Application for civil forfeiture of funds held in a bank account under the Forfeiture of Monies (etc) Law 2007 as amended. Operation and application of burden of proof discussed. Application dismissed.

[2025]GRC004

IN THE ROYAL COURT OF GUERNSEY

ORDINARY DIVISION

Civil Action No 2496

IN THE MATTER OF THE FORFEITURE OF MONEY ETC IN CIVIL PROCEEDINGS (BAILIWICK OF GUERNSEY) LAW 2007

Between:

HIS MAJESTY'S COMPTROLLER

Applicant

-and-

(1) FIDELITY MANAGEMENT LIMITED

(2) ROYAL BANK OF CANADA (CHANNEL ISLANDS) LIMITED

Respondents

Before: Her Hon Hazel Marshall KC, Lieutenant-Bailiff

(sitting alone)

Dates of hearing: 16th – 19th December 2024

Judgment handed down: 17th January 2025

Counsel for the Applicant — **Advocates R Gist and P M Grainge**
Counsel for the First Respondent — **Advocate A Davies**
The Second Respondent was not represented.

Legislation cases and materials cited:

Legislation

Guernsey
Theft (Bailiwick of Guernsey) Law 1983
Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law 1999

Forfeiture of Money (etc) in Civil proceedings (Bailiwick of Guernsey) Law 2007
Fraud (Bailiwick of Guernsey) Law 2009
Forfeiture of Assets in Civil Proceedings (Bailiwick of Guernsey) Law 2023

Forfeiture of Money (etc) in Civil Proceedings (Bailiwick of Guernsey) Ordinance 2022)

Jersey
Forfeiture of Assets (Civil Proceedings) (Jersey) Law 2018

Cases

Guernsey
Fidelity Management Limited v Royal Bank of Canada (Channel Islands) Ltd [2007-8] GLR Note 14
L, M, N and Mrs B v Credit Suisse AG [2023] GRC026
Fidelity Management Limited v His Majesty's Controller [2024] GCA041
In the Matter of the Forfeiture of Money (etc) in Civil Proceedings (Bailiwick of Guernsey) as amended and the sum of £12960 in cash seized on 3 October 2023: (HMC v Collins) Guernsey Judgment (unreported) 24th June 2024

England and Wales
R v Halai [1983] Crim LR 624
Fletcher v Chief Constable of Leicester [2013] EWHC 3357 (Admin)

European Court of Human Rights
Yordanov v Bulgaria Applications Nos 265/17 and 26473/18 Final judgment: 19.02.2024

Textbooks and materials
Archbold on Pleading Evidence and Practice in Criminal Cases 36th Ed 1966 (and 2003 Edition)
Michael Marshall: *Criminal Law of the Bailiwick of Guernsey* (undated Ed) page

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J U D G M E N T

Index	**Para.**

Introduction – the Claim

1. This is an application ("**the Application**") by His Majesty's Comptroller ("**HMC**") issued on 25 January 2024 under s 13 (2) of the *Forfeiture of Money (etc) in Civil proceedings (Bailiwick of Guernsey) Law 2007*, ("the **2007 Law**") to forfeit a sum of $14.4 Million plus accrued interest held

by the Second Respondent, Royal Bank of Canada (Channel Islands) Limited ("**RBCCI**") in an account originally identified as being Account No 05301155, standing in the name of the First Respondent, Fidelity Management Limited ("**FML**"). I will refer to it as "**the Accoun**t". The Account No has changed over the intervening period, but nothing turns on that.

2. The 2007 Law itself has now been repealed and replaced by the *Forfeiture of Assets in Civil Proceedings (Bailiwick of Guernsey) Law 2023,* ("**the 2023 Law"**) which came into force on 26th April 2024. However, under its transitional provisions, this Application, which was already in train at that time, is to be dealt with entirely under the "*former law*", namely the 2007 Law (see s 147 and Schedule 4 to the 2023 Law) and I need say no more about the 2023 Law.

3. However, the form of the 2007 Law with which I am concerned is the amended form of that Law, brought into force in January 2023 by the *Forfeiture of Moneys etc in Civil Proceedings (Bailiwick of Guernsey) Ordinance 2022*. The 2022 Ordinance amended s 13 of the 2007 Law, in a manner which is central to this dispute.

4. Section 13 of the 2007 Law as amended and insofar as here material, reads as follows:

> *"13 (1) While money is … frozen under section 10* [ie of the 2007 Law]*, an application for the forfeiture of the whole or any part of it may be made by H[is] Majesty's Procureur to the Royal Court.*
>
> *(2) The Royal Court shall order the forfeiture of the money or any part of the money unless satisfied on the balance of probabilities, by the person against whom such an order is proposed to be made, that the money or the part is not*
>
> *(a) any person's proceeds of unlawful conduct, or*
> *(b) intended by any person for use in unlawful conduct."*

5. The funds in the Account were frozen pursuant to a Freezing Order made under s. 10 of the 2007 Law upon HMC's application (acting on behalf of His Majesty's Procureur) on 27th June 2023.

The parties and the brief history

6. FML is a company which was formed and registered in the Turks & Caicos Islands, on 3 January 1989.

7. RBCCI has no direct interest in the proceedings, being merely the holder of the subject funds, and it has no practical knowledge of the matters in dispute. It has therefore taken no active part in the proceedings in order to save costs.

8. The current shareholders of FML are Mrs Michelle Solis and Miss Nicole Laport, who are both citizens of the United States. They are half-sisters, being the two daughters of a Mr Frank Laport ("**Mr Laport**"). I will refer to them, without disrespect, as "**Michelle"** and "**Nicole"** or "**the daughters**"**.**

9. Mr Laport was also a United States citizen. He was born in 1942. He became a lawyer and practised as a personal injury lawyer in Chicago, although the evidence suggests that he did not act as a trial lawyer, so much as a negotiating lawyer and generator of business, operating on contingency fee arrangements, and effecting referrals to trial lawyers (for a commission) where appropriate. He also qualified as a real estate broker (I think this is equivalent to an estate agent) although he never practised as such. He was also a businessman, investing in commercial ventures and in real estate purchase and development. He died unexpectedly on 12 January 2005, thus aged 63, from an infection contracted during a stay in a hospital for what should have been a relatively routine operation.

10. Either as his heirs, or as the beneficiaries of a trust declared or intended to be created by Mr Laport during his life, the daughters are now beneficially entitled to the entire shareholding in FML, having become the registered shareholders of FML's entire issued share capital in May 2005. Prior to that FML's share capital was issued as five bearer shares, which were in the possession of a Mr George Collins, since deceased. He was also a Chicago based lawyer and had been a firm friend and long-time business associate of Mr Laport for some 40 years. He understood the shares to be intended to be for the benefit of the daughters, and who then arranged their transfer to Michelle and Nicole. FML's defence to the claimed forfeiture of its funds has therefore been conducted, in effect, by Michelle and Nicole as the persons with the real interest in FML's assets. Both of them are close to Nicole's mother Louise ("**Mrs Laport**"). Together, the daughters and Mrs Laport have been referred to as "**the Family**".

11. There has been previous litigation about the Account. To obtain the original Freezing Order on 26th June 2023, HMC was obliged, under s 10 (1) of the 2007 Law, to satisfy the Court that there were

> *".....reasonable grounds for suspecting that the funds or any part of the funds in* [the Account] [were]
>
> *(a) any person's proceeds of unlawful conduct, or*
>
> *(b) intended by any person for use in unlawful conduct."*

Having been given notice of the proposed application for a Freezing Order, FML gave notice of its own application to challenge its validity, as it was entitled to do under s 11 of the 2007 Law ("**the Release Application**"). This would have involved allaying the "reasonable suspicions" accepted by the Court in order to grant the original Freezing Order. A timetable for the preparation and hearing of that application was agreed, and FML continued to prepare its evidence for that application, consenting to the renewal of the Freezing Order in the meantime. However, before the hearing of the Release Application, HMC issued this Application, on 25 January 2024, for forfeiture of the funds in the Account.

12. FML disputed that this Application could supersede its own Release Application because the latter had been issued prior to the Forfeiture Application, and was proceeding; it argued that the Release Application must be determined first. The reason for this was that, had the Release Application been successful, the grounds for this Application for forfeiture would have been cut from under it, because the funds would no longer be frozen under s.10 of the 2007 Law (or, indeed, at all), and that is a statutory pre-condition for their being forfeited under s 13.

13. On 27 February 2024, I held that the effect of this Forfeiture Application was to supersede FML's Release Application, and that the Forfeiture Application could and should therefore proceed, but I gave leave to appeal. The Court of Appeal dismissed the Appeal: see *Fidelity Management Limited v His Majesty's Controller* [2024] GCA041, hereafter referred to as "**the CoA Decision**". This Forfeiture Application has therefore proceeded and come on for hearing between 16 and 19 December 2024.

Factual background

14. The following general account of the factual history is largely common ground. Where it is not, it can be taken to be my findings of fact, made on the evidence before the court. Much of the account is taken from the research and evidence of Mr Brian McCreight, a former police detective constable and now an investigator with the Economic and Financial Crime Unit and HMC's principal witness, and the documents which he exhibits to his own evidence. I pay tribute to his diligence, and I also express appreciation of the very helpful tables he has prepared, of the

chronology of the matter, and the various companies and persons who are involved or referred to. They have been of very great assistance as tools of reference.

15. I record here that whilst quite a lot of relevant documents (approximately 750 running to nearly 2000 actual pages) have been gathered and are in evidence, the documentation is certainly not complete. Whilst efforts have been made, both on behalf of HMC and of the Family (although Mr McCreight expresses criticism of the Family's not having produced, or managed to produce, more) there has been a lack of success in obtaining any more such evidence. Comments made in the evidence suggest that this is owing to the fact that various of the institutions of which requests for information and documents have been made, have been unable to assist, owing to their own policies about the disposal of historic documents, and the fact that the enquiries relate to matters dating back between (now) 20 and 35 years.

16. There is also some evidence of at least some of Mr Laport's own documents having been deliberately destroyed, shortly after his death, at the behest of Mr Collins, mentioned above, when, with the agreement of the Family, he took initial charge of trying to sort out Mr Laport's affairs. This also involved dealing with a probate dispute, initiated by Mr Laport's sisters, which was compromised. I understand that this was by way of an agreed payment to them. Mr Collins also engaged the assistance of a Mr Joseph Dombrowski, another United States lawyer and acquaintance of Mr Laport, (they had attended Law School together) who also destroyed documents. Mr Dombrowski has admitted this in evidence in other proceedings, but said that he was charged with clearing up Mr Laport's estate and affairs, and destroyed documents, which were very voluminous, just where they did not appear to him to be of value or importance. Quite what was destroyed, or was subsequently lost by Mr Collins (he and the Family fell out, three or four years after Mr Laport's death) is just not clear. The available contemporaneous documentation is derived partly from papers obtained from Mr Collins, and partly from a Mr Anthony Dupuch, a Bahamian lawyer or corporate service provider, mentioned further below.

17. What the enquires and available documents have revealed, though, is that FML's incorporation in the Turks & Caicos Islands was in January 1989 and was effected at the request of a Mr Clive Knowles, but as an "off the shelf" company. Its registered agent and corporate services provider was Britannic Management Limited, who initially supplied its officers, as well as its registered office. It had an authorised capital of $5,000, but had only five issued shares of £1 each, and these were bearer shares. That was quite legitimate, and, indeed, in those days, bearer shares were not uncommon in offshore companies.

18. A matter of days afterwards, on 25th January 1989, the Manager of the Royal Bank of Canada's branch in Nassau, Bahamas, sent a letter of introduction to RBCCI in St Peter Port, introducing to them a Mr Thomas H Magill, described as a "valued customer" of RBC Nassau, who wished to do business with RBCCI in Guernsey, and attaching a specimen signature. Quite what business ensued is not directly evidenced by anything contemporaneous.

19. Documents clearly related to the Account come into evidence only six years later. On 6 December 1995, FML, acting by Mr Thomas H Magill as purportedly its Secretary and sole director, requested the opening of a Fiduciary Account Agreement with RBCCI, St Peter Port, submitting supporting documentation and certified copy documents relating to FML. Since some of the necessary supporting documentation was on RBCCI standard forms, there had plainly been prior communications. The covering letter itself refers to an introduction and a reference having been provided to RBCCI on 4 February 1989 "*when we initially opened our account*" as obviating the need to provide the Bank's "*Form No 3*". The letter requests a quick reply as "*we have fixed term deposits maturing on January 19 1996*". These were plainly, therefore, anticipated to go into the new account. The letter does not state where those deposits are held, but this very fact, and the matter-of-factness with which they are referred to, might be thought to suggest that they were currently with some other account already held with RBCCI.

20. This was clearly the opening of the subject Account. Statements on the Account for the period 18 January 1996 to 7 August 2007 are in evidence and show the Account being opened with an initial deposit made, indeed, on 19 January 1996.

21. This first entry on the Account ("**Deposit 1"**) is a credit of some $3.39 Mn (I am going to use approximate figures, except where precise accuracy is material). It is simply described in the statement as "New Funds Received". There is no other evidence as to its origins, but as all the other deposits made into the Account from external sources record either the entity, or the bank, of their origin, this reinforces the likelihood that these particular funds were already with RBCCI in a different account - presumably a non-"fiduciary" account, since the creation of such an account appears to be the reason for opening it.

22. The pattern on the Account is then that the funds are paid out in large round amounts, leaving a small sum in the account itself, each time into a "*New Term Deposit*" (thus obviously with RBCCI itself), at varying intervals of a few months. The Account entries then record interest received and commission payments taken out on maturity, at which point the funds are rolled over into another term deposit in the same way. Apart from one insignificant payment of $1,178.15 made to "Fidelity Management Limited" itself on 20 September 1996, this is the consistent pattern of the Account until 19 April 2001, when the first of the further 10 deposits to the Account was made.

23. On 19 April 2001, a sum of $9,93Mn odd ("**Deposit 2**") was received into the account from (it is recorded) RBC Nassau. The pattern of term deposits - though now often in more than one tranche with different interest rates and sometimes for periods of days rather than weeks or months, with interest being added and rolling over at maturity - then resumes on the Account until the next injection of external funds on 2 July 2001. This is a receipt of some $35,500 odd ("**Deposit 3**") marked as received "re Kashiyama and Co Ltd". These funds are then incorporated in the same term deposit/rollover pattern.

24. This same treatment is then applied to a further six deposits made as follows:

- **Deposit 4**	27 July 2001	$34,800 odd	"Funds received"
- **Deposit 5**	20 Aug 2001	$44,600 odd	"Funds received"
- **Deposit 6**	1 Mar 2002	$32,200 odd	"Funds recd from Fidelity Mgmt Ltd"
- **Deposit 7**	4 Mar 2002	$55,800 odd	"Funds received"
- **Deposit 8**	22 Apr 2002	$44,500 odd	"Funds rec'd re Bank of Butterfield International Gsy Ltd"
- **Deposit 9**	22 Apr 2002	$189,100 odd	"Funds rec'd re Natwest Offshore Limited"

25. The pattern then resumes once more until the final two deposits namely:

- Deposit 10	5 Aug 2002	$341,100 odd	"Funds Received re Compagnie Italiana Int"
- Deposit 11	5 Aug 2002	$497, 900 odd	"Funds received re Compagnie Latina SA".

26. There are no more deposits credited into the Account, which by then totalled between $16Mn and $18Mn. There are four later debits from the account prior to Mr Laport's death, but as I am here concerned with the sources of the funds, I will return to these later. Those payments depleted the Account to the level of $14.4 Mn plus interest which is what was and is still held within it.

27. As has been remarked, Deposit 1 bears no indication of its outside origins, even if its immediate source may have been another account or accounts already held by FML with RBCCI. The immediate source of the subsequent eight deposits (ie other than deposits 10 and 11) has been traced in each case to bank accounts controlled by Mr Magill, being either accounts in FML's name with other banks, or, in one case (Deposit 4) in Mr Magill's own name and in one other case (Deposit 3) emanating from Kashiyama & Co Ltd, a Bahamian company, in respect of which the evidence is that Mr Magill held a general power of attorney and was signatory on its bank account. The companies which were the immediate source of Deposits 10 and 11 were involved more indirectly, as I will mention later.

