



Neutral Citation Number: [2025] EWHC 495 (Comm)

Case No: CL-2024-000062
CL-2020-000392

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
KING'S BENCH DIVISION
COMMERCIAL COURT

Wednesday 5 March 2025

Rolls Building
Fetter Lane
London
EC4A 1NL

Before:

MRS JUSTICE COCKERILL DBE

Between:

MR SOKOL IANKOV

Claimant

- and -

- 1) MR KOSTA KANTCHEV**
- 2) NEXO CAPITAL INC**
- 3) NEXO INC**
- 4) NPEM LTD**
- ~~5) NEXO FINANCIAL SERVICES LTD~~**
- ~~6) NEXO CLEARING AND CUSTODY LTD~~**

Defendants

AND BETWEEN:

NEXO CAPITAL INC

Claimant/First Part 20 Defendant

- and –

MR GEORGI SHULEY

Defendant/Part 20 Claimant

- and –

MR KOSTA KANTCHEV

Second Part 20 Defendant

- and -

MR ANTONI TRENCH

Third Part 20 Defendant

**Tom Montagu-Smith KC and Rumen Cholakov (instructed by
Squire Patton Boggs (UK) LLP) for Claimant/Part 20 Claimant
David Quest KC and Judy FU (instructed by Eversheds Sutherland (International) LLP)
for the Nexo Parties**

Hearing date: 21,22 January 2025

APPROVED JUDGMENT

This judgment was handed down remotely by the judge and circulated to the parties' representatives by email. The date and time for hand-down is deemed to be Wednesday 5 March 2025 at 09:30am.

Mrs Justice Cockerill:

INTRODUCTION

1. Over a two day hearing I heard argument covering a suite of applications in these proceedings (CL-2024-000062, the “Iankov Proceedings”), which concern a business dealing with cryptocurrency. The core of the applications is a challenge to jurisdiction, but also key to the issues in that and the other applications is the fact that there is already before the Court another set of proceedings (CL-2020-000392, the “Shulev Proceedings”), scheduled for trial in July 2026, which has a definite overlap of parties and issues. The extent of that overlaps is in issue; the case advanced for Mr Iankov comes close to saying that the extent of the overlap drives the answers which the Court should return.
2. The Shulev Proceedings in their current form (under Part 7 of the CPR) have been ongoing since July 2022, but the pleadings only concluded in May 2024. It has given rise to two interlocutory judgments by Henshaw J in [\[2022\] EWHC 1685 \(Comm\)](#) (the “July Judgment”) and [\[2023\] EWHC 1646 \(Comm\)](#) (“SJ/SO Judgment”). The Part 20 Defendants in the Shulev Proceedings and the Defendants to the Iankov Proceedings are referred to as the “Nexo Parties”.
3. These Iankov Proceedings were commenced in late May 2024 and service out of the jurisdiction on the foreign defendants was granted by order of Mr Justice Robin Knowles CBE dated 27 June 2024 (the “Order”), following an *ex parte* application by Mr Iankov.
4. The applications before the Court are as follows:
 - i. An application by D1 in the Iankov Proceedings (“Mr Kantchev”), D2 (“Nexo Capital”) and D3 (“Nexo Inc”) dated 28 August 2024 to challenge the jurisdiction of this Court pursuant to CPR r.11(1)(a) (the “Jurisdiction Application”) on the basis that there is no material claim which is brought in this jurisdiction and that the anchor defendant NPEM Limited (“NPEM”) is no proper anchor defendant;
 - ii. An application by NPEM dated 28 June 2024 to strike out the entirety of the claim against it (the “Strike Out Application”). This overlaps heavily with the anchor defendant issue, because NPEM effectively says that there is no claim against it at all;
 - iii. An application by Mr Kantchev dated 8 July 2024 to set aside the order for alternative service made against him (the “Set-Aside Application”);
 - iv. An application by Mr Iankov to consolidate the Iankov Proceedings with the Shulev Proceedings and a corresponding supporting application by Mr Shulev in the Shulev Proceedings dated 24 June 2024 (together, the “Consolidation Applications”). Although this might be said logically to come last Mr Iankov contends that consolidation and overlap is critical at all stages of analysis.

BACKGROUND

5. The following section sets out the core background, both in terms of agreed facts, and allegations in the two sets of proceedings. This is not as easy as it might be because the pleadings are (even allowing for the Shulev claims' origins as a representative action) by no means the clearest of documents.
6. At the heart of both claims is a dispute about the ownership of the Nexo Group which operates a crypto-asset lending platform. Its current estimated value (extrapolating from the claims advanced) is over US\$4 billion. Mr Kantchev, the First Defendant, is currently registered as the sole legal owner of the principal entities within the Nexo Group.
7. The business was however a start-up co-founded in 2017. The facts surrounding that start up are in issue in both sets of proceedings. Depending on whose version eventually prevails it was either founded by four Bulgarians (Messrs Shulev, Iankov and Kantchev, and Mr Trenchev (the Third Part 20 Defendant in the Shulev Proceedings)); or it was founded by a subset of them, with the others becoming involved shortly thereafter. In the Shulev Proceedings, for example, there is a dispute about whether the co-founders were Messrs Kantchev and Shulev or Messrs Kantchev and Trenchev.
8. However, Mr Shulev's and Mr Iankov's cases are that one way or another it was agreed that ownership would be shared by all four individuals as co-founders. In Mr Iankov's case this is said to be via an agreement (the "Shareholding Agreement"), or series of agreements such that Mr Shulev and Mr Iankov are entitled to 33.92% and 20% of the Nexo Group respectively. It is not suggested that there was a written Shareholding Agreement. Mr Shulev would say that he initially had a 50% share but subsequently agreed to dilution via agreement(s) allegedly "made with" other beneficial owners from time to time and summarised by Mr Shulev at a meeting with Mr Kantchev on 21 August 2019 (referred to as the "Ownership Agreement").
9. The pleaded cases currently indicate that an initial agreement or agreements was/were reached in August-September 2017 in the following way:
 - i. Mr Shulev and Mr Kantchev agreed to split the ownership 50:50 at a meeting in a park in Sofia, Bulgaria in August 2017. It is Mr Shulev's pleaded case that it was agreed that he would run the project with Mr Kantchev providing guidance and sourcing the initial funding;
 - ii. In a telephone conversation in August 2017, Mr Kantchev then invited Mr Iankov to join the project in exchange for a 20% ownership stake, which was to come from both Mr Kantchev and Mr Shulev's shares. What Mr Iankov brought to the party was his ownership of a well-established short term loan company Credissimo. He was thus able to supply employees, goodwill and reputation to help launch the Nexo brand;
 - iii. Mr Shulev subsequently agreed to that arrangement;
 - iv. In September 2017, Mr Trenchev was invited to join, on Mr Iankov's recommendation. Mr Kantchev agreed with Mr Trenchev that he would receive 5%

of the ownership and communicated this to Mr Shulev and Mr Iankov who consented;

- v. Other early employees were then offered further, albeit much smaller, percentages of the business, as is the common practice in start-ups.
10. Mr Shulev and Mr Iankov broadly claim that, as a result of the Shareholding Agreement/the agreements relied on by Mr Shulev, on establishment of the Nexo Group companies, Mr Kantchev personally held their shares on trust for each of them. One common theme of the two sets of proceedings is that Mr Shulev and Mr Iankov seek to establish those interests and seek appropriate relief, including orders requiring the transfer to them of their shares and compensation. It is fair to say however that Mr Iankov's claim focusses on the initial agreements, whereas Mr Shulev's claim focusses on later events.
11. Nexo Capital was incorporated in February 2018 as the main operating company, with Nexo Inc, the main holding company, following shortly thereafter. It was initially a Delaware corporation, but later was re-registered in the Cayman Islands, where it resides today. Other Nexo companies followed. They included a Swiss Nexo AG, a Bulgarian Nexo and Nexo Estonia. The entity which matters for present purposes is NPEM (also sometimes referred to as Nexo UK), which was registered on 26 November 2018.
12. Later that month, Nexo Capital launched a crypto token (the "NEXO Token") through an Initial Coin Offering. Part of the dispute relates to certain "Founder Tokens". Nexo issues its own token which gives rights to share in profits of crypto. It is alleged in both actions that there was an agreement to distribute over 11% of tokens to founders as Founder Tokens. The NEXO Token offering was subject to the Nexo Token Terms (the "Nexo Terms"). Specifically, the Nexo Terms provided that 11.25% of the NEXO Tokens (or 112,500,000 NEXO Tokens) would be distributed to the co-founders of the business as Founder Tokens.
13. The overall thrust of the two claims is that Mr Kantchev appropriated the entirety of the Group for himself. Mr Shulev contends that after he confronted Mr Kantchev at a meeting on 22 August 2019 in Sofia (the "Ownership Meeting") about his rightful ownership and that of the other co-founders, Mr Kantchev procured that Mr Shulev was removed from the Nexo Group on 13 September 2019. This is referred to in the Shulev Proceedings as the "Termination Conspiracy".
14. In the Shulev Proceedings there is dispute about the consequences of the following matters:
 - i. Nexo's practice to entrust certain of its officers and employees to store certain cryptocurrency assets on its behalf, by storing them in cryptocurrency accounts in the officers' and employees' names and/or wallets loaded on to hardware devices in the officers' and employees' possession.
 - ii. Mr Shulev had an account in his name on the trading platform BitMEX (referred to as the "BitMEX Account") and possession of one such hardware device (referred to as the "Hardware Ledger"). This device was set up in March/April 2019 and there is an issue as to who did this in the Shulev Proceedings.

- iii. At the time of Mr Shulev's termination, there were certain cryptocurrency assets stored in the BitMEX Account and on the Hardware Ledger, which Nexo alleges belonged to it. This led to the initial stakeholder proceedings, asking the Court to determine which of Nexo and Mr Shulev were entitled to operate and control the Account.
 - iv. There is a dispute between the parties as to whether Mr Shulev retained possession of the Hardware Ledger after his termination from the Nexo business. Mr Shulev alleges that he left the Hardware Ledger at Nexo's office in Sofia, Bulgaria, on 13 September 2019. Nexo denies that the Hardware Ledger was returned.
15. In April 2020, Mr Iankov resigned as director of Nexo AG (a Swiss entity) and left the Nexo Group - he says as a result of Mr Kantchev's failure to honour the Shareholding Agreement and Founder Token Agreement.
16. On 24 June 2020, HDR commenced stakeholder proceedings to seek determination (among other things) as to which of Nexo and Mr Shulev owned and controlled the BitMEX Account.
17. On 1 July 2021:
- i. The hearing of the stakeholder proceedings was listed to be heard;
 - ii. Mr Shulev and Nexo entered into a written agreement to settle the parties' dispute (the "Settlement Agreement"), requiring Mr Shulev to transfer certain assets to Nexo on demand in consideration of USD 1 million, and the parties to jointly notify HDR requesting the release of the contents of the BitMEX Account to Nexo. They also entered into certain other agreements. In the Shulev Proceedings there are issues about whether these were entered into in reliance on representations, or by reason of threats.
18. Shortly after execution of the Settlement Agreement, by email at 1:19pm on 1 July 2021 Mr Trenchev (on behalf of Nexo) demanded the return of nine different types of cryptocurrency assets believed to be in Mr Shulev's control by reason of his access through the Hardware Ledger (the "Nine Assets"), together with "all NEXO ERC-20 Tokens" (the "NEXO Tokens"). Mr Shulev claimed that Nexo was in breach of the Settlement Agreement, and he therefore refused to continue with the agreement and did not agree to inform HDR of the release of the contents of the BitMEX Account.
19. Mr Shulev has never returned the Nine Assets; his case is that after 13 September 2019 he never had access to the Hardware Ledger or the seed phrases required to reconstitute it and access the Nine Assets remotely. There are issues in the Shulev Proceedings about Mr Shulev's liability as a result of refusal or delay in returning the Nine Assets and BitMEX Account.
20. Consequently a further hearing was listed to deal with the disputes which had arisen under the Settlement Agreement and associated agreements.
21. On 1 July 2022, Henshaw J issued the July Judgment, determining (among other things) that Mr Shulev was to comply with the Settlement Agreement, directing that statements of case be served as to the outstanding matters of dispute, and for the action to proceed

as a Part 7 claim (with Nexo as claimant and Mr Shulev as defendant). Following this the parties to the Shulev Proceedings served pleadings.

