JUDGMENT : JUSTICE BRIGGS:. Chancery. 16th January 2008

1. The first and second defendants Mr and Mrs Beller apply for security for their costs of these proceedings and also for fortification of the cross undertaking of damages given by the claimants to the court when it obtained freezing orders and other interim relief at the outset of these proceedings in June 2007. These are two of a number of applications before me. They are both based upon an alleged inability of the claimants to pay. I have, therefore, heard both of them together. Much the most significant of the two applications in terms of quantum is that for security for costs, with which I will therefore deal first.

2. The defendants have thus far conducted their defences in these proceedings through two wholly separate legal teams of solicitors and counsel. Originally, their applications for security for costs assumed that that would continue through to trial. However, the first defendant has recently decided, mainly due to lack of funds, to discharge his solicitors and counsel after this hearing and to continue in the proceedings as a litigant in person. Mr Aldridge, who appears on this occasion for the first defendant, does not seek to include any further costs of the first defendant as a litigant in person in the amount for which security is sought, but he seeks security for the first defendant's costs incurred to date in the sum of £150,000. The second defendant's original cost estimate in November 2007, to trial, was some £420,000. Mainly in the light of now having no prospect of assistance from the first defendant's legal team, it is said on the second defendant's behalf that this estimate may prove to be an underestimate. Nonetheless, Mr Weisselberg, who appears for the second defendant, seeks security for 60 per cent of that estimate of £420,000; i.e. security in the sum of £252,000 in two instalments - namely, £140,000 to be paid in 21 days and £112,000 to be paid by 5 weeks before trial.

3. The first claimant, Jirehouse Capital, is an unlimited company in which Mr Stephen Jones is the only shareholder. The second defendant, Jirehouse Capital Trustees Ltd. is, as its name implies, a limited company. It is a wholly owned subsidiary of the first defendant. Both companies were incorporated in England. There are three sets of proceedings to which the security for costs application relates. Firstly, a claim for damages and for recission of a document known as the Jirehouse Capital's release, based upon alleged fraudulent misrepresentations and/or conspiracy to injure on the part of the defendants. Secondly, a claim under section 262 of the Insolvency Act to revoke Mr Beller's IVA. Thirdly, a bankruptcy petition against Mr Beller. All those proceedings have been ordered to be tried together in the Chancery Division, the order having been made by Mr Justice Lindsay on 4th October 2007. Subject to an outstanding question of whether there should be directed to be tried one or more preliminary issues, all proceedings are currently due and on course for a trial in November 2008.

4. The applications for security for costs are made under CPR Part 25 rules 12 and 13. I must read the relevant parts of rule 13, which are as follows:

   '13 (1) The court may make an order for security for costs under rule 25.12 if –

   (a) it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order; and

   (b)

   (i) one or more of the conditions in paragraph (2) applies, or

   (ii) an enactment permits the court to require security for costs'.

   Then sub-rule 2 sets out the conditions of which the relevant condition for present purposes is in sub sub-rule (c) which is that:

   'the claimant is a company or other body (whether incorporated inside or outside Great Britain) and there is reason to believe that it will be unable to pay the defendant's costs if ordered to do so'.

5. As against the second defendant, there is a relevant enactment which permits the court to require security for costs in the form of Section 726 of the Companies Act 1985 which reads as follows:

   'Where in England and Wales the limited company is plaintiff in an action or other legal proceeding, the court having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the Defendant's costs if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.'

6. The first question is whether the court should ever make a security for costs order against an unlimited company incorporated within the jurisdiction which, by its nature, may, through its liquidator, look to the whole of its shareholders' assets for the resources with which to pay its debts. Mr Auld QC, for the first claimant, says that the position is analogous to that of an individual claimant in relation to whom there is no jurisdiction to order the payment of security for costs where a claimant is resident within the jurisdiction. While it is clear that security for costs cannot be ordered under section 726 of the Companies Act against an unlimited company, in my judgment part 25.13(2)(c) plainly contemplates that security may be ordered against any kind of corporate body whether resident or incorporated within or without the jurisdiction. That is what the sub-rule says in terms, and I see no reason to put any gloss on it. It is clearly, in my judgment, not a mere re-enactment of Section 726, nor a repeat of that jurisdiction in the rules. It is a self-standing which, I must conclude, after due thought, has been expressed in broader terms than the jurisdiction conferred by the Companies Act 1985. Accordingly, although the assets of an unlimited company's shareholders may be highly relevant to the question whether the condition in CPR 25.13(2)(c) is satisfied in any particular case, there is, in my judgment, plainly jurisdiction for making an order for security for costs against the first claimant in this case, if there is, to use the words of the condition itself, 'reason to believe' that the company will be unable to pay the defendant's costs.

