HERBERT SMITH FREEHILLS KRAMER

Kyle J. Ortiz
Partner
+1 212 715 9132
+1 212 715 8000
kyle.ortiz@hsfkramer.com

1177 Avenue of the Americas
New York, NY 10036
T 212.715.9100
F 212.715.8000

July 28, 2025

VIA ECF AND EMAIL

The Honorable John P. Mastando III
United States Bankruptcy Court
Southern District of New York
One Bowling Green
New York, NY 10004

Re: *In re Eletson Holdings Inc., et al., Case No. 23-10322 (JPM)*

Dear Judge Mastando:

We write on behalf of Eletson Holdings Inc. ("Holdings") regarding a decision entered by the High Court of Justice Business and Property Courts of England and Wales Commercial Court ("UK Court") on July 14, 2025 (the "July 2025 UK Decision"), a copy of which is attached hereto as Exhibit A. The dispute arose from whether Laskarina Karastamati and Vassilis E. Kertsikoff (collectively the "Kertsikoff Parties") or certain individuals affiliated with Levona (the "Spears Parties") had the right, on behalf of Eletson Gas, to exercise a purchase option of certain vessels and appoint an arbitrator on behalf of Eletson Gas in an arbitration with the vessel owners. We understand that the July 2025 UK Decision was entered for the limited purpose of deciding who had the right to appoint such arbitrator. Contrary to prior representations made to this Court, Reed Smith represented the Kertsikoff Parties. *See* cover page of the July 2025 UK Decision ("Ms. Ruth Den Besten KC (*instructed by Reed Smith LLP*) appeared for the Kertsikoff Parties").

The UK Court discussed the history of the proceedings in both this Court and the District Court and held that, for the purposes of the July 2025 UK Decision:

- "Eletson Holdings is controlled by the directors appointed under and by operation of the Chapter 11 Plan and that their appointment of [Leonard J Hoskinson] to the Board of [Eletson Gas] was a valid appointment." July 2025 UK Decision at ¶ 41. In so ruling, the UK Court rejected the arguments raised by the Kertsikoff Parties that (i) "the orders giving effect to the Chapter 11 scheme has not been recognized in Liberia and/or by the court in the RMI and that therefore the Chapter 11 plan is immaterial" (*Id.* at ¶ 38) and "if reliance was to be placed on the Chapter 11 plan, that plan and the order under which it was made had first to be recognized by the courts of the RMI." (*Id.* at ¶ 39).

- Under English law, the Kertsikoff Parties are not entitled to rely on the JAMS award for their claim to the preferred shares of Eletson Gas (*Id.* at ¶ 45) and that "the [Spears Parties] should be permitted "to appoint the claimant's arbitrator." *Id.* at ¶ 71. In reaching that conclusion, the UK Court observed that the JAMS [illegible]

HERBERT SMITH FREEHILLS KRAMER

either in England or in the Marshall Islands (being the jurisdiction in which Eletson Gas is registered). *Id* at ¶49.

- The UK Court also rejected an additional argument raised by the Kertsikoff Parties that the certificate of incumbency of Eletson Gas (which suggested that officers and directors of Eletson Gas were the same as before November 19, 2024) demonstrated that the Kertsikoff Parties owned the preferred shares. ("The [Spears Parties] submit the certificate does not establish the truth of its contents. I agree."). *Id.* at ¶ 47.

  We are available if the Court has any questions on this decision.

Respectfully submitted,

/s/ *Kyle Ortiz*

Kyle J. Ortiz
Partner

EXHIBIT A

Neutral Citation Number: [2025] EWHC 1855 (Comm)

Case No: CL-2025-000142

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (KBD)

The Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Date: Monday, 14th July 2025

Before:
HIS HONOUR JUDGE PELLING KC
(Sitting as a Judge of the High Court)

- -

Between:

(1) ELETSON GAS LLC

Claimant

- and -
(1) [A LIMITED]
(2) [B LIMITED]
(3) [C LIMITED]
(4)MARK LICHTENSTEIN
(5) ELIYAHU HASSETT
(6) JOSHUA FENTTIMAN
(7) ADAM SPEARS
(8) LEONARD J HOSKINSON
(9) LASKARINA KARASTAMATI
(10) VASSILIS E. KERTSIKOFF

Defendants

- -
- -

MR. ALEXANDER WRIGHT KC, MR. JONATHAN SCHAFFER-GODDARD and **MR. WEI JIAN CHAN** (instructed by **Floyd Zadkovich LLP**) for the **Claimants** and the **Spears Parties**
MR. SEAN O'SULLIVAN KC and **MR. RICHARD NICHOLL** (instructed by **Orrick, Herrington & Sutcliffe (UK) LLP**) appeared for the **First to Third Defendants**
MS. RUTH DEN BESTEN KC (instructed by **Reed Smith LLP**) appeared for the **Kertsikoff Parties**

- -

Approved Judgment

HIS HONOUR JUDGE PELLING KC SITTING AS A JUDGE OF THE HIGH COURT

Transcript of the Stenograph Notes of Marten Walsh Cherer Ltd.,
2nd Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP.
Telephone No: 020 7067 2900. DX 410 LDE
Email: info@martenwalshcherer.com
Web: www.martenwalshcherer.com

HIS HONOUR JUDGE PELLING KC:

Introduction

1. This is the hearing of a claim brought in the name of the claimant by the 9th-10th defendants for a declaration under section 32 of the Arbitration Act 1996 that the arbitrator they have caused to be appointed in respect of three references by the 1st-3rd defendants to arbitration have been validly appointed.

2. In reality this is a dispute between the 9th-10th defendants on the one hand and the 4th-8th defendants on the other as to who is in ultimate control of the claimant and who, therefore, is entitled nominate an arbitrator in its name in relation to each of the references. It follows that although in form this is claim by the claimant against the 1st-3rd defendants, in fact, those defendants have not played any substantive part in the proceedings which has been fought out as a bipartite dispute as to who I should conclude controls the claimant, at any rate as things stand and who, therefore, should decide who the claimant should appoint as its arbitrator.

3. This dispute has no connection with England, other than that the Arbitration Agreements with which this application is concerned requires arbitration in London. As will be apparent from what I say hereafter, the dispute between the 4th-8th defendants, on the one hand, and the 9th-10th defendants, on the other, has been litigated primarily in an arbitration conducted in the State of New York and in the US Bankruptcy Court for the Southern District of New York ("Bankruptcy Court") and the US District Court for the Southern District of New York ("District Court"), exercising its supervisory jurisdiction in relation to US seated arbitrations in New York. It engages issues of US bankruptcy and arbitration law and Republic of the Marshall Islands ("RMI") and Liberian company law.

4. There is a highly contentious application pending before the District Court to set aside the final award in the New York arbitration, brought by parties ultimately controlled by the 4th-8th defendants against parties ultimately controlled by the 9th-10th defendants on the ground that the entities controlled by the 9th -10th defendants obtained that award by fraud. That issue is due to be resolved by Judge Liman in the District Court at the end of this year. I make clear that nothing I say in this judgment should be regarded as relevant to the resolution of that dispute which is exclusively a matter for Judge Liman to resolve on the evidence before him and by reference to the submissions made to him. Indeed, it should not be necessary to refer to this judgment in those proceedings at all other than perhaps as a chronological footnote.

