

Judgment 13/2012

**Credit Suisse Trust Limited and Nemni et al
Civil Action File No 1564, Royal Court,
20th March 2012**

Application seeking a further anti-suit injunction against the first defendant (see judgment 2/2012) and an anti-suit injunction to restrain the first defendant from pursuing proceedings in Luxembourg.

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 20th day of March, 2012 before Patrick John Talbot, QC, Lieutenant Bailiff; sitting alone.

Between:-

CREDIT SUISSE TRUST LIMITED
(as Trustee of the Settlement)

Trustee

-and-

(1) GIUSEPPE NEMNI

First Defendant

(2) SIMON E. HAGGIAG

Second Defendant

(3) MICHAEL HAGGIAG

Third Defendant

(4) MIRELLA PETTENI HAGGIAG

Fourth Defendant

ON THE APPLICATION of the Plaintiff Trustee for an anti-suit injunction against the First Defendant, dated the 13th February, 2012;

WHEREAS THE COURT on the 22nd February 2012, having heard Advocate I.C. Swan Counsel for the Trustee and Advocate K.M. Le Cras, Counsel for the Second to Fourth Defendants, the First Defendant having not appeared, and having GRANTED the anti-suit injunction, and on the 24th February 2012 made an Order to that effect (attached) and RESERVED written reasoned judgment;

THE COURT this day handed down judgment in the terms attached hereto.

Her Majesty's Deputy Greffier.

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

ORDINARY DIVISION

In the matter of an application by Credit Suisse Trust Limited in respect of the Translux Financing Trust ("the TFT")

BETWEEN:

(1) CREDIT SUISSE TRUST LIMITED (as trustee of the Settlement)

Trustee

- and -

(1) GIUSEPPE NEMNI

(2) SIMON E. HAGGIAG

(3) MICHAEL HAGGIAG

(4) MIRELLA PETTENI HAGGIAG

Defendants

Advocate Ian Swan for the Trustee

Advocate Karen Le Cras for the 2nd to 4th Defendants

The First Defendant, **Giuseppe Nemni**, not appearing

Hearing 22 and 24 February 2012

J U D G M E N T

of

Lieutenant Bailiff Patrick John Talbot QC

29 February 2012

Introduction

1. By an application dated 13 February 2012 the Plaintiff trustee company Credit Suisse Trust Limited, (“the Trustee”), which is the present trustee of the Translux Financing Trust dated 14 November 2005, (“the TFT”), sought (i) a further anti-suit injunction against the First Defendant Giuseppe Nemni (“Mr Nemni”) to restrain him from continuing to pursue proceedings brought by Mr Nemni against the Trustee in the Corte di Appello in Rome, Italy, on about 11 November 2011 and served on the Trustee on 28 November 2011, (“the second Italian proceedings”), on the ground that the pursuance of the second Italian proceedings would be an abuse of this Court and (ii) an anti-suit injunction against Mr Nemni to restrain him from continuing to pursue proceedings brought by him in Luxembourg against a TFT trust company, Orium SA, and others on 24 January 2011 (“the Luxembourg proceedings”). I shall refer to the application now before the Royal Court as “the 2nd Application”.
2. Advocate Ian Swan appears for the Trustee. The 2nd Application is also supported by the Second to Fourth Defendants, for whom Advocate Karen Le Cras appears. Her clients are respectively the sons and widow of the late Robert Haggiag Senior (“Mr Haggiag”), who was born in Tripoli, Libya, on 18 March 1913 and died on 27 February 2009. Mr Haggiag was a well-known film producer and international businessman and died aged 95.
3. The 2nd Application was supported by the 7th affidavit sworn by Mr Geoffrey le Poidevin, a director of the Trustee, on 12 February 2012.
4. I received written submissions in support of the 2nd Application from Advocate Swan for the Trustee and Advocate Le Cras for the Second to Fourth Defendants and I heard oral submissions from Advocates Swan and Le Cras on Wednesday 22 February 2012. At the close of the oral hearing I announced that I would grant an anti-suit injunction to restrain the continuation by Mr Nemni of both the second Italian proceedings and the Luxembourg proceedings and I made a written Order dated Friday 24 February 2012 pursuant to my decision. On 22 February 2012 I also said that would give the reasons for my decision as soon as possible. Accordingly, I shall now give my reasons in this Judgment for the decision, which I made on 22 February 2012.
5. Whilst in the Italian proceedings brought by Mr Nemni against the Second to Fourth Defendants on 3 or 4 January 2011 (“the first Italian proceedings”), to which my judgment dated 26 January 2012 relates, Mr Nemni did not include the Trustee as a respondent, the second Italian proceedings are brought against the Trustee only. But in all other material respects the second Italian proceedings repeat, by direct copying of pages of the first Italian

