In The Supreme Court of Bermuda

CIVIL JURISDICTION
(COMMERCIAL COURT)
2020 No: 262

BETWEEN:

GRIFFIN LINE GENERAL TRADING LLC

Plaintiff/Respondent

And

CENTAUR VENTURES LTD

First Defendant

TEMPLAR CAPITAL LTD

Second Defendant /
First Alleged Contemnor

DANIEL JAMES MCGOWAN

Second Alleged Contemnor

RULING

Dates of Hearing:	Friday 19 December 2025
Date of Judgment:	Monday 19 January 2026
Plaintiff/Respondent:	Mr. Lewis Preston and Mr. Dantae Williams (Marshall Diel & Myers Limited)
First Defendant: (In liquidation)	

Second Defendant/
First Alleged Contemnor
And
Second Alleged Contemnor Mr. Henry Tucker (Harneys Bermuda Limited)

Application for Leave to Amend Notice of Motion for Contempt of Court Proceedings – Objections on the ground that the proposed amendments are liable to be struck out as an abuse of process- Guiding Legal Principles on Amendment of Pleadings – Estoppel – Freezing Order

RULING of Shade Subair Williams J

Introduction

1. There are five applications presently before this Court.

2. The first application is the substantive hearing of the Plaintiff's summons for leave to amend its Notice of Motion (the "amendment application"/ the "amendment summons"). The amendment summons was filed on 11 November 2025 and dated by the A/Registrar on 18 November 2025. It alleges acts of contempt of Court against the Second Defendant/First Alleged Contemnor and the Second Alleged Contemnor (the "Alleged Contemnors"). Appended to the amendment summons is a draft Amended Notice of Motion. The proposed amendments are opposed by the Alleged Contemnors, and the amendment application was fully argued before me.

3. The second application is for directions on two strike out summonses filed by the Alleged Contemnors. The first strike out summons was filed on 2 July 2025 and is dated 4 July 2025 (the "first strike out summons"/ the "first strike out application"). The second strike out summons was filed on 25 September 2025 and is dated 3 December 2025 (the "second strike out summons" / the "second strike out application"). The Alleged Contemnors' strike out summonses seek to have the contempt proceedings, as pleaded by the (Amended) Notice of Motion, dismissed.

4. The third application is made on the Second Defendant's summons for leave to amend its Defence. A draft Amended Defence is before this Court. The proposed amendments on the Defence were not opposed by Counsel for the Plaintiff but require leave of this Court.

5. The fourth application was also made on behalf of the Second Defendant. It is a summons for trial directions in respect of the underlying main action filed. That application was contentious and fully argued between the parties.

6. The fifth and final application is made on behalf of the Second Defendant for a further variation of the freezing injunction originally granted by me on 16 September 2020 (the "Freezing Order" / the "Freezing Injunction") and subsequently varied by Hargun CJ (as he then was) on 2 August 2021[1] (the "varied Freezing Order" / the " varied Freezing Injunction") and again on 31 March 2022 (the "further varied Freezing Order" / the " further varied Freezing Injunction"). The variation application is before this Court by way of two summonses. The first summons is dated 4 July 2025 and the second summons is dated 18 July 2025. At this stage of the proceedings, only directions are sought on the Second Defendant's application to further vary the varied Freezing Order.

7. These applications were heard and argued before me on 19 December 2025. At the close of the hearing, I reserved my decisions and informed Counsel that I would aim to provide a written decision by mid-January 2026. This is my Ruling in respect of the five applications.

Factual and Procedural Background:

8. For relevant background, I have extracted from six previous Rulings of this jurisdiction of Court and the Court of Appeal. Those Rulings are as follows:

   (i) Case No. 185 of 2020 - *Griffin Line Trading LLC v Centaur Ventures Ltd* [2020] SC (Bda) 29 Com (the "**22 June 2020 *ex parte* Ruling**");

   (ii) Case No. 185 of 2020 - *Griffin Line Trading LLC v Centaur Ventures Ltd* [2020] SC (Bda) 31 Com (the "**24 July 2020 *inter partes* Ruling**");

   (iii) Case No. 262 of 2020 - *Griffin Line Trading LLC v Centaur Ventures Ltd and Templar Capital Ltd (Daniel James Mcgowan as Contemnor)* [2021] SC (Bda) 60 Civ (the "**2 August 2021 Ruling**");

   (iv) Case No. 262 of 2020 - *Griffin Line Trading LLC v Centaur Ventures Ltd and Templar Capital Ltd* [2022] SC (Bda) 15 Civ (the "**22 March 2022 Ruling**").

[1] Hargun CJ handed down a Ruling on 2 August 2021, the effect of which varied the Freezing Order. The Amended Freezing Order, however, was formally issued on 6 August 2021.

(v) *Templar Capital Limited v Griffin Line General Trading LLC and Centaur Ventures Ltd (in liquidation)* [2023] CA (Bda) 20 Civ (the "**2023 COA Ruling**")

9. I have also drawn from my previous knowledge of the case having granted the Freezing Order together with the usual ancillary disclosure order made on 16 September 2020. Additionally, I have drawn from the pleadings contained in the draft Amended Notice of Motion and the Amended Defence in summarising the competing cases between the parties.

The Parties

10. Further below, I interchangeably refer to the Plaintiff, Griffin Line General Trading LLC, as "Griffin Line" and the "Plaintiff". The First Defendant, Centaur Ventures Ltd, is referred to as "Centaur" and the Second Defendant and First Alleged Contemnor, Templar Capital Limited, is interchangeably referred to as "Templar" and the "Second Defendant". The Second Alleged Contemnor, Mr. Daniel James McGowan, is referred to as "Mr. McGowan".

11. Griffin Line is a general trading company incorporated in the United Arab Emirates. Mr. Kamal Singhala, who has filed evidence before this Court in support of the Plaintiff's applications, describes himself as a director of Griffin Line. In Templar's draft Amended Defence, it is said that 20% of Griffin Line's stock is owned by Mr. Singhala and the other 64% is owned between members of the Gupta family.

12. Centaur was a Bermuda exempted company which historically traded coal in South Africa. It is now in liquidation on the grounds that it is insolvent. It is said that another Bermuda incorporated company known as "CGL" was one of the two initial and equal shareholders in Centaur. Mr. McGowan is/was the sole director of CGL and was also appointed a director of Centaur from the point of incorporation. (The other 50% shareholder of Centaur was Mr. Akash Garg. He was also a director of Centaur until he sold his shares to a Mr. Deepak Raswant, who replaced Mr. Garg).

13. On Templar's draft Amended Defence it is said that on 13 August 2018 Mr. Garg's shares in Centaur were ostensibly acquired by Mr. Raswant. The case that Templar seeks to plead is that Mr. Garg resigned as a director and that Mr. Raswant replaced Mr. Garg as a director of Centaur and Centaur's South African subsidiaries. At para 2E of the proposed pleading, Templar states:

"[Templar] *infers and believes that Mr. Garg procured his replacement as shareholder in and director of [Centaur] and director of its South African subsidiaries by Mr. Raswant in order to mask his and/or the Gupta family's continued involvement in those companies, in light of the scandal that had emerged in South Africa about corruption and "state capture"*

on the part of the Gupta family and the impending commencement of a Judicial Commission Inquiry into that "state capture"."

14. Optimum Coal Mine (Pty) Limited ("OCM") is a South African coal mining company. As is explained further below, OCM was indebted to Centaur and that creditor's claim (the "OCM Claim") was Centaur's only significant asset. It is said on the case pleaded by Templar that between 2016 and 2018, Centaur entered into a number of coal purchase contracts with OCM and that Centaur pre-paid most of the purchase price for the coal. The OCM Claim is said to have arisen out of OCM's failure to have delivered under a number of its contracts with Centaur.

15. It is stated in Templar's draft Amended Defence that OCM entered into statutory business rescue proceedings on 19 February 2018 pursuant to Chapter 6 of South Africa's Companies Act, No. 71 of 2008 (as amended) (the "SA Act").

16. The OCM Claim is the centrepiece of this litigation because it is the only resource from which the Plaintiff, Griffin Line, has any real prospect of seeing repayment of the debt owed to it by Centaur.

17. The controversy in this case arises out of a transaction which sought to assign or sell the OCM Claim to Templar. Those background facts are outlined below. So far as the key players in this litigation are concerned, it is relevant to note that Mr. McGowan, in addition to having been a director of Centaur, is also the sole director of Templar, an affiliate company of Centaur. Another associate or affiliate company of Centaur is Centaur Group Finance Ltd ("Centaur Group"). In Hargun CJ's 22 March 2022 Ruling, it is pointed out that Mr. McGown is also the sole registered director of Centaur Group.

Griffin Line's Claim against Centaur for Non-Payment under the Facility Agreements

18. In Case No. 185 of 2020 Griffin Line claimed against Centaur for the recovery of a net sum of US$104,127,604.72 arising out of non-payment under two loan facility agreements dated 15 February 2016 and 7 November 2016 (the "Facility Agreements").

19. In the draft Amended Defence, Templar admits that Griffin Line loaned money to Centaur pursuant to the "First Facility Agreement" but denies that Griffin Line loaned money to Centaur pursuant to the "Second Facility Agreement" (as defined in Griffin Line's Statement of Claim). Templar's case on the Facility Agreements between Griffin Line and Centaur is set out at paras [23], [23A-23B] and 26, [26A-26F] of the draft Amended Defence.

The March 2020 Lurco Agreement

20. It is explained in the 2 August 2021 and 22 March 2022 Rulings of Hargun CJ that on 31 March 2020, Centaur signed an agreement to sell the OCM Claim (defined further below) to LURCO Group South Africa Proprietary Limited ("Lurco") for $73,359,323.46. That agreement (the "Lurco Agreement") is said to have lapsed on or around 8 May 2020.

21. In the draft Amended Defence, it is accepted that Centaur entered into the Lurco Agreement which provided for a combined purchase price for the OCM Claim of US$54,494,548 and ZAR30,532,599 (at the time, approximately US$1,697,934.57), plus either: (i) US$13,729,066.14; or (ii)US$17,161,332.68 and US$175,000 (depending on the outcome of ongoing arbitration proceedings), but was subject to a number of suspensive conditions. Templar asserts on its proposed amended case that the agreement stood to lapse in the event that those conditions were not fulfilled, such conditions including Lurco's bid for OCM's business and the business of a related company, Optimum Coal Terminal (Pty) Ltd ("OCT"), another entity in business rescue proceedings. It is stated in the draft Amended Defence that clause 4.1.2 of the Lurco Agreement required Lurco to pay a deposit to Centaur by 10 April 2020 and that in Lurco's failing to meet that deadline, multiple extensions of time were granted by Centaur, ultimately to 8 May 2020. Notwithstanding, Lurco did not pay the deposit. On Templar's proposed pleaded case Lurco was unable to source the needed funding for OCM's business leaving OCM's business rescue practitioners ("BRPs") to conclude that Lurco was not a viable bidder for OCM's business. Templar's case is that this is why the Lurco Agreement lapsed.

The 15 June 2020 Centaur-Templar Agreement / the Cession Agreement

22. It is said in Hargun CJ's 22 March 2022 Ruling that 12.45 days after the Lurco Agreement fell through, Centaur signed a cession agreement (the "Centaur-Templar Agreement" / the "Cession Agreement") between itself and Templar on 15 June 2020. It was Mr. McGowan alone who signed the Centaur-Templar Agreement. As a director of both companies, he acted as signatory for both Centaur on the one side and for Templar on the other side.

