

Declaration that funds held by the Defendant, in the Jakob Account are not proceeds of criminal conduct, for the purposes of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999.

[2024]GRC045

IN THE ROYAL COURT OF GUERNSEY  
(ORDINARY DIVISION)

**Between:**

**JAKOB INTERNATIONAL INC**

**Plaintiff**

**-and-**

**HSBC Private Bank (Suisse) SA, Guernsey Branch  
(FORMERLY HSBC PRIVATE BANK  
(CI) LIMITED)**

**Defendant**

**Final Judgment handed down: 21 June 2024**

**Before: Jessica E Roland, Deputy Bailiff and Jurats:  
Steven John Morris, Tina Jane Le Poidevin and Heather Reed**

**Counsel for the Plaintiff: Advocate M J Adkins**

**Counsel for the Defendant: Advocate M C Newman**

**Cases, texts & legislation referred to:**

The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999  
The Royal Court (Reform) (Guernsey) Law, 2008  
Evidence in Civil Proceedings (Guernsey and Alderney) Law, 2009  
The Disclosure (Bailiwick of Guernsey) Law, 2007

*R v Silva* [2007] 1 WLR 303

*Chief Officer of Customs & Excise, Immigration & Nationality Service v Garnet Investments Limited*  
[2011-12] GLR 250

*Jakob International Inc v HSBC Private Bank (CI) Limited* (Guernsey judgment 26/2016)

*Liang v RBC Trustees (Guernsey) Ltd* (2018 GLR 189)

*LMNB v Credit Suisse AG (Guernsey Branch)* [2023] GRC 026

**Introduction**

1. The Plaintiff is a BVI company (Company no. 1552956), the directors of whom are Nazma Begum (“Mrs Begum”) and Amar Khan (“AK”). The shares are held jointly by Mrs Begum and AK.
2. The Defendant is a company incorporated under the laws of Guernsey (Company no. 14169) and is licensed by the Guernsey Financial Services Commission (“GFSC”) to carry on controlled investment business under the Protection of Investors (Bailiwick of Guernsey) Law, 2020. Prior to changing its name in June 2020, the Defendant was licensed by the GFSC under the Banking Supervision (Bailiwick of Guernsey) Law, 1994.

3. On 12 April 2013, the Plaintiff opened a bank account with the Defendant, account no. 2116014 (“the Jakob Account”). On 30 April 2013, the sum of USD 4,999,668.50 was received into the Jakob Account. On 8 May 2013, a further sum of USD 4,999,968.50 was received into the Jakob Account. Both sums were from a company called Ever Green International FZCO (“Ever Green”), which is a company incorporated under the laws of the United Arab Emirates. Mrs Begum and AK are the directors of Ever Green. The Defendant was subsequently informed that this was a loan to the Plaintiff.
4. On 1 September 2015, Ever Green demanded immediate repayment of the monies. On 14 September 2015, Mrs Begum gave instructions in person at the Guernsey branch of the Defendant, for the immediate transfer of the funds in the Jakob Account, then understood to be in the sum of USD 10,058,866.83, to Ever Green and for the Defendant to close the Jakob Account.
5. The Defendant did not carry out the instructions and retained the funds in the Jakob Account.
6. On 6 January 2016, the Plaintiff was informed by the Defendant that it had filed a Suspicious Activity Report (“SAR”) on 16 May 2013 under the Disclosure (Bailiwick of Guernsey) Law, 2007 (the “Disclosure Law”) with the Financial Investigation Unit (“FIU”), stating inter alia, its suspicion that the source of funds in the Jakob Account was derived from Mazam Ali Khan (“MAK”). MAK is the father of AK and the estranged husband of Mrs Begum. The Defendant informed the Plaintiff that it was aware that MAK was convicted of VAT fraud in Belgium in 2007, that there was an International Confiscation Order against him and that the Belgian authorities were aware of the assets in Guernsey and were seeking to confiscate these assets via a Rogatory Letter to the Guernsey authorities. The FIU has not given the Defendant consent to transfer the funds or close the Jakob Account. In these circumstances, transferring the funds would expose the Defendant’s MLRO and other colleagues to criminal sanction.
7. The Plaintiff’s claim is for a declaration that the funds held by the Defendant, in the Jakob Account are not proceeds of criminal conduct, for the purposes of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 and an order that the Defendant transfer the funds in the Jakob Account to the Plaintiff or to the Order of the Plaintiff.
8. Further to Section 14(2) of The Royal Court (Reform) (Guernsey) Law, 2008 (“the 2008 Law”), the Deputy Bailiff did not sum up to the Jurats in open Court, but instead retired with the Jurats. This is the reasoned Judgment of the Court as required under Section 16(1) of the 2008 Law. When they retired, the Deputy Bailiff reminded the Jurats of their respective roles. The Deputy Bailiff is the sole judge of questions of law and procedure and the Jurats are the sole judges of questions of fact. The Jurats were directed to take account of all the evidence presented to the Court; the evidence on behalf of the Plaintiff and on behalf of the Defendant, both written and oral, and the documents produced to the Court. It was for the Jurats, and not the Deputy Bailiff, to decide what evidence they accepted and what evidence they rejected or of which they are unsure. Although the Deputy Bailiff reminded the Jurats of aspects of the evidence, she directed them that if she appeared to have a view of the evidence, or of the facts, with which they did not agree, the Jurats were to reject her view. The Jurats were directed to take account of the arguments and speeches they had heard, although they were not bound to accept them. The Jurats were further directed that they were entitled to draw inferences, that is to come to common-sense conclusions based on the evidence that they accept, but that they may not speculate about what other evidence there might have been or allow themselves to be drawn into speculation. The Deputy Bailiff directed that the standard of proof is the civil standard of the balance of probabilities and that to establish something on the balance of probabilities means to prove that something is more likely so, than not so.
9. In this judgment the findings of fact are the unanimous findings of the Jurats.

## The Law

10. The Defendant filed a SAR pursuant to section 38(3) of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (the “Proceeds of Crime Law”) and/or sections 1 and/or 2 of the Disclosure Law.

Section 38 (3) of the Proceeds of Crime Law provides:

(3) Where a person discloses to a police officer a suspicion or belief that any funds or investments are derived from or used in connection with criminal conduct or discloses to a police officer any matter on which such a suspicion or belief is based –

(a) if he does any act in contravention of subsection (1) and the disclosure relates to the arrangement concerned, he does not commit an offence under this section if –

- (i) the disclosure is made before he does the act concerned and the act is done with the consent of the police officer (and in this case the person doing the act shall incur no liability of any kind to any person by reason of such act), or
- (ii) the disclosure is made after he does the act, but is made on his initiative and as soon as it is reasonable for him to make it, and

(b) the disclosure –

- (i) shall not be treated as a breach of any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or contract or otherwise, and
- (ii) shall not involve the person making it in any liability of any kind to any person by reason of such disclosure.

(4) In proceedings against a person for an offence under this section, it is a defence to prove –

(a) that he did not know or suspect that the arrangement related to [criminal property],

[(b) that the person did not know or suspect that the arrangement facilitated the acquisition, retention, use or control of any property by or on behalf of another person, or]

(c) that –

- (i) he intended to disclose to a police officer such a suspicion, belief or matter as is mentioned in subsection (3) in relation to the arrangement, but
- (ii) there is reasonable excuse for his failure to make disclosure in accordance with subsection (3)(a).

(5) In the case of a person who was in employment at the relevant time, subsections (3) and (4) shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to a police officer.

