for Actis with care and conduct of the litigation under the supervision of a partner at Charles Russell Speechlys LLP on behalf of Actis. For Craft the third, the supplemental, the fifth, seventh and eighth statements of its solicitor, Dr Mirande Nasah (dated 3, 10, 14, 15 March and 22 April 2025 respectively) and exhibits were before the court together with the first, second and third statements of Mr Tchumtchoua (dated 12, 16 and March and 22 April 2025) and exhibits including bank statements, and some inter partes correspondence.

13. In Mr Moore's third statement Actis stated that the amount of security sought was £1,100,000 in respect of costs up to and including service of expert evidence and explained that they intend to seek further security later when account can be taken of actually incurred costs at that time. The amount sought has now increased to £1,600,000 following an increase in hourly rates from £600 to £650 (plus VAT) in February 2023 and then a further hike to £715 (plus VAT) per hour from February 2025, that more work than anticipated had been done and future costs were also more than had previously been expected. In their costs schedule as at 28 February 2025, total incurred costs from August 2020 to 28 February 2025 (excluding the costs incurred in relation to the strike out application) were £1,301,393 (exclusive of VAT) and estimated future costs up to expert evidence for trial are now a further £1,218,080.35, making a total of a little over £2.5million.

Stifling

14. The central issue raised by Craft in defending the application is that a security for costs order would stifle its ability to continue the case and thus security should not be ordered (see *Goldtrail Travel Ltd v Aydin* [2017] UKSC 57; [2017] 1 W.L.R. 3014, per Lord Wilson at [12]). The burden of proof is on Craft to establish on the balance of probabilities that such an order would stifle the claim. In order to discharge that burden, full and frank disclosure that it cannot provide security nor obtain assistance from shareholders and others potentially willing to support them to do so is required. In this case the question is whether Mr Tchumtchoua as the minority shareholder who would be the one to benefit from the litigation if it is successful, has the wherewithal to help Craft with any adverse costs. If he does not have access to funds from his own assets and accounts, does he have access through his network of associates or other means? The question is whether he has satisfied the court that it is impossible for him to find whatever security is ordered by way of condition of continuing with the litigation.

15. *Al-Koronky v Time Life Entertainment* [2006] EWCA Civ 1123 sets out that it is a governing principle that the court must not order security in a sum which it knows the

claimant cannot afford *Al-Kornoky* [25]. But a claimant resident abroad who wants to ensure than any security they are required to put up is within their means must be full and candid in setting out what their means are. Mindful of the difficulties inherent in proving a negative (see *Brimko Holdings v Eastman Kodak Co* [2004] EWHC 1343 (Ch) 12) the court is required to scrutinise as much as it is told with a critical eye and to note unexplained gaps in the information that a claimant volunteers or in the documentary support for it. That includes being prepared to draw adverse inferences from any lacunae *Al-Kornoky* [27]

16. The purpose of the exercise is to ascertain how much a claimant, or in this case the minority shareholder of the claimant who would stand to benefit from a successful claim, can afford – knowingly ordering security for costs at a level that a claimant cannot afford is tantamount to striking out their claim and risks breach of their article 6 European Convention of Human Rights. But defendants too have a right not to have their access to a court rendered prohibitive by the prospect of irrecoverable costs, and an entitlement to have claimants' access limited by relevant and proportionate conditions (*Al-Koronky* [32]).

17. If the judge has not been provided with a full and candid account of the claimant's actual and potential means, it is for the judge to exercise their discretion to set a suitable sum (*Al-Koronky* at [28]-[29]).

The evidence on stifling

18. In his first witness statement Mr Tchumtchoua accepts that he is the source of funding for this litigation. He explains that he is a self-employed civil engineer in his own civil engineering firm, Cross Consult, which has an annual turnover of £121,000 and bank statements to this effect were exhibited to his witness statement. He initially stated that his only assets were his 56% shareholding in a family company, SCI (Société Civile Immobilière) Lomathare, which owns two family properties. The remaining shares are held by his five children. All his children are in full time education and are fully supported by his income. The two family properties are said by him to be worth approximately £1.3 million with mortgages in the region of £950,000. He thus owns £187,000 of the equity in the two properties through his shareholding of the family company.

