Neutral Citation Number: [2026] EWCA Civ 516

Case No: CA-2025-00366

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (KBD)
Mr Justice Bright
[2025] EWHC 59 (Comm)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30/04/2026

Before :

LORD JUSTICE MOYLAN
and
LORD JUSTICE MILES

- -

Between :

ZIYAVUDIN MAGOMEDOV & ORS	**Claimants/ Appellants**
- and -	
TPG GROUP HOLDINGS (SBS), LP & ORS	**Defendants/ Respondents**

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- -

Thomas Plewman KC and Robert Steele (instructed by **Seladore Legal Limited**) for the **Applicants**

Hearing date : 27 March 2026

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Approved Judgment

This judgment was handed down remotely at 10.30am on 30 April 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Moylan and Lord Justice Miles :

Introduction

1. This is the judgment of the court on an application under CPR 52.30 seeking to reopen the decision of Males LJ (the appellate judge) dated 3 June 2025 (the PTA Decision) refusing permission to appeal from the order of Bright J (the judge) dated 17 January 2025.

2. At the hearing the appellants (who were the claimants in the proceedings before the judge) were represented by Mr Plewman KC and Mr Steele. The respondents did not appear but a number of them had submitted short written representations objecting to the application to reopen the PTA Decision.

3. We have considered the judgment (which is more than 120 pages), the grounds of appeal and supporting skeleton of 87 pages, the PTA Decision, and the CPR 52.30 application and supporting skeleton of 14 pages, as well as the material to which counsel took us and other material referred to in the written submissions and bundles for the hearing. We also had the benefit of a full day of counsel's impressive oral submissions.

4. We will not set out in any detail the background facts concerning the parties or the complicated series of transactions in issue as they are well known to the parties. Any reader requiring further information should refer to the judge's comprehensive judgment at [2025] EWHC 59 (Comm) (the judgment). We shall refer to the parties as numbered claimants or defendants as set out in the judgment (C1, C2, D1, D2 etc.).

5. C1 is a Russian national with interests in the other Cs. Since 2018 he has been held in prison in Russia. He contends that he was imprisoned as part of an illegal campaign by Russian state entities.

6. C1 claims that his and the other Cs' interests in two valuable Russian port businesses were taken from him as a result of conspiracies involving various of the Ds. The judge summarised these in [2]-[4] of the judgment:

> "[The] claims relate, essentially, to two alleged conspiracies. One is what has been called the 'NCSP Conspiracy', which relates to an interest that the First Claimant ('Mr Magomedov') had in PJSC Novorossiysk Commercial Sea Port ('NCSP'). That conspiracy is said to have involved the Tenth Defendant ('Ms Mammad Zade') and the Twentieth Defendant ('Transneft'), a Russian state-owned oil pipeline company. The other conspiracy, which is said to have involved Ms Mammad Zade and all the other Defendants except Transneft, is what has been called the 'FESCO Conspiracy', which relates to Mr Magomedov's stake in the Nineteenth Defendant ('FESCO'). The Claimants say that these two alleged conspiracies were separate (hence their involving different alleged conspirators) but related.

> These alleged conspiracies were both advanced to me primarily as unlawful means conspiracies. The Claimants also advanced a subsidiary case in relation to each, as a conspiracy to injure, as well as some freestanding allegations of tortious claims against various Defendants. However, the Claimants have made it clear that the case should be treated, first and foremost, as one where the NCSP conspiracy and the FESCO conspiracy are both alleged to have been conspiracies to use unlawful means.
>
> NCSP is a Russian public company, which is said to be the third largest port operator in Europe and Russia's largest commercial seaport operator, controlling ports on the Baltic and Black Seas. FESCO is also a Russian company and is the parent company of a transportation and logistics group which (among other things) owns the Commercial Port of Vladivostok. Thus, both conspiracies relate to valuable and strategically important assets in Russia."

7. The allegations made by the Cs about each of these alleged conspiracies are complex, involving multiple steps. There are 22 Ds. Though the conspiracies were alleged to be separate but related, D10 is alleged to be party to both. The transactions said to have been carried out pursuant to the conspiracies are set out in detail in the judgment.