(6) A person guilty of an offence under this section shall be liable –

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months, a fine not exceeding level 5 on the uniform scale, or both, or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years, a fine, or both.
- (7) No prosecution shall be instituted for an offence under this section without the consent of Her Majesty's Procureur.

The relevant parts of Sections 1 and 2 of the Disclosure Law provide:

1. (1) A person must make a required disclosure [as soon as possible] if the conditions in subsections (2) and (3) are satisfied.
  - (2) The first condition is that he –
    - (a) knows or suspects, or
    - (b) has reasonable grounds for knowing or suspecting, that another person is engaged in money laundering or that certain property is or is derived from the proceeds of criminal conduct.
  - (3) The second condition is that the information or other matter –
    - (a) on which his knowledge or suspicion is based, or
    - (b) which gives reasonable grounds for such knowledge or suspicion, came to him in the course of the business of a financial service business.
  - (4) Any person who fails to make a required disclosure [as soon as possible] after the information or other matter comes to him commits an offence.
  - (5) A required disclosure is a disclosure of the information or other matter –
    - (a) to a nominated officer or a prescribed police officer [or another FIU officer],
    - (b) in the form and manner (if any) prescribed for the purposes of this subsection by regulations under section 11.
  - (6) But a person does not commit an offence under this section if –
    - (a) he has a reasonable excuse for not disclosing the information or other matter,
    - (b) he is a professional legal adviser and the information or other matter came to him in privileged circumstances, or
    - (c) subsection (7) applies to him.....
2. (1) A person who is a nominated officer under section 1(9)(a) must make a required disclosure [as soon as possible] if the conditions in subsections (2) and (3) are satisfied.
  - (2) The first condition is that he –
    - (a) knows or suspects, or
    - (b) has reasonable grounds for knowing or suspecting, that another person is engaged in money laundering or that certain property is or is derived from the proceeds of any person's criminal conduct.
  - (3) The second condition is that the information or other matter –
    - (a) on which his knowledge or suspicion is based, or
    - (b) which gives reasonable grounds for such knowledge or suspicion, came to him in consequence of a disclosure made under section 1.

- (4) A nominated officer who fails to make a required disclosure [as soon as possible] after the information or other matter comes to him commits an offence.
  - (5) A required disclosure is a disclosure of the information or other matter –
    - (a) to a prescribed police officer [or another FIU officer],
    - (b) in the form and manner (if any) prescribed for the purposes of this subsection by regulations under section 11.
  - (6) But a person does not commit an offence under this section if he has a reasonable excuse for not disclosing the information or other matter...
11. In accordance with the decision of the Court of Appeal in Chief Officer of Customs & Excise, Immigration & Nationality Service v Garnet Investments Limited [2011-12 GLR 250] the remedy for someone who wishes to procure the release of the funds is a private law action between the customer and their financial institution as “[t] his enables the status of funds to be determined by a court in circumstances where (unlike in public law proceedings) evidential issues may be fully explored and the fund owner and the fund holder are represented” .
  12. The parties agreed that the right approach was that identified by the Deputy Bailiff (as he was then) in the previous set of proceedings between the parties (see Jakob International Inc v HSBC Private Bank (CI) Limited 26/2016) namely (i) for the holder of the funds in question to establish the underlying suspicion had arisen in its mind, which necessitated the disclosure being made under the Disclosure Law and (ii) for the Plaintiff to prove, on the balance of probabilities, that the provenance of the funds in question was legitimate, i.e. that the funds were not the proceeds of crime.
  13. By the time of the hearing the Plaintiff had accepted that the Defendant had the requisite suspicion that the funds held in the Jakob Account are, or in whole or in part, directly or indirectly represent, the proceeds of criminal conduct for the purposes of the Proceeds of Crime Law i.e. “the defendant must think that there is a possibility, which is more than fanciful, that the relevant facts exist. A vague feeling of unease would not suffice.” (see R v Da Silva [2007] 1 WLR 303)
  14. The parties agree that it was for the Plaintiff to prove on the balance of probabilities that the provenance of the funds in the Jakob Account was such that the relief being sought should be granted. In considering the relief, the summary set out in paragraph 26 in the Liang v RBC Trustees (Guernsey) Ltd (2018 GLR 189) decision should be applied:-

*“... a court is considering whether to find on the balance of probabilities that the funds are not the proceeds of crime. ... In my view, this formulation puts the finding in the negative and so indicates where the burden of proof lies. The statutory scheme is that an institution can protect itself by seeking law enforcement consent where it has suspicion. If it had no suspicion, it would act without needing to seek such consent. Because it has the evidence giving rise to that suspicion under its control, it is apparent why it must discharge the burden on that question. If it also had to prove to the civil standard that the funds are tainted by criminal conduct, this would escalate what it has to be aware about beyond establishing suspicion. All of a sudden, it would be required to prove its level of knowledge. In my view, this would be an unwarranted gloss on the statutory language. There is, I think, a difference between how the funds reached the institution, ie, the last step, and any explanation given about the provenance at that time and thereafter, and the wider the issue of how far back one needs to go to be satisfied that the funds are not the proceeds of criminal conduct. The latter are matters under the control of the person asserting the affirmative that the funds are not the proceeds of criminal conduct. In my judgment, the*

*burden of proof properly shifts between the parties in this manner. A plaintiff will establish a prima facie case to have the instruction or request made to the institution complied with. A defendant will raise an impediment to being in a position to comply, which will be the combination of the suspicion held and the absence of law enforcement consent. In order to overcome that impediment, the plaintiff will have to prove that the position is that the suspicion is unfounded because the source of the funds is not tainted in the manner believed or suspected. Accordingly, I see no reason to depart from the indication I gave in Jakob International (supra) on where the burden lies. I am satisfied that the proper approach is to require the Plaintiff to discharge the burden of proof in respect of provenance.”*

15. It was also common ground between the parties that the approach that the Court should take to the second stage was that most recently identified by LB Marshall in LMNB v Credit Suisse AG (Guernsey Branch) [2023] GRC 026 at paragraph 30 where she said:

*“... after that, it would be for the customer to demonstrate, on sufficiently cogent and credible evidence, that the funds in question were not the proceeds of crime. Whilst this might look like the impossibility of proving a negative, it would be achievable by the positive route of proving the actual provenance of the funds, and that this was innocent and untainted.”*

16. When considering what “indirectly” means under the Proceeds of Crime Law, the parties agreed that the approach taken by LB Marshall in LMNB v Credit Suisse AG (Guernsey Branch) [2023] GRC 026 was the right one where she says at paragraph 99:

*“In my judgment, the emphasis implied by the addition of the word “indirectly” must be aimed at preventing any argument that “representation” requires that a formal tracing exercise between the relevant proceeds and the target funds (or an identifiable part of them) in the bank account should be possible. It allows that “representation” may be fairly discerned as a matter of common-sense impression, rather than by fulfilling a mechanical process, such as importing rules of legal or equitable tracing.”*

17. During the hearing, Advocate Newman took the role of testing the Plaintiff’s witness evidence to assist the Court in line with the positions of Counsel for the financial institutions in previous similar matters (see the approach taken in Liang v RBC Trustees (Guernsey) Ltd (ibid) as noted by the Bailiff in his judgment at paragraph 63). Advocate Newman quite appropriately probed and tested the evidence and the witnesses and the Court were very grateful for the role undertaken by Advocate Newman which it found very helpful in coming to its conclusions.