28. This limited further information as to Deposits 2 – 9 is derived from a spreadsheet document referred to as "**The List**", which was found amongst the evidence documents. It contains a list of various bank accounts and particulars of deposits, withdrawals, earnings and charges. The entry for RBCCI shows, in relation to "FML" deposits still held at that bank and containing entries corresponding to the 11 identified Deposits (and an earlier deposit in February 1989). The entries with regard to other banks show their deposits going "To" "RBC-CI", and can be identified very closely with the dates and details of transfers made into the Account. The actual authorship and provenance of the List is not known, but its information correlates sufficiently well with the entries in the Account, and other documents as to suggest that it was compiled by someone with confident background knowledge of the facts recorded. Its strapline computer heading suggests that it was in a file location of "…\Banks\Amalgamated\SUMMARY…" and also that much of the information was also recorded in an American personal finance management software app, called "Quicken", as a few entries are annotated "Not in Quicken".

29. The two expert forensic accountant witnesses called on behalf of the Family on the one hand, and HMC on the other, disagree about the degree of reliance which can or should be placed on this document, owing to its unclear provenance, but I am satisfied that it is reliable as to the matters recorded and can therefore be used, also, as the basis for sensible inference. Whilst I thought that Mr Ken Krys, the Family's expert witness suggested that, from its content, it would appear to have been compiled in about August/September 2001, that can hardly be right, as it contains some entries with dates in mid-2002. (The computer sheet strapline location heading contains what appears to be a date of 18 November 2003, but that may be only a print-off date.)

30. From RBCCI's point of view, the Account appears to have been conducted quite unremarkably for the period from 1996 onwards, their contact always being with Mr Magill. It is to be inferred that this was simply with regard to instructions as to what term deposits were to be made, or, latterly what payments were to be made. Few of any such instructions are now available as documents.

31. However, in May 2006, RBCCI received a letter, not from the Mr Magill with whom they were familiar, but from Mr Collins, explaining that Mr Magill had been an alias of Mr Frank Laport, who had recently died and that he (Mr Collins) was then engaged in winding up the affairs of Mr Laport's estate on behalf of the daughters. RBCCI had, of course, never heard of Mr Fank Laport.

32. In August 2006 the Cook County Court in Illinois made an order certifying that it was satisfied that Mr Laport, and Mr Thomas H Magill were one and the same person, and in March 2007, RBCCI then received a request from Mr Collins, now purporting to be the secretary and sole director of FML, instructing it to transfer the sums in the Account to a bank in Switzerland. Although this was no doubt supported by production of the US Court Order, faced with this state of affairs, RBCCI unsurprisingly made a Suspicious Activity Report to the Guernsey Financial Intelligence Service ("the **FIS**").

33. In the meantime, the Royal Court itself had been requested to make an order to the effect that Mr Magill and Mr Laport were one and the same person, and it did so, on 20 September 2007 (see *Fidelity Management Limited v Royal Bank of Canada (Channel Islands)* Limited GLR 2007-8 Note 14). Despite this, though perhaps not surprisingly, RBCCI received on 31 October 2007, a

"no consent" response to their enquiry whether they could fulfil the purported payment instruction of March 2007 without fear of laying themselves open to charges of money-laundering offences. They therefore did not make the payment.

34. This imposed an informal "freeze" on the funds in the Account, which is supposed to enable investigations as to the provenance of the relevant monies to take place. However, these investigations were protracted, and even stalled. It is not necessary to trace their progress in detail because the relevant evidence is now before the court on this Application in any event. I note simply that between 2007 and 2012, the United States Revenue Service ("**the IRS**") conducted an investigation of Mr Laport's affairs and his estate, with knowledge of the existence of the Account, and concluded that the monies in the Account were the proceeds of Mr Laport's lawful real estate and business activities and formed part of his taxable estate. However, with the estate having no assets other than the Account there were no funds to pay the tax demanded. On 5 February 2016, losing patience with the non-payment of this tax, the IRS issued a Final Notice and Intent to Levy in respect of this tax, which then totalled $8,528,934.63 together with interest of $146,886.97.

35. This prompted US Attorneys, Kostelanetz & Fink LLP, representing the Estate of Frank Laport, to write to the FIS in 2016, explaining the position, seeking to provide more evidence to the effect that the Account had been funded by Mr Laport's business and real estate activities, that he had been the ultimate beneficial owner of the Account until his death, that the Account had not been involved in any tax crimes, and thereby to induce the FIS to permit the release of the funds. This letter (referred to as "**the Letter**") has also been in the evidence before the Court, although possibly only in draft form. It did not, however, induce the release of the Account, and much is made by Mr McCreight, of the fact that there are some inconsistencies between the facts alleged in this letter and the account previously given in a letter written in 2008 by FML's then Guernsey Advocates, Babbé, which had then been proffered in order to achieve the same result.

36. Eventually, the position gave way to the formal Freezing Order, referred to above, made on 27 June 2023, with the subsequent procedural history described in Paragraphs [1] and [13] above.

The evidence at the hearing

37. As noted, HMC had obtained a Freezing Order on the Account in an Application supported by the lengthy evidence of Mr McCreight. That evidence was sufficient for the Court to accept that there were "reasonable suspicions" that the funds in the Account were the proceeds of unlawful conduct. It exhibited virtually all of the documents now in these proceedings, including some produced by Mr McCreight's own researches and some handed over by the Family, which they had, in turn obtained principally from Mr Collins but also from Mr Dupuch, to whom the daughters had entrusted further dealings with Mr Laport's estate after they had fallen out with Mr Collins in this regard, in about 2010.

38. HMC proposed that this evidence should stand also as evidence in support of this Application. The Family objected to the form of this evidence for that purpose, on the grounds that the affidavit was not confined to factual evidence, but inappropriately contained arguments, comments, and the personal opinions and "conclusions" of Mr McCreight on the matter, to such an extent that it was felt to be unfair and prejudicial. There was much force in that contention. It was dealt with by the parties agreeing redactions of Mr McCreight's evidence to confine the content to facts, and more neutral comments by way of explanation of the documents, where needed. Mr McCreight also swore two further short affidavits in answer to evidence adduced on behalf of the family. He attended court and was cross-examined by Advocate Davies. I am satisfied that his evidence was sincerely given, although I found some of the opinions he inevitably expressed, as to inferences which he suggested should be drawn from documents and circumstances, to be somewhat extreme in places. Mr McCreight has many years' experience as a criminal investigator, which must

develop a natural tendency to be acutely alert to even small matters which might possibly be indicative of wrongdoing.

39. FML relied on the contents of many of the documents already referred to, which included affidavits, declarations, depositions and statements in other proceedings (including an affidavit of Mr Collins made in support of the Cook County application referred to at [32] above) together with affidavits of Mrs Laport and of Nicole as to factual matters. They each attended for cross-examination, and also confirmed their affidavits and declarations made in other proceedings. I am satisfied that the evidence of each was honestly and sincerely given, although I do not, of course, ignore the obvious fact of where their own personal interests lie, and the extent to which wishful thinking may have coloured their recollections.

40. The Family also tendered an affirmation of 25 March 2024 of a Ms Stephanie Gardner, of K2 Integrity Limited, a global risk advisor firm practising in Illinois, exhibiting a "background investigation" report on Frank Laport, prepared by her firm, which collated such information as could be gleaned about Mr Laport's legal practice, investments and business affairs ("**the K2 Report**"). She was not cross-examined and the report was taken as read. A further affidavit of Mr Benjamin Newton of Collas Crill, dated 2 October 2024, exhibited correspondence which had been had on behalf of the Family with the IRS, pertaining also to assistance sought from that Department by the Guernsey Economic and Financial Crime Bureau. Mr Newton was likewise not cross-examined.

41. Each side had commissioned an expert forensic accountant's report into the funds in the Account and what could be divined as to their source from the materials available, with particular reference to four US properties, and transactions surrounding them, which the Family had suggested to provide evidence of perfectly lawful sources of funds into the Account. Mr Kenneth Krys of KryS Global, forensic accountants, provided a report on such matters; he attended for cross-examination by video link from the Cayman Islands. Ms Andrea Harris of Grant Thornton, also a forensic accountant considered Mr Krys' report and gave her own report. Whilst she too attended for cross-examination (being locally resident) she was not greatly questioned. In fact, the two experts largely agreed with each other, their only point of any significant difference being that Ms Harris stated that she would have been less ready to express the "confident" and "fairly confident" conclusions arrived at by Mr Krys, as to the likely sources of part of Deposit 2 and Deposits 10 and 11. Little turns on this.

The law

42. Before turning to a more detailed analysis of the facts disclosed, it is appropriate to turn to the law, and make several points on its terms and application, and I now do so. I have already quoted the relevant terms of s 13 of the 2007 Law above, but I repeat it here for ease of reference.

> *"13 (1) While money is … frozen under section 10* [ie of the 2007 Law]*, an application for the forfeiture of the whole or any part of it may be made by H[is] Majesty's Procureur to the Royal Court.*
>
> *(2) The Royal Court shall order the forfeiture of the money or any part of the money unless satisfied on the balance of probabilities, by the person against whom such an order is proposed to be made, that the money or the part is not*
>
> *(a) any person's proceeds of unlawful conduct, or*
> *(b) intended by any person for use in unlawful conduct."*

Various important aspects are to be noted as preliminary context.

(1) Mandatory order

43. First, under s 13 (2), if the qualifying condition is fulfilled, the making of some forfeiture order is mandatory, and not discretionary. This is a recent amendment of the test under the 2007 Law as it applied until January 2023; previously the making of any order was discretionary as the wording was "*may*" order rather than "*shall*" order. The effect of this change is somewhat awkward because of the subsequent use of the word "*any*", (ie that the court "*shall*" order "*the forfeiture of the money or any part of the money*") which makes perfect sense when the stipulation is discretionary , but not so much when it is mandatory.

44. The word "*any*" must mean "*some*", but it is left to the court to decide what (part). As the assessment is presumably not intended to confer a discretion at large, it must be intended to direct the court to evaluate what part of the money actually meets the qualifying condition in sub-paragraphs (a) and (b) and order forfeiture accordingly, and I will interpret it in this way if the point becomes material. Its significance at this juncture, though, is that the inclusion of this phrase, with that being its only sensible intention, would seem to indicate that the legislature intends the sums being forfeited to be identified as the sums found to fulfil the relevant qualifying condition in s 13 (2).

(2) Definition of "unlawful conduct"

45. Next, the qualifying condition is defined by reference to "*any person's unlawful conduct*", it being required that the funds be either the "*proceeds*" of such conduct, or "*intended for use*" in such conduct.

46. The word "*any*" in this context would seem to be emphatic and intended to make it clear that the "*unlawful conduct*" does not have to be that of the person(s) claiming entitlement to the funds. The forfeiture claim is a claim *in rem.* The origins of the funds in "unlawful conduct" by some other person, or the intention to use them for such, renders them vulnerable to forfeiture even in the hands of the legal or beneficial owner. However, the emphasis of "*any person*" does, literally extend the qualification to the possibility of the funds' being the proceeds of the unlawful conduct of "[anyone] *else in the world*": see the CoA Decision at [14].

47. "*Unlawful conduct*" is defined in s 61 of the 2007 Law, by reference to criminality. By s 61 (1)

> *"(1) Conduct which occurs in any place within the Bailiwick is "unlawful conduct" if it is unlawful under the criminal law of that place*".

By Section 61 (2), conduct is also **"***unlawful conduct"* if it is conduct which

> *"(a) occurs in a country outside the Bailiwick and is unlawful under the criminal law of that country, and*
>
> *(b) if it occurred in any place in the Bailiwick would be unlawful under the criminal law of that place".*

(The definition seems to envisage that the criminal law of the Bailiwick may be different in different places with the Bailiwick, but that is not a complication which arises in this case.)

48. Previously s 61(3), used to provide for the Royal Court to determine any of the above matters (ie the occurrence of such criminal conduct) on the balance of probabilities, but that subsection was repealed by the 2022 Ordinance, which introduced the "balance of probabilities" test into s 13 (2) itself instead, but as part of the very important amendment considered later, below under "burden of proof".

49. The simple case for identifying "*unlawful conduct*", therefore, is the examination of conduct occurring within the Bailiwick. That simply has to be (potentially) criminal under the laws of the

Bailiwick. The more complex case is where the conduct being examined occurs abroad. For it then to be "*unlawful conduct*" for the purposes of s 13, it must be both criminal under the relevant foreign law and (potentially) criminal if its commission were transposed geographically into the Bailiwick. Whilst the concept is easily understood, its application to any particular set of facts may not be so easy, especially if the allegedly unlawful conduct in question relates to a foreign jurisdiction's revenue laws.

50. Especially to lawyers, "unlawful" is a word which is capable of carrying a wider meaning, in law, than simply "criminal", but the requirement under s 61 is of criminality. Given that I am dealing with a defined concept, I will continue to refer to "*unlawful conduct*" as it may be unclear not to do so. However, wherever I do so, it should be taken that I am referring to criminally unlawful conduct except where I specifically make it clear that I am not.

(3) **Standard of "proof" of "unlawful conduct"**

51. "*Unlawful conduct*" in the context of civil forfeiture under s 13 of the 2007 Law has to be established to the court's satisfaction only on the balance of probabilities, and not to the criminally required standard of "*beyond reasonable doubt*", even though that would be the standard for any actual conviction.

52. Advocate Davies did not seek to argue, therefore, that the absence of any criminal conviction of Mr Laport must be determinative of the fact that there had been no criminal conduct (by him, at least) outside the Bailiwick. It was common ground that the presence of any criminal conviction abroad is not a pre-requisite to a finding of criminal unlawful conduct having occurred abroad for the purposes of s 13(2). (By parity of reasoning, this would apply also to conduct even within the Bailiwick).

53. Given the standard of proof mandated by s 13 (2) being merely on balance of probabilities, this approach, (ie that the presence or absence of a criminal conviction does not determine the existence or absence of "*unlawful conduct*") must logically be right, and it must be right *a fortiori* given the reversal of the burden of proof onto the account holder, referred to later. The presence or absence of any criminal conviction is thus in no way determinative of the issue here before the court. However, such presence or absence, or even evidence of charges, or allegations, from a reliable source must still form part of the overall relevant evidence to be assessed. It is not entirely irrelevant.

54. The above approach is also, in my judgment, in line with the approach to the establishment of "*criminal conduct*", recognised under the *Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law 1999* ("**the POC Law**"), which is similarly to be determined only on the balance of probabilities: see ss 1, 4 and 52(1) of that Law. This determination becomes the issue, in the "private law action" which has become the means of obtaining release of the informal freeze of a customer's funds in a bank account, produced by the filing of an SAR and a "no consent" response to a request for leave to give effect to a customer's instruction to pay: see *L, M, N and Mrs B v Credit Suisse AG [2023] GRC026* followed recently in *Loero v Credit Suisse Trust Limited* [2024]075. However too close a parallel with such cases in other respects cannot be drawn, as the POC Law is not drafted in identical terms to the Forfeiture Laws.

(4) "**Proceeds**"

55. An important thing to observe is that s 13 (2) (a) of the Law is predicated on the proposition that relevant criminal "*unlawful conduct*" does have "*proceeds*". The Law is thus aimed at depriving criminals, or persons benefitting from criminal activity, of the benefits they have thereby obtained. It is not aimed simply at punishing criminal conduct.

56. This is reinforced by the definition of the "*proceeds of unlawful conduct*" in s. 59 of the 2007 Law, which states that references to money or other property as being the "*proceeds of unlawful conduct*"

> *"include reference to money which, in whole or in part, directly or indirectly represents the proceeds of unlawful conduct*".

57. This is a matter of characterisation, which I discussed at some length in the slightly different context of the POC Law, in *L, M, N and Mrs B v Credit Suisse AG [2023] GRC026:* see there [98]-[103]. I concluded there that the meaning of the whole phrase "*represents the proceeds of unlawful conduct*" must be a common-sense test of impressionistic identity; the target funds must be capable of present identification with the wealth produced by the relevant unlawful conduct. The connection between the target funds and the unlawful conduct is one of causation and traceability (as a matter of fair impression, if not necessarily legal or equitable requirements), and is not a matter of some, or any, kind of theoretical association.