proceedings, the terms and substance of the first Italian proceedings. I have noted, in particular, that no changes at all were made to any parts of the repeated parts of the second Italian proceedings to the parts relating to the so-called Russian project, which is called the Botanic Garden project in both sets of Italian proceedings.

6. By the Order following my judgment in the first Italian proceedings dated 26 January 2012, Mr Nemni is restrained from continuing his claims in those proceedings against the Second to Fourth Defendants. So, in the 2nd Application the Trustee seeks to prevent him continuing against it his claims in the second Italian proceedings either in the second Italian proceedings themselves or in any other proceedings in any jurisdiction relating to the same subject-matter.

Evidence in support of the 2nd Application

7. In the material parts of his 7th affidavit, Mr le Poidevin deposed as follows:

Although apparently a substantial document, examination of [the claim form in the second Italian proceedings] reveals that pages 55 – 91 (of [exhibit] Glep8) comprise a copy of Mr Nemni’s original claim against RHS’ heirs (which is the claim the subject of the anti-suit injunction granted by this Court on 26 January 2012): the full text of that original claim has been inserted within the text of the new claim. The new claim therefore consists of pages 53, 54 and 92 – 95 (of Glep8). The subsequent pages (96 to 105 of Glep8) are merely the content of pages 82 (second half of the page) to 91 (of Glep8, which have been reproduced in identical form.

The substantial overlap between the two claims is apparent from page 92 (of Glep8), when one sees:

that there is reference in paragraph 2 to “the first hearing of this lawsuit” [emphasis added];

that there is reference in paragraph 3 to “a possible reunification with the pre-existing lawsuit” implying that application may be made to consolidate the two sets of proceedings, although as at today’s date no such application has been made;

that there is reference in paragraph 3 to it being “declared the same conclusions of the lawsuit against [the heirs of RHS]” [;]

that (on pages 93 and 94 of Glep8) Mr Nemni seeks relief jointly and severally from the Trustee and from the heirs.

...

The relief sought against the Trust in the new claim is, as appears from page 94 (of Glep8), exactly the same as is sought in the original claim: Mr Nemni claims two sums (€4.5 million and €4.1 million) by way of remuneration for the work he claims to have carried out for the Trust during RHS' lifetime, and a further US \$50 million for the "unjustified withdrawal from the New Ring of Moscow deal" i.e. the Russian Project.

The Russian Project

Amongst the attachments to Mr Nemni's original Italian claim is attachment number 14 (a copy of which appears at pages 179 - 187 of Glep8) which he relies on for his claim to be paid the sum of \$50 million in relation to the Russian Project. It is worthy of note that this document, entitled "AFI Development PLC Preliminary Results for the year ended 31 December 2007" is dated 27 March 2008 and amongst other things, states:

that AFI Development PLC ("AFI") was listed on the London Stock Exchange in May 2007 (page 181 of Glep8);

that the Botanic Gardens project (which he suggests is the same as that which I have called "the Russian Project") was one of 7 new projects added since the IPO (page 179 of Glep8);

that the market value of the Botanic Gardens Project as at 31 December 2007 was estimated to be US \$73 m (pages 183 – 184 of Glep8);

that the estimated market value on completion was anticipated to be US \$515.6 million (pages 183 – 184 of Glep8);

that AFI held a 90% share of this project which was under construction, and which required a further \$294 million to be spent on it, with an estimated completion date of 2010.

