Neutral Citation Number: [2026] EWCA Civ 1172

Case No: CA-2026-000379-Y

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
LONDON CIRCUIT COMMERCIAL COURT (KBD)
David Quest KC sitting as a Deputy Judge of the High Court
[2026] EWHC 153 (Comm)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22 September 2026

Before :

LORD JUSTICE JEREMY BAKER
LORD JUSTICE MILES
and
LORD JUSTICE FOXTON

- -

Between :

(1) BENJAMIN GILBERT **(2) BG PROJECTS LIMITED**	**Claimants/ Appellant**
-and-	
BROADOAK PRIVATE FINANCE LIMITED	**Defendant**
-and-	
(1) SHAHENA BLEAKLEY **(2) KING STREET CAPITAL SL**	**Respondents/ Non-Cause of Action Defendants**

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James Mather and **Max Marenbon** (instructed by **Keidan Harrison LLP**) for the Claimants
Sam Goodman (instructed by **PCB Byrne LLP**) for the Respondents

Hearing date : 23 July 2026

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Approved Judgment

This judgment was handed down remotely at 10.30am on 22 September 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 Foxton :

A INTRODUCTION

1. The Claimants, Mr Gilbert and his company BG Projects Limited ("BGP", and, together with Mr Gilbert, "the Gilbert Claimants") obtained a judgment against the Defendant ("Broadoak" and "the Broadoak Judgment") for outstanding loans. As part of their efforts to enforce the Broadoak Judgment, the Gilbert Claimants obtained disclosure from a third party which they suggest shows that the Respondents to the present appeal (the non-cause of action defendants or "NCADs") had received substantial sums from Broadoak for no good reason.

2. On the basis of that information, the Gilbert Claimants obtained a without notice freezing order against the NCADs from His Honour Judge Bird on 30 July 2025 ("the WFO"). At the return date, the NCADs brought a wide-ranging challenge to the WFO which was heard by Mr David Quest KC sitting as a Deputy Judge of the High Court ("the Judge").

3. In his judgment reported at [2026] EWHC 153 (Comm) ("the Judgment"), the Judge rejected all of the NCADs' challenges to the WFO save for one – that there was no gateway under paragraph 3.1 of Practice Direction 6B which provided a basis for service of the application out of the jurisdiction on the NCADs in Spain. On this appeal, the Gilbert Claimants seek to challenge that conclusion, relying on three gateways.

4. The first, for which they have permission, is to argue that the claim for WFO relief is a claim "under an enactment which allows proceedings to be brought" within PD 6B paragraph 3.1(20)(a) ("the Enactment Gateway"), the relevant enactment relied upon being s.37 of the Senior Courts Act ("SCA") 1981. This argument takes three largely independent developments in the law, and suggests that, in combination, they lead to the conclusion that the Enactment Gateway provides a basis for serving free-standing freezing order applications out of the jurisdiction.

5. The Gilbert Claimants seek permission from this court to appeal from the Judge's rejection of their argument that the claim for the WFO fell within two further gateways:

    i) First, that the claim for WFO relief is a claim "for an injunction ordering the defendant to do or refrain from doing an act within the jurisdiction" within PD 6B paragraph 3.1(2) ("the Injunction Gateway").

    ii) Second, that "the subject matter of the claim relates wholly or principally to property within the jurisdiction" within PD 6B paragraph 3.1(11) ("the Property Gateway").

6. Having heard Mr Mather on the issue of permission, we concluded that the two additional grounds did not have a realistic prospect of success and we refused permission. We give our reasons for that conclusion below.

B THE BACKGROUND

7. The Gilbert Claimants invested in Broadoak, an English company which provided finance for commercial property investment. The Gilbert Claimants had a minority shareholding in Broadoak, the majority shareholder being Mr Jamie Bleakley. The first NCAD is Mr Bleakley's wife (although it is her evidence that they separated in 2022), and the second NCAD is a Spanish company owned by Mr Bleakley and controlled by Mr and/or Mrs Bleakley.

8. Over the period 2017 to 2019, the Gilbert Claimants advanced substantial loans to Broadoak which were not repaid when they fell due. These proceedings were commenced to recover the outstanding balance on 14 November 2023, as well as seeking a declaration that certain assets were held by Broadoak on constructive trust, and for further financial relief.

9. On 8 December 2023 judgment in default was entered against Broadoak for part of the Gilbert Claimants' claim in the sum of £3,314,303.19. The Gilbert Claimants' remaining claims were determined at a trial (in which Broadoak did not participate), with judgment being given in their favour on 20 June 2025. The effect of that judgment was to award a further sum of £2,186,240.22 to the Gilbert Claimants.

10. On 25 September 2024, the Gilbert Claimants obtained a worldwide freezing order against Broadoak ("the Broadoak WFO") with a maximum sum of £1m, later increased to £1.4m. On 29 January 2025, the Gilbert Claimants obtained a worldwide freezing order against Mr Bleakley ("the Bleakley WFO") on a so-called *Chabra* basis – that is to say on the basis that assets in the apparent ownership of Mr Bleakley were in fact amenable to execution of the Gilbert Claimants' judgment debt against Broadoak. Mr Bleakley has not engaged with the Bleakley WFO and has failed to provide the asset disclosure he was ordered to provide.

11. On 17 February 2025, the Gilbert Claimants obtained an order for third party disclosure against Broadoak's bank which revealed that Mr Bleakley had removed some £5m from Broadoak's bank account. The evidence suggests that some £800,000 was used to meet personal expenditure of Mr and/or Mrs Bleakley, and that payments totalling £3.8m were made to an account with TT Moneycorp Ltd ("Moneycorp"). A *Norwich Pharmacal* order made against Moneycorp on 5 June 2025 revealed that, from the amounts received from Broadoak, payments of €2.55m had been made to a Spanish bank account in Mrs Bleakley's name, and that other amounts originating from sums paid from Broadoak may have benefitted the second NCAD.

12. Armed with that information, the Gilbert Claimants applied for worldwide freezing order relief on *Chabra* grounds against the NCADs. As I have stated, the WFO was granted on a without notice basis by His Honour Judge Bird, but was later set aside by the Judge.

C THE JUDGMENT

13. The Judge rejected arguments raised by the NCADs that the injunction should be discharged on the basis that the Gilbert Claimants had not fairly presented the case on the without notice application (although he did make some criticisms of the presentation). He held that the substantive conditions for *Chabra* relief were made out:

i) There was "good reason to suppose" that Mr Bleakley had, in his capacity as a director of Broadoak, caused payments to be made to the NCADs for no proper purpose and which were not in Broadoak's interests (Judgment, [95]).

ii) The requisite risk of dissipation was established, there being "a strong inference that the [NCADs] knew that they had no right to receive or benefit from the money", and that risk was exacerbated by the NCADs' failure to give satisfactory asset disclosure ([98-100]).

iii) If the court had personal jurisdiction over the NCADs, it would be just and convenient to make the order ([101]).

14. However, the Judge held that the court did not have personal jurisdiction over the NCADs. Before the Judge, the Gilbert Claimants relied upon the same three gateways as they do before this court, and also PD 6B paragraph 3.1(3) ("the necessary or proper party" gateway) and paragraph 3.1(10) ("where a claim is made to enforce a judgment"). The Judge's decision that those last two gateways were not available has not been challenged on appeal.

15. As to the three gateways which remain live, in summary the Judge concluded as follows:

i) While the claim for the WFO was a claim for the purposes of the Enactment Gateway, s.37(1) of the SCA 1981 did not create the procedural right to seek freezing order relief, with the result that the claim could not be said to be "made under an enactment which allows proceedings to be brought". The Judge noted that the Gilbert Claimants' argument to the contrary was inconsistent with statements in *AES Ust-Kamenogorsk Hydropower Plant LLP v Ust-Kamenogorsk Hydropower Plant JSC* [2011] EWCA Civ 647, [2012] 1 WLR 920 ("*AES*") to the effect that s.37 of the SCA 1981 was not an enactment for this purpose ([74-75]). Had the Judge reached the contrary conclusion, he would have rejected the argument that the Enactment Gateway only applied to a claim of a type which did not fall within another gateway ([86]).

ii) The Injunction Gateway was not available because, although Mrs Bleakley did have some limited assets in the jurisdiction (she had disclosed a c.£5,000 balance in a bank account here), the decision of the House of Lords in *Siskina (Owners of the Cargo) v Distos Cia Naviera SA ("The Siskina")* [1979] AC 210 established that the Injunction Gateway only applied to an injunction sought as final, substantive, relief for the invasion of a legal or equitable right, and not a freezing or other interim injunction ([54-56]).

iii) The Property Gateway was not available because a claim for a post-judgment freezing order was not one which "wholly or principally" related to the judgment debt ([66]-[68]).

16. Had the application fallen within a service out gateway, the Judge would have concluded that England was "a clearly and distinctly more appropriate forum than Spain" ([94]).

D GROUND 1: THE ENACTMENT GATEWAY

D1 Three developments in the law

17. Mr Mather's argument that the Enactment Gateway applies in this case rests on what is said to be the synergistic effect of three developments in the law, which it is helpful to outline in chronological order.

D1(1) Orexim Trading Ltd v Mahavir Point and Terminal Private Ltd

18. The first concerns the scope of the Enactment Gateway itself, as considered in *Orexim Trading Ltd v Mahavir Point and Terminal Private Ltd* [2018] EWCA Civ 1680, [2018] 1 WLR 4847 (*"Orexim*"). The case concerned the service out of the jurisdiction of an application under s.423 of the Insolvency Act 1986, and whether it could be effected through the Enactment Gateway. Delivering the judgment of the court, Lewison LJ outlined the effect of s.423 at [18-19], noting that "an application for an order under section 423 may be made either by a relevant office holder, or by a victim of the transaction: section 424(1)." At [30], having reviewed the relevant authorities, he stated that s.423 "confers on the court power to make orders against persons or property outside England and Wales, subject to the court being satisfied that there is a close enough connection with England and Wales."

