

**IN THE COURT OF APPEAL
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (KBD)
HENSHAW J**

B E T W E E N:

FH HOLDING MOSCOW LIMITED
(a company incorporated in the Republic of Cyprus)
Claimant / Appellant

- and -

(1) AO UNICREDIT BANK
(a company incorporated in the Russian Federation)
(2) UNICREDIT S.p.A.
(a company incorporated in the Italian Republic)
Defendants / Respondents

RESPONDENTS' REPLACEMENT SKELETON ARGUMENT

dated 18 March 2026

Defined terms: the defined terms used in the Judgment and in the Appellants' Skeleton Argument are adopted unless otherwise stated. AO and SPA together are referred to as "Rs".

References to paragraphs of the Judgment are in the form "J§X"; to paragraphs of the Grounds of Appeal are in the form "G§X"; to paragraphs of FHM's Skeleton Argument are in the form "Skeleton §X"; to pages in the 13 November 2025 hearing transcript are in the form "T/p.X"; to the core bundle are in the form "[CB/Tab/Page]"; and to the supplementary bundle are in the form "[SB/Tab/Page]".

Pre-reading: in addition to the skeleton arguments, the Court is invited to pre-read:

- (a) The Judgment of Henshaw J dated 25 November 2025 [CB/10/91-122]
- (b) The N460 PTA form [CB/11/123-124]

- (c) The Order of Males LJ dated 11 February 2026 [CB/12/125-126]
- (d) The Respondents' Notice dated 25 February 2026 [CB/3/17-25].

(A) Introduction

1. By the Judgment, the Judge upheld AO's jurisdiction challenge and SPA's application under CPR 24 that the claim against it be summarily dismissed, and dismissed FHM's claim for anti-suit relief in respect of proceedings brought by AO in Russia. As at first instance, AO's submissions are without prejudice to its jurisdiction challenge (upheld by the Judge).
2. FHM's claim for anti-suit relief was based on its claim that the Moscow Proceedings are in breach of the Arbitration Agreement [CB/17/178-179] and on the grounds that the Moscow Proceedings were said to be vexatious and oppressive. It no longer pursues relief on the grounds of vexation and oppression. Accordingly, unless FHM succeeds on Ground 1 (that the Judge was wrong to hold that the Moscow Proceedings did not breach the Arbitration Agreement), its appeal goes nowhere.
3. Grounds 2 to 4 therefore only fall to be decided if FHM succeeds on Ground 1:
 - a. Grounds 2 and 3 concern whether the Court has jurisdiction against AO (the sole claimant in the Moscow Proceedings) and the linked question of whether there is between FHM and SPA a "*real issue it is reasonable for the Court to try*" or whether the claim against SPA should be summarily dismissed; and
 - b. Ground 4 is that the Judge was wrong to hold that in all the circumstances it was not just and convenient to grant an ASI.
4. The Judge refused permission to appeal and permission was given by Males LJ on the basis that "*[d]espite the judge's powerful reasoning, the appeal is sufficiently arguable and the issues merit consideration by the Court of Appeal ...*".
5. In advancing its appeal on Ground 1, FHM seeks permission to adduce translation evidence as to what it says is the correct translation of a Russian phrase in the Russian language version of the Mortgage Agreement (the "**Expert Evidence Application**"). Rs oppose that application on the basis that it would not be in accordance with the overriding

objective for the Court to exercise its discretion to admit that new evidence pursuant to CPR 52.21(2)(b), in particular because *(i)* this evidence is equivocal and would not have had an important influence on the result of the case; *(ii)* there is no reason why this evidence could not have been obtained before the first instance hearing; and *(iii)* in any event, the Mortgage Agreement was executed in both English language and Russian language originals ([SB/2/135-170] and [CB/18/180-201]) and it is not the case that the Russian language version has priority. If permission for FHM's expert evidence is given, Rs seek permission to rely on their own expert translation evidence in response.

(B) Ground 1

6. The learned Judge was right to hold that the Moscow Proceedings are not in breach of the Arbitration Agreement [CB/17/178-179], because disputes relating to Events of Default fall within cl.21 of the Mortgage Agreement [CB/18/188] as well as within the Arbitration Agreement (rather than within the Arbitration Agreement alone).
7. This is a question of construction: see Dicey, Morris & Collins, 16th ed. at [12-082]. The Judge set out the relevant principles at J§§27-32 [CB/10/101-103], and FHM does not suggest that the Judge erred in identifying those principles. Indeed, FHM itself sets out at Skeleton §22 [CB/4/30-31], and relies upon, the same summary of the relevant principles as to the interpretation of potentially competing jurisdiction clauses set out in BNP Paribas SA v Trattamento Rifiuti Metropolitan SPA [2019] EWCA Civ 768 (“**TRM**”) (at [68] per Hamblen LJ (as he then was)) as the Judge set out at J§29 [CB/10/101-102].
8. FHM now appears to suggest (Skeleton §24) [CB/4/31] that the Judge erred in finding that “*the parties have legislated for the position*” (emphasis added) where the dispute falls within the Arbitration Agreement as well as the Mortgage Agreement jurisdiction clause because, while FHM, AO and SPA are party to the Facility Agreement, only FHM and AO are parties to the Mortgage Agreement. This point is a bad one. First, it is common ground (see e.g. Skeleton §7 [CB/4/27]) that FHM and AO entered into the Mortgage Agreement as part of a single overall transaction in which SPA was involved; the Mortgage Agreement falls within the category of Finance Documents defined in the Facility Agreement. FHM's point amounts to an argument that the Facility Agreement and Mortgage Agreement should nevertheless not be construed together, which is simply wrong on well-established principles: see, for example, UBS AG v HSH Nordbank [2009] EWCA Civ 585, [2009] 2

Lloyd's LR 272 at [83] per Lord Collins, "... the essential task is to construe the jurisdiction agreement in the light of the transaction as a whole". Second, AO is party to the Mortgage Agreement in its capacity as Security Agent for **both** AO and SPA (as Secured Parties).

9. The relevant provisions of the Mortgage Agreement are as follows (emphasis added) **[CB/18/183-184, 188]**:

Clause 9.1: Right to Enforce

9.1.1: Subject to any other provisions of this Agreement and/or the Facility Agreement, the Parties agree that the occurrence of any Event of Default shall constitute a material breach of the Secured Obligations giving rise to the Mortgagee's entitlement to levy execution of the Mortgaged Property.

