SUPREME COURT OF QUEENSLAND

CITATION:	*Virgtel Ltd & Anor v Zabusky & Ors* [2013] QSC 88
PARTIES:	**VIRGTEL LIMITED AND ANOR** (applicants) v **HARVEY ZABUSKY AND ORS** (respondents)
FILE NO:	BS6547 of 2005
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court of Queensland
DELIVERED ON:	4 April 2013
DELIVERED AT:	Brisbane
HEARING DATE:	19 July 2012, 28 August 2012, 4 September 2012
JUDGE:	Daubney J

ORDERS:

1. The application by the first and fifth respondents for discharge of the orders made on 10 July 2012 is dismissed, with costs reserved.

2. Paragraph 1 of the order made on 10 July 2012 is varied to read as follows:

1. Until the hearing of the application for final relief sought in the Application filed by leave on 10 July 2012, that:

(a) the second, third and fourth applicants shall make, and

(b) the first respondent shall cause Morganat Enterprises SA to make

applications (such applications to be made separately but contemporaneously) in the Federal High Court of Nigeria, suit number FHC/L/CS/547/2012 ("the Nigerian Proceedings") for the variation of the ex parte interim order made 30 May 2012 by amending:

(i) Order 1 by inserting before the words "pending the hearing" the words "other than in or in connection with the conduct of proceedings in

the Supreme Court of Queensland in proceedings BS 6547/05 ('the Queensland Proceedings')";

(ii) Order 2 by inserting at the end of that order the words "provided that nothing in this Order affects the ability of the defendants to conduct and defend the Queensland Proceedings".

3. Paragraph 4 of the order made on 10 July 2012 is varied to read as follows:

4. It is directed that the applicants conduct this proceeding, including all interlocutory applications in this proceeding:

(a) without doing so (if otherwise that be the case) by acting or purporting to act in the name of Virgin Technologies Limited;

(b) without holding themselves out (if otherwise that be the case) as directors, members or shareholders of Virgin Technologies Limited including that the applicants be relieved of any requirement of the Uniform Civil Procedure Rules or otherwise to include or read any statement that might otherwise be made in a pleading, affidavit, statement or submission as to whether they or any of them are directors, members or shareholders of Virgin Technologies Limited pending further direction of the Court.

CATCHWORDS: PROCEDURE – JUDGMENTS AND ORDERS – AMENDING, VARYING AND SETTING ASIDE – INHERENT POWER TO AMEND TO GIVE EFFECT TO MEANING AND INTENTION OF COURT – where the respondents make application for discharge of court orders – whether the application should be allowed

Uniform Civil Procedure Rules 1999 (Qld), r 5

Virgtel Ltd & Ors v Zabusky & Ors [2011] QSC 269
Virgtel Ltd & Zabusky [2006] 2 Qd R 81

COUNSEL: M M Stewart SC and S Monks for the applicants
D R Cooper SC and C Wilson for the first and fifth respondents on 19 July 2012
D Tucker (Solicitor) for the first and fifth respondents on 28 August 2012 and 4 September 2012

SOLICITORS: James Conomos Lawyers for the applicants
Tucker & Cowen for the first and fifth respondents

[1] The background to this litigation between interests associated with Mr van Leeuwen and Mr Zabusky respectively has been outlined in previous judgments in this Court and in the Court of Appeal. For present purposes, it is sufficient to state the following.

[2] Apart from the proceedings in this Court, the van Leeuwen interests and the Zabusky interests have, for many years, been engaged in litigation in other countries. One of those cases was a proceeding in the Federal High Court of Nigeria brought by Mr Zabusky and one of his companies, Amalia Investment Ltd, against, *inter alia*, companies controlled by Mr van Leeuwen by which the Zabusky interests sought, relevantly, declarations as to the shareholdings in Virgin Technologies Ltd ("VTL"). Those proceedings ("the Amalia Nigerian proceedings") are described at more length in one of my previous judgments.[1] As noted by the Chief Justice in his judgment in this proceeding,[2] the present proceeding in this Court concerns alleged misdealing in the property of VTL.

[3] As a consequence of certain legal advice he received, Mr Zabusky gave instructions for the Amalia Nigerian proceedings to be discontinued. The necessary notice of discontinuance was filed on 30 April 2012.[3]

[4] On 2 May 2012 I made orders and directions in relation to an interlocutory application concerning disclosure in the present proceeding. That application was listed to be heard by me in mid-July 2012.