8. The judgment determined a number of applications. Some of the Ds challenged the jurisdiction of the English Court. Other Ds (which did not challenge the court's jurisdiction) applied to strike out the claims or sought reverse summary judgment. The judge summarised the main applications before him in [5] of the judgment:

   i) D1-D7 did not challenge jurisdiction, but made a strike-out/summary judgment application in relation to the claims pleaded against them.

   ii) D21 was served when he came to England on a brief visit. He too applied for summary judgment, but in addition challenged English jurisdiction on the basis that England was not the appropriate forum.

   iii) The other Ds all brought jurisdictional challenges. In addition, a number of the Ds made various alternative applications to set aside service or alternative service (for failure to make fair presentation).

   iv) While the applications were not all the same, and were presented on different bases by the various Ds, a common thread that ran through all of them was the contention that the Cs' case did not raise a serious issue to be tried.

   v) In addition, the Ds who challenged jurisdiction disputed the applicability of the jurisdictional gateways relied on by the Cs against each of them.

   vi) These Ds also contended that England was not the appropriate forum for the claims. They said that there was no real connection with England and that the natural forum for the claims was Russia. In relation to the alleged FESCO conspiracy, most of them said that, if the claims could not be tried in Russia, then the most appropriate forum was Cyprus.

9. There were two hearings before the judge totalling 13 hearing days. Submissions about the FESCO conspiracy (and related claims) were heard over two weeks in September 2024, and about the NCSP conspiracy over a further week in November 2024.

10. In the judgment, given on 17 January 2025, the judge summarised his conclusions in [574] to [584]:

> "[NCSP Conspiracy]
>
> 574. The unlawful act conspiracy and other claims in relation to the alleged NCSP conspiracy fail, on the basis that there is no serious issue to be tried against either Transneft or Ms Mammad Zade.
>
> 575. None of the jurisdictional gateways are available to the Claimants.
>
> 576. I would in any event have set aside service out of the jurisdiction, in respect of these claims, on the basis that the Claimants did not make a fair presentation in September 2023.
>
> [FESCO Conspiracy]
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> 577. The unlawful act conspiracy claims in relation to the FESCO conspiracy fail as against TPG, Domidias, Felix, DP World, FESCO, Mr Garber and GHP, on the basis that the claims have no real prospect of success and/or there is no serious issue to be tried as against these Defendants.
>
> 578. There are serious issues to be tried in respect of the unlawful act conspiracy claims in relation to the FESCO conspiracy as against Halimeda, Ms Mammad Zade, Mr Rabinovich, Ermenossa, Mr Kuzovkov, Mr Severilov and ROSATOM.
>
> 579. The only FESCO Defendants in relation to whom the Claimants did not need permission to serve out of the jurisdiction were TPG and Mr Garber.
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> 580. None of the jurisdictional gateways are available to the Claimants against any of the Defendants against whom I have found there is a serious issue to be tried, i.e. Halimeda, Ms Mammad Zade, Mr Rabinovich, Ermenossa, Mr Kuzovkov, Mr Severilov or ROSATOM. Nor would one have been available against Domidias, Felix, DP World, FESCO or GHP.
>
> 581. I would anyway have stayed the FESCO conspiracy claims against all those Defendants in respect of whom I have found a serious issue to be tried, in favour of Cyprus, i.e. Halimeda, Ms Mammad Zade, Mr Rabinovich, Ermenossa, Mr Kuzovkov, Mr Severilov and ROSATOM. This would also have applied as

> regards Domidias, Felix, DP World, FESCO and GHP, if I had found a serious issue to be tried as against any of them.
>
> 582. If there had also been a real prospect of success or a serious issue to be tried as against TPG, I would have considered the position having sought further submissions.
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> 583. In relation to Ms Mammad Zade, I would anyway have set aside the extension to the period of validity of the claim form, granted by Jacobs J on 22 January 2024, and the permission to serve by alternative means, granted by me on 17 May 2024.
>
> [Other claims]
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> 584. The Claimants' other claims also fail."

11. The Cs sought permission to appeal. In their amended grounds of appeal there are 23 grounds. The headings in that document state that grounds 1 to 10 concern the FESCO conspiracy, grounds 11 to 19 concern the NCSP conspiracy and grounds 20-23 concern the duty of fair presentation.

The PTA Decision

12. In the PTA Decision, the appellate judge refused permission to appeal on all grounds. He explained that an appeal would not have a real prospect of success.

13. As to the FESCO Conspiracy (grounds 1 to 10), the appellate judge started by referring to the legal principles applicable to a strike out/reverse summary judgment application, the test for serious issue to be tried in a jurisdictional challenge, the elements required for unlawful act conspiracy, and the role played by inferences in determining whether a claim was properly pleaded. The appellate judge identified the relevant parts of the judgment by referring to specific paragraph numbers. The appellate judge then said that the judge was careful to state that at the interlocutory stage reached in this case, the court is not concerned with whether the evidence at trial will or will not establish the claim, but with whether facts are pleaded which would justify the plea and (when an inference is relied on) with whether the pleaded facts are such as to justify the inference being drawn.