9.1.2: The Parties agree that the restrictions under part 3 of Article 348 of the Civil Code and part 5 of Article 54.1 of the Mortgage Law shall not apply, and the Mortgagee may levy execution on the Mortgaged Property **immediately after the occurrence of the Event of Default** in accordance with the terms and conditions of this Agreement and subject to Clause 21 (Dispute Resolution).

9.1.3: The Mortgagee may levy execution under this Agreement **only in a judicial procedure**.

...

9.1.5: **The Mortgagee shall not be obliged** before exercising its right to levy execution on the Mortgaged Property in a judicial procedure to:

(a) take any action or **obtain a decision of any court, arbitration court** or state authority against the Mortgagor;...

Clause 20: Governing Law

This Agreement shall be **governed by the laws of the Russian Federation**.

Clause 21: Dispute Resolution

21.1 **Any dispute arising out of or in connection with this Agreement** (including a dispute regarding the entry into, validity, interpretation, breach or termination of this Agreement or the consequences of its nullity) (the 'Dispute') **shall be referred to and finally settled by the Commercial Court of Moscow** (the 'Court') **in accordance with the laws of the Russian Federation**.

Clause 9.1.2 [CB/18/183]

10. As the Judge held at J§57 [CB/10/114-115], cl.9.1.2 provides that execution can be levied “*immediately after the occurrence of the Event of Default*”, though “*subject to Clause 21 (Dispute Resolution)*”. That is, as the Judge said, “*consistent with an intention that clause 9 should apply not only in cases where there is no dispute between the parties, but also where there is such a dispute, which may well include whether there has been an Event of Default or not; and makes provision for such disputes. Read as a whole, clause 9.1.2 indicates that the lenders can commence the execution procedure immediately, with any dispute about entitlement being resolved, under clause 21, by the Moscow Commercial Court in which those proceedings are commenced, rather than by a two-stage procedure requiring an arbitration followed by proceedings in the Moscow Commercial Court.*”
11. FHM is unable to give any sensible meaning to the provision that execution can be levied “*immediately after the occurrence of the Event of Default*” unless it has the meaning the Judge found it had at J§57. At Skeleton §§27-32 [CB/4/32-34] FHM submits as it did at first instance that (in summary) because cl.9.1.1¹ refers to the Mortgagee being able to levy execution “*immediately after the occurrence of the Event of Default*”, and “*Event of Default*” is defined in the Mortgage Agreement by reference to its definition in the Facility Agreement, then the question whether an “*Event of Default*” has occurred has to be decided in accordance with the Arbitration Agreement in the Facility Agreement rather than the jurisdiction clause in the Mortgage Agreement.
12. This argument is wrong because the occurrence of an Event of Default is not the same as a determination that there has been an Event of Default. It is entirely possible that something could happen “*after the occurrence of the Event of Default*” but before there had been a determination that there had been an Event of Default: for example, if the Event of Default happened on a particular day and a determination that an Event of Default had taken place was reached two months later, an event on any date in between would take place both “*after the occurrence of the Event of Default*” and before the determination there had been an Event of Default. As the Judge held at J§57, “*clause 9.1.1² provides that execution can be levied, by a judicial procedure, as soon as an Event of Default has in fact occurred, as distinct from after a separate arbitral process has confirmed that to be the case*”. FHM’s argument effectively amounts to a submission that the words “*immediately after the occurrence of an Event of Default*” should

¹ This appears to be an error for cl.9.1.2.

² This is a typographical error which the parties did not identify on hand-down: the wording of this sentence and of cl.9.1 makes clear that this is intended to be a reference to cl.9.1.2, rather than cl.9.1.1.

be read as “*immediately after a determination that there has been an Event of Default*”. There is no basis for re-writing the clause in this manner.

13. FHM’s Skeleton §29.4 **[CB/4/33]** says that “*Critically, as a legal concept, whether an Event of Default ‘has occurred’ (noting the perfect tense, which is conclusory i.e. a completed event) is an issue that can only be determined (i) by agreement of the parties; or (ii) by legal determination; but (iii) not unilaterally by AO.*” That submission does not give sensible meaning to the provision that execution can be levied “*immediately after the occurrence of the Event of Default*” because it fails to recognise that there is a difference between the occurrence of an Event of Default and a determination that there has been an Event of Default. (See also the same failure at Skeleton §31 **[CB/4/33-34]**, emphasis added: “*(only) after an Event of Default has occurred (which in the event of a dispute requires legal determination by a VLAC Tribunal) there are no further procedural or contractual steps that need to be taken to enforce the mortgage.*”)
14. FHM suggest that the Judge’s construction is wrong because he used additional words at J§57 **[CB/10/114-115]** in setting out his conclusion: see Skeleton §28 **[CB/4/32]**. This provides no basis for challenging the decision: the Judge was there setting out his conclusion as to what the clause meant, and using the words “*as soon*” and “*in fact*” to make that clear (by contrast to the construction proposed by FHM), rather than purporting to quote the words of the clause. The Judge’s use of those words does not involve any error in the reasoning in reaching that conclusion.
15. FHM then (Skeleton §29) **[CB/4/32-33]** seeks to bolster its criticism of the Judge’s construction by relying on his use of the words “*as soon*” and “*in fact*” in setting out his conclusion, submitting that by doing so, he treated the question whether an Event of Default had occurred as “*a relatively simple factual issue that justified an immediate resort to execution at AO’s discretion*”. This submission has no proper basis in the Judgment and is contrary to what the Judge in fact said. He expressly found that (J§55 **[CB/10/114]**), “*The questions of whether an Event of Default has occurred, and (if so) what amount is due to the lenders, are questions that may arise under the Mortgage Agreement as well as under the Facility Agreement*”, thereby expressly recognising that the question before him arose in situations where there was a dispute between the parties as to whether there had been an Event of Default. He did not, as FHM contend, treat the question of whether an Event of Default had occurred as a simple factual issue: that is a bootstraps argument that only has anything in it if, contrary to the Judge’s decision about the true construction of the clause, FHM is right to argue that a

determination that there has been an Event of Default is (at least where there is an issue between the parties) what is referred to as “*the occurrence of the Event of Default*” in cl.9.1.2. The Judge, on the contrary, expressly recognised that he had to decide what the true construction of the Arbitration Agreement and the Mortgage Agreement is in this case, where FHM says there is an issue as to whether an Event of Default has in fact occurred, and found that in this case, “*the dispute about whether an Event of Default has occurred falls within the scope of the Mortgage Agreement jurisdiction clause, as well as the Facility Agreement Arbitration Agreement*” (J§55 [CB/10/114], emphasis added).