22. On 12 January 2023, the Bulgarian authorities conducted a search and seizure operation at Nexo's offices or premises related to Nexo in Sofia (the "Bulgarian Operation"), during which time certain hardware devices were seized. Following the Bulgarian Operation, eight of the Nine Assets were transferred back to Nexo by the Bulgarian authorities. The Bulgarian authorities thereafter returned the hardware devices seized, which hardware devices are now in the Nexo Parties' lawyers' possession. No criminal charges were brought against Nexo.
23. In the Shulev Proceedings there is a vibrant debate about what the implications of the Bulgarian Operation are. In particular:
 - i. Mr Shulev alleges that as part of the Bulgarian Operation, Mr Shulev's Hardware Ledger was seized from Nexo's offices and/or another hardware ledger (the "BPO Ledger") was seized from Nexo's offices which also had access to and control of the Nine Assets. It is said that that establishes Mr Shulev had returned the Hardware Ledger to Nexo when he was terminated and did not have control of the Nine Assets, and/or that following his termination Nexo had the ability to, and did, create the BPO Ledger with access to the Nine Assets.
 - ii. Consequently in the Shulev Proceedings Mr Shulev alleges that the July Judgment was procured by fraud by Nexo. Mr Shulev claims that he never intended to compromise his valuable claim to the Nexo Group and that he was placed under duress and intimidated into entering into the Settlement Agreements.
 - iii. Nexo denies any fraud. In any event, Nexo does not admit whether the devices seized during the Bulgarian Operation included Mr Shulev's Hardware Ledger and/or the BPO Ledger.
24. By a judgment dated 3 July 2023, Nexo's summary judgment / strike-out application was dismissed determining (among other things) that Mr Shulev has a realistic prospect, sufficient to make summary judgment inappropriate, of persuading the court that the evidence about the Hardware Ledger amounts to special circumstances such that the court at trial would not be bound by Henshaw J's earlier finding as to Mr Shulev's control of the Nine Assets in the July Judgment.
25. Pleadings in the Shulev action closed in June 2024. A CMC was heard in July 2024. As a result of that CMC:
 - i. Disclosure is due to be taking place in May 2025;
 - ii. Witness evidence is due to be completed in September 2025;
 - iii. Expert evidence is due to be served from November 2025 to February 2026. One of the expert disciplines is cryptoasset technology and hardware and covers the following issues:
 - a) How cryptoassets can be transacted through a hardware ledger and/or be reconstituted through a master seed;

- b) Whether the ledger returned by the Bulgarian authorities is likely to be Mr Shulev's hardware ledger; and
 - c) Alternatively, when the ledger was likely to have been set-up and how.
- iv. A trial has been listed for 4 weeks starting in July 2026.

Similarities and differences in the claims

- 26. There are, as the parties explained at length, similarities and differences between the two claims. Because those similarities and differences inform a number of the issues which arise at different points in the judgment, it is helpful to catalogue these at this point.
- 27. As to the similarities (which form the basis of the Consolidation Application) there are plainly common themes as to ownership both as to group companies and Founder Tokens.
 - i. One of the main allegations in the Shulev proceedings is that Mr Kantchev refused to give Mr Shulev his share of the overall business; there is a pleading of an initial joint venture giving rise to fiduciary duties, breached by the making of a conspiracy which deprived Mr Shulev of his ability to exercise his beneficial interest and resulted in the misappropriation of his share/beneficial interest. Declarations are sought relating to ownership of the Nexo Group and as to his being unlawfully removed from the boards of Nexo companies including NPEM. The Shulev case will therefore involve a decision as to whether agreements as to ownership were concluded, who owns the Nexo Group and in what percentages, and who is entitled to the Founder Tokens and in what amount;
 - ii. A similar but far from identical allegation is made in the Iankov proceedings. Mr Iankov asserts a specific Shareholding Agreement between himself and Mr Kantchev, which as a joint venture created fiduciary duties. He also asserts a Founder Token Agreement (agreed orally at a meeting in Credissimo's offices). There follow claims of breach of those agreements. There is then a pleading of:
 - a) An express trust arising out of the Shareholding Agreement;
 - b) A trust arising by reason of the nature of the Shareholding Agreement (as one capable of specific performance);
 - c) A constructive trust arising out of Mr Iankov's reliance on the Shareholding Agreement in contributing to the Nexo project;
 - d) A further trust relating to the Founder Tokens; and
 - e) Fiduciary duties arising out of the trust relationship.
- 28. Mr Iankov's claim is more straightforward. It hinges on the alleged agreement, taken with allegations of instructions by him to transfer the shareholding and Mr Kantchev's failure to act on those instructions. He seeks orders for:

- i. An order for specific performance and/or an injunction requiring Mr Kantchev to transfer to Mr Iankov 20% of the shares in Nexo Inc and all other Nexo Group companies, including Nexo Capital, and NPEM;
 - ii. A declaration that Mr Kantchev holds 20% of Nexo Inc and all other companies within the Nexo Group beneficially for Mr Iankov;
 - iii. A declaration that Mr Kantchev holds 20% of the powers, rights, and interest in Nexo Inc and/or Nexo Capital, and NPEM as trustee and nominee for Mr Iankov;
 - iv. A declaration that Mr Iankov should have been registered as the legal owner of 20% of NPEM;
 - v. Damages, disgorgement of dividends/profits and an account; and
 - vi. Delivery up of the Founders Tokens or the traceable proceeds of them.
29. Mr Shulev's case on breach and loss hinges on allegations of conspiracy which is multilayered covering:
 - i. The initial Termination Conspiracy between Mr Kantchev, Mr Trenchev and Nexo to get him ejected unlawfully from Nexo;
 - ii. The false pursuit of a case that he held the Nine Assets for the benefit of the company (The Nine Assets Conspiracy);
 - iii. A conspiracy to induce Mr Shulev to enter into the Settlement Agreement either on a false basis or as a result of threats; and
 - iv. There are claims regarding ownership of the Nexo Group (section K2 of the pleading) but they are put essentially as claims based in breach of fiduciary duty, the breaches being the actions pursuant to the various conspiracies. His case as to ownership is not currently put as breach of any agreement reached in the past.
30. There are obvious similarities between the two sets of proceedings. But as the preceding summary indicates, there are also however some differences.
31. The Shulev Proceedings are considerably more complex than the Iankov Proceedings. The Shulev claim is wider in that it contains issues as to:
 - i. The July Judgment;
 - ii. The Settlement Agreements;
 - iii. Mr Shulev's retention of Nexo's assets;
 - iv. Mr Trenchev's role; and
 - v. The wide-ranging allegations of misrepresentation, duress, intimidation, or conspiracy.

32. It is Mr Iankov's case that the differences are overstated and that the Nine Assets and Settlement Agreement arguments are still linked to the ownership of the Nexo Group: that part of the conspiracy by Mr Kantchev (with assistance from Mr Trenchev) was to deprive Mr Shulev of his ownership of the Nexo Group through the false allegation that Mr Shulev had misappropriated company assets for his own benefit (namely, the Nine Assets). He also contends that overall the Settlement Agreement arguments all trace back to the existence of the Shareholding Agreement and that that agreement is a key part of the context for the duress and intimidation.
33. At the same time the Iankov claim has issues as to Mr Iankov's alleged agreement with Mr Kantchev, which are not relevant to the Shulev Claim.
34. There will be a considerable volume of evidence and argument in the Shulev Claim that have nothing to do with the Iankov Claim. There will also be some (smaller) parts of the Iankov claim which have nothing to do with the Shulev Proceedings.
35. The parties to the two proceedings are self-evidently different.
 - i. Mr Trenchev is central in the Shulev Claim, but is not a party to and does not feature in the Iankov Claim, while Nexo Inc and NPEM are not parties to the Shulev Claim. While Mr Iankov says there is limited impact from this because Mr Trenchev is the Managing Director of Nexo Capital, and so is directing these proceedings for the Nexo Parties (as can be seen from the fact that he signed the reply and DCC in the Shulev claim), there is still a real difference. He is for example personally a party to the Shulev Claim because of his personal involvement in the Nine Assets claim.
 - ii. Then there is the absence of Nexo Inc and NPEM from the Shulev claim. While that is said to be a result of the development of understanding and that now Mr Shulev knows this he will no doubt wish to advance claims against Nexo Inc (though probably not NPEM), that is purely speculation. There is no evidence of this, in circumstances where there was certainly scope for this point to have been clarified.
36. Then the causes of action in the two claims are different, though Mr Iankov submits that the differences are not material:
 - i. Mr Shulev's claim to ownership is based on breach of fiduciary duty and unlawful means conspiracy. Mr Iankov's claim is based on breach of contract and in trust. Mr Iankov also advances a breach of fiduciary claim, but against Mr Kantchev only (whereas Mr Shulev's claim for breach of fiduciary duty is against Mr Kantchev and Mr Trenchev);
 - ii. Mr Shulev and Mr Iankov rely on different alleged oral agreements with Mr Kantchev as to their ownership interests. Mr Shulev relies on a conversation in a park and Mr Iankov relies on a different telephone conversation. While Mr Iankov says orally that both are part of a single tripartite agreement that is not how the Iankov claim is pleaded;
 - iii. The claims in respect of the Founder Tokens seem more similar, in that both the Shulev and Iankov Claims are based on breach of contract and in trust. But there are differences. They are based on different agreements: Mr Shulev does not allege

that Mr Kantchev was party to the Nexo Terms (as he defines it), whereas Mr Iankov's claim is based on breach of the Founder Token Agreement (Mr Iankov does not allege Nexo Capital was party to that) and the Nexo Terms (to which Mr Iankov does seem to allege Mr Kantchev was party). Further, Mr Iankov advances a breach of fiduciary duty claim, which Mr Shulev does not.

37. Mr Iankov accepts that there are differences of expression, but submits that the fundamental facts are the same, and that the differences come from the fact that information has been drip fed as regards the company structure and that pleadings emerged differently as a result of the way the evidence has emerged.