From this document, it appears that Mr Nemni has deducted the \$294 million estimated to be spent on the Botanic Gardens project from the estimated value on completion of \$500 million, to leave, he claims, a profit from this development in AFI of US \$200 million. He says that had RHS carried out this project, Mr Nemni would have been entitled to 25% of the profit i.e. US \$50 million.

These calculations must be viewed as highly suspect:

Mr Nemni ignores the original acquisition cost of this property, which must be assumed to be in the region of US \$73 million or (if the value increase of 15.8% since June 2007 applies also to this property) \$63.2

million. Mr Nemni seems to assume that the property must have been acquired for nothing;

Mr Nemni appears to ignore the fact that the project was under construction, and that any sales figure was no more than an estimate;

Mr Nemni ignores the fact that, even had RHS or the Trust been able to raise US \$73 million, it would have been difficult if not impossible to fund the interest on such borrowing, nor could the \$294 million estimated to be spent on developing the Botanic Gardens project have been raised;

The Trust, conscious of its duties to maintain a balanced portfolio of assets, would not have funded a development of this magnitude.

The developer, AFI, turns out to be an English plc quoted on the London Stock Exchange. More recent published information in relation to this company is readily downloadable from the internet, and some of this is now produced and shown to me at pages 189 - 437 of Glep8. I draw to the court's attention:

The Preliminary Results for the year ended 31 December 2008 (Glep8 pages 189 - 229) which say that 2008 saw a serious downturn in the Russian real estate sector, and that AFI suffered serious impairments in property values: it wrote down the value of Botanic Gardens from \$83 million to \$67 million;

AFI's Preliminary Results for the year ended 31 December 2009 (dated 8 March 2010) (Glep8 pages 231 - 301) reveal:

- *At pages 231 and 233 the projects AFI reactivated did not include Botanic Gardens.*
- *At page 234 that AFI had not estimated that there would be any capital expenditure, and at page 295 that it had no capital commitments in relation to the Botanic Gardens project.*
- *at page 236 that Botanic Gardens was valued at \$55 million (down from \$67.4 million the previous year).*

AFI's Preliminary Results for the year ended 31 December 2010 (dated 29 March 2011) (Glep8 pages 303 – 437) reveal:

- *In the operational highlights on page 1, that no progress has been committed or is anticipated in relation to the Botanic Gardens Project, which was not included in the "current projects" section (pages 308 – 309).*

- On page 325 the Botanic Garden is described as a project under development valued at \$64 million as at 31 December 2010, an improvement on the previous year.
- On page 333 there is the following:

“It is noted that the Botanic Gardens project, detailed in the table above, is in concept stage and the Otradnoye project, also described in the table above, is at the design stage of development, that is, after receipt of certain permits relating to their construction and execution agreements have also been signed (in one of the projects, the execution agreement as stated was signed with Danya Cebus). However, following the effects of the financial Crisis, the Company's group has decided, at this stage, not to commence execution of these projects, and to continue monitoring, from time to time, the feasibility of their construction. Although the construction deadline under the Botanic Gardens investment contract was extended until December 2010, the holding company is still in breach of certain interim construction deadlines under the Botanic Gardens investment contract and is in breach of the contract.”

As at the date of this statement, the Company's group ... is already entered into negotiations with the City of Moscow to postpone the completion date under the Botanic Gardens project until the end of 2014.”

[emphasis added [by Mr le Poidevin]]

From the above, I believe that the Court can be satisfied that the Botanic Gardens Development has not been completed, that AFI has not realised a \$200 million profit on the development, and that Mr Nemni has not lost \$50 million or any sum by being unable to participate in it.

It follows that Mr Nemni's assertions that this development has realised or on valuation produces a profit of \$200 million are obviously false, and his new claim should not be permitted to go forward. Such a claim is oppressive and vexatious, as I understand such expressions are used in this legal context.