19. He has used the repayment of the deposit to defend the litigation brought by Mr Kamdem over the appointment of the provisional administrator and to challenge Mr Kamdem's attempt to place Craft in liquidation in Cameroon which has so far consisted of 9 court hearings in which he was successful in every one[2]. He does not say if costs were awarded in his favour in relation to any of the court cases and hearings in Cameroon. He has borne the entirety of the costs of the proceedings in Cameroon. He states that he has part paid the fees and disbursements in the litigation in England but still owes Craft's solicitors in London "a good proportion of their fees" which has left him "financially exhausted and short of cash". According to the costs schedule served

[2] There is a dispute between the parties as to whether Mr Kamdem was the claimant in all of the Cameroonian proceedings, or if Craft was validly struck off the Cameroonian register of companies and thus required litigation by Mr Tchumtchoua to reinstate, but nothing turns on it. The point is that Craft was reinstated and Mr Hiob as the provisional administrator could and has brought the litigation against Actis.

on 8 March 2024 Craft had incurred £622,530.76 costs in defending Actis' strike out application and at the preliminary hearing.

20. He has been unable to find after the event insurance with an affordable premium. His solicitor, Dr Mirande Nasah has set out the steps she has taken to try to secure funding for the litigation which have been fruitless.

21. In his second witness statement of 16 March 2025 Mr Tchumtchoua records the sad deterioration of the family finances and the enforcement action taken against him by creditors. He has managed to reduce his indebtedness but £72,000 is still owing and enforcement procedures are still hanging over him. He sets out the details of the various bank accounts – both personal and in the name of his engineering company, Cross Consult. Only two bank accounts are now active- a personal account with Afriland First Bank which received gross income of £77,000 in 2024 from his engineering business and the income from engineering was verified by his accountant whom he had used to prepare his tax return. He uses the Cross Consult business account for his daily transactions and he confirmed its annual income stated in his first witness statement.

22. As for the SCI Lomathare family property business, he explained that this has two business accounts and the statements were exhibited. One was around £14,800 in debt, the other was in credit, but the balance seized and transferred to Afriland First Bank in a debt collection exercise. The properties owned by SCI Lomathare are rented out as flats but generate no profit as the proceeds are used to pay expenses and the mortgage and Mr Tchumtchoua derives no income from the rents received. He states that he has no other bank accounts and that the Court can be very confident of the accuracy of his statement as in the debt collection process brought against him and SCI Lomathare by the bank a bailiff was appointed who has searched all the headquarters of banks in Cameroon to trace any bank accounts in his name and that of the family property company, SCI Lomathare.

23. He said that he had borrowed £257,000 from a friend, Ms Veronique Kamga to pay the deposit for the Promesse de Vente and the rest was paid in cash and cheque. When the deposit was refunded by Mr Kamdem he repaid Ms Kamga, funded the litigation in Cameroon against Mr Kamdem, paid for his late wife's healthcare costs and the building one of the properties owned by SCI Lomathare which is now rented out. He exhibited the bank statements and the invoices of the legal costs he had incurred in Cameroon and in this country and the outstanding unpaid part of the bill from Craft's solicitors in London. He considers that he is in debt to the tune of £500,000.

24. In his third witness statement of 22 April 2025 Mr Tchumtchoua states that he is making this new declaration to complement his previous ones and to give additional information about his current financial situation. He exhibits his tax return for 2024 and a formal notice before legal proceedings of November 2024 that he found in his documents for a mortgage loan taken out by SCI Lomathare for £825,050. He explains that in Cameroon, where the banking system is less sophisticated than in England, cash payments are the norm and it is routine for people to use third parties such as friends and relations to bring cash into the UK because of the difficulties in transferring monies abroad, so that not all transactions appear in detail on the bank statements. But whether in cash or at the bank, he now has very little money and cannot afford the security sought by Actis.