## **The Evidence**

18. Before the Court there were two witness statements of AK (dated 8 December 2022 and 15 September 2023 respectively), a witness statement of Mr Javed Anwar (“Mr Anwar”) (dated 9 December 2022), a witness statement of Mian Nawab Ali (“Mr Ali”) (dated 13 September 2023), two witness statements of Mrs Begum (dated 8 December 2022 and 18 October 2023) and an Expert Report of Mr Benjamin Rhodes of Grant Thornton (“Mr Rhodes”) (dated 6 January 2023) along with the replies to the Defendant’s follow up questions (dated 9 June 2023).
19. The Defendant’s evidence was set out in two witness statements of Oluwatoyosi Olatomiwa Ayoola (“Ms Ayoola”) (dated 12 December 2022 and 3 February 2023 respectively) and a witness statement of Jesyka Tually (“Mrs Tually”) (dated 18 July 2023). The Plaintiff accepted the evidence of the Defendant.
20. The witness evidence of Ms Ayoola, who was at the relevant time the MLRO of the Defendant, set out the basis upon which the original SAR had been made. The SAR of 16 May 2013 was

filed by the Defendant with the FIU on the basis that the Defendant had suspicions about the source of wealth of the Plaintiff. The Defendant had reason to suspect the Jakob Account contained funds which potentially constituted the proceeds of crime.

21. By way of background to the SAR Ms Ayoola said in the account opening form, it stated that the main source of wealth of Mrs Begum was in jointly owned properties in Belgium and Pakistan which generate substantial income. In Ms Ayoola's first affidavit she says it was of concern that the source of wealth appeared to be jointly created with Mrs Begum's husband, MAK. In Mrs Tually's affidavit she says that this should have said "*the available* information indicates that the SAR was made in part on the basis that [the Defendant] understood MAK to be the main source of wealth". It also stated that MAK held power of attorney on the Jakob Account, and further, that the two tranches of money that entered the Jakob Account in April and May 2013, which were now said to be loans from Ever Green, had not been referred to as such in the account opening form. No loan agreement or similar documentation had been seen at the time of the Jakob Account being opened. The Defendant further understood that MAK was a director of Ever Green at the time of the loans. Also it said that he was a beneficial owner, along with Mrs Begum of Ever Green. Shortly after the Jakob Account was opened, the Defendant had become aware of certain news reports concerning MAK. These news reports stated that MAK and other members of his family (not Mrs Begum or AK) had been convicted of a "*massive VAT fraud in the oil sector*" in Belgium in 2007. The Defendant did not know whether the money held in the Jakob Account constituted the proceeds of crimes outlined in the articles. The Defendant relied on its account opening forms in which MAK was recorded as an account signatory and the main source of wealth. As a consequence, the Defendant had a suspicion that MAK was the source of funds in the Jakob Account. That being the case, it considered it was obliged to make the SAR given the crimes for which MAK had been convicted in Belgium in 2007. On 21 November 2013, the FIU provided consent to the Defendant to continue or maintain the Jakob Account, but that the Defendant did not have consent to exit the relationship that it had with the Plaintiff. It has not changed its stance since.
22. Since 21 November 2013, therefore the Defendant had been prohibited, pursuant to section 39(3) of the Law, from transferring or otherwise disposing of the funds in the Jakob Account.
23. On 19 October 2015, following a request from the Plaintiff's English solicitors, Stephenson Harwood LLP, the Defendant confirmed that the reason why it was unable to comply with the instructions it had received from the Plaintiff to transfer the funds in the Jakob Account to Ever Green was for legal and regulatory reasons. In November 2015, the FIU and the Central Authority for International Co-operation in Criminal Matters in Belgium permitted the Defendant to inform the Plaintiff that the Defendant was aware of the conviction, aware that there was an international confiscation order against MAK and that the Belgian authorities were going to seek confiscation of assets via a Rogatory letter.
24. On 27 November 2015, the Plaintiff commenced proceedings against the Defendant for the release of the funds in the Jakob Account. This case progressed (including a Strike-Out Application which was dismissed (*see Jakob International Inc v HSBC Private Bank (CI) Limited (ibid)*) but was subsequently withdrawn by the Plaintiff by consent on 4 May 2018.
25. The Plaintiff has provided the Defendant with various reports, namely the Report on the Source of Funds of Jakob International Inc undertaken by Kyrill Lapin of Seitenberg LLC dated 24 August 2021 (the "Kyrill Lapin Report") and by Anwar Javed & Co dated 19 January 2022 (the "Anwar Javed & Co Report") however, the Defendant (through Ms Ayoola) has maintained its suspicions. The Defendant has kept the FIU up to date generally with matters in relation to the Jakob Account in the intervening period, but despite requests the FIU has not changed its position during this period.

26. There were three witnesses who gave live evidence for the Plaintiff – AK, Mr Ali, and Mr Rhodes. The witnesses were cross examined by Advocate Newman on behalf of the Defendant. It had been the intention of the Plaintiff to call Mr Anwar, but unfortunately Mr Anwar had fallen seriously ill and was unable to come to Guernsey to give evidence, therefore the Plaintiff filed a Hearsay Notice in relation to his evidence. Mrs Begum’s two witness statements confirmed the truth of her son’s first and second statement. They were provided in Urdu with a certified English translation. The second statement was handed up during the course of the hearing. Mrs Begum did not attend to give evidence and Hearsay Notices were provided for her (as well as a confidential affidavit of Ms Amy Davies).

### **ADIL International (PVT) Limited**

27. The Plaintiff’s evidence was that Mrs Begum is the ultimate source of wealth for the Plaintiff. She comes from a wealthy family in Pakistan. In 1993, ADIL International (PVT) Limited (“ADIL”) was incorporated by Mrs Begum. As set out in the Memorandum of Association dated 30 January 1993, the initial shareholders of ADIL were AK’s father, MAK and Mr Muhammad Iqbal. AK said that at all times MAK held the shares on trust for AK.
28. The purchase of the defunct paper mill, the Adamjee Mill and surrounding land (“the Mill”) was the first project undertaken by ADIL. The funding for this came from Mrs Begum and two other investors. MAK was not a source of any of the funding for ADIL. His mother’s funds came from the sale of a property which her father (Khuda Dad Khan) gave to her and which she sold in 1993 for PKR19.5 million. She then supplemented this with the sale of jewellery (PKR 2.9 million) as well as using other jewellery to secure investment from the other original investors. A further, approximately PKR10.1 million was from other funds and liquid savings his mother had, for example, income from the family construction business. AK said that she would not have asked for any funds from MAK. If she had needed to supplement them she would have asked her father rather than MAK. Attached to the witness statement of Mr Ali from the archives of PKF FRANTS the successor firm to Sajjad Ahmad & Co (who were the advisers to Mrs Begum on the purchase of the Mill) were copies of letters from Sajjad Ahmad & Co dated 25 January 1995, 13 February 1995 and 11 April 1995. These set out Mrs Begum’s initial interest in the Mill, the funds likely to be needed by Mrs Begum for a bid to be accepted on the purchase by auction of the Mill and how this money was being raised by her and then the subsequent acceptance of her bid, as well as detailing the sale of jewellery by Mrs Begum to make up an initial short fall. Also attached to Mr Ali’s witness statements was a receipt from a jewellers dated 21 March 1995 detailing the sale of the jewellery by Mrs Begum for PKR 2,900,000. There is no mention of MAK in any of the documents dealing with the raising of the funds for the purchase of the Mill. Mrs Begum’s father died in 2002.
29. AK accepted that he was only about 6 or 7 when the Mill was bought. However he heard, observed and understood what was going on as a child and had also spoken to his mother about it. He also said that his understanding had been further enhanced by the process of collecting together all the documentary evidence for the hearing. He explained that his mother’s written English is not good, but she had learnt to speak English at the same time as he did. In her own statements she describes her spoken English as very poor. Her mother tongue is Pashtu but she also speaks Urdu. If she had not understood the English in the documents back in the mid-90s, she would have been surrounded by professionals who would have been able to translate it for her. His father’s English was worse than hers.
30. AK was referred to Mr Anwar’s evidence which attached the report, the Anwar Javad & Co Report, which Mr Anwar’s firm had undertaken, however, due to Mr Anwar’s illness he was unavailable for cross-examination. AK said in cross-examination that he was as confident as he can be that the Anwar Javed & Co Report was accurate. He said that a lot of time and effort had gone into compiling the Anwar Javed & Co Report. He was able to confirm that the sources had been verified, it accorded with his own and his mother’s recollection of what had happened.