58. I note, again, the awkward reference to money "*in whole or in part*" representing the "*proceeds of unlawful conduct*" (emphasis added) as supplementing the definition of money which is to be regarded as the "*proceeds of unlawful conduct".* It is awkward because it is capable of meaning that a reference to "money" (in an account) which "*in part … represents the proceeds of unlawful conduct*" thereby becomes money (in an account) the whole of which is to be deemed to be the "*proceeds of unlawful conduct*". However, I do not interpret it as such. In my judgment, it is intended to mean that the consequences of part of the money being proceeds of unlawful conduct mean that that part only is to be treated as such proceeds. In my judgment, the 2007 Guernsey Law, unlike the Jersey Law, (*Forfeiture of Assets (Civil Proceedings) (Jersey) Law 2018*), does not have the concept of "tainted" property, by which the whole of a sum of money can become sufficiently "tainted" and therefore vulnerable to forfeiture in its entirety, by being the product of the co-mingling of lawful and unlawful funds.

59. The underlying principle of the Guernsey 2007 Law is, in my judgment, that it is the identified "proceeds" of sufficiently proven criminal conduct which are forfeitable, with the principle being that of identifying such actual proceeds in a common-sense impressionistic way, as mentioned above. I conclude that in such situation, it would only be the relevant part of any such money which was liable to forfeiture. I also note that this definition was enacted in the unamended Law, where the burden of proving such illicit provenance was placed on HMC, with which this interpretation fitted comfortably.

(5) **"Intended for use in unlawful conduct"**

60. The second limb of s 13 (2) extends the qualification for forfeiture beyond funds which are on balance of probabilities the proceeds of lawful conduct, to funds which are "*intended by any person for use in unlawful conduct*".

61. This is a readily understood concept, and is not connected with any idea of "proceeds". It is to be noted, however, that it is framed totally in the present tense, ie that the current owner/controller of the funds intends them to be used for criminal purposes. The qualifying condition thus does not encompass funds which may previously have been intended for use in unlawful conduct. (In this respect, I understand that the Guernsey Law is narrower than the equivalent Jersey Law.)

62. It follows, though, that this limb of the qualifying condition will generally only have independent effect upon funds which were obtained lawfully (or which are not, or cannot be proved to have been, obtained unlawfully), but which have now currently become subject to such an intention. This is because funds which were originally obtained through criminal conduct would already be caught as "*any person's*" proceeds of such conduct under s 13(2) (a).

63. Advocate Gist pointed out the various money-laundering offences under ss 38 – 40 of the *Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law 1999,* and submitted that merely handling sums in the account, or instructing their transfer, could constitute an offence under those sections. I agree, but that does not take the matter any further because he ultimately also agreed that, as such an offence would depend on the sums being suspected of being the proceeds of criminal conduct, anyway, and that there was currently no intention (or ability) of anyone in this case to deal with them at all, unless and until this matter had been determine in favour of their not being the proceeds of unlawful conduct, those offences were not engaged.

64. The effect, in this case, is to simplify the issues. HMC expressly does not contend that Michelle or Nicole, (or Mrs Laport) have any intention of using the funds in the Account for criminal conduct. The entirety of HMC's case lies in its contention that they (FML) do not and cannot discharge the burden of proof which the law now lays upon them, to satisfy the Court on the balance of probabilities that the monies in the account are not the proceeds of any person's criminally unlawful conduct - the obvious likely candidate being Mr Laport – within the meaning of s 13 (2) (a). I need not, therefore, consider the application of s 13(2)(b) any further.

(6) Reversed burden of proof

65. This is the amendment to the original 2007 Law, effected by the 2022 Ordinance, which has caused the most controversy in this hearing.

66. The qualifying condition for not forfeiting any previously frozen funds now laid down by s 13 (2) of the 2007 Law is that the Royal Court must be satisfied

> "*by the person claiming to own or be entitled to the funds"*

that the funds in question (whether the whole or a relevant part) are, on the balance of probabilities, not "*any person's proceeds of unlawful conduct*". This amends the previous position, whereby the burden of proof was placed on HMC to prove, as a positive fact (albeit still on balance of probabilities), that the monies in the account (or the part of them) were the proceeds of some person's unlawful conduct, rather than the claimant to the monies having to prove that they were not.

67. The new wording now, therefore, apparently places the burden of proof of the legitimacy of the source of the funds, squarely on the claimant to the funds, seemingly from scratch - and the fact to be proved is essentially a negative proposition. It is logically impossible to prove a negative as a matter of certainty, and extraordinarily difficult to prove it, even as a matter of probability.

68. The course which has been suggested in similar situations (eg, the "private law action" context of *Jakob International Inc v HSBC Private Bank (CI) Limited (Royal Court Judgment 26/2016*) and *Liang v RBC Trustees (Guernsey) Ltd (Royal Court Judgment 20/2018)* is for the claimant to prove the corresponding positive fact which displaces the negative, ie in this case, to prove positively both the source of the funds and the legitimacy of such source. Indeed, this seems to have been acknowledged and at least acquiesced in in the CoA Decision: see Para [31(4)-(6)].

69. However, the Court of Appeal was not, there, concerned with the issue now arising in this case. It was concerned with the procedural issue of whether the Law permitted HMC to start forfeiture proceedings on the basis of monies being frozen in the account, when the Respondent was in the course of proceeding with an application to release the freezing order, thereby depriving the Respondent of the right to challenge the freezing order with the burden of proof in its favour. The Court of Appeal was thus looking at the perceived effects of the reversal of the burden of proof only as context for the arguments of FML on the proper interpretation (both linguistically, and in the context of an argument that such an outcome was contrary to the protection of FML's human rights under Article 1 of the First Protocol to the European Convention on Human Rights, which

is applied into Guernsey Law by the Human Right (Bailiwick of Guernsey) Law 2000) of the procedural implications of the legislation. I shall have to return to this aspect later, and I will refer to those rights as the Respondent's "**A1P1 rights**", for brevity.

70. It is to be noted, however, that even casting the burden of proof on the Respondent as being a burden to prove positively the source of the target funds nonetheless requires eliminating uncertainties to a degree which positively overcomes the balance of probabilities threshold, including the question: how far back must one go? How far that is ever possible, can make that course appear insuperable. especially where the matters in question are so historic that obtaining relevant evidence proves difficult or impossible.

71. Nevertheless, at first blush, that is what the Law apparently says. It is more convenient to deal with detailed implications of this after having examined the relevant evidence, but at this point I am dealing with high level principle as to how this operates, and the parties' competing contentions on the law.

(i) HMC's argument

72. HMC's case, as presented in Advocate Grainge's skeleton argument, is simply that the words of s 13 (2) (a) mean just what they say – no more and no less. The funds in the Account are presently frozen under s10 of the Act, which means (the Court of Appeal has confirmed) that HMC can apply to forfeit them. Taking the analysis of the Court of Appeal referred to at [68] above (and in particular Para [31(6)] of the CoA Decision), upon any such application, it is for the Respondent (FML but in practice the daughters) to satisfy the Court that, on the balance of probabilities, the funds in the account do not represent the proceeds of any person's unlawful conduct (the focus obviously being on Mr Laport). The evidential burden of achieving this now lies on them, and if they do not achieve it the Court must forfeit the funds.

73. It is then submitted that the evidence provided by the Family (or otherwise before the Court) simply does not achieve this. It neither proves the actual source of the funds and their legitimacy, nor does it provide sufficiently strong and credible evidence that the funds could be derived from legitimate business activities, so as to displace any (necessarily pre-existing, as the funds are frozen) suspicion that they are not so derived. The four properties to which the daughters refer as demonstrating a credible source of the funds in the Account, or part of them, simply do not do so, on proper examination. The implications of the other evidence before the court, such as in particular the use of aliases to open the account, and to transact other business, suspicious circumstances such as the apparent shredding of Mr Laport's documents after his death, other apparent associates of Mr Laport having themselves been implicated in seriously criminal conduct as noted in the evidence of Mr McCreight, and the absence (it is submitted) of any convincing evidence of Mr Laport's having had lawful funds with which to open or augment the Account, are not displaced, and the Court must therefore forfeit the funds.

74. In summary, it was submitted that, on this Application the Court simply looks at the evidence in the round. With the hugely (it is submitted) suspicious circumstances surrounding this Account and all the other evidence before the court, the Court is entitled to draw a general inference that Mr Laport was engaged in criminal conduct, and then because the contrary has not been shown satisfactorily, that suffices to render the monies forfeitable.

75. It was submitted that in the only other case yet to have been decided under this reversed burden of proof, *In the Matter of the Forfeiture of Money (etc) in Civil Proceedings (Bailiwick of Guernsey) as amended and the sum of £12,960 in cash seized on 3 October 2023* Guernsey Judgment (unreported) 24th June 2024) this was exactly the approach adopted. Lt Bailiff Finch OBE held that no plausible legitimate explanation for the Respondent's carrying that amount of cash at the airport had been given, his explanations, which described an "odd" business model which did not make sense, were unconvincing. The facts were suggestive of seeking to evade tax and, in those

circumstances, the Respondent failed to discharge the burden of proof and the cash was therefore forfeitable. (The case might be more conveniently intituled "*HMC v Collins".)*

76. Whilst I note this case, I do not find it of any assistance, since the Respondent was self-represented, and the points of interpretation which have been raised by counsel in the present case were not considered.

(ii) FML's argument

77. On behalf of the daughters, Advocate Davies argues that, notwithstanding the reversal of the burden of proof, HMC must make out some initial case that the target funds are the proceeds of some identified criminal conduct. A general assertion of some completely unspecified criminal conduct does not suffice, and that is all that HMC has actually asserted in this case. There are two reasons why this is not good enough, and why some putative offence or offences must be sufficiently identified.

78. The first is a matter of interpretation and necessary implication, merely from the terms of the Law itself. Section 13 itself requires that, for funds to be forfeited, they must be identified as the "proceeds" of unlawful conduct, which since it is defined as criminal conduct, has to be identified by reference to known criminal offence(s). Unless one knows what such criminal offence(s) (ie the putative unlawful conduct in question) actually is or are, one cannot determine whether the monies can fairly be viewed as being the "*proceeds*" of such conduct. The Law therefore implicitly mandates that identifiable such "*unlawful conduct"* must be made out, in order to implement the sanction it imposes at all. The burden imposed on the Applicant cannot be so broad as to have to refute any suspicion of any type of unlawful conduct in a vacuum.

79. For that reason, it is not sufficient for HMC simply to assert general suspicion that the monies have originated in criminal conduct of some sort, and then just stand back. They are able to take that approach when seeking a Freezing Order under s 10, because that section only requires reasonable suspicion of the funds being the proceeds of "unlawful conduct" to be made out, and suspicion can of course be reasonably entertained on the basis of a generalised context of "dodginess". But the qualification for actual forfeiture is not mere generalised suspicion, but the actual linkage of the funds to being the proceeds of conduct in the nature of a criminal offence, and HMC must identify at least some such candidate offence, even if the ultimate burden of proof that there is no such causal linkage, and no other sufficiently probable criminal origins for the funds either, then rests on the Respondent.

80. Advocate Davies submits that authorities on the English *Proceeds of Crime Act 2002,* such as *Fletcher v Chief Constable of Leicester* [2013] EWHC 3357 (Admin) cannot be relied on and should not be cited, because they decide the matter under the terms of English statute law which is different from the terms of the Guernsey 2007 Law as amended, and this creates a different, irrelevant and misleading context.

81. Her second submission supporting the approach that HMC must at least specify what nature of criminal offence it claims to be material, is that, notwithstanding the express reverse burden of proof now contained in the s.13, that approach is necessary in order to provide sufficient safeguards for the Respondent's A1P1 rights, as regards not being deprived of the peaceful enjoyment of its possessions. For this proposition, she relies on the decision of the European Court of Human Rights in *Yordanov v Bulgaria* Applications Nos 265/17 and 26473/18 Final judgment: 19.02.2024 .

82. In *Yordanov*, two persons contested forfeiture orders made in respect of their property (real and personal property) under the Bulgarian *Forfeiture of Unlawfully Acquired Assets Act* 2012. That Act authorised the forfeiture of assets "*of unlawful origin*" , (which was held to mean: being the proceeds of the commission of criminal or administrative offences) and had been enacted to

remove the requirement under a previous Act of 2005 that establishment of "unlawful origin" required an actual criminal conviction. The Act also, and repeating the 2005 Act, reversed the burden of proof, requiring the owner of the target assets to prove their lawful origin. The Bulgarian Constitutional Court had previously (by a judgment of 13 October 2012) held that the 2012 Act was in accordance with constitutional guarantees of the right to property, even though not specifying exactly the types of unlawful activity which were proscribed and reversing the burden of proof as mentioned. The Constitutional Court held this to be justified as facilitating the establishment of the truth, and being a proportionate means of achieving the legislature's objective of combatting serious corruption.

83. Mr Yordanov's properties had been forfeited in circumstances where (i), he had been charged with tax evasion (but had received no gain as he had then paid the tax and fines), (ii) he had been investigated for human trafficking, black market trade and breaches of employment law, but never charged, still less convicted, and (iii) his demonstrated lawful income was so low (explanations as to the supposed origins of some of his funds not being found credible) that the assets he possessed had not been proven to be of lawful origin – ie in reliance of the reversed burden of proof. He appealed on the grounds that the State had not established any link between the suggested criminal or unlawful conduct and the assets forfeited, the domestic court having held, in Mr Yordanov's case, that no such link was required to be established; any finding of apparent criminal activity was only the starting point for enabling investigations to be made; the preconditions for actual forfeiture of assets were "detached" from the criminal proceedings (see [16] of the judgment) with the burden of proving no unlawful origin resting on the owner of the property. The parallels between that case and HMC's approach in the present case are striking.

84. It is not necessary to trace the entirety of the Court's reasoning, much of which is concerned with the point, which there was still contentious, about whether forfeiture of assets could be justified in the absence of a criminal conviction. In its ultimate assessment, however, the Court first noted (see [98]) that, in order to comply with A1P1, an interference with property rights (which a civil forfeiture obviously is) must meet three criteria. It must be lawful, be in the public interest, and strike a fair balance between the demands of the general interest and the applicant/owner's rights.

85. The forfeiture was plainly lawful in terms of its domestic legislation, and it also pursued the legitimate public interest of preventing the acquisition of property through criminal or administrative offences. However, in respect of the third criterion the Court held it to be established that

> "*in judicial proceedings concerning the right to property, an individual must have a reasonable opportunity to put his or her case to the competent authorities and to challenge effectively any measures interfering with the rights guaranteed under [A1P1]":* (see [112]).

It held that the requirement of proportionality under the third, "fair balance", principle would be infringed if an "*excessive*" burden were imposed on the holder of the target assets, by other features of the operation of the law, which tilted the proceedings in favour of the State. Several such features were present in the Bulgarian Act. Particularly mentioned were the reversal of the burden of proof, coupled with the retroactive application of the law, (though by that time only for 10 years rather than the previous 25 years) rendering it difficult for applicants to prove a lawful income source or the lawful provenance of assets. It was held that these features did impose such an excessive burden, when coupled with the removal of the obligation on the State, (it had been removed in the 2012 Act) to establish some link between the assets forfeited and the predicate offence (see [121]). Whilst this requirement for some such causal link had been reinstated by the Bulgarian Supreme Court by judicial construction, in an Interpretative Decision No 4 of 7 December 2018, this reinstatement been immediately overturned by Parliament.

86. The Court's decision in those circumstances was that,

> *"for a forfeiture under the 2012 Act to be in compliance with the requirements of Article 1 of Protocol No 1, it is essential, as a counterbalance to the potential deficiencies discussed above, that the domestic courts provided some particulars as to the offences, criminal or administrative in which the assets subject to forfeiture are alleged to have originated and showed, in a reasoned manner that there could be a link between such offences and the assets in question."*

In effect, there was an obligation on the State, independent of the reversed burden of proof, to identify allegedly relevant offences and show how the assets could have been the proceeds of these.