23. In the 2 August 2021 Ruling, Hargun CJ recorded the Court's concerns that Mr. McGowan had not been forthcoming on the identity of the purchaser of the OCM Claim and that Mr. McGowan acted as signatory for both sides of the Centaur-Templar Agreement. At paras [9] and [10] he said:

"*9. When requested to identify the purchaser of the OCM claim Mr. McGowan refused to do so. In his subsequent affidavit sworn on 9 July 2020 Mr. McGowan explained that CVL had voluntarily disclosed this information and explained that CVL "had no obligation to do this,*

nor to identify the party who acquired the claim. These commercial matters are private and confidential to CVL and are not matters of which [Griffin Line] or any of CVL's other creditors are entitled to."

10. It subsequently transpired that CVL (through Mr. McGowan) had sold the OCM Claim to TCL, a company owned by Mr. McGowan of which he was the sole director. A copy of the Cession Agreement between CVL and TCL dated 15 June 2020, produced in these proceedings, shows that the agreement on behalf of CVL, as the vendor of the OCM Claim, was signed by Mr. McGowan alone in his capacity as a director of CVL and on behalf of TCL, as the purchaser of the OCM Claim, the agreement was again signed by Mr. McGowan alone in his capacity as a sole director of TCL."

24. The effect of Centaur-Templar Agreement was such that Centaur sold and/or assigned its interest, rights, options, and/or claims in and over OCM to Templar (the "Centaur-Templar Transaction"). It is stated in Hargun CJ's 22 March Ruling, that this was done notwithstanding that Centaur knew at the time of the Centaur-Templar Agreement that it, Centaur, was unable to repay the outstanding sums owed to Griffin Line under the Facility Agreements and that the OCM Claim was its only significant asset. Hargun CJ noted that the OCM claim was sold to Templar for approximately USD$11,900,000.00 on a five-year low-interest loan, that being only 17% of the sale price offered under the Lurco Agreement. Templar, however, in its proposed Amended Defence, denies that the sale of the OCM claim can be properly described as a "low interest loan", stating that the interest rate agreed was at 4% per annum.

25. On the proposed Amended Defence, Templar's case is that after Lurco caused the Lurco Agreement to lapse, Centaur was left in a position where, if another bidder for OCM's business could not be found, it would receive nothing for the OCM Claim in the event of OCM being liquidated. The reasons for Templar's assertion that it was not open to Centaur to acquire OCM's business is explained at para [9N] of the draft Amended Defence. At paras [9O] and [13] it is said:

"*In the circumstances, and as the only realistic way to realise some value for itself in respect of the OCM Claim, on 15 June 2020,* [Centaur] *entered into a cession agreement with* [Templar] *by which it sold the OCM Claim to* [Templar] *for "Fair Value" (as defined) (the "Cession Agreement")*…

By Cession Agreement the "Fair Value" of the OCM Claim was the mean of the upper market value and the lower market value of the "Ceded Claims" (i.e. the OCM Claim) as the Effective Date determined, in US dollars, by the independent third-party valuation expert,

Mineral Valuation Group (Pty) Limited ("MVG"), commissioned by [Centaur] *to undertake such valuation, which was US$11,937,481*."

26. On the question of "fair value", Templar points to the arbitration award it obtained declaring that it had not acquired the OCM Claim for a sale price less than fair value. That arbitration award was subsequently made an order of the High Court of South Africa (see further below). Templar also points out at para 22A of the proposed Amended Defence that Griffin Line never exercised its rights under the Addendum to the Cession Agreement by contesting the price payable under the Cession Agreement. Templar's proposed case is that the Centaur -Templar Agreement did not impose the burden of the level of conditionality that had been contained in the Lurco Agreement and that "fair value" was payable to Templar "come what may", meaning Templar carried all the risks in relation to recovery (or non-recovery) of any value for the OCM Claim. Templar avers that such risks were material and materialised as set out in the examples provided under para [22B] of the proposed Amended Defence.

27. In summary, Templar says that Griffin Line's comparison of the consideration payable under the Lurco Agreement and the Cession Agreement is "simplistic, misplaced, and misleading." (See para [23Ec.] of the draft Amended Defence). Templar also denies in the draft Amended Defence at para [35.b.] that the Cession Agreement negatively impacted Centaur's financial position in any way. Templar's intended case at trial is that the Cession Agreement markedly improved Centaur's financial position and that the disposition was not made at an undervalue or with any intention to put the OCM claim beyond the reach of Griffin Line. At para [35A.c] of the draft Amended Defence Templar states:

"*…the allegations that entering into the Cession Agreement had no commercial rationale, or was not in the best interests of CVL (or its creditors), or that CVL knew that it was not, or that it was inconsistent with Mr McGowan's fiduciary duties, are denied. The Cession Agreement markedly improved CVL's financial position and no better terms were available*."

June/July 2020 Freezing Order Proceedings (Case No. 185 of 2020)

28. By way of an *ex parte* summons application filed on 16 June 2020 in Case No. 185 of 2020, Griffin Line applied to the Court for a worldwide freezing order to prevent Centaur and Mr. McGowan from dissipating Centaur's assets up to the value of $104,100,000.00. However, it was later noted by Hargun CJ in the 22 March 2022 Ruling at para [13] that the injunction application was premised on the Lurco Agreement as the Centaur-Templar Agreement was unknown to Griffin Line at the time. An *ex parte* freezing order was granted in Hargun CJ's 22 June 2020 *ex parte* Ruling on the basis that the payments expected to be made to Centaur in respect of the OCM Claim were at a real risk of being dissipated. An ancillary order for disclosure was also granted requiring Centaur to provide information in relation to the OCM

Claim. The subsequent *inter partes* application for the discharge of the injunction and ancillary orders was refused in the 24 July 2020 *inter partes* Ruling. At para [11] Hargun CJ said:

"*In the July Ruling the Court expressed its concern at the reluctance of Mr. McGowan and his legal advisers to disclose the identity of the valuer and the details of the consideration for which the OCM claim had been disposed of. The Court expressed the view that in light of the alleged disposal of the OCM claim to a company wholly owned by Mr. McGowan; the manner in which the disposal was disclosed; and the refusal to provide the necessary information so that the disposal can be examined on an objective basis. The Court formed the clear view that there was "real risk" of a dissipation of assets. In those circumstances the Court ordered that the injunction granted on 22 June and 2020 should not be discharged*."

The 11 August 2020 Writ commencing these Proceedings and the 20 August 2020 Winding Up Petition against Centaur

29. The present proceedings were commenced on 11 August 2020 when Griffin Line issued a Writ of Summons (the "Writ") against Centaur and Templar to set aside the Centaur-Templar Transaction. In the Writ, Griffin Line also seeks consequential directions to restore the original position as it was prior to the implementation of the Centaur-Templar transaction.

30. So, in summary, Griffin Line asserts that it is an eligible creditor and that the OCM transaction should be set aside pursuant to sections 36A-E of the Conveyancing Act 1983 on the basis that it was a disposition of property made with the requisite intention and made at an undervalue, thereby rendering it void. That case is denied and disputed by Templar.

31. The winding up petition brought by Centaur Group against Centaur was filed on 20 August, nine days after the Writ was filed. It is noted in Hargun CJ's 22 March 2022 Ruling that three days after the Court refused to discharge this injunction, Centaur Group, of which Mr. McGowan was the sole director, served a statutory demand on Centaur alleging various intercompany loans. It is stated in the proposed Amended Defence that Centaur Group had served four statutory demands on Centaur based on creditor claims of over US$14,700,000. Be that as it may, the winding up petition against Centaur was filed shortly after the Plaintiff's commencement of these proceedings.

August 2020 Mr. Raswant's Concerns about the Disposal of the OCM Claim

32. It is stated in Hargun CJ's 22 March 2022 Ruling that on 24 August 2020, Mining Weekly published an article quoting Mr. McGowan's proposals to convert the OCM Claim into R1.3

billion of equity in "NewCo"[2], said to be the equivalent of $90,454,024.50. Through his attorneys at Cox Hallet Wilkinson ("CHW"), Mr. Raswant, as an equal shareholder of Centaur, wrote to Appleby (Bermuda) Limited ("Appleby") and Wakefield Quin Limited ("WQ") who were the Bermuda attorneys for Centaur. In that correspondence complaint was made that Mr. McGowan proposed these steps to dispose of the OCM Claim without Mr. Raswant's agreement. More so, these public statements were said to have been made by Mr. McGowan after his WQ attorney had described Centaur in an 8 August 2020 email as "*hopelessly insolvent*", a position which Hargun CJ considered to be in direct conflict with Mr. McGowan's first affidavit filed in Case No. 185 of 2020.

Business Rescue Plan for OCM published on 11 September 2020

33. The business rescue plan (the "Business Rescue Plan" / the "Rescue Plan") was published on 11 September 2020. The Defence points to section 152 of the SA Act as authority for its contention that the Rescue Plan, if approved by the requisite proportion of creditors, is binding on the OCM, every one of its creditors and every holder of the company's securities.

34. The Notice of Motion quotes from paragraph 13.2 -13.2.1.2 of the Rescue Plan to show that a debt-to-equity swap is proposed on the Rescue Plan by which Templar would either cancel or extinguish the OCM Claim or transfer the OCM Claim to its subsidiary "Liberty Coal" for its conversion into Liberty Coal shares issued to "Liberty Energy", another subsidiary of Templar.

35. At para [7] it is stated in Hargun CJ's 2 August 2021 Ruling that Centaur was recognized in the South African proceedings as OCM's largest independent creditor, giving it "*a powerful voice with blocking vote within those proceedings*." On Templar's pleaded case, it is accepted that Centaur was recognised as the largest independent creditor of OCM on account of the OCM Claim. However, at para [35A.d] of the Amended Defence, Templar denies that Centaur could have used its position to carry through a debt for equity swap. The position that Templar intends to assert at trial is that any creditor with voting rights of 25% upwards would be positioned to prevent the requisite majority, but that it alone cannot vote a plan through.

36. In the previous judgments of the Court, the OCM Claim was said to be valued at $74,577,288.00. Templar denies the accuracy of that assertion. Notwithstanding, Templar's case is that Centaur sought to protect the value of the OCM Claim which would have been worth very little had OCM become liquidated. It is stated in the Defence that Centaur entered into discussions with third parties who were interested in purchasing OCM's business

[2] It appears that "NewCo" is referred to by the Plaintiff at para 28B.2 of Schedule 1 of the draft Amended Notice of Motion as "New OCM" (being Liberty Coal)".

and assets or the OCM Claim. Templar's case is that these explorative discussions included discussions between Centaur and Lurco.

37. In Mr. McGowan's 14 June 2021 affidavit evidence put before Hargun CJ, he stated that 87.79% of voting creditors favoured the Rescue Plan and that no one creditor out of OCM's mass of 340 creditors sought to have it set aside. The evidence before Hargun CJ from both Mr. McGowan and Mr. Brett Tate, head of litigation at Anderson South Africa, asserted that the Rescue Plan is binding on all of the stakeholders unless and until it is set aside by a South African Court, or until the proposals and related conditions are fully implemented or until the Rescue Plan fails based on the various conditions within the Rescue Plan. Mr. Harshaw, Templar's former Counsel, argued "*the Court should be very slow to make an order which will have the practical effect of interfering with the workings of a legal process (OCM Rescue Plan) in a foreign land that will deprive certain creditors of a company in that foreign land of vested rights under the relevant laws*." These points have since which been repeated by Counsel for the Alleged Contemnors, Mr. Henry Tucker, and are made out in the Amended Defence.