He picked up on an error on the date of ownership of the Mill in the Anwar Javed & Co Report. He thought that this was an oversight but that the Anwar Javed & Co Report was otherwise accurate.

31. AK's evidence was that at all times the shareholding in his father's name was held on trust for him. A Deed of Trust dated 23 January 1995 was produced confirming that MAK's share was held on trust by him in AK's favour. Prior to this, AK said that the shares were held on trust by his father for him but it was not deemed necessary to formalise the trust arrangement as ADIL did not have any activity during the first two years. The trust was then formalised with the Deed of Trust when the Mill project seemed likely to go ahead. A copy of the Deed of Trust was attached to the Anwar Javed & Co Report. Later, when on 8 May 2000 ADIL issued further shares, Mrs Begum acquired 45,000 shares and Mr Muhammad Iqbal acquired a further 99 shares. On 30 October 2004, Mrs Begum acquired Mr Muhammad Iqbal's 100 shares on behalf of AK and she retained these on trust until 2008, when she gave them to AK. MAK received further shares on behalf of AK bringing the shares held on trust for AK to a total of 50,100. A copy of a Deed of Trust dated 19 May 2000 was also attached to the Anwar Javed & Co Report. His father transferred the legal ownership of the 45,700 shares to AK in his own right in 2015 when he was 27 and deemed to have sufficient maturity and experience to play a greater role in the family business. AK agreed that his mother should remain the majority shareholder, and therefore, the remaining 4,400 shares that were held by MAK on trust for AK were transferred to Mrs Begum. The position in 2015 remains the same today, whereby Mrs Begum owns 49,300 shares and AK owns 45,800 shares.
32. AK accepted that MAK was a director of Adil from 30 January 1993 until 16 November 2015. Mr Muhammad Iqbal was a director of ADIL from 30 January 1993 until 30 October 2004. Mrs Begum was a director from 31 December 2002 to date. AK has been a director from 14 June 2008 to date.
33. AK said that there are no historic bank statements for ADIL because of the passage of time and also because of the very serious floods in the region which led to the loss of archives. They requested bank statements for the accounts at the relevant time but were told there were none available (AK thought because they were for a period more than 10 years ago).
34. The purchase of the Mill by ADIL was from the Peshawar High Court ("PHC"). Mr Ali had obtained original newspaper advertisements for the Mill from the archives of PKF FRANTS, which were attached to his witness statement. In 1994 and 1995, the PHC in Pakistan advertised the Mill inviting bids to auction the property to satisfy a judgment in the court against the previous owner following bankruptcy. As Mrs Begum had shown an interest in purchasing the Mill, her father asked local investors to invest funds with his daughter.
35. Mrs Begum and her father appointed Sajjad Ahmad and Co. to assist them with the matter. Mr Muhammad Israr and Mr Muhammad Iqbal agreed to invest in the Mill with Mrs Begum and they transferred PKR 28,000,000 and 9.5 million respectively, to ADIL's account. On 27 April 1995, Adil was declared the successful bidder by PHC for the acquisition of the Mill for PKR 220,000,000 with a deposit of PKR 70,000,000. Correspondence at the time from Sajjad Ahmad & Co produced by the Plaintiff shows that the payments of the amount, net of the deposit, were in annual installments: three lots of PKR 90 million and the last instalment of PKR60 million. AK said that this was a bargain due to value of what was on site and which could be liquidated. An inventory from the purchase agreement was attached to his witness statement. It was over 100 acres of land (865 kanals) with a lot of buildings and machinery on it. In support of the value of the assets, the correspondence from Sajjad Ahmad & Co. from 13 February 1995 says "*You will also need funds, at least initially, in the form of working capital for the operations of the Mill. Once your offer is accepted we estimate that, given the huge asset base of the Mill, you will be able to easily pay off the remaining installments and any borrowings you may need.*" It also says further on in the same letter "*Mr Iqbal has indicated*

*that due to his reputation in the market he can arrange for initial working capital against stocks and raw materials once the possession of the mill is handed over to you.”*

36. At that time, approximately one third was covered by buildings (AK estimated 100 to 120 buildings) and the remainder was land, either open or in disarray. By 26 October 1999, Muhammad Israr and Muhammad Iqbal had been repaid with interest by the sale of various assets, including scrap metal and machinery from the Mill and on its land. On 29 February 2000, PHC confirmed the full amount had been paid for the Mill and issued a final Sale Deed to ADIL, a copy of which was produced to the Court. There was then a period of cleaning up land, making the buildings rentable and putting the area in good order for a commercial sale. This was financed by ADIL itself mainly through its tenants. The main person on the ground managing the process was Muhammad Iqbal. Due to the war in the area the land also became worth a lot more.
37. By 2005, the properties on the Mill site had been cleaned up and tenants found. It was generating rent. These include warehouses, private villas, a university, two dormitories and a mosque. The open land was in the process of being cleaned up and ready for commercialisation and development. AK thought that the land was 75% to 80% cleaned up by that point. In 2005, the Mill was sold to a local businessman, a Mr Nisar for PKR 510,000,000. However, Mr Nisar defaulted on his purchase installments and the matter resulted in extensive litigation with the sale ultimately being cancelled. On 18 November 2008, the Mill was transferred from ADIL to Mrs Begum for PKR 510,000,000 in order to sell land surrounding the Mill to a Mr Aziz Ullah Butt (“Mr Butt”). 560 kanals of land were sold to Mr Butt (by means of a share sale) and 305 kanals of land were retained by Mrs Begum. No money was paid to ADIL by Mrs Begum due to the ongoing litigation with Mr Nisar. The sale agreement to Mrs Begum included at clause 9 that *“The Buyer will be bound to pay the entire sale proceeds/price as agreed between the parties within one month of settlement of court case with Mr Mobeen Nisar.”* AK also said that ADIL has not demanded the money back yet. AK confirmed in cross-examination that the monies have not yet been paid because they are the funds frozen in the Jakob Account. The evidence was that Mr Butt wanted to deal with Mrs Begum directly rather than ADIL, as ADIL was still engaged in the litigation with Mr Nisar (this did not finally finish until 7 October 2015 when it was concluded in ADIL’s favour). Mrs Begum continues to own the retained land, although ADIL manages it and continues to receive income from the rental of various buildings from it (approximately USD 200,000 of income but the PKR value is very volatile compared to the USD). AK gave a rough estimate of the current value of the land as PKR500,000,000. AK said his father did not inject any money into ADIL or purchase of the Mill. The contemporaneous documents provided from the Sjjad Ahmad & Co archives show that it is Mrs Begum with the assistance of her father who has arranged the loans from the other two investors who were involved in the purchase of the Mill, There is no mention of MAK.