7. The next question is as to the precise nature of the test imposed by that condition and there is an unfortunate lack of any unanimity on this issue in the authorities, many of which are unreported. It is common ground that the question has to be decided now, but that the ability to pay has to be assessed as at the date when the costs order is likely to be made; that in this case being, or shortly after, November 2008. There is a serious question as to the standard of proof required in relation to inability to pay. In ***Re Unisoft Group Ltd (2)*** [1993] BCLC 532, which was a case which preceded the CPR and based on a construction of Section 726 of the Companies Act 1985, Sir Donald Nicholls, sitting as Vice Chancellor, said this:

*'I start consideration of the subsection by noting that the phrase 'the company will be unable the pay the defendant's costs if successful in his defence', is clear and unequivocal. The phrase is **'will be unable'**, not 'may **be unable'. 'Inability to pay'** in this context I take to mean inability to pay the costs as and when they fall due for payment. Thus the question is, will the company be able to meet the costs order at the time when the order is made and requires to be met? That is a question to be judged and answered as matters stand when the application is heard by the court, although the court will take into account and give appropriate weight to evidence about what is expected to happen in the interval before a costs order would fall to be met. The court will draw appropriate inferences and here, as elsewhere, it will not let common sense fly out of the window. The phrase **'the company will be unable to pay'** is preceded by the words, **'if it appears by credible testimony that there is reason to believe'.** I do not think this latter phrase has the effect of watering down the words which follow. The court, on the basis of credible testimony, must have **'reason to believe'**, that is, to accept, **'that the company will be unable to pay'.** If this were not so, and the test is not whether the court, on the basis of credible testimony, believes the company will be unable to pay, then it is difficult to identify what is the proper approach and what is the test being prescribed by the statute. It cannot, surely, suffice that the applicant's accountant, for example, who is a credible witness, puts forward a case of inability, to pay. If there is conflicting evidence the court must have regard to that also. The court must reach a conclusion on the basis of the totality of the evidence placed before it, giving such weight to the various matters deposed to as is appropriate in the circumstances. The matter on which, in the end, the court is required to reach a conclusion is whether the company will be unable to pay'.*

8. ***Phillips v Eversheds***, for which the neutral case citation is [2002] EWCA Civ 486, was a decision of the Court of Appeal, in fact a single judge of the Court of Appeal, in relation to an application for security for costs of an appeal. It was given on 18th March 2001, and Lord Justice Buxton, in giving judgment, said this at paragraph 6:

'On the evidence before me, which I am not going to detail, I am satisfied that RSL' [which is the company against which the application for security was made] 'is in significant danger of not being able to meet any order for costs. I have come to that conclusion not only on the basis of the evidence that has been filed, but also because RSL have not filed any accounts since 1998, and the court will make adverse inferences against a company that fails to file accounts and where no explanation has been given on its behalf, either of the failure or of its present financial position.'

9. ***Marine Blast Ltd v Targe Towing Ltd & Anr***; [2003] EWCA Civ 1940, was another decision of the Court of Appeal, in this case Lord Justice Mance, sitting alone, also in relation to security for costs of an appeal. It is clear from Lord Justice Mance's judgment that his approach to the question was based upon his understanding of the true interpretation of CPR 25.13(2)(c), which is the relevant provision which I have to apply. At paragraph 11 he said this:

I have to ask myself in the light of all the evidence including that which I have read, whether the condition is satisfied that there is reason to believe that the company will be unable to pay the defendants' costs if ordered to do so. I think it is right the stress the words 'reason to believe', and the words 'will be unable to pay'. It seems to me that there is indeed reason to believe that it will be unable to pay. This is not an occasion on which one can determine whether or not, as a matter of probability, it will pay. The question is whether there is reason to believe that it will be unable to pay. I think that test is satisfied'.

That decision was given in December 2003.