16 September 2020 Freezing Order

38. Having filed the Writ against Centaur and Templar on 11 August 2020 to set aside the OCM Transaction, on 16 September 2020, Griffin Line sought the freezing order I granted on the same date. The material portion of the supporting evidence from Mr. Singhala's first affirmation was quoted by Hargun CJ in his 2 August 2021 Ruling as follows:

"*I further believe that unless restrained by an injunction, TCL/Mr. McGowan, now acting as a director of TCL, will continue to take steps to dispose of or further transfer on the OCM Claim and/or CVL's other assets pending the determination of the Set Aside Proceedings. This runs the risk of creating a dire situation where the transfer of the OCM Claim to TCL either cannot be unwound by directions of this Court or where TCL has no assets to satisfy any order this Court might make. In this regard, I wish to draw the Court's attention to paragraph 51 of the July Judgment where Honourable Chief Justice found there to be "solid and cogent evidence that there is a real risk of dissipation of assets of CVL". This position is not improved upon at all in light of the CHW Letter. Quite to the contrary, it appears that Mr. McGowan has misled the Court as to CVL's solvency and that the Company is now "hopelessly insolvent". Furthermore, Mr. McGowan is now actively seeking to consolidate control over CVL's remaining assets, including by ensuring that Mr. McGowan becomes the sole director of CVL's South African subsidiaries. Mr. McGowan, as the sole director of TCL, is likely to consider this course of conduct unless restrained by this Court*."

39. Having set out an overview of all this background information, Hargun CJ highlighted its relevance at para [22] of the 22 March 2022 Ruling:

"*The background facts outlined above demonstrate to this Court that Griffin Line is fully justified in its concern that unless this Court takes all the measures which are available to it there is a serious risk that Mr McGowan and the corporate entities controlled by him will make it impossible for Griffin Line (or CVL) to have any recourse to the OCM Claim(or its replacement assets) in the event Griffin Line is successful in its claim to set-aside the transaction under the Conveyancing Act 1983.The present applications necessarily must be considered with these considerations firmly in mind*".

9 October 2020 Arbitration Proceedings between Templar and Centaur

40. At para [15] of the proposed Amended Defence, Templar states that on 9 October 2020 it initiated arbitration proceedings in South Africa against Centaur in accordance with a dispute resolution provision in the Cession Agreement. In those proceedings Templar sought a declaratory order from the arbitrator confirming that Templar acquired the OCM Claim from Centaur at fair value, or alternatively determining what the fair value should have been, in order for the purchase price to be adjusted.

41. At para [21] it is said that a retired South African Justice of Appeal[3] considered the expert evidence before him in the arbitration and declared that 'the cedent claims were not acquired by Templar and alienated by Centaur at less than fair value' in an award made on 16 November 2020. Templar avers at para [22] that that award was made an order of the High Court of South Africa, Gauteng Division in Johannesburg on or about 3 December 2020.

The Plaintiff's 24 June 2021 Variation Application and 2 August 2021 Ruling

42. By summons filed and/or dated 24 June 2021 the Plaintiff sought to vary the Freezing Order so as to, *inter-alia*, prevent Templar from "*taking any steps to advance and or implement the Rescue Plan until further order of this Honourable Court*". That application was heard before Hargun CJ on 5 July 2021.

43. On that 24 June 2021 summons application, Griffin Line sought the prohibition of:

(a) Acquiring OCM and its assets to a newly formed company ("New OCM") by debt-to-equity conversion;

[3] The Hon Justice Frederik Daniel Jacobus "Fritz" Brand, former judge of the Supreme Court of Appeal of South Africa

(b) Converting TCL's claim against OCM (the "OCM Claim") into fixed equity in exchange for new OCM Class V shares;

(c) Taking any steps to advance and/or implement the Rescue Plan until further order of this Court;

(d) Any formal legal agreement required to give effect to the acquisition of OCM by New OCM or any other entity, corporation or individual; and

(e) Adopting any structure or option directly or indirectly, which takes or has the ability to take, the right of TCL over OCM outside Bermuda or beyond the jurisdiction and control of the Bermuda courts.

44. Having taken into consideration Mr. Harshaw's caution to the Court against interfering with the South African Court's jurisdiction over the Rescue Plan, Hargun CJ concluded at paras [47] to [49]:

"*47. In the circumstances the Court will not presently rule on the substantive relief sought in the Summons. However, the Court is anxious to preserve the position that the OCM Claim and any assets acquired by its exchange (New OCM shares or any other asset) remain within the control of this Court pending the outcome of the Set Aside Proceeding. With the aim of achieving this object the Court orders, on a temporary basis, that TCL and any of its subsidiaries or any affiliated company are, with effect from 2 August 2021, restrained from taking any further steps to implement the Rescue Plan without prior approval of this Court in relation to such steps, pending the determination by this Court of any additional measures to preserve the assets of TCL and in particular the OCM Claim or any other asset acquired in exchange of the OCM claim. "Steps to implement the Rescue Plan" include any steps designed to convert TCL's claim against OCM into fixed equity in exchange for New OCM Class V shares.*

48. For the purposes of considering what further steps the Court should take to preserve the OCM Claim, TCL is ordered to file an affidavit, within the next 21 days, setting out (i) full information in relation to the debt to equity conversion contemplated in relation to the OCM Claim; (ii) value placed upon the OCM Claim for the purposes of the debt to equity conversion; (iii) the corporate or other structure contemplated to own TCL's rights to the shares in New OCM; (iv) breakdown of the composition of the shareholders of New OCM; and (v) the composition of the Board of Directors of New OCM.

49. The Court directs that the Summons be adjourned to a date to be fixed by the Registrar at which time the Court will consider the evidence filed by TCL and any additional evidence

filed by Griffin Line and will consider whether and if so what additional relief should be granted to Griffin Line in order to preserve the assets of TCL pending the determination of the Set Aside Proceedings."

The 6 August 2021 and 22 March 2022 Variation Orders

45. At the hearing before me, I was addressed on the previous variations made by Hargun CJ to my 16 September 2020 Order. However, these 2021 and 2022 Orders of Hargun CJ were not included in the Hearing Bundle produced by Counsel for the Court.

46. Notwithstanding, paragraphs 3 and 4 of Schedule 1 of the 29 May 2025 Notice of Motion provide:

"*On 2 August 2021 the TCL* [Templar] *Freezing Order was amended, on notice to the Alleged Contemnors, which amendments were embodied in the Court's Order dated 6 August 2021 (the "Amended TCL Freezing Injunction").*

On 31 March 2022, there was a further (albeit for these purposes of this application irrelevant) amendment to the terms of the Amended TCL Freezing Injunction, on notice to the Alleged Contemnors (the "Further Amended TCL Freezing Injunction")."

The First Application: The 18 November 2025 Summons to Amend Notice of Motion

47. Under this application, the Plaintiff seeks leave to amend the Notice of Motion in the form appended to the summons and for leave to serve the Amended Notice of Motion using the same mode of service which was previously permitted by the Court.

The Previous Notices of Motion for Contempt

The First Contempt Application

48. On 15 October 2020 Templar and Mr. McGowan were found to be in contempt of Court for failure to disclose information ordered by the Freezing Order.

49. The penalty imposed was made in the following terms:

(1) Templar was required to pay into court forthwith a fine of $100,000.
(2) Mr. McGowan was required to pay into court forthwith a fine of $50,000.
(3) Both Templar and Mr. McGowan were required to pay a penalty of $10,000 each per day they continue to be in breach of the terms of the injunction Order dated 16 September 2020

The Second Contempt Application

50. On 5 July 2021 the Notice of Motion dated 10 May 2021 alleging contempt against Templar and Mr. McGowan was heard before Hargun CJ. On that application Griffin Line argued that Templar and Mr. McGowan, as the sole director of Templar, had not purged their previous contempt and therefore could not make representations. Griffin Line also sought an order that Mr. McGowan be committed to prison for his contempt in failing to comply with my original directions.

51. Griffin Line relied on paragraph 9(3) of the Freezing Order which imposed a disclosure obligation on Templar to provide the following information "*(3) All updated, varied, modified and/or amended such proposals as specified in paragraph 9 (2) that may be sent or received by TCL in the business rescue proceedings in South Africa, which are material to the OCM claim, within 24 hours of such proposal being sent or received by TCL*".

52. However, the limitations of the scope and reach of the Freezing Order in relation to the Alleged Contemnors' participation in the Rescue Plan and in their disposal of the OCM Claim was explained in the 2 August 2021 Ruling at paras [37]-[39] as follows:

> "…
> *37*
> *First, the Freezing Order does not expressly prohibit in terms that TCL is restrained from participating in the OCM Rescue Plan or from voting in relation to it.*
>
> *38*
> *Second, paragraph 9 (2) assumes that a state of affairs may arise when TCL is the owner of the shares in New OCM: " Any shares or any other interest whether held directly or indirectly by [TCL] in respect of any debt to equity conversion of the OCM claim within the business rescue proceedings in South Africa and/or distribution related thereto <u>including but not limited to shares in New OCM</u>." TCL could only become a shareholder of New OCM, by converting its OCM claim into shares of New OCM, if the Rescue Plan was implemented.*
>
> *39*
> *Third, the Summons issued by Griffin Line dated 24 June 2021 is premised on the assumption that the injunction Order may not be clear so as to prohibit TCL from taking steps in the Rescue Plan. Paragraph one of the Summons states " To the extent that paragraph 6(1) and 6(2) (as read with paragraph 4) of the injunction granted by the Honourable Judge Subair Williams on 16 September 2020 (the "Freezing Injunction") does not prohibit Templar Capital Ltd ("TCL") from taking steps to advance and/or implement the Revised Business Rescue Plan (dated 11 September 2020) (the "Rescue Plan") approved in the South African Business Rescue Proceedings (on 28 September 2021) concerning Optimum Coal Mine (Pty) ("OCM")… the Freezing Injunction be varied to prohibit the aforesaid actions." The terms of the Summons dated*

24 June 2021 recognise that the Freezing Order is not clear, certain and unambiguous in prohibiting TCL from participating and/or taking steps in the Rescue Plan."

53. The impugned conduct on the part of Templar and Mr. McGowan related to Templar's vote of approval of the Rescue Plan and its receipt of status reports said to contain updated and material information about the Rescue Plan. However, no finding of contempt was made against Templar or Mr. McGowan as the Court was not satisfied that it was properly positioned to find that the terms of the Freezing Order were sufficiently clear, certain and unambiguous in prohibiting Templar from participating and/or taking steps in the Rescue Plan. See paras [33]-[40] of Hargun CJ's 2 August 2021 Ruling.

The 29 May 2025 Unamended Notice of Motion

54. The Notice of Motion which is the subject of the proposed amendments was filed in its original version on 29 May 2025.

55. On the Notice of Motion, the Plaintiff seeks a finding and declaration against Templar for breach and or contempt of the varied Freezing Order and the further varied Freezing Order (where it is not relevant or material to distinguish between the varied Freezing Order and the further varied Freezing Order: "the Freezing Order, as varied"). The Plaintiff also seeks a finding and declaration against Mr. McGowan for breach and or contempt of the Freezing Order, as varied, insofar as it is alleged that he, as a sole director and 100% shareholder of Templar who had notice of the varied Freezing Order, assisted Templar in committing its breach and or contempt.

56. Unlike the first contempt application culminating in the 15 October 2020 Order, the Notice of Motion does not include a provision for criminal penalty or sanction. In lieu of punishment, the remedy prayed is for a writ of sequestration "*in respect of the Alleged Contemnors' assets securing the OCM Claim… its proceeds, the value of the same, or $74,577,285 as the Court thinks fit*". In the alternative, the Plaintiff seeks mandatory injunctive relief compelling the Alleged Contemnors to effect the return and restoration of the OCM Claim or its proceeds "*or pay the value of the same or $74,577,285 into Court in its place as security for the outcome of the proceedings, failing which the First Alleged Contemnor's Defence shall be struck out and Judgment entered in favour of the Plaintiff*". The Notice of Motion also seeks costs on an indemnity basis.

57. Ten grounds are advanced on the Notice of Motion as the basis for asserting contemptuous conduct and breaches of the Freezing Order, as varied. (As noted further above, neither a copy of my Freezing Order nor a copy of the Freezing Orders, as varied by Hargun CJ were included in the Hearing Bundle for my ease of reference. In lieu of engaging in a file search

for these previous Orders, I have instead relied on the accuracy of Counsel's summary descriptions and quotes from the said Orders in aid of a timely delivery of this Ruling.)