THE JURISDICTION APPLICATION

The Law

38. The applicable principles were not in issue. There are two stages, gateways and *forum conveniens*. On gateways (in brief summary):
- i. In respect of each claim made, there must (subject to the consolidation argument) be a good arguable case that one of the jurisdictional gateways under PD 6B para 3.1 applies;
 - ii. Good arguable case in this context means the claimant has "the better of the argument", based on a "plausible evidential basis"; *Brownlie v Four Seasons* [2017] UKSC 80 [2018] 1 WLR 192 at [7] (affirmed at *Goldman Sachs v Novo Banco* [2018] UKSC 34 [2018] 1 WLR 3863 at [9]);
 - iii. The Court must be satisfied that there is a serious issue to be tried on the merits, meaning (as on application for summary judgment), there is a real as opposed to fanciful prospect of success: *Altimo Holdings v Kyrgyz Mobil Tel Ltd* [2011] UKPC 7 at [71];
 - iv. Although there may be some overlap between the two questions, this is a separate threshold on the merits and the standards of proof are different. However, where an ingredient for a cause of action is also what is being relied upon for jurisdictional purposes, "*the lower standard of proof is subsumed into the higher, and becomes irrelevant*": *Cecil v Bayat* [2010] EWHC 641 (Comm) at [19] and White Book para 6.37.15;
 - v. The satisfaction of the tests as to gateways is an issue "*which should ordinarily fall to be addressed by reference to the pleaded case the claimants chose not to update their pleadings... if they wanted to advance a case which was not reflected by their existing pleading then they should have amended it. In that way the proper focus of the inquiry can be maintained*": *Okpabi v Royal Dutch Shell* [2021] UKSC 3 [2021] WLR 1294 at [103-105]; and
 - vi. The court may exercise its discretion to allow reliance on a new gateway that had not been relied upon at the *ex parte* service out application to defeat a jurisdictional challenge if it does not rely on a new cause of action.
39. If the argument proceeds to the second stage:

- i. The Court must be satisfied that in all the circumstances, England is “clearly and distinctly” the appropriate forum. The burden lies on the claimant: it is not enough to show that England is a possible forum: [The Spiliada \[1987\] AC 640 HL](#), *Altimo Holdings v Kyrgyz Mobil Tel Ltd* [\[2012\] 1 WLR 1804](#);
- ii. In seeking to establish the appropriate forum for the litigation, the court should consider the forum with which the action has “the most real and substantial connection”: *Spiliada* p. 478; *Lungowe v Vedanta Resources plc* [\[2020\] AC 1045](#) at [66];
- iii. The risk of inconsistent judgments is one important factor in the assessment of *forum conveniens*: *Lungowe* at [69],
- iv. Relevant factors will include the location of witnesses and documents, and their language, consideration of the places where the parties reside or carry on business, the place where the wrongful act or omission occurred, and the place where the harm occurred: *Spiliada* p. 478; *Lungowe* [66];
- v. Where the claim is time-barred in the foreign jurisdiction and the claimant's claim would be defeated if it were brought there, it may not be just to rule against English proceedings if the claimant acted reasonably in commencing proceedings in England, and did not act unreasonably in not commencing proceedings in the foreign country;
- vi. Where matters of foreign law arise, it is “a matter of common sense” that “*it is more satisfactory for the law of a foreign country to be decided by the courts of that country*”, not least because points of law would be appealable in that country: *The Eleftheria* [1969] 2 W.L.R. 1073 at 105 *VTB Capital v Nutritek*, [2013] [UKSC 5](#), [46]; and
- vii. The opportunity by a claimant to take advantage of pre-existing relevant knowledge of lawyers or experts in England (usually referred to as the Cambridgeshire factor) has historically been regarded as a factor, but is of diminishing importance in the modern world and requires proper substantiation: *Samsung v LG Display* [\[2022\] EWCA Civ 423](#), [32].

The structure of the issues

40. The jurisdiction issues in this application are numerous; as Mr Montagu-Smith KC conceded, they have somehow multiplied into a forest. It is regrettable that it was not considered possible for Mr Iankov to streamline these arguments, some of which were tacitly accepted to add nothing. Yet rather than streamlining, the arguments actually continued to expand - even during oral submissions. As a result of that approach the sections which follow on gateways are unavoidably somewhat indigestible and repetitive.
41. However the structure is possibly best understood in this way:
 - i. **NPEM** is a UK company and therefore subject to this court’s jurisdiction. It is used by Mr Iankov as an anchor defendant under Gateway 3 (necessary and proper party) as regards his claims against all the other defendants. NPEM says that the claim

against it falls to be struck out. If it is right, jurisdiction cannot be established against any other defendant via NPEM;

- ii. **Nexo Inc** is said to be subject to the jurisdiction via Gateway 2 (injunction to take steps to register Mr Iankov as 20% owner of NPEM). If jurisdiction cannot be established under that head against Nexo Inc, the other Defendants cannot be brought within the jurisdiction via Gateway 3 or 4A in respect of that claim;
- iii. **Mr Kantchev** is in some ways the main target of this litigation. Mr Iankov says he can be made subject to the jurisdiction via one or more of Gateways 12C, 11, 12E, 15 and/or 15B, or 4A. If Mr Iankov is right about any of those, he can bring the Defendants relevant to the claims within that gateway in under Gateway 3 and/or 4A;
- iv. There is a supplementary argument that regardless of gateways, the factual nexus and similarities justify **consolidation**, and once consolidation is ordered Gateway 3 can provide a basis for jurisdiction; and
- v. There are issues as to **proper forum** which overlap substantially with the consolidation grounds.

NPEM: THE STRIKE-OUT/SUMMARY JUDGMENT APPLICATION

- 42. The application is made by the sole English defendant NPEM, under CPR 3.4.2(a), by which the Court is empowered to strike out a statement of case which “*discloses no reasonable grounds for bringing or defending the claim*”. This applies to claims which “*do not disclose any legally recognisable claim against the defendant*”.
- 43. The claim which Mr Iankov currently makes against NPEM is for a declaration that he is the owner of 20% of its shares. This gives rise to Nexo’s arguments that there is no cause of action alleged against NPEM, because in reality NPEM is not said to be liable for anything and that claim is not based on any dispute with NPEM.
- 44. While Mr Iankov contends that the declaration sought is sufficient to pass the strike out test, I am not persuaded of the merits of this point.
- 45. The case needs to be considered on two bases – the pleaded case and the proposed revised case relying on s. 125(3) Companies Act. This is because so far as strike out applications go, the court should take into account any proposed amendments: *Mishcon de Reya v RJI (Middle East)* [2020] EWHC 1670 (QB) at [51]-[60]; the SJ/SO Judgment at [123].

The pleaded claim

- 46. The Defendants assert that the claim against NPEM discloses no cause of action against it and that there is no reasonable basis for the declaration sought. They submit that the situation is not dissimilar to in *Tsareva v Ananyev* [2019] EWHC 2414 (Comm) where English companies were used as anchor defendants to bring claims against their Russian domiciled ultimate beneficial owners. The English companies successfully challenged jurisdiction and (alternatively) applied to strike out the claim against them.

47. Mr Iankov relies upon the authorities which establish that a cause of action in the conventional sense need not exist to justify a declaration: Woolf, *The Declaratory Judgment* at [2-17]. He also relies on the modern (more permissive) approach to the granting of declaratory relief as set out in *Rolls-Royce plc v Unite the Union* [2009] EWCA Civ 387 [2010] 1 WLR 318 at [120] and *Messier-Dowty v Sabena* [2000] EWCA Civ 48 [2000] 1 WLR 2040 at [36], [41] – [42].
48. Starting with these legal principles, it is certainly the case that the strict requirement of an issue between the relevant parties is no longer slavishly observed and as Pumfrey LJ said in *Nokia Corporation v Interdigital Technology Corporation* [2007] EWHC 3077 (Pat) at [5]: “... the principal factor affecting the exercise of the court's discretion ... is the utility of the negative declaration sought. Will the declaration if granted be the legal equivalent of shouting in an empty room, or is there some point in it?”.
49. However the decision as to utility will often engage the questions identified in *Rolls Royce* of whether there is “a real and present dispute between the parties before the court as to the existence or extent of a legal right between them” or whether each party will be “affected by the court's determination of the issues concerning the legal right in question”.
50. Here Mr Iankov wants to focus exclusively on utility precisely because it is clear that there is no real and present dispute between NPEM and Mr Iankov. That is in part because (contrary to Mr Iankov's original understanding) Mr Kantchev does not own NPEM shares. The starting point for this claim was that the main claim brought by Mr Iankov is based on allegations of rights against Mr Kantchev and disputes with Mr Kantchev. The evidence explained that the declaration sought would effectively protect against evasive action by Mr Kantchev. It was also predicated on an understanding (now superseded) that Mr Kantchev owned the shares in all relevant companies, including NPEM. The pleaded claim was then that Mr Kantchev owned 20% of the “power rights and interest” in NPEM as trustee for Mr Iankov and had refused to hand it over on demand. That was not a direct claim or a dispute between Mr Iankov and NPEM, but one might say that if NPEM was owned by Mr Kantchev and Mr Kantchev was under an obligation to transfer the shareholding it would not be unreasonable to regard this as also being in issue *vis a vis* NPEM. It goes no higher than “might” because analytically it is certainly not a necessary claim; and a similar course is not taken in the Shulev pleadings as regards NPEM, or in these proceedings as regards the Nexo companies which do not have any jurisdictional use. But on that factual basis the claim would probably pass the strike out test.
51. However that factual basis is false. NPEM is not owned by Mr Kantchev, and he can no longer effect the transfer of NPEM shares. While Mr Iankov did not formally concede that this point was now no longer one apt for declaratory relief as against NPEM, that is the reality. There is no dispute between Mr Iankov and NPEM as to ownership. There was some suggestion that the claim could be recast as a claim against Nexo Inc as the holder of shares in NPEM. However, it was certainly not made clear how there would be any claim against Nexo Inc (other than the injunction claim made under Gateway 2) by Mr Iankov, given that there appears thus far to be no basis (pleaded or explained at the hearing) for saying that Nexo Inc owes any duties or obligations to Mr Iankov.
52. Is there then any issue, if not a dispute, direct with NPEM? The answer to this is fairly plainly in the negative. Just because there is an issue with Mr Kantchev/Nexo Inc

regarding ownership of NPEM shares does not mean NPEM needs to be included as a party. A company *prima facie* has no interest in who is its shareholder or in disputes about beneficial ownership. Everything it needs to know it finds from the register. There was no submission that (unusually) this was a company which had any provision in its Articles of Association which would place it in a different position to the paradigm. There is therefore no “*real and present dispute*”, nor does the question of beneficial ownership directly affect NPEM.