11. In ***Texuna International Ltd v Cairn Energy PLC*** [2005] 1 BCLC 579, Mr Justice Gross had to apply CPR 25.13(2)(c) to an application made at first instance for security for costs. It was common ground between counsel before him that he should treat Sir Donald Nicholls' test in the ***Unisoft* case** as applicable due to the similar type of narrative language between the jurisdiction provision of the Companies Act 1985 and that to be found now in the CPR. He did so apply that test without further analysis. In ***Mbasogo v Logo Ltd***, a decision given on 6th April 2006, Lord Justice Auld, again sitting alone, had to resolve a question of the security for costs being given by a company pending an appeal. At paragraph 12 he said this:

*'In my view, the observation for Lord Justice Mance as he then was at paragraphs 11 and 13 of his judgement in **Marine Blast** and of Lord Justice Buxton in paragraph six in **Phillips v Eversheds** are relevant to the approach of the court and in considering whether there is reason to believe that the party against whom security is sought will be unable to pay the other party's costs if and when ordered to do so. It is an approach that falls below the level of balance of probabilities, as Lord Justice Mance pointed out. And where it arises as a result of the party against whom the order is sought either providing unsatisfactory financial information as to his or its affairs, or as in this case none at all it is not a big step for the court to take to conclude that there is reason for such belief.. As Lord Justice Buxton put it at paragraph six of his judgement in **Phillips v Eversheds**, there is, at the very least, significant danger in this case of one or more of the respondents not being able to meet any order for costs made against them when the time comes'.*

12. Finally, Mr Justice Mann reviewed the relevant authorities for the purposes of determining security for costs application in the first instance. In ***Aerotel Ltd v Wavecrest Group Enterprises Ltd*** and others, for which the neutral citation is [2007] EWHC 104 (Pat). Having referred to Sir Donald Nicholl's test in the ***Unisoft*** case, he described

that as a test akin to a balance of probabilities requiring that it be established on the evidence that the court thinks that it is probable, or more probable than not, that the company would not be able to pay the costs of the action if it loses before the court can contemplate making the order; that is the order for security. In conclusion, having reviewed the authorities, he said this at paragraph 11:

'There may be a difference in approach between the two Court of Appeal decisions which I have mentioned and that of the Vice-Chancellor but, at the end of the day, there may be a semantic element to it. I am not quite sure what the extent of the dispute is but, for present purposes, I propose to follow the approach of the Court of Appeal and, in particular, the phraseology adopted in the ***Mbasogo case,*** *that is to say, I should consider whether there is, at the very least, significant danger in this case that the claimant will not be able to pay the costs of the action if it loses'.*

13. I am bound like Mr Justice Mann to follow the Court of Appeal's guidance. In my judgment it is clear at least (if nowhere else) in Lord Justice Mance's judgment in the *Marine Blast* case, that there is no difference in principle between the application of CPR 25.13(2)(c) on an application for security for costs of an appeal and an application for security of costs of proceedings at first instance. The effect of that guidance is that the burden is on the applicant for security not to show that the claimant company will probably be unable to pay costs if ordered to do so, but that the phrase in the CPR, *'reason to believe that it will be unable to pay'* requires it to be shown on the evidence that there is, at the very least, a significant danger that it will be unable to do so. In many cases the ***Unisoft*** test and the significant danger test may produce the same result. However it seems to me inescapable that the formulation in the ***Mbasogo*** case of significant danger imposes a substantially lower threshold for the exercise of the court's discretion to order security than the probability test originally enunciated by the Vice Chancellor in the ***Unisoft*** case.

14. I turn therefore to the question of whether there has here been shown at least a significant danger that the claimants will be unable to pay costs if ordered to do so at trial by a judgment handed down shortly after November 2008. For this purpose, I intend to treat the claimants together, due to what I perceive to be the low risk that the court will make a differential costs order requiring costs to be paid by one of the claimants but not by the other. I have been presented with a wealth of evidence on the issue and I propose to give no more than a bare summary, as follows: The first claimant's last accounts as at 31st March 2007 which are in draft but not yet audited show net assets of some £98,000 odd, after crediting a pre-tax profit for that year of some £84,300 odd. At that time, the second claimant was a one man company with no significant assets. As at September 2007, the first claimant's management accounts show net assets of some £233,000 odd inclusive of the value of its interest of the second claimant which had by then been capitalised at £250,000 at the expense of the first claimant. Those assets were identified after crediting profits for the six months to September 2007 of some £242,000 odd.

