JUDGMENT : Tomlinson J. Commercial Court. 29 February 2008

1. The title of Part 71 of the Civil Procedure Rules is "Orders to Obtain Information from Judgment Debtors". The question which arises in this case is whether pursuant thereto the court may permit service out of the jurisdiction of an order requiring an officer of a corporate judgment debtor to attend court to provide information about the judgment debtor's assets or any other matter about which information is needed to assist in the enforcement of a judgment.

2. Capri Marine Limited, the Defendant in this action, is a judgment debtor. Judgment was given on 6 April 2005 in favour of the Claimant Vitol S.A. in the sum of US$6,793,518.28. Of that amount only US$1,000,000 has been recovered. The judgment itself recited that Vitol was to give credit against the judgment sum for the amount of US$500,000 paid to Vitol in February 2001. A further US$500,000 was paid into court in November 2002. No further sum has been recovered since judgment. Capri is a Maltese company which probably only ever owned one asset, the tanker "Alambra" whose admitted unseaworthiness caused Vitol, who chartered her in 2000 to carry a cargo of petroleum products from Tallinn, Estonia to Singapore, the loss and damage in respect of which this action was brought.

3. Capri was managed from Greece by Starlady Marine Limited. In May 2001 the "Alambra" was allegedly sold to a Marshall Islands company, Aurora Maritime Inc or Ltd, for US$2,000,000. On the evidence available it seems likely that Aurora is likewise managed from Greece by Starlady. The proceeds of sale were apparently paid to Starlady as Capri's agent. In an effort to find out more about what became of those proceeds and more generally about Capri's assets, Vitol applied for two orders pursuant to CPR 71.2, which provides:

"Order to attend court

(1) A judgment creditor may apply for an order requiring

(a) a judgment debtor; or

(b) if a judgment debtor is a company or other corporation, an officer of that body,

to attend court to provide information about-

(i) the judgment debtor's means; or

(ii) any other matter about which information is needed to enforce a judgment or order.

(2) An application under paragraph (1)-

(a) may be made without notice; and

(b) (i) must be issued in the court which made the judgment or order which it is sought to enforce, except that

(ii) if the proceedings have since been transferred to a different court, it must be issued in that court.

(3) The application notice must

(a) be in the form; and

(b) contain the information

required by the relevant practice direction.

(4) An application under paragraph (1) may be dealt with by a court officer without a hearing.

(5) If the application notice complies with paragraph (3), an order to attend court will be issued in the terms of paragraph (6).

(6) A person served with an order issued under this rule must

(a) attend court at the time and place specified in the order;

(b) when he does so, produce at court documents in his control which are described in the order; and

(c) answer on oath such questions as the court may require.

(7) An order under this rule will contain a notice in the following terms

'You must obey this order. If you do not, you may be sent to prison for contempt of court.'"

4. The application was for orders directed to Mr Gerassimos Kalogiratos and Mr Ioannis Kalogiratos, father and son, both of whom were until shortly before judgment was given in April 2005 directors of Capri. Gerassimos Kalogiratos remains a director of Capri. The Maltese Register of Companies recorded the resignation of Ioannis Kalogiratos as a director of Capri on 4 April 2005. The circumstances in which Ioannis Kalogiratos came to resign as a director of Capri are, at any rate as is so far explained, puzzling. However the questions raised by that exercise are irrelevant to anything which I have to decide. Both Gerassimos and Ioannis Kalogiratos have at all material times been and remain directors of Starlady, although that too is irrelevant to anything which I have to decide.

5. Orders under CPR 71.2 in standard form were made by Andrew Smith J on 30 August 2005 on the ex parte application. They are in identical form. That addressed to Ioannis Kalogiratos provides, so far as material:

"Order to attend court for questioning [there then appears the action title]

On 30th August 2005 Mr Justice Andrew Smith sitting at the High Court of Justice, Commercial Court considered the application of the Claimant ('the judgment creditor'), which shows that: *a judgment or order given on 6th April 2005 by Cresswell J in claim 2001 Claim No. 39 ordered the defendant ('the judgment debtor') to pay money to the judgment creditor, and that the amount now owing under the judgment order is US$5,793,518.28 plus costs plus further interest on the principal sum since 6th April 2005 accruing daily in the amount of US$...* and the court orders that

1. IOANNIS JOHN KALOGIRATOS of 61-65 Filonos Street, Piraeus, Greece who is an officer of the judgment debtor company attend the Commercial Court at the Royal Courts of Justice on the first working day following the expiration of 21 clear days from service of this order upon him before a judge at 10:30 a.m.

   to provide information about the judgment debtor's means and any other information needed to enforce the judgment order.