16. As Skeleton §29 wrongly characterises the Judge’s decision, it is unnecessary to address the points made in its sub-paragraphs which are intended by FHM to show that that (mischaracterised) decision was wrong. §29.4 [CB/4/33] is, however, addressed above and §29.5 [CB/4/33] contains a further mischaracterisation of the Judge’s decision, suggesting that the Judge wrongly found the issue whether there had been an Event of Default was one that “*can be resolved by AO unilaterally as satisfying the cl.9.1.1 enforcement gateway*”. In fact, FHM (and Rs) accept that the parties can agree that an Event of Default has occurred (Skeleton §29.4(i)), and where that is not the case, the Judge’s decision was that the issue fell to be resolved by the Moscow Court pursuant to the jurisdiction clause in cl.21 of the Mortgage Agreement, not that it could be “*resolved by AO unilaterally*”.
17. Skeleton §30 [CB/4/33] echoes this last error by contending that cl.9.1.2 “*says nothing about how a dispute over the occurrence of an Event of Default is to be resolved*”. In fact, as FHM sets out at §30, cl.9.1.2 provides that AO’s levying of execution after the occurrence of the Event of Default is to be “*in accordance with the terms and conditions of this Agreement and subject to Clause 21 (Dispute Resolution)*” and so does make clear that any dispute which arises in the course of AO’s levying of execution over whether an Event of Default has occurred is to be resolved in accordance with Clause 21, i.e. in the proceedings in the Moscow Court. Furthermore, as a matter of Russian law, Russian courts (such as the Moscow Court) can and do decide issues such as the fact of non-performance or the amount of the underlying debt as part of proceedings to levy execution; this is clear from the evidence of Ms Trusova on behalf of Rs (at paragraph 40(b)) of Trusova 1 [SB/B3/253]), and FHM has not disagreed with that part of Ms Trusova’s evidence.
18. Separately, Rs note here that, if and to the extent that FHM is now seeking to rely on a point (see Skeleton §21 [CB/4/30], §47.4 and footnote 16 [CB/4/40]) that there is a

distinction between the Commercial Court of the Moscow Region and the Commercial Court of Moscow, that point is not open to it since FHM has accepted that this distinction is not material (Mr Lim's second witness statement at §23 **[SB/B4/273]**).

19. The Judge was therefore (respectfully) right to find that this is one of the occasions well-recognised in the authorities (including TRM at [68(6)], but also Monde Petroleum SA v Westernzagros [2015] 1 Lloyd's Rep 330 at [35]-[36] per Popplewell J as he then was, cited with approval in Deutsche Bank AG v Savona [2018] EWCA Civ 1740 at [30]-[31] per Longmore LJ) where a dispute falls within the ambit of two different jurisdiction clauses in an overall set of contractual arrangements. The passage from the Monde Petroleum case explains one reason why that is a commercially sensible conclusion in this case. Popplewell J said at [35]-[36],

“Where there is more than one agreement between the same parties, and they contain conflicting dispute resolution provisions, the presumption of one stop adjudication dictates that the parties will not be taken to have intended that a particular kind of dispute will fall within the scope of each of two inconsistent jurisdiction agreements. They will fall to be construed on the basis that they are mutually exclusive in the scope of their application, rather than overlapping, if the language and surrounding circumstances so allow ...

“Nevertheless the possibility of fragmentation may be inherent in the scheme of the parties' agreements and clear agreements must be given effect to even if this may result in a degree of fragmentation in the resolution of disputes between the parties.”

20. Here, the parties' choice to use a Mortgage Agreement in respect of Russian real estate assets as a form of security meant that it was inevitable that execution would have to be pursued in Russia. It was in this way *“inherent in the scheme of the parties' agreements”* that execution would have to be pursued in Russia rather than through VIAC arbitration and therefore that there would, at least to this extent, be a degree of fragmentation (rather than having all disputes arising in respect of the transaction resolved in VIAC arbitration). In those circumstances, the fact that a dispute as to whether there had been an Event of Default where AO is seeking to levy execution under the Mortgage Agreement falls within cl.21 of the Mortgage Agreement **[CB/18/188]** as well as within the Arbitration Agreement **[CB/17/178-179]** could enable the parties to have their entire dispute determined in one forum (namely the Moscow Court) rather than in two (VIAC tribunal and the Moscow Court). The learned Judge correctly held that a dispute as to whether an

Event of Default has occurred may arise: **(i)** in the course of proceedings brought pursuant to the jurisdiction agreement in the Mortgage Agreement (which is the case here); or **(ii)** in the course of proceedings brought pursuant to the Arbitration Agreement.

21. The position can be tested by reference to the point made by Thomas LJ in Sebastian Holdings Inc v Deutsche Bank [2011] 1 Lloyd's Rep 106 at [62-63] that "... *the question as to whether a claim falls within the jurisdiction clause is an issue that has to be determined at the time the proceedings are issued ... Businessmen agreeing to different jurisdiction clauses in a series of related contracts cannot have been taken to have intended that the entitlement to bring that claim in the chosen forum in respect of one contract should depend on whether a defence had been raised prior to the bringing of the claim and that the defence to that claim might place the centre of gravity of the dispute as being related to a different contract with a different jurisdiction clause*" (emphasis added).
22. In TRM, Hamblen LJ quoted this with approval (at [60]) and continued at [61]: "*The answer to this question cannot change by reason of subsequent events, such as a defence raised or a subsequent set of proceedings*". Applying this point here:
- a. If AO was unaware of a dispute as to whether there had been an Event of Default at the time it issued proceedings to foreclose in Moscow under the Mortgage Agreement, there can be no dispute that AO would be entitled to pursue that claim pursuant to the jurisdiction provisions in the Mortgage Agreement.
 - i. This appears to be common ground, hence FHM's approach of identifying specific issues (which it defines as the "Disputed Issues": see Skeleton §13) as issues which fall within the scope of the Arbitration Agreement and saying that the Disputed Issues have to be determined in a VIAC arbitration before proceedings can take place (or proceed) in the Moscow Court pursuant to the Mortgage Agreement: see Skeleton §§19 and 21 [CB/4/30].
 - ii. If this were not the case, AO could never pursue foreclosure proceedings without first obtaining a ruling from a VIAC tribunal that there had been an Event of Default. And (unless FHM succeeds in adducing its new evidence of translation and persuades the Court that the reference to "arbitration court" in cl.9.1.5 does not include an arbitration tribunal), that

construction is clearly wrong given the terms of cl.9.1.5(a): “*The Mortgagee shall not be obliged before exercising its right to levy execution on the Mortgaged Property in a judicial procedure to take any action or obtain a decision of any court, arbitration court or state authority against the Mortgagor.*”

b. As made clear by Thomas LJ in Sebastian Holdings and Hamblen LJ in TRM, it would be wholly uncommercial for businesspeople to agree that whether jurisdiction for a particular claim could be established in a particular tribunal would depend on whether or not a particular defence was raised before or after the claim was issued. Thus the answer to the question whether the Moscow Court has jurisdiction to determine foreclosure proceedings cannot change depending on whether a dispute as to whether there had been an Event of Default or as to the amount of outstanding debt was raised after (rather than before) the Moscow Proceedings had been issued. The question of whether the Moscow Court has jurisdiction has to be capable of being answered in the same way before and after the proceedings have begun.