87. Advocate Davies submits, that the material similarities between the structure and the operation of the legislation considered in *Yordanov* and the 2007 Law as amended, are very apparent. There is the reverse burden of proof, the lengthy retrospective effect of the State's Application, the difficulties likely to be faced by the Respondent in procuring affirmative evidence, and the omission of any express requirement in the Law for the State to specify some logical causal link between the funds and any "predicate offence" said to qualify under s 13 (2). In those circumstances she submits that the Court should, indeed must, construe the 2007 Law in the same way as indicated in *Yordanov,* namely by interpreting it as requiring the demonstration of a "causal nexus" between identified or identifiable acts of unlawful conduct (ie recognised criminal offences) and the funds sought to be forfeited as potentially being their generated "proceeds".

88. She observes that in the CoA Decision, the Court of Appeal was referred to *Yordanov* and impliedly recognised its application, when holding that the opportunity of the Respondent to contest the grounds for freezing or forfeiting its assets provided by the procedure under s 13, did provide the Respondent with a reasonable opportunity to protect its property rights, as required by the principle of *Yordanov,* despite the reversal of the burden of proof from that which would have applied in relation to the Freezing Order, when matters moved to an application for a Forfeiture Order. The Court of Appeal had in no way distinguished *Yordanov* on this point, which meant that the whole effect of *Yordanov* had to be applied.

89. She submitted that the requirement that there should be a demonstrable causal nexus between the target funds and the unlawful conduct alleged to justify their forfeiture is a fundamental safeguard of the Respondent's A1P1 rights, without which forfeiture becomes disproportionate. This safeguard can only be effective if the legislation is interpreted as requiring the State to identify, with sufficient particularity, the criminal offence(s) which it argues can be made out, and of which the funds can be credibly argued to be the proceeds, so as to enable the Respondent to know the focus of what it has, in effect, to disprove. The State must specify this with sufficient clarity in the first place; only then can the reversed burden of proof actually kick in.

90. Thus to apply s 13 (2) in conformity with FML's A1P1 rights, HMC must make clear what putatively criminal conduct he is relying on as the origin/source of the funds – if not in the detail which would enable an indictment to be drawn, then at least in sufficient detail to enable the nature of the offence and when and where it is supposed to have occurred to be understood – and he simply has not done so. HMC's argument merely relies on allegations of unspecified "unlawful conduct" as a matter of general assertion; he alleges no specific instance of unlawful conduct, at all. Advocate Davies submits that this is simply inadequate, and that that deficiency is a first, and total answer to the Forfeiture Application.

91. Whilst still submitting that, being on differently worded legislation in a different context, the English cases gave no reliable assistance on the effects of this Guernsey Law, she submitted as an alternative and a partial retreat from her first proposition, that if a general, unspecified allegation of unlawful (criminal) conduct could fulfil the requirements of a properly founded Forfeiture Application, this could only be on the basis that the circumstantial evidence for the funds being the proceeds of some criminal conduct were so extremely strong as to amount to an "*irresistible inference*" of some such qualifying origin.

92. In this context, I think she did accept the analogy of the English case of *Fletcher v Chief Constable of Leicester* [2013] EWHC 3357 (Admin). In that case, an honest builder, repairing a derelict fire-damaged flat, discovered a metal box hidden under kitchen units, containing £17,940 in £20 notes tied in bundles of £1,000, which he handed in to the police - who then claimed that they should be forfeited under the English *Proceeds of Crime Act 2002 s 298*. The court found, from the factual evidence, that the cash must have been deliberately hidden, and that its nature (notes of a single denomination, in uniform bundles) and the circumstances (concealed in the fabric of an unoccupied building) indicated that it simply must have been the proceeds of some criminal activity even though the actual nature of this could not be specified – and that the Hider must have intended to recover and use it, at some time. In view of its obvious criminal character but the intention to use it in the future, the cash was therefore property intended to be used in what would be unlawful conduct, namely money-laundering. That brought it within the condition for forfeiture under the English legislation authorising forfeiture of the proceeds of crime. It is to be noted, therefore, that it was the "intended for use in" unlawful conduct qualification which was used to justify forfeiture in that case, and not the direct "proceeds of" unlawful conduct qualification.

93. The two-fold qualification, ie that the funds must either be causally linked to some identifiable criminal offence, at least in terms of type, or that the circumstances must give rise to an "irresistible inference" that their origin can only be criminal conduct (as defined in the relevant legislation) albeit unspecified, seems to have been indorsed in an appeal concerning English money-laundering offences in *R v Anwoir* [2008] EWCA Crim 1354: see [21].

94. Advocate Davies submits, however, that even if that extension is permissible, the facts never get to the point where HMC can possibly make out any such "irresistible inference" as to the necessarily criminal origin of the funds, and, indeed, he has not even attempted to do so, because he has relied, solely, on the reversed burden of proof as relieving him of any obligation to establish anything as regards possible criminal conduct, and throwing the burden entirely on FML to prove the negative.

95. Lastly, and in any event, her third submission is also that even if the above were wrong, and her clients are required to demonstrate positively that, on balance of probabilities the funds are not the proceeds of any person's unlawful conduct from scratch, the evidence which they have submitted as part of the evidence before the Court, does, in fact, surmount that threshold. That, though, will be a matter of examination of the evidence.

(iii) HMC's response

96. In response to the above, Advocate Gist submitted that Advocate Davies' propositions were incorrect, and that the Court was simply required to look at the evidence "in the round" and decide whether, on balance of probabilities, it was satisfied, in all the circumstances, that the funds in question were not the proceeds of any person's unlawful conduct. It was for the Respondent to make this out, and if it failed to demonstrate this fact on balance of probabilities, then the logical corollary is that, on balance of probabilities, they are the proceeds of some person's unlawful conduct, and it follows that they must therefore be forfeited. He submitted that, taking the evidence in the round, the Court simply could not satisfied of that negative proposition, and that was really the nub of the case.

97. In response to the court's question, whether, since this argument depended on the burden of proof, it meant that if the Court came to the conclusion that it just did not know whether the funds were the proceeds of criminal conduct or not, HMC won its case. He submitted that it did mean that.

98. He went on to submit, although only in closing submissions, that if it were necessary to identify particular criminal offences which had arguably been committed and of which the funds could be the proceeds, then that could, in fact be easily done. However, as I am here dealing with the

principles mandated by the reversed burden of proof, I will leave consideration of that more detailed point to later.

(iv) Discussion and conclusion

99. The issue at this stage is whether or not, in view of the imposition of the burden of proof as now laid down in s 13 (2) of the 2007 Law, it is necessary for the State (HMC) to identify, in the course of any application for forfeiture of particular funds in an account, the criminal offence(s) which it argues did, or must have, occurred and which had generated those funds, so as to justify their being forfeited in accordance with that Law. Advocate Davies says it is necessary; Advocate Gist says that with the reversed burden of proof, it is not.

100. I prefer Advocate Davies' submissions, in this regard, although ultimately in the slightly attenuated form of her second submission noted above.

101. Notwithstanding the reversed burden of proof, I am satisfied that, in order to forfeit funds under s 13 (2) (a), HMC does have to specify relevant possible offence(s) and indicate the suggested causal link to the funds, for either one, or both, of the reasons she gives. The first is simply that the power to forfeit itself, in my judgment leads to this because of its own language; it is conferred only in respect of money which fulfils the specified criteria Those are that the money is sufficiently identified as the proceeds of unlawful (ie criminal) conduct, and one cannot identify money as the "proceeds" of anything without identifying what that thing is. Moreover, when the alleged source is "foreign" criminal conduct, the need for identifying the relevant criminal conduct becomes even more obvious, because of the "dual criminality" qualification for the funds to be forfeitable, at all.

102. The second reason, although this may, in effect, be the first reason by a different route, is that I also accept her argument based on the *Yordanov* case, that without such a requirement as a safeguard, the terms of the reversed burden of proof risk imposing such an excessive burden on a person seeking to defend their rights of property that it would be a disproportionate interference with those rights in terms of A1P1. Whilst *Yordanov* concerned Bulgarian legislation, the parallel with the terms of the 2007 Guernsey law as amended is very notable, as discussed above. (I should mention that I have not had to consider the subsequent consolidating *Forfeiture of Assets in Civil Proceedings (Bailiwick of Guernsey) Law 2023* which has repealed the amended 2007 Law, which may not be in exactly the same terms.)

103. As I have said, I accept Advocate Davies' submissions in their second form. I do not, in fact, regard the English cases of *Fletcher* and *Anwoir*, as being of any real assistance in this case, because they are concerned with different, English, legislation, different offences, different contexts and different facts, and the interpretative considerations in this area of law are very intricate. However, I consider that a similar two-fold approach of principle is correct, simply applying the language of the 2007 Law naturally. I accept, therefore, that HMC should be able to succeed in forfeiting money if, in the particular circumstances of any case, it can be said that, whilst no conduct constituting an identifiable criminal offence can be identified, nonetheless, the circumstances are such that there is no plausible explanation but that the funds are the proceeds of some criminal conduct (of course, still meeting the qualifying "dual criminality" requirements in the law, if appropriate). The principle that a forfeiture is effected on the proceeds of demonstrated criminal activity is thereby preserved, but, so long as the Respondent knows that that is the proposition, or one of the propositions, on which HMC's application is to be made, it will obtain the necessary "fair opportunity" (which is what the *Yordanov* principle requires) of contesting that argument. The "fair opportunity" required is not so much a procedural opportunity simply to make a case, but an opportunity which is fair because the party concerned does have knowledge of the focus of what he needs to disprove.

104. I therefore hold that, notwithstanding the reversal of the "burden of proof" in the amended s 13 (2), it is necessary for HMC to specify what "unlawful conduct" within the meaning of that section it is relying on, either as an identified criminal offence or offences with an identified causal nexus to the target funds, or on the grounds that there is an irresistible inference that the target funds can only be the proceeds of some criminal activity, even if of an unidentified type, and in each case to demonstrate fulfilment of such offence(s) with the requirements of s 61.

105. I accept that this all has to be specified only to the minimum level of being arguable - which makes it completely consistent with the determinative burden of actual proof being placed on the Respondent - but it must be so specified. It must also be so specified having regard to the qualifying conditions of s 13 (2), including the "dual criminality" condition, if applicable.

106. I should just note, though, that whilst this is my holding on this point, I apprehend that it will not, in practice, be of very great significance, for the following reason. In practice, – at any rate under the terms of the Law with which I am here concerned, - there will almost inevitably have been some case already made out as to what relevant criminal conduct and what link to the target funds, is suggested. This is because a "reasonable suspicion" of this will have been had to be disclosed in any preceding application for a Freezing Order. The Respondent will therefore, in the usual case, already have notice of the kind of case which is being alleged to justify forfeiture and thereby will have already some indication as to where its evidential efforts should be directed, even if it may then be required to go more widely, depending on what the actual circumstances may suggest, because of the reversed burden of proof.

107. Indeed, this seems to be what the Court of Appeal in the CoA Decision had in mind as the normal case, when they said at [31(4)] that in the normal case

> *"the account holder will have to start by dispelling the grounds of suspicion relied on by HMC when obtaining the Freezing Order. If they can do that, then it will be for the Court to establish how much evidence it will require in order to establish the matters which need to be proved in order to avoid forfeiture"*

whilst simultaneously acknowledging, at [31(5)] that, on the wording of the Law,

> *"the account holder would have to do more than disprove a particular case made against them by HMC; they have to prove the absence of any case which might be brought against them in relation to any wrongdoing or intended wrongdoing committed by any person"*

suggesting that

> *"In effect they will have to satisfy the Court that the provenance of the money in the account is untainted by unlawful conduct…".*

108. Importantly, though the Court of Appeal was not, there, examining the actual manner in which the subsequent application for Forfeiture would have to be conducted, and how the reversed burden of proof could practically (and in accordance with A1P1 rights) be given effect, which is the issue before me. This is because they had already remarked, at [31(3)] that the issue of "reasonable grounds for suspicion" (with which they were dealing) and the issue of whether the account holder could prove that the monies in the account should not be forfeited were two distinct issues.

109. I do not, therefore, consider that these dicta preclude the conclusion which I have reached, and I note in particular, (as submitted by Advocate Davies) that the Court of Appeal itself analysed the European Law cases, including *Yordanov,* and specifically held that the question of the application of the reversed burden of proof in the Forfeiture Law would be a matter for the court

conducting the forfeiture hearing and it recognised that one of the principles of this was that the reversed burden of proof should only be applied

> "*once the state has first demonstrated some form of causal nexus between the asset to be forfeited and the criminal or unlawful activity, and the existence of that causal nexus must be capable of being challenged by the owner of the asset.*"

I consider that that is the principle which I have applied.

110. The Court of Appeal also noted, at 31(6), that HMC's submissions appeared to assume that the reversal of the burden of proof had the effect of relieving it of any need even to defend the grounds for its reasonable suspicions which had been necessary to justify the freezing order, but it did not opine as to whether that was correct. Even in that case, though, the Respondent is likely to have obtained some fair and reasonable notice of the likely target at which to direct its energies in discharging the onus of proof imposed upon it (which is what I am concerned with) if criminal offences have there been identified.

(7) Are any identifiable criminal offences and arguable causal nexus sufficiently identified and made out?

111. The next point is, therefore, whether in point of fact any such sufficient identification of arguable qualifying criminal conduct and a causal nexus to the funds has been established in this case.

112. The possible need to identify conduct which would disclose the elements of an identifiable criminal offence or offences in order to meet the requirements of s 13 (2) (a) of the Law had apparently not been appreciated by HMC before the hearing. Advocate Gist merely submitted that it was plain that criminal conduct had occurred, on the general basis that in opening and conducting the Account in the *persona* of "Mr Magill", Mr Laport had clearly committed criminal offences.

113. It was only in closing submissions, in answer to the court's question as to what those offences actually would be (bearing in mind that it was necessary to identify their "proceeds" in order to justify a Forfeiture Order, and that whilst the word "fraud" was easily bandied round descriptively, offences of "fraud" would have to be capable of being related to the elements of an identifiable offence within that family) that he sought to specify particular offences.

114. He submitted by reference to extracts from *Archbold* on *Pleading Evidence and Practice in Criminal Cases 36th Ed 1966* and a later 2003 Edition, and certain other texts, and that such offences would have been

- forgery, citing ss 1 (1) and (2) of the English Forgery Act 1913. (This is, by s 1, the offence of "*making of a false document in order that it may be used as genuine, with intent to defraud or deceive*". Whilst most elements of the falsity of a document as laid down are simply not applicable, the definition of a false document as "*purporting to be made by or on behalf of a deceased person*" would apply to the application form submitted for the Canadian passport, although arguably not to the passport itself);

- uttering a forged document (constituted by making any use of the false passports, which he submitted must have occurred in connection with opening and maintaining the Account, and which is stated in the 1966 Edition of Archbold to be a misdemeanour at English common law);

- obtaining by false pretences (citing the Larceny Law (Guernsey) 1958 and noting customary law offences of "*obtenir sous de faux-prétextes*" which were treated as public

order offences in the 19th century, described in an extract from an undated edition of *Criminal Law of the Bailiwick of Guernsey* by Michael Marshall); and

- obtaining services by deception, (citing the English *Theft Act 1978 s 1,* which introduced such offences in England and Wales, and which was seemingly adopted into Guernsey Law by the *Theft (Bailiwick of Guernsey) Law 1983)* citing particularly s 15A - I am not sure when this was inserted - which made it an offence *"by any deception dishonestly to obtain a money transfer for himself or another",* suggesting that this would cover opening and using the Account facilities by using a false identity.

Moreover, the latter three, he submitted, would have been committed in Guernsey itself.

There was also the matter of

- tax evasion, and I note, from the extract in the 2003 Edition of Archbold, that it was acknowledged in England that there was a common law offence of "*cheating the public revenue*", and that the Fraud (Bailiwick of Guernsey) Law 2009, although after the event, expressly "preserved", by s 13, the customary or common law offence of… "*cheating relating to the public revenue*".

Advocate Gist floated, in addition, the possibility of

- money-laundering offences

but ultimately recognised that this really added nothing to the question whether the funds in the account were themselves already the proceeds of unlawful conduct, which would have to be shown in order to make out any such offence: see [61] – [63] above.