5. This claim has been brought in circumstances of great urgency with the trial taking place between 7th - 9th July and all parties demanding a judgment by no later than 18th July. In fact, I have been able to deliver this judgment on 14th July.

6. There is a long and inglorious history of procedural difficulty which led to this trial being expedited, listed originally for two days before ultimately being extended to its current length, following the joinder of the 4th-8th defendants - something that, in my judgment, the 9th -10th defendants should have provided for from the outset. Had that been done, then the litigation process could have been managed much more effectively.

7. The reason for this haste is something I explain in more detail below. In essence, however, options to purchase three ships the subject of the London arbitrations have to be completed on or before 31st July 2025. The ostensible concern of the 4th-8th defendants on the one hand and the 9th-10th defendants on the other is that whoever succeeds in appointing an arbitrator in the name of the claimant will seek to profit from the exercise of the options at the expense of the unsuccessful group of defendants, while the dispute concerning who controls the claimant is resolved by the United States courts. This led me to make two points to the parties, which I record at this stage. The first is that it would have been significantly more satisfactory if the parties had resolved this dispute by applying to the District Court for injunctions in the pending proceedings there, that regulated who was to appoint the arbitrator on behalf of the claimant. The other point is that this dispute has generated enormous cost and use of public resources where it could and should have been resolved by undertakings designed to preserve the tankers and their charterparty income within the claimant until after the control issue has been resolved in the US proceedings. Despite my encouragement, the parties failed to adopt this course. If and to the extent that this was in the hope of obtaining an advantage in the US proceedings, it has failed because, as I have said, nothing I say in these proceedings is or should be regarded as at all relevant to that litigation.

8. The final point I should make at this stage is an obvious one. Although this is the final hearing of this arbitration claim, it is not a procedure in which any contested findings of fact can be made, other than in relation to the principles of foreign law relevant to this claim. It is for that reason that the 9th -10th defendants have sought to advance their factual case on the basis that all parties are bound by the findings in the award in the US-seated arbitration. That reliance has been hotly contested and is submitted by Mr. Wright KC on behalf of the 4th-8th defendants and by Mr. O'Sullivan KC on behalf of the 1st-3rd defendants, to be the key issue that arises in this trial. I agree that its determination will, in practice, resolve most of what I have to decide. It is why most of the submissions and much of what follows focuses on that issue.

Background

9. As might be expected, the relevant background to the issue that arises is lengthy and complex. In essence, however, the 1st -3rd defendants are the owners of three oil tankers. Each of those defendants entered into a bareboat charter of the vessel it owned to the claimant. Each bareboat charter was subject to a London arbitration agreement, as I have said, and each was subject to an option that entitled the claimant to purchase the tankers on the purchase option date specified in each charterparty. For two of the vessels, that was 24th May 2025 and for the other it was 31st July 2025. For pragmatic reasons, the 1st -3rd defendants have been prepared to agree to an extension to 31st July 2025 of the purchase option date in relation to the vessels with an contractual option date of 24th May, but the 1st to 3rd defendants are not prepared to extend any of those dates further in their own reasonable commercial best interests.

10. In order to exercise the options, the claimant was required to serve on the 1st -3rd defendants a purchase option notice. Two sets of such notices have been served, one signed by the 9th defendant in relation to all three vessels and the other for two of the vessels signed by the 8th defendant, representing the 4th - 8th defendants. Thereafter, a further notice was served on behalf of the 4th -8th defendants in relation to the third

vessel. In the result, each rival camp has now served notices in relation to each of the three vessels.

11. This has placed the 1st - 3rd defendants in an impossible position because the 1st -3rd defendants are not in a position to resolve which set of notices it can safely act on. In order to resolve that situation, the 1st -3rd defendants referred that dispute to arbitration in accordance with the arbitration agreement contained in each of the charterparty's and appointed Sir Stephen Tomlinson as its arbitrator. The 9th -10th defendants purported to appoint Mr. Luke Parsons KC as the claimant's arbitrator. The 4th -8th defendants purported to appoint Sir Jeremy Cooke as the claimant's arbitrator. There being a dispute as to who was entitled to appoint on behalf of the claimant, the 9th – 10th defendants commenced these section 32 proceedings in the name of the claimant.

12. I need not take up time describing the procedural wrangling that followed. In the result, in order to accommodate the time constraints I have referred to, the trial was listed over Monday-Wednesday of last week. The 1st -3rd defendants, as I have said, are the owners of the vessels. Aside from some helpful scene setting by Mr. O'Sullivan and the provision of what he described as a "*route to verdict*" by way of closing, the 1st -3rd defendants have not played any active part in these proceedings. Their only ultimate interest is in knowing that the arbitral references are properly constituted and which of the sets of purchase option notices it can safely rely upon.

13. The 9th -10th defendants commenced these proceedings in the name of the claimant. Together they represent the interests of three Greek families who have extensive knowledge of and involvement in the shipping industry. They claim to be the duly appointed officers of the claimant and thus entitled to appoint an arbitrator on behalf of the claimant. The 4th -8th defendants are associated with Levona Holdings Limited, a company incorporated in the BVI by Murchinson Limited, a Canadian-registered company whose business is or includes private equity investment. The 5th defendant is Levona's sole director and each of 4th -7th directors were appointed directors of the claimant following Levona's acquisition of the class A, B1 and B2 preferred shares, ("preferred shares") in the claimant on 2nd November 2021.

14. On 22nd February 2022, a contract known in these proceedings as the Binding Offer Letter ("BOL") was entered into between the claimant, Eletson Holdings Incorporated (which at all material times held the 30 million common shares in the claimant), Eletson Corporation (which held one special class share in the claimant) and Levona. The purpose of the BOL was to give effect to an arrangement that would permit those represented in these proceedings by the 9th -10th defendants to buy out Levona's interest in the claimant, consisting of the preferred shares. It contained an option which obliged Levona to sell the preferred shares to either the claimant or its nominee. The 9th -10th defendants maintain that on 11th March 2022 that option was exercised and the preferred shares were transferred to three Cypriot-registered companies nominated by or by those represented by the 9th – 10th defendants. These companies are referred to by the 9th-10th defendant and in this judgment as the "*Eletson nominees*".

15. Those represented by the 4th-8th defendants dispute that this is so and the US-seated arbitration was commenced to resolve that dispute. The parties to that arbitration were on one side Eletson Holdings Incorporated (the holder of the common shares in the claimant) and Eletson Corporation (the holder of the special share in the claimant) and

Lenovo as the other party. This arbitration is referred to in the proceedings and in this judgment as the "*JAMS arbitration*".

16. After commencement of the JAMS arbitration but before it had been completed three petitioning creditors filed Chapter 7 bankruptcy proceedings against Eletson holdings in the Bankruptcy Court. Lenovo maintained in the JAMS arbitration that the effect of this was to impose a mandatory stay on the JAMS arbitration by operation of section 362(a) of the US Bankruptcy Code. On 10th March 2023, the arbitrator stayed the JAMS arbitration pending further order of the Bankruptcy Court.