23. Rs’ position also makes commercial sense, because otherwise all FHM would have to do to deprive the Moscow Court of jurisdiction to deal with enforcement proceedings begun by AO would be to raise an entirely spurious dispute as to whether there had been an Event of Default (without being under an obligation to begin a VIAC arbitration itself).

Clause 9.1.3 [CB/18/184]

24. The Judge held at J§58 [CB/10/115] that his decision that the dispute in this case fell within cl.21 of the Mortgage Agreement as well as within the Arbitration Agreement was “*also consistent with clause 9.1.3, which provides that execution can be levied only in a judicial proceeding. The requirement for such judicial approval, including resolution of any dispute, provides a safeguard for the borrower just as the Arbitration Agreement in the Facility Agreement does.*” There is no error in that decision.

25. FHM sought to rely at first instance on the presumption of contractual interpretation that parties are unlikely to forego valuable rights without clear words (recognised in RTI Ltd v MUR Shipping BV [2025] AC 675 at [43]-[46]) to support their argument on construction. Its contention (§53 of its first instance skeleton [CB/4/41]) was that the right to VIAC

arbitration is a valuable right and that it is “*unrealistic to suppose, in the absence of clear words, that the parties intended the Mortgage DR Clause to take away their rights under the Arbitration Agreement*”. The Judge (respectfully) was right to conclude that cl.9.1.3, by providing that execution could be levied only in a judicial proceeding, means that there is “*no real question of a valuable right being removed*”, but that, even if there were, the wording of clause 9 made the position sufficiently clear to satisfy the principle recognised in MUR Shipping. The points at Skeleton §34 [CB/4/34-35] do not identify any error in that conclusion. Furthermore, the point could equally be put the other way: why should it be supposed that Rs have given up the valuable right to be able to bring enforcement proceedings in the Moscow Court without first having to bring proceedings elsewhere?

Clause 9.1.5 [CB/18/184]

26. The Judge also relied on cl.9.1.5 as supporting his decision on construction on the basis that the reference in the English version of cl.9.1.5 to “arbitration court” includes a VIAC tribunal. FHM now appears to accept (Skeleton §§35-45) [CB/4/35-38] that cl.9.1.5 does support the Judge’s conclusion on construction if it is indeed the case that cl.9.1.5’s reference to “arbitration court” includes a VIAC tribunal.

27. On that basis, cl.9.1.5 does indeed support the Judge’s conclusion on construction. There would be no reason for this wording in cl.9.1.5 to be included if it was not possible for proceedings before the Moscow Court pursuant to the Mortgage Agreement to raise an issue which might fall within a jurisdiction clause giving a different court or arbitral tribunal jurisdiction to decide it (i.e. the Arbitration Agreement). In other words, this wording in cl.9.1.5 supports the conclusion that some disputes will fall within both the Arbitration Agreement and cl.21 of the Mortgage Agreement. The fact that the wording is included makes clear that, in this situation, AO is entitled to pursue foreclosure proceedings in Moscow without first obtaining a decision from a VIAC tribunal. FHM’s case to the contrary is inconsistent with the clear meaning of cl.9.1.5(a). In light of FHM’s point on translation, Rs emphasise that the Judge found at J§59 [CB/10/115] that cl.9.1.5(a) “*bolstered*” the view he had already taken as to the correct construction, rather than it being necessary to the conclusion he reached. Further, and as the Judge held at J§60 [CB/10/115], cl.9.1.5 in any event supports his conclusion on construction (regardless of the translation issue) because it is unclear on FHM’s construction what purpose cl.9.1.5 would really serve, Ms Trusova’s evidence on behalf of Rs being that she was unaware of

any relevant permission that might be needed from another Russian court **[SB/B5/288]**. At first instance and now, FHM remain unable to identify what permission this could be a reference to (see Skeleton §43 **[CB/4/37]**, which argues that cl.9.1.5(a) is surplusage).

28. FHM has made an application **[SB/G4/592-596]** to adduce new translation evidence to support its position, which Rs say should be rejected for the reasons set out at §§33-35 below and, if it is not rejected, Rs seek permission to rely on their own evidence in answer.
29. Rs say that FHM's submissions on the basis of the evidence as it stands do not disclose any error in the Judge's approach to cl.9.1.5.
30. First, FHM is wrong to contend on the basis of cl.13.5 **[CB/18/187]** that the Russian language version of the Mortgage Agreement is authoritative. Cl.13.5 is part of clause 13 which is headed, and concerned with, "Notices". Cl.13.5, headed "Language", states: "*Any notice given by a Party under or in connection with this Agreement shall be in Russian. For the avoidance of doubt, a text in Russian may be accompanied by a translation into any other language, in which case the text in Russian will prevail.*" Cl.13.5 relates to notices only (not the agreement as a whole), and therefore does not provide that the Russian language version of the Mortgage Agreement is authoritative. On the other hand cl.1.2 **[SB/A2/138]**, which is headed "Interpretation", does concern the Mortgage Agreement as a whole, but it does not provide that the Russian language version of the Mortgage Agreement is authoritative. Thus the Judge was right to construe, as he did, the English version of cl.9.1.5.
31. Second, Rs submit that it was not open to FHM to rely on the Russian language version of the Mortgage Agreement in circumstances where in the first instance proceedings (as noted by the Judge in Form N460 **[CB/11/123-124]**) FHM had agreed with Rs that the Russian language version of the Mortgage Agreement should be omitted from the hearing bundle because (as stated at page 432 of the original hearing bundle) "*the English Version will be relied upon for the purposes of the hearing*". For the same reason, Rs submit that it is not open to FHM to rely on the Russian language version of the Mortgage Agreement in this appeal.
32. Third, the Judge was right to hold at J§59 **[CB/10/115]** that in circumstances where there was no expert evidence on the correct translation of cl.9.1.5 and the parties had exchanged witness statements which proceeded on the basis that the phrase included an arbitral

tribunal, it would not have been fair to allow FHM to argue to the contrary at the hearing. The Judge was right in so doing to hold that the parties had exchanged witness statements on the basis that the phrase did include an arbitral tribunal. FHM now say (Skeleton §38) **[CB/4/36]** that the burden was on Rs to make clear that they relied on the phrase “arbitration court” in cl.9.1.5 as including an arbitration tribunal. As the Judge set out at J§59, Ms Trusova did so on behalf of Rs at §§36 and 37 of her first WS **[SB/B3/251-252]**, concluding that in light of cl.9.1.5, AO “*was entitled to proceed to levy execution on the Mortgaged Property without first obtaining a decision from an arbitral tribunal*” (emphasis added), and in response Mr Lim (giving evidence for FHM) in his second WS at §§14-35 **[SB/B4/271-275]** took issue with that proposition as a matter of construction of the agreements as a whole but not on the basis that the words in cl.9.1.5 do not include an arbitral tribunal.