Mr Nemni's Luxembourg Proceedings

Four of the five heads of claim against Mr Nemni in the Guernsey proceedings involved “the use of trust monies through the medium of Orium ...” as appears from Paragraph 93 of the judgment of 18 November 2011 (Glep8 page 155). The findings in relation to the Spanish Project (see Paragraphs 144 – 149 of the judgment – Glep8 pages 172 - 174) include that the €1 million came from Orium and was paid to and received by Mr Nemni as fiduciary agent of the Trust. The judgment goes on to say that: “TFT trust monies via Orium, a trust company, were used and the balance should have been returned to ... the Trustee of the TFT who has requested it.” The €1 million was held in Madame Wauthier's client account.

As I explained in my witness statement which was put in evidence at the trial of the Trustee's claim:

"19.9 ... on 25th May 2010, the Trustee caused an Extraordinary General Meeting of Orium to be convened at which Madame Wauthier and her partners were replaced as directors of Orium by the Trustee's nominees. Immediately thereafter, an injunction was obtained by Orium from the Tribunal d'Arondissement de Luxembourg freezing the €1 million held by Madame Wauthier in her firm's client account to the order of Mr Nemni which he claimed as his own, but which the Trustee believes (as explained above) represents money belonging to the Settlement. It was necessary to remove Madame Wauthier and take control of Orium, first because she was and still is Mr Nemni's personal Luxembourg lawyer, and secondly because she has demonstrated seriously divided loyalties since RHS' death.

*19.10 I mention for completeness that Mr Nemni has made various attempts to have the Luxembourg injunction removed, but these have not so far been the subject of a fully contested application as there might be in Guernsey.
..."*

One of the steps taken by Mr Nemni was to start proceedings against Orium, Madame Wauthier and Fidalphi claiming that the money was not Orium's. This Court has now determined that Orium was acting as the Trust's agent, and that the money is that of the Trust. I believe that for Mr Nemni to assert otherwise, when, in a properly formulated claim of which he had notice and in which he had full opportunity to participate, the Court has so determined, is abusive and oppressive and justifies the Trust in seeking an anti-suit injunction in respect of Mr Nemni's Luxembourg proceedings.

8. In his written skeleton argument Advocate Swan argued on behalf of the Trustee in support of the grant of a further anti-suit injunction against Mr Nemni as follows:

2. As is explained in the 7th affidavit of Geoffrey le Poidevin sworn on 10 February 2012, the issues raised in these proceedings have already been comprehensively dealt with by the Court in its judgments of 26 January 2012 (in relation to the previous anti-suit injunction application) and 18 November 2011 [GleP8 pp 125-177] (following trial of the action), and Mr Nemni did not succeed in respect of them.

3. The relief sought against the Trust in the new Italian claim is, as appears from page 94 of GleP8, exactly the same as is sought in the original claim: Mr Nemni claims two sums (€4.5 million and €4.1 million) by way of remuneration for the work he claims to have carried out for the Trust during RHS' lifetime, and a further US \$50 million for the "*unjustified withdrawal from the New Ring of Moscow deal*" i.e. the

Russian Project.

4. Lieutenant Bailiff Talbot ruled that with regard to the proxies, Mr Nemni was doing work for the Trust, but had agreed to do it without remuneration (see paragraphs 86 and 156 of the Judgment of 18 November 2011).

5. As for the claim in respect of the Russian project, this was, in summary, that the Trust wrongfully stopped providing funding for a substantial property development in Moscow, and so the project was carried out by another company called AFI Development plc (“AFI”). Mr Nemni claims that AFI made a profit of US \$200 million, and therefore that (as he would have been participating to the tune of 25%) he had lost US \$50 million. Mr le Poidevin produces the documentation from AFI which discloses that the project was not developed, and no profit has been made. As Mr le Poidevin says, the claim is a fantasy.

6. Lieutenant Bailiff Talbot found that the Trust was entitled to cease its involvement in the Russian project when it did so, and that the Trust was under no obligation to continue providing funds for the project (see paragraph 136 of the Judgment).