14. The appellate judge then noted that there was no challenge to the correctness of the judge's statement of these principles, which he said could not be faulted.

15. The appellate judge noted that the Cs had submitted that despite setting out the principles correctly the judge had failed to apply them properly and had conducted a minitrial in which he reached final conclusions on myriad factual issues, losing sight of the serious issue threshold. The appellate judge noted that this submission was fundamental to grounds 1 to 6 of the appeal, which were concerned with the merits of the case relating to the FESCO conspiracy.

16. The appellate judge started with grounds 1 to 10 (using the heading the FESCO conspiracy claim). He considered in relation to grounds 1 to 6 that it was apparent from a fair reading of the judgment as a whole that the judge did not go wrong in the way alleged by the Cs: he did not lose sight of the legal principles but applied them carefully

to the complex facts. Rather than reaching factual conclusions he tested the evidence relied on by the Cs to test whether it was capable of supporting the inferences for which they contended. He held that the judge was entitled to conclude, applying this approach, that there was no real prospect of success / no serious issue to be tried in respect of the FESCO conspiracy against Ds 1-8, 14, 18-19, and 21. This was sufficient to dispose of the case against them.

17. The appellate judge noted that the judge did find that there was a serious issue to be tried against the other FESCO conspiracy Ds (i.e. Ds 9-13 and 17). The appellate judge concluded however that the judge was entitled to conclude that there was no applicable jurisdictional gateway. Specifically, as to the English law contract gateway (ground 7), he was right to conclude that "even applying the most generous test" there was no need for the English law contracts to be relied upon in order to assert the relevant cause of action. The relevant contracts formed part of the background but there was no issue arising from them. As to the necessary/proper party and connected facts gateways (ground 8) the appellate judge held that the judge had applied the right test and was in the best possible position to consider whether there was a sufficient connection between the NCSP and FESCO conspiracies. The judge was entitled to conclude that, despite some similarities, the differences between them (not only timing, but more significantly, the alleged involvement of the Russian state only in the former) as well as acute issues of case management meant that the two conspiracies would not appropriately have been joined in a single action.

18. The appellate judge decided that in these circumstances grounds 9 and 10 (which concern forum) did not arise.

19. The appellate judge turned to the NCSP conspiracy claims against D10 and D20. He explained that in order to succeed the Cs had to succeed on all major issues (serious issue to be tried, gateway and fair presentation). He then said that it was sufficient to consider the last of these.

20. In paragraph 11 the appellate judge concluded that the judge was entitled to find that there had been a serious failure of presentation in the respects he had explained and to conclude that this would have caused him (the judge) to set aside permission to serve out of the jurisdiction and to refuse any fresh application. As the judge who had granted permission in the first place and with the benefit of the long and detailed *inter partes* hearing the judge was in the best possible position to evaluate whether these matters amounted to a failure of fair presentation and to assess their seriousness. The appellate judge concluded that "[t]here is no flaw in [the judge's] analysis, which was essentially a matter of discretion".

21. In paragraph 12 the appellate judge stated that the judge's conclusion on fair presentation was sufficient to dispose of the application as regards the NCSP conspiracy. He went on to say "[a]ccordingly the other grounds need not be addressed in this ruling (although I might have given permission on ground 11 if that could have been decisive)".

22. The appellate judge said in paragraph 14 that he had considered the Cs' 87-page skeleton argument and said that if he had granted permission to appeal, he would have required a more focused document.

Principles applicable to the CPR 52.30 application

23. CPR 52.30 provides materially:

> "(1) The Court of Appeal or the High Court will not reopen a final determination of any appeal unless—
>
> (a) it is necessary to do so in order to avoid real injustice;
>
> (b) the circumstances are exceptional and make it appropriate to reopen the appeal; and
>
> (c) there is no alternative effective remedy.
>
> (2) In paragraphs (1), (3), (4) and (6), "appeal" includes an application for permission to appeal.

24. Phillips LJ ordered on 30 October 2025 that the application to reopen should be adjourned to an oral hearing before a two-judge court.

25. The authorities governing applications under CPR 52.30 were comprehensively considered by this court in *Municipio de Mariana v BHP Group Plc* [2021] EWCA Civ 1156, [2022] 1 WLR 191 ("*Mariana*"). We shall not repeat the exercise, but for present purposes we take the following relevant guidance from that case (omitting references to the authorities cited in it).

26. First, when giving reasons on an application for PTA the degree of detail which is appropriate depends on the case. There are very many applications for PTA which can be and are appropriately dealt with in a few sentences (paragraph 55).