   The questioning will take place before a judge.

2. The officer at that time and place produce at court all documents in the judgment debtor's control which relate to the judgment debtor's means of paying the amount due under the judgment or order and which relate to those matters mentioned in paragraph 1. The documents produced must include those shown in the attached list.

3. The officer at that time and place answer on oath, all the questions which the court asks and which the court allows the judgment creditor to ask.

4. The court where the questioning is to take place may make an order for the payment of the costs of the application and of the hearing.

   To IOANNIS JOHN KALOGIRATOS of 61-65 Filonos Street, Piraeus, Greece

   You must obey this order. If you do not, you may be sent to prison for contempt of court

   Amount owing

   The application shows that the amount owing under the judgment or order

   (including any costs and interest) is £5,793,518.28

   The judgment creditor has paid a court fee of £50.00

   Total £5,793,568.28

   …

   The information required

   You will be required to disclose full details of your income and outgoings and your assets (what you own) and liabilities (what you owe) and the matters referred to in paragraph 1 of the order.

   (If you have been ordered to attend as an officer of a company or corporation, you will be required to disclose the same details about the company or corporation).

   Documents in your control

   You must produce all documents which confirm the information required. If you do not have them in your possession, you must get them if you can.

   These will include:

   • *pay slips*
   • *bank statements*
   • *building society books*
   • *share certificates*
   • *rent book*
   • *mortgage statement*
   • *hire-purchase and similar agreements*
   • *court orders on which you still owe money*
   • *other outstanding bills*
   • *electricity, gas, water and council tax bills for the last year.*

   If you have a business or you are a partner in a business, or the judgement debtor is a company or corporation, they will include the above documents so far as they relate to the business and

   • *bills or invoices owed to the judgment debtor*
   • *two years' balance sheets and profit and loss accounts*
   • *current management accounts.*

If a list of additional documents is attached to this order, these too must be produced."

A list of additional documents was indeed attached. It was headed:

"Documents which the officer is required to produce in additional to those set out in the note on page 1."

That list called for the production of copious documentation concerning the conduct of Capri's business including in particular the sale of the vessel in May 2001.

6. On the same application Andrew Smith J gave permission for service out of the jurisdiction of these orders on Gerassimos and Ioannis Kalogiratos at the address of Starlady in Piraeus. Both Gerassimos and Ioannis Kalogiratos are resident in Greece.

7. Gerassimos and Ioannis Kalogiratos seek to set aside both the orders made against them and the orders permitting service of the same upon them out of the jurisdiction in Greece. They say that the court lacked jurisdiction either to make the orders or to permit service thereof out of the jurisdiction. Ioannis Kalogiratos additionally says that the court lacked jurisdiction to make the order against him because he was not when it was made a Director of Capri. As I have already set out the order recites that "Ioannis [John] Kalogiratos of 61-65

Filonos Street, Piraeus, Greece [who] is an officer of the judgment debtor company" whereas when the order was made he was not.

8. An order made under CPR 71.2 against an officer of a corporate judgment debtor is not an order made against the judgment debtor itself It is not therefore an order made against the existing Defendant company which is amenable to the jurisdiction. This is inherent in the wording of the order, but is particularly spelled out by CPR 71.2(6), with its reference to "a person served with an order". The person served with an order in a case such as this is a natural person, the officer, not a corporate person, the judgment debtor. That is why, pursuant to CPR 71.2(7) an order under this rule will contain a notice in the following terms:

"*You must obey this order. If you do not, you may be sent to prison for contempt of court.*"

9. In these circumstances I am unable to accept the analogy pressed upon me by Mr Parsons QC with an order for an affidavit verifying specific disclosure which is always, he submitted, directed to the officers of the company and served upon them within the existing proceedings. I do not believe that that is the correct analysis. Such an order is directed to the company itself as a party to the action but it requires the company to comply by procuring that one of its officers, a "*proper*" or appropriate officer, makes the required affidavit. For the same reason I do not consider that CPR 6.30(2) provides the court with machinery pursuant to which it may permit service out of the jurisdiction of an order made under CPR71.2(1)(b). CPR 6.30(2) provides:

"Unless paragraph (3) applies, where the permission of the court is required for a claim form served out of the jurisdiction the permission of the court must also be obtained for service out of the jurisdiction of any other document to be served in the proceedings."