7. The Luxembourg proceedings concern €1 million relating to the Spanish Project, which came from Orium and was paid to and received by Mr Nemni as fiduciary agent of the Trust (see Paragraphs 144 – 149 of the judgment). The Royal Court judgment goes on to say that:

“TFT trust monies via Orium, a trust company, were used and the balance should have been returned to ... the Trustee of the TFT who has requested it.”

8. The €1 million was held in Madame Wauthier’s client account. Mr Nemni’s proceedings are against Orium, Madame Wauthier and Fidalphi claiming that the money was not Orium’s. This Court has now determined that Orium was acting as the Trust’s agent, and that the money is that of the Trust.

9. The current principles governing Anti-Suit Injunctions are set out in the Lieutenant Bailiff’s judgment of 26 January 2012 and it is submitted that it is plainly abusive and vexatious within those principles for Mr Nemni to continue such proceedings. In particular, the present application falls within the principles set out in *Masri v Consolidated Contractors International Co. SAL (No.3)* [2009] QB 503. The actions of Mr Nemni in pursuing his claims in Italy and Luxembourg are an unconscionable attempt to re-litigate matters already decided against him by this Court in proceedings to which he was a party. An injunction is required in order to

protect the integrity of the judgment which this Court has already given in this action.

9. It appears, therefore, that the only differences between the first Italian proceedings and the second Italian proceeding are to be found in the (added) general introduction to the second Italian proceedings and in the (added) prayer for relief at the end of the second Italian proceedings. But, as I concluded in my judgment relating to the first Italian proceedings dated 26 January 2012, and as is also the case in the second Italian proceedings, it seems to me that the TFT, and the position of the Trustee as the trustee of the TFT, appear to be regarded by Mr Nemni and his Italian lawyers as almost wholly irrelevant to those proceedings. In my judgment, this was seriously misleading pleading by Mr Nemni.
10. As he had done on the application for the first anti-suit injunction, Mr Swan stressed this point in his oral argument as indicating a clearly vexatious intention on Mr Nemni's part to ignore the TFT and to ignore any interest which the Trustee may have in the very great majority of Mr Haggiag's former assets, ignoring the fact that these assets, including any claims in relation to recovery of funds received by Mr Nemni from TFT companies towards the Russian project and the Spanish project, have been held by the Trustee as trustee upon the trusts of the TFT from its inception on 14 November 2005. Mr Swan then submitted that it was a further abuse of the Royal Court for Mr Nemni to have commenced the second Italian proceedings and to have continued them, and the Luxembourg proceedings, after the delivery of my judgment at the trial dated 18 November 2011 and the delivery of my judgment on the first anti-suit application relating to the first Italian proceedings dated 26 January 2012.
11. I consider it would be helpful if I were to repeat what I said in my judgment on the first anti-suit application relating to the first Italian proceedings on 26 January 2012:

“[A] fuller history of the making of the United Prod Foundation and the TFT is set out in detail in my Judgment on the trial in this action which I delivered on 18 November 2011, (the approved version of which was released by me on 20 December 2011). Suffice it to say, that I concluded that under Guernsey law the TFT is a valid, binding Guernsey trust subject to the overall jurisdiction of the Royal Court of Guernsey.

.....

As I decided in my main judgment, I am satisfied on the basis of Mr Le Poidevin's evidence that a very large proportion indeed of the free assets of Mr Haggiag were settled by him on the terms of the TFT on 14 November 2005 and so are legally vested in the Trustee as trustee of the TFT, which I repeat is a Guernsey trust. Any powers of disposition or other more limited transfer were, therefore, vested in the Trustee as such trustee from the date of the TFT and still remain so vested.

....

The Trustee has been the sole trustee of the TFT during all its existence as a Guernsey trust and was the sole trustee of the United Prod Foundation, (which was formerly called the Roberto Haggiag Foundation,) during its entire existence between 1994 and 14 November 2005. It is helpful, I believe, to remember that the governance and administration of Guernsey trusts are ultimately within the jurisdiction of this Court and that the experience of Guernsey corporate trustee companies, including the Trustee, enables Guernsey trusts to be administered effectively within the Bailiwick and assists the maintenance of Guernsey as a respected international financial centre and jurisdiction.