115. Advocate Davies, not surprisingly, objected that this was a forensic ambush, since there had been no reference to such offences (except a general mention of money-laundering) previously and there therefore had been no reasonable opportunity to consider whether the required elements of such offences had actually occurred, and when (insofar as they were statutory rather than common law and would require to be considered under current legislation,) and where, (since there would be arguments arising out of the "dual criminality" requirement), and how their "proceeds" would be identified, and there were intricate legal arguments which might be attached to any of these points.

116. In the short time available, however, she produced some arguments and also the report of *R v Halai* [1983] Crim LR 624, which considered five charges of offences under the English Theft Acts 1968 and 1978. This case was based on the defendant's having presented cheques to a building society to open a savings account with a view to obtaining a mortgage advance, when he knew the cheques would not be honoured, and having misrepresented his employment status. The conviction for obtaining services by deception which relied on his inducing the bank to get a survey report by giving it a (bad) cheque for the survey fee was upheld as such. The conviction for theft by obtaining a £100 withdrawal of cash, knowing that the two other cheques paid into the savings account which he had represented would back the withdrawal would not be honoured was also upheld. However, three further convictions of dishonestly obtaining services by deception in relation to the opening of the savings account, the augmenting of the balance supposedly in the savings account with the second bad cheque and seeking to obtain a mortgage advance were quashed by the court on the basis that the counts were bad because neither the opening, nor the maintaining, of a savings account, nor getting a mortgage advance, was a "service", and the mere administration of the account was not anything which was being paid for by the bad cheques. (The effect of the decision in relation to the mortgage advance was reversed by statute in 1996.)

117. Advocate Davies submits, therefore, that, by parity of reasoning, no case of obtaining services by deception is revealed by the facts of this case, so as to begin to provide the foundational requirement of "unlawful conduct" for the proposes of s 13.

118. I accept Advocate Davies' submission on this aspect. The Guernsey offences of obtaining by false pretences, which were also actually aimed at assets rather than services, seem to me, also, to fall into the same category. The offence of obtaining a money transfer by deception also requires "dishonesty" as a specific further element, and whilst the false passport document itself may have been obtained dishonestly, it is far from clear that it could be said that any money transfer was obtained with the necessary dishonesty, since the Account was operated in a perfectly regular way, and no-one seems to have claimed to be cheated or overreached.

119. The material submitted in support of the supposedly "obvious" commission of any of the four offences initially suggested, coming largely from English sources and without analysis of the application of the elements required, is also unclear, intricate and problematic, but one very obvious problem with the offences of forgery and uttering a forged document, which Advocate Gist suggests can clearly be taken to have been committed, is that they are not offences which produce any "proceeds". The "proceeds" of a forgery are only the document itself. The "proceeds" of uttering a forged document – even assuming that that offence were made out on the facts, since it is indeed an assumption that the passport, as contrasted with possibly a signature, was actually used to open or maintain the Account, in the historic times in question – are only the provision or continuance of the account facility. In neither case can the funds in the Account be viewed as the "proceeds" of that piece of unlawful conduct, by similar reasoning to that in the *Halai* case.

120. This leaves only tax evasion. That is the form of criminal conduct which most obviously springs to mind (I note that it was the court's obvious thought in *HMC v Collins* above) and it is also conduct which is likely to be similarly regarded as criminal in both Guernsey and any relevant foreign jurisdiction. But that is not quite an end to the matter, however, as there must be arguments about how far the geographic transposition of the relevant conduct affects the "dual criminality" position. Does the offence of failing to declare relevant income to a tax authority occur where the tax authority office is situated, or where the taxpayer completes his declaration? How does one identify the conduct which is then to be considered, as to whether it would also be criminal if occurring in Guernsey, if Guernsey law does not (as I imagine it does not) contain a criminal offence of failing to declare income to US tax authorities. This kind of point would all have to be considered before the terms of s 13, even as to "unlawful conduct" could be held to be fulfilled.

121. All the above considerations show that the question of the identified criminal conduct test in s 13, and its proceeds, is not necessarily easy, nor can it be fairly presumed at a high level. For present purposes, insofar as it may be necessary for an identifiable criminal offence to be cited and considered for the purpose of satisfying the criminal conduct qualification of s 13 (2) (whether single or dual), and to have generated identifiable proceeds which can be seen as fairly represented by money actually in the Account, I am not satisfied that any such offence is actually made out from the facts discussed above, either as a matter of probability or as to a matter of causal nexus.

122. My only hesitation has been as to tax evasion. First, of course, there is no suggestion of FML having evaded tax, and it is, in any event, not taxable in Guernsey. No evidence as to its possibly incurring any tax liability in any other jurisdiction was suggested, and in the absence of any evidence as to the revenue laws of any other jurisdiction, I understand that I start from the proposition that they must be the same as Guernsey law.

123. Obviously, the only real candidate as to tax evasion being the relevant unlawful conduct is Mr Laport. However, even if I might think that the probability of his having evaded tax is plausible,

that does not get over the technical problems of applying the "dual criminality" test as laid down by the Law to offences of tax evasion, and nor does it surmount the problem of identifying a sufficient arguable "causal nexus" with the moneys in the account. The "proceeds" of tax evasion are the tax which has been evaded, and not the entire funds. The Guernsey Law has adopted the approach of confiscating the proceeds of criminal conduct, and not, in this section, the instrumentalities by which criminal conduct may be effected, which might arguably extend to the funds which were illegally not declared. However, none of the above points were even adverted to, let alone argued, at this hearing before me, and insofar as I was invited simply to take a general view that some criminal conduct, (which could include tax evasion), must have occurred, and that a causal nexus could (in effect) be assumed unless the contrary were proved, I have already held that that is not the law.

124. I therefore conclude that invoking the possibility of tax evasion does not and has not fulfilled the requirement on HMC to identify, to the level of arguability, some criminal offence which has actually been committed (together with an arguable causal nexus to the funds) or a factual scenario which itself demonstrates that a causal nexus between the funds and criminal conduct of some kind is, realistically, irresistible.

Conclusions on point of law: primary decision.

125. In summary, therefore, I have accepted Advocate Davies' submission that, notwithstanding the reversal of the eventual burden of proof under s 13(2), there is an onus on HMC to establish a causal nexus between the Funds (or a relevant part of them) and unlawful (ie criminal) conduct falling within the descriptive qualifications posited by s 13 (2), either for being identifiable arguable criminal offences, or because the circumstances of the funds arguably show an irresistible inference that they are the proceeds of some kind of criminal conduct. I have also found that HMC has not done this.

126. It follows that I will dismiss the application on this ground, and this is my primary decision. However, in case that is wrong, and the proper approach is, indeed, that in the circumstances of this Forfeiture Application having been brought, the burden now simply falls on FML to demonstrate generally, on balance of probabilities that the funds in the Account are not anyone's proceeds of unlawful conduct (as defined) I turn to consider this.

Secondary decision, applying the reversed burden of proof alone:

Does FML demonstrate, on the balance of probabilities, that the funds are not the proceeds of any person's "unlawful conduct"?

127. As to this, I have on reflection concluded that my question to Advocate Gist (see [97] above) about the effect of the reversed burden of proof, is not the appropriate question. That approach may be appropriate in considering the burden of proving an affirmative fact, ie that something is more likely than not positively to be the case, an exercise with which both logicians and lawyers are more familiar, but it ignores the negative nature of the matter which the Law now requires the Respondent to "prove" in this case.

128. In my judgment the correct approach in such a situation is, indeed, to balance the probabilities, but against each other.

129. To do this, I consider that the correct approach is to take all the evidence in the round (as Advocate Gist submits) and to assess the relative strengths, simply, of the body of evidence which points to the funds probably, or possibly, being the proceeds of criminal conduct on the one hand, and the body of evidence which points to their probably, or possibly, not being the proceeds of criminal conduct on the other. If the latter feels to have the greater weight, then the Respondent has discharged the onus of satisfying the Court "*on the balance of probabilities*" that the funds

are not any person's proceeds of unlawful conduct. If the former feels to have the greater weight then the Respondent has not done so and the funds are forfeit. In my judgment, this approach appropriately addresses the situation where the evidence in the case is sparse, or insubstantial or circumstantial, such that the Court might be inclined to feel it simply "does not know" and that the burden of proof therefore determines the result. It involves the Court making an actual decision and judgment of the relative balance of the apparent probabilities.

Evidence and facts

130. I therefore now move on to consider the evidence and the facts in the case so as to determine whether the Respondent would satisfy me, on balance of probabilities, that the funds in the Account are not the proceeds of any person's unlawful conduct as required by s 13 (2) of the 2007 Law. It is convenient to do so by particular topics, and then to gather together the overall result. There is, however one preliminary point to be disposed of.

Was Mr Laport also Mr Magill?

131. I need to record here a specific finding that he was.

132. This may seem strange in the circumstances, but Advocate Gist was not prepared to concede this point in the light of his instructions, seemingly because Mr McCreight was not prepared to concede this point, even though, to my mind, it is perfectly obvious.

133. Mr McCreight had expressed his view that this fact was not established in view of reports obtained in May 2019 from

    (1) a US Forensic Image Analyst, a Mr Matthew Stephens, who examined the six passport photographs in the three Magill Canadian passports and the three Laport US passports and concluded that, whilst each separate set was of the same person, there were apparent differences in "ethnic/heritage" and "jawline/jowls" between the two sets which were "*irreconcilable*", such that it could not be the same person in both sets; and

    (2) a US Forensic Handwriting and Signature Examiner, Mr Richard Brown, who had examined both the passport signatures and signatures on other documents of Mr Magill and Mr Laport and had given the inconclusive opinion that a certain opinion of common authorship could not be given, that there were anomalies but "no firm evidence" about some of the Magill signatures, that there was no evidence that the Laport signatures were not made by the same persons, and that the possibility that all signatures were made by the same person could not be ruled out.

    I note, however, that both examiners were working from copies.

134. As against this, all of Mrs Laport, Nicole and Mr Collins (in a previous affidavit in other proceedings) had stated that they were aware, at the time, of Mr Laport using also the name Magill in some if his business dealings and having a Canadian passport in that name. Mrs Laport had accompanied him when he had found the name of the deceased infant Magill in Canada in order to obtain the Canadian passport, and had been with him when he collected it. All these persons claimed to recognise that the photos on both sets of passports were of Mr Laport. The Magill passports were discovered amongst Mr Laport's effects after his unexpected death. The Cook County Judge had been prepared to grant a certificate to the Estate that Mr Laport and Mr Magill were the same person in 2006, and, indeed, so had the Guernsey Royal Court in 2007 ("**the Recognition Proceedings"**).

135. Mr McCreight raises certain matter which he says are suspicious, such as that that Mr Collins had reported that Mr Laport had said that on one occasion he had filled his mouth with cotton

pads for the purpose of obtaining a Magill Canadian passport, so as to look different, and this was illogical, as the point of obtaining a false passport in another name must be that it would look like oneself. It was therefore suspicious. I really do not see that that follows; in fact the illogicality rather supports the Family's submission that Mr Laport was more focused on the amusement of being able to "be" another person than facilitating the carrying out of criminal activity. Nor do I find any of the other matters which he raises, such as complaints that the Family had sometimes not produced all of the passports, or originals of the passports or signatures, to carry any great weight in the face of the overwhelming evidence that Mr Laport was also Mr Magill. The Forensic Examiners' opinions are insufficient to displace that, even on a balance of probability. Moreover, if Mr Laport was not Mr Magill, then there was some other "Mr Magill" somewhere who carried out the relevant business transactions, and that idea is just fanciful. It is inconceivable, in my judgment, that any such individual would not have shown up, somewhere in the story.

136. I am perfectly satisfied therefore, from the entirety of the evidence, that "Thomas H Magill" was an alias used by Mr Laport for conducting certain business transactions principally in or from the Bahamas, that Mr Laport obtained a sequence of Canadian passports in the name of Thomas H Magill, and used them for identification purposes when it suited him to do business in that name, and that he did so in relation to FML. That does not necessarily mean that the business which he chose to do in that name was itself unlawful, nor that it had unlawful aspects. I do accept, of course, though, that it is a suspicious circumstance As I said at the Freezing Order hearing, doing business under an alias is not a normal way of behaving, and the obvious inference is that one wishes to keep one's real identity concealed for some purpose.

Use of aliases

137. I have, as I have said, accepted that the use of an alias is a circumstance provoking suspicion, even if it is not automatic evidence of criminal conduct. Whilst it is not, in itself, unlawful to use an alias, that will depend on what the alias is used for. I accept that it must have been the case that the obtaining (and by the same token the renewals) of the Magill Canadian passport would have entailed criminal conduct, and that might be said to be some evidence that Mr Laport was not necessarily averse to committing crimes. However, on its own, that merely goes to propensity rather than evidence of any other criminal activity or of the source of the funds in FML's Account being criminal activity.

138. It can of course be said that the evidence, even of propensity, is compounded by the fact that Mr Laport apparently used several aliases. The Clive Knowles who procured the setting up of FML in the Turks & Caicos Islands in January 1989 turned out to be another alias of Mr Laport, supported by a (forged) Australian Driving Licence. Due diligence was less rigorous in 1989. The company formation agents, Britannic Management Limited, had subsequently dealt only with "Mr Knowles" through an accommodation address, but their charges had always been routinely met. After Mr Laport's death, the Family came to know of at least three other aliases used by Mr Laport (Anthony Henreah, Anthony Thompson and John G Hart), and Mrs Laport confirmed this in her evidence. However, there is no evidence of any of the circumstances in which such further aliases may have been used. This no doubt increases the weight of suspicious circumstances and propensity, but again does not, in itself, provide evidence of any criminal conduct in respect of the origins of funds in FML.

Mr Laport's personality

139. Whilst Mr Laport's observed personality is, once again, only indirect evidence, it helps paint a picture of Mr Laport and thus arguably of the likelihood of his being associated with criminal conduct in his dealings with FML's funds. From all the evidence (and I include matters referred to in Ms Gardner's evidence and in the evidence of reports and interviews conducted by the FBI

and the US IRS (Criminal Division) exhibited to Mr McCreight's affidavit) I derive the following.

140. Mr Laport was a secretive man. He gained personal satisfaction from knowing he had secrets. He was also very driven, in his work, and probably generally, by a need for personal success. I have no doubt that this would have been gratified mainly by gaining wealth and material success and the status, real or perceived, which that brought him. Mrs Laport said that he needed to feel that he was cleverer than other people. He gained satisfaction from feeling that he had "got one over" on other people. This would have been satisfied not only by his secretiveness, but also by his being a ruthless operator in business, which I have no doubt he was.

141. He was self-oriented, as independently shown by his being diagnosed as having Narcissistic Personality Disorder by a forensic psychiatrist who was assessing both him and Mrs Laport in connection with a custody battle, which Mr Laport initiated (and lost) regarding Nicole, shortly after the couple divorced in 1982. The psychiatrist said he viewed his children through the lens of his own needs and wishes rather than recognising their independent needs.

142. That however, is not to say that he did not care deeply about his daughters; the evidence suggests that they eventually developed a reasonably good, if possibly turbulent, relationship (Nicole says that they were not close) but I nonetheless find it reasonably clear that his intentions in setting up the funds in FML, probably right from the start, were to seek to provide for them. He deposited the FML bearer shares first with another lawyer, a Mr Davidson, and subsequently with Mr Collins, with instructions to that effect, even if he was not prepared to relinquish his own control over the assets by creating a trust, and, certainly latterly, he was apparently prepared to use FML's funds for his own business purposes (payments to Evenstar Ltd) if he thought fit.

143. All accounts of him suggest that he was competitive, aggressive, dogged, determined, and litigious, even if capable of being charming. As a lawyer, he was not afraid of litigation, even personal litigation and would readily have used the courts, even for tactical reasons. He was certainly litigious.

144. Mr Laport practised in the field of personal injury law. In the United States. This means that he would have made his law practice living by gathering the business of pursuing (or defending) cases, but working on a contingency fee basis. I am satisfied that this would have been a very volatile, stressful and cut-throat area of work. Participants would succeed by being ruthless. The evidence suggests that Mr Laport did not himself act as a trial lawyer, but as a bringer of business and a claims negotiator, and that he would farm out actual trials, if it came to that, to other businesses - but taking a percentage of the fees earned, as a referral fee. It also suggests that in latter years he ceased much active practice and concentrated on his investments.