19. Turning to the issue of service out of the jurisdiction, he stated at [32] that as s.423 gave the court power to make orders against persons or property outside England and Wales, he "would a priori expect procedural rules to exist to enable the court to exercise those powers". Beyond the fact that "the enactment in question must allow proceedings to be brought against persons not within England and Wales", he stated that "it is not easy to see any other limitation from the words of the paragraph itself" on qualifying enactments ([33]). That expansive approach was reinforced by:

    i) a change in the judicial attitude towards the service of proceedings outside England and Wales, which was no longer regarded as inherently "exorbitant" ([33]);

    ii) the change in the language of the service out provisions of the CPR and the Enactment Gateway effected by the Civil Procedure (Amendment) Rules 2008 since earlier decisions addressing service out of applications made under similar statutory provisions had been decided ([47]), including the fact that service out would only be ordered if a proper case for service out was shown.

20. At [48], Lewison LJ rejected the argument that the Enactment Gateway was limited to enactments which expressly authorise the bringing of proceedings against persons outside England and Wales. At [49], he made the following observation which is of potential importance in the present context:

> "In most cases which fall within one of the 'gateways' the claimant is asserting that a legal right of his has been infringed. In very general terms, where a legal right has been infringed it is the function of the legal system to provide a remedy. But section 423 does not create a legal right on the part of a creditor. The person against whom the claim is made owed no legal obligation not to do what he is alleged to have done. Rather, the section enables a victim to ask the court to exercise a discretion."

21. In summary, therefore, *Orexim* could be said to have adopted an expansive scope to the Enactment Gateway, at least to the extent of suggesting that:

    i) where an enactment gave the court power to make orders against persons or property outside England and Wales, a gateway permitting service outside the jurisdiction would be expected to exist;

    ii) the Enactment Gateway did not appear to impose any other limit on qualifying enactments;

    iii) it was not necessary for the enactment expressly to authorise the bringing of proceedings against persons outside of the jurisdiction; and

    iv) the gateway applied to a claim where the claimant was not asserting a legal right against the defendant, but asking a court to exercise a discretion.

D1(2) Broad Idea International Ltd v Convoy Collateral Ltd

22. The second development is the decision of the Privy Council in *Broad Idea International Ltd v Convoy Collateral Ltd* [2021] UKPC 24, [2023] AC 389 ("*Broad Idea*"), an appeal from the Court of Appeal of the Eastern Caribbean on appeal from the Eastern Caribbean Supreme Court in the British Virgin Islands ("BVI"). In that case the Board faced two issues:

    i) whether the court under the Eastern Caribbean Supreme Court Civil Procedure Rules 2000 (the "EC CPR") has power to authorise service on a defendant outside the jurisdiction of a claim form in which a freezing injunction is the only relief sought; and

    ii) whether, when personal jurisdiction over a party was established, the court has power to grant a freezing injunction against that party to assist enforcement through the court's process of a prospective (or existing) foreign judgment, even where the application could not be said to be ancillary to substantive proceedings in the BVI.

23. The Board answered the first of the questions in the negative. I return to that aspect of the Board's decision below when considering the Gilbert Claimants' application for permission to appeal in respect of the Injunction Gateway. However, the Board answered the second question positively. After surveying developments in the law of freezing injunctions, injunctions more generally and other forms of relief such as third party disclosure and website blocking orders, the Board held:

    i) The court's power to grant interim injunctions was not limited to cases where the injunction was granted to protect a right which could be identified independently of the reasons which justify the grant of an injunction ([52]).

    ii) The court's power to grant freezing injunctions was not limited to proceedings in which substantive relief was claimed in the jurisdiction ([76]).

    iii) The rationale of freezing injunctions was "the enforcement principle" ([88]), Lord Leggatt stating at [89]:

> "Although it is unnecessary to make the enforcement principle dependent on the identification of a legal or equitable right, there is no harm in expressing the interest of the applicant which a freezing injunction seeks to protect in these terms, provided it is understood to be different, and different in character, from the right on which a cause of action for substantive relief is based. The interest protected by a freezing injunction is the (usually prospective) right to enforce through the court's process a judgment or order for the payment of a sum of money. A freezing injunction protects this right to the extent that it is possible to do so without giving the claimant security for its claim or interfering with the respondent's right to use its assets for ordinary business purposes. The purpose of the injunction is to prevent the right of enforcement from being rendered ineffective by the dissipation of assets against which the judgment could otherwise be enforced."

iv) That essential purpose having been recognised, "there is no reason in principle to link the grant of such an injunction to the existence of a cause of action" ([90]), and "there is no connection between a freezing order and a cause of action for substantive relief" ([91]).

v) There was no principled basis for distinguishing between freezing orders sought in the context of actual or anticipated domestic judgments, and actual or anticipated foreign judgments ([93]).

vi) The enforcement principle also justified freezing orders against *Chabra* defendants ([111]).

24. *Broad Idea*, therefore, made it clear that the granting of a freezing order does not depend on the applicant asserting a substantive cause of action in the jurisdiction, or indeed having an accrued cause of action in any jurisdiction at the time the order is granted. Rather, a freezing injunction protects a claimant's interest (usually a prospective one) in being able to enforce through the court's process a judgment or order for the payment of a sum of money. That clear decoupling of the right to seek freezing order relief from any form of substantive cause of action, and the recognition that freezing order relief is justified to protect an enforcement interest which is not itself constituted by any legal or equitable right, provides the basis for the argument that applications for this type of injunction are free-standing claims for a form of relief afforded by the court's injunctive power.

D1(3) Gorbachev v Guriev

25. The final decision is *Gorbachev v Guriev* [2023] EWCA Civ 1270, [2023] KB 1 ("*Gorbachev*"). That raised the question of whether an application for an order under s.34 of the SCA 1981 could be served out of the jurisdiction pursuant to the Enactment Gateway. The reasoning in the case extended to both ss.33 and 34 of the 1981 Act which provide as follows:

i) Section 33(1) provides that "on the application of any person in accordance with rules of court, the High Court shall, in such circumstances as may be specified in the rules, have power to make an order" before proceedings are commenced for various forms of evidence gathering in relation to property

which may become the subject-matter of subsequent proceedings in the High Court. Section 33(2) provides that "on the application, in accordance with rules of court, of a person who appears to the High Court to be likely to be a party to the proceedings", the court can order a person "who appears to the court to be likely to be a party to the proceedings" to disclose or produce documents they are likely to have which are relevant to an issue arising or likely to arise out of the claim.

ii) Section 34 provides that "on the application, in accordance with rules of court, of a party to any proceedings … the High Court shall, in such circumstances as may be specified in the rules, have power to order a person who is not a party to the proceedings and who appears to the court to be likely to have in his possession, custody or power any documents which are relevant to an issue arising out of the said claim" to disclose and/or produce documents, and also provides for the court to make various evidence-gathering orders in relation to property "which is the subject-matter of the proceedings or as to which any question arises in the proceedings."

26. At first instance, Mr Justice Jacobs ([2022] EWHC 1907 (Comm)) held that applications under these sections could be served out of the jurisdiction through the Enactment Gateway. The Court of Appeal agreed. In reaching that conclusion, the Court rejected the argument that these applications were not "claims" and did not constitute "proceedings" for the purpose of the Enactment Gateway:

i) At [30-33], Males LJ referred to Jacobs J's decision at [60-64] of the first instance judgment that an application for third party disclosure was a claim for the purposes of the Enactment Gateway because "the action involves the applicant seeking to invoke the court's jurisdiction, against another person, for an order that that person should provide disclosure", and given the broad definition of "claim" in CPR 6.2. He also referred to Jacobs J's statement that CPR rule 6.39 contemplated applications of "a procedural rather than substantive character" being served out of the jurisdiction through the CPR gateways.

ii) At [34], Males LJ agreed with that reasoning, holding that the word "claim" in paragraph 3.1 of Practice Direction 6B included applications under both s.33 and 34 of the SCA 1981.

iii) Turning to the issue of "proceedings", at [35] Males LJ set out Jacobs J's reasons for concluding that an application for third party disclosure constituted "proceedings", and, in particular that "the concepts of 'claim' and 'proceedings' are closely linked, 'proceedings' being the court process by which a 'claim' is resolved." He also referred to Jacobs J's conclusion that "proceedings" should be broadly interpreted to include an application of a procedural character.

iv) At [36], Males LJ recorded his agreement with those conclusions, stating "an application for third party disclosure constitutes 'proceedings' for the purpose of gateway (20)".

v) He addressed the territorial scope of s.34 in a lengthy section of the judgment between [38] and [88], ultimately holding that no considerations of the extra-territorial application of s.34 were engaged in that case, because the document to which the s.34 application related was in England and Wales, although its owner was out of the jurisdiction ([88]).

vi) It was not necessary to decide whether s.34 gave the court jurisdiction to make an order against someone out of the jurisdiction to produce a document which was itself out of the jurisdiction (Jacobs J having held that it did) ([90]).

27. *Gorbachev*, therefore, established that applications of a "procedural character" could constitute "claims" and "proceedings" for the purposes of the Enactment Gateway, and found that applications of that character under s.33 and s.34, at least to the extent that they concerned documents within the jurisdiction, could be served out through the Enactment Gateway.

28. Sections 33 and 34 appear in the same part of the SCA 1981 as s.37 (Part II, "Jurisdiction", under the same heading, "Powers"), and with similar introductory text:

i) Section 33: "powers of High Court exercisable before commencement of action".

ii) Section 34: "powers of High Court to order disclosure of documents, inspection of property etc. in proceedings for personal injuries or death".

iii) Section 37: "powers of High Court with respect to injunctions and receivers."