17. On 17th April 2023, that court made an order referred to in these proceedings as the "*lift/stay order*". It is so-called because its apparent effect was to lift in part the statutory stay imposed by section 362(a) of the US Bankruptcy Code so as to permit the JAMS arbitration to continue. That order is described on its face as being a "*stipulation and order*". I understand that to mean the order was a Consent Order, which reflects an agreement reached by the parties to it. It is relied upon by the 4th -8th defendants in these proceedings. In so far as is material, it provides as follows:

> "**Stipulation and order granting alleged debtor's motion for relief from stay to proceed with, or to confirm the inapplicability of, the automatic stay to pre- petition arbitration proceedings**.
>
> This Stipulation and Order (the 'Stipulation and Order') is entered into by and among (a) Eletson Holdings, Inc. ('Eletson Holdings'), Eletson Finance (US) LLC ('Eletson Finance'), and Agathonissos Finance LLC ('Eletson MI', and together with Eletson Holdings, and Eletson Finance, collectively, the 'Alleged Debtors,' and, together with their controlled affiliates and subsidiaries, 'Eletson'), and (b) Pach Shemen LLC ('Pach Shemen'), VR Global Partners, L.P. ('VR Global'), and ALPINE PARTNERS (BVI), L.P. ('Alpine' and, together with Pach Shemen and VR Global, the 'Petitioning Creditors'). The Alleged Debtors and the Petitioning Creditors are referred to herein individually as a 'Party' and collectively as the 'Parties.'
> …
>
> **RECITALS**
>
> "…
>
> D. As of the Petition Date, Eletson Holdings, non-debtor wholly owned subsidiary of Eletson Holdings, Eletson Corporation ('Eletson Corp.'), and non-debtor Levona Holdings Ltd. ('Levona', and together with Eletson Holdings, and Eletson Corp., the 'Arbitration Parties') are parties to the JAMS arbitration proceeding entitled, Eletson Holdings, Inc., et al. v. Levona Holdings Ltd., JAMS Ref. No. 5425000511 (the 'Arbitration'), originally commenced on July 29, 2022, and pending before the Honorable Ariel Belen (the 'Arbitrator').

E. By email dated March 10, 2023, the Arbitrator informed the Arbitration Parties that he was staying the Arbitration pending further order of the Bankruptcy Court ...

F. On March 13, 2023, Debtor filed the Alleged Debtor's Motion for Relief from Stay to Proceed with, or to Confirm the Inapplicability of, the Automatic Stay to Prepetition Arbitration Proceedings ... the 'Stay Relief Motion') requesting entry of an order, pursuant to section 362(d) of the Bankruptcy Code, lifting the automatic stay under section 362(d) ... to permit the Arbitration to continue before the Arbitrator. The Stay Relief Motion was served on the other Alleged Debtors, non-Debtor Eletson Gas LLC ('Eletson Gas'), the Arbitration Parties, the Petitioning Creditors, and the U.S. Trustee, and no other parties ...

H. In order to resolve the Petitioning Creditors' objections to the Motion, the Parties have agreed upon this Stipulation and Order, subject to Bankruptcy Court approval.

I. The Court having held a hearing to consider the Stay Relief Motion on April 17, 2023

IT IS THEREFORE STIPULATED AND AGREED, AND UPON BANKRUPTCY COURT APPROVAL HEREOF, IT IS HEREBY ORDERED:

1. The above recitals are incorporated herein in their entirety.

2. The Stay Relief Motion is approved solely to the extent set forth herein.

3. The automatic stay under section 362(a) of the Bankruptcy Code is hereby modified with respect to the Arbitration solely to the extent necessary and for the sole purpose of permitting a trial, any related pre-trial proceedings (including any remaining discovery), any related post-trial proceedings or briefing, and a final determination or award to be made by the Arbitrator, including any appeals, with respect to the claims currently pending in the Arbitration (the 'Arbitration Award'). The Arbitration Parties are authorized to provide a copy of this Stipulation and Order to the Arbitrator.

4. Any Arbitration Award, whether in favor of any Arbitration Party, shall be stayed pending further order of the Bankruptcy Court on a motion noticed following the issuance of the Arbitration Award. For avoidance of doubt, no Arbitration Party shall transfer, dispose of, transact In, hypothecate, encumber, impair or otherwise use any such Arbitration Award or any asset or property related thereto absent a further order of this Court. ..."

18. There is a dispute as to the effect of this order to which I turn in more detail later in this judgment. Broadly, the 9th -10th defendants maintain that the order is confined in its effect to the parties defined in the order as being the "A*rbitration Parties*". The 4th -8th defendants maintain that the final sentence of paragraph 4 is of entirely general effect. I return to these issues later in this judgment. There is however very little dispute as to how it should be construed. Obviously, US principles of construction apply. It is agreed that what the witnesses called "*extraneous*" evidence is relevant to construction where the language used is ambiguous. Mr. Angelich maintains that all the information needed to construe this and indeed the other orders that arise in these proceedings is to be found within the four corners of the order concerned. Mr. Barefoot said that orders should be construed holistically by which he means that account must be taken of each and every provision within the order to be construed when arriving at a conclusion as to the true meaning and effect of the order concerned. I have applied that approach when considering the meaning of the lift/stay order and the other orders of the Bankruptcy Court and District Court to which I refer below.

19. On 29th September 2023, the final award in the JAMS arbitration ("JAMS award") was published. Eletson Holdings and Eletson Corporation, controlled ultimately by the parties represented in these proceedings by the 9th -10th defendants, succeeded and Levona failed. In reaching that conclusion the arbitrator expressed himself in emphatic terms in relation to Levona's conduct. However, that is not material to the issues that arise in these proceedings. It is only the outcome that is or may be relevant. In the result, the arbitrator concluded that the BOL option had been exercised in favour of the Eletson nominees and as of 11th March 2022, Levona had no membership interest in the claimant by reference to its claimed interest in the preferred shares.

20. On 19th October 2023, Eletson Holdings commenced confirmation proceedings before the District Court. Although not discussed in detail in the course of this hearing, my understanding is that these proceedings are broadly equivalent to proceedings in this jurisdiction under section 66 of the Arbitration Act 1996, by which an award may be made enforceable as if it were a judgment of the court. On 24th October 2023, Levona applied to vacate the JAMS award. This is broadly equivalent to a claim in this jurisdiction under either section 68 and/or section 69 of the Arbitration Act 1996. There then followed a series of steps in these proceedings that led to this dispute.

21. In the District Court, Judge Liman initially allowed in part each of the applications to confirm and the cross-application to vacate - see the order he made on 9th February 2024. Levona had applied to the District Court for an order referring the applications to the Bankruptcy Court under paragraph 4 of the lift/stay order. The District Court rejected that application on the basis that District Court was the court with original jurisdiction under the Federal Arbitration Act, which had been expressly incorporated into the arbitration agreement pursuant to which the JAMS arbitration had been constituted. That does not mean, however, that the stay/lift order had ceased to apply, for the reasons I explain below. At that stage, there was no suggestion that the award had been procured by fraud, see paragraph 41, final full paragraph, of Judge Liman's judgment on that occasion.

22. On 24th February 2024, the 9th and 10th defendants maintain the Eletson nominees gave notice removing the 4th-7th defendants as directors of the claimant and substituting three new directors.

23. There was then some activity by Judge Liman and the parties concerning the remission of the award to the arbitrator, to give effect to the partial vacation orders made as directed by Judge Liman, but that is not centrally or indeed at all relevant for present purposes.