### **Regency Holdings Inc**

38. Mr Butt wanted to structure the deal so that the ownership of the land would be first transferred to an offshore entity by Mrs Begum and the sale by way of a share sale. As a consequence, Mrs Begum transferred the ownership of 560 kanals of land to Regency Holdings Inc. (“Regency”) (referred to in the Declaration of Investment dated 16 December 2008). This was a company incorporated in Belize on 6 March 2008. On 5 May 2009, Mrs Begum sold the shares in Regency to Mr Butt for PKR 700,000,000 or USD 8,661,685.26 (“the Regency sale”). The sale price recognised the continuing litigation between ADIL and Mr Nisar and although the rights to use the land were transferred it also included ADIL obtaining some building certificates for the land. Although Mr Butt is now dead, his son provided AK with an affidavit confirming that this was his understanding of what had happened. MAK had no involvement with Regency. ADIL still retains the remaining land which is leased out. AK’s mother remains involved with ADIL but MAK is not.

### **Ludwig Universal Investments Ltd**

39. A letter from the law firm who acted on behalf of Mr Butt (Muhammad & Muhammed Law Associates) was produced confirming the completion amount and that the proceeds of the sale of Regency shares to Mr Butt were placed in USD in an account belonging to Ludwig Universal Investments Ltd (“Ludwig”) with the Arab Bank (Switzerland) Limited (the “Ludwig Account”) in two tranches. The first tranche paid was USD 5,598,997.34 on 5 June 2009 and the second tranche paid was USD 3,062,687.92 on the 29 June 2009 (confirmed by a contemporaneous letter from Muhammad & Muhammed Law Associates). Ludwig was an SPV belonging solely to Mrs Begum. It was a Seychelles company incorporated on 28 January 2009, created to receive the proceeds of sale of the shares in Regency. The company issued two bearer shares certificates each representing 500 shares, which were held by Mrs Begum at all times. Ludwig was dissolved on 15 November 2013 after the funds were transferred out of the Ludwig Account. MAK and Mrs Begum were directors of Ludwig.
40. Between 2009 and 2012, by means of foreign exchange currency investments and fixed deposit investments, the amount in the Ludwig Account, increased to around \$10 million. AK was unable to produce any bank statements or portfolio reports from 2009 but had documents from 1 January 2010 until 31 December 2013. Arab Bank confirmed by email to Mrs Begum and AK that in the absence of the company existing it would not provide any account documentation. AK’s evidence was that he recalls seeing the 2009 statements at the time and that his recollection was that this only contained the money from the Regency Sale. His recollection was that the money was used for investments in Term Deposits and foreign exchange during this period, in the same way as it was used between 2010-2012. There was a gain of just over \$1,400,000 due to the investments.

### **Ever Green International**

41. On 6 December 2012 and on 14 March 2013, Ludwig transferred USD 7,000,037.75 and USD 3,000,036.72 to an account (account number 2012-7770454903) with Habib Bank Limited in the name of Ever Green in Dubai (the “Ever Green Account”). The corresponding receipts show USD 6,999,958.19 and USD 2,999,990.00 respectively. The minimal difference in the amounts is assumed to be bank charges. Ever Green was a trading company incorporated on 19 June 2004 in the Jebel Ali free zone (JAFZA) Dubai. AK explained that this was around the time his parents separated. The company had been involved in the sale of construction materials in Dubai. The intention with the movements of the money from Ludwig to Ever Green had been to invest in property in Dubai. However, they were being courted by HSBC and were entering into a banking relationship with them. MAK is described as a founder of Ever Green along with Mrs Begum. Ever Green issued 3 shares to MAK and 2 shares to Mrs Begum. MAK’s shares were initially held on behalf of AK on an informal basis, it not being deemed necessary to formalise the arrangement but on 24 November 2004, MAK formally placed his 3 shares on trust for AK. A copy of the Declaration of Trust was produced. AK said no funds in the Ever Green Account came directly or indirectly from MAK at any point. AK became the legal owner of the 3 shares on 22 February 2016. The directors were MAK from 19 June 2004 until 5 November 2018; Mrs Begum from 19 June 2004 to date; and AK from 26 November 2015 to date. References to MAK in the narrative of Ever Green’s Account are references to Mrs Begum wife of MAK but this does not mean it is his money or their joint money, it is how they identify Mrs Begum.

### **Jakob International Inc**

42. On 21 October 2009, Jakob International Inc. (“Jakob”), the Plaintiff was incorporated in the BVI. The purpose of the Plaintiff was to invest in Fixed Term Deposits and foreign exchange currency swaps. Mrs Begum and AK are the joint shareholders owning a single share between them. Mrs Begum and AK were authorised signatories on the Jakob Account along with MAK. The directors were Mrs Begum and AK.

43. AK accepted that the conversations between HSBC in Dubai and his family had included MAK on at least one occasion. They also included AK. Some of them happened at the home of AK and his mother and some (once or twice) at the offices of HSBC. He explained that the separation of MAK from Mrs Begum was not acrimonious and MAK, who lives in Belgium (and has done during AK's entire life), stays with Mrs Begum and AK when in Dubai, although his visits are not frequent (once in the last two years). As a director of Ever Green, MAK would have been involved in decisions when he was in Dubai. AK thought that this was why a Dubai address was used in the Third Party Authorisation form. His passport, which is attached to the form as his identification, shows that he is living at an address in Belgium. However, although there are references to "they" in the account opening forms, which seem to imply joint decisions between Mrs Begum and MAK, AK's evidence was that it would be Mrs Begum who would be the lead decision-maker and it was her money. He believes that the meetings would have occurred in English. On 6 February 2013, account opening documents for Jakob were signed with the Defendant through a relationship manager based in Dubai. These were signed by AK and Mrs Begum. It was the relationship manager that filled in the forms, which explained the various errors that had been made on the forms. This led to the Jakob Account being opened with HSBC in Guernsey. On 29 April 2013 and 7 May 2013, two tranches of USD 4,999,968.50 and USD 4,999,968.50 respectively were transferred from Ever Green to Jakob by way of a loan. A loan agreement between Ever Green and Jakob was subsequently produced.
44. AK gave evidence of numerous errors contained in the account opening and referral forms relied upon by the Defendant. These ranged from errors in the birth dates to fundamental errors about the source and nature of Mrs Begum's wealth. Included within the documents is an estimate of net worth and annual income of the Plaintiff, which AK attested to being vastly over-stated and false. AK said that the forms were riddled with inaccuracies but Mrs Tually, who attached the forms to her statement, did not draft them and she had no reason to question what was in the forms. He does not know why his mother is referred to as a homemaker in the HSBC private client referral form. He said it also contradicts other forms completed by the Defendant's Dubai office which refer (although inaccurately) to her business experience. He does not know who completed the internal HSBC private client referral form but it was someone from HSBC. He had not seen it before. He denied that there was any attempt to launder the money through a HSBC account by his parents. He accepted that the account opening forms should have been checked by them before AK and his mother signed them. AK said that HSBC persuaded "us" to open an account with it rather than the other way round. The documents were not prepared by HSBC in Guernsey and HSBC in Dubai did what they could to open the Jakob Account, as bringing in a client would be to their advantage.