D1(4) Service out of the jurisdiction of applications for freezing order relief

29. In an evening talk about the history of the freezing injunction, delivered to the Manchester Business Property Courts Forum in November 2024, one of the topics I addressed was to sketch the outlines of an argument, in the light of these three developments, to the effect that a claim for a freezing injunction might be served out of the jurisdiction under the Enactment Gateway on the basis that it was a claim "under" section 37(1). I was not intending to suggest that this outcome would be anything other than highly surprising, merely that it could be said to be the unintended consequence of the three developments in the law I have referred to. An attempt was made to raise that argument before me in the course of oral submissions in *Commercial Bank of Dubai v Al Sari* [2024] EWHC 3304 (Comm), [2025] 1 CLC 1 but there was insufficient time to consider the point, in a case already overburdened with issues.

30. The result is that the hearing before the Judge was the first occasion on which an argument along the lines floated in that talk arose for determination, albeit in fairness to Mr Mather and Mr Marenbon, it must be noted that it is advanced in a much more developed form.

D2 S.37 of the SCA 1981

31. Section 37 of the SCA 1981 provides:

> "(1) The High Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the court to be just and convenient to do so.
>
> (2) Any such order may be made either unconditionally or on such terms and conditions as the court thinks just.
>
> (3) The power of the High Court under subsection (1) to grant an interlocutory injunction restraining a party to any proceedings from removing from the jurisdiction of the High Court, or otherwise dealing with, assets located within that jurisdiction shall be exercisable in cases where that party is, as well as in cases where he is not, domiciled, resident or present within that jurisdiction."

32. Section 37(1) has a statutory predecessor in s.45 of the Supreme Court of Judicature (Consolidation) Act 1925, but that is not the case for s.37(3), on which Mr Mather's submissions before this court placed some emphasis.

33. As is well known, the freezing injunction emerged from the decisions of the Court of Appeal in *Nippon Yusen Kaisha v Karageorgis* [1975] 1 WLR 1093 and a subsequent case which, until the introduction of the CPR, won the battle for naming rights, *Mareva Compania Naviera SA v International Bulkcarriers SA* [1975] 2 Lloyd's Rep 509.

34. The court's power to make orders of this type was, at the outset, a matter of legal controversy. In particular, the decision in *Lister v Stubbs* (1890) 45 Ch D 1 appeared to present an obstacle to the new form of injunction – certainly that was the view of Mr Justice Donaldson who heard the applications in both cases at first instance. One possible means of distinguishing *Lister*, albeit not a wholly satisfactory one, was to distinguish between defendants resident in the jurisdiction, against whom freezing injunctions could not be granted, and those outside. In *Rasu Maritima SA v Pertamina* [1977] 2 Lloyd's Rep 397, Lord Denning MR referred to *Lister v Stubbs* and similar authorities, and stated "so far as concerns defendants who are within the jurisdiction of the Court and have assets here, it is well-established that the Courts should not, in advance of any order or judgment, allow the creditor to seize any of the money or goods" (p.402). He noted that none of the statements in those authorities "were made … in relation to a defendant who was out of the jurisdiction but had money or goods in this country". He held that *Mareva* injunctions could be granted in the latter kind of case. In *The Siskina*, at p.261, Lord Hailsham commented unfavourably on the distinction, and stated that "sooner or later the courts or the legislature will have to choose between two alternatives."

35. Subsequent first instance case law offered conflicting views on the validity of the distinction. In *Gebr Van Weelde Scheepvaart Kantoor BV v Homeric Marine Services Ltd (The Agrabele)* [1979] 2 Lloyd's Rep 117, 118, Mr Justice Lloyd concluded that he was bound by authority to hold that a *Mareva* injunction could not be obtained against a defendant domiciled in the jurisdiction. In *Barclay-Johnson v Yuill* [1980] 1 WLR 1259, Sir Robert Megarry V-C reached the opposite view. When the matter came before the Court of Appeal in *Prince Abdul bin Turki al Sadairy v Abu-Taha* [1980] 1 WLR 1268, 1272, Lord Denning held that it now fell to the courts to choose

between those two alternatives, and that the answer was that *Mareva* injunctions could be made against both classes of defendant.

36. The bill which became the SCA 1981 – then, of course, the Supreme Court Act 1981 – was introduced into the House of Lords on 12 February 1981 and the Act received the Royal Assent on 28 July 1981. Mr Mather sought to refer to statements made by Lord Hailsham and Lord Wilberforce in the course of Parliamentary debates in order to establish the purpose of s.37(3). However, there was no attempt to show that the strict conditions for admitting material of this kind as set out in *Pepper v Hart* [1993] AC 593 and subsequent authorities were satisfied, and no *Pepper v Hart* statement was served. In those circumstances, I am satisfied that ascertaining the meaning and effect of s.37(3) falls to be undertaken by reference to the usual principles of statutory construction, without recourse to this material.

37. In his written submissions, Mr Mather appeared at one point to be arguing that it was s.37(3) of the SCA 1981 which provides the statutory source of the court's power to grant freezing injunctions, although the argument was not advanced in so stark a form in oral submissions.

38. I am satisfied that s.37(3) was intended to provide a definitive resolution of the issue which had proved controversial in some of the case law as to whether *Mareva* injunctions could be made against defendants inside the jurisdiction, as well as defendants outside it. It is clear, however, that s.37(3) was not purporting to create a new source of the court's power to grant freezing injunctions. That is clear from the language of s.37(3), which defines the operation of the sub-section by reference to "the power of the court under sub-section (1)".

39. Had s.37(3) been intended to provide the source (and limits) of the power to grant freezing injunctions, this would have presented an obvious obstacle to the development of the worldwide freezing injunction, because s.37(3) (reflecting the state of *Mareva* jurisprudence at the time), refers only to injunctions restraining the removal of or dealings with "assets located within that jurisdiction." In *Babanaft International Co SA v Bassatne* [1990] Ch 13, 26, Kerr LJ rejected the argument that s.37(3) has this effect, stating:

> "The purpose of section 37(3) was not to restrict the territorial ambit of *Mareva* injunctions but to ensure that there should be no discrimination against persons not domiciled, resident or present within the jurisdiction. Section 37(3) does not restrict the scope, geographical or otherwise, of section 37(1)".

40. There are a number of judicial statements as to the essentially confirmatory function of s.37(3) including Lord Mustill in *Mercedes Benz AG v Leiduck* [1996] AC 284 (*"Mercedes"*), 299E.

41. I would, therefore, have rejected any contention that the power to grant freezing injunction rests on s.37(3) of the SCA 1981 but, as I have stated, I did not understand Mr Mather's oral submissions to argue for that outcome. He relied on s.37(3) for two purposes: first, to make it clear (were there otherwise any dispute) that s.37 specifically contemplates freezing orders being made against persons out of the jurisdiction (cf. *Orexim*, [32-33]) and second, in support of the contention that the divide between powers conferred on the court by statute and those arising under its

inherent jurisdiction is rather more complex than Mr Goodman suggested. That argument was made in response to Mr Goodman's submission as to the effect of s.37(1), to which I now turn.

D3 Is the granting of freezing order relief the exercise of a statutory power?

42. Mr Goodman's first argument, which does not appear to have been advanced before the Judge, is that s.37(1) is not the source of the court's power to grant interim and final injunctions, which arises under the inherent equitable jurisdiction of the superior courts rather than any statute. For that reason, he submits that a claim for freezing order relief cannot be said to be a claim "under" s.37 of the SCA 1981.

D3(1) The authorities relied upon by Mr Goodman

43. Mr Goodman cited a substantial body of authority in support of his threshold argument.

44. He began with IFC Spry's *The Principles of Equitable Remedies* (9th) ("*Spry*"), 340-42. *Spry* begins with a discussion of s.25(8) of the Judicature Act 1873. That section appeared in Part II, "Jurisdiction and Law", and provided as follows:

> "And whereas it is expedient to take occasion of the union of the several Courts whose jurisdiction is hereby transferred to the said High Court of Justice to amend and declare the Law to be hereafter administered in England as to the matters next herein after mentioned: Be it enacted as follows:
>
> > (8) A mandamus or an injunction may be granted or a receiver appointed by an interlocutory Order of the Court in all cases in which it shall appear to the Court to be just or convenient that such Order should be made ; and any such Order may be made either unconditionally or upon such terms and conditions as the Court shall think just ; and if an injunction is asked, either before, or at, or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted, if the Court shall think fit, whether the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title; and whether the estates claimed by both or by either of the parties are legal or equitable."

45. *Spry* referred to two views as to the effect of s.25(8). The first was that it extended the powers of the courts, enlarging their ability to grant injunctions, as to which view it is observed that "there are difficulties in accepting this analysis". *Spry* states:

> "the second and preferable view is that s.25(8) was not concerned to confer a power to grant injunctions where neither a court of equity nor a court of common law would previously have had that power, and that it was passed largely ex abundanti cautela."

46. One reason for that view was that the power to grant injunctions was already unlimited. That discussion does not directly engage with the question before this court,

which is not whether s.37(1) was intended to enlarge the powers of the court, but whether it was intended to place them on a statutory footing. Section 25(8), in both its terms and location within the statute, presents a number of obvious differences from s.37(1) (although it is right to record that footnote 9 of the relevant section of *Spry* states "similar observations may be made of s.37(1)").

47. Thus far, it is not wholly clear to me that *Spry* was directly engaging with the target at which Mr Goodman's submissions were aimed. *Spry* clearly regards the statutory provisions as of some moment, referring to a view that "the passage of general statutory provisions has been regarded as justifying a more broad application of equitable principles which has sometimes led to the abandonment of the material rule of practice" (i.e. that they have not enlarged the scope of what the courts might do, but removed self-imposed limitations on the exercise of the court's powers). *Spry* also speaks of the statutory provisions "conferring a general equitable discretion" (p.341). Elsewhere (e.g. pp.343 and 534), there is reference to the statutory provisions "confirming the width of the court's inherent powers".