15. Projections to November 2008 verified as reasonable by the first claimant's accountants show the first claimant anticipating making profits from November 2007 to November 2008 of some £469,000 odd. Thus, says Mr Auld, the first claimant will have some £700,000 at least to meet any costs liability in relation to the costs of the defendants in these proceedings, which is a sum in excess of that currently relied upon in their present estimates. The first claimant will be able to meet those costs, says Mr Auld, without recourse to the unlimited liability of Mr Jones, who, he says, in any event, will be well able to pay any shortfall and who will do so in order to avoid his valuable and apparently profitable company going to the wall over the issue of costs.

16. For the defendants Mr Aldridge and Mr Weisselberg criticise both the evidence and Mr Auld's analysis of it on a number of grounds. Firstly, it is submitted that no account is taken in the projections for the year to November 2008 of the requirement of the claimants to pay their own costs of litigation which, in an estimate given last year, apparently significantly exceeds £1 million. Further, I am I am told by Mr Auld that, just as in the case of the defendants, their experience of these proceedings to date suggests that current estimates may turn out on the low side. In response, Mr Auld submitted that, in fact, the costs of this litigation which would otherwise be incurred by the claimants will be met by Mr Jones himself. He proffered a formal undertaking to be given by Mr Jones designed to satisfy the court on that point. The undertaking he offers is as follows: that he would remain the sole shareholder of the first claimant, that he would ensure that the first claimant remained an unlimited liability company, and that *'I will remain personally responsible and liable for the costs incurred by the claimants through their solicitors Mishcon de Reya in these proceedings and I will not seek to recover any amount in that regard from the claimants'.*

17. The defendants criticised that proffered undertaking and invited the court to approach with considerable caution the suggestion made that therefore the liability of the claimants for costs could safely be ignored in making the necessary calculations, essentially on two grounds. Firstly, reference was made to Mr Auld's skeleton argument before Master Teverson in December (who I interpose was to have heard the security for costs application and heard it in part before deciding that it ought to be adjourned for various reasons including its relationship with the fortification application to a Judge). Mr Auld said in his skeleton that the projections to November 2008 took into account both the claimant's legal costs that they have already been paid and those which will fall due during the course of the litigation. That, it was submitted, suggested that the claimants were, in fact, paying their costs as they went along and anticipated continuing to do so throughout the litigation. It is fair comment that the projections do not in fact include any item for ongoing costs for this litigation, nor is there anywhere within the expenses shown in those projections in which costs approaching or exceeding £1 million could be fitted but, nonetheless, the implication from the skeleton which I have no doubt was prepared on instructions is that, until then, at any rate, the claimants were paying the costs and they anticipated continuing to do so. Mr Aldridge then submitted that, on that basis, it

appeared that Mr Jones's proposal that he would defray the claimant's costs liability was a lately conceived solution to an otherwise insoluble problem which the court should also approach with caution.

18. In my judgment, it is appropriate to approach the proferred undertakings with considerable caution. The relevant undertaking is that Mr Jones will remain personally responsible and liable for the costs incurred by the claimants to their solicitors. That contemplates, as I read it, a situation which the claimants' solicitors have sought an assurance that Mr Jones make himself liable for their costs at a time when they were treating the claimants themselves as their primary debtors. Furthermore, the undertaking does not constitute an undertaking that he will pay the costs to the exclusion of any costs liability of the claimants, and one can well understand, having regard to the indemnity principle, why the undertaking does not go that far. Furthermore, the promise not to seek to recover any amount paid in that regard applies, as I read it, only to recovery of costs which he has actually paid and comes nowhere near requiring the claimant's solicitors to take the course of not seeking payment of costs by the claimants themselves. Finally, Mr Jones has, for good reason or bad, and the reasons do not matter, declined to give the court any evidence at all or even any statement on instructions as to his own personal means and, in particular, his ability actually to discharge a costs burden in excess of £1 million for the purposes of ensuring that the claimants continue to prosecute these claims to trial.