24. The next event of potential significance to these proceedings occurred on 3rd July 2024, when Levona applied to amend its cross-petition to vacate the JAMS Award on grounds of fraud based on documents that have been disclosed to Levona, only with great reluctance by Eletson Holdings, pursuant to previous orders. Judge Liman permitted that amendment by an order made on 6th September 2024. In permitting that amendment, Judge Liman was severely critical of the conduct of Eletson Holdings and associated parties in relation to discovery and the failure, as he saw it, of those parties to comply with orders and/or to co-operate with the litigation process - see in particular paragraphs 34-35 of his judgment. The documents disclosed were described by Judge Liman as tending: "*... to show fraud in the arbitration proceedings. As it turns out, Levona was not just blustering*"; an allegation which had been made on behalf of Eletson Holdings in resisting the discovery sought by Levona. The judge considered the relevance of this material at page 17 of his judgment, where he said:

> "The story that Eletson told, which was accepted by the arbitrator, was that by March 2022, Eletson had already bought out Murchinson's preferred interest and all that remained was the repayment of the working capital. In that version of events, there would have been no need after March 2022 for Eletson to raise money for the purchase of the Preferred Interests or for Eletson to have sold the vessels. Eletson already had the Preferred Interests and Lenova had the right to the vessels, which it obtained in exchange for the Preferred Interests.
>
> According to the documents which Eletson was compelled to produce during the bankruptcy proceeding, the story told by Eletson to the arbitrator was untrue. As late as August 2022, after Eletson had filed the arbitration, Eletson was trying to raise funds in order to purchase the Preferred Interests and was contemplating that it would have to pay more for those interests than contemplated under the Purchase Option. And unlike the email the arbitrator considered during the arbitration, not all of these emails were written by the bribed Kanelos. It is easy to imagine that an arbitrator, confronted with these documents, would have reached a contrary decision to that reached by the arbitrator here and would have ruled for Levona on its counterclaims rather than Eletson on its claims."

25. The 9th-10th defendants maintain that the documents to which Judge Liman has referred have been misunderstood and that the documents that form the basis of the fraud allegation had been taken out of context and concerned a different but related transaction and were not relevant to the purchase to which Judge Liman referred in the part of his judgment I have just quoted from. No one suggests that this dispute can (or should) be resolved at this hearing. As things stand, the allegations appear to have been accepted by Judge Liman as at least realistically arguable by reference to the documents

but, by the same token, the allegations of fraud are strenuously denied by the parties represented in these proceedings by the 9th -10th defendants.

26. It is now necessary chronologically to return to the bankruptcy proceedings. On 25th October 2024, the Bankruptcy Court approved what is known as a "*Chapter 11 Plan*" proposed by the petitioning creditors. Prior to that, the Chapter 7 bankruptcy that had originally been commenced, had been converted into a Chapter 11 bankruptcy, which was the precursor to the approval of the Chapter 11 Plan. That order was confirmed by a further order made by the Bankruptcy Court on 4th November 2024. The 4th -8th defendants' case is that that Plan took effect on 19th November 2024. I accept that that was so because although an appeal against that order is pending, no stay of the Bankruptcy Court's order has been applied for or ordered. It is common ground, but in any event I find on Mr. Barefoot's evidence, that unless a Chapter 11 Plan Order is stayed pending appeal, it continues in full force and effect even though an appeal has been lodged and has yet to be resolved.

27. The effect of the Scheme was that, amongst other things: (a) Eletson Holdings issued equity to creditors in substitution for debt; (b) the Board of Eletson Holdings, as it was at the time the scheme was approved, was deemed to have resigned with effect from 19th November 2024; and (c) a new board consisting of the 7th and 8th defendants and Mr. Matthews took office with effect from 19th November 2024.

28. Thereafter, between 19th November and 2nd December 2024: (a) the new board of Eletson Holdings removed its previous officers and appointed the 7th defendant as its President and CEO; (b) Eletson Holdings, as holder of the common shares in the claimant, removed its officers and replaced them with the 8th defendant as a director; (c) Eletson Holdings confirmed the 4th -8th defendants as directors of the claimant; (d) the directors of the claimant appointed the 4th defendant as its Secretary; and (e) the directors of the claimant removed its pre-existing officers and replaced them with the 8th defendant as its CEO.

29. I record that a certificate of incumbency was issued, suggesting that none of the changes to which I have referred to above had taken effect and the officers and directors of the claimant remained as they had been before 19th November. This is relied upon by the 9th and 10th defendants as evidence of the truth of its contents. Those parties also commenced New York Convention recognition proceedings in respect of the JAMS Award in Greece and before this court. One of the purposes of this exercise was to obtain recognition of its ostensible entitlement to the preferred shares.

30. Returning to the District Court proceedings, there were two further orders made that I need to refer to. The first is an order made by Judge Liman on 14th February 2025, by which he amended his previous partial confirmation and partial vacating order in relation to the JAMS Award so as to take account of the permission he had given to the parties represented in these proceedings by the 4th-8th defendants to challenge the JAMS Award on the ground it had been obtained by fraud. He stated that the order was to be amended: "*... to add the conditional language 'subject to the resolution of Levona's pending notion to vacate the award and its defence based on fraud in the arbitration.'"* He added that the amended order should be read so as to state: "*Subject to the resolution of Levona's pending motion to vacate the award and its defence based on fraud in the arbitration, the court confirms the award*." This order has given rise to

a significant amount of debate in these proceedings, both by way of substance and in the expert evidence. In arriving at a conclusion as to what was intended by the amended order, I have applied the US Principles of Construction to which I referred earlier in this judgment.

31. Applying those principles, I think Judge Liman formulated the order in the way he did so as to reserve all options for the substantive hearing. These options will or may include: (a) rejecting the fraud challenge and confirming the award to the extent that it had been confirmed previously; (b) partially setting aside the award for fraud but nonetheless confirming parts of the Award; or (c) setting aside the whole of the award for fraud. As things stand, however, I do not see how the confirmation referred to in the amended order can serve any useful purpose unless and until the fraud challenge has been determined. This appears to be Judge Liman's view as well because by an order made by him on 2nd June 2025 ("ASI Order") he ordered the Eletson nominees to procure dismissal of the New York Convention recognition proceedings that had been started in Greece and in this court and further directed that they, "*inform Levona ... of any foreign proceedings currently pending, seeking to confirm and/or enforce the award within one day of the entry of this order so that Levona may seek relief as appropriate*."

32. Levona sought an order from Judge Liman that confirmed expressly that his understanding was as I have described it. He declined to make that order, on the basis that the order he made four days earlier required the Eletson nominees (described in that order as the "*interveners*") to inform the court of any future foreign proceedings seeking to confirm or enforce the JAMS award (so as to enable ASI proceedings to be commenced in relation to any such proceedings) and because the interveners were taking steps to dismiss the Greek and Commercial Court proceedings.

33. In my judgment, those orders must be construed together, applying the principles referred to earlier in my judgment. The effect of Judge Liman's orders on this basis, taken as a whole, were clearly intended to suspend recognition and enforcement of the award pending final determination of the fraud challenge. No other approach to the orders, taken as a whole, could be coherent or reflect accurately his decisions to require the Greek and English recognition proceedings to be discontinued and his direction that any further attempts were to be notified to the Spears parties with a view to an injunction being sought preventing any such proceedings from continuing.