[5] On 23 May 2012, a completely separate proceeding was commenced in the Federal High Court of Nigeria ("the new Nigerian proceedings"). The plaintiffs in the new Nigerian proceedings are Mr Lateph Akingbade Adeniji, Ms Abisoye Balogun, Mr Shanshi Otuyemi and Virgin Technologies Ltd. The first three plaintiffs in the new Nigerian proceedings were the subscribers to the Memorandum and Articles of Association of VTL. The relief they seek in Nigeria (the country of VTL's incorporation) is, in effect, for declarations that they are and always have been the shareholders of VTL. The defendants to the new Nigerian proceedings include "Morganant (sic) Enterprises SA" (it is not in issue that this is a reference to Morganat Enterprises SA ("Morganat"), which is a company controlled by Mr Zabusky), and Virgtel Global Networks NV, Viscaya Armadora SA Panama and Viscaya Armadora SA Anguilla (all companies controlled by Mr van Leeuwen).

[6] On 23 May 2012, an ex parte application was made by the plaintiffs in the new Nigerian proceedings, and on 30 May 2012 a judge of the Federal High Court of Nigeria made the following orders:

> "1. That the defendants as well as all individuals and corporations, their servants, agents, privies, nominees, donee of powers of attorney, administrators, successors-in-title OTHER THAN the subscribers to the Memorandum and Articles of association of 4th plaintiff Virgin Technologies Limited filed with the 2nd defendant Corporate Affairs Commission on 20th day of February, 1995 are restrained from holding themselves out within and outside the Federal Republic of Nigeria as DIRECTORS, MEMBERS and/or SHAREHOLDERS of 4th plaintiff (Virgin Technologies Limited) pending the hearing and determination of the Motion on Notice.

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1 *Virgtel Ltd & Ors v Zabusky & Ors* [2011] QSC 269.

2 *Virgtel Ltd v Zabusky* [2006] 2 Qd R 81 at [1].

3 See affidavit of Mr Zabusky sworn 30 July 2012, para 9(e).

> 2. That the defendants as well as all individuals and corporations, their servants, agents, privies, nominees, donee of powers of attorney, administrators, successors-in-title OTHER THAN the subscribers to the Memorandum and Articles of association of the 4th plaintiff Virgin Technologies Limited filed with the 2nd defendant Corporate Affairs Commission on 20th day of February, 1995 are restrained from ACTING or purporting to ACT within and outside the Federal Republic of Nigeria in the name of the 4th plaintiff (Virgin Technologies Limited) in any legal matter or action whether existing now or in the future pending the hearing and determination of he (sic) Motion on Notice."

[7] These injunctions have since been extended to trial.

[8] It seems that the parties, and their legal advisers, took seriously the fact that these far-reaching anti-suit injunctions had been ordered by the High Court of Nigeria. Mr Zabusky's lawyers in the present proceeding corresponded with Mr van Leeuwen's lawyers and with my Associate in late June 2012 drawing attention to the fact that these orders had been made in Nigeria and raising questions as to the impact of those orders on the future prosecution of the present proceeding.

[9] At the request of the applicants in the present proceeding, I agreed for the matter to be mentioned before me on 10 July 2012. The following parties were represented by counsel on that date, namely the applicants, the second and third respondents (i.e. Amalia Zabusky and Erez Zabusky) and the first and fifth respondents (i.e. Mr Zabusky and his company Softquest Solutions Pty Ltd). At this hearing, counsel for the applicants applied for interim injunctive relief seeking, in effect, that Mr and Mrs Zabusky and Softquest cause an application to be made in the new Nigerian proceedings to seek a variation of the ex parte order made in Nigeria so as to exclude the present proceeding from its ambit.[4] Directions were also sought with a view, amongst other things, to enabling the disclosure application listed for the following week to be heard with express acknowledgment that it was not an application brought by VTL. Agreement was reached between the applicants and the second and third respondents. Further considerable argument was engaged in between counsel for the applicants and counsel for the first and fifth respondents.

[10] One of the principal contentions sought to be advanced on behalf of the applicants was, in effect, that Mr Zabusky was the "driving force" behind the institution of the new Nigerian proceedings. This was hotly disputed by counsel for Mr Zabusky, and an affidavit by Mr Zabusky's solicitor was filed in the course of the hearing in which the solicitor deposed to having been specifically instructed by Mr Zabusky (who was in Nigeria at that time) that neither Mr Zabusky nor Softquest had in any way funded or provided any instructions for the institution of the new Nigerian proceedings. As is clear from the transcript of the hearing, in view of the evidence from the Zabusky side (subsequently confirmed in an affidavit sworn by Mr Zabusky on 30 July 2012), I did not attach any weight to the assertion that Mr Zabusky was the moving force behind the new Nigerian proceeding.