48. More pertinent is Lord Scott's treatment of s.37(1) in *Fourie v Le Roux* [2007] UKHL 1, [2007] 1 WLR 320, on which Mr Goodman understandably placed considerable reliance. The particular issue before the court in that case was whether a freezing order could be made at a time when there were no subsisting proceedings, and no undertaking to commence them. That question had been argued below as one of jurisdiction, when, on proper analysis, it was held not to raise a question of what the court had power to do, but as to the principles by which the court's power should be exercised. At [25], Lord Scott stated:

> "But jurisdiction is a word of some ambiguity …
>
> The power of a judge sitting in the High Court to grant an injunction against a party to proceedings properly served is confirmed by, but does not derive from, section 37 of the Supreme Court Act 1981 and its statutory predecessors. It derives from the pre- Supreme Court of Judicature Act 1873 … powers of the Chancery courts and other courts, to grant injunctions: see section 16 of the 1873 Act and section 19(2)(b) of the 1981 Act".

49. It is certainly the case that the power to grant injunctions does not originate with s.37 of the SCA 1981, and Mr Mather does not argue otherwise. It is not clear to me whether Lord Scott was saying more than that, and in particular whether he was determining that the current legal foundation of the injunctive power is not to be found in s.37. At [26] he refers to "the line of authority on the power of the court to grant an injunction under section 37 of the 1981 Act" and at [28] referred without disagreement on this aspect to Lord Brandon's description of s.37 in *South Carolina Insurance Co v Assurantie Maatschappij 'De Zeven Provincien' NV* [1987] AC 24, 40 ("*South Carolina*"), to which I refer below, which described the power to grant injunctions as a "statutory power".

50. Mr Goodman also relied on the citation of Lord Scott's speech in *Fourie* with approval in *Broad Idea*, [40]. That passage repeats the "confirms and restates" language used by Lord Scott, but also speaks of "the power of the High Court of England and Wales to grant injunctions" being "now embodied in section 37(1)". At [31], Lord Leggatt stated that "the court has power under section 37(1) of the 1981 Act to grant

interlocutory injunctions", he used the "embodied" language at [40], and at [118] he referred to "the court's power under section 37".

51. That same language – "confirmed but not derived" – appears in *Cartier International AG v British Sky Broadcasting Ltd* [2016] EWCA Civ 658, [2017] Bus LR 1, [41] (a website blocking injunction case) on which Mr Goodman also relied. At [43], Kitchin LJ referred to the same passage from *South Carolina* and at [55] he referred to "the breadth of the court's jurisdiction under section 37(1)". After holding that the court had jurisdiction to grant such injunctions under Article 11 of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the Enforcement of Intellectual Property Rights ([65]), he addressed the alternative argument as to jurisdiction under domestic law. He did so by reference to "the proper interpretation of section 37(1)" ([66]), and in particular, the application to s.37(1) of the principle of legislative interpretation set out by the CJEU in *Marleasing SA v La Comercial Internacional de Alimentacion SA* C-106/89. Significantly, Kitchin LJ had to address the following argument ([72]):

> "Miss May [submits that] section 37(1), of the 1981 Act merely re-enacts in substantially identical terms provisions going back to the Judicature Act 1873 and embodies the powers previously exercised by the Court of Chancery and those of the common law courts, and such powers are not susceptible to a conforming interpretation. Moreover, in these circumstances, a conforming interpretation would necessarily go against the grain of the legislation."

52. His response, at [72], does appear to treat the scope of the court's injunctive power as involving an exercise in statutory interpretation and thus susceptible to the *Marleasing* principle:

> "Had it been necessary to do so, I am satisfied that it would have been appropriate to adopt a conforming interpretation of section 37(1). It provides that an injunction may be granted in all cases where it is just and convenient to do so. I see no difficulty in construing these words in such a way as to include the grant of an injunction in an appropriate case against an intermediary whose services are used by a third party to infringe a registered trade mark."

53. Mr Goodman also referred to *Wolverhampton City Council v London Gypsies and Travellers* [2023] UKSC 47, [2024] AC 983. The first issue identified for the court at [13(1)] (in the judgment of Lord Reed, Lord Briggs and Lord Kitchen) was "is it wrong in principle and/or not open to a court for it to exercise its statutory power under section 37 … so as to grant an injunction which will bind 'newcomers'?" At [17], they stated:

> "The injunction is equitable in origin, and remains so despite its statutory confirmation. The power of courts with equitable jurisdiction to grant injunctions is, subject to any relevant statutory restrictions, unlimited: Spry, *Equitable Remedies*, 9th ed (2014) ('*Spry*'), p 333 …, The breadth of the court's power is reflected in the terms of section 37(1) … As Lord Scott explained in *Fourie* ... that provision, like its statutory predecessors, merely confirms and restates the power of the courts to grant injunctions which existed before the Supreme Court of Judicature Act 1873 …and still exists."

54. That passage clearly records that the equitable jurisdiction has not ceased to exist as a result of the statutory confirmation and restatement of the court's injunctive power. However, at [145] the justices went on to refer to s.37, stating "this or a very similar formulation has provided the statutory basis for the grant of injunctions since 1873."

55. Finally, Mr Goodman referred to *Newcastle Upon Tyne Hospital NHS Foundation Trust v Abbasi and another* [2025] UKSC 15, [2026] AC 63, [83] stating that "the court possesses an inherent and unlimited equitable power to grant injunctions … [which] is confirmed and restated in section 37(1)."

D3(2) The authorities relied upon by Mr Mather

56. Mr Mather cited a substantial body of authority to support the assertion that, when a party seeks and obtains an injunction, the power exercised in their favour is now to be classified as a statutory power. He does not dispute that s.37(1) reflects (and is co-extensive with) the inherent equitable jurisdiction, but argues that the effect of s.37, at least so long as it is in force, is to make the exercise of that jurisdiction the exercise of a statutory power.

57. Mr Mather began with *South Carolina*, 39-40 where Lord Brandon stated:

> "In considering the question which I have formulated, it will be helpful in the first place to state certain basic principles governing the grant of injunctions by the High Court. The first basic principle is that the power of the High Court to grant injunctions is a statutory power conferred on it by section 37 (1) of the Supreme Court Act 1981 , which provides that 'the High Court may by order (whether interlocutory or final) grant an injunction in all cases in which it appears to the court to be just and convenient to do so.' That provision is similar to earlier provisions of which it is the successor, namely, section 45 (1) of the Supreme Court of Judicature (Consolidation) Act 1925 and section 25 (8) of the Supreme Court of Judicature Act 1873."

58. Lord Goff, at 44-45, doubted Lord Brandon's suggestion that the power to grant injunctions was confined to certain exclusive categories, and Lord Goff's view has prevailed, but he did not challenge Lord Brandon's description of the effect of s.37(1).

59. Mr Mather also referred to *Masri v Consolidated Contractors International Co SAL* [2008] EWCA Civ 303, [2009] QB 450, [141] in which Lawrence Collins LJ referred to the court exercising "a power under section 37(1)", to the power to appoint a receiver being "embodied" in s.37(1) ([142]), to a power "conferred" by s.37(1) ([175]), to the granting of a remedy "under" s.37(1) ([177]), and to "the jurisdiction under s.37(1)" ([183]). The (by then) Lord Collins referred back to that judgment in *Tasarruf Mevduati Sigorta Fonu v Merrill Lynch Bank & Trust Co (Cayman) Ltd* [2011] UKPC 17, [2012] 1 WLR 1721, describing s.37 in similar terms ([5], [55], [56], [57]).

60. Next, Mr Mather referred to *AES* – a decision of considerable importance on the issue of whether a claim for relief under s.37(1) falls within the Enactment Gateway, which I deal with in section D4 below. The argument in *AES* was addressed as one concerning the relationship between powers arising under s.44 of the Arbitration Act

1996 and under s.37(1) (see e.g. Rix LJ at [96] and [101]). Stanley Burnton LJ referred at [207] to "section 37… which confers powers to grant injunctions." In the Supreme Court ([2013] UKSC 35, [2013] 1 WLR 1889), similar statements were made by Lord Mance at [48], [50], [55-57], [60] and [62].

61. Finally, Mr Mather referred to two first instance decisions: *Royal Westminster Investments SA v Varna* [2012] EWHC 3439 (Ch), [38], in which Mr Justice Newey stated "section 37(1) … confers a power to grant injunctions"; and *L v K* [2013] EWHC 1735 (Fam), [2014] 2 WLR 914, [13] in which Mr Justice Mostyn referred to "the power to grant injunctions" being "placed on a statutory footing".

62. To those might be added numerous other authorities, including:

i) *The Siskina*, 254 (Lord Diplock referring to "the powers conferred upon the High Court by section 45(1) of the Supreme Court of Judicature (Consolidation) Act 1925").

ii) *AJ Bekhor & Co Ltd v Bilton* [1981] QB 923, 940 (Ackner LJ stating "it is now clearly established that the power of the High Court under section 45 (1) includes the power to grant an interlocutory injunction to restrain a party to any proceedings from removing from the jurisdiction or otherwise dealing with assets located within the jurisdiction where that party is, as well as where he is not, domiciled, resident or present within that jurisdiction"), and 497 (Griffiths LJ stating "the power to make the *Mareva* injunction is derived from section 45 (1) of the Supreme Court of Judicature (Consolidation) Act 1925").

iii) *Babanaft International Co SA v Bassatne* [1990] Ch 13, 26 (Kerr LJ stating "the jurisdiction of the court to grant injunctions is now to be found in section 37"), 37-39 (Neill LJ: stating "the power of the High Court to grant injunctions is now a statutory power. It is conferred by section 37(1) of the Supreme Court Act 1981").

iv) *Re Broadmoor Special Hospital* [2000] QB 775 (Lord Woolf MR at [24] referring to the injunctive jurisdiction being "statutorily codified in section 37").

v) *Cartier International AG v British Telecommunications Plc* [2018] UKSC 28, [2018] 1 WLR 3259 (Lord Sumption referring at [5] to "the jurisdiction of the court to make [a website blocking] injunction under the general power conferred on the court by section 37(1)").

D3(3) Where does this material lead?