34. There is one point made by reference to the ASI order by the 9th -10th defendants that I ought to deal with at this stage. Ms. den Besten KC, in her closing submissions, referred to a comment I made at one of the CMCs leading to this hearing, that these proceedings did not appear to breach the terms of paragraph 2 of the ASI order. At that CMC, I had not appreciated that the 9th -10th defendants would be relying on the content of the JAMS Award in the way that they have at this hearing. I return to this point further below but observe at this stage that the ASI order has a potential impact on these proceedings because the 9th – 10th defendants submit I should proceed on the basis that the JAMS Award had been recognised (even though it has not been) or would be recognised, if recognition had been applied for.

35. Before turning to the resolution of the issues that arise, I need to record two events of relevance in relation to Eletson Holdings. On 14th March 2025, the deputy registrar in

Liberia recorded that the directors of Eletson Holdings were the 7th-8th defendants and Mr. Matthews and that its officer was the 7th defendant. Although this was challenged by the 9th-10th defendants, I do not accept that they were entitled to, for the reasons identified by Professor Banks in his report on Liberian law at paragraph 40, and in particular paragraphs 40(e) and (f) of his report. In my judgment, Professor Banks conclusions are consistent with the principles of Liberian law which he summarises in paragraph 40(g)-(k). On the same day as the deputy registrar had acted in the way I identified, but necessarily after that event, Eletson Holdings was removed from the Liberian register and repatriated to the RMI.

Resolution of the dispute between the parties

36. The claimant's board is made up of directors appointed by two groups of shareholders, being (a) up to two directors appointed by the holders of the common shares (it being common ground that those shares remained at all times in the control of Eletson Holdings), and (b) up to four directors who were to be appointed the holders of the preferred shares. The two issues that matter therefore, are (a) who controlled Eletson Holdings and (b) who controlled the preferred shares.

37. As to the first of these issues, that depends on the status of the Chapter 11 bankruptcy plan. That plan, as carried into effect, provides that the old board was deemed to have resigned with effect from 19th November 2024 and from that date the 7th-8th defendants and Mr. Matthews were to be its directors. Although the order of the US Bankruptcy Court giving effect to this plan had been appealed, there is no stay in place pending appeal.

38. The 9th-10th defendants submit that the orders giving effect to the Chapter 11 scheme has not been recognised in Liberia and/or by the courts in the RMI and that therefore the Chapter 11 Plan is immaterial. I reject those submissions. Down to the date when Eletson Holdings was removed from the Liberian register and redomiciled in the RMI, its management and control depended upon Liberian law. On 14th March 2025, the deputy registrar filed the order from the US Bankruptcy Court and recorded the changes that it has made. As I have explained, the deputy registrar was required to do so as a matter of Liberian law. Professor Banks' evidence is he was correct to adopt the course he did. That course was challenged in the Liberian courts. That challenge failed. Once the deputy registrar had taken that step, Professor Banks' evidence is that the effect of the order was that it backdated as a matter of Liberian law to the date of the order, that is 19th November 2024. There is no evidence to contrary effect. That is a complete answer to the point made by the 9th -10th defendants based on Liberian law.

39. The final issue that arises is whether redomiciling the company to the RMI makes any difference to this analysis. It was submitted on behalf of the 9th -10th defendants that if reliance w\as to be placed on the Chapter 11 plan, that plan and the order under which it was made had first to be recognised by the courts of the RMI. I do not see why that is so. First, what had been redomiciled is the company as it was structured before it was redomiciled. The whole point about re-domiciliation is that it permits an entity to transfer from one jurisdiction to another without having to be dissolved and reformed as a new company in the successor jurisdiction. What is redomiciled is the company as it was constituted when it was redomiciled. As I have explained, the Chapter 11 scheme had been registered in Liberia of necessity before the re-domiciliation process took

place. This much is obvious since registration could not take place after Eletson Holdings had been redomiciled into the RMI because it had been removed from the Liberian register in order to facilitate re-domiciliation in the RMI.

40. In any event, the point made by Mr. Wright in his opening oral submissions and again in his closing submissions is that the decision to redomicile Eletson Holdings to the RMI was one taken by the Board put in place by the Chapter 11 plan and thus it proceeded only on the basis that the new board and management were in place. The consequence if the 9th – 10th defendants were correct is that re-domiciliation in the RMI would be void or invalid, which presumably means it would have to be redomiciled back to Liberia where it would become subject to the scheme by operation of the principles to which Professor Banks refers.

41. For either or both of these reasons, in my judgment, Mr. Wright is correct in submitting that the law of the RMI is immaterial for present purposes. In my judgment, therefore, Mr. Wright is correct to submit that for the limited purpose of resolving the question before me, I should proceed on the basis that the 4th -8th defendants are correct to submit that Eletson Holdings is controlled by the directors appointed under and by operation of the Chapter 11 plan and that their appointment of the 8th defendant to the Board of the claimant was a valid appointment.

42. It is now necessary to consider what in truth is the real issue in these proceedings, namely who I should conclude has control of the preferred shares because the 4th -7th defendants are directors of the claimant only if and to the extent that Lenova has lawfully exercised its powers as holders of the preferred shares.

43. The key issue on which the question turns is whether the preferred shares were transferred to the Eletson nominees as the 9th -10th defendants allege. That depends in turn on whether the BOL option was exercised by those represented in these proceedings by the 9th -10th defendants. There is an issue to be considered at this stage as to how those questions are to be resolved. Mr. Wright maintains that the 9th -10th defendants have chosen to rely exclusively upon the JAMS award, that they are not entitled to do so and in consequence the 9th -10th defendants' claim on the issue I am now considering must fail. This is a critical issue because if Mr. Wright is correct, then the question is not whether in fact the position is as the 9th-10th defendants maintain, but only whether or not they are entitled to rely on the JAMS award as a determination binding on the 4th-8th defendants in the terms it has been expressed.

44. I asked Ms. Den Besten KC whether she accepted Mr. Wright was correct on this point - see transcript day 3, page 131/11 to 134, line 6. With respect to Ms. Den Besten, she seemed to be avoiding the question I am now considering. I asked the question again at T3/132/22, but it was not answered. I asked it earlier, at T3/131/25 to 132/6. Again it went unanswered. I had asked it at T3/131/11, but again it was deflected. The closest I got to an answer was when I asked at T3, is 131/19: "*... You haven't sought to prove that [the title to the preferred shares has passed to the Kertsikoff parties] other than by reference to the award*", to which the reply was: "*That's right, and then the award confirmed the prior passage of the shares."*

45. In the end, I accept the point made by Mr. Wright that the 9th -10th defendants seek to prove their claim in relation to the preference shares exclusively by reference to the

JAMS award and their assertion that an issue estoppel arises as a result. The question does not turn therefore on any finding of fact by me, but on whether the 9th -10th defendants are entitled to rely upon the JAMS award. I conclude that they are not. My reasons for reaching that conclusion are as follows.