145. Mr McCreight disputes that Mr Laport can have been that successful given what he sees as the limited number of cases listed in various court records as involving Mr Laport or his firm. In the circumstances I do not agree that this provides such evidence. I am satisfied that there will have been matters not appearing on court files which would justify the description of "successful". I also do not set much store by the fact that he was at least three times a Defendant in a malpractice suit. In the United States, and particularly in the kind of area I which Mr Laport practiced, this was an occupational hazard.

146. Furthermore, Mr Laport was not just a lawyer, but also a businessman and an investor, and, it seems to me, to a significant extent. Many lawyers with a commercial leaning follow that course, being introduced to projects or businesses on a personal basis by clients or becoming alerted to them from information gained in the course of their legal work. Persons who are entrepreneurial and even ruthlessly entrepreneurial are not necessarily criminal. The evidence suggests Mr Laport's involvement, using the name Laport, in various commercial development and other projects over the years, and we are talking of a career spanning 30 years, in several such projects.

At one stage, he was seeking to get his office premises in Illinois turned into a strip club. He might not, therefore, disdain such somewhat "suspicious" areas of business in the pursuit of profit, but such entrepreneurship is not unlawful, and subsequent publicity regarding connections with crime, noted in the K2 Report, did not mention Mr Laport.

147. Again, I have no doubt that his business projects were not always smooth running, and I have no doubt they will have been operated in a very hard-nosed fashion. Furthermore, I also have no doubt that having a reputation for being hard-nosed and ruthless was something he would have seen as a business advantage, given his personality and the kind of business he was in. There is evidence of this succeeding, in that Mrs Laport accepted a low rate of child maintenance for Nicole, after their divorce in 1982, not (she confirmed in cross-examination) because she accepted that Mr Laport could not afford more because he was not (in fact) "successful", but rather because she could not face dealing with him as an adversary in a legal suit. She says, though, that they later achieved a reasonably friendly relationship.

148. Mr Laport is recorded, by Mr Collins and others, as having expressed a wish and determination, in times of debt or difficulty, to keep his assets out of reach of his creditors. He expressed similar sentiments in respect of his former wife. I have no doubt that he would have sought to take steps to achieve this; it is not an uncommon attitude and practice, but it is not criminal, and only becomes so if criminal acts are adopted. There is no evidence of this.

149. There have been suggestions that Mr Laport claimed to "creditor-proof" himself by constructing artificial lawsuits between companies which he controlled, so as to make it appear that he was effectively without wealth. In particular, it was suggested that a judgment of $6.6Mn which was entered against Mr Laport on 14 September 1981 from a company called Americas Shipping and Funding Corporation ("**ASF**"), a Panamanian company incorporated in 1981, was in fact fabricated to create such impression, because this was a company associated with him. However, that assertion of connection seems to be based on the fact that a Mr Kofi Bain is recorded both as President of ASF, and from 1999, as apparently an officer of Atlantic Title & Trust Company Ltd ("**AT&T**"), a Florida company incorporated in 1980, of which Mr Laport was openly president, and Mrs Laport secretary (though she did not recall this). AT&T was involved in two of the property sales transactions, referred to later which the family has suggested to be the possible source of some of the funds in the Account. Mr Bain, however, appears simply to have been yet another person involved in the provision of corporate services. He appears to have worked at Lionsgate Management Limited ("**LGM**") a corporate services provider who provided an accommodation address for FML in Nassau, and to have moved with Mr Dupuch (mentioned above) to join Bluewood Management Ltd with Mr Dupuch, when he also left LGM to set up that company in 2003. As far as I can see, this allegation (of a sham judgment) is only speculative, even if it might smack of having some likelihood. On any basis, though, it does not have any connection with the funds in the Account

150. Mr Laport was also, as one might have anticipated, not keen to pay tax, having once reportedly said that he "*did not earn money in order to pay taxes*". He is reported to have frequently commented on the merits of living in the BVI to avoid tax, and of retiring to Panama. Arranging one's affairs so as to avoid (as contrasted with evade) tax is not unlawful, and is, indeed, an exercise engaged in by many very respectable people. Moving countries to reduce tax is not uncommon. It can also frequently be achieved by the use of appropriate trust or company structures, to keep income in less heavily taxed places. Such structures may also facilitate a high-end lifestyle to be maintained by enabling expenses or benefits to be legitimately defrayed or enjoyed using trust or corporate funds. None of this would necessarily be unlawful in itself, and as a commercial lawyer who appears to have been zealous in this regard, Mr Laport would have been able to set up such structures, and is likely to have had the energy to maintain or manipulate them. Once again, it all depends on particular facts as to whether any such desire and determination to minimise tax liabilities has strayed over the line of legitimacy, or has simply exploited all possible lawful means.

151. I accept, however, that the setting up of companies in tax haven jurisdictions such as the Turks & Caicos Islands, with bearer shares, and using aliases, does reasonably excite suspicion as to whether the activities being covered by such entities are otherwise conducted entirely legitimately.

Evidence of (other) unlawful conduct

152. I have headed this "other" unlawful conduct because I have already dealt in paras [113] – [122] above, at a detailed level, with the possible allegations of specific unlawful conduct, which might have been posited (though unsuccessfully) as fulfilling the requirements of s 13 (2). I am concerned here only with further matters which it might seem that FML would need to refute as feeding into the balance of probabilities, if the reversed burden of proof is considered in isolation.

(i) **The Knowles factor**

153. The evidence supporting submissions that Mr Laport was, or must have been engaged in unlawful (criminal) conduct is really contained in the evidence and deductions of Mr McCreight. He first says that whilst a "Mr Knowles" incorporated FML, there is no documentary evidence produced by the family that links Knowles with either Mr Laport or Mr Magill or FML, despite their claiming that these were both Laport aliases.

154. Having dealt with the question of actual personal identity above, I cannot see that there is any significance in this. First, I do not find it surprising that the Family, the daughters in particular, should be unable to produce such evidence given the particular circumstances, their lack of knowledge of Mr Laport's business affairs and the time which has elapsed. Second, FML was incorporated with bearer shares. This was perfectly legitimate, but the company was also exempt from filing information with the T&C companies registry so that, as deposed to in para. 10 of an affidavit of Mr Owen Foley, of Misick and Stanbrook, Attorneys, in the Turks & Caicos Islands, which was produced in the Recognition Proceedings, this all has the effect that

> *"it is not possible to tell from the information publicly available at the Companies Registry of the Turks & Caicos Island who the directors and shareholders are, or were on any given date".*

Whilst this was no doubt an attractive feature for Mr Laport's love of secrecy, I do not see how any inferences at all can therefore be drawn from the fact that the public record of the officers of FML does not refer to anyone connected with the story, nor does it show anything about the actual activities conducted by those who were subsequently *de facto* in charge of FML's business. The original officeholders were nothing but nominees.

(ii) **"Mob money"**

155. Mr McCreight's next matter supporting suspicion of qualifying criminal conduct relies on a money laundering investigation opened by the FBI in Chicago in August 1996, which implicated Mr Laport. It arose from a business transaction in which Mr Laport, here as a lawyer and businessman, represented a group of individuals including himself, based in the Bahamas, who were seeking to invest up to $15Mn in the Princeton Dental Management Corporation, ("**PDCM**") a distressed dental implements manufacturer. It was initiated because of complaints that Mr Laport was using organised crime money, in effect to take over the business (which is what he factually did, Mr Laport becoming Chairman and CEO).

156. Officers of PDMC, who were in a weak negotiating position and no doubt felt that they were being bulldozed, notified the FBI that Mr Laport had boasted to them of connections with organized crime and of using "mob money" to invest in the business by way of convertible loan stock, and complained that he had used threatening behaviour in the course of the negotiations. They mentioned companies involved, and also even Mr Collins as part of the group of investors.

However after investigations, including obtaining a Grand Jury subpoena for the production of all Mr Laport's telephone records, (and despite the fact that Mr Laport declined to co-operate in the investigation) an interim report of November 2017 concluded that, although Mr Laport made such claims, there was "*little to support*" such allegations, and the Final Report made in August 1998 confirmed that

"information regarding Laport's organized crime connections yielded negative results".

There is thus simply no evidence here that Mr Laport was engaged in any association with organised crime, or its money or that the claims he made were more than braggadocio, onwardly reported by disgruntled officers in the target company, where Mr Laport had driven a hard bargain. This incident has all the flavour of trouble being stirred up for a man who was no doubt a ruthless businessman, by those who heartily disliked him but were in a weak negotiating position. I note that the report does not even carry the "insufficient evidence" comment, which suggests that there is some, but only weak evidence; it actually refers to "negative results" which I consider to indicate that there was no evidence whatsoever. It is, of course the case that Mr Laport had no criminal convictions. I conclude that there is no evidence of relevant criminal conduct by Mr Laport at all, still less causally linked to the funds in the Account.

157. Another point which I note incidentally from this matter is that accounts for PDMC note Mr Laport as a major shareholder in the company (34.45%) but including shares held by his Individual Retirement Account, which I take to be a pension fund. This is, again, evidence supporting what I glean, namely that Mr Laport organised his business and personal affairs to best perceived advantage, with some sophistication and probably complexity.

158. Mr McCreight's further suggestions of evidence tending to suggest that Mr Laport was engaged in criminal conduct are, on analysis actually no more than suggestions of suspicion of guilt by association, and of a very tenuous nature.

(iii) **Mr Patrick Thomson**

159. A Mr Patrick J Thomson was a shareholder and manager of LGM Management Limited (or Lionsgate Management Ltd) ("**LGM**") mentioned above. It was a corporate services provider and company agent in the Bahamas. LGM was at one time Registered Agent for Amsterdam Equities ("**Amsterdam")** a company with which, indeed, Mr Laport in the Bahamas had connections (as did Mr Collins to a similarly named company in Delaware); they participated in the PDMC investment: see above. One of the four debits out of the Account ($168,00 odd) was paid to LGM on 28 March 2003.

160. Mr Thomson was linked to two other companies. In 1998 he/LGM had incorporated Northstar Consultants Limited in the Bahamas, which was registered at LGM's address, and which was later allegedly involved in a $9Mn misappropriation fraud. Mr Thomson also incorporated (as subscriber) Evergreen Holdings Limited, of which he was again a director and LGM was its corporate services provider and which owned Evergreen Securities Ltd, a BVI company incorporated in 1994, of which Thomson was also named as a director, and provided a service address. In 2004, Evergreen Securities collapsed in bankruptcy in a Florida Court, having been involved in an alleged Ponzi scheme said to have defrauded investors of $200 Mn over the years. Mr McCreight suggested that this collapse came to the attention of the public in 2001, shortly before the large "Deposit 2" of £9.93 Mn odd, was deposited into the Account on Magill's instructions from "our funds" in RBC Nassau. Mr McCreight suggested that this large deposit could therefore have been the Evergreen funds being spirited away from Nassau, when everything collapsed.

161. Mr McCreight's evidence of such timing, and of Mr Thomson's suggested connection with the frauds of Evergreen Securities is derived from a reference to Mr Thomson as a director of

Evergreen, in a long article reviewing major financial frauds, appearing in Vanity Fair in October 2017, and which does not suggest that Mr Thomson was a "ringleader" in the actual fraud, at all.

162. In essence, the only "connection" being alleged here is through Mr Thomson being, through LGM, a corporate service provider to (1) a "Laport" associated company (Amsterdam) and (2) two other companies, Northstar and Evergreen Securities, which were linked to notorious frauds committed (somewhere) at around the time when the deposits were being made into the Account, and also the four payments subsequently being made out of the Account being made to LGM and to another company (Evenstar Ltd) which also used LGM as a formation agent and company services provider.

163. This proposition is just so tenuous and speculative, even as to giving grounds for a "suspicion" as regards the legitimacy of the sources of the funds in the Account, that I cannot see that FML really needs to do more than point this out with sufficient cogency for it to satisfy the court that such evidence does not, on balance of probabilities, tend to show that the fund in the Account were themselves the proceeds of anything but lawful conduct. Even if such flimsy evidence is now admissible (since the abolition of the old rules against hearsay) it is, on analysis, inference sought to be drawn from at least third hand hearsay, and in any event, I do not see that a court can place any weight on inferences imaginatively derived from articles written for entertainment in popular magazines. The weight of any such evidence, in the "balance of probabilities" context, in my judgment simply recedes to vanishing point.

(iv) **Mr Dombrowski**

164. Mr Dombrowski's involvement, after the death of Mr Laport, has been mentioned above at [16], and it has been noted that he admits to having shredded documents, although he says that this was only where they did not appear, to him, to be of importance. By implication, he denied shredding anything incriminating, although I am not sure how much reliance I would place on that.

165. Mr McCreight invokes Mr Dombrowski at this point, though, as an associate of Mr Laport with a doubtful moral compass. He cites Mr Dombrowski's being named as one of the defendants in the State Farm Insurance Fraud, a civil case in 1996, alleging a conspiracy between laypeople and medical and legal professionals, to stage traffic accidents which were then used to make fake personal injury claims against insurance companies. Mr Collins had defended Mr Dombrowski. It is said that Mr Dombrowski eventually made a large settlement payment, although I have not been able to trace this. In addition, but only in 2003, Mr Dombrowski surrendered his law licence for three years to settle Professional Disciplinary charges, arising from his having (contrary to codes of conduct) paid fees to get potential wrongful death cases directed towards his firm.

166. Once again, however, this evidence says nothing about the actual funds in the Account in this case. There is no suggestion that Mr Laport was involved. All it shows is that a person known to Mr Laport was not averse to committing criminal or unethical conduct. This, to my mind, can prove nothing of any weight in this matter, one way or the other.

(v) **Mr Dupuch**

167. Mr Dupuch was a Bahamian lawyer or corporate services provider who had dealt with Mr Laport as Mr Magill. He worked at LGM. He had met the latter only once, and had never met the former, although he understood from "Mr Magill" that Mr Laport was his (Magill's) Attorney. He carried out FML's instructions, through Magill and had subsequently taken over seeking to sort out Mr Laport's affairs in the Bahamas at the request of the daughters.

168. Mr McCreight sees it as a matter of significant suspicion that the daughters had asked Mr Dupuch to take over from Mr Collins on the grounds that he appeared to have been very loyal to "our father", when Mr Dupuch had not known Mr Laport, their father, at all, but only "Mr Magill". I do not. It is perfectly apparent that the daughters were referring to his loyalty to the person he knew as Magill, who was their father, even if more rightly known as Laport. This is, to my mind, another example of Mr McCreight's ultra-readiness to see suspicion in anything, and a tendency not to distinguish between good and bad points.

169. Some years after Mr Laport's death, Mr Dupuch had admitted to breach of fiduciary duty in using clients' funds without their consent, in a regulatory investigation into a Bahamian financial services company, of which he was, through being a corporate services provider (though now with his own firm Bluewood Management Limited) a director. This, though, was many years after the deposit of any funds into the Account, and, once again, it is of no materiality to the central issues. It sounds as yet another matter of "damning by association" rather than providing material evidence in itself.

Payments made out of the Account

170. Mr McCreight also seeks to derive some support for suspicions as to the legitimacy of the funds in the account from inferences drawn from the withdrawals which were made.

171. There were four such withdrawals. The first was made in favour of LGM, in the sum of $168,000 on 28 March 2003. The subsequent three withdrawals, in amounts of $450,000, September 2003, $200,000 in April 2043 and £200,000 in November 2004, were each made on the basis of payment instructions signed by "Mr Magill" to Credit Lyonnais in New York with further instructions showing that they were to go to Evenstar Ltd, which was a Bahamian company, incorporated in June 1999, which also used LGM (and had Mr Thomson as one of its original subscribers) and latterly Bluewood as its corporate services provider. (I note, in passing, that the terms of the instruction letters relating to these withdrawals support the impression that "Mr Magill" had a keen eye for detail in terms of seeking to maximise return, by avoiding penalties on term deposits, or delays in making transfers, etc.)