58. The Plaintiff referred to paragraph 4 of the Freezing Order, which became paragraph 5 in the further varied Freezing Order. That paragraph was quoted at paragraphs 6.2-6.4 of Schedule 1 of the Notice of Motion as follows:

    5.*Until further Order of the court*, [Templar] *[the First Alleged Contemnor] must not-…*

    (2) In any way…dispose of [or] deal with…[its] assets whether they are in or outside of Bermuda up to the value of [$74, 577, 285].

59. The Plaintiff also referred to paragraph 5 of the Freezing Order, which became paragraph 6 in the further varied Freezing Order. That paragraph was quoted at paragraph 6.3 of Schedule 1 of the Notice of Motion as follows:

    6. For the purposes of this order [the First Alleged Contemnor's] assets include any asset which [it] has the power, directly or indirectly, to dispose of or deal with as if it were [its] own. [The First Alleged Contemnor] is to be regarded as having such power if a third party holds or controls the asset in accordance with [its] direct or indirect instructions.

60. The Plaintiff also referred to paragraph 6 of the Freezing Order, which became paragraph 7 in the further varied Freezing Order. That paragraph was quoted at paragraph 6.4 of Schedule 1 of the Notice of Motion as follows:

    7. The prohibition…in relation to [the First Alleged Contemnor's] assets extends to the following assets in particular:

    (1) [The First Alleged Contemnor]'s interest, rights, options and/or claims in and over Optimum Coal Min (Pty) Ltd ["OCM"] in business rescue proceedings in South Africa [the "OCM Claim"];

    (2) Any shares or any other interest whether held directly or indirectly by [the First Alleged Contemnor] in respect of any debt to equity conversion of the OCM Claim within the business rescue proceedings in South Africa and/or distribution related thereto including but not limited to shares in New OCM…"

61. Paragraph 7 of Schedule 1 also refers to paragraph 9 of the Varied Freezing Order which has been in place since August 2021, and was repeated in the Further Varied Freezing Order as the new paragraph 10. That part of the Order is quoted as follows:

"*[The First Alleged Contemnor] and any of its subsidiaries or any affiliated company are restrained from taking any further steps to implement the Revised Business Rescue Plan dated 11 September 2020 (the "Rescue Plan") approved in [OCM's] South African Business Rescue Proceedings on 28 September 2020, without prior approval of the Court in relation to such steps, pending the determination by the Court of any additional measures required to preserve the assets of [the First Alleged Contemnor] and in particular the OCM Claim or any other asset acquired in exchange of the OCM claim. Such "steps to implement the Rescue Plan" include any steps designed to convert [the First Alleged Contemnor]'s claim against OCM into fixed equity…*"

62. Mr. Preston submitted that the effect of this part of the Order is such that the Alleged Contemnors were prohibited not only from implementing the Rescue Plan but also from taking any further steps to implement it.

63. Contrasting the drafting of the Notice of Motion from its predecessor pleadings, Mr. Preston pointed to what he described as a full articulation of the particulars of breach in the Notice of Motion. At paragraph 10 the breaches are divvied into two separate categories. Paragraph 10.1 contains what is referred to as the "Dealing Prohibition". The Dealing Prohibition applies to any disposing of or dealing with the OCM Claim. Paragraph 10.2 contains what is referred to as the "Taking Steps Prohibition".

64. The ten alleged breaches are set out numerically at the sub-paragraphs of paragraph 11. The proposed amendments insert conjunctive and alternative letter numbering to the listed breaches. A second paragraph 11 (errantly) appears under the subtitle "Rescue Plan", the portion of the pleading which sets out the detail of the Rescue Plan. Further above I provided an outline of the Rescue Plan by reference to Clause 13.2 and its subparagraphs. At paragraph 14 of the Notice of Motion, Clause 2.1.33 of the Rescue Plan is said to state "*that "Effective implementation Date" means, provide the Adoption Date has occurred [which was 28 September 2020], the third Business Day after the date on which all the suspensive conditions [of the Rescue Plan] have been fulfilled*."

65. At paragraph 15 of the Schedule 1, the Plaintiff refers to a 25 April 2024 letter (the "T&D Letter") from Trott & Duncan Limited ("T&D"), the former attorneys of the Alleged Contemnors. The T&D Letter is said to have confirmed the implementation of the Rescue Letter "*following the settlement of proceedings in South Africa*" on or around 30 January 2024. The Plaintiff complains that the Rescue Plan was implemented despite the promise to the Court made by the Alleged Contemnors to return to Court before implementing the Rescue Plan. Mr. Preston contends that the Business Plan was also implemented in spite of the twenty subsequent occasions in which the Alleged Contemnors represented to the Court

that they could not implement the Business Plan for as long as the Freezing Order, as varied, remained in place. This, as pointed out by Segal AJ during the stay application, requires an explanation from the Alleged Contemnors.

66. Paragraph 15 and all of the preceding paragraphs are unaffected the by the proposed amendments, save for the necessary numbering adjustments. Paragraphs 16 through to 28 set out the detail of the allegations made out in the first four charges of breach. Equally, those paragraphs of Schedule 1 are materially unchanged by the proposed amendments.

67. Paragraphs 16 and 17 set out the first alleged breach. By way of reference, it quotes from the T&D Letter as follows: "*following the Plan being put forward, voted upon and approved by a majority of a* [sic] *creditors in OCM on 28 September 2020…, there were no further steps that [the First Alleged Contemnor] was required to take to effect implementation of the Plan*".

68. However, the Plaintiff's position is that the Alleged Contemnors' *28 September 2020* vote offended the Freezing Order's prohibition from dealing with the OCM Claim. For the purpose of the second alleged breach, the Plaintiff disputes that the 28 September 2020 creditors' vote was the last step required to implement the Business Rescue Plan. This is because not only had the suspensive conditions for implementation not yet been fulfilled but also because Mr. McGowan confirmed in an October 2020 affidavit that Templar continued to own the OCM Claim. It thus follows, says the Plaintiff, that the Alleged Contemnors must have disposed of the OCM Claim after the 28 September 2020 creditors' meeting and that they must have fulfilled a number of the Rescue Plan's suspensive conditions. That is what is alleged by the Plaintiff as Breach Two.

69. Each of the alleged breaches set out a suspensive condition expressly contained in the Rescue Plan. Further, these alleged breaches all refer to a status update report provided by the OCM business rescue practitioners (the "BRPs") on 19 August 2021, post-dating the varied Freezing Order of 2 August 2021. That update report sets out which of the suspensive conditions of the Rescue Plan had already been implemented and which of the suspensive conditions had yet to be satisfied or fulfilled as at the date of the report.

70. So, in each case the allegation specifies that the suspensive condition was either (i) fulfilled on or after 2 August 2021 when the taking steps prohibition ordered by the varied Freezing Injunction or (ii) that the fulfilling of the suspensive condition constituted dealing with or disposing of the OCM claim once the Business Rescue Plan was implemented, such acts allegedly constituting a breach of the Dealing Prohibition ordered by the Freezing Order made on 16 September 2019.

71. Paragraphs 22 to 25 plead the Plaintiff's Breach Three which alleges a breach of the dealing prohibition in relation to Templar's fulfilment of the suspensive condition requiring Templar to enter formal legal agreements which has been termed by the Plaintiff as the "*OCM Transaction Agreement(s)*". The Plaintiff's case is that the Alleged Contemnors did in fact enter these agreements, thereby breaching the Freezing Order, as varied. Those paragraphs are unaffected by the proposed amendments.

72. The alleged Breach Four, refers to the allegation that Templar provided notice to the BRPs that it was satisfied with the results of the studies undertaken by it, as set out in paragraph 13.1 of the Rescue Plan and as required by clause 15.1 of the same. The Plaintiff's pleaded case here is that the fulfilling of this suspensive condition amounted to a breach of the Dealing Prohibition.

73. Paragraphs 29 to 34 allege Breaches Five and Six. This relates to the suspensive condition requiring Templar to provide a proof of finance, which the Plaintiff submits is another breach of the Dealing Prohibition. Breach Six pleads this as a breach of the Taking Steps Prohibition because the provision of this information was carried out after the making of the Varied Freezing Order.

74. Breaches Seven and Eight are alleged at paragraphs 35 to 40 of Schedule 1 of the Notice of Motion. They set out the suspensive condition of Templar appointing an administrator in the implementation of the Rescue Plan, as required by Clause 15.3.2 of the Rescue Plan which is said to provide for "*the appointment of the Administrator by TCL, in consultation with the BRPs, on terms mutually acceptable to the parties*." At paragraph 36 of Schedule 1 it is said that the August 2021 Status Report records that this had not been completed as at 19 August 2021 and at paragraphs 37 and 38 it is said that the 19 June 2024 OCM Business Rescue Status Report records that an Administrator had been appointed. So, the inference invited by the Plaintiff is that Templar appointed an administrator at some point between 20 August 2021 and 19 June 2024. Breach Seven alleges that the fulfilment of this suspensive condition is a breach of the Dealing Prohibition and Breach Eight is a further or alternative allegation that the appointment of an administrator amounted to a breach of the Taking Steps Prohibition.

75. Breaches 9 and 10 are alleged by the Plaintiff at paragraphs 41 through to 45 of Schedule 1 apply to a suspensive condition prescribed by clause 15.5.3 of the Rescue Plan requiring the replacement of the Trustees of the Optimum Mine Rehabilitation Trust with nominees acceptable to Templar "*with the approval to the extent required of the DMRE*". The Plaintiff's pre-amendment pleaded case alleges that the breach was committed by Templar when it satisfied this suspensive condition which was required to implement the Rescue Plan and thereby to effect the extinguishment or transfer of the OCM Claim. The Plaintiff's

pleaded case under the Notice of Motion states that in combination with the other suspensive conditions, the naming of new nominees ultimately resulted in the transfer of the OCM Claim. The pleaded Breach Nine alleges that this constituted a breach of the Dealing Prohibition. Breach Ten alleges that the satisfaction of this suspensive condition is evidence of a step taken in the implementation of the Rescue Plan after 2 August 2021 in breach of the Taking Steps Prohibition contrary to the Amended Freezing Order.

The Draft Amended Notice of Motion

76. Paragraphs 28A and 28B (together with its subparagraphs) of Schedule 1 set out an alternative basis for the alleged breaches. Those paragraphs expressly allege liability against the Alleged Contemnors for any contemptuous acts committed by any subsidiary acting under the direction or control of Templar and or Mr. McGowan.

77. The Plaintiff's position is that it was driven to pursue these amendments on account of Mr. Tucker's passing reference at the 29 October 2025 hearing before Segal J to the "Definitions and Interpretation" section of the Rescue Plan in respect of the meaning of "TCL" [Templar]. That definition is quoted from the Rescue Plan as follows:

"*"TCL" means Templar Capital Ltd, a Bermuda exempt company…and any reference in this Business Rescue Plan to TCL shall, as the context requires, be reference to its wholly owned nominated South African subsidiary*."

78. Mr. Preston submitted that what Mr. Tucker was doing, without any full commitment to the position, was implying that Templar's wholly owned subsidiary may have carried out some or all of the suspensive conditions or other acts giving rise to the allegations of breach in the Notice of Motion. Mr. Preston submitted that this statement from Mr. Tucker was the first occasion on which it was hinted by Templar that the alleged breaches were committed by another entity, that being its wholly owned subsidiary.