[11] As I have mentioned, counsel for the applicants and counsel for the second and third respondents were able to reach an accommodation at the hearing on 10 July 2012.

[12] As to the first and fifth respondents, I formed the view in the course of the hearing, and suggested to the parties, that an appropriate way forward would be for the

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4 See transcript of hearing on 10 July 2012 at T1-5.10-25.

applicants and Mr Zabusky to make, or cause to be made, separate but contemporaneous applications to the High Court of Nigeria for a variation of the anti-suit injunctions so as to carve out, in effect, the present proceedings from its ambit. The reference to "cause to be made" was in acknowledgment of the fact that Mr Zabusky personally was not a party to the new Nigerian proceedings, but his company Morganat was – the intention, as discussed with counsel in the course of argument, was for Mr Zabusky to cause Morganat to make the application for variation in Nigeria.[5] I was also disposed to making a direction, and in the end there was no significant opposition to this, with respect to the conduct of the present proceedings, and particularly with respect to the disclosure application then listed for 19 and 20 July 2012. As appears from the transcript of the hearing, a relevant consideration in making that order and direction was the assurance I received from Mr Zabusky's counsel in the course of the hearing that his instructions were to bring the present proceeding on for trial in Queensland as quickly as possible.[6] Having indicated the nature of the orders I was prepared to make, counsel were left to prepare a draft order in terms satisfactory to them. A form of draft order was subsequently provided to me by counsel, and I made orders in terms of that draft. Those orders included the following:

> "1. Until the hearing of the application for the final relief sought in the Application filed by leave 10 July 2012 or earlier order, that:
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> (a) the applicants; and
>
> (b) the first respondent,
>
> separately, but contemporaneously, make or cause to be made, an application to be heard forthwith in the Federal High Court of Nigeria, suit number FHC/L/CS/547/2012 ('the Nigerian Proceedings') for the variation of the ex parte interim order made 30 May 2012 by amending:
>
> (c) Order 1 by inserting before the words 'pending the hearing' the words 'other than in or in connection with the conduct of proceedings in the Supreme Court of Queensland in proceedings BS 6547/05 ("the Queensland Proceedings")';
>
> (d) Order 2 by inserting at the end of that order the words 'provided that nothing in this Order affects the ability of the defendants to conduct and defend the Queensland Proceedings'.
>
> 2. Until the hearing of the application for the final relief sought in the Application filed by leave 10 July 2012 or earlier order, that the second respondent be restrained from taking any step to inhibit the making or the success of any application in the Nigerian Proceedings for the variation of the ex parte interim order made 30 May 2012 by amending:
>
> (a) Order 1 by inserting before the words 'pending the hearing' the words 'other than in or in connection with the conduct of proceedings in the Supreme Court of Queensland in proceedings BS 6547/05 ("the Queensland Proceedings")';

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5 See, for example, T1-33.18-45.

6 T1-32.28.

(b) Order 2 by inserting at the end of that order the words 'provided that nothing in this Order affects the ability of the defendants to conduct and defend the Queensland Proceedings'.

3. For the purposes of UCPR rule 904, it is sufficient service for this order to be served upon the solicitors on the record for the applicants, the first respondent and the second respondent.

Directions

4. The applicants are able to conduct these proceedings, and in particular the applications listed for hearing on 19 and 20 July 2012:-

(a) without doing so (if otherwise that be the case) by acting or purporting to act in the name of Virgin Technologies Limited;

(b) without holding themselves out (if otherwise that be the case) as directors, members or shareholders of Virgin Technologies Limited including that the applicants be relieved of any requirement of the Uniform Civil Procedure Rules or otherwise to include or read any statement that might otherwise be made in a pleading, affidavit, statement or submission as to whether they or any of them are directors, members of (sic) shareholders of Virgin Technologies Limited pending further order."

[13] The proceeding was before me again on 19 July 2012, putatively for the hearing of the disclosure application. At the outset, however, counsel for the first and fifth respondents made an application for my orders of 10 July 2012 to be discharged. For reasons which are apparent on the face of the transcript of the hearing on that day, and which are not necessary to traverse here, neither side was in a position to argue that application on that day, and it was adjourned for hearing at a later date. As a consequence, the disclosure application was also adjourned to a date to be fixed.