19. The second criticism of the evidence advanced by the defendants is that the claimant's profitability appears from the evidence to be based upon a very large increase in profitability during the six months to September 2007 disclosed by the management accounts over the profitability recorded in the company's draft audited accounts for the previous year, and projections which are simply based upon the proposition that that increase will continue for the year thereafter, that is, from November 2007 to November 2008. Mr Aldridge described that as a speculative projection which, although verified as reasonable by the accountants acting for the claimants, was unsupported by any factual detail as to the basis upon which the claimant's directors, or Mr Jones in particular, regarded that expectation as well founded in objective terms. Reference was also made to the less happy economic climate that may be expected to prevail during this year. It was also pointed out that the figures for the claimant's projected profitability are pre-tax and, more importantly, pre-dividend. Mr Aldridge pointed out that Mr Jones took significant dividends as, of course, he was entitled to do, from the first claimant's profits in the year ending March 2007. Next, it was pointed out that the assets of the first claimant included an amount stated at £193,100 in relation to its investments which, from notes in the accounts, were revealed to be investments in loss-making companies where the at cost valuation was supported by a note expressing a hope, rather than a certainty, that those companies would return to profitability.

20. Finally, it was submitted that, since the business of the claimants is, in substance, the conduct through corporate bodies of Mr Jones's solicitor's practise, it could not be regarded by the court as certain that that business would be conducted wholly and exclusively through those companies during 2008. Not only would Mr Jones be free to draw profits, but he would be to conduct business in a way making sure the profitability arose outside of the companies if he chose to do so.

21. In my judgment, the effect of the defendant's criticisms of the evidence of the ability to pay advanced by the claimants is not to make it probable that the claimants will be unable to pay, but the effect of those criticisms is, in my judgment, substantially to increase that risk. It seems to me that, in substance, the claimant's ability to pay costs if ordered to do so depends critically on two factors. Firstly, Mr Jones actually paying all the claimant's costs between now and trial rather than merely undertaking to remain personally responsible and liable for those costs, which is not, as I see it, necessarily implying that he will actually pay them. Secondly, on the claimant's management accounts and the predictions of 2008 proving accurate. It is fair to say that the management accounts go some way to help the court place some reliance upon the predictions but the profitability record to March 2007 on the other hand does not inspire confidence. Furthermore, Mr Jones, who, although not the only employee of the first claimant, is plainly the leading light in his business, is likely to be heavily involved in the prosecution of this litigation between now and the trial and that in itself does not inspire confidence that the profitability of his solicitors business will be unaffected by this litigation. The result, in my judgment, is that there is at least a significant danger that the claimants will be unable to pay the costs if ordered to do so, albeit not a probability that they will be unable to do so. For the reasons I have given, that satisfies the condition for the arising of the discretion to order security for costs set out in CPR 25.13(2)(c), and I therefore turn to the question whether as a matter of discretion, I should make an order for security.

22. I remind myself that the overriding requirement when exercising discretion is to make an order for security only under CPR 25.13(1)(a) if I am satisfied having regard to all the circumstances of the case that it is just to make such an order. Furthermore, I remind myself of the discretionary considerations which have, for many years, been applied in relation to security applications against companies and which were set out in the decision of the Court of Appeal in ***Sir Lindsay Parkinson & Co Ltd v Triplan Ltd*** [1973] QB 609 by Denning MR. They are conveniently summarised in the note at the bottom of page 654 of the current White Book, and I need not repeat them as a list. I have considered all those matters as well as the overiding question of whether it is just to make an order.

23. In my judgment, the most important aspects relevant in my exercise of the discretion are as follows. Firstly, this is not a case in which the merits of the parties' cases are so obviously loaded one way or the other as to make merits a significant factor in the exercise or non-exercise of a discretion. Mr Auld, in his skeleton argument, sought to make out a strong case on the merits. He did not pursue that submission orally and, in the circumstances, it was unnecessary for Mr Aldridge or Mr Weisselberg to reply to it. It is sufficient for me to say that every aspect of

the claimant's claim is vigorously challenged but that, in the language of Lord Denning in ***Triplan***, the claim is nonetheless on the face of it a bona fide claim which stands a reasonable as opposed to fanciful prospect of success. Secondly, it is not said that the making of an order for security of costs will stifle this claim. I can well understand why it is not said even though Mr Jones has not produced any evidence of his means. Thirdly, Mr Jones's decision not to produce evidence of his means while at the same time relying upon his unlimited liability for the first claimant's debts is a material factor in the exercise of the court's discretion. I reach no conclusion one way or the other whether in fact he has the means, but since those are matters beyond the defendants' knowledge as to which the defendants must therefore take the risk, that is, in my judgment, a matter which tends to go in favour rather than against the making of an order for security. This is not a case where there have been admissions or payments into court or open offers, and nor is it a case where there is any evidence or, indeed, any submission that any want of means of the claimants is attributable to the conduct of the defendants which is the subject matter of the claimants' litigation.