79. At paragraph 28B it is said:

"It was suggested in the Hearing that this definition may provide a basis for a defence to this Notice of Motion and/or contempt of Court (although the Alleged Contemnors[']*counsel did not provide any information about whether the relevant subsidiary did actually do any of the actions alleged (the "Putative Subsidiary Point")). The Putative Subsidiary Point is an unsustainable basis for avoiding a finding of contempt for the reasons set out here and below in amended text, to ensure that potential issues are joined.*"

80. At paragraph 28B.1 the Plaintiff states that Breach Two is unaffected by the Putative Subsidiary Point because in Case No. 185 of 2020 Mr. McGowan swore an affidavit deposing that Templar owned the OCM Claim on 19 October 2020[4]. So, the Plaintiff's pleaded case is that Templar must have disposed of or dealt with the OCM Claim as set out in Breach Two.

81. Paragraph 28B.2 sets out the alternative basis to the Plaintiff's Breach Three allegation which relates Templar's alleged entry into the OCM Transaction Agreement(s), which was said to give effect to Clause 13.2.1 of the Rescue Plan, "*which in turn required "with effect from the Effective Implementation Date… the simultaneous assumption by New OCM (being Liberty Coal) of TCL's entire Claim against OCM" along with the acquisition of the business of OCM by Liberty Coal…*" The Plaintiff says that Templar was either directly party to the OCM Transaction Agreement(s) or Templar dealt with or disposed of the OCM Claim to its wholly owned South African subsidiary (whether Liberty Energy or Liberty Coal) after 16 September 2020, contrary to what Mr. McGowan deposed in his 19 October 2020 affidavit confirming Templar's then ownership of the OCM Claim.

82. The biting effect of the proposed amendments in relation to the Breach Three allegation is this: The Plaintiff says that if Templar had in fact been alienated of the OCM Claim and the OCM Claim was under the ownership of Liberty Coal or Liberty Energy, then Templar is said to have nevertheless acted in breach of the Freezing Order, as varied, by wilfully failing to prevent its subsidiary from satisfying the suspensive condition and thereby wilfully failed to prevent the extinguishment or transfer of the OCM Claim. On the proposed amended case, this wilful failure amounted to a breach of the Dealing Prohibition and is to be termed Breach 3A.

83. The same approach is applied to the Plaintiff's proposed Breach 4A which refers to paragraph 13.1 and clause 15.1 of the Rescue Plan and alleges that Templar breached the Dealing Prohibition by the fulfilling of the suspensive condition requiring Templar to provide notice to the BRPs that it was satisfied with the results of the studies undertaken by it. The Plaintiff's case in answer to the Putative Subsidiary Point in relation to Breach 4A is pleaded as follows:

"*As an alternative to above Breach Four, if a wholly owned South African subsidiary (whether Liberty Energy or Liberty Coal) did provide a notification as described, TCL and/or Mr. McGowan, being in control of such wholly owned South African subsidiary through TCL's direct or indirect shareholding, wilfully failed to control so as to prevent their*

[4] At paragraph 28B.1 there is an errant reference to the date "19 October 2025". The Plaintiff seeks leave to correct the date so that it properly reads "19 October 2020" when an Amended Notice of Motion is filed as a final document.

wholly owned subsidiary from satisfying the suspensive condition referred to in Breach Four, and thereby willfully failed to prevent the extinguishment or transfer of the OCM Claim (upon, and in combination with, the fulfillment of the other suspensive conditions and implementation), and also thereby disposed of or dealt with the OCM Claim in breach of the Dealing Prohibition (Breach 4A)."

84. It is not necessary for me to spell out the proposed amendments for each of the remaining alleged breaches as the drafting approach in respect of the Putative Subsidiary Point is the same, resulting in what is proposed to be Breaches 5A-10A.

The Objections to the Proposed Amendments

85. Essentially, the Alleged Contemnors object to the proposed amendments on the basis of its contention that the proposed amendments (and the Notice of Motion in its entirety) is liable to be struck out on the following grounds:

    (i) That is an abuse of process;
    (ii) That the allegations are a moving target; and
    (iii) That an issue estoppel arises

86. Mr. Tucker argued that the proposed amendments do not serve to clarify the issues in dispute. He went so far as to say the amendments pursue "inconsistent factual and legal positions". At paragraph 31(a)-(c) of the Alleged Contemnors' written submissions it is argued [footnotes omitted]:

    (a) On the one hand: Annex 1 of Singhala 10 alleges that it can be inferred from Clause 13.2.1 of the Plan and statements made in OCM status reports that "Liberty Coal is now the owner of the business, assets, and compromised liabilities of OCM since 1 February 2024", and that "Liberty Coal issued shares to TCL or its nominee Liberty Energy, and that TCL and/or Mr McGowan, and/or TCL's subsidiaries/affiliated companies, Liberty Coal and/or Liberty Energy, both/either acting through Mr McGowan, took steps to effect this in the implementation of the Plan.[Emphasis added]"

    (b) On the other: paragraphs 28B.2-4 of the Draft Notice of Motion. allege that, in order to comply with the requirements at Clause 13.2.1 of the Plan, either (i) TCL dealt with or disposed of the OCM Claim, or alternatively (ii) if one of TCL's wholly owned South African subsidiaries entered into a "formal legal agreement" to give effect to Clause 13.2.1, TCL and/or Mr McGowan "failed to control so as to prevent their wholly owned subsidiary from satisfying the suspensive condition referred to in

Breach Three, and thereby wilfully failed to prevent the extinguishment or transfer of the OCM Claim"[Emphasis added].

(c) Further, GL is now attempting to re-plead its contempt allegations again to include what it terms "alternative grounds" in respect of actions by subsidiaries which TCL and/or DM "failed to control" or "failed to prevent".”

87. Mr. Tucker also criticized the proposed amendments constituting Breaches 4A, 5A and 6A for failing to identify which entity is alleged to have committed the alleged acts. On Mr. Tucker’s objections, the proposed amendments are no more than a fishing expedition and a feeble attempt made by the Plaintiff to improve on the previously withdrawn contempt application, which he referred to as “Contempt Application 3” (the “third contempt application”).

88. Additionally, Mr. Tucker argued that the issues raised by the proposed amendments are all matters which ought to have been raised previously, citing *Ketteman v Hansel Properties Ltd* [1987] A.C. 189 at 220. Specifically, in relation to the abuse of process complaint, Mr. Tucker robustly argued that the amendments dealing with the Putative Subsidiary Point were available to the Plaintiff to make long before the filing of the amendment summons. Mr. Tucker referred to the third contempt application and the Tenth Affirmation of Mr. Singhala to establish that the Plaintiff itself had previously implied that the acts of Templar’s subsidiaries and affiliates could be attributed to the alleged breaches of Templar or Mr. McGowan.

89. Mr. Tucker also pointed out that Templar served a skeleton argument on the Plaintiff in respect of the third contempt application. That skeleton argument was said to have been served on MDM on 10 January 2025. Addressing Griffin Line’s then pleaded case on the third contempt application, Mr. Tucker quotes from Templar’s January 2025 skeleton argument as follows [footnotes omitted]:

“*TCL's "subsidiaries/affiliated companies" [including Liberty Energy, Liberty Coal and Liberty Terminal] took steps to implement the Plan*" and that Mr McGowan was a director of certain of these subsidiaries/affiliated companies. It is trite law that a company has an existence independent of its shareholders: *Salomon v Salomon; Ebbw Vale Urban DC v South Wales Traffic Area Licensing Authority.*”

90. The objection grounded on the Alleged Contemnors’ complaint that the allegations are a moving target may be treated as a limb of the abuse of process complaint. Mr. Tucker complained that the contempt application is the fourth such application brought by the Plaintiff and that the proposed amendments represent Griffin Line’s third iteration of the

application for the grounds of contempt alleged. At paragraph 27 of the written submissions made on behalf of the Alleged Contemnors, Mr. Tucker argued:

"…
It is an abuse of the Court's process for GL to make its case against TCL and Mr McGowan a continuously moving target. Indeed, it is a fundamental procedural safeguard that an alleged contemnor is entitled to know "what precisely he is said to have done wrong" (citing Re L (A Child) [2016] EWCA Civ 173, [73])."

91. In reference to the third contempt application, Mr. Tucker stated at the subparagraphs of paragraph 28 in his written submissions [footnotes omitted]:

"…

(a) the first iteration in July 2024 was in the form of Contempt Application 3, which was woefully unparticularised (among other serious defects), including by references to unspecified "steps" said to have been taken by TCL or Mr McGowan in exchange for "various financial advantages" said to have been gained by TCL, Mr McGowan and TCL's "direct and indirect subsidiaries".

(b) In support of Contempt Application 3, GL filed Singhala 10 on 22 July 2022 (i.e. a month after it issued Contempt Application 3), including an Annex, which set out additional grounds of contempt that were not included in Contempt Application 3 (which in itself was not procedurally permissible). It is notable that GL continues to rely on Singhala 10 in support of Contempt Application 4.

(c) (GL impermissibly sought to rely on evidence to cure the defects in Contempt Application 3, which GL itself acknowledged was "procedurally [un]orthodox". Ultimately, the allegations set out in the evidence were similarly unparticularised, inchoate, and impossible to understand.

(d) GL then improperly sought to further expand the scope of the contempt charges and to bolster its application through an application for disclosure dated 29 August 2024 (the Evidence Application).

(e) Contempt Application 3 and the Evidence Application were duly withdrawn by GL on 17 January 2025 (a week before the hearing of TCL's and Mr McGowan's application to strike it out), with GL agreeing to pay TCL and Mr McGowan's costs. Ultimately, GL implicitly acknowledged that its position was hopeless and the applications were doomed to fail.

(f) Yet, almost six months later, the grounds of Contempt Application 3 have been restated in a yet further iteration - GL now seeks to amend Contempt Application 4 by way of its draft amended notice of motion dated 11 November 2025 (the Draft Notice of Motion) appended to the Summons to Amend Contempt Application 4."

92. As for the estoppel point, Mr. Tucker submitted that Griffin Line should be estopped from pleading a case that it has already attempted to bring but has opted no longer to pursue. Mr. Tucker submitted that the estoppel arises on account of Griffin Line reintroducing grounds which were pleaded in the third contempt application notwithstanding the express statements made in the affidavit evidence of Mr. Singhala that Griffin Line would no longer pursue the application.

Analysis of the Law and Decision on the Proposed Amendments

The Law on Amendment of Pleadings

93. RSC Order 20/5(1), as read with Order 20/7, is the relevant governing procedural rule for seeking the Court's leave to amend a Notice of Motion. These rules provide:

"*20/5 Amendment of writ or pleading with leave*
5 (1) Subject to Order 15, rules 6, 7 and 8 and the following provisions of this rule, the Court may at any stage of the proceedings allow the plaintiff to amend his writ, or any party to amend his pleading, on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.

20/7 Amendment of other originating process
7 Rule 5 shall have effect in relation to an originating summons, a petition and an originating notice of motion as it has effect in relation to a writ."

94. RSC Order 20/8 applies to applications to amend other documents, that is documents other than a writ and other than any originating process specified under Rule 7.