63. While I see force in the argument made by Mr Goodman, in my view the court should not resolve this appeal on the basis of this threshold point. I suspect I have barely scratched the surface of the judicial descriptions of the effect of s.37(1) on which each party might place reliance, and the resultant debate would be a highly technical one which I suspect would be of no real moment outside the present context.

64. The threshold argument based on the words "under an enactment" would only be decisive if a claim for an injunction is to be regarded as *exclusively* made under the

inherent power of the court, or the Enactment Gateway only extends to claims arising *exclusively* under a statute.

65. As to the first contention, even if the authorities relied upon by Mr Goodman established that the court retains a continuing inherent power to grant an injunction, they are also consistent with that power being confirmed or codified by the SCA 1981. It would then be necessary for the purposes of this argument to explore quite what it means to say an inherent jurisdiction of the court has been "confirmed", "restated", "embodied", "reflected" or "codified" in a statutory provision, and whether that is of itself sufficient to prevent the claim arising under the statute. This argument might also raise issues as to the interrelationship between the continuing inherent jurisdiction and any statutory power. Similar issues have been considered in other contexts. When addressing the relationship between the prerogative and an overlapping statutory power in *Attorney-General v De Keyser's Royal Hotel Limited* [1920] AC 508, Lord Dunedin at p.527 stated that "it is equally certain that if the whole ground of something which could be done by the prerogative is covered by the statute, it is the statute that rules" and Lord Atkinson at p.540, that "after the statute has been passed, and while it is in force, the thing it empowers the Crown to do can thenceforth only be done by and under the statute, and subject to all the limitations, restrictions and conditions by it imposed, however unrestricted the Royal Prerogative may theretofore have been". In *Williams v Attorney-General* [1987] 1 FLR 501, 502, when addressing the court's inherent jurisdiction, Latey J stated "if there is a statutory remedy with a statutory code of procedure, it must be used in preference to an inherent jurisdiction". Understandably, the submissions we received did not engage with those questions.

66. As to the second contention, the language of the Enactment Gateway contains no express wording requiring the claim advanced to be one which can exclusively be brought under an enactment. As I explain below, in my view the language of the Enactment Gateway offers a more direct answer to the Gilbert Claimants' application than the implicit limitation for which Mr Goodman contends in this part of his argument.

67. Finally, if the particular history of the inherent equitable jurisdiction of the High Court provided the answer to the reliance on the Enactment Gateway for this purpose in High Court proceedings, that would not resolve similar issues arising under other statutes. Service of County Court proceedings out of the jurisdiction is subject to the CPR and the PD 6B gateways. County Court Judges can grant freezing injunctions by virtue of the County Court Remedies Regulations 2014 (SI 2014/982) which revoked and replaced the County Courts Remedies Regulations 1991 (SI 1991/1222). However, the County Court has no inherent jurisdiction, its power to grant injunctions under s.38 of the County Courts Act 1984 being wholly statutory in origin.

68. The analysis of s.37 which Mr Goodman's threshold argument has required remains valuable, however, because of the light it casts on what kind of an enactment s.37 is, and, in particular, whether an application for an injunction can be said to be a claim "under an enactment which allows proceedings to be brought". That was the basis on which the Judge decided this issue, and it is to that question I now turn.

D4 Even if the court's power to award freezing order relief now has a statutory footing, is it a claim "under an enactment which allows proceedings to be brought"?

D4(1) The interpretation of the Gateways

69. In *FS Cairo (Nile Plaza) LLC v Lady Brownlie* [2021] UKSC 45, [2022] AC 995, [51], Lord Lloyd-Jones approached the construction of Gateway (9(a)) by reference to "its ordinary and natural meaning and when considered in the light of the purpose of the provision".

70. In *Orexim* [2018] EWCA Civ 1680, [35], Lewison LJ noted that "the question of construction is a 'neutral' one", picking up a statement to that effect by Lord Sumption in *FS Cairo*, [31].

71. I have adopted the same approach.

D4(2) The Judge's decision

72. As I have stated, the Judge accepted that the application for the WFO involved making a "claim" and bringing "proceedings". The crucial issue for the Judge was whether s.37(1) "allows" proceedings to be brought. At [74] he stated:

> "The parties did not cite any authority to me on what is meant in the gateway by an enactment that 'allows' proceedings. In context, 'allows' must in my view be used in the sense of 'authorises' or 'provides for'. More specifically, I would read the phrase 'an enactment which allows proceedings to be brought' as meaning 'an enactment which establishes the procedural right to bring proceedings'. That seems logical: if a statute itself creates a procedural right to bring a claim, and to bring it against a foreign person, then a claimant or applicant seeking relief under the statute should not need to look elsewhere for a jurisdictional gateway. However, I do not think that the mere fact that a claim or application may be connected with or dependent in some way on an enactment can in itself be enough to engage gateway (20); that would widen the gateway enormously."

73. The Judge also referred to the decision in *AES*, which I address below, as "authority that section 37 is *not* an enactment that allows proceedings to be brought" ([75]). He rejected a submission that the persuasiveness of the Court's observations in *AES* was undermined by the subsequent re-visiting of the legal basis of the freezing injunction in *Broad Idea*, and noted that the factors which had led Jacobs J (and the Court of Appeal) to conclude that ss.33 and 34 were relevant enactments in *Gorbachev* were absent in s.37(1).

D4(3) The authorities

74. In *AES* [2011] EWCA Civ 647, the Court of Appeal had to consider another area in which innovations in the application of the court's injunction jurisdiction have caused difficulties when seeking to serve applications for such relief out of the jurisdiction – anti-suit injunctions, and specifically those which do not involve the assertion (on a direct or derived basis) of a promise not to bring proceedings in the foreign court, but

which rest on the vexatious and oppressive character of those proceedings. One argument raised before the Court, and addressed on an obiter basis, was that the claim could be served out under the Enactment Gateway on the basis that s.37(1) was the relevant enactment.

75. Rix LJ observed of that argument at [26]:

> "I would merely observe that, although the words of para 3.1(20) appear to have deliberately eschewed the former rule's particularity and opted for a catch-all provision, there must be a serious argument that section 37 of the 1981 Act is not an enactment 'which allows proceedings to be brought' but more simply provides for a particular remedy within proceedings whose legal basis has to be found elsewhere. However, I have not sought to investigate whether such a distinction would fit with the statutes which were formerly the subject matter of the predecessor CPR 6.20 (18) (and which covered topics such as immigration, drug trafficking, nuclear power, agriculture, social security and financial regulation)."

76. Stanley Burnton LJ was more forthright at [207]:

> "[I]n my judgment section 37 of the Senior Courts Act 1981, which confers power to grant injunctions in proceedings properly within the jurisdiction, is not 'an enactment which allows proceedings to be brought' within paragraph 3(20)(a) of Practice Direction 6B. In the absence of another basis for jurisdiction, it is only if there is such an enactment that the Court has the power conferred by section 37. Indeed, if it were otherwise, *The Siskina [1979] AC 210* would now be decided differently."

77. Wilson LJ stated at [192]:

> "I consider that the argument that a claim for an injunction under s.37 of the Act of 1981 falls outside the subparagraph is not (as Rix LJ suggests at [126]) merely 'serious' but (as Stanley Burnton LJ in effect suggests at [207]) patently correct."

78. *AES* was considered by Jacobs J in *Gorbachev* [2022] EWHC 1907 (Comm) in the context of the argument about s.34. He distinguished *AES* at [82]:

> "*AES* was not therefore concerned with either s.33 or s.34 SCA. I do not consider that there is an analogy between the specific statutory entitlement (subject to rules of court) to make applications pursuant to those sections, and the general power to grant the remedy of an injunction which is conferred by s.37 SCA. Both of the former sections provide a potential self-standing right to make applications against non-parties to proceedings, albeit that in the case of s.33 SCA there may be a potential cause of action to be advanced in subsequent proceedings. They are not ancillary to other remedies against those parties within existing proceedings. In any event, the *obiter* statements of the Court of Appeal would now have to be reconsidered in the light of the recent decision of the Privy Council not to follow *The Siskina*: see *Broad Idea International Ltd v Convoy Collateral Ltd [2021] UKPC 24*."

It will be noted that, in that paragraph, Jacobs J referenced the potential impact of *Broad Idea* on some of the reasoning in *AES*, but his decision was primarily concerned with the very different forms of the statutory provisions in issue.

79. The Court of Appeal upheld Jacobs J's decision and reasoning, and distinguished *AES* on the ground that it was "dealing with different statutory provisions": [2023] EWCA Civ 1270, [35(4)].

D4(4) Conclusion

80. It is helpful to begin with the language of the Enactment Gateway, which provides for the service out of the jurisdiction of a claim "under an enactment which allows proceedings to be brought". While a compendious phrase, rather more attention has been devoted to its second half than the words "under an enactment".

81. In my view, the requirement that a claim be "under an enactment" is suggestive of a strong legal connection between the claim and the enactment, in contrast, for example, to formulations such as claims "relating to" an enactment. Where a claim is advanced "under" an enactment, I would expect the principal requirements for bringing the claim to be specified either in the enactment itself, or at least by incorporation. That, to my mind, is the point which Jacobs J was making in *Gorbachev*, [82] when referring to s.34 as creating a "self-standing" claim.

82. The words "which allows proceedings to be brought" make it clear that the gateway is concerned with what might be described as "claim conferring" enactments, which give claimants falling within the scope of the provision the right to assert the statutory claim, in contrast to enactments whose purpose is simply to define the powers or jurisdiction of particular courts. While the Judge referred to the need for the statute to "establish the procedural right to bring proceedings", I do not understand him to be adopting a different interpretation of the relevant words in the Enactment Gateway to that set out in this paragraph, although for my part, I am not persuaded that the reference to a "*procedural* right" is helpful.