## MAK

45. AK said that as he was Mrs Begum and MAK's only child they have always worked extremely hard to ensure that he was financially secure and protected. Also, in line with cultural expectations, there needed to be a senior male presence within the companies. It is the male that takes the lead in business dealings. His parents married in 1987 and separated in 2004. They have never divorced, as this is not culturally acceptable. Mrs Begum's witness statement confirms that she was born to a traditional Muslim family ascribing to traditional values, including the need for a senior male to be present in the running of the family businesses. In the history of this matter this role has been performed by her father, Mr Muhammad Iqbal, MAK and now AK. Now that AK is older, he has stepped into these roles to assist his mother.
46. This was why MAK was an authorised signatory on the Jakob Account and was a director of ADIL, Ludwig and Ever Green. AK did not understand the references to a Power of Attorney, as he thought that MAK was an authorised signatory. The sale documents of the Mill to Mrs Begum in 2008 are signed by MAK, as Chief Executive of ADIL. AK said his father "*liked this title*". In cross-examination, he accepted that MAK had been described on the website as Chief Executive but this was used by the general manager of ADIL as a scare tactic to get tenants to

pay up. This was more effective to obtain rent this way than doing so in a woman's name in Northwest Pakistan. AK described his father as "*a bit of a cowboy*".

47. AK remained adamant that his father did not put money into the purchase of the Mill nor into the funds as they passed through the various accounts and entities to the Jakob Account with the Defendant.
48. AK agrees that it is his father who is the person identified by the Defendant as being convicted of VAT Fraud in September 2007. He accepted that the criminality may have taken place 1993-1996, although he described this as a "fair guess" as being the time period of when it happened. AK produced correspondence from the Belgian lawyers who represented MAK which sets out, inter alia, that the sentences pronounced by the Belgian Courts between 2007 and 2009 were partially executed by MAK and were otherwise prescribed by the passage of time. Further, that the authorities did not proceed with any recovery against MAK, nor are there any pending proceedings against him or his assets. As far as the lawyers were aware, none of the relevant companies, being ADIL, Regency, Ludwig, Ever Green or the Plaintiff, have been prosecuted or convicted in the proceedings. Also, that the Belgian courts treated the property of MAK and Mrs Begum as separated. Also produced was a Notarised translation setting out the ruling of the 89th Chamber of the French-speaking Court of the First Instance in Brussels dated 7 January 2020 showing that the various assets seized by the Belgian authorities were to be returned to MAK.

### **Mian Ali**

49. Mr Ali is a chartered accountant, currently the managing director of his own firm in Dubai. He provides corporate services to Jakob (amongst other clients). Mr Ali gave evidence of the searches he had undertaken in 2023 which the Plaintiff asked him to do when they found out he was going to Pakistan to see his family. He had seen the Kyrill Lapin Report and the Anwar Javed & Co Report before he went. He speaks Pashtu (as well as Urdu and English). Mr Ali explained that he was focused on information before the Mill was purchased, which had not been the focus of the Anwar Javed & Co Report. These extensive enquiries which have involved tracing those involved with the transactions and history of this matter, including where necessary speaking to relatives where those who have been directly involved have deceased, including finding diaries of those involved (and getting them translated) and having the archives searched of successor firm (now PKF FRANTS) to those advising Mrs Begum at the time of the original Mill purchase, as well as going to Mrs Begum's mother's home, which he did, although Mrs Begum had told him she did not think she would have any documents. In fact, she had a lot of documents but most were not relevant to the case. He took photos of the original documents that were relevant and he had no reason to doubt that they were genuine. The documents from PKF FRANTS archives were copied by them and sent to him and Mrs Begum. He thinks some of the copies were copies of copies (as this was the version retained by the accountants) rather than the original. The diary entries of Muhammad Israr were from the original diaries that he saw and then the relevant excerpts were then translated and attached to a witness statement of Muhammad Shahnam Khan, son of Muhammad Israr Khan, which was attached to Mr Ali's witness statement (Mr Ali has the original witness statement of Muhammad Shahnam Khan in Dubai). AK also explained that this evidence was provided only relatively recently before the hearing because the opportunity was taken when Mr Ali was going to Pakistan.

### **Expert Evidence**

50. The Expert Evidence by Mr Rhodes was focused on the flow of funds following the receipt by Ludwig of the proceeds of sale of Regency until the funds were remitted to Jakob in April and May 2013. Mr Rhodes described in detail the numerous transactions, particularly during the period that the funds were held by Ludwig and was used for foreign exchange currency investments and fixed deposit investments. Further, counsel for the Plaintiff also asked a number of questions in its instructions to him, in order to assist the Court in its deliberations.

51. The first question was if the PKR/USD conversion rates from the time of the sale of the Mill support the assertion by the Plaintiff that the Sale Proceeds were c. USD 8.6m? Mr Rhodes confirmed that he had compared the stated USD receipts of USD 8,661,685.26 against the PKR 700m agreed sale price. The PKR to USD exchange rates at that time evidence that the USD receipt figure appears correct taking into account fluctuating exchange rates and rounding adjustments. In cross-examination he confirmed that the foreign exchange transactions he used were a number of different exchange rate sources and cross referenced the conversion rates.
52. The second question was whether the Ludwig bank statements support the assertion that no funds, save for those relating to the sale proceeds of Regency, were credited into the Ludwig Account prior to 1 January 2010? Mr Rhodes said that the earliest Ludwig bank statements that he had were from 1 January 2010. Owing to the lack of Ludwig bank statements prior to 1 January 2010, he was unable to comment on whether there was a balance on the Ludwig Account at the time of receipt of the sale proceeds from Regency and he could not comment definitively on movements between the incorporation of Ludwig on 28 January 2009 and 1 January 2010. He was able to say that the Ludwig bank statements show a redemption receipt in the Ludwig Account denominated in Euros on 11 March 2010, which was redeemed from USD 8,786,000 to EUR for 6,286,855.52. The Ludwig Account bank statements, therefore, indicate that prior to 1 January 2010, Ludwig placed USD 8,786,000 on Term Deposit with UBS Jersey. He noted that this amount is greater than the Sales Proceeds sum of USD 8,661,685.26, but he did not have any information in relation to the USD 124,315 difference. He said that this might relate to other Term Deposit related income received following receipt of the share sale proceeds, or to other transactions occurring prior to 1 January 2010. He calculated that Ludwig earned Term Deposit gains of USD 347,863 in the period 1 March 2010 to 30 November 2012, equating to USD 10,541.30 per month, and Ludwig made foreign exchange gains of USD 1,073,643 in the period 1 March 2010 to 30 November 2012, equating to USD 32,534.64 per month. This meant total gains averaged USD 43,075.94 per month. Using this average figure, Ludwig might, therefore, reasonably have earned the USD 124,315 in a period of approximately six months, following the receipt of the share sales proceeds in June 2009. However, he could not comment definitively on this without the relevant Ludwig bank statements.
53. The third question posed was whether the increase in the value of the funds within the Ludwig Account was supported by the transactional activity within the Ludwig Account? Mr Rhodes opined that Ludwig achieved gains which increased the balance on the Ludwig Account. The report shows a meticulous analysis of the transactional activity by Mr Rhodes. It appeared to him that the gains made by Ludwig relate to Term Deposit transactions and foreign exchange transactions over the period from 1 January 2010 to 31 December 2013. Whilst he had not been provided with the Term Deposit notes in order to examine the individual Term Deposits, the Ludwig bank statements suggest that the gains appear to have originated from Term Deposits. He agreed in cross-examination that the terms for the deposits would be for different periods of time and the money was also moving between different currency accounts likely to maximise the benefits of currency fluctuations. He said he did not know who was managing the accounts, nor did he have the specific instructions for those transactions. However, he could say that it did not raise alarm bells in terms of the amount of money being made on these transactions.
54. The fourth question was whether there were any additional funds deposited in the Ludwig Account between 1 January 2010 and 15 March 2013? Mr Rhodes confirmed that, in his opinion, no other unidentifiable income was received into the Ludwig Account between 1 January 2010 and 31 December 2013.
55. The fifth question concerned the USD 6,999,958.19 and USD 2,999,990 which were received into the Ever Green Account from the Ludwig Account on 8 December 2012 and 16 March 2013 respectively. Once received into the Ever Green Account, could he opine on whether these funds were used for investment purposes? If they were, could Mr Rhodes identify an increase in the