95. The 1999 White Book commentary on the Court's power to amend appears at para 20/0/2:

"*The overriding principle with regard to amendments is that contained in r.8, namely that, generally speaking, all amendments will be allowed at any stage of the proceedings and of any document in the proceedings (other than a judgment or order) on such terms as to costs or otherwise as the Court thinks just. This principle is subject to the countervailing rule of practice that an amendment will be refused or disallowed when, if it were made, it would*

result in prejudice or injury which cannot properly be compensated for by costs. Accordingly, as a general rule, either party is allowed to make any amendment in his own pleadings or other proceedings which is reasonably necessary for the due presentation of his case on payment of the costs of and occasioned by the amendment, provided there has been no undue delay on his part, and provided also the amendment will not injure or prejudicially affect any vested rights of his opponent. But if the application is made mala fide, or if the proposed amendment is sought to be made after undue delay, or will in any other way unfairly prejudice or cause detriment to the other party, or is irrelevant or useless or would raise merely a technical point, leave to amend will be refused…"

96. At para 20/8/6 commentary is provided on the general principles for grant of leave to amend under Rules 5, 7 and 8. The follow passages warrant quoting:

"*It is a guiding principle of cardinal importance on the question of amendment that, generally speaking, all such amendments ought to be made "for the purpose of determining the real question in controversy between the parties to any proceedings or of correcting any defect or error in any proceedings" (see, per Jenkins L.J. in G. L. Baker Ltd v Medway Building & Supplies Ltd [1958] 1 W.L.R. 1216 at 1231; [1958] 3 ALL E.R. 540 at 546).*

"It is a well established principle that the object of the Court is to decide the rights of the parties, and not to punish them for mistakes they make in the conduct of their cases by deciding otherwise than in accordance with their rights…I know of no kind of error or mistake which, if not fraudulent or intended to overreach, the Court ought not to correct, if it can be done without injustice to the other party. Courts do not exist for the sake of discipline, but for the sake of deciding matters in controversy…It seems to me that as soon as it appears that the way in which a party has framed his case will not lead to a decision of the real matter in controversy, it is as much a matter of right on his part to have it corrected if it can be done without injustice, as anything else in the case is a matter of right" (per Bowen L.J. in Cropper v Smith (1883) 26 Ch. D. 700 at 710-711, with which observations A.L., expressed "emphatic agreement" in Shoe Machinery Co. v. Cultam [1896] 1 Ch. 108 at 112).

In Tildesley v. Harper (1878) 10 Ch. D. 393 at 396 and 397, Bramwell L. J. said: "My practice has always been to give leave to amend unless I have been satisfied that the party applying was acting mala fide, or that, by his blunder, he had done some injury to his opponent which could not be compensated for by costs or otherwise." However negligent or careless may have been the first omission, and however late the proposed amendment, the amendment should be allowed if it can be made without injustice to the other side. There is no injustice if the other side can be compensated by costs"… An amendment ought to be allowed if thereby "the real substantial question can be raised between the parties" and multiplicity of legal proceedings avoided…

On the other hand, it should be remembered that there is a clear difference between allowing amendments to clarify issues in dispute and those that provide a distinct defence or claim to be raised for the first time (see, per Lord Griffiths in Ketteman v Hansel Properties Ltd [1987] 1 A.C. 189 at 220)"

97. Mr. Tucker referred this Court to the following statement lifted from the judgment of Kawaley CJ (now President of the Court of Appeal) in *Fifth Street Finance Corporation v Dobbin* BM 2013 SC 52. At para [31] Kawaley CJ said:

"*It is well-settled that any amendment which is not liable to be struck-out on the grounds that, inter alia, it discloses no reasonable cause of action or is an abuse of process because it is bound to fail ought ordinarily to be allowed. It remains to consider whether the proposed amendment discloses a legally arguable alternative defence (i.e. a claim for breach of the plaintiff's alleged general duty to act reasonably in relation to its security). Alternatively, the legal viability of the amendment turns on an analysis of whether the plaintiff validly contracted out of the relevant duty so that the proposed defence is bound to fail*."

98. In short, the ultimate function of the Court is to try the disputed issues that require determination, such issues being those which give rise to a valid claim as opposed to a frivolous or vexatious one. The general position is that no litigant should be fastened to only a portion of their true case merely on account of procedural or drafting errors or even a belated appreciation of the fuller factual and legal issues relevant to the claim. Otherwise put, the Court does not seek to have a litigant's pleadings shaved down to anything less than the full and proper statement of their case. So, where the proposed amendment is reasonably necessary for the due presentation of the case, the starting point will be that it is to be allowed. That being the case, there is an important caveat: a proposed amendment will be refused if it is liable to be struck out pursuant to the Court's statutory powers or its inherent jurisdiction. Specifically, leave to amend will not be granted where:

(i) the proposed amendment(s) would result in prejudice or injury which cannot properly be compensated for by an appropriate costs order;
(ii) the application is made *mala fide*,
(iii) the application to amend is made after contumelious delay caused by the applicant or after undue delay coupled with other factors giving rise to an abuse of process; or
(iv) the proposed amendment(s) is/are irrelevant, useless or merely technical

Analysis and Decision on Abuse of Process Objections

99. The basis for the objections to the grant of leave to amend the Notice of Motion is that the whole of the pleading is liable to be struck out, primarily on the grounds of abuse of process.

Whether the proposed amendments clarify issues in dispute or raise a new claim

100. Mr. Tucker's submission to this Court was that the proposed amendments do not serve to clarify the issues in dispute. However, Mr. Preston pointed out that the second strike out application is unparticularised and drew this Court's attention to paragraph 1.c. where it complained that the Plaintiff's invitation for inferences to be drawn constitutes an abuse of process. The Plaintiff criticizes the Alleged Contemnors for lack of particularity in asserting an abuse of process.

101. Mr. Preston submitted that the proposed amendments were purposed to give notice of the Plaintiff's position that the Alleged Contemnors are liable for the alleged breaches, whether they were carried out directly by them or by a wholly owned subsidiary operating under their control. The case advanced on the amendments is that the contempt is still committed in circumstances where the Alleged Contemnors wilfully failed to prevent their subsidiary or subsidiaries from committing the breaches.

102. Mr. Preston referred to paragraph 6 of the Further Varied Freezing Order, the provision which broadly defines Templar's assets to include any asset over which it has direct or indirect power to dispose of or deal with as if that asset was its own. In such circumstances paragraph 6 of the Further Varied Freezing Order states that Templar is to be regarded as having such power *"if a third party holds or controls the asset in accordance with [its] direct or indirect instructions".* Paragraph 6 of the Further Varied Freezing Order was in place when the Freezing Order was initially made on 16 September 2019.

103. Mr. Preston also relied on paragraph 7 of the Further Varied Freezing Order, which was paragraph 6 of the Freezing Order. That provision extended and effectively particularised Templar's assets to include its "*interest, rights, options and/or claims in and over*" the OCM Claim. It also specified that the prohibition applies to Templar's direct or indirect share holdings or any other interest held "*in respect of any debt to equity conversion of the OCM Claim within the business rescue proceedings in South Africa and/or distribution related thereto including but not limited to shares in New OCM…*"

104. So, Mr. Preston's ultimate argument is that the Freezing Order and the Freezing Order, as varied, required Templar and Mr. McGowan to control its wholly owned subsidiaries and to prevent them from committing acts constituting breaches of the Orders of the Court.

105. In my judgment, the proposed amendments effectively seek to clarify the Plaintiff's case that the acts alleged to be in breach of the Freezing Order, as varied, are contemptuous, whether they were carried out by the Alleged Contemnors or one of Templar's wholly owned subsidiaries acting under the control of Templar. That is the Plaintiff's case, and the Plaintiff is entitled to invite the Court to (i) find that the steps carried out to implement the Rescue Plan and the implementation of the Rescue Plan amounted to a breach of the Taking Steps Prohibition and a breach of the Disposition Prohibition and (ii) draw reasonable inferences of fact that the fulfilling of the suspensive conditions and the implementation of the Rescue Plan, could have only been carried out by steps taken by either the Alleged Contemnors or Templar's subsidiaries acting under its direction and or control.

106. For the avoidance of doubt, I make no findings on the quality of evidence filed in support of those allegations. It is a finding that the Plaintiff's amended case, as pleaded, does not constitute an abuse of process on the grounds that it does not clarify the issues in dispute. In my judgment, the proposed amendments do clarify the issues in dispute; they do not give rise to a new claim or allegation against the Alleged Contemnors.

Whether an Abuse of Process arises out of the delay in proposing the amendments

107. Mr. Tucker argued that the Plaintiff's timing in making the application to amend is abusive and that it ought to have properly pleaded its case at an earlier instance or brought the application before the Court at a sooner stage. In response, Mr. Preston argued that the amendments first proved necessary when Mr. Tucker stated before Segal J at the hearing of the stay application that the Business Rescue Plan defined Templar as including its wholly owned subsidiary. Mr. Preston submitted that what Mr. Tucker was doing, without any full commitment to the position, was implying that Templar's wholly owned subsidiary may have carried out some or all of the suspensive conditions or other acts giving rise to the allegations of breach in the Notice of Motion. Mr. Preston submitted that this statement from Mr. Tucker was the first occasion on which it was hinted by Templar that (i) the alleged breaches may have been committed by another entity, albeit a wholly owned subsidiary and (ii) if those acts were committed by a wholly owned subsidiary, Templar could not be held liable for any such contemptuous acts. That is was has been referred to as the Subsidiary Putative Point.

108. In Mr. Kamal Singhala's Fourteenth Affirmation he states that the Plaintiff learned of the circumstances giving rise to the alleged acts of contempt in March 2024. He said that MDM accordingly wrote to T&D on 14 April 2024 requesting an explanation as to how the Plan came to be implemented during the operation of the Freezing Injunction, as varied. Mr. Singhala's evidence is that by letter dated 25 April 2024, T&D responded in terms which appeared to confirm the alleged acts of contempt.

109. By way of Notice of Motion filed on 22 July 2024, the Plaintiff filed the third contempt application. The Notice of Motion was supported by Mr. Singhala's Tenth Affirmation. At paragraph 17 of Mr. Singhala's Fourteenth Affirmation, he explained:

"*…The various contempts were set out in the form of a schedule in the annex to Singhala 10 which, while attempting to be comprehensive by cross-referencing to available published material, the Plaintiff accepts was not procedurally orthodox in its presentation. The Plaintiff also accepts that in respect of certain breaches, in particular the explanations of the acts of subsidiaries and how they could be attributed to the Alleged Contemnors, the approach of an annex was not suitable and did not sufficiently particularise those breaches Nevertheless, as above, the basic facts of the essence of the contempt, as referred to above, was, in the Plaintiff's view, set out therein*."

110. Mr. Singhala's Fourteenth Affirmation sets out a chronology of procedural events which followed the 22 July filing of the third contempt application. Time does not permit me to restate the detail of that chronology, save to say that Mr. Singhala states that on 10 January 2025 the Alleged Contemnors served their strike out skeleton. Mr. Singhala states at para 43 of his Fourteenth Affirmation that two significant points were made against the Plaintiff's Notice of Motion for the third contempt application. Those points were said to be (i) that the breaches were required to be contained in the main body of the notice; and (ii) that the breaches alleged against the Alleged Contemnors in respect of the actions of their subsidiaries were not sufficiently particularised.

111. At paras 44 and 45 Mr. Singhala states:

"*While the Plaintiff maintains that the breaches argued in its previous Notice of Motion (and maintained in its current notice) against TCL and Mr. McGowan concerning their actions were and are understandable and have always been perfectly understood, not having adequate time to replead and amend before replies were due, and no wanting exposure to further costs arising from the same, the Plaintiff took the view that it was better to withdraw and replead their contempt proceeding, than to incur all the costs up to and including the hearing and seeking permission to amend without a draft. On 17 January 2025 a consent order was proposed, and was filed on 20 January 2025.*

While, as above, the Plaintiff's counsel accepted the two points above, both significant points could have been made earlier, either in correspondence after 22 July 2024, in the strike out application notice, in response to the letter dated 29 November 2024, or in a skeleton exchanged 28 days before the hearing, giving time to address the points and consequently, the underlying contempt. Instead, the Alleged Contemnors employed and maintained a strategy, effective in this instance, of explaining their position at the latest and most

disruptive possible time, which secured the maximum possible delay and costs advantage to them."

112. It is clear on the evidence before the Court and from the submissions made by Mr. Preston that the withdrawal of the third contempt application was primarily attributable to drafting errors made by Counsel. However, it is pointed out on Mr. Tucker's arguments that when the current Notice of Motion was filed on 29 May 2025, the Plaintiff had already been long aware of the Alleged Contemnors' call for more particularity on the actions of their subsidiaries. Mr. Tucker argues that by the time the amendment summons was filed by the Plaintiff on 18 November 2025, nearly a year had lapsed since the 10 January 2025 service of the Alleged Contemnors' strike out skeleton.