27. Secondly, the circumstances described in r.52.30(1) are truly exceptional. The jurisdiction can only be properly invoked where it is demonstrated that the integrity of the earlier proceedings has been critically undermined (paragraph 59).

28. Thirdly, matters such as that the decision about PTA was wrong or that the amounts in issue were very large or the points in issue were important are not of themselves sufficient to displace the fundamental public importance of the need for finality (paragraph 60).

29. Fourthly, there must be a powerful probability that the decision in question would have been different if the integrity of the earlier proceedings had not been critically undermined (para 60).

30. Fifthly, there must be a powerful probability that a significant injustice has already occurred, and that reconsideration is the only effective remedy (para 60).

31. Sixthly, an application for reconsideration of a refusal of permission to appeal may usefully be approached in two stages. First, the court should ask whether the appellate judge who refused permission to appeal grappled with the issues raised by the application for permission, or whether they wholly failed so to do. Secondly, if the appellate judge did grapple with the issues when refusing permission to appeal, the court should ask whether, in so doing, a mistake was made that was so exceptional,

such as wholly failing to understand a point that was clearly articulated, which corrupted the whole process and where, but for that error, there would probably have been a different result (para 63).

32. We add the following comment. The requirement that there would probably have been a different result applies to each stage: i.e. either where the appellate judge has failed to grapple with a point or where they have grappled with a point but made an exceptional mistake of the relevant kind. The need to show a powerful probability of a different result imports a high test of materiality.

33. Seventhly, the appellate judge should address ("grapple with") the essential points raised by the grounds and identify why in their view the point in question does not satisfy the test for the grant of PTA. The concept of "grappling with" the issue does not connote any particular degree of detail: what is required depends on the case (para 64).

The CPR 52.30 application

The PTA Decision: general

34. We start with some general comments about the PTA Decision.

35. First, it is plain that the appellate judge considered the judgment carefully. The PTA Decision gives detailed references to various passages in the judgment.

36. Secondly, the PTA Decision shows that the appellate judge understood the structure of the judgment and the way that the various elements in it fitted together. It is also clear that the appellate judge appreciated the way in which the grounds of appeal related to one another. Though the PTA Decision does not address each of the grounds separately, its terms and structure show that the appellate judge considered all of the grounds of appeal.

37. Third, the appellate judge stated that he had considered the Cs' 87-page skeleton argument submitted in support of the grounds of appeal (see above). The Cs noted in their skeleton argument in support of this application that the judge did not refer to the skeleton in the body of the decision. If the Cs were thereby suggesting that the appellate judge did not consider their skeleton, we reject the suggestion.

The FESCO claims

38. In brief summary, in their skeleton argument the Cs submitted that the appellate judge had failed to grapple with a number of their arguments concerning the judge's approach to the FESCO conspiracy. The appellate judge dealt with grounds 1 to 6 together and dismissed them in a single paragraph, which was conclusory. He did not address the Cs' arguments individually. The appellate judge also overlooked the fact that the Cs did challenge the judge's summary of the legal principles in play, both as to the approach to be taken to the merits on a jurisdiction challenge and the ingredients of an unlawful means conspiracy.

39. The complaint about the judge's approach to the legal principles was addressed during counsel's oral submissions. The first area concerned unlawful means conspiracy. The judge in fact set out the principles concerning this tort in [151] to [165] of the judgment. In the event, in his oral submissions counsel for the Cs accepted that there was no

challenge to the way the principles were set out. The objection was to the way the judge had applied them. The Cs did however contend that the judge had not referred to the principle that it is not necessary to show that each defendant appreciated that the means employed were in fact unlawful (see *The Racing Partnership Ltd v. Done Brothers (Cash Betting) Ltd* [2020] EWCA Civ 1300; [2021] FSR 2). We do not think there was any substance in this point, since the judge referred to the review of the law in *Lakatamia Shipping Co Ltd v Su* [2021] EWHC 1907 (Comm) at [76]-[115] which referred to this point (and cited the *Racing Partnership* case).

40. Counsel for the Cs did not ultimately take issue with the judge's statement of the principles concerning the approach of the court to the merits on interlocutory applications concerning summary judgment and serious issue to be tried. Nor did they take issue with his summary of the principles concerning the pleading of inferences. For these reasons we do not think that there was any discernible error (never mind a serious and exceptional one of the kind required by CPR 52.30) in the appellate judge's conclusion that the challenge was to the judge's application of the principles rather than his summary of them.