172. As regards the payment to LGM itself, LGM is a corporate services provider and since LGM was providing corporate services for companies with which Mr Laport was associated, such as Amsterdam, it is reasonable to infer that on balance of probabilities, these were payments for corporate services. There is nothing suspiciously bizarre or untoward about such a payment. Nothing is known about Evenstar's business, or what use the payments might have been intended or actually put to.

173. It might have been possible to draw inferences as to the purposes of the FML Account, if any information as to Evenstar's activities had been available, and this might in turn have suggested the legitimacy or otherwise of the transactions giving rise to the funds in the Account, and possibly therefore, its likely provenance more widely, but there is, just, no such information. It is only the tenuous connection with Mr Thomson which could possibly be prayed in aid, as I have already made clear, I therefore regard the subsequent withdrawals from the Account as providing no evidence from which any relevant inference can be drawn as to the origins of the funds in the Account.

The provenance of the funds in the Account

174. I turn now to evidence as to the provenance of the funds in the Account. The simplest way of actively dispelling any accusation that funds in an account have, or "must have", criminal origins is to prove positively what their origins were, and that they were legitimate.

175. However, FML has expressly not attempted to provide a forensic analysis of the source of the funds in the Account because, Advocate Davies submits, that is simply no longer possible at this remove in time (and she further submits that this is not through any fault of the daughters, as the now effective claimants to those funds) but she also submits that it is not necessary. She places reliance, more, on the evidence that Mr Laport did, in fact have significant income (either directly or indirectly as ultimate beneficial owner or trust beneficiary) and earned sufficient funds, principally through successful real estate investment projects, to show - especially in the context of the surprising paucity of assets otherwise found in his personal estate on his death - that the funds in the Account were likely, on balance of probabilities, to have been his savings from such projects and transactions, squirreled away and accumulated over the years, and ultimately intended to provide for his daughters.

176. On the question of the lapse of time providing a reasonable excuse for the absence of evidence, and enabling the court to take a sympathetic view of the sufficiency of evidence to discharge any suspicions, HMC, through Mr McCreight, seemed to suggest that FML should not be given the benefit of such doubt, because it (or the daughters themselves) had not been diligent in seeking either to obtain or to preserve evidence. I do not think that much can be made of this. In my judgment the court must simply judge the situation at the time and according to its assessment of the reasonableness of any relevant party's stance. I note, and I think it is not unreasonable to accept, that the daughters have not been in a position to fund serious and potentially expensive investigations until permitted to use funds in the Account. I also bear in mind that, until as late as October 2022, FML was entitled to assume that the burden upon it was simply to rebut a positive case made out by HMC, rather than possibly having to take the initiative to make out a negative case on its own account. In the end, I do not think anything should, or even does, turn on this point.

177. The evidence of what is known about any funds in the Account should not just be ignored, however. I have already noted the entries on the Account and the essence of the findings of the two forensic accountants who have examined it together with other available information which might help to deduce the origins of the particular deposits: see [21]-[28] above. The immediate source of Deposits 3-9 has been established simply to be accounts of either (i) FML with other branches of RBC, (ii) FML with other banks, (iii) Kashiyama & Co (a "Magill" operated company) or an account of "Mr Magill" himself. The trail is otherwise cold, and there is no evidence enabling one to go further back, to trace the origins of those deposits in sources outside Mr Laport's control.

178. Advocate Gist submits that this pattern of deposits, from one account to another, is typical of "layering" ie, money laundering transactions. Whilst I take this point, there are other reasons why people, especially businessmen and/or those particularly concerned with interest rates, may hold more than one account and make transfers between their "own" accounts. I do not find any compelling implications from the mere fact of such transfers; at best they might invite wariness.

179. The only deposits which merit further special mention on the evidence are Nos 1, 2, 10 and 11.

Deposit 1

180. I have already stated my findings about Deposit 1 (see [21] above). I am satisfied by the evidence that on the balance of probabilities the initial substantial deposit of $3.39 Mn made in January 1996 was the accumulated funds in an account which was opened with RBCCI in February 1989 by "Mr Magill" (who had previously been a customer of RBC in the Bahamas) on behalf of the recently incorporated FML, and of which there are now no further details of the deposits into that account (and could hardly be expected to be). I find it to be a safe inference from the relevant dates, that when FML was formed, the initial account was opened to be the repository of its assets. This means, of course, that Deposit 1 can still not be traced to a source

independent of Mr Laport/Magill, but it also means that the provenance of some funds now in the Account plausibly dates back to 1989.

181. The circumstances of the opening of the Account also suggest to me that "Mr Magill" was being astute to look for better terms on which to place funds on deposit If the 1996 transfer to the new Account had been for the furtherance of money-laundering, it was rather feeble.

Deposit 2: Pinellas Farms

182. There is more to say about Deposit 2. Mr Krys's researches in relation to Deposit 2 led him to the conclusion, albeit relying on the List, that $2,562,481.91 out of the total of Deposit 2, of $9, 933,613.77 made into the Account on 19 April 2001 from RBC in Nassau, were the proceeds (with accumulated interest) of a deposit made with RBC Nassau on 3 May 1999, and noted as regarding "Paramount Title Corp." The List suggested that it was this deposit, together with a much larger deposit of $7,370,831.96 in another account with RBC Nassau, which formed Deposit 2.

183. Mr Krys located an Escrow Agreement made on 22 March 1999 between ASF, AT&T (represented by Mr Laport, with written indications that AT&T were trustee for him) and Paramount, relating to the sale of two Farms in Pinellas County, Florida ("**the Pinellas Farms**") by AT&T to third parties, whereby Paramount was to wire the sale proceeds to AMF, on certain conditions. A document of 3 May 1999 shows that ASF confirmed receipt of a payment from Mr Laport of $2,298,965.57 on that date, which corresponded with the original date and sum of the "Paramount" deposit noted above, made, according to the List, into RBC in Nassau on that day. It had subsequently accumulated interest to bring it up to the $2.5Mn level, recorded as paid out on 19th April 2001. Mr Krys therefore felt confident that he had traced the origin of at least this part of Deposit 2.

184. However, there are many unanswered questions about this. First, according to the Escrow Agreement, this sum was being paid to ASF, and not for the benefit of Mr Laport or Magill or any of his associated entities. Second the receipt document (from ASF) records that the sum received was being applied in four payments, three to outside parties and the balance to ASF's apparently still outstanding judgment against Mr Laport (see [148]) above. But there is no record of any such payments, either in the Account or on the List. Whilst, therefore, it is perfectly fair to say that whoever complied the List – and it appears to have been done by someone with reasonably close and reliable knowledge of the "Banks" with which Mr Laport/Magill had dealings: see the List itself – may have understood Deposit 2 to include the previous "Paramount" deposit and its earnings as part of its source, this cannot be satisfactorily reconciled with any other documentary evidence.

Deposits 10 and 11: Sheboygan County land

185. It is a similar story with Deposits 10 and 11. These comprise substantial deposits ($340,000 odd and $497,000 odd) being received into the Account on 5th August 2002 from Compagnie Italiana Int ("**Italiana**") and Compagnie Latina SA ("**Latina**"), respectively, sent from their accounts with Isle of Man Bank.

186. Mr Krys says, first, that he considers that those deposits can be traced to the cumulative sums supposedly held in such deposits with the Isle of Man Bank, at about that time, as shown in the List. The small differences of amounts and dates could be accounted for by interest on interim deposits in the meantime and/or differences in value dates attributed by various Banks. From other documents, he then concluded that these sums would have been the proceeds of sale, in 2002, of certain land in Sheboygan County, Wisconsin which appears to have been held, if not directly by Mr Laport, then by entities which he owned or controlled. He expresses himself to

be "fairly confident" of this. Ms Harris, however, disagrees, and I am myself not convinced of this.

187. I accept Mr Krys's reasoning as regards the sums and the transfers themselves, and I also accept and find that these transfers were undoubtedly connected *in some way* to a transaction, which was supposed to be taking place in about April 2002, concerning the assignment or "buy in" of, and/or a sale/purchase agreement in respect of, certain leasehold interests, or rights attaching thereto, in property in Sheboygan County, as evidenced by certain documents entitled "Agreements" of that time. The transaction in question was apparently between Amsterdam (already mentioned and with which Mr Laport had some association, but was not the sole proprietor) on the one side and the interests of Mr Laport (held openly in his own name but through an elaborate hierarchy of corporate interests, with the Panamanian companies Italiana and Latina at its apex: Mr Laport apparently held their bearer shares) on the other. However, I cannot accept that the relevant transfers of funds were the proceeds of any sale.

188. The documents record that Amsterdam, apparently previously a leaseholder (but intermediate) of the property, was the "Seller", and Italiana and Latina were the "Buyer" of the relevant real estate, but other Laport connected entities, and in particular American Heritage Corp ("AHC") were also involved. AHC was a company in which Mr Laport had, ostensibly, a 0.02% shareholding, but exercised sufficient control that it is safe, I think, to infer that he was indirectly beneficially interested to a far greater extent. But be that as it may, if Italiana and Latina were the "Buyer" of the relevant real estate interest(s), they would not be receiving any proceeds of sale; these would be going to Amsterdam.

189. In practice I find that it is simply impossible to work out what this transaction was actually achieving, for two main reasons. First it seems to have been one part of a larger scheme by which Amsterdam and the Laport interests were collaborating to try to secure the development of this property (and probably also other neighbouring properties). There was some kind of restructuring arrangement going on, of which the entirety is just not discernible. Second, the transaction certainly did not go smoothly, as an original version of the "Lease Purchase Agreement" dated 2 April 2002 failed (because the Isle of Man Bank did not make a required payment on time), and was then cancelled and superseded by a somewhat different form of "Agreement" on 23 April 2002. This latter even envisaged that upon its completion, the shares in Italiana and Latina would be transferred to Amsterdam, though, the reason for this is entirely opaque, and in the event, this does not appear to have happened because the bearer shares of Latina and Italiana were found amongst Mr Laport's effects on his death.

190. It is thus, once again, impossible to reconcile the Account entries, or the List, with documents suggesting what might have been the underlying commercial transaction, and it is disproportionate for me to make any attempt to do so. All that I can (and do) find is that Deposits 10 and 11 consisted of funds transferred from Italiana and Latina to FML, at about this time and therefore probably in some sort of connection with whatever was going on in this transaction - albeit the transfers were not actually made until August 2002. I would conjecture that any possible transfer of Italiana and Latina away from Mr Laport was not regarded as extending also to their "cash at bank", which was therefore being moved away, but that is not relevant. The point is simply that I cannot see how these transfers can be interpreted as being the proceeds of any apparent sale (by Amsterdam) of any interests in the Sheboygan County property, and no other transactions generating proceeds of sale for Italiana and Latina from any external source is suggested.

191. Therefore, I can make no positive findings as to any particular external source of funds in the Account on the basis of attempting to identify the external origins of the actual deposits beyond the rather inconclusive ones above.

Other specific potential sources of the funds

192. FML had previously suggested that four property transactions, including the two above, in which Mr Laport was known to have been interested could plausibly have been the original source of the deposits to the Account. Direct identification of this tracing trail is no longer firmly pressed, but I should nonetheless mention the other two matters as they form part of the overall picture.

Hancock Tower

193. The first is the sale of a condominium property at Hancock Tower, 175 East Delaware Place, Chicago. This actually comprised three apartments, in what I accept to have been a very up-market and desirable town centre apartment building in Chicago. Mrs Laport states that she and Mr Laport lived there during their marriage – he already owned it - until their divorce in 1982, and that it was sold in 1988, for about $ 1.2Mn. She suggested that these proceeds would have been the opening deposit in the Account. The general high value of the apartment at this level (it is to be remembered that these are figures from the 1970s and 80s) was supported in affidavit evidence of Mr Collins.

194. The evidence of title searches shows, in simple terms, that these three apartments were originally sold by an unrelated third party in October 1974, into a trust, No 33404, administered by the American National Bank and Trust Company of Chicago ("**ANBTCC"**), although in two stages, the first comprising two apartments and the second a third one acquired by the third party and then sold on to the Trust. Two relatively small mortgages were taken out upon them. The combined condominium property was eventually sold by the Trust 15 years later, on 13 February 1989 to a Mr Gantz and the mortgages were repaid, albeit a few months subsequently, by the Trust/ANBTCC. Mrs Laport has sworn to her understanding that Mr Laport was the settlor and beneficiary of Trust No 33404.

195. Mr McCreight objects that there is no documentary evidence of this, nor of any connection of Mr Laport with Trust No 34404 (or any of the other persons, or entities involved), and he criticises the fact that when asked to provide evidence of Mr Laport's connections with the property, its value, etc, the only thing Mrs Laport provided was a sales brochure. (I do not think that this is fair, as I cannot see that it is at all strange that neither Mrs Laport (nor Nicole) should, even at the time of Mr Laport's death, have had access to documentary evidence or details regarding a property which had not been her home, let alone something she owned, for more than 20 years.) Mr McCreight acknowledges, however, that Mr Laport was given as the notification addressee for the ultimate Deed of Release of the mortgages in 1990, and he also notes that Mr Davidson, plainly a trusted friend and legal associate of Mr Laport, was the attorney for the purpose of serving notices under the 1974 sales agreements into the Trust.

196. I am quite satisfied, as a matter of obviousness, that Mr Laport lived in this property as his main residence from 1974 to 1988/9, and I also find, as a matter of common sense, that this means that on balance of probability he was a main beneficiary of the Trust which is recorded as having legal title to the property. This is exactly the kind of property arrangement which is frequently encountered amongst relatively wealthy people as a matter of (lawful) tax-planning.

197. I note that the timing of the eventual sale of the condominium coincides with both the incorporation of FML and the apparent opening of the predecessor account with RBCCI in Guernsey. I also note that the List refers to a deposit with RBCCI, which precedes the 11 Deposits to the Account itself, taking place on 27 February 1989 (14 days after the sale of the condominium) and comprising $2,283,750. This seems a remarkable coincidence. I accept that this figure is nothing like the figure suggested by Mrs Laport as the proceeds of the sale of the condominium (at about $1.2Mn) but nonetheless, I am still prepared to and do infer that it is likely that the proceeds of the condominium, whatever they were, were used to open the original account of FML with RBCCI in 1989. However, it is still impossible to deduce any further detail as to how these funds swelled to $3.39 Mn by January 1996.

Marion County land

198. The second specific suggested source of funds is the sale of 22 lots of land at Marion County (or Ocala County) in Florida, in about 1995. The sale was on 21 August 1995 by AT&T, to one Jimmy Gladwell and others, for $6Mn.

199. Initially, it was suggested by the Family that a part of these proceeds was likely to be Deposit 1 ($3,39 Mn), in January 1996, but this appears to me to have been pure speculation, and it does not fit with the dates. This sale post-dated Deposit 1 by six months. Moreover, I have already explained what I think is the likely origin of Deposit 1, and it is not this: see above.

200. The documents revealed by title searches show that Mr Laport purchased these properties in November 1973. However, the subsequent history was complicated, with various mortgages (which Mr Laport apparently defaulted on) until, in October 1974, he set up a limited partnership ("**Royal Pines**") with a former mortgagee, Surfside Limited, into which he contributed some money and Surfside the properties and $1000, and in which Mr Laport was the general partner and the majority partner (probably in an 88:12 ratio) as to both profits and losses. On 13 January 1982 Royal Pines, acting through Mr Laport, transferred the property to AT&T (by "Quitclaim", which I understand connotes a gratuitous transfer) as Trustee under a Trust Number FL1003, giving its address as c/o Mr Laport, at his Hancock Tower address. I am prepared to infer from the reference no and the circumstances that Mr Laport is likely to have been the beneficiary. AT&T eventually sold the property to the Gladwells, by Warranty Deed (which connotes a sale) for $6Mn, in August 1995.