113. Be that as it may, where it is said that the Plaintiff ought to have long before pleaded the proposed amendments, I reiterate that no litigant should be fastened to only a limb of their case merely on account of procedural or drafting errors or even a belated appreciation of the fuller factual and legal issues relevant to the claim. In this case, I have no basis for finding that the proposed amendments were filed *mala fide*. As I see it, the proposed amendments address the real controversy in this case: whether the Alleged Contemnors directly committed the acts alleged to be in breach of the Freezing Order, as varied, or whether they indirectly committed those acts through a wholly owned subsidiary, in which case it is said that the Alleged Contemnors wilfully failed to prevent the commission of the contemptuous acts. In my judgment, the Plaintiffs are entitled to advance that case on its Notice of Motion, so long as the Alleged Contemnors are not prejudiced by the amendments to the extent that they cannot be adequately compensated by a costs order. In my judgment, there is no such level of prejudice suffered by the Alleged Contemnors.

Analysis and Decision on Estoppel Claim

114. Finally, I come to Mr. Tucker's objection grounded on estoppel. Mr. Tucker submitted that Griffin Line should be estopped from pleading a case that it has already attempted to bring and has opted no longer to pursue. Here he is referring to the withdrawal of the third contempt application. Seemingly, Mr. Tucker relies on cause of action estoppel as opposed to issue estoppel.

115. I was not taken to any authorities or legal text on the doctrine of *res judicata* and its estoppel components. However, a brief statement of the doctrine and the basic principles is warranted.

116. Issue estoppel is the form of estoppel which arises to estop the relitigating of specific issues which were previously decided between the same parties in another case. In cases where

there is an issue estoppel, the previously litigated and decided issue resurfaces as a necessary ingredient of the subsequent proceedings which are founded on a different cause of action. For there to be an issue estoppel, it is key that the two sets of proceedings are as between the same parties.

117. However, where the subsequent action does not strictly qualify for *res judicata* and issue estoppel because the subsequent action does not involve precisely the same parties, an attempt to re-litigate the same issue may nevertheless give rise to a claim for abuse of process. As Kerr LJ put it in the English Court of Appeal's decision in *Bragg v Oceanus Mutual Underwriting Association (Bermuda) Ltd* [1982] 2 Lloyd's Rep 132 "*…it is clear that an attempt to relitigate in another action issues which have been fully investigated and decided in a former action may constitute an abuse of process, quite apart from any question of res judicata or issue estoppel on the ground that the parties or their privies are the same.*"

118. Cause of action estoppel was explained by Lord Keith of Kinkel sitting in the House of Lords in *Arnold v National Westminster Bank plc* [1991] UKHL:

"*It is appropriate to commence by noticing the distinction between cause of action estoppel and issue estoppel. Cause of action estoppel arises where the cause of action in the later proceedings is identical to that in the earlier proceedings, the latter having been between the same parties or their privies and having involved the same subject matter. In such a case the bar is absolute in relation to all points decided unless fraud or collusion is alleged, such as to justify setting aside the earlier judgment. The discovery of new factual matter which could not have been found out by reasonable diligence for use in the earlier proceedings does not, according to the law of England, permit the latter to be re-opened. The rule in Scotland, which recognises the doctrine of res noviter veniens ad notitiam is different. See Phospate Sewage Co. Ltd. v. Molleson (1879) 4 App.Cas. 801, per Earl Cairns L.C. at p. 814. There is no authority there, however, for the view that a change in the law can constitute res noviter. The principles upon which cause of action estoppel is based are expressed in the maxims nemo debet bis vexari pro una et eadem causa and interest rei publicae ut finis sit litium. Cause of action estoppel extends also to points which might have been but were not raised and decided in the earlier proceedings for the purpose of establishing or negativing the existence of a cause of action. In Henderson v. Henderson (1843) 3 Hare 100 at p. 114 Sir James Wigram V.-C. expressed the matter thus:*

"In trying this question, I believe I state the rule of the Court correctly, when I say, that where a given matter becomes the subject of litigation in, and of adjudication by, a court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought

forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time.""

119. In my judgment, neither issue estoppel nor cause of action estoppel arises in this case, simply because the third contempt application was never litigated or decided by a Court of competent jurisdiction. Moreover, this is not a case lending to abuse of process where estoppel would otherwise arise but for a strict application of the rule. That is because it cannot be said that the issues previously pleaded are now being relitigated. The fact of the matter is that the allegations of contempt were never tried; the Plaintiff simply withdrew the Notice of Motion on the premise of a concession that it was badly pleaded.

120. For these reasons I reject the claim made by the Alleged Contemnors that an estoppel arises in the circumstances of this case.

The Second Application: The Alleged Contemnors' Strike Out Summonses

121. The Alleged Contemnors' strike out application is against the contempt application made on the Amended Notice of Motion. That application is said to be pending and this Court was asked only to make directions on the application.

122. On the directions proposed by Mr. Preston, it is proposed that the strike out application be heard between 11 March 2026 and 14 April 2026 with a time estimate of one day. Otherwise, the proposed directions provide for the usual filing of evidence, an agreed Hearing Bundle and skeleton arguments and authorities.

123. Mr. Tucker proposes the following directions:

Strike Out Summonses

"*2. In relation to the Partial Strike Out Summons and the Further Strike Out Summons (together, the Strike Out Summonses), the following directions shall apply:*

a. If the Contempt Application 4 Amendment Summons is dismissed, the Strike Out Summonses shall be listed for the first available date from 30 April 2026 onwards before the Honourable Mr Justice Segal, with reference to the availability of counsel.

b. If the Contempt Application 4 Amendment Summons is granted, the Second Defendant and First Alleged Contemnor may file and serve amended Strike Out Summonses, along with any evidence in support, within 14 days of a sealed Order in respect of the Contempt Application 4 Amendment Summons and the Strike Out Summonses shall be listed for the first available date from 21 May 2026, with reference to the availability of counsel.

c. The Court shall make further directions as it sees fit."

124. In the event that the Notice of Motion survives the Strike Out Application, Mr. Tucker proposes that the contempt application should be set down for a further mention following the determination of the Strike Out Summonses.

125. However, in deciding whether to grant leave to the Plaintiff to amend its Notice of Motion, I was required to assess whether the amendments were liable to be struck out on the grounds of abuse of process. I decided each of the following questions against the Alleged Contemnors and in favour of the Plaintiff:

(i) Whether the proposed amendments clarify issues in dispute or raise a new claim
(ii) Whether an Abuse of Process arises out of the delay in proposing the amendments
(iii) Whether the Alleged Contemnors are entitled to claim estoppel

126. This begs to question whether it would now be an abuse of the Court's process for the Alleged Contemnors to relitigate the question as to whether the Amended Notice of Motion ought to be struck out on the grounds of abuse of process. That question ought to be decided by this Court for two reasons:

(i) The hearing of the strike out application by another judge opens the Court up to the risk of inconsistent judicial findings within the same jurisdiction of Court and

(ii) The question as to whether an Assistant Justice is to be assigned to determine a matter is an administrative function of the Chief Justice, not Counsel.

127. For these reasons, and as a matter of much-needed case management, I require Counsel to address me as to why the Court ought not to strike out the strike-out summonses of its own motion.

The Third Application: Leave to Amend the Defence

128.By way of background, on 3 June 2025 Harneys filed a Notice of Change of Attorney dated 2 June 2025. In an open letter of same date to MDM and to Carey Olsen Bermuda Limited ("Carey Olsen"), Harneys wrote:

> "*Amended Defence*
> *Given the numerous procedural and factual developments, including in South Africa, since these proceedings were issued in 2020, our client considers it has now become necessary to amend its Defence in order to ensure that it fairly states and represents the actual case that will be relied upon by our client at trial and in particular identifies all matters, including those arising since the commencement of proceedings, which are reasonably necessary for the due presentation of that case. Such amendments to our client's Defence will not prejudice any part to the proceedings. To the contrary, this appropriately timed introduction of amendments to our client's Defence will ensure that all parties are availed of their right to prepare for and present their case at trial with the benefit of pleadings which fairly reflect the case that they will be required to meet. There is no basis upon which it could be said that any party ought to be deprived of this opportunity merely due to the passage of time since these proceedings commenced.*
>
> *Accordingly, our client current intends to serve a draft Amended Defence shortly and will seek the parties' consent to the proposed amendments*."

129.By summons dated 2 July 2025, Templar brought the application to amend its Defence. By letter dated 23 October 2025 Griffin Line agreed to the proposed amendments. Leave to amend is governed by the Court. It was thus necessary for me to review the proposed pleading in order to be properly satisfied that it is not liable to be struck out on the face of the pleadings. I have undertaken that exercise and am indeed satisfied that the draft Amended Defence contains amendments which are necessary to clarify the Second Defendant's case in answer to the issues to be resolved by the Court at trial. For that reason, I grant leave to amend in the form of the draft Amended Defence.

The Fourth Application: The Alleged Contemnors' Summons for Trial Directions

The 6 November 2024 Consent Order

130.By Consent Order, dated 6 November 2024, trial directions were agreed between the parties. The directions provided for a two (2) month period for the inspection of documents disclosed by the First Defendant, following which would be a five (5) month period within which to file and exchange witness statements. Leave was also granted for expert evidence to be

adduced in the form of an expert report, and the parties agreed to file and exchange expert reports within four (4) months following the exchange of witness statements. This was to be followed by a maximum period of twenty-one (21) days by which the parties' experts were to confer and attempt to narrow the issues in dispute. Twenty-eight (28) days thereafter a joint memorandum setting out the agreed issues and brief reasons for the disputed issues was to be filed. Reply expert evidence could then be filed and served within twenty-one (21) days of the filing of the joint memorandum of issues.

131. Under the 6 November 2024 Consent Order the parties agreed to a trial estimate period of ten (10) days and a condition that the trial date be fixed no sooner than 1 January 2026, allowing for a trial preparation period of no less than 13.8 months. An agreed trial bundle was to be prepared by the Plaintiff and filed and served not later than twenty-eight (28) days prior to the trial and a mutual exchange of skeleton arguments was to be carried out fourteen (14) days prior to the trial.

The Alleged Contemnors' 3 December 2025 Summons for Trial Directions

132. It was of some surprise to me to learn that the substantive trial of this matter had been marked in the Court Calendar for 4-15 May 2026 to be tried before me. Notwithstanding, calendar-wise, I am available to sit during that period. However, one of the questions for my determination is whether this trial fixture is to remain in place or whether the trial is to be vacated and substituted for a 2027 trial as advocated by Mr. Preston for the Plaintiff.

133. Mr. Preston's position is that the proposed changes to the trial timetable are necessitated by the substantial amendments reflected in the Amended Defence. Mr. Preston pointed out that on his count, up to 200 amended sentences appear on the Amended Defence. He submitted that this expansion of the Defence will require no less than a two-month re-review of the existing disclosure which is said to exceed 2,200 documents comprising approximately 82,000 pages. Additionally, Mr. Preston pointed to the recent disclosure by the Second Defendant of hundreds of new documents constituting over 8,000 pages of additional materials (the "Recent Discovery"). At paragraph 42 of Mr. Preston's written submissions he states:

"*The Recent Discovery is not only extensive, it is also, on even a preliminary review, selective, incomplete and not categorised or referenced to the paragraphs of the draft Amended Defence to which it purports to relate*."

134. This submission was developed by Mr. Preston in his written and oral submissions. Citing, *inter alia*, a significant example of non-disclosure, Mr. Preston referred to the absence of any financial documentation on the Templar's income receivables from the acquisition of OCM's mining business. Mr. Preston submitted that this information is necessary and particularly important given the Second Defendant's significant reliance on other post-acquisition events to justify a reduction in the value of the asset.