25. He explains in his third statement, but did not mention previously, that he set up a real estate company, Valmart Property Investments CC in South Africa in 2010, with an associate. He is a 50% shareholder in the company which owns three real estate properties that were worth £670,000 when they bought them, but are now worth about half that because of the devaluation of the Rnd. The yield on the properties is very low because they are not always occupied by tenants, and generate monthly income of £2,300. With operating expenses of £1,200 and monthly mortgage repayments of £840 it leaves a very low yield. His business partner does not wish to sell the properties since they have fallen so much in value and without litigation in South Africa he will not be able to force their sale. He explained that he did not disclose the existence of this company previously because of his partner's reluctance to be involved in the case and apologised to the Court. He exhibited the most recent bank statement and the mortgage accounts of the company and details of a non-resident bank account at First national Bank (FNB) in Johannesburg with a credit balance of £900.

26. Mr Moore's fifth witness statement in response to Mr Tchumtchoua's third statement noted that it was evident from the recently disclosed bank statements that Mr Tchumtchoua had withdrawn around USD $115,000 (£87,000) in cash from the Cross Consult account with Afriland First Bank between 2 January 2025 – 16 April 2025 which appeared to be a combination of cash withdrawals from the bank and ATM withdrawals. He also noted that cash withdrawals of somewhere in the region of £70-80,000 (after conversion from Central African CFA Franc (per the below correction)) appear to have been made from the SCI Lomathare account at Afriland First Bank since 22 July 2024, which was the date Actis informed Craft of its intention to make an application for security for costs.

27. Mr Moore also noted that Mr Tchumtchoua had been identified on a website about Cameroonian enterprises (fico.cetnreblog.net/52-LES-ENTERPRISE-CAMEROUNAISES) that a Mr Tchumtchoua was listed as the contact for a company called Le P-tit Salin SARL which was listed as being a meat processing company, but the website was currently inaccessible.

Stifling conclusions

28. From the above I am satisfied that Craft is not able to pay any legal costs that may be awarded against it and nor is Mr Tchumtchoua personally. Much was made by Ms O'Sullivan in her submissions (although there was no evidence that had been served to support it) that Actis was "onto" Mr Tchumtchoua's South African investment which was publicly available information and it could reasonably be inferred that he had only belatedly voluntarily disclosed the details of Valmart to avoid being found not to have made full disclosure. Who knows what other assets may be hidden she asked. Mr Coulter vigorously asserted that there was no evidence on which the Court could reach such a conclusion.

29. I am satisfied on the balance of probabilities that by the time of the hearing before me, Mr Tchumtchoua had made a full disclosure of his own assets. Given the level of encumbrance of his South African investments which were now worth significantly less than what he had paid for them, were relatively small scale and are not available to him to liquidate because of his business partner's opposition to them being sold, although it is unfortunate, I am not particularly troubled by him not having thought to mention

them sooner. They did not reveal a hidden crock of gold and would not help him raise money to provide security for costs.

30. Although it is for Craft – and for this purpose Mr Tchumtchoua -to evidence the lack of funds, the fact that all Mr Moore had been able to unearth to suggest that there were undeclared assets and business interests was a reference to a Mr Tchumtchoua on some kind of listings website connected to a meat processing operation, date and details unknown, which contained a link to a website that no longer existed was not a promising lead, even if I assume that it was the same Mr Tchumtchoua, since it would not appear to be currently operational. In any event Mr Tchumtchoua had stated in his witness statement that he was a former owner of Le P'tit Salin and the company was dissolved in 2008.

31. I note Mr Moore's level of anxiety about the cash transactions of a total of around £150,000 over the past year or two from Mr Tchumtchoua's accounts, which were not fully explained. But these were not of such a scale and magnitude to conclude that there were significant undeclared other assets. The fact is that Mr Tchumtchoua is in financial difficulties in Cameroon as evidenced by the appointment of a bailiff by his creditors who had researched all possibilities of bank accounts in Cameroon and had found only those that have been disclosed to this Court in this litigation. Mr Tchumtchoua had exhibited the documentary evidence of the bailiff and all his unredacted bank statements.