46. Mr. Wright challenges the ability of the 9th -10th defendants to rely upon the JAMS on multiple different grounds, including (a) that no application has been made by the 9th-10th defendants for an order in this jurisdiction, recognising the JAMS award under section 101 of the Arbitration Act in consequence of which it has no relevant effect as a matter of English law; (b) it is not open to the 9th -10th defendants to seek recognition of the award since they are not parties to it and so again the award is of no material effect; (c) the formal requirements for recognition have not been satisfied, a point of itself I regard as of relatively little importance, since there is no application for recognition, but more importantly (d) assuming in principle that the 9th -10th defendants were entitled to apply in this jurisdiction for recognition of the JAMS award, there are numerous grounds on which recognition could be resisted under section 101 of the 1996 Act (which gives effect in in this jurisdiction to the New York Convention) including (i) that upon a proper analysis of the JAMS award, it is not binding on the parties to these proceedings, (ii) the JAMS award has been suspended in the US, either by operation of the lift/stay order in the Bankruptcy Court or the orders of Judge Liman summarised above in the District Court and/or (3) because recognition should be stayed pending resolution of the application to set aside the award for fraud pending before the District Court. Even if all that is wrong, Mr. Wright submits that the conditions for issue estoppel are not made out so that the 9th -10th defendants' reliance on the JAMS award must fail and with it the claim in these proceedings and that it is wrong in principle for the 9th -10th defendants to claim that the proceedings are an abuse of process, even if issue estoppel is not available.

47. Before turning to these issues, it is necessary to dispose of an alternative way Ms. Den Besten put the 9th -10th defendants' case on the issue I am now considering, which was to rely upon the contents of the certificate of incumbency issued in relation to the claimant. Ms. Den Besten did not rely on the point at all firmly, contending only that the certificate had evidential value - see paragraph 42.2 of her opening and closing submissions. As Ms. Muller, the 9th -10th defendant' witness on RMI law says in paragraphs 37-38 of her report, the certificate is not based upon any concept provided for by RMI law. It is an extract provided by a company Registrar based on records it has on file at the time the document is issued. I consider with respect that Ms. Muller is entirely correct to say that a certificate: "... *can be evidential* ..." - see her report at paragraph 38. Whether and to what extent weight will be given to it is, however, highly context-specific. In my judgment, it is unlikely to assist in a case such as this as the parties at least implicitly recognise by the length and intensity of their focus on the JAMS award. The certificate establishes what is set out in the records. The 4th-8th defendants submit the certificate does not establish the truth of its contents. I agree. They submitted it added nothing material to a case such as this. Again, I agree.

48. I turn therefore to the JAMS award. As to this, Mr. Wright submits the default position is that findings made in earlier proceedings are not admissible in subsequent proceedings between different parties as evidence of the facts found - see the well-known decision of the Court of Appeal in Hollington v Hewthorn [1943] KB 587. Similarly, an arbitral award is not admissible evidence in a subsequent case between

different parties to prove a fact in issue. The rationale for this rule in modern times is that identified in Hoyle v Rogers [2014] EWCA Civ 257, by Christopher Clarke LJ, at paragraph 39, namely that:

> " ... findings of fact made by another decision maker are not to be admitted in a subsequent trial because the decision at that trial is to be made by the judge appointed to hear it ('the trial judge'), and not another. ..."

I agree that summary represents the default position in English law. Whilst the rule is subject to a number of exceptions, there is no relevant exception is relied on by the 9th – 10th defendants in this case, other than the alleged availability of issue estoppel. There are a number of difficulties that the 9th – 10th defendants face in relying on issue estoppel which I consider below but the point that matters at this stage is that before that doctrine can be relied on by reference to a foreign arbitral award, the foreign award must first be recognised by an order made by the English court under section 101(1) of the Arbitration Act 1996, for it is only then that it can be "*... relied on in any legal proceedings in England and Wales ...*" and only then between "*... the parties as between whom it was made ...*" - see Svenska Petroleum Exploration AB v Republic of Lithuania [2005] l LLR 515, where at paragraph 10, Nigel Teare KC (as he then was) held that if a reward was to be relied on as giving rise to an issue estoppel, the award had first to be recognised pursuant to ss. 101-103 of the Arbitration Act 1996, "*... as a gateway to an issue estoppel ...*".

49. The JAMS award has not been recognised, either in England or for that matter in the RMI. As noted earlier, any claim for such recognition at least arguably would come within the scope of paragraph 2 of Judge Liman's ASI order. However, that order bites on the parties against whom it is made and not this court. Thus, whilst any application for recognition by a party to whom the ASI is addressed might expose that party to proceedings for contempt in the United States, it would not preclude this court from granting recognition if it was sought.

50. It follows from the points so far considered that

i) If (as the 4th-8th defendants contend) the parties to these proceedings are not the same as the parties to the JAMS award (or their privies), the 9th – 10th defendants are not entitled to rely on the JAMS award in these proceedings because at common law that award is not admissible in subsequent proceedings between different parties as evidence of the facts found; but

ii) even if (contrary to the 4th -8th defendants' submission) the JAMS award could be treated as made between the same parties as the parties to this claim or their privies, it is none the less not available to support an issue estoppel claim by the 9th – 10th defendants because it has not passed through the recognition gateway established by sections 101-103 of the Arbitration Act 1996. Indeed, 9th -10th defendants have been clear that they are not applying for such recognition, presumably because of a concern as to the effect of Judge Liman's ASI order on them if they made such an application.

51. That of itself is dispositive of the 9th – 10th defendants claim in these proceedings. There is one other point that would be dispositive, even if what I have said so far was not. By

section 103(2) of the Arbitration Act 1996, recognition may be refused when an award "... *has been set aside or suspended by a competent authority of the country in which, or under the law of which, it was made* ...". In addition, by section 103(5) of the Arbitration Act 1996:

> "Where an application for the setting aside ... of the award has been made to such a competent authority as is mentioned in sub-section (2)(f), the court before whom the award is sought to be relied upon may, if it considers it proper, adjourn the decision on recognition ... of the award."

On any view, the last-mentioned provision is engaged in the circumstances set out above, with the result that if an application for recognition had been made, it is probable that the application would have been stayed until after the application to the District Court for an order setting aside the JAMS award for fraud had been determined. I say that because the allegations that have been made are apparently credible, are not demurrable and are made in a jurisdiction where there continues to be professional constraints on the making of fraud allegations - see the evidence of Mr. Borne at T2/88/14-15. Levona's allegations were not regarded by Judge Liman has anything other than realistically arguable issues as is apparent from his comments quoted earlier.

52. A court is bound to be cautious before recognising an award where there is an apparently credible pending application to set aside an award for fraud in the courts where the arbitration is seated. In addition, the potential for wasted costs, huge commercial uncertainty as well as the requirement to ensure that no more than a proportionate share of public resources is made available to individual cases all point firmly towards a court postponing recognition until after final determination of the set-aside application pending before the courts of the arbitral seat, particularly where (as here) that determination is expected to happen within relatively early course.

53. Aside from that, I conclude that the effect of Judge Liman's orders when read together and applying the relevant principles of construction summarised earlier were intended to suspend recognition or enforcement until after the application to set aside fraud had been resolved. This approach is entirely consistent with Leidos Inc v The Hellenic Republic [2019] EWHC 2738 (Comm) 2020 1 LLR 37, where Jacobs J held that a relevant suspension had been imposed where a competent authority (in this case the District Court) makes it clear that there can be no enforcement of the award pending determination of the substantive application. As Jacobs J said:

> " ... the question of whether there has been a suspension of the award must be considered as a matter of substance, and that this occurs where the courts of the seat have stayed enforcement pending determination of a challenge to the Award. ... ".