135. Stating his summary on the timelines for discovery, Mr. Preston proposed:

(i) 2 months for the Plaintiff's disclosure;
(ii) 2 months for the re-review of the existing disclosure; and
(iii) 2 months for the review of the Recent Disclosure

136. Mr. Preston also opined that "*it may take two months for the Defendant to disclose the relevant material relating to the mine and, likely a further two months from the time of disclosure to review that material*".

137. On that footing, Mr. Preston proposes that parties be given to 28 February 2026 to "*disclose all relevant material relating to the amendment, including in the case of the Second Defendant, all material in its or its majority controlled subsidiaries' control or possession, relating to the value or finances of the mine and/or mining business acquired through the disposition of the OCM Claim as defined in the 16 September 2020 Order*."

138. Following the close of the disclosure period, a three (3) month period within which the Plaintiff would file and serve an Amended Reply is proposed by the Plaintiff. That would advance the timetable up to 30 May 2026. Following the close of the amended pleadings, Mr. Preston proposes witness statements to be filed and served six (6) months later, by 30 November 2026. Four (4) months after that would be the exchange of expert reports by 31 March 2027 and the expert conference to narrow the expert issues would take place one (1) month later on 21 April 2027. The expert's joint memorandum of issues would be due the following month on 19 May 2027 and reply expert evidence by 9 June 2027. One (1) week later, on or by 16 June 2027, the agreed hearing bundle would be prepared and lodged and two (2) weeks thereafter, on or by June 2027, the parties would exchange and lodge their skeleton arguments. Against that background, Mr. Preston seeks a 10-day trial to be fixed no earlier than 21 July 2027.

139. In the draft Order produced on behalf of the Second Defendant, the Amended Defence would be deemed to have been filed and served on 31 October 2025 with the dispensing of the need to file and serve it hereinafter. Further above, I provided the procedural background to the filing of the Amended Defence and referred to Mr. Tucker's reliance on a 23 October letter from the Plaintiff confirming its consent to the proposed amendments to the Defence. At paragraphs [43]-[45] of Mr. Tucker's written submissions he states:

"*43. Despite consenting to the amendments, GL has failed to engage with the timetabling in any sensible manner. In a letter to Harneys dated 11 November 2025, MDM purported that GL would need a significant amount of time to consider the amendments, disclose further documents, and then file an Amended Reply, running into the Spring of 2026. Harneys has repeatedly sought engagement from MDM to agree a consent order, but ultimately to no avail. TCL provided supplemental disclosure on 17 November 2025.*

44. Indeed, TCL's primary position is that GL has not applied for permission to amend the reply, as it is obliged to do (as set out in White Book 1999 at paragraph 20/4/6, which applies to any pleading pursuant to paragraph 20/4/4). Without prejudice to that position, in order to keep to the trial timetable, TCL will agree to GL amending the Reply, provided that it is filed and served in a timely fashion. In that context, we would ask the Court to consider that:

(a) GL has had the Amended Defence for nearly half a year and agreed to those amendments in a letter dated 23 October 2025, and at the hearing of 29 October 2025

(b) TCL made supplemental disclosure on 17 November 2025, and the disclosure duty is ongoing. There is no need for GL to carve out further time for any supplemental disclosure;

(c) GL's Reply is only 9 pages in any event; and

(d) A period of 14 days from the date of the hearing is ample time to prepare an Amended Reply in all of the circumstances and given the timetabling of the trial.

45. Without prejudice to the above, TCL makes provision for the Amended Reply in the draft order at Annex A to this skeleton argument."

140. Driven by a determination to preserve the May 2026 trial fixture, Mr. Tucker proposes the following trial directions:

"...

a. The Plaintiff and First Defendant shall provide supplemental disclosure arising from the Amended Defence and shall file and serve a List of Documents and simultaneously serve a bundle of documents contained in the List of Documents within 2 weeks of the date of this Order.

b. The parties shall file and exchange trial witness evidence on or before 4:00pm on 29 December 2025.

c. The parties shall file and exchange expert reports on or before 4:00pm on 5 February 2026.

d. The experts shall confer and narrow the issues in dispute on or before 4:00pm on 19 February 2026.

e. The parties shall file a joint memorandum prepared by the experts setting out agreed and disputed issues with brief reasons for any disagreement on or before 4:00pm on 5 March 2026.

f. The parties shall file and exchange reply expert evidence (if so advised) on or before 4:00pm on 26 March 2026.

g. The Plaintiff shall provide a draft Hearing Bundle Index to the Defendants on or before 4:00pm on 2 April 2026.

h. The Defendants shall provide comments on the draft Hearing Bundle Index on or before 4:00pm on 7 April 2026.

i. The Plaintiff shall file and serve an agreed hearing bundle on or before 4:00pm on 14 April 2026.

j. The parties shall file and mutually exchange skeleton arguments on or before 4:00pm on 20 April 2026."

141. The above timetable proposed by Mr. Tucker entirely rejects Mr. Preston's expressed concern that a minimal period of six months will be needed to complete the parties' disclosure obligations. Mr. Tucker's argument is that the Plaintiff's law firm has had the

benefit of the last six months and some to re-review the disclosure and draft an Amended Reply since the draft Amended Defence was filed in July 2025. Alternatively, Mr. Tucker points to the date on which the Plaintiff consented to the draft Amended Defence, which was 23 October 2025. On that basis, Mr. Tucker argues that the time needed to engage in that level of disclosure review has been wasted by the Plaintiff to the detriment of the Second Defendant who is keen to bring this longstanding litigation to an end since it first commenced in 2019.

142. Mr. Preston, however, argued that it would not have been reasonable to expect his law firm to embark on that exercise prior to the Court's confirmation of leave to amend, an exercise which might have been sooner carried out in the form of a Consent Order.

143. In my judgment, the Plaintiff's Counsel cannot be properly criticised for not having sought leave to file an Amended Reply prior to the Court's granting of the order for leave to amend the Defence. The Plaintiff was under no procedural or other obligation to do so. Further, the Plaintiff cannot be criticised for not having jumpstarted the drafting of an Amended Reply because, again, it was under no obligation to do so.

144. However, having now granted leave to amend the Defence, the next step is for an Amended Reply to be filed and I am mindful that the Plaintiff has had ample opportunity to consider the detail and effect of the Amended Defence and has clearly seized on that opportunity. Having regard to those circumstances, I direct the Plaintiff to file its Amended Reply within 14 days from the date of this decision. For the avoidance of doubt, I do not accept that the Plaintiff is entitled to seek further discovery from the Second Defendant prior to filing an Amended Reply. The normal practise is for discovery to follow the close of the pleadings.

145. The next step brings into question the appropriate timelines for the parties' amendment-related mutual discovery obligations. The Plaintiff is asking for a two-month period to carry out and complete its disclosure obligations to the Second Defendant. That said, it seems that the lion share of new discovery will come from the Second Defendant. So, it follows that this timeline will more so be set by the timeframe needed by the Second Defendant to fulfil its additional discovery obligations. In this regard, Mr. Preston highlighted his expectation that the Second Defendant's discovery would include all material relating to the value or finances of the mining business acquired through the disposition of the OCM Claim. Mr. Tucker's position is that the Second Defendant will be able to meet its amendment-related discovery obligations within a period of 14 days.

146. I prefer to allow for a more conservative timeframe which (i) aims to strike a balance between the different periods estimated by Counsel, and which (ii) takes account of the eagerness expressed by both parties to proceed as efficiently as possible, avoiding

unnecessary delay. With that in mind, this Court will afford the parties six weeks for mutual discovery of all new amendment-related material which meets the test prescribed by RSC Order 24/1 as read with Order 24/8.

147. The Plaintiff is also asking for a two-month inspection period for the re-review of the existing discovery. That is the same timeframe previously agreed between the parties under the 6 November 2024 Consent Order which permitted the Plaintiff two months to inspect the documents produced by the Defendant. Given that the volume of material exceeds 2,200 documents comprising approximately 82,000 pages, that is not unreasonable.

148. There is then the question of additional time for reviewing the Recent Discovery. The Plaintiff's Counsel contemplates that this will include additional material comprising, i*nter alia*, all relevant material in the control or possession of Templar or its majority-controlled subsidiaries. Mr. Preston says that material would relate to the value or finances of the mine and/or the mining business acquired through the disposition of the OCM Claim. Taking into consideration that the Recent Discovery comprises hundreds of new documents and materials spanning over 8,000 pages I find that an additional two-month period for inspection is reasonable.

149. The disclosure timelines consumed the bulk of the contention between the parties. However, the parties are also at an impasse as to the timeframe within which they are to file and serve witness statements following the inspection stage. Mr. Preston seeks five months to do so but Mr. Tucker says that twelve days would suffice. Under the 6 November 2024 trial directions both the parties and the Court were satisfied on the suitability of a five-month period. I see no reason to depart from that approach; so, the directions of this Court for the filing of witness statements will align with the timeframe set by the previous Consent Order for directions.

150. My directions will also accord with the directions issued under the Consent Order in respect of the expert reports, the expert conference for the narrowing of the disputed issues, the joint memorandum and any reply expert evidence. So, the parties are to file and exchange expert reports within four (4) months following the exchange of witness statements. This is to be followed by a maximum period of twenty-one (21) days by which the parties' experts are to confer and attempt to narrow the issues in dispute. Twenty-eight (28) days thereafter a joint memorandum setting out the agreed issues and brief reasons for the disputed issues is to be filed. I also grant leave to file and serve reply expert evidence within twenty-one (21) days of the filing of the joint memorandum of issues.

151. However, to adjust the final timelines directed under the Consent Order, an agreed trial bundle is to be prepared by the Plaintiff, and the Plaintiff must file and serve the trial bundle no later than thirty-five (35) days prior to the trial. Also, the mutual exchange and filing of skeleton arguments is to be carried out no later than twenty-one (21) days prior to the trial.

The Fifth Application: Directions on the Variation Summonses

The Second Defendant's 4 July 2025 and 18 July 2025 Variation Summonses

152. On 2 July 2025 the Second Defendant filed a summons, dated 4 July 2025, to vary the freezing injunction, as varied, to substitute all references to the sum of "$74,557,285" with the sum of "$60,252,307.80".

153. By the 18 July 2025 summons, the Second Defendant seeks an Order to further vary the Freezing Order to substitute all references to the sum of "$74,557,285" with the sum of "US$41,975,022.80".

154. It is proposed on the draft directions submitted by Mr. Tucker that this application immediately follow the Alleged Contemnors' strike out summonses. However, further above I state that the Court will need to be addressed on the question as to whether it is now abusive for the Alleged Contemnors to proceed with the strike-out summonses considering my findings and decision that the Amended Notice of Motion is not liable to be struck out on the grounds of abuse of process.

155. If this Court, upon hearing Counsel, strikes out the strike summonses of its own motion, then the next step will be to hear the variation summonses. Those directions may be settled at the next Court appearance before me.

Costs

156. I shall hear the parties as to costs once Counsel for both sides have had the opportunity to review and consider the effects of this Ruling and after the Order of this Court has been drawn up and finalised.

Postscript

157. On Friday 16 January 2026 (one working day ago) Mr. Tucker emailed the Court to propose a new timeline for trial directions. In his email he stated, *inter alia*, that:

> "*In view of the passage of time, the Second Defendant is reluctantly able to agree to vacate and relist the trial for the first available date from 14 September 2026.*
>
> *On that basis, we attach updated draft directions giving fresh dates which we hope can be considered and with a view to a trial starting in mid-September 2026*"

158. Notwithstanding, my findings in this Ruling remain.

Dated this 19th day of January 2026

HON. MRS JUSTICE SHADE SUBAIR WILLIAMS
PUISNE JUDGE OF THE SUPREME COURT