32. But that is not the end of the story. There are two difficulties with the evidence submitted by Mr Tchumtchoua. The first is that there is no explanation of how he intends to fund Craft's costs of the continuing litigation and why his lawyers do not seem to be pressing him for funds, when he does not have means. He has not identified or named any others who are supporting the litigation and the evidence is that litigation funding from commercial providers is either exorbitant or unavailable. He seems to have been single handedly supporting the litigation on a wing and a prayer and by himself becoming increasingly indebted thus far. How then can Craft continue to pursue the case which requires service of lay and expert evidence in the coming months that will undoubtedly be costly? Even if one assumes that Craft's lawyers are not charging the £715 per hour that Charles Russell Speechley are charging their corporate client, the legal bills will be considerable and there is no evidence that they are working on a no win no fee or contingency funding agreement. So given that litigation cannot be conducted on fresh air, the logical inference is that he will somehow be able to rustle up the funds for Craft's legal fees and since he has not disclosed how he will manage it, the disclosure looks a little less than full and frank. Having said that, there may be an element of the Micawber principle involved in him hoping that something will turn up and he too is unsure what that "something" might be. But if that is the case, a further logical inference is that he would also be able to rustle up some security for costs.

33. The second concern I have is that there is no evidence about the lack of possibility of other sources of funds. I bear in mind that it is very hard to prove a negative (see *Brimko* at [12]) and I did not expect Mr Tchumtchoua to name all his friends, relations and business associates, their assets, income and explanation for their lack of willingness to help him out. But instead there is more of a blanket denial. It is also a little puzzling when there is evidence of at least one person who has previously lent him money and helped him, (Ms Kamga), so I would have expected an explanation from her at least as to why she was unwilling to assist again. It may be the answer is obvious – it is one

thing to put up money for a deposit that will either be returned or lead to a very profitable investment, but quite another to fund litigation, but that explanation was not forthcoming.

34. On a related point advanced by Craft, I find that Craft has not established that its impecuniosity is caused by Actis. True it is that because the Promesse de Vente was assigned or transferred to Mr Kamdem's company or companies, it meant that Craft did not have the opportunity to make a profit from Douala Mall, but there are many contingencies and ifs and buts as to whether or not Craft's want of means are attributable to Actis. It is a very different factual scenario to a theft type case, such as *Gresport*, where, for example a defendant investment manager is alleged to have misappropriated client funds for his direct benefit where the amount of money can be clearly and easily traced, quantified and attribution is straightforward.

Delay

35. Actis first informed Craft that it would be seeking £250,000 security for costs by letter dated 26 April 2022, but their application was not issued until 2024. The first interlocutory hearing of this case was on 24 June 2022 when Master McCloud made directions for Actis' strike out application at the preliminary hearing. It was not however the Case Management Conference which was not held until 10 January 2025. Dr Nasah's supplementary witness statement of 10 March 2025 states that since it is now three years into the litigation and the delay in Actis making their application for security for costs has now made getting insurance cover unaffordable and unobtainable in spite of her efforts with many litigation funders.

36. Delay in making an application is a relevant factor in the Court's exercise of its discretion, but in this case Craft was on notice in correspondence from as early as 2022 that Actis would be seeking security for costs, even if the amount suggested they would be looking for then was £250,000 and it has now grown over six-fold. It was not unreasonable for Actis to wait until the outcome of their initial strike out application to pursue their security for costs application although they could perhaps have acted sooner. For reasons outside their control their initial strike out application took much longer than anyone expected for a number of reasons.

37. Since Actis raised the issue early, even though they did not pursue it at that time while they pursued a different strike out application, Craft was on notice that an application might be made and could have explored funding options early on in the litigation. They could also have been thinking about how they could fund their own costs in the litigation. I appreciate that Dr Nasah was under time limit pressure to issue proceedings once the Cameroonian litigation over validity of Dr Hiob's appointment as provisional administrator was resolved which may have prevented her from exploring funding options prior to litigation and it would not have been unreasonable for her to await the outcome of the Cameroonian litigation before incurring more costs. I also note that the trial is still some way off and that Craft has had nearly a year's notice of the application itself.

38. I therefore conclude that Craft has not established that there has been a delay by Actis and it does not count against them as being a late and oppressive application.