54. In reaching that conclusion, Jacobs J considered many of the leading New York Convention commentaries. None were cited to me which suggested Jacobs J's approach was even arguably wrong. Those he referred to are identified in his judgment and his conclusions derived from them are set out in paragraphs 32-34. He emphasises that challenges to an award in the courts of the seat do not automatically prevent

enforcement. Rather, each case, where that situation arises, has to be considered on its merits.

55. In this case, the terms of Judge Liman's order, principally his suspension/confirmation order, his order amending its terms after permission had been given to Levona to allege fraud, the terms of his ASI order and his reasons for refusing any additional order, when read together, clearly point to the judge intending that enforcement should be suspended until the challenge based on fraud could be determined. To the extent there was a dispute about it in these proceedings, consistently with Jacobs J's conclusion, I respectfully agree that the concept of "*suspension*" extends to temporary suspensions for the reasons he sets out. Mr. Born's evidence was that the US courts would reach a similar conclusion - see his second report at paragraph 24 and his oral evidence at T2, page 90, lines 1-19.

56. I have not so far considered the effect of the lift/stay order made by the Bankruptcy Court. Given the conclusions I have so far reached, it is probably unnecessary that I do so. However, had it been necessary to reach a conclusion on those issues, I would have considered its effect was to stay at least enforcement of the JAMS award, because I accept Mr. Born's evidence that the phrase "*competent authority*" means any court in the arbitral seat with jurisdiction to deny legal effect to arbitral awards.

57. I accept that the Bankruptcy Court is one such court in the US because it has control over the bankruptcy of a corporate entity over which it otherwise has jurisdiction and because bankruptcy is a collective or universal remedy, designed to ensure that all creditors in the same class are treated in a similar way. For that reason the English court would generally not permit enforcement of a judgment or award in England where the judgment debtor is subject to insolvency proceedings in another jurisdiction other than in exceptional circumstances - see Beograd Innovation Limited v Somovidis [2025] EWHC 1182 (Comm). Thus in principle, permitting the JAMS arbitration to be completed made sense because it would enable the issues between the parties to be resolved. However, it would not be appropriate to permit enforcement since that would cut across the universalism of the insolvency remedy or might do so if the effect of the award was to grant monetary or other valuable remedies against the debtor, which was, it will be recalled, Eletson Holdings.

58. With these generalities in mind, the lift/stay order is, in my judgment, principled and clear in its effect, applying the construction principles identified earlier. The order was made between the parties defined as "*alleged debtors*" on the one hand and the creditors on the other, with Lenova being identified as a party to the arbitration that appears to have been served with the application and therefore bound by the order that was made - see in particular recital F quoted above.

59. As Judge Liman observed in his February judgment, the lift/stay order does not expand on the statutory stay imposed by the US Bankruptcy Code. As the judge observed, and I respectfully agree, its effect is to permit a limited derogation from the effect of the statutory stay. In my judgment, paragraphs 2 and 3 of the order make clear the very limited nature of the agreed derogation from the statutory stay, with it being limited strictly to the commencement and completion of the steps identified in paragraph 3. In my judgment, paragraph 4 makes perfect sense, once the bankruptcy context and the

limited effect of the derogation from the statutory stay is understood. It provides that enforcement of the award is stayed pending further order.

60. Whilst its inclusion was probably not necessary given the terms of the statutory stay and the restrictive terms of paragraph 3 of the lift/stay order, its effect is clear enough. The second sentence of paragraph 4 adds nothing to the general scope of the first, as the words "*for the avoidance of doubt*" make clear, whilst at the same time expressly making clear that the steps there set out are prohibited without further order. The words: "... *whether in favour of any arbitration party* ..." are not material for present purposes. They were inserted so as to make clear that a further order of the Bankruptcy Court was required before any further steps could be taken, irrespective of who won and who lost in the JAMS arbitration. I regard the debate as it whether the order has any effect other than on the arbitration parties to be an arid one. If and to the extent it is so-limited, that makes sense, since generally only the parties to an arbitral award can enforce the award. If and to the extent any arbitration party has any privies capable of enforcing the order, then the order plainly applies to them as well, since otherwise the effect of the order could be circumvented. Finally, in my view, the list / stay order bound the parties to the bankruptcy proceedings to the extent they are not arbitration parties as defined and to the extent they could otherwise enforce the JAMS award.

61. I have so far referred to enforcement, so a question arises concerning recognition. Given that recognition may be sought for a variety of purposes other than enforcement, as section 101 of the Arbitration Act makes clear, in my judgment, the lift/stay order is widely enough drawn to prevent recognition being sought as well, without the prior permission of the Bankruptcy Court. It may be that if recognition was sought for a purpose other than enforcement of the award against Eletson Holdings or one of the other debtors, that permission would be reasonably readily given to seek recognition but that is all beside the point. In my judgment, the plain words of the order are clear enough. The only derogation from the statutory stay is that permitted by paragraph 3, with all other steps in relation to the award that is within the scope of the statutory stay requiring the permission of the Bankruptcy Court before such a step is taken.

62. A point remains as to whether or not the District Court is the only competent authority for New York Convention purposes. But for the intervention of bankruptcy, I would have no doubt in holding that the District Court, on the evidence, would be the sole competent authority in the circumstances of this case. However, once bankruptcy intervened, the Bankruptcy Court of necessity became also a competent authority, since otherwise the universalism of the insolvency remedy would be at least potentially compromised or would depend on a court other than Bankruptcy Court determining applications relevant to a pending bankruptcy. That is an improbable outcome. The statutory stay protects the universalism of the bankruptcy remedy and the scope of any derogation from the statutory stay is a matter that is, in my judgment, for the Bankruptcy Court on the material that I have available to me.

63. I do not understand the expert evidence to disagree with this analysis. In my judgment, therefore, and applying Jacobs J's analysis of the suspension concept in Leidos v The Hellenic Republic, ibid, I consider that the lift/stay order constituted a suspension for the purposes of the New York Convention and section 101 of the 1996 Act.

64. The final difficulty faced by the 9th -10th defendants in relying on the JAMS award is that even if they had applied for its recognition and aside from the points so far considered, they would not have had standing to seek recognition or to rely on the award if it were recognised. The parties to the award must be the same people as against whom recognition is sought - see Norske Hydro ASA v The State Property Fund of Ukraine [2002] EWHC 2120 (Comm) 2009 BLR 558, *per* Gross J (as he then was), when he refused to permit enforcement of an award made against one party, against two separate and distinct other parties. It is worthwhile noting that one of the reasons Gross J gave for adopting that course was because otherwise it would be necessary to consider English domestic principles concerning principals and agents to which I would add privies, since it would be necessary to determine whether a non-party applying for enforcement or against whom enforcement was sought was a privy to one of the parties to the award. That engages precisely the mischief that led Gross J to the conclusion that he reached in support of the restrictive determination he made. As Gross J said: "*... this is all inappropriate for an enforcing court*." As he added: "*The right approach is to seek enforcement of an award in the terms of that award.*" To do otherwise would not be to enter judgment "*in the terms of the award*" as required by section 101(3) of the Arbitration Act 1996. None of the defendants were parties to the JAMS arbitration. The claimant was not a party either.