33. As to the application for permission to adduce new evidence, the application should be refused because the evidence could undoubtedly, with reasonable diligence, have been obtained for use at the hearing:
- a. Ms Trusova’s first WS **[SB/B3/239-268]** made clear that Rs relied on the phrase “arbitration court” in cl.9.1.5 as including an arbitration tribunal, so FHM had the opportunity to address that issue in its reply evidence and failed to do so.
 - b. FHM incorrectly says Rs first “revealed their hand” on this point in their first instance skeleton. Even if that had been the case, and FHM had disagreed with that position, it would have been addressed upfront in FHM’s oral submissions (if not between the parties before the hearing). The fact that FHM did not raise the point until late in FHM’s oral submissions at the hearing, and then only in response to questions from J, suggests that it did not occur to FHM to dispute the point until that stage, not that they were unaware of Rs’ position.
 - c. In fact: *(i)* as held at J§59 **[CB/10/115]**, the parties’ evidence proceeded on the basis that “arbitration court” covered an arbitration tribunal; *(ii)* Rs’ first instance skeleton at §§9, 15-17 and 22-23 **[SB/F2/555, 559, 562-563]** relied on the point; *(iii)* FHM’s oral submissions on cl.9.1.5 (starting T/p.47 **[SB/C2/300]**) did not initially challenge this point even when the Judge asked about “arbitration court” at T/p.55 **[SB/C2/302]** (in fact, FHM’s Leading Counsel accepted at T/p.56 lines 10-12 **[SB/C2/302]** that cl.9.1.5 did apply to arbitration tribunals); *(iv)* only after

that, at T/p.57 [SB/C2/303], apparently after a team member made the point, did FHM's Leading Counsel then make a submission on this issue, and then initially only to the effect that Russian commercial courts are called "arbitrazh courts"; (v) the Judge then asked three times (T/pp.58, 62, 63 [SB/C2/303, 304]) whether FHM was submitting that "arbitration court" did not include an arbitration tribunal, a question which FHM's Leading Counsel did not answer other than by saying that Rs were not saying "arbitration court" did include an arbitration tribunal (T/p.63 [SB/C2/304]). That submission is inconsistent with what FHM now says, namely that Rs "revealed their hand" on this point for the first time in Rs' skeleton for the first instance hearing.

34. Second, the evidence would in any event not have had an important influence on the outcome. It remains the case that, as the Judge held at J§60 [CB/10/115], FHM cannot, on its construction, identify any purpose served by cl.9.1.5. (FHM apparently no longer seeks to maintain the suggestions made by Mr Lim in his evidence). By contrast, as the Judge held at J§60 [CB/10/115], on his construction the clause supports "*what can in any event be deduced from clauses 9.1.1 to 9.1.3, namely that the parties intended that execution proceedings could be started immediately, with any disputes being resolved as part of those proceedings rather than extraneously to them*". Thus, the meaning of cl.9.1.5 is not a necessary part of the Judge's decision. But even if, contrary to Rs' case, FHM's position on the Russian version were correct, cl.9.1.5 still supports Rs' case that cl.9.1 as a whole makes clear there is no need for a prior decision on whether an Event of Default has occurred before enforcement proceedings are commenced in the Moscow court pursuant to cl.21 (the Mortgage Agreement jurisdiction clause).
35. Furthermore, Mr Prokofiev's evidence [SB/D1/312-318] is equivocal, and does not support the submissions that FHM seeks to make, purportedly in reliance on that evidence. In particular he acknowledges at para.2.1(2) that "*the confusing term арбитраж for courts of arbitration is still widely - and not entirely correctly - used by lay persons, and even quite often by lawyers. The only explanation for this, in my view, is the 'gravitational pull' of the English '(court of) arbitration', French '(cour d') arbitrage' etc*". Accordingly, there is no basis for FHM's assertion that it was "*simply absurd*" (Ladd v Marshall Skeleton §16 [CB/6/78]) to suggest that Mr Lim had "*somehow agreed with Ms Trusova that 'arbitration court' in MA cl.9.1.5(a) meant 'arbitral tribunal' in a sense that included a VLAC Tribunal*". On its expert's own evidence, that interpretation is "*quite often*" adopted by lawyers.

36. If the new evidence is to be admitted, Rs seek permission to rely in response on the translation evidence of Kirill Petukhovskiy [SB/D6/330-339]. He explains that the relevant Russian phrase (which is ‘arbitration court’ in the English version of the Mortgage Agreement) can mean a Russian commercial (state) court or an arbitration tribunal, and gives his conclusion that a translation including arbitral tribunals within cl.9.1.5 is more consistent with the drafting structure than one confined to Russian commercial state courts. Furthermore, Mr Petukhovskiy explains that the Russian term for ‘court’ which precedes ‘arbitration court’ in cl.9.1.5 is, contrary to FHM’s submissions, general, and a reader would not normally derive a specific category of court from this word. For the reasons he gives his evidence is to be preferred.
37. Finally in respect of FHM’s Ground 1, Rs make the point in their Respondents’ Notice that, as the hearing before the Judge was the final hearing of FHM’s claim, FHM had to prove that the Moscow Proceedings were in breach of contract to the civil standard (i.e. on the balance of probabilities), rather than to the lower standard of a “*high degree of probability*”, the test applied by the Judge (J§3(i) and J§44) [CB/10/93, 109] which is in fact the test for interim (rather than final) anti-suit relief: see *Denizilik v Cofco Global Harvest (Zhangjiagang) Trading Co Ltd* [2020] EWHC 3645 (Comm) at [83(6)] per Bryan J and Raphael, *The Anti-Suit Injunction*, 2nd Ed. at [13.51-13.56]. This means that FHM fell even further short of the relevant test below, and must persuade this Court to the civil standard that the Moscow Proceedings are in breach of contract (rather than simply that there is a high degree of probability that that is the case).