83. In *Orexim* [2018] EWCA Civ 660, Lewison LJ referred to the link between the extra-territorial operation of an enactment which allows a claim to be brought, and the scope for service out of such a claim under the Enactment Gateway ([31] and [32]). Where the statute creates the claim, and on its proper construction permits the claim to be advanced against someone outside the jurisdiction, then the "a priori expectation" Lewison LJ referred to that there will be a basis for service out under the procedural rules follows easily. Further, the necessary (but not sufficient) territorial link between claims of the relevant type and this jurisdiction which the gateways generally reflect will follow inevitably from the legislative choice, as manifest in the enactment, that claims under the enactment can be advanced against someone outside the jurisdiction. It is much more difficult to discern any such legislative choice, however, where the connection between the claim and the statute is of a looser kind, and where the statute is directed at defining the powers and jurisdictions of courts in a general sense, rather than conferring a particular right on a qualifying claimant.

84. Turning to the enactments considered in *Orexim* and *Gorbachev*:

i) Section 423 of the Insolvency Act 1986 provides a narrow power with a carefully defined field of application, the conditions for whose operation are essentially apparent from the terms of the statute itself. While s.423 is expressed in terms of a court's power, s.423(2) expressly refers to "the next section". Section 424, to which Lewison LJ referred in *Orexim*, specifically defines "those who may apply for an order". A claim for relief under s.423 is, therefore, fairly described as one "under" the enactment, and the legislative scheme is "claim conferring" in character.

ii) Sections 33(1) and (2) of the SCA 1981 apply "on the application of any person" and specifically provide that rules of court will define the process by which such applications are made and the circumstances in which the relevant power may be exercised. Section 33(2) requires the applicant to be "a person who appears to the High Court to be likely to be a party to the proceedings". Both subsections are narrowly drawn, being concerned with powers for a limited number of specified matters. Once again, a claim for relief by virtue of s.33 is fairly described as a claim "under" that section, and the provision is clearly "claim conferring".

iii) That is also true of s.34, which requires the applicant to be "a party to any proceedings", and which follows a broadly similar structure.

85. The contrast between those provisions, and s.37(1) is obvious:

i) Section 37 is a provision of the most general kind, which confirms the court's ability to grant a particular form of relief or remedy, but only addresses the circumstances in which it will be granted in the most general terms ("just and convenient" and s.37(2)).

ii) The circumstances in which that relief or remedy can be granted are many and various: domestic and worldwide freezing injunctions, appointments of receivers, interim and final injunctions, quia timet injunctions, anti-suit, anti-enforcement and anti-recognition injunctions, website blocking injunctions, etc, etc. The requirements for obtaining any particular form of injunctive relief are not to be found in s.37(1), but in case law dealing with that type of injunction. As Rix LJ noted in *AES*, [26], s.37(1) "more simply provides for a particular remedy within proceedings whose legal basis has to be found elsewhere".

iii) Nor does s.37(1) contain any language suggesting that it has a claim-conferring character: the language of the section is directed to the court, not applicants for relief.

iv) It is also apparent from the history of s.37(1) that its purpose was not to create a statutory claim and allow claimants to pursue that claim, but to confirm, restate or codify the pre-existing equitable jurisdiction of the court (section D3 above).

86. Indeed it is noteworthy that Mr Mather accepted that when an interim or final injunction is sought in support of a private law cause of action (breach of contract, tort, by virtue of a property right etc), it is not s.37(1) which "allows" the claim to be

brought, but the underlying private law right. He relies upon the fact that, following *Broad Idea,* a freezing injunction has a different character to those more traditional forms of injunction (albeit I would note that, once again, the principles which determine when freezing order relief is to be granted are not to be found, expressly or by implication, in s.37(1) itself).

87. That involves s.37(1) having a very different character for different types of injunction, and operating differently as between ordinary and proprietary freezing injunctions. In my view, the very broad scope of operation of s.37(1), and the absence of any language within it indicative of a legislative intention that that provision alone "allows proceedings to be brought", makes it impossible to derive from s.37(1) the conclusion that all claims of a particular type falling within that language should be capable, in all circumstances, of being asserted against persons outside of the jurisdiction.

88. For those reasons, I would reject the suggestion that a claim for freezing order relief is to be characterised as a claim "under" s.37(1) for Enactment Gateway purposes, and I agree with the Judge that s.37(1) does not "allow proceedings to be brought". For those reasons, I would dismiss the appeal. In doing so, I wish to pay tribute to the Judge's judgment on this novel application, which cut to the heart of the issues and provided a convincing answer to an argument which, as the Judge rightly noted, would have led to a number of very surprising consequences, and effected a major upheaval in the service out regime unheralded in any of the legal building blocks used to assemble it.

D5 Is service out of a claim for a freezing injunction under the Enactment Gateway precluded by the words "not covered by any of the other grounds referred to in this paragraph"?

89. The Enactment Gateway (in its entirety) provides:

> "(20) A claim is made –
>
> (a) under an enactment which allows proceedings to be brought and *those proceedings are not covered by any of the other grounds referred to in this paragraph*."

(emphasis added).

90. I will refer to the italicised words as the Enactment Gateway Proviso.

91. One of the points taken by Mr Goodman in his Respondent's Notice is that since some of the relief capable of being obtained under s.37 of the SCA 1981 is covered by another gateway (a final injunction requiring the respondent to do or refrain from doing an act within the jurisdiction, covered by the Injunction Gateway) it followed that no claims for relief under s.37 could be brought within the Enactment Gateway.

92. The Judge saw some attraction in that interpretation of the Enactment Gateway Proviso, on the basis that he thought it difficult to give any other purpose to the Proviso's terms (Judgment, [85]). However, he rejected the argument ([86]):

> "On reflection, however, I cannot see how the court could coherently determine the scope or coverage of any gateway other than by reference to the description in the gateway of the claims that pass through it. Taking gateway (2) for example, I do not see how a claim for a non-domestic injunction could be treated as 'covered by' a gateway that in its terms applies only to a domestic injunction. I therefore conclude that the proceedings initiated by the Claimants' application are not 'covered by' gateway (2) and so would pass through gateway (20) if (contrary to what I have decided above) the other conditions to that gateway were satisfied."

93. At the hearing, we queried how the Enactment Gateway had come to assume its current form, with a sub-paragraph (a) and no other sub-paragraphs. "Real time" research by Mr Goodman's former pupil, Mr Jack Hollingworth, for which the court is grateful, identified how the Enactment Gateway came to assume this form. Having reviewed the relevant material, the position appears to be as follows:

i) From the introduction of the CPR's formulation of the service out rules until 1 October 2008, the Enactment Gateway took the following form:

   a) The relevant rule provided "a claim is made under an enactment specified in the relevant practice direction."

   b) Practice Direction 6B then listed a series of enactments, amended from time-to-time.

ii) With effect from 1 October 2008, the gateways themselves were removed from the body of the rules to Practice Direction 6B, and the Enactment Gateway provided as follows:

> "A claim is made:
>
> (a) under an enactment which allows proceedings to be brought, and those proceedings are not covered by any of the other grounds referred to in this paragraph; or
>
> (b) under the Directive of the Council of the European Communities dated 13 March 1976 No 76/38/EEC, where service is to be effected in a Member State of the European Union."

The Directive referred to is concerned with "mutual assistance for the recovery of claims resulting from operations forming part of the system of financing the European Agricultural Guidance and Guarantee Fund, and of the agricultural levies and customs dues", according to the *White Book*.

iii) Sub-paragraph (b) was removed with effect from 1 January 2021.

94. It is right to record that the editors of the *White Book* have proceeded on the basis that the words "any other grounds referred to in this paragraph" are a reference to paragraph 3.1, setting out all of the grounds for service out with permission, and the argument before us proceeded on that basis. While the reference to "other grounds" clearly lends support to that construction, the word "paragraph" is used in numerous gateways to refer to an individual gateway rather than the collective set. On that

construction, the Enactment Gateway Proviso might have envisaged specific enactments being added to the list, with Gateway (a) acting as some form of residual category. Neither interpretation is wholly satisfactory, and I shall proceed on the basis that the approach approved in the *White Book* is correct.

95. I have concluded that the Judge's construction is to be preferred for the following reasons:

i) First, as the Judge noted, Mr Goodman's construction raises very real difficulties as to the level of abstraction to be adopted when identifying whether "those proceedings are not covered by any of the other grounds referred to …". He submits, in this case and on the assumption that the Injunction Gateway has the effect for which he contends, the issue is whether a claim for an injunction of any kind can be brought within another gateway, and not whether an interim injunction, or more specifically a freezing injunction, can be so brought.

ii) The premise on which, following *Orexim*, the Enactment Gateway is to be approached is that where a statute gives the court power to make orders against persons or property outside England and Wales, then it is to be expected that procedural rules exist which enable the court to exercise those powers. Where the claims allowed by the statute are broader than those permitted by any gateway other than the Enactment Gateway, but include within them some claims which fall within some other gateway, it would in my view be surprising if the legislative intention was to be frustrated by the Enactment Gateway Proviso. To take an extreme case, assume a statute expressly provided that claims of a kind created by the statute could be brought against persons abroad, and served on them, for a form of breach of statutory duty, wherever damage was sustained. It would, in such circumstances, be surprising if the fact that Gateway (9(a)) would be available if (but only if) damage was sustained within the jurisdiction would prevent service out under the Enactment Gateway being available in a case in which damage was sustained abroad.

iii) The introduction of the Enactment Gateway Proviso would have effected a very significant change in this part of the service out regime, but we were not referred to any material to suggest that this was intended. One of the statutes which was consistently referred to when the Enactment Gateway took the form of specifying the enactments to which it applied was the Nuclear Installations Act 1965. Section 10 of that Act imposes a duty on foreign operators in relation to causing injury or damage arising from radioactive properties. Section 12 provides a right to compensation for that breach of duty "wherever the injury or damage was incurred". That would plainly encompass, but not be limited to, damage in England and Wales. On Mr Goodman's argument, a claim under s.12 can no longer be served through the Enactment Gateway.

iv) I note that my conclusion accords with the instinctive view of Mr Justice Vos in *Apex Global Management v Fi Call Limited* [2013] EWHC 1652 (Ch), [2014] BCC 286, [158], although he did not reach a final view on the matter.