Merits of the claim

39. The parties agreed that the authorities state and as reflected in the Commercial Court Guide Appendix 10, para 4, that the investigation of the merits of the case on an application for security is strongly discouraged. It is usually only in those cases where it can be shown without detailed investigation of evidence or law that the claim is certain or almost certain to succeed or fail that the merits will be taken into account (Commercial Court Guide Appendix 10, para 4, and see *Mountain Ash Portfolio Ltd v Boris Tsibenovich Vasilyev* [2022] EWHC 1867 (comm) [42]).

40. The test is whether a claimant's case or a defendant's defence is "highly likely to succeed" (*Al-Koronky*). Furthermore, parties should not attempt to go into the merits of the case unless such high probability of failure can be clearly demonstrated one way or another (*Chernukhin v Danilina* [2018] EWCA Civ 1802 at [69]).

41. Actis have changed their position in relation to the merits of the claim. In their then counsel, Mr Charles Holroyd's written submissions dated 13 March 2025, prepared in advance of the hearing on 17 March which was subsequently adjourned, their position was that the Court should not have regard to the merits of either the claim or the defence in an application of this nature. It was only upon receipt of Ms O'Sullivan KC's written submissions served two working days before the hearing that Actis now rely on what are said to be inherent fatal weaknesses in Craft's case in support of the application. Of course she is not bound by the submissions of previous counsel, but it is telling that it is only at this stage that the point has been thought worth taking.

42. It is also telling that no application has been made to strike out the claim under CPR 3.4(2)(a) on grounds that the statement of case discloses no reasonable grounds for bringing the claim or for summary judgment under CPR 24 on grounds of no real prospect of success. Whilst I note that in one of the authorities cited to me Chief Master Marsh in *Gresport Finance Limited v Carlo Battaglia* [2015] EWHC 2709 (Ch) considered that the test for the exercise of the Court's power to strike out a statement of case under CPR 3.4(2)(a) and CPR 24 were both a higher threshold than the merits test in a security for costs application of "highly likely to succeed", but that there was "a high degree of overlap" [35]. I also remind myself that the authorities are clear that an application for security for costs is not intended as a weapon to obtain a speedy summary judgment without a trial or by the back door (see *Prince Radu of Hohenzollern v Houston* [2006] EWCA Civ 1575 at [18]) and see also *Bailey v GlaxoSmithKline UK Ltd* (2017) EWHC 3195 Foskett J at [75]).

43. If it had seriously been intended for a proper analysis of the merits to have been undertaken the defendants should also have asked for a longer hearing and indicated that more reading time would be necessary. But the risk was that the case would turn into a mini-trial – blowing the case up into a large interlocutory hearing – which is exactly why investigation of the merits is deprecated except in the clearest of cases.

44. In spite of Ms O'Sullivan's best efforts in the limited time available, I am not satisfied that she has shown the high probability of failure of Craft's case as she has argued for. There are a number of difficulties with the points relied on by her. Her assertion that Cameroonian law would not apply to any aspect of the substantive claim and the interpretation of the LOI and the "Promesse de Vente" sat very uneasily with the agreed directions for expert evidence from both sides on Cameroonian law for which she had

no explanation. The question of interpretation of whether the LOI was intended to be legally binding upon the fulfilment of certain conditions does not appear to be as straightforward as she suggested. She acknowledged that it would require detailed analysis and a finding as to whether there was a typographical error in a reference to clauses in the document which may not be straightforward and evidence about whether the conditions were fulfilled. Whether Craft's interpretation of the LOI is eccentric, as Ms O'Sullivan suggested, will require detailed analysis and submissions to assist the court. Other aspects of the claim will depend on the evidence and disputed facts.

45. Actis has failed to demonstrate in the short hearing that this is a case where there is a high degree of probability of their success.

Actis' alternative remedies

46. Craft submits that an order for security for costs is not necessary since in the event that Actis successfully defends the claim, Craft's shareholders will be personally and unlimitedly liable for Craft's debts and Mr Kamdem is more than good for the money with the success of the Douala Mall and profits he has received from Actis through his companies to whom the Promesse de Vente was transferred. However there was insufficient information before the Court for me to be confident that under Cameroonian law the corporate veil could be pierced in this way.