(C) Ground 2

38. There was no error in the Judge’s conclusion that FHM cannot rely on CPR PD6B para.3.1(6)(c) (a claim in respect of a contract governed by English law) in order to establish jurisdiction for the claim against AO. As the Judge said at J§81 [CB/10/121], “*the dispute in an ASI claim is about where the proceedings should take place*” and that claim is based on the Arbitration Agreement. While that in practice (as the Judge said) involves referring to the main contract, so that in that sense the underlying contract (here, the Facility Agreement) needs to be “*referred to and relied upon in order to assert the relevant cause of action*” (*Cecil v Bayat* [2010] EWHC 641 (Comm) per Hamblen J, as he then was, at [49]), the Judge was

(respectfully) entirely right to hold that, “*The real contract under which the ASI claim is brought is the Arbitration Agreement, as opposed to the main contract*”. The Facility Agreement is only referred to in FHM’s ASI claim because of its factual connection with the separable Arbitration Agreement; the Facility Agreement is not “*a necessary part of the cause of action*” and there is no “*relevant legal connection*” between it and the claim (per Hamblen J in Cecil v Bayat). By its claim, FHM is seeking to uphold the Arbitration Agreement providing for arbitration in Vienna and is not seeking relief in respect of the Facility Agreement. (It is, on the contrary, an important part of an application for an ASI based on an arbitration agreement that the ASI claimant is not seeking relief from the court in respect of the underlying claim but seeking simply to uphold the parties’ (alleged) agreement to arbitrate the relevant dispute: see e.g. Lord Leggatt’s discussion of the need for interim relief sought from the Court to be compatible with the parties’ agreement that their disputes should be resolved by arbitration (rather than in court) in UniCredit Bank GmbH v RusChemAlliance [2024] UKSC 30 at [84]-[88].)

39. The Judge’s conclusion is consistent with what was said by the Court of Appeal in the same RusChemAlliance case, [2024] EWCA Civ 64, at [40]:

“The gateway on which the bank relies is that set out in paragraph 3.1(6)(c) of Practice Direction 6B, that the claim is in respect of a contract governed by English law. Because of the principle of separability (see e.g. section 7 of the Arbitration Act 1996), the contracts on which the bank relies are not the bonds, which are expressly governed by English law, but the arbitration agreements contained within them. The issue, therefore, is as to the governing law of those arbitration agreements.”

40. And as the Judge set out at J§37 **[CB/10/105-106]**, it was suggested for the first time in that case in the Supreme Court that the para.3.1(6)(c) gateway applied because the claim for an ASI was made “in respect of” the underlying contract, and he set out the Supreme Court’s response to that suggestion in the Supreme Court decision at [19]. Contrary to FHM’s criticism at Fn.21 of its skeleton, the Judge was therefore (respectfully) entirely accurate in saying at J§80 **[CB/10/120-121]** that “*The authorities proceed on the basis that, in a claim for an ASI, the relevant law is that governing the arbitration agreement, as distinct from the law governing the main or ‘matrix’ contract*”.

41. This analysis is supported by the authorities on “two contract” cases where a party seeks to rely on this gateway (a claim in respect of a contract governed by English law). While

that gateway is given a wide application where there is only one contract in issue, there is no authority to support a wide application being given to the gateway where that would have the effect of undermining the scope of an arbitration agreement which is, as the Judge found here, the real contract under which the claim is brought. That is consistent with the recognition in the authorities of a distinction between one contract and two contract cases: see, for example, Alliance Bank v Aquanta [2012] EWCA Civ 1588 per Tomlinson LJ at [60] and [67]-[68] as well as Cecil v Bayat and Global 5000 v Wadhawan [2012] EWCA Civ 13.

42. FHM is wrong to say (Skeleton §55) [CB/4/41-42] that Aikens J (as he then was) in Youell v Kara Mara [2000] 2 Lloyd's Rep 102 at [49] was considering the position of a contract expressly governed by English law and an arbitration agreement governed by foreign law. The discussion at [49] was, as Aikens J there set out, as to the position if “*there is no English EJC or English arbitration clause*” but “*the claim for an anti-suit injunction is in connection with a contract that is expressly governed by English law*”. Youell was a case where the ASI claim was brought in respect of proceedings brought pursuant to a Direct Action Statute where the relevant insurance policies contained an exclusive jurisdiction clause in favour of the English courts and the insurance was said to be “*subject to English law and practice*” (see [61] and [4]), so the discussion at [49] appears to have been directed to the situation where there was no arbitration agreement or EJC at all, rather than one governed by a foreign law. It was in any event obiter. Further, it is a first instance decision, predating Cecil v Bayat, Global 5000 and Aquanta, and does not disclose any error on the part of the Judge in this case.

43. Further, by choosing a foreign seat for their arbitration in a contract governed by English law, the parties are now (by s.6A Arbitration Act 1996) statutorily deemed to have opted out of the supervisory jurisdiction of the English court in support of the arbitration; it would therefore be surprising for the governing law of the Facility Agreement to be found sufficient to ground English jurisdiction for a claim made for anti-suit relief, where the Arbitration Agreement does not do so.

(D) Ground 3

44. The Judge's decision at J§78 [CB/10/120] was that FHM could not rely on the “*necessary and proper party*” gateway in order to establish jurisdiction against AO because between

FHM and SPA there is not a “*real issue which it is reasonable for the Court to try*” (as required by CPR PD6B para.3.1(3)(a)). That decision is right for the reasons he gave.

45. The Judge was also (respectfully) right to hold (last sentence of J§78) **[CB/10/120]** that it would not be just and convenient to grant relief against SPA in any event for the reasons set out at J§76 **[CB/10/120]** and because “*like Erste Group, this is an overwhelmingly Russian case where, even if a ‘real issue’ existed between the Claimant and SPA, it is not one ‘which it is reasonable for the court to try’.*” The Moscow Proceedings are proceedings to enforce a Russian-law governed mortgage agreement over real property in the Moscow region with a jurisdiction clause providing for Russian court jurisdiction.

46. FHM’s challenges to that decision in Grounds 1 and 4 are addressed above and below.

47. FHM is wrong to say that the Judge erred in applying a motive consideration to the analysis of jurisdiction. At J§76 **[CB/10/120]**, the Judge sets out the (undisputed) fact that “*Only AO, as the Agent, is contractually entitled to pursue the Moscow proceedings ..., and, as already noted, SPA as third party would have no procedural standing as a third party to continue the current proceedings itself.*” The Judge recorded (at J§69 **[CB/10/118]**) that it was the Ds’ “*undisputed evidence*” that as a third party SPA had no procedural standing to pursue the Moscow Proceedings itself.