24. Taking those matters and all other matters together, it seems to me that this is a proper case for the making of an order for security, and I propose to make orders broadly in the form sought. That is, that there be security for the costs incurred by the first defendant to date, in the sum of £150,000 and for the second defendants, the 60 per cent the second defendants estimated cost of trial; that is for £250,000 payable in the instalments which I have identified at the beginning of this judgment.

25. I will hear submissions as to the precise form of order and as to the manner in which that security ought to be provided. I should add that I have taken into account the undertakings proffered by Mr Jones and that, for the reasons which I have given, they have not, in my judgment, formed a sufficient basis for making it unnecessary or unjust for an order for security to be made.

26. I turn then to the question of fortification. There was no issue between the parties as to the relevant principles. I was referred to a judgment of my own in ***Harley Street Capital Ltd and Tchigirinski (No 1)and others*** [2005] EWHC 2471 for the relevant principles. Broadly speaking, they require an intelligent estimate to be made of the likely amount of any loss which may be suffered by the applicant for fortification (here the defendants) by reason of the making of an interim order. They require the court to ascertain whether there is a sufficient level of risk of loss to require fortification. They require that the loss has been or is likely to be caused by the granting of the injunction.

27. In the present case, the application by the second defendant was that the defendants would suffer loss by reason of a freezing order under two heads. The first was loss of the opportunity to negotiate an advantageous rate of interest in relation to their mortgage liabilities in relation to the house which they occupy as their matrimonial home - a property which, on the face of it, is said to be owned solely by the second defendant, the truth or otherwise of that proposition being at the centre of this litigation. Secondly, a loss occasioned by a deposit account or accounts of the second defendant, which was interest bearing prior to the making of the order, having been converted into a non-interest bearing account by her bankers upon being served with notification of the order. In other words, losses occasioned by increased interest payable in relation to liabilities, and reduced or no interest being paid in relation to deposits. When launched and prior to evidence recently provided by the second defendant, this application assessed the likely amount of loss for which fortification was sought, in the region of £150, 000. The recent evidence which shows that Mr Beller appears substantially to have mitigated the loss anticipated from having to renegotiate the mortgage on much less advantageous terms, at something more likely to be in the region, at the highest, of ten to fifteen thousand pounds. As to that, there are, so far as I can see, serious risks that, even if they succeed in these proceedings, the defendants will be unable to establish, as a matter of causation, that either of those losses were in fact the result of granting of the freezing order in relation to which the cross undertaking evidence was given. Nonetheless, it is not a case in which I can proceed with confidence on the basis that no loss of any kind may have been suffered by the defendants.

28. I have to approach this question in the light of the decision that security for costs ought to be given by the claimants, such that the burden of costs will not be, as it were, additional to whatever they have to put up by way of security between now and trial. Mr Auld submitted that not least because the loss estimate has been reduced from £150,000 to a maximum of £15,000 by the time of the hearing, and because the costs incurred by the parties in relation to fortification application each are likely to substantially to exceed the amount of potential costs in issue, that this is and always has been an inflated and disproportionate application in which the appropriate response should be no fortification should be ordered. In my judgment, there is considerable substance to that submission. It seemed to me that, before launching an application suggesting that losses could be as high as £150,000, it was incumbent upon the defendants to assess cooly and objectively what the real loss was likely to be. In the circumstances, this turned out to be something no more than one tenth of the amount originally assessed, which inspires no confidence that any significant loss will in due course be established at all. This is not a case in which, in relation to that much more modest sum, there is any sensible basis for assuming that the claimants will be unable to pay, if ordered to do so, having previously given security for the costs of proceedings. In those circumstances, I propose to make no order for fortification of the cross undertaking.

Mr Stephen Auld QC and David Caplan appeared on behalf of the Claimant
Mr James Aldridge appeared on behalf of the First Defendant
Mr Thomas Weisselberg appeared on behalf of the Second Defendant