41. The principal submission advanced at the hearing concerning the FESCO allegations was that the judge had failed to allow for the way in which the different parts of the FESCO conspiracy interrelated to establish the serious issue to be tried and the participation of the conspirators. Instead, he had disaggregated the specific transactions in isolation from one another. The Cs argued that in turn the appellate judge had failed to grapple with that essential challenge to the judgment.

42. We are unable to accept this submission. The complaint about disaggregation was part of the challenge to the judge's conclusion that there was no serious issue to be tried against a number of the Ds in relation to the FESCO conspiracy (see [577] of the judgment set out in paragraph [10] above). The complaint that the judge had failed to look at things in the round was part of the challenge to this conclusion. The Cs' PTA skeleton made the point that it was necessary to consider the various steps in the transactions in the round and that the judge had wrongly considered them individually or in silos (see e.g. paras 30 to 31). As already stated, the appellate judge had considered the skeleton and it cannot realistically be contended that he did not appreciate this point. We consider that he grappled with the issue in reaching the conclusion in paragraph 6 of the PTA Decision. He stated his conclusion concisely and, in our judgment, was not required to say more.

43. Counsel for the Cs took us through some of the detail of the evidence about the transactions making up the alleged FESCO conspiracy. Detailed points were made about the role of the various Ds. Counsel emphasised the need to look at the allegations in the round. The presentation was skilful but was necessarily selective and hopped from point to point. We have carefully considered the submissions, but no purpose would be served by our summarising the evidence, as our attention on this application must be firmly focused on the question whether there was a serious and exceptional failure of process of the kind identified in *Mariana*. In our view there was no such failure. On a proper analysis, as we have said, the disaggregation argument is one element of the Cs' case in grounds 1 to 6 that the judge reached the wrong conclusions on serious issue to be tried. In [6] of the PTA Decision the appellate judge concluded that the judge properly applied the relevant legal principles to the complex facts on which the Cs relied.

44. The judge heard the applications over many days and the conclusions he reached about the merits of the FESCO case involved an evaluation of a mass of evidence. He did not make findings on the balance of probabilities, but he had to reach an evaluative judgment as to whether, on the evidence before him, there was a serious issue to be tried or that the Cs had a case with reasonable prospects.

45. As already explained, we are satisfied that the appellate judge grappled with the contention that the judge had erred in reaching the conclusion that there was no serious issue to be tried and, as in our judgment, the disaggregation or siloing point is merely part of this overall complaint. Nor are we satisfied that if (contrary to this conclusion) the appellate judge made an error, it is powerfully probable that he would otherwise have reached a different conclusion. Given the number of Ds in the case, the judge was required to consider the claims against them separately. He was also required to consider the various elements of the conspiracy. The point about not placing evidence into silos is an extremely familiar one to all experienced judges. We do not think that there is a realistically arguable case that the judge wrongly siloed the separate steps or failed to see the wood for the trees. We are not satisfied that if he had separately picked out and addressed the siloing complaint, the appellate judge would probably have reached a different conclusion.

46. In our judgment this is really an argument that the appellate judge should have reached a different conclusion. The Cs' submissions did not persuade us that there was any flaw in the integrity of the process.

47. We are also unable to accept the submission that the appellate judge's decision to address grounds 1 to 6 together rather than individually, undermined the integrity of the process. The common thread to grounds 1 to 6 was that the judge erred in assessing the merits. The complaint included that he had effectively conducted a mini-trial, had reached conclusions on the balance of probabilities and had been influenced by case management decisions. The appellate judge was entitled to address these common complaints by grouping the grounds in the way he did. We reject any suggestion that by addressing these grounds in this way the appellate judge failed to grapple with them.

48. The Cs also submitted in relation to ground 1 that in addition to the claim for conspiracy against TPG there was a claim for inducing breach of contract, with which the appellate judge failed to grapple. We note in this regard that the grounds of appeal did the Cs no favours as they arranged grounds 1 to 10 under the heading "FESCO Conspiracy" whereas ground 1 covers both the claims for conspiracy and for inducing a breach of contract. The same essential complaint about the judge's assessment of the merits of the case was made in the grounds of appeal in respect of both torts. The appellate judge did not grapple separately with the inducement claim. But we are not satisfied that if he had separately addressed the claim he would probably have reached a different conclusion on permission to appeal. On the contrary, in the light of the conclusions the judge had reached about TPG's involvement in the transactions and state of mind, and the appellate judge's view about the judge's assessment of the evidence, we are firmly of the view that the appellate judge would have concluded that there was no reasonable prospect of an appeal succeeding in overturning the judge's conclusions that there was no arguable case against TPG for inducing a breach of contract.