value of funds prior to their transfer to the Jakob Account in April and May 2013? In response, he said that the receipts detailed in the Ever Green bank statements predominantly relate to Term Deposit gains. Other than any transactions he set out in detail in his report, he confirmed it was his opinion that there was no evidence that he had seen that the gains made in the Ever Green Account came from transactions other than Term Deposits. Following the gains made by Ludwig, there were a number of additional gains in the Ever Green Account between 8 December 2012 and 29 April 2013 (through Term Deposit transactions). As a result of Term Deposit issues and redemptions, the balance of the Ever Green Account increased by USD 720,190.98. Cash withdrawals are noted at USD 190,683.73, which subsequently decreased this overall net movement to USD 529,507.25. At the time of the first receipt from Ludwig on 8 December 2012, the Ever Green Account balance stood at USD 63,781.40 on 11 April 2012. At this time, it also appears that around USD 500,000 was already held on Term Deposit (which was redeemed on 17 April 2013 for USD 505,524.77). The narrative on the Ever Green bank statement reads “TDR EN-CASHED DP12012-1001-528”. However, he did not know how much was originally deposited on Term Deposit and could not comment on the source of the funds placed on Term Deposit as he did not have Ever Green bank statements for earlier periods, but noted that the deposit pre-dates the receipts from Ludwig. At the point of receipt of the funds from Ludwig, he therefore estimated the Ever Green Account assets comprised an opening balance of USD 63,781.40 and approximately USD 500,000.00 held on a Term Deposit. The balance on the Ever Green Account at the point the funds are subsequently remitted to the Jakob Account had therefore grown to USD 10,593,487.18. The overall deposit gain since the inception of the Ever Green Account up until the remittal was around USD 14,666.21. The movements on the Jakob Account between receipt of funds from Ever Green and the account balance on 30 June 2013 relate to Term Deposit gains.

56. He confirmed he has not provided an opinion for the period prior to the money arriving in the Ludwig Account. He said in cross-examination that he did not think it was odd that Arab Bank had not provided the bank statements for Ludwig from the time of its opening until the beginning of 2010. Its explanation made sense to him. Expanding on his response to the written questions from Counsel for the Defendant after the filing of the Expert Report, Mr Rhodes confirmed in cross-examination that, whilst he considered it unusual that the loan agreement between the Plaintiff and Ever Green dated 1 May 2013 refers at clause 1 to “*Initially the funds will be invested with HSBC Guernsey (as advised by Katherine Lisle)*”, he also said that as this was an agreement between related parties then this might explain why this is included. He also said he did not think that the reference to Ms Lisle impacts the substance of the loan agreement.
57. He also confirmed that he did not consider the trust arrangements between MAK and AK were unusual in his experience and the rationale appears logical. Likewise, the structure of the Regency transaction was not unusual. This was a share transfer and is something that Mr Rhodes sees regularly. There can be multiple reasons for structuring a sale in this way.

### **Brief Summary Submissions**

58. The Defendant continued its neutral role in making its submissions. The evidence of when the criminality of MAK is said to have taken place was set out in the SAR (attached to Ms Ayoola’s first witness statement) which, in turn, relies on excerpts quoted from adverse newspaper reports, which refer to the period 1993-1996. The evidence of MAK’s gains from his criminality is limited to what is reported in those articles. Advocate Newman submitted that in his role it was appropriate to suggest an alternative version of events to the one put forward by the Plaintiff, premised on MAK introducing funds from his criminal behaviour (which is believed to have occurred around the same time as the setting up of ADIL and the purchase of the Mill) into the funds which were used to purchase the Mill by ADIL and/or along the funds journey to the Jakob Account. It could be argued that when ADIL was formed, MAK held the shares in his own name for his own benefit and then disassociated himself from ownership of ADIL when he declared that the shares were held on trust for his son. MAK remained a director of ADIL, as well as

being a director of Ludwig and Ever Green. Despite the efforts of the Plaintiff there are, the Defendant says, still gaps in the funds' journey between 1995 and 2009 and the Court should consider these when deciding whether the Plaintiff has discharged the burden upon it. The Defendant does not challenge the admissibility of any of the evidence produced by the Plaintiff.

59. The Plaintiff's submissions were that it has done enough to show that, on the balance of probabilities, the funds in the Jakob Account are not the proceeds of criminal conduct in any way. The Plaintiff had gone through a pain-staking process tracing back from the Jakob Account demonstrating that the original source of funds was Mrs Begum's wealth. MAK was not a source of wealth or of the funds. Mrs Begum's wealth had been invested (with the help of others but not MAK) in the Mill, a significant proportion of which was sold and the proceeds invested. Other than interest and foreign exchange gains no new funds were added to the funds which were transferred into the Jakob Account with the Defendant. As well as the witness testimony the Court has cogent and credible documentary evidence (as referred to in *LMNB v Credit Suisse AG (Guernsey Branch)* (*ibid*)) which supports the Plaintiff's version of events. MAK was irrelevant to the funds which are being held by the Defendant. The Plaintiff submitted that this was not an exacting task but required a common sense and practical approach (again identified in *LMNB v Credit Suisse AG (Guernsey Branch)* (*ibid*)). The Court should adopt the methodology of the Deputy Bailiff in *Liang*, namely that if the Court finds that there are any proceeds of crime, it should find that the quantum of any such monies which could possibly be argued to be so attributable would be a fraction of the whole sum under consideration and thus, was so small that the Court should overlook any intermingling principle. The Plaintiff urged the Court to be sympathetic to the burden placed on it which has been an expensive evidence gathering exercise. Also, that the absence of bank statements from 30 years should not weigh in the Court's consideration of the evidence in the same way as a statement from only a few years ago. Gaps in the evidence should not be filled by inference and assertion of an alternative case theory without evidential basis. Advocate Adkins referred the Court to the decision in *Liang* at paragraph 26 set out in full above where the Deputy Bailiff, as he was then, said:

*"A plaintiff will establish a prima facie case to have the instruction or request made to the institution complied with. A defendant will raise an impediment to being in a position to comply, which will be the combination of the suspicion held and the absence of law enforcement consent. In order to overcome that impediment, the plaintiff will have to prove that the position is that the suspicion is unfounded because the source of the funds is not tainted in the manner believed or suspected."*

Whilst the burden of proof is on the Plaintiff, it does not require them to disprove an alternative version of events, their burden is to prove that its funds do not represent the proceeds of anyone's criminal conduct and the Plaintiff has discharged that burden in this case.