96. For those reasons, had I been persuaded that the claim for WFO relief otherwise fell within the Enactment Gateway, the claim would not have been excluded by the

Enactment Gateway Proviso. The claim which the Gilbert Claimants assert does not fall within any other gateway, because there is no gateway addressing injunctions which are not granted by way of substantive relief. Accordingly, the Enactment Gateway Proviso would not have been engaged.

E THE INJUNCTION GATEWAY

97. The Gilbert Claimants relied on the Injunction Gateway for the first time in their skeleton argument for the hearing before the Judge. The Judge permitted the argument to be run, but held that he was bound by *The Siskina* to hold that the Injunction Gateway did not apply to a freezing order. The Judge noted that, despite being invited to depart from *The Siskina*, the Privy Council had followed *The Siskina* when addressing the equivalent provisions of the EC CPR (CPR 7.3(1)(b)) in *Broad Idea*.

98. I agree with the Judge's analysis. In *The Siskina* the House of Lords considered whether an application for what we would now term a domestic freezing injunction fell within RSC Order 11 r1(1)(i) which permitted service out where:

> "If in an action begun by writ an injunction is sought ordering the defendant to do or refrain from doing anything within the jurisdiction whether or not damages are also claimed in respect of a failure to do or the doing of that thing".

99. At p.256, Lord Diplock stated that the rule "pre-supposes the existence of a cause of action on which to found 'the action'", and a right to an interlocutory injunction was not founded on a cause of action:

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

100. The Privy Council was invited to depart from *The Siskina* in *Mercedes*, when considering the scope of the Hong Kong RSC Order 11 rule 1(1)(b), which was identical to the service out provision considered in *The Siskina*. Lord Mustill, delivering the judgment of the majority, stated that RSC Order 11 was generally concerned with a "claim for relief founded on a right asserted by the plaintiff in the action or matter, and enforced through the medium of a judgment given by the court in that action or matter" (p.302). Lord Mustill rejected an argument that the Injunction Gateway should be given a wider construction so as to embrace applications for interim injunctions in support of foreign proceedings introduced by s.25 of the Civil Jurisdiction and Judgments Act 1982, stating at p.304:

> "Whatever else may be said about the current standing of *The Siskina*, it has not so far been reversed by anything, as shown by the decisions of the House of Lords which their Lordships have cited, still less as a by-product of the 1982 legislation. Either the reasoning of the decision is sound or it is not, and the subsequent enactment of a power applicable in certain limited areas for which special jurisdictional provision is made can have no bearing on the generality of

> situations to which the statute does not apply. Their Lordships are unable to understand how the conferring of powers to be exercised, by way of exception to the general rule, in support of litigation within Convention countries could have any effect on the meaning of Ord. 11, r. 1(1) of the English Rules of the Supreme Court, which governs the service of proceedings worldwide."

101. At pp.302-3, Lord Mustill suggested that "at the centre of the powers conferred by Order 11 is a proposed action or matter which will decide upon and give effect to rights", and, Order 11 Rule 9 (providing for service of originating summonses out of the jurisdiction) notwithstanding, "the imprint of rule 1(1) does, in their Lordship's view remain on the entire scheme for extra-territorial jurisdiction, and relates to proceedings for substantial and not incidental relief".

102. I accept that the re-formulation of the conceptual basis of the freezing injunction in *Broad Idea*, and the removal from the Injunction Gateway of the words "whether or not damages are also claimed in respect of a failure to do or the doing of that thing" (which might be said to be suggestive of claims for substantive relief) provide the basis for an argument distinguishing *The Siskina*. However, the interpretation of the Injunction Gateway in the EC CPR was directly addressed in *Broad Idea*, when the Board refused the invitation to depart from *The Siskina* and the Board's earlier decision in *Mercedes*. Lord Leggatt stated at [2]:

> "In the Board's view, those decisions should not now be disturbed. The EC CPR must be interpreted by reference to them and, if a wrong turning has been taken, the appropriate means of getting the law of the BVI back on track is by amending the EC CPR."

103. Returning to that issue, Lord Leggatt continued at [67-70]:

> "Whatever merit it might have had if the question was a new one, CCL's argument that this rule encompasses a claim made for a freezing injunction comes far too late in the day. The common law does not operate on a principle of third time lucky. On the contrary, at its core is the doctrine of stare decisis, meaning 'stand by what has been decided'. That doctrine remains as essential as ever to securing stability, consistency and predictability in the common law. The Board has never acted on a strict rule that it is bound by its own previous decisions, nor those of the House of Lords or Supreme Court; but the Board will not depart from a previous decision of its own or of the House of Lords or Supreme Court without compelling reason to do so: see Lord Mance and J Turner, *Privy Council Practice* (2017), paras 5.07–5.21 and the cases there cited. Such a reason is unlikely to be found where the question concerns the meaning of a rule of court. Where the meaning of such a rule has already been settled at the highest level of judicial authority, litigants should be entitled to rely on that meaning in the knowledge that there is a procedure readily available for amending the rules, if necessary. The use of that procedure is generally the fairest and most efficient means of ensuring that the rules of court are kept up to date. (See also in this respect the warning by Lord Hailsham in *The Siskina* [1979] AC 210, 262 that, in relation to any extension of the grounds for permitting service out of the jurisdiction, the courts should not usurp the functions of the Rule Committee.)

> The justice and convenience of interpreting a rule in accordance with a settled meaning is all the greater where, as in the present case, a rule in the same or materially similar terms exists in other jurisdictions for which the Board is or was the final court of appeal. For the Board to depart from the interpretation of the rule applicable to claims for injunctions which was adopted in *The Siskina* and in *Mercedes Benz* would have repercussions beyond the BVI and would potentially upset reasonable expectations and cause uncertainty about the effect of the corresponding rules in those other jurisdictions.
>
> A further and cogent consideration is that the decisions in *The Siskina* and *Mercedes Benz* formed part of the legal background against which the EC CPR were introduced in 2000. Where legislation re-enacts a provision which has been the subject of authoritative judicial interpretation, it is generally to be inferred that the new provision was intended to bear the meaning that case law had already established … This presumption applies with all the more force where that case law included two decisions at the highest level. EC CPR r 7.3(2)(b) replaced without material alteration in wording Ord 11, r 1(i) of the Rules of the Supreme Court (Revision) 1970 (BVI), which was itself in identical terms to the rules construed in *The Siskina* and *Mercedes Benz*. The overwhelming inference in these circumstances is that EC CPR r 7.3(2)(b) was intended to have the same meaning and effect as was given to its predecessor by the House of Lords and the Board.
>
> For these reasons, the Board would affirm the decision of both courts below that Dr Cho cannot be brought within the jurisdiction of the BVI court by serving him with a claim form abroad. The lacuna in the EC CPR can only be filled by amending the rules and not by reinterpreting them."

104. The considerations identified by Lord Leggatt apply with equal force here. The scope of the relevant rule of the CPR has been settled by courts of the highest authority, and subsequent revisions of the CPR have not sought to amend it. Any revision of the kind contended for is a matter for the Rules Committee. Those considerations are sufficient, in my view, to answer Mr Mather's argument that the decision in *Broad Idea* did not address the development of the service out provisions to encompass procedural applications, as set out in *Gorbachev*, which it was said undermined at least part of Lord Mustill's reasoning in *Mercedes*.

105. There is a further reason why I have concluded that it was not appropriate to grant permission to appeal to advance this point. As I have stated, the argument was advanced late below. It is apparent that the argument is something of a stalking horse. I understood Mr Mather to accept that it is not enough to bring a claim within the Injunction Gateway that the injunction sought extends in its application to England and Wales, where its application is not so limited (see *Unlock Ltd v Google Ireland Ltd* [2018] EWHC 1363 (Ch), [2019] ECC 1, [45] and *Conductive Inkjet Technology Ltd v Uni-Pixel Displays Inc* [2013] EWHC 2698 (Ch), [2014] FSR 22, [61]).

106. However, an order limited to preventing the dissipation of assets which remain in the jurisdiction would be of very limited value in this case. It is apparent that the Gilbert Claimants would seek to argue that the application for worldwide relief fell within PD 6B paragraph 3.1(4A) as a claim "which arises out of the same or closely connected facts" as the claim for a domestic freezing injunction ("Gateway (4A)").

107. The Gateway (4A) argument was not advanced before the Judge in relation to the Injunction Gateway. There was an attempt to raise that argument in the context of the Property Gateway, but the Judge held that the point had been raised too late and refused to admit it (Judgment, [68]). The argument that it would be possible to circumvent the geographic limitation in the Injunction Gateway by this means is one which, to put it at its lowest, would require the most careful consideration. The issue was not addressed in the written submissions, and barely touched upon in Mr Mather's oral argument, and it is not a matter which could have been properly addressed within the appeal.

F THE PROPERTY GATEWAY

108. The application of the Property Gateway was principally advanced before the Judge on the basis that the Broadoak Judgment represented property in the jurisdiction, and that the Broadoak Judgment was wholly or principally the subject of the claim for WFO relief.

109. The Judge accepted that there was a connection between the application and the Broadoak Judgment, but held (Judgment, [67]) that:

> "I do not think that it would be right to treat an application for *Chabra* relief, even one made post-judgment, as one whose subject matter relates 'wholly or principally' to the judgment debt. The application is more directly concerned with the assets held by the NCADs, specifically whether they are available to the CAD and whether there is a risk of dissipation".

110. There was no argument before the Judge or in the appeal on whether the Property Gateway was limited to claims concerning a legal right (cf. *Vestel Elektronik Sanayi Ve Ticaret AS v Access Advance LLC* [2021] EWCA Civ 440, [2021] 4 WLR 60, [69]-[70]) and whether any such requirement was satisfied. I therefore say nothing about that issue.