[14] The hearing of the application to discharge the orders made on 10 July 2012 eventually came on before me on 28 August and 4 September 2012. Two principal arguments were advanced at that hearing on behalf of Mr Zabusky:

(a) That the orders of 10 July 2012 ought be discharged because of material non-disclosure by the applicants; and

(b) That the orders of 10 July 2012 lacked utility, and ought be discharged for that reason alone.

[15] In respect of the first argument, the "material facts" which Mr Zabusky said had not been disclosed were that on 18 June 2012 the van Leeuwen parties in the new Nigerian proceedings had filed conditional appearances in that proceeding and Virgtel Global Networks NV had also filed a motion seeking to have the new Nigerian proceedings struck out. It was argued that the hearing on 10 July 2012 was in the nature of an ex parte application, that in those circumstances the applicants were required to put all matters, both favourable and unfavourable before the Court, and that these omitted facts were of a nature such as to have had the potential to influence the outcome of the hearing on 10 July 2012.

[16] Evidence was put before me on behalf of the applicants to prove, and I accept, that as at 10 July 2012 the Australian lawyers for the van Leeuwen interests did not know, and had not been instructed, that the motion to strike out the new Nigerian

proceedings had in fact been filed some weeks before the hearing before me on 10 July 2012. The applicants' Nigerian solicitor did not tell the applicants' Australian lawyers about the motion to strike out until after the hearing on 10 July 2012. Mr Simonet, who is Mr van Leeuwen's factotum in respect of the various pieces of litigation, knew about the filing of the motion in Nigeria, but says that he did not communicate this fact to the Australian lawyers because he did not appreciate that that fact could be relevant to the hearing on 10 July 2012. I accept that any omission to inform me of the fact that the motion to strike out had been filed in Nigeria on 18 June 2012 was innocent.

[17] What I was, however, told by counsel for the applicants during the hearing on 10 July 2012 was that the van Leeuwen parties had entered conditional appearances in the new Nigerian proceedings and that it was proposed to make application for the ex parte orders to be discharged.[7]

[18] The hearing on 10 July 2012 was clearly not ex parte. The Zabusky interests were represented and argued the application. True it is that the matter came on with little notice, but it is also the case that the issues for decision on that day were attended by argument from counsel for both sides. Indeed, as I have already noted, the Zabusky side was able to produce an affidavit, albeit sworn on information and belief, but nevertheless of instructions taken from Mr Zabusky by which he denied being the moving party behind the new Nigerian proceedings.

[19] In any event, it was argued on behalf of the first and fifth respondents that:

(a) to the extent that the hearing on 10 July 2012 be regarded as akin to an ex parte application, the fact that Virgtel Global Networks NV had actually already filed a motion to strike out the new Nigerian proceedings was a matter of which the applicants should have, but failed to, inform me, and it was a fact which went to the discretion I exercised on that day;

(b) to the extent that the hearing on 10 July 2012 was a contested hearing, the subsequent discovery of this fact, i.e. that Virgtel Global Networks NV had actually filed a motion to strike out the new Nigerian proceedings, was a matter which required the orders of 10 July 2012 to be set aside in the interests of justice.

[20] In support of both of these cases, significant evidence was led in relation to the proceedings in Nigeria, what motions had been filed when, and the process for determination of those applications. Particular reliance was placed on evidence to the effect that the motion to dismiss the new Nigerian proceedings on jurisdictional grounds (that being the basis of the motion to strike out) needed to be determined first.

[21] It was argued that, if I had been informed of this on 10 July 2012, it would have removed the necessity for me to make orders as a matter of urgency, and would have been a discretionary factor to take into account when deciding whether it was necessary to make any orders at all, i.e. the approach should have been to wait and see the outcome of the motion to strike out the new Nigerian proceedings.

[22] As to the first of these points, such urgency as attached to the need to make orders on 10 July 2012 arose not because of anything that was or was not happening in Nigeria, but because the disclosure application in the present proceeding was then

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7 T1-43.10-15.

listed for hearing in the following week. Nothing about the fact that an application to strike out the Nigerian proceedings had been filed some weeks previously would have had any impact on what was then a fixture in the calendar for the present proceedings.