49. For these reasons the application fails in respect of grounds 1 to 6.

50. Grounds 7 and 8 concern the contract and necessary and proper party jurisdictional gateways.

51. As to the first of these, the appellate judge concluded in paragraph 7 that the judge was right to conclude that, even applying the most generous test, there was no need for the English law contracts to be relied on in order to assert the relevant cause of action; the relevant contracts formed part of the background and there was no issue arising from them.

52. The Cs contended in their PTA skeleton that an even wider test for a claim "in respect of a contract" should be applied than any so far recognised in the cases. Having considered the Cs' submissions on this point we were unable to detect any respect in which it can be said the appellate judge failed to grapple with the issues or made an error corrupting the process of the kind explained in *Mariana*. This is again on analysis a complaint about the correctness of the appellate judge's decision.

53. As to ground 8 and the necessary and proper party gateway, the appellate judge said in paragraph 8 that the judge had applied the correct test and was in the best position to consider whether there was a sufficient connection between the NCSP and FESCO conspiracies. The appellate judge said (in summary) that the judge was entitled to reach the conclusion he did as a matter of evaluation and case management considerations about the connections between the two cases.

54. The Cs submitted that though it was not being alleged that the Russian state was a party to the FESCO conspiracy, the actions of the Russian state in relation to that conspiracy were going to be critical to questions of causation and loss. We did not find that distinction easy to follow. But in any case, the judge's decision was based on case management considerations about the importance of evidence about the Russian state in relation to the two conspiracies. The appellate judge clearly grappled with the question whether there was an arguable appeal against the judge's decision, which turned on an evaluative assessment of the connections between the two limbs of the case as well as case management issues. The appellate judge concluded (as he was entitled to do) that the judge had reached a decision that was rationally available to him. The appellate judge therefore grappled with the point and disagreed with the Cs. This is really just another challenge to the correctness of the PTA Decision.

55. We therefore reject the challenge to grounds 7 and 8. In the light of this and our conclusions about the NCSP claims, it is therefore unnecessary to consider grounds 9 and 10, concerning forum.

The NCSP claims

56. In summary the Cs submitted that the appellate judge dealt only with the grounds concerning fair presentation on the basis that this was sufficient to dispose of the application for permission to appeal. This approach was flawed because the underlying merits bore directly on the issues concerning fair presentation. The appellate judge also failed to differentiate between the three different heads of fair presentation that were the subject of the judge's decision. The appellate judge concluded that the judge's decision was essentially one of discretion and that the judge (who had heard the *ex parte* application) was in the best position to determine it; but that was wrong and it would

effectively mean that it would never be possible to challenge a fair presentation determination by a judge who had heard the *ex parte* application.

57. The Cs further submitted that the appellate judge had failed to grapple with the fair presentation issues themselves, and that had he done so, there was a powerful probability that he would have made a different decision. Secondly, fair presentation, as distinct from regrant of an order, is not an issue of discretion, and the appellate judge erred in treating the whole issue as one of discretion.

58. The Cs submitted that the first of the fair presentation issues, which concerned evidence about various resolutions and completion processes in September 2018 for an agreement called "the Omirico SPA" after it was signed (the completion events), overlapped materially with the Cs' contention that it had been an abuse of process on the part of D20 to have raised and relied on the completion events at the hearing before the judge.

59. In brief summary, the Cs said that it was an abuse of process for D20 to rely on the completion events because at a hearing in November 2023 concerning a freezing/notification order, D20 had contended (unsuccessfully) that there was no good arguable case of conspiracy and had not relied on these parts of the history. The Cs submitted that, had the judge accepted their arguments about abuse of process, D20 would not have been able to raise any complaint about fair presentation in relation to the completion events. Cs' submission was that it would indeed have been an abuse of process for D20 to make that complaint.

60. The Cs submitted that the appellate judge went fundamentally wrong in approaching this issue. In paragraph 12 of the PTA Decision the appellate judge indicated that he might have given permission on ground 11 (which concerned abuse of process) if that could have been decisive. Counsel for the Cs submitted that this gave rise to a basic problem with the appellate judge's approach. Had ground 11 succeeded the completion events would not have been in play at the hearing at all and therefore the judge's approach to fair presentation would have been different.

61. We are unable to accept the Cs' submissions. First, we are satisfied that the appellate judge grappled with the fair presentation grounds. Secondly, we do not consider that the appellate judge made a material error or (at least) one which would probably have led to a different result. Indeed we consider that there is a basic fallacy in the Cs' submissions. Our reasons follow.