47. Similarly there was too little information about the possible claim that Craft thought Actis might have for breach of warranty by Mr Kandem if Actis was unable successfully to defend itself against the claim brought by Craft for it to be taken into account in the assessment and exercise of the discretion. But in any event it would be irrelevant to the application for security for costs by analogy with *Dimension Data Advanced Infrastructure Ltd v Berkeley Homes Plc* [2020] EWHC 1328(TCC).

Conclusion

48. For the reasons set out above, of all the issues raised by the parties as to factors the court should take into account in deciding whether to exercise the discretion to order security for costs I have disregarded the merits of the claim and the defence and the possibility of alternative remedies. I do not consider that there has been an unreasonable delay by Actis in bringing the application. The sole consideration is stifling, but and I do not consider that it is sufficiently clear to say that Craft's impecuniosity is caused by Actis.

49. Whilst I appreciate that care must be taken and caution exercised where corporate entities with their distinct legal identities are involved (see *Goldtrail Travel*), this is a case where I do not take Mr Tchumtchoua and Craft's refutation of inability to pay entirely at face value because of the lacuna in the evidence of how Craft is going to fund its own costs of the ongoing litigation and the absence of information about lack of source of funds from associates, such as Ms Kamga. I am therefore not satisfied that Craft has fully discharged its burden of proof. It seems to me that whether or not there has been full and candid disclosure is binary – there either has been or there has not. On the facts of this case it is fairly close run, but on balance I find that the gaps that I have identified mean that a little more was required of Mr Tchumtchoua to discharge the burden. I am thus satisfied that having regard to all the circumstances of the case it is just to make an order for security for costs.

50. Having said that, the picture is clear enough to see that Mr Tchumtchoua's finances are hand to mouth and that an order for security for costs in the region claimed by Actis will stifle the litigation. I am satisfied that Craft and Mr Tchumtchoua will not be able to lay their hands on the £1.6 million sought and certainly not at the short notice required for the litigation timetable.

Amount of security to be provided

51. CPR 25.2(3) provides that the court must determine the amount of security and direct the manner and time within which the security must be given. The principles to be applied as to how the Court should approach the exercise of its discretion have been helpfully summarised by Henshaw J in *Pisante v Logothetis [2020] EWHC 3332 (Comm); [2020] Costs L.R. 1815*.

> "(i)The appropriate quantum is a matter for the court's discretion, the overall question being what is just in all the circumstances of the case. In approaching the exercise, the court will not attempt to conduct an exercise similar to a detailed assessment, but will instead approach the evidence as to the amount of costs which will be incurred on a robust basis and applying a broad brush (see also *Excalibur Ventures v Texas Keystone* [2012] EWHC 975 (QB) § 15)."
>
> (ii)In some cases, the court may apply an overall percentage discount to a schedule of costs having regard to (a) the uncertainties of litigation, including the possibility of early settlement and (b) the fact that the costs estimate prepared for the application may well include some detailed items which the claimant could later successfully challenge on a detailed assessment between litigants. There is no hard and fast rule as to the percentage discount to apply. Each case has to be decided upon its own circumstances and it is not always appropriate to make any discount.
>
> (iii)In deciding the amount of security to award, the court may take into account the 'balance of prejudice' as it is sometimes called: a comparison between the harm the applicant would suffer if too little security is given and the harm the claimant would suffer if the amount secured is too high. The balance usually favours the applicant: an under-secured applicant will be unable to recover the balance of the costs which is unsecured whereas, if the applicant is not subsequently awarded costs, or if too much security is given, the claimant may suffer only the cost of having to put up security, or the excess amount of security, as the case may be (see also Excalibur § 18) …
>
> (v)In determining the amount of security, the court must take into account the amount that the respondent is likely to be able to raise. The court should not normally make continuation of their claim dependent upon a condition which it is impossible for them to fulfil."

52. In this case the two risks identified are Actis not being able to recover their costs if they win, and Craft not being able to continue with the litigation if a realistic amount of security for costs is ordered. It is a difficult circle to square. In this regard the discussion in the judgment of Marcus Smith J in *Absolute Living Developments Limited (In Liquidation) v DS7 Limited and Ors* [2018] EWHC 1432 (Ch) at [22] – [34] is useful.