[23] As to the second point, even if I had been informed that Virgtel Global Networks NV had actually filed its motion to dismiss, I do not consider that knowledge of that fact would have had any impact on the nature of the orders which I was, in fact, disposed to make on 10 July 2012. Indeed, the orders which I was disposed to, and did, make on 10 July 2012 were directed to having the parties seek to have the present proceedings excluded from the ambit of the new Nigerian proceedings. There is no reason why such an application to the court in Nigeria should be seen as incompatible with the fact that an application to strike out those proceedings had been filed. Indeed, even assuming that the application to strike out the Nigerian proceedings needed to be heard first in time, the applications to "carve out" the Queensland proceedings from the anti-suit injunctions would conformably follow such an application, in the event that the court in Nigeria is not inclined to summarily dismiss the new Nigerian proceedings.

[24] To the extent that there was an element of urgency about the hearing on 10 July 2012, the need to make orders to advance the current proceedings was also confirmed by Mr Zabusky's desire, expressed through his counsel, to get the current proceedings on for trial as quickly as possible. I note that in a more recent affidavit, Mr Zabusky is a little more sanguine with respect to the potential impact of the new Nigerian proceedings on the prosecution of the current proceedings. In his affidavit sworn on 30 July 2012, Mr Zabusky said:

> "If I derive a collateral benefit by reason of the subscribers succeeding in [the new Nigerian proceedings], namely this matter not being actively progressed, then so be it, as that saves me time and money, and the need to defend what I regard as, and is, false allegations by Mr van Leeuwen."

[25] Of course, what Mr Zabusky now perceives as a collateral benefit from the new Nigerian proceedings does not impact on the clear and proper statement of intent made to me on his behalf in the course of the hearing on 10 July 2012. Nor does his perception of a "collateral benefit" impact on the implied undertakings to which he is subject in the current proceedings by virtue of the operation of r 5 of the *Uniform Civil Procedure Rules*.

[26] In short, for the purposes of the present proceedings it was just as much in Mr Zabusky's interests as in the interests of all the other parties for orders to be made on 10 July 2012.

[27] Moreover, insofar as it was submitted that my decision to make the orders on 10 July 2012 was influenced by assertions that Mr Zabusky was the driving force behind the new Nigerian proceedings, and had caused those proceedings to be commenced in an attempt to thwart the current proceeding, I note again that I made it clear on 10 July 2012 that my decision to make the orders was not based on any assumption that Mr Zabusky was the guiding hand behind the new Nigerian proceedings[8]. Lest there be any doubt on that point, when the parties were before me on 19 July 2012 I reaffirmed that I had not made such a finding against

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[8] Transcript of 10 July 2012, T1-32.39-44.

Mr Zabusky, and had not needed to do so in order to make the orders on 10 July 2012[9].

[28] Accordingly, Mr Zabusky's contentions concerning an alleged material non-disclosure do not justify a discharge of the orders made on 10 July 2012. Nor do the interests of justice in the current proceeding require the orders to be discharged. On the contrary, the orders were designed to enable the parties to advance the current proceeding in accordance with implied undertakings imposed by the *UCPR*.

[29] The second principal argument advanced on behalf of Mr Zabusky was that the orders of 10 July 2012 lacked utility. The basis for this argument was a contention that the orders of 10 July 2012 required Mr Zabusky personally to intervene in the new Nigerian proceedings in order to seek a variation of the ex parte anti-suit injunction.

[30] This argument misconceives the effect of the orders made on 10 July 2012. Indeed, with respect, it would seem that there has been a comprehensive misunderstanding of the orders made and the basis for the orders. As I have already noted, it was expressly canvassed in argument on 10 July 2012 that, so far as Mr Zabusky was concerned, the order was to have him cause Morganat (his company, which is a party to the new Nigerian proceedings) to make the necessary application for variation. It was to encompass that precise circumstance that the applicants sought that the order be couched in terms of an application "being caused to be made". Similarly, it was precisely to cater for that circumstance that the order which I made was cast in those terms.

[31] Notwithstanding the fact that this is apparent on the face of the transcript of the hearing on 10 July 2012, however, it appears that it is necessary for me to vary the terms of that order in order to make it abundantly and unequivocally clear that the order does not require Mr Zabusky to personally intervene in the new Nigerian proceedings, but rather requires him to cause his company Morganat to make the application envisaged by the order.

[32] Once the order is understood in those terms, the argument with respect to lack of utility falls away.

[33] There are several further matters arising out of the applicants' submissions which need to be addressed.