62. A party making an *ex parte* application for permission to serve proceedings out of the jurisdiction is required to make a fair presentation of all material facts and draw the court's attention to significant factual, legal and procedural aspects of the case. That duty is owed to the court, to ensure the integrity of the court's processes. As the court may be prepared to act exceptionally without hearing from the other party, the applicant is required to present the argument in a fair and even-handed manner, drawing attention to evidence and arguments which it can reasonably anticipate the absent party would wish to raise or make.

63. The application for permission to serve out was made *ex parte* in September 2023. The duty to make fair presentation is to be tested as at that date. The Cs' evidence did not

refer to the completion events at all. The judge held at [551] of the judgment that there was a very serious failure to investigate these matters which was inexcusably negligent.

64. The Cs' arguments concerning abuse of process depend on the fact that at the freezing/notification order hearing in November 2023 D20 did not raise the completion events in support of its unsuccessful contention that there was no serious issue to be tried (or good arguable case).

65. In our judgment this simple statement of the history exposes the fallacy in the Cs' argument. On the judge's findings, the Cs were required to investigate and fairly disclose the closing events when they made their *ex parte* application in September 2023. That duty was, as already explained, owed to the court. The Cs cannot rely on the stance taken by D20 at a later hearing to excuse or expunge their own breach of the duty they owed to the court at the *ex parte* stage. Hence, on the judge's findings, in September 2023 when they applied for permission to serve the proceedings abroad, the Cs were required to investigate and disclose the completion events. They did not do so. They could not have known at that stage what stance the Ds would take in the proceedings. Specifically, they did not know that they might potentially be able to rely on an abuse of process argument by the time of any *inter partes* hearing. In our view the Cs cannot say that, because of the subsequent forensic decisions of the Ds, they became relieved of any breaches they committed of their duties of fair presentation in September 2023.

66. We specifically reject the Cs' submission that, if the judge had found against D20 on the abuse of process argument concerning the assessment of whether there was a serious issue to be tried, it would not have been open to D20 nevertheless to complain about fair presentation. They are two different things. One concerns the merits of the case for the purposes of the jurisdiction challenge. The second concerns the duty of fair presentation owed to the court. Even supposing (for the purposes of argument) that D20 had been barred (on abuse principles) from refighting a previously lost battle over serious issue to be tried, in our view, it does not follow that D20 would have been precluded from complaining to the court about a failure of fair presentation at the *ex parte* hearing. On the contrary, any suggestion that D20 could not have raised the point with the court at the *inter partes* stage would serve to undermine the importance of upholding the integrity of the court's processes.

67. For these reasons we are satisfied that the judge grappled with the issues sufficiently and made no error. But, even if (contrary to this conclusion) the appellate judge made an error concerning the interplay between ground 11 and the fair presentation grounds in relation to the completion events, we are not satisfied that there is a powerful probability that he would have reached a different conclusion on permission to appeal but for the error.

68. The Cs separately submitted in relation to the fair presentation ground relating to the completion events that the judge placed excessive weight on these events when deciding that they were material. As to this, we consider that the appellate judge (who had read the PTA skeleton argument) appreciated the Cs' case that the judge placed excessive weight on the completion events. The issues that the judge had to decide in relation to fair presentation (including the question whether to regrant the order) are evaluative and discretionary judgments for first instance judges and the appellate court will only interfere where it is shown that the first instance judge has taken into account

immaterial factors, failed to take account of material factors, erred in principle or reached a conclusion outside the reasonable range. The appellate judge, who it is to be assumed had these very well-known principles well in mind, concluded that there was no realistic prospect of the Cs establishing that the judge had erred in a relevant way. He therefore grappled with the issues concerning fair presentation. There was no need for him to say more in the PTA Decision. As *Mariana* shows, each case is different, and concise reasons may suffice. We are not satisfied that there was any error which undermined the integrity of his approach. We consider that the Cs were really saying that the appellate judge's decision was wrong rather than demonstrating that the integrity of the process he followed had been corrupted.

69. The second ground concerning fair presentation concerned [550] of the judgment, where the judge explained that he had been told in September 2023 that the two alleged conspiracies were related because they both involved the Russian state but that, by the end of the hearing in September 2024, it had become apparent that this was not the case. The judge said that if he had known this in September 2023 he would have questioned whether it was appropriate for the Cs to rely on the necessary and proper party jurisdictional gateway in the context of the NCSP conspiracy.

70. The Cs contended that there was a fundamental problem with this part of the judgment as nobody had contended at the hearing that there was a failure of fair presentation on this issue. Ground 20 itself is more equivocal, saying that an allegation of unfair presentation on this point was not put "or was not squarely put" by the NCSP Defendants. We were taken to some of the history of the way the Russian state issue was addressed at and after the hearing in September 2024 (including in a letter from the Cs' solicitors dated 23 September 2024). The terms of the letter showed that the judge was concerned about what he saw as a material shift in the Cs' case on a potentially crucial point. There was then a further hearing in November 2024 at which the Russian state issue was addressed.