53. There is therefore a genuine analogy with the *Tsareva* case where the judge concluded at [43] “*the pleaded case does not in fact allege any particular act on the part of the English companies*” and it was not alleged that the companies did or omitted to do anything other than exist.
54. As for the argument via utility, Mr Iankov submits that if the Court is deciding issues as to the rightful ownership of the NPEM shares as between Mr Iankov and Mr Kantchev it is useful to make that determination binding on NPEM (rather than dependent on further steps that may be required against Mr Kantchev and/or Nexo Inc in the Cayman Islands). Mr Iankov says if it is Nexo Inc which is capable of making the transfer, that statements of Nexo Inc cannot be taken at face value because they come from a litigant who is disputing entitlement.
55. However the focus must be NPEM and utility *vis a vis* NPEM remains unclear, in circumstances where NPEM has no interest in its ownership. There appears to be no basis for suggesting that an order of this court declaring beneficial ownership would not be complied with by this UK company; nor is the fact of a dispute as to ownership a basis for saying Nexo Inc would disobey an order of the court to which it is a party.
56. Ultimately it was fairly clear that making the determination binding on NPEM in case of NPEM default was not the utility which Mr Iankov has in mind. Rather it is said that because of the dispute with Mr Kantchev (and Nexo Inc) it would be useful to nail everything down via a declaration against NPEM.
57. But there is more than an element of “bootstraps” about that reasoning. On this hypothesis jurisdiction against Mr Kantchev is in part being sought on the basis of a real and present dispute between Mr Iankov and NPEM to which Mr Kantchev is a necessary or proper party. It would be wrong to say that there is a sufficient basis for the claim against Mr Kantchev on the basis of a jurisdiction which depends upon the reality of that claim.
58. This therefore deals with the original case.

Alternative case: s. 125(3) Companies Act

59. By way of back up argument in the light of these developments Mr Iankov has indicated that he further intends to amend to introduce a claim under the Companies Act 2006, s.125(3) for rectification of the register. This was one claim in respect of which there was a draft amendment to the pleading in place prior to the hearing.
60. Section 125(3) says:

“On such an application the court may decide any question relating to the title of a person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand, and generally may decide any question necessary or expedient to be decided for rectification of the register.”

61. Mr Iankov suggests on that basis that there would be a viable claim against NPEM to the extent that a declaration of ownership would permit him to apply for rectification of NPEM’s register under s. 125 of the Companies Act. He had therefore pleaded at paragraph 70A of the draft Amended Particulars of Claim:

“Mr Iankov seeks retroactive rectification of the register of NPEM pursuant to s. 125 of the Companies Act 2006 to record Mr Iankov as a 20% shareholder of NPEM from the date of its incorporation.”

62. Mr Iankov contends that a claim under s.125(3) is capable of resolving both claims between members and between members and the company: *Otto v Inner Mongolia Happy Lamb* [2024] EWHC 497 (Ch) at [55]-[60]. He also contends that such a claim may be made under s.125(3) before there is a determination of the proper shareholder, thereby meeting any arguments as to prematurity. He points out that the Court may resolve questions of entitlement in the course of the s.125(3) claim or order the company to pay the shareholder dividends due for the period when they should previously have been registered: *In the matter of JDK Construction Limited* [2024] EWCA Civ 934 at [59-62].
63. In particular, he contends that NPEM is a proper defendant to the s.125(3) claim which can be made now, before the issues as to the true ownership of its shares are resolved. Further, a claim for rectification of NPEM’s register would operate retroactively from its date of incorporation and thus would lead to genuine remedies. Its effect is not merely to transfer 20% of the shareholding of NPEM to Mr Iankov (which could theoretically be achieved by a transfer of 20% of the shareholding of Nexo Inc), but also disgorgement of all benefits that would have been received by Mr Kantchev directly from 2018 to 2021 when he was the sole shareholder of Mr Iankov’s 20% shares in NPEM.
64. In the circumstances, Mr Iankov submits that he has real prospects of success against NPEM under s.125(3) and for a declaration, and his claim discloses reasonable grounds for bringing those claims.
65. The starting point is that the claim that Mr Iankov is the true owner of 20% of NPEM is plainly present in the proceedings and is equally plainly arguable – although there are cogent arguments as to double counting. If it is right that there was a Shareholding Agreement, by which Mr Kantchev agreed that Mr Iankov would be entitled to 20% of the Nexo Group and that NPEM was incorporated as part of the Nexo Group and was originally held directly by Mr Kantchev, it would follow that there is a real prospect of establishing that, on incorporation, Mr Kantchev held 20% of the shares in NPEM on trust for Mr Iankov.
66. However it does not follow that there is a genuine claim against NPEM in relation to rectification of the register. There appears to be force in Nexo’s contention that this is

misguided and a misunderstanding of the rectification mechanism under the Companies Act.

67. The section is on its face directed to correcting mistakes on the register. Here it is not said that the register is mistaken as regards legal ownership – rather there is a (logically prior) dispute as to beneficial ownership (which might or might not then be reflected in the register). There is no mistake. While under the section issues as to ownership can be determined, the section does not create an issue which otherwise is not there. That comes back to the points already made about the lack of any issue between Mr Iankov and NPEM.
68. There is, as the Defendants submit, a valid analogy with the case of *Nilon v Royal Westminster Investments* [2015] UKPC 2 [2015] BCC 521. In *Nilon*, as here, the claimants also sought to use a rectification claim against a company (there, in the BVI) as anchor defendant to ground an application to serve out. There, as here, the claimant's entitlement to shares in the company remained an untried allegation of beneficial ownership based on whether there was any agreement to allot shares to the claimant. At [51] the Privy Council said:

“proceedings for rectification can only be brought where the applicant has a right to registration by virtue of a valid transfer of legal title, and not merely a prospective claim against the company dependant on the conversion of an equitable right to a legal title by an order for specific performance of a contract.”
69. The Board went on to say that for the purpose of establishing a serious issue to be tried for permission to serve out, the Board held the claimants “*have no arguable case to a present right to rectification*”. Even if permission to serve out were warranted, the claim would be liable to be struck out: “*the combination of the motive and the artificiality of the rectification proceedings, and the fact that they are dependant on a trial of the underlying facts, means that the appropriate order in these circumstances is not to stay or adjourn the rectification application, but to strike it out*”.
70. Mr Iankov says that *Nilon* cannot help the Defendants because it is not English Law, and that as a matter of English Law I am bound by the case of *Re Hoicrest* [2000] 1 W.L.R. 414 at 416 which was said to be *per incuriam* in *Nilon* on the topic of whether proceedings for rectification are a permissible vehicle for determining a dispute about beneficial ownership, and whether they can be used not only by a person seeking registration of a share transfer, but also by a person claiming an order for transfer of shares. That was said to be the conclusion of the court in the *Otto* case on which Mr Iankov relies.
71. However this is not quite right. In *Otto* Zacaroli J said that the question of the binding nature of *Hoicrest* was neither here nor there, because it was not on point. In *Hoicrest* rectification proceedings were the only proceedings in existence. In *Otto* Zacaroli J held that rectification proceedings could not go on at that time because “*the application to rectify the register cannot proceed unless and until [the company] is first restored to the register*”.
72. The position here is not dissimilar: rectification cannot be granted until after the title to shares is established. Mr Iankov's approach to this point is again an overreach. The

section 125 argument cannot rescue the supposed claim against NPEM. Before section 125 can be relevant, and any claim for rectification can arise, there must be a determination of ownership.

73. It follows that there is no claim against NPEM and the claim against it should be struck out.
74. Finally on this point, I should note that if, contrary to the conclusion I have reached, I were to conclude that the declaration or the proposed amended case counted as a cause of action the question would arise of *de minimis*. The Defendants contended, at least in writing, that the value of NPEM is *de minimis*.
75. For the purposes of strike out I would accept Mr Iankov's contention that this would not be a sufficient ground for strike out. Even on the Defendants' account, NPEM holds some value. The Court cannot strike out a claim simply because it is of limited value. In any event, the value of NPEM is an issue to be determined at trial. Furthermore, whatever its value now, it has been operating since 2018. There is some reason to believe its value may be or may have been more significant than the Defendants say because of the "Jeong Declaration" of 18 November 2021, which stated that Nexo Capital's "*principal place of business*" was in the United Kingdom.

Gateway 3: necessary or proper party (version 1)

76. Mr Iankov relies on this gateway in three ways. The first, and in some ways the key one, is that as regards NPEM. At present Mr Iankov contends that the claim against NPEM enables him to join the other Defendants. On the basis that the Strike-Out Application succeeds, the claim against NPEM will not proceed and this reliance on this gateway also fails.
77. Had the Strike Out Application not succeeded there would be an issue as to the ambit of claims which could come in via this gateway. On this the Nexo Parties would be correct that this gateway would in any event have limited utility, as it could only permit the bringing of claims which are part and parcel of any genuine dispute with NPEM.
78. It follows from the conclusion above that independent grounds of jurisdiction must be established against one of the remaining defendants. That does not end the role of Gateway 3 however because there is a secondary or parasitic reliance on this gateway if that can be done. Mr Iankov contends that:
 - i. If Mr Iankov is successful in establishing Gateway 2 against Nexo Inc (injunction to take steps to register Mr Iankov as 20% owner of NPEM), Mr Kantchev and Nexo Capital are necessary and proper parties to that claim; and
 - ii. If Mr Iankov is successful in establishing any of Gateways 4A, 12C, 12E, 15 and/or 15B against Mr Kantchev, Nexo Capital and Nexo Inc are necessary and proper parties to those claims.
79. That aspect of the question of necessary and proper party therefore falls to be considered once those prior gateways have been evaluated.

NEXO INC: INJUNCTION**Gateway 2: injunction to do act in the jurisdiction**

80. The second gateway originally relied on is Mr Iankov's claim for "*an order for specific performance and/or injunction requiring Mr Kantchev to transfer to Mr Iankov 20% of the shares in Nexo Inc and all other Nexo Group companies, including...[NPEM]. Such order can only be given effect to within this jurisdiction. The claim is therefore for an injunction to do an act in England*".
81. That claim (i.e. the injunction insofar as it relates to NPEM, not the other Nexo companies) was again initially advanced on the false premise that Mr Kantchev owns the shares in NPEM directly. That is wrong; the only shares which Mr Kantchev holds directly are those in Nexo Inc. Mr Kantchev holds no shares in NPEM which he could be ordered to transfer. The claim as formulated therefore has no prospect of success.
82. It was therefore assumed by the Defendants that this point disappeared. However Mr Iankov maintains it. First he says that the claim be amended and directed to Nexo Inc. Second he says that a claim against Mr Kantchev however remains as he is in practice in control of the shares and "*it is perfectly appropriate to seek injunctions against him ordering him to reverse what amounts to breach of trust, breach of duty and so forth*". So, if Mr Kantchev is still in control of Nexo Inc Mr Iankov says that he can get an injunction to procure the transfer of those shares now held by Nexo.
83. It is fair to say that the way that the case is proposed to be put is not clear. This is not an area where there is a draft amended pleading, or even a formulation offered via correspondence or skeleton. It thus falls foul of the passage in *Opkabi* cited above. As that case notes, it is important that where a gateway is relied upon by reference to a different factual and legal case than that pleaded or dealt with in the application to serve out, that amendment requires to be formulated because the question of jurisdiction should not be determined on the basis of guesswork and approximation. For example, as to the claim which is said to survive against Mr Kantchev, the claim for an injunction would need to be grounded in a suitable legal basis for that relief. If, as at present appears, the claim against Mr Kantchev is essentially a contractual claim, that *prima facie* sounds in damages and it is hard to understand how injunctive relief could be available. The Defendants ought to be able to understand the case they have to meet in order to challenge it.
84. There is no good excuse for the absence of a formulated case. Mr Iankov cannot say that the issues which give rise to the need to amend are so fresh that no reformulation was possible: in the Iankov skeleton it was said that the position was clear only from the last round of evidence served on 13 December 2024. Even if that had been the sole source for the information, this was a month before the hearing. But in any event the position as to the ownership of NPEM has been on record at Companies House since late August 2021. It therefore appears that no checks were made before the ownership position was pleaded (although at paragraph 7 it is pleaded "*based on records available online with Companies House*").
85. Given the absence of a properly formulated case it would therefore be open to me simply to note that the pleaded case must fail.