That provision is I think concerned with documents which require to be served on parties to the proceedings. Furthermore, as Aikens J pointed out in ***C. Inc. plc v. L.*** [2001] 2 All ER (Comm) 446, CPR 6.30(2) itself requires the identification of a ground within CPR 6.20 which gives the court power to grant permission to serve out of the jurisdiction the document service of which is sought to be effected. It is not suggested that there is any head of CPR 6.20 under which permission could be granted to serve either an order or an application for an order under CPR 71.2(1)(b).

10. That being so, the question arises on what basis the court can assume an exorbitant jurisdiction to permit service of such an order out of the jurisdiction? The closest analogy is a witness summons issued under CPR 34.2, which, in the language of that rule, "is a document issued by the court requiring a witness to (a) attend court to give evidence or (b) produce documents to the court." It is axiomatic that a party cannot compel a witness in a foreign country to attend a trial in England and Wales – see the note to that effect at CPR 34.13.1. The exception which proves the rule is that what was in 1981 a writ of subpoena and is now a witness summons may by virtue of section 36(1) of the Supreme Court Act 1981 in the discretion of the court be issued in special form commanding the witness to attend the trial wherever he shall be within the United Kingdom, and the service of any such writ (now witness summons) in any part of the United Kingdom shall be as valid and effectual for all purposes as if it had been served within the jurisdiction of the High Court.

11. A similar problem arose in connection with service out of the jurisdiction of applications under section 51 of the Supreme Court Act 1981 directed to securing payment of costs by a person not hitherto formally a party to an action. Such applications are now dealt with expressly by CPR 6.20(17) which provides:

"*In any proceedings to which rule 6.19 does not apply, a claim form may be served out of the jurisdiction with the permission of the court if*

…

Claim for costs order in favour of or against third parties

(17) A claim is made by a party to proceedings for an order that the court exercise its power under section 51 of the Supreme Court Act 1981 to make a costs order in favour of or against a person who is not a party to those proceedings."

In ***National Justice Compania Naviera S.A. v. Prudential Assurance Co. Ltd*** [2000] 1 WLR 603 the Court of Appeal decided that even before that provision of the rules had come into force the court had power to permit service out of the jurisdiction of such an application. The rationale of the decision was explained by Waller LJ in this way:

"*As will by now be apparent, it seems to me that the English court does have jurisdiction to decide in relation to a non-party resident outside the jurisdiction whether they should be liable for costs under section 51 of the Act of 1981. It seems to me that it must be open to a party to serve a notice on someone outside the jurisdiction which in effect says: 'We have issued a summons in the action and we are going to contend you have had such a connection with proceedings within the jurisdiction and, more clearly still, that it is actually you that brought the action and that you have submitted to the jurisdiction, and we are going to seek an order for costs against you on that basis.'* "

I do not consider that this rationale assists here by analogy. As it happens Vitol is in this action additionally claiming relief on this basis against both Gerassimos and Ioannis Kalogiratos. It is not however every officer of a company who can properly be described as its alter ego. An order under CPR 71.2 depends upon no such description. It is sufficient to render a person amenable to such an order that he be "an officer" of the judgment debtor. The fact that the court has jurisdiction to permit service upon Gerassimos and Ioannis Kalogiratos out of the jurisdiction of an application seeking their joinder to the action for the purpose of being required to pay costs

does not mean that the court has jurisdiction to permit service upon them of an order requiring their attendance before the English court on pain of imprisonment.

12. I find support for my approach in the decision of the court of appeal in ***In re Tucker (a bankrupt) ex parte Tucker***, [1990] Ch 148. That case was concerned with section 25 of the Bankruptcy Act 1914 which, so far as material, provides as follows:

"*(1) the court may, on the application of the official receiver or trustee, at any time after a receiving order has been made against a debtor, summon before it the debtor or his wife, or any person known or suspected to have in his possession any of the estate or effects belonging to the debtor, or supposed to be indebted to the debtor, or any person whom the court may deem capable of giving information respecting the debtor, his dealings or property, and the court may require any such person to produce any documents in his custody or power relating to the debtor, his dealings or property. (2) If any person so summoned, after having been tendered a reasonable sum, refuses to come before the court at the time appointed, or refuses to produce any such document, having no lawful impediment made known to the court at the time of its sitting and allowed by it, the court may, by warrant, cause him to be apprehended and brought up for examination. (3) The court may examine on oath, either by word of mouth or by written interrogatories, any person so brought before it concerning the debtor, his dealings, or property. ... (6) The court may, if it thinks fit, order that any person who if in England would be liable to be brought before it under this section shall be examined in Scotland or Ireland, or in any other place out of England.*"