....

Mr Nemni is an Italian resident who was born on 10 August 1923 and is, therefore, now aged 88. Over quite a long period, and especially during the last years of Mr Haggiag's life, Mr Nemni was a close friend, confidant and business associate of Mr Haggiag. Indeed, Mr Haggiag appears in his last years to have used Mr Nemni, who was about 10 years his junior, as one of the persons through whom his instructions relating to his personal affairs would be carried into effect and through whom his proposals for the investment of the funds of the United Prod Foundation and, from and after November 2005, the funds of the TFT would be communicated to, and discussed with, the Trustee as trustee of the two Guernsey trusts. Again, further details of the relationship between Mr Haggiag and Mr Nemni appear in my Judgment on the trial of this action to which reference can be made.

12. Mr Nemni, who is, in a legal sense, amenable to the jurisdiction of this Court, as I found in my main judgment, did not appear on the oral hearing of the 2nd Application on 22 February 2012. His Advocate, Advocate Gareth Bell of Collas Crill, whose office address is Mr Nemni's address for service within the jurisdiction of the Royal Court, was duly notified of the 2nd Application hearing date. In these circumstances, I direct that a copy of this Judgment be supplied to Advocate Bell on behalf of Mr Nemni.

Jurisdiction

13. In paragraphs 13-22 of my judgment dated 26 January 2012 I dealt in some detail with the jurisdiction of the Royal Court to grant an anti-suit injunction. Without repeating what I said there, I refer to those paragraphs of that judgment as clearly founding the jurisdiction of the Royal Court to grant an anti-suit injunction against Mr Nemni in relation to the second Italian proceedings and in relation to the Luxembourg proceedings. What I said there should be treated as being part of this judgment.

14. Advocate Swan for the trustee has centred his submissions to the issue whether or not the continuation of both the second Italian proceedings and the Luxembourg proceedings would be unconscionable, vexatious or oppressive and accordingly an abuse of this Court, in the sense of challenging the integrity of my judgment dated 18 November 2011, and that the grant of an anti-suit injunction to prevent Mr Nemni continuing with both those proceedings, and any further proceedings elsewhere based on the same subject-matter, *i.e.* either the Russian project (the Botanic Garden project) or the Spanish project, would prevent what would otherwise amount to a clear injustice. Mr Swan submitted that the key to the 2nd Application is that Mr Nemni's conduct in relation to both the second Italian proceedings and the Luxembourg proceedings is unconscionable in the sense of being vexatious and oppressive and that the proceedings in this Court require protection by the grant of an anti-suit injunction.
15. As he had done in relation to the Trustee's claim for the first anti-suit injunction, Mr Swan demonstrated in oral argument that Mr Nemni had been selective in what he had pleaded in the second Italian proceedings, and also in the Luxembourg proceedings, in omitting these important matters, namely, (i) the making of powers of attorney by the Trustee as trustee of the TFT under which Mr Nemni became the attorney and fiduciary agent *of the Trustee*, (ii) the involvement of *the Trustee as trustee of the TFT* in the Russian project, and (iii) the Trustee's requests made in May 2007 and May 2008 for reports from Mr Nemni on his work as the Trustee's attorney, which, in fact, led to a detailed report from Mr Nemni to the Trustee in 2008. Mr Swan submitted that these omissions constituted a wilful, *i.e.* intentional, refusal or omission by Mr Nemni to tell the Italian Court the full picture, which amounted to vexatious or oppressive conduct on his part. I agree with this submission and consider that, although the jurisdiction is exceptional and it is likely to be rare for such an injunction to be granted, it would be inequitable to refuse the 2nd Application for an anti-suit injunction against Mr Nemni in respect of the second Italian proceedings and the Luxembourg proceedings.
16. The matters relied upon by Mr Nemni in the second Italian proceedings and the Luxembourg proceedings all relate to issues which have been determined by me in my main judgment delivered on 18 November 2011 in Guernsey, which I found was the proper forum for the dispute relating to those issues. With regard to those issues Mr Nemni could have counter-claimed in the Royal Court, against the Trustee, as trustee of the TFT, but did not do so. There could, in my judgment, have been no ground of opposition to him taking such a course if he had decided there was some merit in doing so.
17. Although different definitions are used by Mr Nemni in some parts of the second Italian proceedings than those used by the Trustee in the Cause in these proceedings, *e.g.* the Russian