86. However there is an issue which arises in whatever way the case is put and that issue was substantively argued *de bene esse*. That is the question of whether, however formulated, the injunction sought falls within the bounds of the gateway as an injunction “ordering the defendant to do or refrain from doing an act within the jurisdiction.”
87. The Defendants say that it is wrong in law to say that an order to transfer an asset situated in England means an injunction to act in England. The relief sought is not to transfer shares in NPEM while in England. An order to effect a transfer is an order that could be complied with “anywhere in the world, and not merely within the jurisdiction” as it was put in *GAF Corp v Amchem Products Inc* [1975] 1 Lloyd's Rep. 601.
88. Mr Iankov says this case is not a safe guide because it was about an assignment, and that is not this case which is not simply a case of executing an assignment, because transferring shares requires steps to be taken in this jurisdiction. Mr Iankov therefore focusses on the transfer - which would certainly be recorded/registered in England.
89. But it is not the transfer itself which the injunction would require. Whether aimed at Nexo Inc (to take steps to execute the transfer) or Mr Kantchev (to procure Nexo to take steps to execute the transfer) there appears to be no requirement for any single thing to be done in this jurisdiction. Nexo could execute the form for transfer anywhere. As Mr Quest KC explained in argument:
- “what the transferor has to do is to sign a share transfer, send it to the transferee and it is then for the transferee to arrange registration. Stamping, ... is not actually something that is done physically any more. Under the rules, it is an electronic process”
90. And as regards Mr Kantchev the position is *a fortiori* – all Mr Kantchev (*ex hypothesi* resident outside the jurisdiction) would have to do would be to instruct Nexo Inc (itself based in Cayman) to execute the relevant form. So anything Mr Kantchev might be required to do would be perfectly capable of being executed outside the jurisdiction.
91. Mr Iankov relied (here and elsewhere) on the case of *Bulgarian Development Bank EAD v ULAS Investments EAD* [2024] EWHC 2916 (Ch). That is an unreported judgment of Deputy Master Francis where at [34] the judge indicated that an order to transfer legal title to shares did fall within Gateway 2. That decision is not binding on me, nor indeed was that decision *ratio* at all, it being clear from [35] of the judgment that that part of the decision was *obiter*. While reliance was also placed by Mr Iankov on [32] where the Deputy Master considered that a communication was effective where received, that is not a decision on the same point. That part of the judgment dealt with a separate gateway dealing with the location of a breach of trust. Even if one were to apply a similar test of looking to where effective action has to be taken, the answer is the same, and contrary to Mr Iankov: the effective action in relation to a transfer of shares in an English company does not require execution and delivery in England. Nexo/Mr Kantchev's effective actions would relate to the execution of the transfer document, which can be done anywhere, and would naturally be done in their domiciles (outside England). It is only if the injunction were directed to CREST (which is not Mr Iankov's case) that the effective action would be required to be taken in England.

92. It follows therefore that Gateway 2 is not available to Mr Iankov as against either Mr Kantchev or Nexo Inc. and that any secondary or parasitic reliance on Gateway 3 and/or Gateway 4A also fails.

MR KANTCHEV: THE TRUST GATEWAYS

93. Mr Iankov then seeks to capture Mr Kantchev via the trust arguments which he has either pleaded already or says are available to him based on the facts upon which he relies.

94. The overarching submission was perhaps captured in Mr Montagu-Smith's oral argument thus:

“we say is that the effect of that understanding or that agreement was to establish a trust or trusts over the shares in the Nexo group companies when they were established ... that is put, as you saw in the Iankov pleadings, in various different ways. But in part what is pleaded is that it creates a constructive trust over the companies, the shares in the companies, as they are incorporated in Mr. Kantchev's hands.”

95. This passage alludes to a number of features of the argument – the variety of ways in which the case is put, the emphasis on the conscience base for the claim, and the focus on the moment of incorporation, which is Mr Iankov's route to reliance on NPEM, the one direct link to this jurisdiction.

Gateway 12C: trust created in the jurisdiction (PD 6B, paragraph 3.1 (12C))

96. The first way in which Mr Iankov puts his trust case is that there is a trust created in England because Mr Kantchev's claim in respect of the Nexo Group companies includes NPEM, and because “*a trust can result from a prior agreement that property will be jointly owned once acquired*”, and that “*the trust over the shares in the English companies occurred in England when they were incorporated by and/or their shares issued to Mr Kantchev*”. This therefore relates to the NPEM shares.
97. The problem with this analysis is that it involves the proposition that there is a separate trust in relation to the NPEM shares. That is not, however, the case which Mr Iankov is running. At paragraph 22 of the pleading it is alleged that by the Shareholding Agreement Mr Kantchev agreed that he would hold 20% of the “*shares of any subsequent companies incorporated within the Nexo Group*”. That is a pleading that he (expressly) declared an overarching trust in favour of Mr Iankov, then and there.
98. That is echoed at paragraph 50 of the pleading which is entitled “*Trust over the Nexo Group*” and says “*By the shareholding agreement Mr. Kantchev expressed an intention to create a trust over the companies of the Nexo group, of which Mr. Iankov would be the beneficiary of 20%*”. There is no pleading of a multiplicity of trusts all created separately, but rather (one might think, logically) of one overarching trust; the case is that a single trust was created in 2017 and in respect of “*subsequent companies incorporated*”. There is certainly no pleaded case of a trust over NPEM specifically arising on incorporation. There is therefore no case on the face of the pleadings to which this gateway applies.

99. It would therefore follow that if the question relates solely to creation of the trust (viewed from an English Law perspective) the trust as pleaded was created in Bulgaria, because Mr Iankov and Mr Kantchev were present in Bulgaria at the time of the Shareholding Agreement. The parenthesis as to proper law is not insignificant, because to the extent a legally significant relationship other than a contract (such as a trust) was created by a conversation in Bulgaria, one might well expect Bulgarian law to have something to say about where and how that relationship/trust should be seen as having been created and subject to what laws it would operate. No such case is currently pleaded; one reason for that has been suggested to be that Bulgarian law (like numerous other national laws) does not recognise the concept of a trust.
100. However returning to the English Law analysis, while Mr Iankov says no trust was created by the conversation because there was no property over which the trust could arise at the time of the Shareholding Agreement and that the trust was only created and came into existence with the incorporation of NPEM in 2018, that is most certainly not the pleaded case on the basis of which permission to serve out was sought and obtained, and it is not the case pleaded before me. Specifically there is no pleading to match paragraph 103 of the evidence in support of the application that: *“there was a prior agreement that property will be jointly owned once acquired”* or that *“the trust was created in the English companies when they were incorporated by and/or their shares issued to Mr Kantchev”*.
101. The pleaded case as regards NPEM is:
- i. At section C3.1 *“Trust over the Nexo Group”* the primary pleading being that by the Shareholding Agreement Mr Kantchev declared a trust over the companies of the Nexo Group;
 - ii. There is a pleading at paragraph 51 of a trust arising on incorporation of Nexo Delaware and/or Nexo AG (but not NPEM);
 - iii. There is an alternative pleading of beneficial interest arising on incorporation of each company by reason of the agreement being capable of specific performance; and
 - iv. There is a pleading of a constructive trust arising as a result of Mr Iankov’s reliance and dedication of time and skill.
102. Though the above is enough for current purposes, it is worthy of note that the pleaded case also makes far better sense than the argument run by Mr Iankov. It makes no sense to suggest that the place where a trust in respect of *“the Nexo Group”* as a whole was created would be displaced or varied by where any individual company in the group is later incorporated. *“The Nexo Group”* includes entities in Bulgaria, Cayman, Switzerland, and the US; it is hard to see how the place of the creation of a trust over the group can be retrospectively changed depending on whether an entity happens to later come into existence.
103. Even if there was sufficient pleading to cover a trust specific to NPEM arising separately, it would still not change the fact that the acts which create the trust have to be ones done by Mr Kantchev and Mr Iankov – and there is no reason to suppose that any effective acts (whether of agreement, reliance, or making arrangements for the

incorporation of NPEM) occurred in England. This was the approach taken in the *Bulgarian Development Bank* case. The judge rightly focused on the word “created” as indicating a need to identify the means by which the trust came into being. At [29] the judge said this:

“I was not taken to any authority on what is meant by the words “created in the jurisdiction” and / or what steps should be regarded as the key or central to its creation for the purposes of this gateway. However, on the face of it, the words appear to be focused upon the actions or conduct by which ULAS assumed the obligations of trustee to BDB in relation to the shares. Where this was done voluntarily, by agreement or arrangement between the parties, I tentatively conclude that, as with the contract gateway under sub-paragraph (6), it is necessary to consider where the relevant agreement was entered into. In this case, that appears to be in Bulgaria, whether the relevant agreement is the Restructuring Deed itself, or some antecedent bilateral oral or written agreement between the parties.”

104. Mr Iankov also suggested in relation to this gateway that absent the choice of the trustee, the governing law in respect of immovable assets can be determined by the situs of the assets if the trust property consists wholly or principally of immovables. This was used as a basis for saying that there is a good arguable case that the trust over NPEM’s (and the Nexo Parties) shares was an English law trust. This appears to be a misplaced point for a variety of reasons. The first is that it does not address the relevant gateway which relates to the location of the creation of the trust. The second is that it would in any case not be applicable to a trust of shares, which are not immovables. The point was not pursued orally.
105. Consequently Mr Iankov cannot rely on Gateway 12C as against Mr Kantchev; and parasitic reliance on gateways 3 and 4A is similarly not available.

Gateway 11: Property wholly or principally in England

106. The next point relied upon was a new one adopted only at the hearing. There is, as noted, no bar to service out being justified by reference to a gateway not relied upon when the original application was made. That point was made by Rix LJ at [141] *AES Ust-Kamenogorsk v Ust-Kamenogorsk* [2011] [EWCA Civ 647](#) [2012] 1 WLR 920 and has not since been contradicted.
107. This gateway responds where “*the subject-matter of the claim relates wholly or principally to property within the jurisdiction provided that nothing under this paragraph shall render justiciable the title to or right of possession of immovable property outside England and Wales*”.
108. Mr Iankov says the subject-matter of the claims for injunctions, breach of trust, breach of fiduciary duty and specific performance in so far as they relate to NPEM are claims which relate to property within the jurisdiction.
109. While shares are capable of being property for the purposes of this gateway, one has to see how the property comes into the equation. There are familiar issues here: to the extent that it is a claim against Mr Kantchev regarding the NPEM shares, this cannot

work. So far as concerns claims for injunctions etc against Mr Kantchev despite his lack of ownership, this is not pleaded, and has been considered and rejected under the earlier gateways.