## **Discussion**

60. In order for the Court to determine the provenance of the funds, the Plaintiff has worked backwards from the funds arriving in the Jakob Account with the Defendant to evidence its assertion that the monies contained therein derived from a source that is untainted by criminal conduct. The transactions in this case go back over 30 years, starting with incorporation of ADIL and the raising of the funds for the Mill. A substantial part of the Mill site was sold off, and the funds from the sale, flowed in and out of various bank accounts belonging to different entities until it reached the Jakob Account with the Defendant. It was the criminality of MAK, in relation to VAT convictions in Belgium, that led to the suspicion in relation to the funds. There is no evidence of any other criminal allegations or bases of suspicions before the court nor are there allegations against AK or Mrs Begum.
61. The Deputy Bailiff directed the Jurats that it was not for the Defendant to prove a positive alternative case but rather for the Plaintiff to prove that that the funds in the Jakob Account are

not the proceeds of criminal conduct in any way. The Deputy Bailiff directed the Jurats that in relation to the original funds raised to purchase the Mill and during the journey of the funds to the Jakob Account with the Defendant, the Plaintiff needed to show on the balance of probabilities that at no time during the flow of the funds was MAK a source of funds. Further, although the Plaintiff provided evidence in relation to the current status of MAK's criminal proceedings in Belgium, it is the Plaintiff's case that he played no role in relation to the funds. If the Jurats are satisfied that the Plaintiff has proved on the balance of probabilities that MAK did not, at any point play a role in the funds journey, nor contribute to the funds directly or indirectly, then the Deputy Bailiff directed the Jurats that it was not necessary for them to consider the criminal offences further or the issue of intermingling criminal proceeds with legitimately obtained funds.

62. Not included for the sake of reasonable brevity in this judgment are all the references and detail of the extensive searches that have been undertaken by the Plaintiff contained in the evidence before the court, however, these have all assisted the Jurats in coming to the conclusion on the facts in relation to this matter. They found the oral evidence of AK to be thoughtful and compelling. They were also assisted by the evidence of Mr Ali and his further investigations into the origin of the funds, and in particular, the contemporaneous documentation which enabled ADIL to purchase the Mill, as well as the basis upon which the Mill came to be offered for sale. The expert evidence provided by Mr Rhodes showed meticulous analysis of the accounts and his evidence was clear and comprehensive and supported the Plaintiff's case.
63. When considering the evidence of Mrs Begum and Mr Anwar, the Deputy Bailiff directed the Jurats that as this amounted to hearsay evidence they needed to consider the weight, if any, to be given to the matters set out therein, in accordance with section 4 of the Evidence in Civil Proceedings (Guernsey and Alderney) Law, 2009. It was also the case that the bundles provided for the trial had, as is common with many trials, a large number of documents that contained hearsay. In some cases where witness statements attached further statements or affidavits this was multiple hearsay. The Deputy Bailiff directed the Jurats, in accordance with the Evidence in Civil Proceedings (Guernsey and Alderney) Law, 2009 and the adoption of less rigid rules in relation to hearsay, that they should consider the weight given to these documents, whether it is proportionate or not to rely on hearsay evidence, as well as their relevance to the issues. The Deputy Bailiff also directed the Jurats as to the provisions of sections 14 and 15 of Evidence in Civil Proceedings (Guernsey and Alderney) Law, 2009 dealing with authenticated documents in witness statements and in relation to business records produced as evidence respectively.
64. The parties agree that in order for the Plaintiff to discharge the burden of proof in respect of provenance of the funds, three questions should be posed to the Jurats: the first question is: was the Mill purchased with funds which did not come from MAK? The second question posed is: did the sale proceeds from the Mill constitute the funds eventually deposited within the Jakob Account held with the Defendant? The Third question is: did any funds originating from MAK enter into the flow of funds that resulted in the deposit now held in the Jakob Account?
65. In response to the first question, the Jurats are satisfied that on the evidence before them, the Mill was purchased with funds which did not come from MAK. The Jurats were satisfied that although AK was only very young when the transaction was set up, his evidence, supported amply by the documentation that the Plaintiff was able to produce, much of it contemporaneous, due to the comprehensive research undertaken on behalf of the Plaintiff by Mr Ali and others, and the evidence of the other witnesses, including the witness statements of Mrs Begum, show that, on the balance of probabilities, the source of the funds for the purchase of the Mill was not MAK. The Mill was purchased by Mrs Begum through ADIL with the assistance of investments from Mr Muhammad Israr and Mr Muhammad Iqbal and the subsequent sale of some of the extensive assets that came with the purchase of the Mill.

66. In response to the second question, the Jurats were satisfied that ADIL transferred the Mill to Mrs Begum for PKR510 million. She then transferred the ownership of a significant part of the Mill's land to a SPV called Regency. Regency was sold by a share sale by Mrs Begum to a Mr Butt who transferred the funds to the Ludwig Account with Habib Bank. Whilst there is a period of approximately 6 months when there is a gap in the bank statements relating to the Ludwig Account, the Jurats were satisfied that there was no evidence of funds coming from any other source, and in particular, from MAK. Further, they were satisfied by the analysis of Mr Rhodes supports this conclusion. Further, taking into account the calculations made by Mr Rhodes in relation to Term Deposit and foreign exchange gains over the period based on the investments and use of the funds from January 2010 that, on the balance of probabilities, the funds in the Ludwig Account derived from the Regency sale along with monies earned by its investment. The funds were then transferred to Ever Green on 6 December 2012 and 14 March 2013 and then in April and May of 2013 to the Jakob Account with the Defendant.
67. In response to the third question, the Jurats found, on the balance of probabilities, that there were no funds originating from MAK which entered into the flow of funds that resulted in the deposit now held in the Jakob Account with the Defendant. The Jurats did not identify any intermingling. As set out in response to the first two questions the Jurats were satisfied there was cogent and credible evidence that the funds derived from the sale of the Mill and that upon analysis of the evidence including the bank statements and taking into account the Expert Evidence of Mr Rhodes, any additional amounts which have accrued during the funds journey to the Jakob Account had been adequately explained and that there was no evidence that MAK was the source of any funds originating from MAK whether directly or indirectly.
68. Having considered the three questions posed by the parties, the Deputy Bailiff directed the Jurats to consider whether, on the balance of probabilities, they were satisfied that the funds in the Jakob Account are not the proceeds of criminal conduct in any way. The Jurats were satisfied, on the balance of probabilities, having conducted a detailed analysis of the materials before them, considered the evidence, including the expert witness evidence and the large amount of documentation produced in relation to the source of funds and the journey of the funds to the Jakob Account and the submissions of both parties, that the funds in the Jakob Account are not the proceeds of criminal conduct in any way.
69. The Deputy Bailiff directed the Jurats that, having satisfied themselves to the requisite standard that the funds in the Jakob Account were not the proceeds of criminal conduct, they should consider whether it was appropriate to exercise their discretion to make the declaration sought by the Plaintiff. The Jurats considered that the Plaintiff is entitled to the declaration sought, i.e. that the funds held by the Defendant in the Jakob Account are not proceeds of criminal conduct for the purposes of the Proceeds of Crime Law.

## **Conclusion**

70. The Jurats, having come to the conclusion that the Plaintiff is entitled to the declaration sought that the funds held by the Defendant in the Jakob Account are not proceeds of criminal conduct for the purposes of the Proceeds of Crime Law, the court will make the order sought by paragraph 2 of the prayer in the Cause that the Defendant should comply with the Plaintiff's instruction to transfer the sum subject to a retention for the Defendant's costs. The Defendant relies on the indemnity for its costs contained in its terms and conditions and has deducted some of its costs from the Jakob Account. The principle of costs on this basis is accepted by the Plaintiff, although the quantum is disputed. The Plaintiff did not object to a sum being retained on the account to cover the outstanding amount of costs, which Advocate Newman estimated at approximately £120,000. As this was an estimate, the Deputy Bailiff considered that given the terms and conditions of the Jakob Account to which the Plaintiff signed up to, it was appropriate to be conservative in the Defendant's favour and the appropriate amount to retain until this is resolved in the circumstances was £130,000. Therefore, there is an order that the Defendant transfer the

balance of the funds held in the Jakob Account to the Plaintiff or to the order of the Plaintiff less £130,000.