111. Under RSC Order 11 rule 1(1)(g), a writ could be served out of the jurisdiction if "the whole subject-matter of the action is land situate within the jurisdiction (with or without rents or profits) or the perpetuation of testimony relating to land so situate". Rule 1(1)(h) applied where "the claim is brought to construe, rectify, set aside or enforce an act, deed, will, contract, obligation or liability affecting land within the jurisdiction". Rule 1(1)(i) applied to claims for a debt secured on immovable property, or to declare or determine proprietary or possessory rights, rights in or over movable property, situate within the jurisdiction.

112. When the service out gateways were brought within the CPR regime by SI 2000/221, these three RSC gateways were replaced by CPR 6.20(10), which applied "where the whole subject matter of a claim relates to property within the jurisdiction." With effect from 1 October 2015, the gateway was amended, so that it now provided that the "subject-matter of the claim relates wholly or principally to property within the jurisdiction.

113. A number of cases have considered the meaning of the word "property" in the CPR formulations, but the meaning of the requirement that "the subject matter of the claim relates wholly or principally to property within the jurisdiction" has received less

attention. In *re Banco Nacional de Cuba* [2001] 1 WLR 2039, Lightman J (when addressing the 2000 iteration of the gateway) stated at [33]:

> "The critical differences between RSC Ord 11, r 1(g) and CPR r 6.20(10) is the substitution for the words 'is land situate within the jurisdiction' of the words 'relates to property located within the jurisdiction'. The implications are that: (1) the rule is no longer limited to land and now extends to personal property; and (2) instead of the whole claim having to be confined to a claim to a proprietary or possessory interest, it is sufficient that the whole claim relates to property. The evident purpose of the new rule is to lay down a single rule, in place of the three earlier rules, which embraces and extends beyond the contents of those rules. It is to be noted that in *Civil Procedure* Autumn 2000 ed (the 'White Book'), p 128 the comment is made on CPR r 6.20(10): 'This wide and new provision is no longer confined to land and the old cases are redundant.' In my view on its proper construction the rule cannot be construed as confined to claims relating to the ownership or possession of property. It extends to any claim for relief, whether for damages or otherwise, so long as it is related to property located within the jurisdiction. This construction vests in the court a wide jurisdiction, but since the jurisdiction is discretionary the court can and will in each case consider whether the character and closeness of the relationship is such that the exorbitant jurisdiction against foreigners abroad should properly be exercised."

114. In *Lakatamia Shipping Co Ltd v Su* [2023] EWHC 1874 (Comm), [2024] 1 WLR 2746, Mr Justice Bryan considered the Property Gateway in the context of an application to serve claims in unlawful means conspiracy, for intentionally causing damage by unlawful means and for the so-called *Marex* tort out of the jurisdiction, arising from the proposed defendant's conduct in assisting a judgment debtor deal with assets in what was said to be a breach of a post-judgment freezing injunction. Bryan J found that three service out gateways were established in that case, including the Property Gateway. In view of his earlier conclusion that the claim fell within rule 3.1(9)(a), because damage has been suffered within the jurisdiction, he dealt with the Property Gateway briefly at [74-76]. At [74] he noted that property "encompasses intangible property such as rights and obligations". At [69], Bryan J had already held that the judgment debt was a chose in action and that there was a good arguable case that the judgment required payment in England, and he dealt with the remainder of the Property Gateway point briefly at [75]:

> "The debt owing pursuant to the Cooke Judgments is a chose in action giving Lakatamia rights to be paid in England (as addressed above). Accordingly I am satisfied that Lakatamia has established a good arguable case that Lakatamia's claims against Maître Zabaldano, each of which are connected with or founded upon the Cooke Judgments, pass through the 'property' gateway."

115. It is to be noted that Bryan J was addressing claims to serve substantive tortious causes of action out of the jurisdiction, and that he had earlier concluded that there was a good arguable case that the value of the judgment debt payable in England had been reduced by the tortious acts ([61]). Given that very different context, and the fact that it was not necessary for the judge to address the issue in any detail given his earlier conclusion, I have found that decision of limited assistance in this case. The issue of whether claims for tortious interference with an English judgment debt fall within the

Property Gateway is not a straightforward one, nor the issue as to where a debt is located, but any consideration of those questions is best left to a case which directly raises them.

116. Returning to the issue here, the Property Gateway requires the identification of the subject-matter of the claim, and then a determination of whether that subject-matter "relates wholly or principally to property within the jurisdiction". As to this:

i) The identification of "the subject matter" of a claim looks to its substance or essence, and will fall to be answered at a relatively high level of generality. A claim with a single subject matter may raise a series of discrete issues or sub-issues as to individual elements of the cause of action. However, it is not the case that each and every one of those sub-issues considered in isolation can be said to constitute its subject matter.

ii) The words "relates wholly or principally" require a relatively strong connection between the subject matter of the action and property within the jurisdiction. Some overlap or connection between the subject matter and property within the jurisdiction will not suffice.

117. In this case, the subject matter of the WFO is the restraining of the NCADs from certain kinds of dealing with assets in their control. The purpose of such an order is to facilitate the enforcement of the Broadoak Judgment, and there is clearly a connection between the WFO application and the Broadoak Judgment, as the Judge accepted. I accept that the existence of that judgment meets one of the requirements of which the court will generally have to be satisfied before it exercises its discretion to grant freezing order relief, although freezing order relief is, of course, available before any judgment is obtained. However, the court will also need to be satisfied of the risk of dissipation; the existence of assets amenable to execution to which the injunction will extend; and that it is just and convenient to make such an order.

118. In my view, it is not arguable that the subject matter of the application for freezing order relief relates "wholly or principally to property within the jurisdiction" simply because the order is sought to assist enforcement of an English judgment, whether actual or anticipated. This seeks to elevate one means of satisfying one of the requirements of a freezing injunction into the subject-matter of the application. The freezing order would not itself effect the discharge of the judgment debt, but would simply prevent the dissipation of assets against which some process of execution might subsequently be levied.

119. I should also note the striking consequences which accepting Mr Mather's argument would have. It would mean that the Property Gateway would provide a means of serving all applications for a process of execution in respect of an English judgment debt, and ancillary relief, out of the jurisdiction. In *Commercial Bank of Dubai v Al Sari* [2024] EWHC 3304 (Comm), [274], I observed that "if there is to be a general power to serve proceedings out of the jurisdiction to assist the enforcement of an English judgment debt, that is a matter for the Rules Committee." I remain of that view. I would note, however, that the Gilbert Claimants' submission would not seem to be limited in its effect to judgments debts, but would arguably extend to applications intended to assist the enforcement of all debts with an English situs.

120. The Gilbert Claimants sought in their oral reply submissions before the Judge to advance an alternative argument, which treated the assets of Mrs Bleakley in the jurisdiction as the property within the jurisdiction to which the subject matter of the claim was wholly or principally related. That argument would have faced, among others, the difficulty that the relief sought is worldwide in nature, it being undisputed that the predominant part of the assets affected by the WFO are outside of the jurisdiction. As a result, even accepting the premise of that argument, it could not be said that the subject-matter of the application relates "wholly or principally" to property within the jurisdiction in this case.

121. The Gilbert Claimants' response to this difficulty was to argue that an application for a freezing order extending to assets within England and Wales would fall within the Property Gateway, and that Gateway (4A) could be relied upon to seek a WFO extending to assets abroad. As I have stated, the Judge refused to admit that new argument, which he rightly described as "ambitious" ([68]), referring to the lateness of the point, and the very limited submissions received. Those same deficiencies arise on appeal, in addition to the fact that we do not have the benefit of a decision from the Judge. I am satisfied that it would not be appropriate to permit the Gilbert Claimants to advance this argument on the appeal.

122. I would simply note that the argument that an application for a non-proprietary domestic freezing order falls within the Property Gateway because the order applies to assets within the jurisdiction would require very careful consideration. A freezing order confers no proprietary interest in property nor any priority when others seek to enforce their rights against the same property. Rather, it limits certain types of dealings with assets, up to a certain value, for its duration. Some or all of those assets may not, in the event, be used in satisfaction of the applicant's judgment, and assets initially covered by a freezing injunction may legitimately be consumed by the respondent in accordance with the terms of the order or sold and replaced by other assets. To the extent the respondent has unencumbered assets above the maximum sum, they will be able to deal with those as they wish, and the choice as to which assets to retain to ensure the limit of the freezing order is met will generally be a matter for them. Indeed the standard freezing order provides that the order will cease to have effect if the respondent provides security by paying a specified sum into court, to be held to the order of the court, or makes provision for security in that sum by another agreed method. That attenuated link between the relief granted by a non-proprietary freezing order and any specific property within the jurisdiction is a matter of obvious potential relevance to the application of the Property Gateway.

G CONCLUSION

123. For these reasons, I would dismiss the appeal and uphold the decision of the Judge. I am conscious that that outcome might not be seen as entirely attractive, given that the Judge found that all of the conditions for granting freezing order relief in respect of the dissipation of assets which would impair the enforcement of an English judgment are satisfied. However, it should be noted that the Gilbert Claimants have now brought claims under s.423 of the Insolvency Act 1986 and for constructive trust relief which would appear to provide an appropriate vehicle for pursuing their complaints, which claims can be served out of the jurisdiction on established authority, and which can provide a basis for seeking freezing order relief. The NCADs' success on this appeal may yet prove to be pyrrhic.

124. The Judge continued the WFO until the determination of this appeal. The order will continue until the parties have had an opportunity to file written submissions as to what consequential orders should be made following this judgment, and the court's order has been finalised.

125. As I have stated before, it is a matter for the Rules Committee as to whether there ought to be a gateway for the service out of the jurisdiction of applications for relief intended to assist in the enforcement of an English court judgment. It can certainly be said to be a curiosity that there is a gateway permitting service out of an application for a freezing order intended to assist in the enforcement of a foreign judgment (Gateway (5A)), which would extend to *Chabra* relief, but no equivalent gateway for domestic judgments. Section 423 may not provide the necessary relief in every case.

Lord Justice Miles

126. I agree.

Lord Justice Jeremy Baker

127. I also agree.