65. In light of these conclusions, it is not necessary that I consider further the question of issue estoppel. I consider the point only because it was the subject of extensive argument and in case I am wrong on the points I have so far considered.

66. In order to succeed in an issue estoppel claim, there must be an identity of parties - see Good Challenger Navegante v Metalexportimport SA [2003] EWCA Civ 166, 1668; [2004] 1 Lloyds Rep. 67 per Christopher Clarke LJ at paragraph 20 following long-standing authority to similar effect. There is no such identity as between the parties to the arbitration and the parties to this litigation unless they were privies. In English law, issue estoppel applies not merely to the parties to a judgment but also their privies. This class of connected person is traditionally defined as being those where: *"(h)aving due regard to the subject-matter of the dispute there is a sufficient degree of identification between the two to make it just to hold that the decision to which one was a party should be binding in proceedings to which the other is a party*." - see Gleeson v Wippell and Co. Ltd. [1977] 1 WLR 510 per Sir Robert Megarry V-C at 514-515. The English courts will decide whether there is an issue estoppel, applying principles of English law, see Carl Zeiss Stiftung v Rayner and Keeler Ltd. (No. 2) [1967] 1AC 853 at 191. The degree to which persons other than parties to an arbitral award could be made subject to an issue estoppel was considered most recently by Foxton J in PJSC National Bank Trust v Mints & Others [2022] EWHC 871 (Comm); [2022] 1WLR 3099, where one of the issue that arose was whether an LCIA arbitral award was capable of giving rise to an issue estoppel against the respondents who are not parties to the LCIA arbitration. The relevant principles are those identified by Foxton J at paragraph 27 and following in his judgment in Mints. Generally, for the reasons he identifies, the class of privies who will be bound by an arbitration award will be narrower than those bound by state court judgments. In relation to who might come within the class of privies in principle, Foxton J identified various factors of importance to that question, at paragraph 33 in his judgment. At paragraph 33(iii) he said this:

> "That argument must be approached with particular caution when it is alleged that a director, shareholder or another group company is privy to a decision against a company, because it risks undermining the distinct legal personality of a company as against that of its shareholders and directors ...".

That is of particular significance in arbitral proceedings because generally a non-party will not be entitled to participate in an arbitration because that is a process by definition generally only open to the parties to the relevant arbitration agreement. To my mind, these factors would weigh very heavily against the JAMS Award having any preclusive effect as against the 4th-8th defendants and would have led me to reject the 9th – 10th defendants case on issue estoppel had it otherwise been open to them to argue.

67. I have so far considered the question on the basis that the recognition issue is one of English law, applying New York Convention principles. The only other potential candidate jurisdiction for recognition is the RMI. As to that: (a) it is not suggested the JAMS Award has been recognised there; (b) I do not understand the Marshall Islands law expert evidence to suggest that Marshall Islands' court would approach the recognition and enforcement issues materially differently to the manner an English court would approach the issues, which is not surprising since it is a New York Convention-driven not a domestic law driven issue; (c) specifically Ms. Muller, the expert in Marshall Islands' law, whose evidence was adduced by the 9th -10th defendants accepted that the courts of the RMI could adjourn recognition proceedings pending an application to suspend or set aside an award in the courts of the seat. As she put it in her oral evidence: " ... *it is permissive. It is up to the court* ..." and was a matter of judicial discretion. She was unable to help me as to what factors would be taken into consideration because the one reported case to which she referred did not address that question: see Transcript Day 2, page 14, lines 11-18. There is no reason, however, to suppose that the factors I have considered earlier would not be relevant to the decision-making process in the RMI or that a judge in the RMI would arrive at any different conclusion to those set out above.

68. In those circumstances, if, contrary to what I consider to be the position, recognition is a matter of Marshall Islands" law, then I conclude the position would be no different in outcome to the position as I have considered it to be in England and any attempt to recognise or enforce the award in the RMI would be met with a similar response to that I consider would be an appropriate response by the English courts. In the Marshall Islands, a foreign arbitral award has effect only if and when it is registered.

69. There is one final point to consider and that concerns whether, as a matter of English law, I should conclude that the position adopted by the 4th -8th defendants in these proceedings is an abuse of process, even if the 9th -10th defendants are unable to rely on issue estoppel. This point is material only if I am wrong to conclude that the 9th -10th defendants are not permitted to rely on the JAMS Award, but I am correct to conclude that issue estoppel is not available.

70. In my judgment, this submission is mistaken. The alleged abuse is said to arise from the fact that the 4th -8th defendants are asserting ownership of the preferred shares contrary to the findings made in the JAMS arbitration. In my judgment, this submission is mistaken because: (a) it ignores the fact that the award has not been recognised in

this jurisdiction; (b) it ignores the fact that the award is subject to suspension by order of the competent authority in the arbitral seat; and (c) it ignores the fact there is a pending application to set aside the award for fraud. The authority relied upon by the 9th -10th defendants in support of its case on this point concerns earlier litigation. This claim is concerned with an arbitral award. Not merely does the award suffer from the difficulties I have referred to but to my mind abuse would have to be considered, bearing in mind the more restrictive approach identified as appropriate in relation to issue estoppel by Foxton J in Mints, for the same reason he identifies in that case.

71. Drawing together the contents of this probably over-lengthy judgment, for the reasons set out above, I conclude that this claim should be resolved by orders permitting the 4th-8th defendants to appoint the claimant's arbitrator. I will now hear the parties as to the orders required to give effect to this conclusion whilst, at the same time, being strictly limited to that purpose and no other.

APPLICATION FOR PERMISSION TO APPEAL

72. This is an application for permission to appeal from the judgment and order I made a few moments ago in the section 32 proceedings. The principles which apply to the application for permission to appeal are those identified in section 32(6) of the Arbitration Act 1996 which provides as follows:

> "The decision of the court on the question of jurisdiction shall be treated as a judgment of the court for the purposes of an appeal.
>
> But no appeal lies without the leave of the court which shall not be given unless the court considers that the question involves a point of law which is one of general importance or is one which for some other special reason should be considered by the Court of Appeal."

73. The test therefore is not the conventional one which applies in relation to applications for permission but is one which depends upon there being a point of law of general importance As Mr. Wright KC on behalf of the 8th defendant submits, and I accept, that means a question of English law. The only English law point which has been identified by Ms. Den Besten KC on behalf of the proposed appellants is that I was wrong to apply the principles in Hollington v Hewthorn in the circumstances of this case. I reject that submission. The principles of English law which I applied throughout the judgment were not novel points of law, but they were points of law which have been decided and applied by the courts for a number of years and in some cases for many years. In those circumstances, it seems to me that the proposition that there is a point of law that is of general importance is wrong. More generally this claim is concerned with a fact specific dispute in relation to specific contracts and therefore is not one which is going to inform legal debate in relation to standard form agreements for example. Permission to appeal is refused on the simple basis that there is no issue of law between the parties that is of general importance. There is no other special reason why permission to appeal should be given and none has been suggested. In those circumstances, permission is refused.

(For continuation of proceedings: please see separate transcript)