48. He went on to conclude that (J§76 **[CB/10/120]**):

“There is no reason to believe that, if AO is restrained from pursuing the Moscow proceedings, SPA would attempt to pursue them itself. Nor is there any reason to believe that AO, if restrained by an ASI, would nonetheless pursue the proceedings in breach of the injunction if so instructed by SPA under clause 27.5 of the Facility Agreement. In reality, it seems likely that the claim against SPA is brought essentially in order to find an ‘anchor defendant’. Even aside from that latter point, it would in my view, in all the circumstances, not be just and convenient to grant an ASI against SPA in any event, whether on the contractual basis or on the vexation and oppression basis.”

49. In J§76 **[CB/10/120]**, the Judge was therefore concluding that there was no need for FHM to have sought ASI relief against SPA (which is not the claimant in the Moscow Proceedings but was joined as a third party on FHM’s own application to the Moscow Court) rather than simply against AO. It was in support of that conclusion, that the joinder

of SPA as a party was unnecessary, and as an explanation of why SPA had (despite his conclusion) been joined, that the Judge expressed the view that *“In reality, it seems likely that the claim against SPA is brought essentially in order to find an ‘anchor defendant’”*, rather than in support of a conclusion that there is between FHM and SPA no *“real issue which it is reasonable for the Court to try”* and that the Court should not therefore grant permission to serve out on AO as a *“necessary and proper party”*. The Judge did not err in doing so.

50. The fact that a breach of an arbitration agreement usually justifies the granting of an ASI against the party in breach does not help FHM, because the Judge’s decision, set out at the start of J§76 [CB/10/120], was that any breach of the Arbitration Agreement (although he found there was none) was that of AO, the claimant in Russia, which *“whilst a subsidiary of SPA, has its own board of directors, and as Security Agent has its own direct claim against [FHM] in respect of both facilities”*, rather than a breach by SPA.

(E) Ground 4

51. The Judge did not err in concluding that it was not just and convenient to grant an ASI against SPA in all the circumstances. Even if FHM succeeds on Ground 1, that conclusion remains correct because, as the Judge explained at J§76 [CB/10/120]:

- a. even if the Moscow Proceedings were a breach of the Arbitration Agreement, that is not a breach by SPA but a breach by AO (see above), and
- b. there is no reason to believe that if AO were restrained from pursuing the Moscow Proceedings, SPA would attempt to pursue them itself or that AO would pursue the Moscow Proceedings contrary to an ASI against it if SPA directed it to do so (it being undisputed that SPA as a third party did not have the procedural standing to pursue the proceedings itself).

52. The Judge was therefore (respectfully) right to hold that it was not just and convenient to grant relief against SPA in any event. As to the further points made by FHM:

- a. The Judge’s conclusion was that even if, contrary to his conclusion, the Moscow Proceedings were a breach of the Arbitration Agreement, then SPA was not

independently in breach of the Arbitration Agreement: J§§72-76 [CB/10/119-120]. That is a complete answer to the claim for relief against SPA if relief were not granted against AO because FHM's claim for contractual ASI relief against Rs is based on the contention that both AO and SPA are in breach of the Arbitration Agreement: see FHM's first instance skeleton at §§54-63 [SB/F1/542-544]. The Judge then went on at J§76 [CB/10/120] to consider whether it would be appropriate to grant relief against SPA if relief were granted against AO: contrary to Skeleton §78 [CB/4/48], that approach is therefore neither counterintuitive nor illogical.

- b. As set out above, insofar as FHM contends at Skeleton §79 [CB/4/48] that the Judge was wrong because his decision is inconsistent with the principle that once a breach of an arbitration agreement is established, an ASI will be granted unless strong reasons not to do so are made out, that disregards the fact that even if the Moscow Proceedings are a breach of the Arbitration Agreement, FHM has to overturn in addition the further finding that they are not a breach by SPA: J§§72-76 [CB/10/119-120].
- c. FHM addresses that finding at Skeleton §80 [CB/4/48-49]. It submits that there is un rebutted evidence that SPA has been "*directing and controlling the Moscow Proceedings*", relying on what is said in Greaves 1st WS, in particular at §§21-22 [SB/B1/187]. The points Mr Greaves makes there are, in summary, that "*it is likely that [AO] and [SPA] are coordinating their litigation strategy in the Moscow Proceedings*", and that "*as [AO's] sole shareholder, [SPA] is able to direct (and, I believe, would be directing, [AO's] actions in the Moscow Proceedings ...*". This evidence is speculative (Mr Greaves' belief as to what SPA "would be" doing) and does not suggest that the relationship is anything other than a normal parent/subsidiary relationship. FHM (Skeleton §80) characterises Rs' response, namely that AO has its own board of directors, as a "*bland point*", but that submission is apparently intended to encourage the Court simply to disregard the separate corporate identity of SPA and AO and itself disregards the Judge's finding that there is not "*any reason to believe that AO, if restrained by an ASI, would nonetheless pursue the proceedings in breach of the injunction if so instructed by SPA under clause 27.5 of the Facility Agreement*" (J§76) [CB/10/120]. It is unclear if FHM intend by this appeal to challenge that finding. If so, there is no

basis for doing so. As set out above, it is common ground that SPA could not pursue the Moscow Proceedings itself (and that was a point made by Ms Trusova in her first WS at para.73 [SB/B3/265]). (FHM record in a footnote (Fn 29) that the Judge did not make any finding about whether AO's board of directors acted independently in bringing and pursuing the Moscow Proceedings: that is correct, but if FHM intend to submit by that footnote that the Judge erred in that respect, that challenge is hopeless because FHM did not ask him to find that AO's board had not acted independently and there is certainly no evidence which could provide the necessary basis for any such finding.)