project/the Botanic Garden project, the second Italian proceedings appear to me to relate to Mr Nemni's work as attorney and fiduciary agent for the Trustee, as trustee of the TFT, during the period from about February 2005 until Mr Haggiag's death on 27 February 2009. At the heart of the second Italian proceedings, as I read them, lies a claim by Mr Nemni that he was a partner of Mr Haggiag in the Russian project, which is an issue which I consider I have determined by concluding, after a full trial in November 2011, that the Russian project was a 50/50% project of the Trustee as trustee of the TFT and Mr Nemni, and, therefore, not a partnership between Mr Haggiag and Mr Nemni – see paragraphs 128-142 of my main judgment. Equally, at the heart of the Luxembourg proceedings brought by Nemni against Orium, Mme Wuahtier and Fidalphi is a claim by him that the moneys currently frozen in a Luxembourg bank account belong to him, whereas I have decided in my main judgment that these moneys are trust moneys belonging to the Trustee as trustee of the TFT and that Mr Nemni is obliged to account for the balance of the total sum of €1.16m provided to him by Orium towards the Spanish project (paragraphs 144 to 149 of my main judgment).

18. I also agree with Advocate Swan that it is correct to describe both the second Italian proceedings and the Luxembourg proceedings as having been vexatiously brought by Mr Nemni and as being vexatiously continued by him and that his intention appears to have been to drag the Trustee, as trustee of the TFT, into expensive and lengthy proceedings in Italy and Luxembourg, each of which have no realistic prospect of success, thereby putting wrongful pressure on the TFT and its trustee, the Trustee, so as to improve Mr Nemni's perceived bargaining position now that he is faced with a reasoned decision of this Court, which is binding on him, reached after a full trial.
19. In my judgment, the way in which Mr Nemni has framed his claims in the second Italian proceedings and in the Luxembourg proceedings is seriously misleading, and especially so in that there is no proper analysis of the true legal position which arose as between the trustee, as trustee of the TFT, and Mr Nemni as a result of the 'Proxies'. To have framed his claim in such a way amounts, in my judgment, to vexatious, oppressive and unconscionable conduct on his part. Furthermore, in doing so, Mr Nemni must have intended to tie up a large proportion of the assets of all the other parties to these proceedings, *i.e.* the Trustee and the 2nd to 4th Defendants, in defending proceedings in Italy and Luxembourg, which, in my judgment, are without merit.
20. In my judgment, the continuation by Mr Nemni of both the second Italian proceedings against the Trustee, and the continuation of the Luxembourg proceedings against Orium and others, would be unconscionable and contrary to the basic principle of justice and there is a clear need of protection of both the proceedings which still remain before the Royal Court and the process of the Royal Court.