110. Any claim regarding NPEM shares would have to be against Nexo Inc. There is no explained basis for any of these claims against Nexo Inc. While that could of course be advanced it is not advanced yet. Nor is it compatible with the way the case is pleaded which is as regards a share in the Nexo Group – which on any analysis is not in England.
111. This makes this a very different case to the *Bulgarian Bank* case where the sole matter in dispute was ownership of shares in an English company; the broader contractual relationship was not the subject of any claim. So the balance was very different indeed and the judge appears to have been quite right to reject an argument that the real dispute was about a wider contractual relationship. Here the reality of the claim does relate to a wider relationship, and the Nexo Group, not to beneficial ownership of NPEM. There is no claim against Mr Kantchev or Nexo Inc which relates wholly or principally to NPEM shares. There is no arguable specifically pleaded claim regarding ownership of NPEM. It follows that the gateway is not engaged.
112. Again therefore this gateway is not available to Mr Iankov and nor is any Gateway 3 or 4A analysis depending on this gateway.

Gateway 12E: breach of trust committed in the jurisdiction

113. Moving on, Mr Iankov contends that “*As the trust over [NPEM] existed in England, it was also breached by Mr Kantchev in England, by failing to follow Mr Iankov’s lawful instruction to transfer 20% of the shares in the English companies to Mr Iankov*”. This can be dealt with very briefly indeed. There is no case advanced of a breach of trust in the jurisdiction.
114. Moving beyond the pleaded case, Mr Iankov now suggests that this is engaged because between its incorporation in 2018 and transfer to Nexo Inc in 2021, Mr Kantchev, in breach of trust, would have misappropriated benefits such as dividends or other payments due to Mr Iankov pursuant to his rightful 20% ownership of NPEM, or otherwise dealt with Mr Iankov’s shares (including to transfer them to Nexo Inc) without reference to Mr Iankov and that such breaches would have occurred in England because:
 - i. That is where dividends would have been declared by NPEM; and
 - ii. That is where the transfer of NPEM’s shares from Mr Kantchev to Nexo Inc would have taken place. Failure to transfer is therefore something done in jurisdiction.
115. Or to put it yet another way (what Mr Montagu-Smith in reply said was his primary approach to breach of trust): “*the primary breach of trust by a trustee in this situation is failing to follow the lawful instruction to transfer the shares to the beneficiary*”.
116. Again there are familiar issues with this – the lack of a properly pleaded case, the lack of an NPEM specific pleading (for example as to requests to transfer), there is no

pleaded case in respect of any trust created in England specifically in respect of NPEM (the case is that the trust was created in 2017 pursuant to the Nexo group) and so forth.

117. But there are graver analytical problems. The first echoes the earlier points regarding the mechanics of transfer: if this is really a case about breach by the transfer there are the same difficulties about the mechanics of transfer. There is no reason to think that the actual transfer which took place would, in terms of actions by Mr Kantchev, have taken place in England. Nor is there any reason to believe that any failure by Mr Kantchev to follow any instruction to transfer (ie to take steps to effect the transfer which Mr Iankov says should have been done) would have been here. There is good reason to think it would not. And (again) there is certainly no pleading that the act (or omission) in question took place in England, and how that is the case.
118. As for the dividends case, this is pure speculation. There is no positive pleaded case as to dividends of NPEM (the nearest approach being “20% of any dividends and/or other benefits due to the shareholders of the companies within the Nexo Group since August 2017”), and there is no evidence that any dividends were ever paid by this very small company with tiny assets. Certainly none are suggested by NPEM’s financial statements filed at Companies House.
119. This gateway therefore fails, as do gateways subsidiary upon it.

Gateway 15: constructive trust arising out of acts or assets in the jurisdiction

120. By this gateway, it is said there is “*a claim...against a defendant as constructive trustee where the claim (a) arises out of acts committed or events occurring within the jurisdiction (b) relates to assets within the jurisdiction...*”
121. Mr Iankov claims a constructive trust over the shares in NPEM. As already noted, the pleading of the constructive trust is neither clear nor conventional. Mr Iankov’s claims as regards ownership are based on the alleged Shareholding Agreement. The basis of the first constructive trust is said to be the Shareholding Agreement (“*and/or the said declarations*”), but these appear to refer to declarations that are not relevant to NPEM). But it is also said the Shareholding Agreement created an express trust. If that is right, there is no need or room for a constructive trust (and if it is wrong, then there is no basis for a claim at all). It is hard to see why a constructive trust analysis is relevant or what it adds.
122. After the plea of express trust, there is another plea apparently but not explicitly indicating a resulting trust (“*By reason of the Shareholding Agreement and/or the declarations...*”). There is a non-specific trust pleading at paragraph 52 of the Amended Particulars of Claim, apparently based on the *Pallant v Morgan* equity as explained in *Banner Homes*. Finally in fourth place there is a specific reference to constructive trust, based on the agreement in the Shareholding Agreement, and reliance to Mr Iankov’s detriment.
123. That constructive trust plea is explicitly based on Mr Kantchev “holding” shares beneficially for Mr Iankov: “*Mr Kantchev holds 20% of the companies within the Nexo Group (alternatively, 20% of Nexo Inc or, if different, the ultimate holding company of the Nexo Group and 20% of NPEM...) beneficially for Mr Iankov as a constructive trustee*”.

124. The claim fails for the various reasons already adumbrated in relation to earlier gateways:
- i. A claim against Mr Kantchev for his shares in Nexo Inc would not fit through the gateway;
 - ii. There is no pleaded or properly arguable claim against him in relation to any assets within the jurisdiction;
 - iii. A fallback claim against Nexo Inc cannot be used here, because the basis of the constructive trust does not relate to Nexo Inc; and
 - iv. There are no relevant acts within the jurisdiction.
125. Mr Iankov submits that there was a constructive trust claim against Mr Kantchev and that it cannot be right that the constructive trust claim disappears on transfer because that would enable trust to be dissipated in order to avoid litigation. While I sympathise with the sentiment, there is no pleaded case about how the constructive trust works post transfer. Nor was I directed to any law on it. This argument therefore fails on the basis that it has not been demonstrated that there is an argument that Mr Kantchev remains subject to a constructive trust arising out of acts in the jurisdiction or relating to assets within the jurisdiction.
126. Again as a consequence gateways parasitic on that fail also.

Gateway 15A – assisting in breach of trust

127. This was a gateway first mentioned in oral argument. The gateway relates to assisting in breaches of trust which fall within other gateways already relied upon. It was not explained how this gateway could conceivably add anything to the analysis.
128. To the extent this gateway was formally relied upon therefore it fails.

Gateway 15B: breach of fiduciary duty in the jurisdiction

129. Mr Iankov then relies on PD 6B paragraph 3.1(15B)(a) (breach of fiduciary duty). Mr Iankov says that by refusing to transfer Mr Iankov's 20% shareholding in NPEM to Mr Iankov, by transferring it to Nexo Inc and/or distributing all benefits of such shareholding to Mr Kantchev, Mr Kantchev committed a breach of his fiduciary duties in England.
130. Gateway 15B, requires:

“(15B) A claim is made for breach of fiduciary duty, where—

- (a) the breach is committed, or likely to be committed, within the jurisdiction;
- (b) the fiduciary duty arose in the jurisdiction; or
- (c) the fiduciary duty is governed by the law of England and Wales.”

131. There was a familiar lack of focus as to the case being run. The skeleton pitched the argument as breach within the jurisdiction based on a refusal to transfer the NPEM shares. The evidence put it differently as: *“a claim...against a defendant as constructive trustee where the claim relates to assets within the jurisdiction”*. Mr Iankov’s pleaded claim for breach of fiduciary duty is at PoC paragraph 67, where it is said that in breach of duty Mr Kantchev *“misappropriated the entirety of Mr Iankov’s 20% interest in the Nexo Group and/or Mr Iankov’s 20% share of the Founder Tokens and/or deprived Mr Iankov of the benefits associated with Mr Iankov’s 20% shareholding of the Nexo Group and/or 20% share of the Founder Tokens, including dividends or other distributable profits”*.
132. The reality, as conceded orally, is that this adds nothing to the other gateways already considered above. As Mr Montagu-Smith put it: *“So the same issues arise, and have the same answers.”* This is correct. For the reasons already given, the gateway is not engaged, and reliance on gateways 3 and 4A as accessories to this gateway also fails.

THE OTHER POSSIBILITIES

133. This brings the argument to the “other” possibilities – those gateways or arguments relied on in conjunction with other gateways or as alternatives to a traditional analysis.

Gateway 3: necessary or proper party (reprise)

134. As has already been indicated, each of the gateways relied upon fails. It follows that there is no scope for the use of Gateway 3.

Gateway 4A: same or closely connected facts

The orthodox use of Gateway 4A

135. As with Gateway 3, Mr Iankov relies on Gateway 4A in three separate ways. The first two are essentially slightly different ways of putting the Gateway 3 arguments. Thus if:
- i. Mr Iankov is successful in his reliance upon Gateway 2 against Nexo Inc, there is a good arguable case that the remaining claims against Nexo Inc can be brought under Gateway 4A;
 - ii. Mr Iankov is successful in his reliance upon any of Gateways 2, 12C, 12E, 15 and/or 15B against Mr Kantchev, there is a good arguable case that the remaining claims against Mr Kantchev can be brought under Gateway 4A.
136. For the reasons already given neither of these points arises. I should note for completeness that to the extent that the primary conclusion as to gateways were wrong and they were to arise, they were not contentious as regards claims bearing the appropriate relation to the particular claims apt for any particular gateway. Thus as regards the NPEM shares and Nexo Inc, this would represent a very valid use of the 4A gateway. The Nexo Parties however say that as with Gateway 3, jurisdiction via gateway 4A would not however extend to the other claims.
137. Had this point arisen I would probably have been more sympathetic to Mr Iankov on this. There is a difference in the wording of the two gateways, and it seems to me that

the wording “*closely connected facts*” offers slightly more scope. If claims turn on the shareholding of Nexo Inc and that is closely connected to issues around the establishment of the Shareholding Agreement and the operation of the Nexo Group it might well be the case that the gateway could be apt. However as already indicated this is academic, and it is not appropriate to delve deeper into this point, not least where a variety of counterfactuals would arise in relation to specific gateways.

The novel proposition

138. Far more daring is the third basis on which Mr Iankov seeks to invoke Gateway 4A. Mr Iankov contends that Gateway 4A is accessible regardless of success on other gateways because the Iankov Proceedings arise out of facts that are closely connected to the Shulev Proceedings.
139. In other words, he contends that the Shulev Proceedings can be the basis for a 4A gateway covering the entirety of the Iankov Proceedings. Mr Iankov contends that while the claimants in both sets of proceedings are different, Gateway 4A does not require that the claimant be the same, but instead only that the defendants are the same. Therefore, Mr Iankov relies on this gateway to bring his claims against Mr Kantchev and Nexo Capital, who are Part 20 Defendants in the Shulev Proceedings.
140. In this connection Mr Iankov relied on [*Eli Lilly and Co v Genetech Inc*](#) [2018] EWHC 3522 (Pat) [2018] 1 WLR 1755 at [32]-[33] (Birss J):

“Gateway (4A) is certainly not as wide as the ambit of the court’s power to try distinct domestic cases together, where no jurisdictional question arises, but it seems to me that essentially the same practical considerations indicate what the provision is aimed at. Given that the defendant is already properly subject to the court’s jurisdiction, pragmatic factors are appropriate matters to take into account in deciding whether the connection between the facts is sufficiently close to justify service out having regard to the overall justice of the circumstances. The purpose of gateway (4A) is to allow the joinder of a further claim against the same defendant based on the same or closely connected facts so as to further the interests of justice, including taking into account practical considerations such as procedural economy and an avoidance of inconsistent results.