- d. As to Skeleton §82 [CB/4/49], the Judge did not err in deciding the matter on the basis that the burden was on FHM (the reference here at Skeleton §82 to the burden being on Rs appears to be a typographical error) to prove that AO would not comply with any ASI that was granted. That is the starting point and unless the evidence filed by FHM was sufficient to discharge the burden on FHM (which it was not, for the reasons above), then the burden remained on FHM.
- e. The Judge did not err in referring to Erste Group at J§78 [CB/10/120] for the reasons set out above because *(i)* the Judge was addressing here the question whether FHM could make out a case that it could rely on the “necessary and proper party” gateway in order to serve AO out of the jurisdiction, i.e. whether it could establish personal jurisdiction over AO, and there is nothing in RusChemAlliance to undermine the need to make out a good arguable case on a gateway relied on to establish personal jurisdiction (the necessary first step before the Court considers the grant of relief), and *(ii)* in any event, it was expressly left open in RusChemAlliance that there might be cases in which the connection with this jurisdiction was too tenuous to justify the grant of relief even if the Court had personal jurisdiction over the relevant defendant. Both points are made clear by Lord Leggatt in the RusChemAlliance case at [83]:

“It is unnecessary to express a view in this case on whether it will always amount to a sufficient connection to justify intervention by the English court to restrain breach of an agreement to arbitrate in a foreign seat that the English court has personal jurisdiction over the defendant – either because the defendant has been served with the claim form in England and Wales or because, if service out

of the jurisdiction is necessary, jurisdiction is established through one of the gateways. As in IPOC International Growth Fund, this is not a case where jurisdiction is based on a tenuous link. There is a substantial connection with England and Wales in the fact that the contractual rights which UniCredit is asking the court to enforce are rights governed by English law.”

Here, the rights the Court is being asked to enforce are governed by Austrian law.

(F) Respondents’ Notice Ground 2

53. In respect of both Grounds 2 and 3 of FHM’s appeal, Rs have an alternative case that FHM can rely on neither of the gateways in CPR PD6B para.3.1 because CPR 62.5 is the exclusive route for service out of the jurisdiction of an arbitration claim form (the effect of CPR 6.1 being that CPR Part 6 does not apply to service of arbitration claim forms, because that is provided for by CPR 62.5). As Rs recognised in flagging this point below (Fn.4 of their first instance skeleton **[SB/F2/568]**), this argument is inconsistent with the decision in the RusChemAlliance case (see, in particular, at [63] and [91-93]) but the point was not argued in that case. At first instance, Rs reserved their right to argue this point on appeal (FHM having agreed that this was the appropriate course given the effect of the RusChemAlliance decision).

54. The argument is as follows:

- a. CPR 6.1 provides that “*This Part [i.e. CPR 6] applies to the service of documents, except where – (a) another Part, any other enactment or a practice direction makes different provision; or (b) the court orders otherwise.*”
- b. CPR 62 applies to “arbitration claims” (CPR 62.1), and “arbitration claim” is defined at CPR 62.2 as including various claims including (a) any application to the court under the Arbitration Act 1996; (b) claims to determine whether there is a valid arbitration agreement, whether an arbitration tribunal is properly constituted, or what matters have been submitted to arbitration; (c) a claim to declare that an award is not binding on a party; and (d) any other application affecting arbitration proceedings (whether started or not) or an arbitration agreement.

- c. CPR 62.5 sets out the basis on which the court may give permission to serve an arbitration claim form out of the jurisdiction, and does not include (by cross-reference or otherwise) the gateways in CPR 6. In particular, CPR62.5(3) provides that certain parts of CPR 6 (namely Rules 6.34, 6.35 and 6.40 to 6.46) apply to the service of a claim form under CPR 62.5(1) or (2A), but there is no reference to CPR 6.36, which is the rule providing for the gateways in CPR 6.
- d. There is good reason why CPR 62.5 should be a complete list of the gateways available for the service out of an arbitration claim form. Where the relevant defendant cannot be served within the jurisdiction, CPR 62.5 provides an appropriate list of connections for the Court to exercise its jurisdiction in relation to an arbitration claim. If those connections are not present (for example, the seat of the arbitration is not and will not be in England and the conditions in s.2(4) of the 1996 Act³ are not satisfied), then the arbitration agreement does not provide good reason for the Court to take jurisdiction – including by granting an anti-suit injunction which is, in reality, an interference with the jurisdiction of the foreign court. The demands of comity support the obvious construction of CPR 62.5 as providing a complete code for service out of an arbitration claim form.

55. While a number of cases have proceeded on the basis that permission to serve an arbitration claim form out of the jurisdiction can be granted under CPR 6 (including two decisions of the Supreme Court, AES Ust-Kamenogorsk v Ust-Kamenogorsk JSC [2013] 1 WLR 1899 (“Kamenogorsk”) at [51], and RusChemAlliance (above) at [63] and [91]-[93]), an argument otherwise appears to have been advanced only in one case, Shipowners’ Mutual Protection and Indemnity Association (Luxembourg) v Containerships Denizcilik Nakliyat Ve Tikaret AS [2015] EWHC 258 (Comm) (and was not pursued on appeal). In that case, the argument was addressed by Teare J at [41]-[42] as follows:

“This argument is based upon CPR 6.1 which provides that ‘this Part applies to service the documents, except where... (a) another Part, any other enactment or a practice direction makes different provision.’ It

³ S.2(4) provides that, “The court may exercise a power conferred by any provision of this Part not mentioned in subsection (2) or (3) for the purpose of supporting the arbitral process where (a) no seat of the arbitration has been designed or determined, and (b) by reason of a connection with England and Wales or Northern Ireland the court is satisfied that it is appropriate to do so.”

is said that CPR 62.5 makes different provision for the service of an arbitration claim form and therefore CPR 6PD para.3.1(6)(c) cannot apply to the service of an arbitration claim form.

“The difficulty with this argument is that it is contrary to an observation by the Supreme Court in [Kamenogorske] at paragraph 51. In that case the Supreme Court was concerned with an anti-suit injunction based upon an arbitration clause. Permission to serve out was granted pursuant to CPR 62.5 but Lord Mance (with the agreement of Lords Neuberger, Clarke, Sumption and Toulson) said that the court would appear to have had jurisdiction to give permission to serve out under CPR 6 PD 3.1(6)(c) also. Mr Lewis said that his point had not been argued. But even if it had not been argued it would be a bold step for a first instance judge to say that an observation of the Supreme Court was in error. I consider that a first instance judge should follow a unanimous observation of the Supreme Court.”

56. Rs say that on the clear wording of CPR 6.1 and CPR 62.5, the Court does not have jurisdiction to grant permission for the service of an arbitration claim form out of the jurisdiction on grounds other than those set out in CPR 62, and for this reason also, the Judge’s decision below should be upheld. If this point can be argued only in the Supreme Court, then Rs wish to reserve their right to argue that point on any appeal to the Supreme Court.

(G) Conclusion

57. For the reasons above, Rs respectfully invite the Court to dismiss FHM’s appeal in its entirety.

LOUISE HUTTON KC

Essex Court Chambers

18 March 2026