[34] First, the applicants advanced before me arguments to the effect that the anti-suit injunctions granted by the High Court in Nigeria do not bind this Court and ought not be regarded as having the effect of preventing the further prosecution of the current proceedings. I do not propose dealing with this argument at this juncture. It is fundamentally inconsistent with the applicants' primary position in respect of the need to have the orders which it sought on 10 July 2012. In other words, if the applicants' position truly is that the anti-suit injunctions ordered in Nigeria are not binding in Queensland, then one wonders what utility there was in the applicants seeking the orders on 10 July 2012, let alone continuing to argue for the maintenance of those orders. Of course, if the applicants themselves wish to have the orders of 10 July 2012 discharged on the basis that they have no utility because the anti-suit injunctions made in Nigeria are not binding in Queensland in any event,

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[9] See transcript of hearing on 19 July 2012, T1-8.38; 1-9.13, 56.

then I will consider the merits of the arguments raised on that point. There are sound policy reasons for the higher courts of different jurisdictions to act with comity. It would be a serious matter for me to accede to this argument, and therefore do not consider it appropriate to entertain and rule on the argument unless and until it is necessary to do so.

[35] The second issue concerns paragraph 4 of the orders made on 10 July 2012. Initially in the course of the hearing before me in the present application, senior counsel for the applicants (who, in fairness, had not appeared before me in the application on 10 July 2012) advanced the proposition that paragraph 4 of the orders made on 10 July 2012 amounted to a declaration of rights which bound the parties. It is quite clear on the face of the transcript of 10 July 2012 that that is not what was intended by that order. Indeed, after having the opportunity to take further instructions in the hearing before me, senior counsel for the applicants conceded that to be the case. It ultimately became common ground between the parties that paragraph 4 of the orders made on 10 July 2012 was not a declaration of rights, but was intended to be a direction with respect to the conduct of the present proceedings. One might have thought that so much was clear from the fact that the relevant paragraph is immediately preceded by the heading "Directions". Be that as it may, in order to avoid any further confusion, it is appropriate for me to vary the orders made on 10 July 2012 to make it clear that it is a direction and not a declaration. I note for completeness that the utility in making this direction lies in making it clear (including, if needs be, to the Court in Nigeria) that the current proceeding is derivative in nature.[10] So much should be clear in any event from the 2006 judgment of the Chief Justice.[11]

Disposition

[36] For the reasons set out above, the first and fifth respondents have not persuaded me that it is appropriate to discharge the orders made on 10 July 2012. As noted above, however, it has become apparent that some variations to those orders are necessary, if for no other reason than to avoid any further misunderstanding as to their effect by both sides. Accordingly, it is appropriate for the costs of this application to be reserved.

[37] There will be the following orders:

1. The application by the first and fifth respondents for discharge of the orders made on 10 July 2012 is dismissed, with costs reserved.

2. Paragraph 1 of the order made on 10 July 2012 is varied to read as follows:

    1. Until the hearing of the application for final relief sought in the Application filed by leave on 10 July 2012, that:

        (a) the second, third and fourth applicants shall make, and

        (b) the first respondent shall cause Morganat Enterprises SA to make

        applications (such applications to be made separately but contemporaneously) in the Federal High Court of Nigeria, suit number FHC/L/CS/547/2012 ("the Nigerian Proceedings") for the variation of the ex parte interim order made 30 May 2012 by amending:

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10 See also my observations in the hearing on 10 July 2012 at T1-14.45-50.

11 [2006] 2 Qd R 81.

(i) Order 1 by inserting before the words "pending the hearing" the words "other than in or in connection with the conduct of proceedings in the Supreme Court of Queensland in proceedings BS 6547/05 ('the Queensland Proceedings')";

(ii) Order 2 by inserting at the end of that order the words "provided that nothing in this Order affects the ability of the defendants to conduct and defend the Queensland Proceedings".

3. Paragraph 4 of the order made on 10 July 2012 is varied to read as follows:

4. It is directed that the applicants conduct this proceeding, including all interlocutory applications in this proceeding:

(a) without doing so (if otherwise that be the case) by acting or purporting to act in the name of Virgin Technologies Limited;

(b) without holding themselves out (if otherwise that be the case) as directors, members or shareholders of Virgin Technologies Limited including that the applicants be relieved of any requirement of the Uniform Civil Procedure Rules or otherwise to include or read any statement that might otherwise be made in a pleading, affidavit, statement or submission as to whether they or any of them are directors, members or shareholders of Virgin Technologies Limited pending further direction of the Court.