... if the key factual issues in the second claim are facts it has in common with the anchor claim and the difference in the relevant facts is only on matters which are undisputed or which can readily be dealt with without substantial disclosure and little or no cross-examination, then the factual connection may be sufficiently close to justify service out.”

141. Nexo submitted that this approach would amount to misuse of the gateway and that the purpose of gateway 4A is to enable the Court to give permission for service out of a claim form “*making a claim ancillary to the claim made against the defendant*” citing White Book para 6H7.10. While in writing Mr Iankov seemed to acknowledge this, saying through Mr Toms “*it might be regarded as unusual for this gateway 4A to be*

called upon in such way”: orally Mr Montagu-Smith was determined to pursue this point.

142. The argument is, in my judgment, not merely novel; it is thoroughly misconceived.
143. As Nexo pointed out, the purpose of the gateway is to add claims to existing proceedings, as the passage in the White Book makes clear. The purpose is “*to allow, in circumstances where the court had jurisdiction over a claim, the joinder of related claims in, for example, tort, restitution, and constructive trust, thereby facilitating ‘one-stop’ adjudication*”. Put another way, the gateway is “*concerned with adding additional claims to a claim against a given party*”.
144. Similarly in *Eurasia Sports Ltd v Aguad* [2018] [EWCA Civ 1742](#) [2018] 1 WLR 6089 at [47] Floyd LJ was clearly seeing the gateway as directed to adding to an existing action:

“The necessary or proper party gateway is concerned with adding additional parties to a given action, whereas the 4A gateway is concerned with adding additional claims to a claim against a given party. The common thread is that claims arising out of the same or closely related facts should be tried together, whether by adding defendants to an existing claim or adding claims to an action against an existing defendant.”

145. Even the authority on which Mr Iankov relied (*Eli Lilly*) was not supportive. That was a case of an entirely conventional use of the gateway: it was a patent case where service out had been granted in respect of two claims relating to the same product. One claim related to the UK designation and service out was granted under CPR 3.1(9). The other related to 5 other EU designations and service out was granted under CPR 3.1(4A). The defendant only sought to set aside the second claim. The wording of Birss LJ’s judgment also makes clear that it is looking to adding further claims to the same proceedings by his use of the phrase “*the anchor claim*”.
146. The point can also be evaluated simply by considering where it practically leads; which is to anarchy. The logical correlate of the argument is that the gateway is available if there are separate proceedings at very different stages of development, which can never conceivably be tried together. Why, one may ask, would that be a basis for bringing a second claim here? Mr Montagu-Smith would doubtless say that this is to anticipate an illusory problem because these practical factors would be relevant at the *forum conveniens* stage. However, he nonetheless attempted to justify the use of the gateway in terms which suggested that once a party is in litigation here, they have no right to complain if they are brought into separate litigation based on the same or connected facts:

“it is dealing with a party who has already been brought, already been hauled internationally in front of this court to deal with one claim and all that is happening is they are being asked to deal with a claim which is based on exactly the same facts or ones which are closely related. So they are already going through the machinery of the court system.”

147. That is an approach which simply cannot be right. The gateway is plainly directed at other claims in the same proceedings against the same defendant – at making a single trial of all relevant issues between the same parties possible. That is how it has thus far been universally perceived. That approach is logical and sensible, which Mr Iankov's contention is not.
148. Finally while strictly speaking the views of the CPRC Sub-Committee which has considered the gateways recently is not binding and may not be admissible, it is comforting to note that its report discusses amendments to 4A in terms which are all predicated on an approach that there is an anchor claim in the same litigation.
149. I would also observe that it is very hard indeed to see how this novel 4A argument could add anything to the consolidation argument, to which I shall now turn. In other words, the argument could only conceivably work if consolidation were appropriate, such that one was looking at a single trial. And if consolidation can, as Mr Iankov contends, operate as an independent basis for permitting service out where no gateway can be established, there is no need for the novel 4A argument. The argument is therefore both wrong and adds nothing to the other arguments.

Consolidation as basis for jurisdiction

150. Thus Mr Iankov pursued the “connected claims” argument to its logical conclusion and argued that, if the Court would be minded to grant the Consolidation Application, Mr Iankov should not require permission to serve Mr Kantchev and Nexo Capital at all, because they are parties to the Shulev Proceedings already. Mr Iankov would then be entitled to serve Nexo Inc as a necessary and proper party.
151. The argument was based on the submission that “*There is no difficulty in consolidating and then considering – post-consolidation – what, if any, permissions are required*”. In this connection reliance was placed on *Harrington and Charles Trading Co Ltd (In Liquidation) v Mehta* [2023] EWHC 998 (Ch) at [100]; *Fremont Insurance v Fremont Identity* [1997] CLC 1428 at pp 1434-5.
152. The argument is at first blush a surprising one, with an element of bootstraps about it. However, it transpires that is not entirely lacking in basis. The starting point is the *Fremont* case, which of course precedes the entry into force of the Civil Procedure Rules. It is a decision of Mance J. The claimant had issued proceedings against two foreign companies for declarations as to the existence and enforceability of certain reinsurance contracts, and later added in some of the companies' directors, claiming breach of fiduciary duty against them. Later a separate writ was issued in respect of a further director, M, and an application was made to consolidate the claims, and then to serve M out of the jurisdiction as a necessary or proper party.
153. While there was some suggestion that there would have been a limitation issue with amending the original writ, the judge concluded (at p 1430) that the reason for not simply further amending the original writ was that it was quicker and simpler to issue a new writ. It also appears to have been the case that the claimants' solicitors had not appreciated that it was not necessary to consolidate the claims to get service out, as the case was argued without reference to the fact (pointed out by the judge) that there was a gateway relating to constructive trust which would have applied.

154. Against this background Mance J said this:

“The nature of the two actions and of their common subject-matter and issues makes them clearly appropriate for consolidation under O. 4, r. 9 . Is it fatal to an application to consolidate that .. the second writ is not or may not be capable of service out without consolidation? ...

the case of *Arab Monetary Fund v Hashim (No. 4)* [1992] 1WLR 553 (Hoffmann J) and 1176 (CA) is of interest. There, a second writ, intended to protect the limitation period, was issued against inter alios Mr Stephan, apparently in the hope that he might come within the jurisdiction. In the event it appears that it could only be served by consolidating it with the first writ and relying on O. 11, r. 1(1)(c) . Consolidation was ordered and leave to serve out was given. The Court of Appeal upheld the judge's conclusion that there was jurisdiction to consolidate under O.4, r. 9 , saying: ‘It is not the leaning of our courts to restrict procedural powers which may be useful to them unless the wording of the rules or the interests of justice require it.’ ...

In my judgment, the two actions before me should be consolidated, although this will enable the plaintiff to apply under O.11, r. 1(1) (c) .”

155. Order 4 rule 9 provided: “*Where two or more causes or matters are pending in the same division . . . the court may order those causes or matters to be consolidated on such terms as it thinks just ...*”. CPR 3.1(2)(h) is in slightly different terms, but not significantly so: “*Except where these Rules provide otherwise, the court may – ... consolidate proceedings.*”

156. The position post CPR is dealt with in *Harrington and Charles Trading Co Ltd (In Liquidation) v Mehta*. This was a case where in three different sets of proceedings there were allegations of a complex international fraud relating to gold bullion. A summary of the alleged fraud is set out at [3]-[19] of the judgment of Miles J. There were two relevant actions known as the May Action and the September action. There was essentially complete overlap between the two, with a separate action having been commenced because of the limitation position with the judge noting at [48] “*The case law establishes that where there is at least an arguable limitation defence the proper course is not to add a party to existing proceedings but to issue a new claim.*”

157. The case came before the court in April 2023 at a time when jurisdiction in the May action had been successfully established, but permission to serve out in the September action had not yet been made. An application was made to consolidate the two actions. It was argued (amongst other points) that the application was an abuse because the sole or primary purpose in seeking consolidation was to enable reliance on the necessary or proper party gateway.

158. From [64] the judge considered the arguments in favour of consolidation, essentially concluding that this was a paradigm case. Dealing with the specific issue at [100] he said:

“c. ...*Fremont* provides some support for the claimants’ position. In that case, Mr Justice Mance made an order for consolidation which enabled the plaintiffs to seek jurisdiction under the necessary or proper party gateway.

d. Though that case was decided before the introduction of the CPR, it appears to me still to be persuasive on the issue of abuse or procedural propriety; and the present argument does not turn on the interpretation of any the wording of any particular provision of the rules.

e. ... Mr Justice Mance also addressed the specific submission that the plaintiffs would be able to seek to serve out under the necessary and proper party gateway if but only if the order for consolidation was made. He did not see that as a valid objection to the order for consolidation. That provides some assistance here.

f. As I have said, the claimants have accepted that they wished to pursue their application for consolidation now, as it would improve their position on service out. But it does not follow, it seems to me, that they were acting improperly any more than it did in the case of *Fremont*. I repeat that they have satisfied me on independent grounds that it is appropriate to order consolidation at this early stage in the two cases.”

159. I conclude that Mr Iankov is correct that, based on this authority, it is possible for consolidation to take place before service out is granted, and in circumstances where the availability of service out, absent consolidation, is open to doubt. However while the cases establish that in some limited circumstances this approach may be seen as not abusive, it is plainly not an orthodox approach. There are apparently only two authorities where it has been done and neither case is on all fours with this one. In both cases the question of consolidation was being looked at when both sets of proceedings were at a very early stage and the case for consolidation was otherwise extremely compelling. In both cases there were at least other options for service out of the later proceedings. In *Fremont* it is clear that Mance J considered there was an available gateway. In *Harrington* the report indicates that there were other gateways open to the claimants, but they were regarded as less simple. There is no suggestion that they were hopeless – or as here had been ruled on and dismissed as unavailable.
160. In general it seems highly likely that it will be abusive to use a procedural step which is *prima facie* apt only to extant proceedings in which the court has jurisdiction in order to sidestep or avoid a jurisdictional hurdle. The jurisdictional gateways in PD6B are now numerous. They are carefully thought out and much debated before they are set in place. They represent a code which should - save in exceptional circumstances - apply.
161. There are no such exceptional circumstances here. Accordingly I do not consider that consolidation (even if I had been minded to order it) could in this case provide an alternative route to jurisdiction.
162. It follows that there is no applicable route to establishing jurisdiction in relation to this claim and questions of forum and service do not arise.