71. The appellate judge grappled with the relevant ground of appeal and reached the view that there was no arguable flaw in the judge's approach. It must be assumed that he had in mind the relevant principles to an appeal on such an issue (see [68] above). We are satisfied that the appellate judge grappled with the challenge to the judgment, albeit in concise terms. Again, we are not satisfied that there was any error which undermined the integrity of his approach and certainly not one which (had it not been made) would probably have led to a different result. In this regard, we do not consider that there is any force in the point that D20 and D10 did not raise the Russian state point as a fair presentation complaint. As we have explained, the duty of fair presentation was owed to the court and the judge was entitled to raise it with the Cs. The judge made clear that he was concerned about the point at the September 2024 hearing and the Cs had the chance to address it, including in their letter of 23 September 2024 and at the November 2024 hearing. We are not persuaded that if the appellate judge had expressly addressed this procedural complaint he would probably have reached a different conclusion in relation to permission to appeal. Again in our view the Cs are really contending that the appellate judge's decision was wrong, rather than that the integrity of the process he followed had been corrupted.

72. The third respect in which the judge held that there was a breach of the duty of fair presentation concerned D10. The Cs had obtained *ex parte* orders on 22 January 2024 for an extension of validity of the claim form and 17 May 2024 for alternative service.

The judge concluded that the Cs had failed to make a fair presentation about what they knew or ought to have known about D10's whereabouts. The Cs say in ground 22 that the judge's conclusion on this aspect was wrong. In oral submissions counsel went through the underlying evidence about the Cs' understanding of where D10 had been living and described the judge's decision on this point as a very harsh one. We are unable to accept that there was any material failure of process in relation to this aspect of the PTA Decision. The appellate judge grappled with the fair presentation issues in para 11 of the PTA Decision and concluded that the judge was entitled to reach the conclusion he did on this (and the other fair presentation points). Again we have no doubt that the judge had in mind the principles set out in [68] above. Applying those principles, an appeal cannot be justified on the grounds that the decision of a first instance judge is harsh, even very harsh. In our judgment the Cs have not identified any error in the appellate judge's approach which would undermine the integrity of that decision. Again the complaint is in reality that the appellate judge reached the wrong conclusion.

73. Ground 23 was that the judge's overall conclusions on fair presentation were wrong, disproportionate and unfair. These complaints were covered as part of paragraph 11 of the PTA Decision. Again we consider that the appellate judge applied well-established principles to the judge's evaluative decision. We specifically reject the submission that the appellate judge wrongly regarded the exercise as entirely discretionary. Indeed he also referred to it being evaluative. We consider that when the appellate judge referred to the decision being one of discretion this was no more than shorthand for the principles summarised in [68] above which apply to evaluative decisions as they do to discretionary ones. We also reject the submission that the appellate judge held that there could never be a successful challenge to a decision about fair presentation where the judge who had heard the *ex parte* hearing also heard the *inter partes* one. The appellate judge was making the telling point that the judge had heard both the *ex parte* application and the long inter partes hearing and was therefore well placed to reach an evaluative assessment.

"Other compelling reason"

74. The Cs submitted that the appellate judge had failed to grapple with whether there was another compelling reason for an appeal to be heard. They submitted that there was a compelling reason in this case, namely, because of the Cs' challenge to the approach taken by the judge (conducting a minitrial and being influenced by case management considerations) and because there were a number of important and unsettled points of law.

75. The appellate judge did not expressly mention this part of the test. It cannot seriously be contended that this experienced appellate judge, who has dealt with many PTA applications, overlooked the compelling reason test. It is a reasonable assumption that he did not mention the test because he had concluded that the appeal would have no real prospect of succeeding – this is generally a powerful reason for thinking that permission should be refused. Moreover, as already explained, there were on analysis no important and unsettled points of law (or at least realistically arguable ones). The complaints in the grounds of appeal and PTA skeleton were in reality (as the appellate judge held) about the application of the law to the evidence and the judge's evaluative conclusions. We are far from being satisfied that, had he expressly addressed this limb of the test, the appellate judge would have reached a different decision.

Conclusions

76. For these reasons, despite Mr Plewman's skilful submissions, we have not been persuaded that it is necessary to reopen the PTA Decision in order to avoid real injustice. It is therefore unnecessary to consider whether there is an alternative effective remedy. The application must therefore be dismissed.