201. I do not lay any weight on Mr McCreight's criticisms that the details of this transaction given by the Letter and supported by the search results do not correspond perfectly with details given in Babbé's earlier letter to the FIS on behalf of FML in 2008, in particular as to the name of the purchaser being "Ford", and the Royal Pines partnership being 99:1 in favour of Mr Laport. These differences suggest no more than someone's inaccurate recollection of details which had not been formally checked out. I also accept that the $6Mn purchase price apparently going largely to the benefit of Mr Laport (which would have been about $5.25Mn as there does not seem to have been any mortgage) does not correspond readily to any of the Deposits into the Account. It is notable that the large balance of Deposit 2 (some $7Mn) transferred in 2001 from RBC in Nassau is otherwise unexplained, and the receipt of $5.25Mn in 1995 could translate into about $7Mn in 2001, after six years of accumulated interest, but there is no evidence suggesting where those proceeds of sale actually went, or what they could have been used for in the meantime, and this is just speculation. I therefore cannot draw any further positive conclusions. This transaction does, however, show a significant receipt of money by or for the benefit of Mr Laport during the period with which I am concerned.

202. I have already considered the other two suggested property transaction sources for the funds in the Account in considering Deposits 2 and 10 and 11, above.

203. In summary, therefore, having considered all the above, I am unable to find that the actual provenance of the deposits comprising the funds in the Account has been demonstrated to be referable to external lawful sources. However, none of the materials which I have examined have suggested to me any sign that Mr Laport was engaged in unlawful (criminal) conduct in itself (leaving aside the obtaining of the false Magill passport), as contrasted with being engaged in possibly devious (but not unlawful) conduct and apparently significantly commercially risky transactions, in the early years before the period with which I am concerned.

Availability of resources

204. I turn then to Advocate Davies' submission to the effect that there is sufficient evidence for the Court to conclude that there were available to Mr Laporte sufficient lawful resources of income or capital receipts to account for the deposits made.

205. I have already referred to the K2 Report on Mr Laport's professional career and investment activities, commissioned by FML from K2 Integrity Limited. I have of course taken account of the whole of it.

206. In practice, it concentrates very much on records of Mr Laport's legal career, and records of legal cases in which he was, or may have been, involved. I summarise materials which have not already emerged.

207. In 1971 Mr Laport initially formed a personal injury related law firm with his cousin, John Sorrentino, eventually becoming sole proprietor when Mr Sorrentino became a judge, in 1983. Mr Laport became licensed to practice law in at least three States, seemingly corresponding to those where he also had property interests. However, he was also involved in a business providing legal and secretarial services from 1971 until about 1997-8 (NML Enterprises and Affiliated Legal Aides), and from 1994 to 2002 his firm owned the trademark "Lincoln Law USA" for a legal services referral business making money by enabling members of the public to find appropriate legal services in the private sector.

208. The Report notes one apparently large personal injury settlement made by Mr Laport at an early time, about 1977. He was also qualified as a real estate broker. He clearly conducted his law practice, his real estate projects, and his personal life with a degree of litigiousness, having been named as Plaintiff and as a Defendant in court cases over 20 times each over the years, although as Plaintiff his name appeared in mainly small claims contract cases. However, despite his having apparently been involved in an investigation regarding false road accidents, and having been a defendant in at least three malpractice claims, his legal and professional records were all "clean", showing no public disciplinary actions against him, and he had no criminal record. He had disputed his personal tax assessment in court, once in 1973, (notably with regard to the Marion County property with which, at the time, he was plainly having financial difficulties) and once in some undisclosed respect in 1998.

209. On the property side, the Report mentions only matters which had attracted publicity. The Report notes that it has

> "*not revisited property transaction analysis related to FLL and his companies that was previously completed* [I am not sure what this refers to]*, but has provided a high level summary of select investments".*

Those recorded were three, being the Marion County property already mentioned, a Maryland property development partnership in which Mr Laport participated between 1980 and 1984, from which he gained a profit of about $140,000 in 1985, (but then litigated unsuccessfully, over the following 10 years, to claim that this should have been $10,000 more,) and the strip club project regarding his office premises also already mentioned, which was uncompleted at the time of Mr Laport's death. The Report is therefore perfectly obviously nothing like a full record of Mr Laport's business and investment dealings, as I have seen reference to many others, of which I think most are referred to above, but it does not even purport to be. Indeed, where dealings are conducted through some structure of companies and trusts, as Mr Laport was clearly wont to do, it would be almost impossible to make a totally complete report unless supplied with inside information. The superficial effect, though, as far as the K2 Report is concerned, is to present an unbalanced impression of the totality of the evidence, and it must be read in the context of all the other evidence in the case.

210. Mr McCreight made no criticism of the K2 Report as such, and really did no more than suggest that the evidence of Mr Laport's legal career did not support the claim that he was very "successful"; K2 had located only one reasonably substantial damages claim, of around $750,000 in 1977, on which I understand Mr Laport would have received a likely contingency fee of about 30%. The other records of his legal involvements as attorney are not that many, and relatively minor matters. However, Advocate Davies submits that this ignores the fact that many cases are settled out of court, even without proceedings, and I have previously noted the evidence that Mr Laport did not himself conduct trials but referred the work to others and took referral commission.

211. Apart from this, Mr McCreight, and Advocate Gist, really submit, simply, that the K2 Report, and all the other evidence, combined with the evident suspicions as to criminality of operating under aliases and with false passports, just do not demonstrate sufficiently strongly to meet the balance of probabilities test, that the deposits were not the proceeds of criminal conduct by Mr Laport.

Tax matters

212. There is just one other important aspect of the evidence which I have not yet mentioned and that is Mr Laport's taxation position. The first aspect of this is the evidence of Mr Laport's personal tax returns. Records of Mr Laport's personal income tax returns for the years 1986 to 2003, have been obtained, earlier records not being available and there being no subsequent returns. They give bald figures for both gross (positive) income and taxable income (after deductions). The figures are as follows, all in US$.

Year	Gross	Net taxable
1986	222,712	?
1987	121,574	41,346
1988	191,181	80,478
1989	717,263	408,255
1990	200,409	23,995
1991	444,135	314,713
1992	248,651	138,376
1993	837,810	680,140
1994	490,366	353,122
1995	1,639, 232	525,006
1996	280,204	0
1997	79,831	225,486
1998	157,079	71,718
1999	2,277,174	2,167,981
2000	376,284	229,666
2001	30,898	0
2002	18,568	0
2003	9,969	

213. These figures are somewhat bizarre. Initially they appear to disclose a very respectable level of income, although variable, but they obviously suggest that in the latter years from 1996, Mr Laport did not, personally, receive a great deal of income (except for the remarkable anomaly of 1999). I do not see that they suggest anything of any assistance with regard to the likely provenance of the actual deposits made into the Account, nor of any predecessor funds, largely deposited with other banks in June 1989 (Kashiyama) and between 1988 and 1992 (Italiana and Latina), nor any other matters. To my mind, though, they do confirm my impression that Mr Laport did his best to minimise his taxable income and, certainly in the latter years, no doubt deploying every argument and accounting tactic in order to achieve this.

214. I do bear in mind also, however, that these are returns of Mr Laport's personal income, and that he could have, and quite obviously did, structure transactions in which he was engaged, to make profits in corporate vehicles, or trusts, as and where this was likely on some basis to have been more tax efficient.

215. The second aspect is that of tax investigations. It is recorded in the evidence that Mr Laport was investigated by the IRS at one time, but some years before the period with which I am concerned, with regard to his tax affairs and that he was represented by Mr Collins, and a settlement was reached. This did not lead to any criminal conviction – Mr Laport has a clear criminal record – but it shows that he may have been inclined to "sail close to the wind" in tax matters.

216. More pertinently, however, and as reported in the affidavit of Mr Benjamin Newton on behalf of FML, made on 2 October 2024, the IRS conducted its own, criminal, investigation into Mr Laport's estate, for five years, between 2007 and 2012, seeking information from foreign sources under (unspecified) mutual assistance requests. However, these were unsuccessful (it is stated) in gathering evidence to further any criminal investigation or forfeiture action in relation to Mr Laport's affairs and estate. The IRS were made aware of the existence of the Account during this investigation, at least by 2011. However, their ultimate conclusion was that the funds in the Account were obtained from Mr Laport's personal wealth and legitimate business dealings, which belief they have subsequently maintained. Mr Newton comments that the investigation showed that Mr Laport had declared a total of $6,693,958 in personal gross income to the US authorities between 1986 and 2003, while he was aged between 45 and 62.

217. Obviously, Advocate Davies relies heavily on the IRS's conclusion. Advocate Gist submits, however, that this is far from decisive. Mr McCreight expressed wariness of the reliability of the IRS's expressed opinion, for several reasons. First, he suggested that there must be concern, because this information had been supplied, in a more open and less redacted form than he had previously seen, through the Family's lawyers. I understood him to suggest that this raised a suspicion that they could have influenced its content. I can see absolutely no grounds for this.

218. Second, I think he was inclined to opine that the conclusion might not be reliable because one simply did not know what enquiries the IRS had actually made, in order to conduct their investigation, and whether these were comprehensive, and also because full and detailed information had not been obtainable, owing to the requirements of US Data Protection with regard to US citizens' tax affairs. He also suggested at one point, that the IRS's opinion should not be relied upon because it could be disingenuously self-serving. By this I understood him to mean that the IRS would only obtain the apparently considerable amount of tax due upon Mr Laport's estate if the funds were held to be lawfully obtained, because if they were not lawfully obtained, they would be forfeited in Guernsey.

219. I do not find there to be any substance in these suggestions, and I do not think I can possibly draw any conclusion such as the final suggestion. This would involve my finding, in effect, that a major organ of a respectable recognised sovereign State has told a lie, or at least acted disingenuously, in order to further its own financial interests. I do not see how I can possibly

draw any such inference and, in my judgment, I must take it that the IRS's conclusion is honest and genuine.

220. Less ambitiously, Advocate Gist suggests that the IRS's conclusion can really only be seen as confirming that there was insufficient evidence to be likely to meet the criminal standard of proof of unlawfulness, and it therefore says nothing about the civil standard of proof, which it is therefore possible to find is nonetheless surmounted, particular in view of the reversed burden of proof. I am not sure that that is the correct interpretation of the information provided by the IRS, but even if it is, this information and conclusion of the IRS must have some weight in assessing the overall position.

Ultimate conclusion

221. It is now time to draw my ultimate conclusion.

222. I am here considering simply the proposition that my first determination is wrong and that HMC is correct on the law, and that in view of the reversed burden of proof now written into s 13 (2) of the 2007 Law (as amended), it is simply for FML/the daughters to satisfy the court that the funds in the subject Account are not "any person's proceeds of unlawful conduct", in terms of s 13 (2) of that Law, without qualification.

223. I test this by asking whether I find the case that those funds are not the proceeds of any person's (obviously Mr Laport's) unlawful conduct to be stronger than the case that they are.

224. Reviewing all the above aspects of the evidence, I find the following points to be those of major significance.

225. First, I can see absolutely no positive evidence of the funds in the Account being the proceeds of any criminal activity by Mr Laport. Apart from the obtaining of the false passport (which, I have held, had no "proceeds") there is actually no clear evidence of any criminal conduct having taken place, at all. The only possible such suggestion is that of tax evasion, which I will deal with separately.

226. Second, I find that the totality of the evidence does satisfy me, on the balance of probabilities, that Mr Laport could have accumulated the funds in the Account, by the time they came to be deposited in the Account (even from intermediate sources indicated by the List) from lawful business activity. Whilst I accept that his declared personal income may not have been sufficient to suggest that such savings were all taken out of that taxed income, this is not a case of a person of limited financial resources or with a modestly paid employment, living an extravagant lifestyle or purchasing luxuries which it would appear that they cannot afford (cf *Yordanov* and similar cases). There is, to my mind, ample evidence of other, principally property related, businesses and projects in which Mr Laport was concerned for his own financial gain, which are more likely than not to have been conducted through companies, including off-shore companies, and/or trust structures, so as to keep the accrual of wealth out of Mr Laport's personal hands.

227. On the other hand, I am also satisfied that Mr Laport was very keen not to pay tax, and was very heavily into taking measures to achieve this, whether by way of elaborate structuring of transactions or companies or trusts, or taking advantage of every possibly available accounting measure, to do so. That would not be unlawful as mere tax avoidance in itself. The question would then be whether I am satisfied that his efforts did not overstep the line between tax avoidance, and tax evasion.

228. As to this, I note the honesty of Mrs Laport, who said in her declaration of 20th January 2016 before the Court of Cook County, Illinois

"7. *To my knowledge Frank Laport engaged in no illegal conduct other than, perhaps, conduct intended to avoid* [sic] *United States income tax liability."*

I consider that that comment is very well justified.

229. The matter which has really given rise to these proceedings is the suspicions as to unlawful activity which have been caused by Mr Laport's use of aliases and at least one forged passport. But for that, I do not think we would be here.

230. I am therefore faced with, on the one hand, the suspicions aroused by the use of such false materials and devious, off-shore, deposits together with the impossibility of directly identifying legitimate sources of the deposits in question and, on the other hand, the possibility that such funds were legitimately obtained and simply deposited off-shore, with the absence of any evidence pointing to criminal conduct of which they might be the proceeds, together with some explanation for the use of aliases, etc, being found in Mr Laport's personality.

231. Whilst, in that situation I might have felt compelled to conclude that I just "did not know", whether the deposits were lawfully obtained or not, and that the reversed burden of proof therefore decided the matter in favour of HMC, there is one more matter which I do find to tip the balance decisively in FML's favour and carry them over the threshold of demonstrating the stronger case, and that is the IRS investigation. I have no reason to doubt that that was thorough, and I have no reason to doubt its veracity, and it has concluded that there is no evidence, even, of tax evasion, by Mr Laport and that the funds in the Account were the proceeds of his lawful business activities, including his earnings as a lawyer.

232. Because I am satisfied that there is no evidence of any material general criminal conduct on the part of Mr Laport, and my only doubt has been on the issue of tax evasion, I find that that doubt is thereby allayed, and I pronounce myself satisfied, on the assumption that this is the only test, that the sums in the Account do not form or represent the proceeds of any person's unlawful conduct within the meaning of s 13 (2) of the 2007 Law, as amended.

233. That is enough to dispose of the matter on this secondary point, but for the sake of completeness, I would also say that even if I had had to proceed on the basis there were some reasonable evidence of actual tax evasion by Mr Laport, I do not think that that would automatically have meant that FML would not have succeeded in this situation, for the following reasons.

234. First, there is the conceptual problem that funds on which tax has been evaded are not, on any natural view, the "proceeds" of such actual (here assumed) criminal conduct itself.

235. Second, the Court's having to be satisfied that the monies in question are "*not the proceeds of any person's unlawful conduct*" within the actual definitions laid down by s 13 (2) and 61, means that it is possible that the account holder may prove this negative result by satisfying the court that the conditions of the dual criminality requirement in s 61 are not met; I have remarked above about the potential conceptual difficulties about this, particularly with regard to tax evasion.

236. Third if resort is then had to invoking the application of money-laundering offences, in order to avoid any possible argument that the whole funds in an account are not the "proceeds" of tax evasion, (because, for example, it might be said that merely moving funds which had, unlawfully and criminally, not been declared for tax purposes would *itself* constitute a money-laundering offence) then the requirements of the dual criminality test may well become extremely complicated. Regard would have to be had to both the content, and the timing, of anti-money laundering legislation in other relevant jurisdictions. It might even be difficult to work out which those were, depending on where such transactions were deemed to have been effected. Fulfilling the dual criminality test is not automatic and it does seem to me that HMC cannot expect simply to assume that the requirements of either revenue or anti-money laundering laws in other

jurisdictions are the same as those in Guernsey, at any point in time, notwithstanding the position in private international law that the law in other jurisdictions is a matter of fact, and that the default position is that it is presumed to be the same as the *lex fori* unless proved otherwise. I can therefore foresee a myriad of arguments of fact about the application of s 61(2) (a) of the 2007 Law (quite apart from an argument of law as to whether the international law presumption could be intended to apply at al), which could enable an account holder claimant to argue that the dual criminality test was not met, on the balance of probabilities.

237. Fortunately, none of the above conceptual problems has had to be grappled with in this case, owing to my previous findings and decisions, but they may well be important in the future.

Disposal

238. For the above reasons (being principally my conclusion in [125] but if that were wrong, my conclusion in [232] I dismiss this Application.

239. If there is any dispute about the incidence of costs, then this will have to be decided by a further application; the order should therefore record a formal liberty to apply.

Her Hon Hazel Marshall KC

Lt Bailiff

17th January 2025