PROPER FORUM

163. Any conclusion on this issue is therefore contingent; and the more so since the analysis of proper forum would depend to some extent on which claims were justiciable. Nonetheless some brief consideration of this question is appropriate.
164. Mr Iankov's case was of course that England is clearly the proper forum for the Iankov Proceedings. While it was accepted on his behalf that the burden is as a matter of law on him to demonstrate that England is clearly the most appropriate forum Mr Montagu-Smith reminded me that in the modern world (post *Abela*) the approach to this question is more pragmatic and less exercised about the question of exorbitance.
165. The obvious point in favour is that the Shulev Proceedings will be determined in England. That gives rise to arguments about overlap of parties, facts and issues and risk of inconsistent judgments. The former has been addressed earlier in this judgment. As to the latter, Mr Iankov argues that there is a very real risk of inconsistent judgments if the Iankov Proceedings are determined elsewhere – and that those decisions will be based on the credibility of the same witnesses. Mr Iankov says that the authorities speak with one voice that in such circumstances justice requires that there be a single forum of adjudication and a single composite trial. This is the more so in a case like the present one which is heavily concerned with such issues as oral agreements honesty and motives.
166. Finally it was submitted for Mr Iankov that limitation is a relevant factor in particular in the light of the fact that Mr Iankov acted reasonably in seeking to bring proceedings in England and the Nexo Parties have not offered to waive any limitation defences that might result in Mr Iankov pursuing his claims in another jurisdiction. Therefore, the Court should decline to dismiss the Iankov Proceedings on the basis of *forum non conveniens* in line with *Altimo Holdings*.
167. I do not find these arguments persuasive. If one looks at the Iankov Proceedings in isolation, it is quite clear that Mr Iankov could never discharge the burden on him.
168. There are at least three other jurisdictions which are no less appropriate than England. Prime among these must be Bulgaria. This is, as Mr Quest pointed out, a dispute which has its roots most firmly in Bulgaria. The relevant events and discussions occurred there in relation to the Shareholder Agreement, the Founder Tokens etc. It is where the protagonists were based at that time. It appears that the majority of Nexo employees are there – and so will be the main base for any hard copy or hard drive based disclosure. There is also Cayman (where Nexo Inc and Nexo Capital Inc, the holding and operating companies in the Nexo Group, are incorporated and Mr Kantchev has a registered address), or the UAE (where Mr Kantchev resides). Mr Iankov has never explained or adduced evidence as to why any of these other fora would not be appropriate.
169. While it is true, as Mr Iankov submits, that there are some ties to England, they are fairly tenuous. Reliance was placed on a few statements made by the Nexo parties in their evidence for this hearing such as:
- i. “I understand from my clients that during 2020, the Nexo Group had considered operating from the UK, and to facilitate that, incorporated the UK Nexo Companies. However, this did not materialise.”; and

- ii. *“I am instructed that the First Defendant and Mr Trenchev ... as they were in the UK during that period for business and personal reasons, the UK was the Second Defendant’s ‘nerve center’ at that point, and the Jeong Declaration was correct”.*
170. Not only are those statements isolated, they relate to a period of time considerably after the key dates for the purposes of the Iankov Proceedings (though they may be significant dates in the Shulev Proceedings because of the Settlement Agreement issues).
171. But more substantively the connections are lacking. This is not a case in which any of the usual *Spiliada* considerations might apply – there are no witnesses or documents in England. There are no Nexo employees in England. As with the Shulev Claim, the Iankov Claim being heard in England would involve a cast of Bulgarian nationals (witnesses and representatives) all travelling to England from Bulgaria (bar Mr Kantchev, from the UAE), potentially giving evidence in Bulgarian by reference to Bulgarian-language documents and concerning events that took place in Bulgaria. On the face of the current version of the Iankov Particulars of Claim, the contract (the alleged Shareholding Agreement) and trust (the express and/or constructive trust created thereby) at the heart of the claim were created in Bulgaria and to all appearances would be governed by Bulgarian law. This is not insignificant given that there is some evidence that the concept of trust is not recognised under Bulgarian law. While this is not currently pleaded, it would be surprising if that was a point which did not emerge; and that carries with it the spectre of Bulgarian Law evidence. While this court is experienced in deciding foreign law issues, it still considers that *prima facie* issues of foreign law are best decided by their home court. Bulgaria is therefore by quite some margin the natural forum.
172. But it is entirely fair to say that if the Iankov Proceedings, or any part of them, could find a gateway apt to found jurisdiction here, it would be artificial to look at the Iankov Proceedings in isolation because there is a very real crossover of issues and because the Shulev Proceedings are going to take place here – with all the logistical consequences which flow from that.
173. The question therefore is to what extent the various factors which flow from that drive the analysis, and whether the result is that the clearly most convenient forum for the dispute itself is actually displaced by this jurisdiction.
174. On balance I come to the conclusion that even if all or the bulk of the issues could be brought within gateways so as to found jurisdiction, the factors in favour of this jurisdiction would still not make this clearly and distinctly the most convenient forum. I cannot quite agree with the contention for the Nexo Parties that the Shulev Proceedings is not a particularly significant factor at all. It is a very real factor. Ultimately there is no doubt that the balance requires careful consideration – but the law is clear – even a close balance is not enough.
175. There are a number of significant points which play into this conclusion. The first is the very real difference in the ambit of the claims, as they at present appear. While Mr Iankov understandably tried to minimize the differences in the cases, the reality is that the Shulev Proceedings have two major strands which do not appear in the Iankov Proceedings. The first is the Termination Conspiracy. There is no related argument in the Iankov proceedings; it concerns an entirely different time period to the Iankov

Proceedings. As with any conspiracy, it is unlikely to be simple to deal with evidentially. Again while Bulgarian Law is not pleaded yet, there is obvious scope for interesting debate about the applicable law of any conspiracy and the relevant law's attitude to such concepts.

176. Then there is the debate arising from the Settlement Agreement (which is of course the basis for the Shulev Proceedings being in this jurisdiction). Again this concerns a different time period. Again it is unlikely to be simple. So much can be seen from the pleadings, but can perhaps be best summarised via the List of Issues. Although the parties have not agreed this document it contains the following potential issues relating to the Settlement Agreement:

“Is the Settlement Agreement valid and binding? Is Mr Shulev precluded by the Settlement Agreement and ROC from bringing his counterclaim? In particular:

a. Were the Settlement Agreement Representations pleaded at Amended Defence and Counterclaim ¶¶57A false, and if so did Mr Shulev rely on them when entering into the Settlement Agreement?

b. Did he intend to enter into the ROC and the Confidentiality Agreement, and was Nexo aware of any contrary intention by Mr Shulev?

c. Did the Phone Threat or Email Threat occur (defined at Amended Defence and Counterclaim ¶¶57.1 and 572)? If so, did Mr Shulev enter into the Agreements under unlawful act duress, by reason of the Phone Threat or Email Threat?

d. Does Mr Shulev have a claim in the tort of intimidation? If so, what would be its effect?

e. Did the Agreements constitute an unconscionable bargain?”

177. Against that background there are real questions about the way in which, if the Iankov Proceedings were brought here, they should best be case managed. There is plainly a real risk of the Iankov Proceedings being artificially inflated by the proposed consolidation with the Shulev Proceedings; and indeed the Shulev proceedings being delayed and made still more complicated and expensive by such a step. One aspect which was debated was the question of how one would deal with pleadings in any consolidated action. Repleading both cases would be a significant burden (here the difference to cases such as *Fremont* and *Harrington* - both very early stage applications - is quite striking). There are also issues as to timing – both in terms of impact on existing timings and slotting Iankov Proceedings into the Shulev timetable. Disclosure is taking place by May in the Shulev action with witness statements scheduled for September. While the Iankov proceedings are simpler, they are a good way behind.

178. I do not of course neglect to consider the risk of inconsistent judgments – always a factor requiring attention where there is any overlap of claims. But the authorities (such as [Donohue v Armco](#)) deal with the particular facts of their particular cases; they do not require this factor to drive the result in all cases (as *Lungowe* makes clear).

179. In this case there is certainly an area of overlap as regards the initial decisions, agreements or declarations as to ownership, and naturally Mr Shulev says that the same issues are going to have to be decided in both, with necessary risk of inconsistent findings if both sets of proceedings are not in the same place. However it is by no means clear at this point to what extent that really will be so. This is because the cases advanced by Messrs Shulev and Iankov as to the genesis of the agreements are different – both as to facts and as to the legal basis for participation. While the case advanced in the Iankov skeleton argument, and orally, was one of a tripartite agreement, that is not the way in which either Mr Iankov or Mr Shulev have currently pleaded their cases. So while there may be a core of fact finding where inconsistent results might be significant (eg as to the final resting point on dilution of the interests of the first founders in the light of subsequent joiners), that core at present appears fairly limited. It is certainly not close to the situation in *Armco* where allegations of fraud were made against a number of people and it was inconceivable, given the case advanced, that some could be participants and some not.
180. The net result is that even if I had been persuaded that there was a gateway (or gateway equivalent) I would not be minded to consolidate the two claims. At best the appropriate approach would be some form of linked case management to preserve a possibility of some discrete issues being tried together. But that would depend on the development of the cases. Certainly this is not a case where identity of issues drives a conclusion that consolidation makes sense.
181. In addition this is not a case where Mr Iankov would suffer the prejudice of being forced to fight on two fronts; it is the Nexo Parties who are involved in both sets of proceedings. On any analysis Mr Iankov faces only one action. If the Nexo Parties' jurisdiction challenge succeeds, Mr Iankov will face a single much smaller action elsewhere than he would if proceedings against him remained here and were consolidated or case managed together with the Shulev Proceedings.
182. Nor do I consider that limitation adds anything to the equation. As Mr Quest rather brutally (but accurately) put it:
- “If the position is that Mr. Iankov has started in the wrong forum and as a result of starting in the wrong forum he has allowed limitation to expire in the right forum ... that is his decision. That is not a reason for allowing him to stay in an inappropriate forum in order to keep the advantage of the timing of his issue of proceedings as regards limitation.”
183. I therefore conclude that had there been a gateway (or gateway equivalent) Mr Iankov would fail by some margin to establish that this is clearly and distinctly the appropriate forum for the claim which he brings.

THE SET-ASIDE APPLICATION

184. Mr Kantchev has applied to set aside paragraph 3 of the Order allowing Mr Iankov to serve Mr Kantchev by alternative means. To some this application was conceded to be moot, because he was subsequently served by other means.

185. Mr Kantchev was also separately served on the address he provided in the Cayman Islands as his registered address as director of NPEM. He was served in accordance with the rules of service in the Cayman Islands and has not disputed this service. Pursuant to the CA 2006, s.1140, a director of a company may be served at their address registered with Companies House.
186. This issue can therefore be dealt with very briefly indeed.
187. Had the issue been live I would have concluded that alternative service should be set aside. This was an application where the requisite “*good reason*” had to approximate to “*exceptional circumstances*”. The reasons relied upon did not approach that level:
- i. It was said that there was “significant urgency” in serving Mr Kantchev, which was a statement without any basis. Mr Iankov’s claim relates to events dating from 2017; he waited 6.5 years after those events to issue his claim, and four months to serve his Particulars. The urgency related to the proposed consolidation, but even in that context there had been delay;
 - ii. It was said that Mr Kantchev had somehow taken steps to make service more difficult, because he had changed his registered address at Companies House to Cayman and moved to the UAE. While the perception is understandable, this is not evidence of any deliberate intention to avoid service;
 - iii. It was also said that service through the Foreign Process Section may take 13 months. Delay alone is rarely a basis for alternative service in “exceptional” cases. That is well within the time period for service usually expected through diplomatic channels: see e.g., *Godo Kaisha v Huawei* [2021] EWHC 1261(Pat) at [20], describing delays of a year as “*fairly normal*”.

CONCLUSION

188. For the above reasons:
- i. The Strike Out application succeeds;
 - ii. The Jurisdiction Applications succeed;
 - iii. The Set Aside Application does not arise, but would succeed;
 - iv. The Consolidation Applications are dismissed.