21. Mr Swan also submitted, as a subsidiary argument in relation to the second Italian proceedings alone, that, even if Mr Nemni were otherwise entitled to sue the Trustee in Italy, (which, of course, the Trustee strongly denied,) his claim for \$50 million loss of profits from the Russian project was very weak indeed, - what Mr Swan called ‘a fantasy’ - and was pleaded in a highly misleading way and that, in acting in such a way, Mr Nemni was acting further in abuse of this Court. In support of his contention that the claim was a fantasy, Mr Swan demonstrated, relying upon the AFI documents referred to in the extracts from Mr le Poidevin’s 7th affidavit which I have set out above, that Mr Nemni had not referred to any up-to-date financial information from AFI relating to the Botanic Garden project, including any relevant information available on AFI’s website at the time of commencing the second Italian proceedings. Miss Le Cras also showed me very up-to-date information from the AFI website dated late January 2012, which also demonstrated the same point and which was later exhibited to her affidavit sworn on about 23 February 2012.
22. I agree with Mr Swan that, if Mr Nemni had used current information about the value to AFI of its investment in the site of the Botanic Garden in Moscow, the highest claim which Mr Nemni could have *pleaded*, relying upon AFI information which was publicly available, would have been a claim for no more than \$1.5 million, and certainly not anything remotely in the region of \$50 million, and that, by misleading the Italian Court in this way, Mr Nemni was further acting in abuse of this Court.
23. Taking into account the way in which Mr Nemni had calculated his claim to \$50 million loss of profits from AFI’s publicly-available documents, and noting carefully what was shown by AFI in its later publicly-available documents, it seems to me that Mr Nemni has either intentionally misled the Italian Court in the second Italian proceedings by failing to rely upon AFI’s latest financial documents or has been extremely careless as to what he pleaded. In my judgment, when looked at either way, Mr Nemni has pleaded his alleged loss in the second Italian proceedings so misleadingly as to have acted both vexatiously and oppressively.
24. I also consider that, in relation to the Luxembourg proceedings brought by him against Orium and others, and continued by him after my main judgment was delivered on 18 November 2011, Mr Nemni has also acted both vexatiously and oppressively.
25. As Sir Anthony Clarke MR decided on the facts in *Masri (supra)*, at paragraph 85, I consider that the continuation by Mr Nemni of his claims in Italy and Luxembourg would be “a classic case of vexation and oppression, and of conduct which is designed to interfere with the process of the [Guernsey] court in litigation to which the judgment debtor submitted.”

26. In my judgment dated 26 January 2012 on the first application for an anti-suit injunction relating to the first Italian proceedings I agreed with a further argument of Mr Swan, which seems to me to be equally applicable to the part of the 2nd Application, in so far as it relates to the second Italian proceedings. I therefore repeat what I said there about this further argument.

On behalf of the Trustee Mr Swan also argued that it was oppressive of Mr Nemni to have brought the Italian proceedings rather than counterclaiming in Guernsey. He relied upon evidence from an Italian lawyer, Virginia Ripa di Meana, a member of the Rome Bar since January 1996, whose affidavit on Italian law sworn on 23 February 2011 was exhibited as exhibit NPB 4 to Mr Byford's 2nd affidavit sworn on 24 February 2011. She is the lawyer for the 2nd to 4th Defendants in the Italian proceedings.

Her evidence establishes to my satisfaction that "*there is no procedure under Italian law for the early resolution of the claim by for example striking out the claim.*" She has also proved to my satisfaction that Italian proceedings usually take a very long time, perhaps as much as three years to reach trial, with an automatic right to appeal, and that such appeals "normally take a further four years to be heard." This argument relates, therefore, both to differences between Italian and Guernsey civil procedure and to the time it takes a trial of proceedings like the Italian proceedings to be heard in Italy. On their own such arguments would not have persuaded me that it was right to grant an anti-suit injunction, but I have accepted, in reaching my decision to grant an injunction, that such factors as Dr di Meana has proved are further supporting reasons for what I consider to be the main plank of, or, to use Mr Swan's words, the key to, the Application."

27. I therefore granted the Trustee an anti-suit injunction on 22 February 2012 restraining the continuation by Mr Nemni of the second Italian proceedings and the Luxembourg proceedings and the pursuance of proceedings anywhere based on the same issues that I had decided in my main judgment delivered on 18 November 2011; and an Order was made by me to that effect on 24 February 2012.

28. I also made an Order that Mr Nemni should pay the costs of both the Trustee and the 2nd to 4th Defendants of the 2nd Application on the indemnity basis. I shall give my reasons for this decision in a separate, short judgment in due course.

29. This judgment has been made available to the parties as quickly as possible, bearing in mind the fact that other matters, which were of equal importance to the parties concerned, had to be

heard and decided by me in the interim between the end of the oral hearing on Wednesday 22 February 2012 and Friday 24 February 2012.

PATRICK TALBOT QC

Lieutenant Bailiff

29 February 2012