53. This is a case where the helpful guidance of Sedley LJ in *Al-Kornoky* at [28]-[29] is apt. The court must use the middle way of setting an amount which represents the court's best estimate of what the claimant (in this case Mr Tchumtchoua) can afford, despite his having been insufficiently candid. Since this was not a case of a complete absence of information from Mr Tchumtchoua and his disclosure was very much at the forthcoming end of the spectrum, although not quite as full as was required, I am in a reasonable position to make an estimate of what Craft and Mr Tchumtchoua can afford and have access to. It is clear that the order will have to be for considerably less than the amount claimed to avoid stifling the claim.

54. Whilst I have not taken the delay in making the application as a factor in deciding whether to order security for costs, as I do not blame Actis for the timing, the proceedings are at the stage that they have now reached and the costs already incurred have been incurred and the clock cannot be put back. Given that I will have to order considerably less than the amount of costs that will be incurred by Actis, even on a robust basis and applying a broad brush, because to do otherwise will make continuation of the claim dependant on a condition which it will be impossible for Craft and Mr Tchumtchoua to fulfil, the fairest approach to both sides seems to be to be to limit the amount to be ordered to a proportion of future costs up to the end of the exchange of expert evidence, leaving open the opportunity for further costs to be sought by Actis at that stage. To that extent, at this stage on the facts in this case the balance of prejudice favours Craft as the respondent to the application because setting the security too high risks forcing them from the judgment seat and out of the litigation with considerable unpaid legal costs already incurred. To set an impossibly high level of security forcing Craft to abandon its claim would be more prejudicial than Actis unpaid legal costs.

55. Doing the best I can and adopting a broad brush basis – balancing both parties' respective rights - and cognisant that the hourly rate claimed by Actis is considerable in excess of guideline hourly rates, and their costs and time claimed seems extravagant in what may not be the most complex litigation either factually or legally, I consider that security for costs should be set at £300,000 towards the costs of future litigation from now up to the completion of the directions ordered for service and exchange of lay and expert witness evidence set out in the two orders of Master Gidden with the agreed extension of time contained in the consent order of 14 May 2025 sealed on 22 May 2025. I assess this to be an amount that will not make compliance impossible, but it will be a very considerable stretch for Craft, which is justified given the extent of Actis' exposure and costs risks. I find that it is the most that can be ordered without making compliance by Craft impossible. In arriving at the figure of £300,000 I have factored in that Craft's costs of defending the strike out application decided by Morris J are yet to be subject to a detailed assessment, which was ordered to be undertaken at the end of the trial.

56. The parties did not address me on the details of the manner in which security should be given, only the principles of whether it should be ordered were canvassed in court. It is

to be hoped that the parties will be able to discuss and agree whether security be provided by payment into the Court Funds Office, bankers draft to Charles Russell Speechlys, or bank or other acceptable guarantee or other mechanism.

57. As to timing, three staged payments tied to the dates of each tranche of expert evidence over the coming months during this stage of the litigation would seem reasonable and be acceptable to the Court. It is hoped that the parties can agree staged payment/guarantee dates. But if not I can decide the matter after brief written representations to be supplied at the same time as any suggested corrections to this judgment, to avoid delay.

Postscript

58. The parties did not agree staged payment dates. After considering the parties respective written submissions I have ordered payment to be made in equal parts, broadly following the timetable for service of expert evidence. I have been a little more liberal than suggested by Actis to enable Craft and Mr Tchumtchoua a little more leeway to find funding so as not to stifle the claim. But they have been formally on notice of the security for costs application for nearly a year now and should have either been taking steps to find the funds or explain in evidence given to this court before the application hearing why more time is necessary to allay any fears that this may merely be a stalling tactic.

59. The parties did not agree costs of the application. Actis sought its costs claiming success, Craft sought its costs claiming that since Actis had been awarded a mere fraction of the amount claimed, they were the successful party. Both sides had a point: as Actis observed, Craft and Mr Tchumtchoua had not made any proposals to offer even a small amount of security, but as Mr Coulter observed Actis had been awarded nothing like the amount they had sought. The fairest resolution seems to me for costs to be in the case.

60. The application for permission to appeal and the application for a stay of the Order pending appeal are refused.