The person sought to be brought before the court for examination was not the debtor but the debtor's brother who, it was said, was a person "*whom the court may deem capable of giving information respecting the debtor*". It was held that this section does not assert jurisdiction over persons resident abroad, not even over British subjects resident abroad that being the fall-back argument. Dillon LI said:

"The trustee's advisers accept, however, that, in the light of the accepted practice of nations and comity in the field of international law and international relations, eyebrows might be raised at the notion that Parliament had in 1914 or 1883 given jurisdiction to any bankruptcy court, which might well be a county court, to summon anyone in the world before it to be examined and produce documents. Accordingly, by a second submission which Scott J accepted, they submit that the jurisdiction at least extends to any British subject anywhere in the world. ... I look, therefore, to see what section 25(1) is about, and I see that it is about summoning people to appear before an English court to be examined on oath and to produce documents. I note that the general practice in international law is that the courts of a country only have power to summon before them persons who accept service or are present within the territory of that country when served with the appropriate process. There are exceptions under R.S.C. Order 11, but even under those rules no general power has been conferred to serve process on British subjects resident abroad. Moreover the English court has never had any general power to serve a subpoena ad testificandum or subpoena duces tecum out of the jurisdiction on a British subject resident outside the United Kingdom, so as to compel him to come and give evidence in an English court. Against this background I would not expect section 25(1) to have empowered the English court to haul before it persons who could not be served with the necessary summons within the jurisdiction of the English court."

It should however be noted that the wording of section 25(6) was in any event conclusive. As Dillon LJ noted, at page 158, that wording inevitably carries the connotation that if the person is not in England he is not liable to be brought before the English court under the section.

13. In ***re Tucker*** was considered and distinguished in ***In re Seagull Manufacturing Co. Ltd*** [1993] Ch 345. That case was concerned with section 133 of the Insolvency Act 1986 which provides:

"Public examination of officers. (1) Where a company is being wound up by the court, the official receiver or, in Scotland, the liquidator may at any time before the dissolution of the company apply to the court for the public examination of any person who- (a) is or has been an officer of the company; or (b) has acted as liquidator or administrator of the company or as receiver or manager or, in Scotland, receiver of its property; or (c) not being a person falling within paragraph (a) or (b), is or has been concerned, or has taken part, in the promotion, formation or management of the company. (2) Unless the court otherwise orders, the official receiver or, in Scotland, the liquidator shall make an application under subsection (1) if he is requested in accordance with the rules to do so by- (a) one-half, in value, of the company's creditors; or (b) three-quarters, in value, of the company's contributories. (3) On an application under subsection (1), the court shall direct that a public examination of the person to whom the application relates shall be held on a day appointed by the court; and that person shall attend on that day and be publicly examined as to the promotion, formation or management of the company or as to the conduct of its business and affairs, or his conduct or dealings in relation to the company. (4) The following may take part in the public examination of a person under this section and may question that person concerning the matters mentioned in subsection (3), namely - (a) the official receiver; (b) the liquidator of the company; (c) any person who has been appointed as special manager of the company's property or business; (d) any creditor of the company who has tendered a proof or, in Scotland, submitted a claim in the winding up; (e) any contributory of the company."

Section 134 relates to the enforcement of section 133. Amongst other things it provides:

"*(1) If a person without reasonable excuse fails at any time to attend his public examination ... he is guilty of a contempt of court and liable to be punished accordingly.*"

The question in this case was whether the court could permit service out of the jurisdiction in the Channel Islands of an order requiring a former director of an English company in compulsory liquidation to attend for public

examination. The Court of Appeal held that it could. In so doing it distinguished *In re Tucker*, a decision on a wholly different statutory provision which related to the private examination not of the debtor but of a person who came within the wide words "*any person whom the court may deem capable of giving information respecting the debtor, his dealings or property*". The court noted that "*the class of persons who could, in Dillon L.T's phrase, be hauled before the court under section 25 of the Act of 1914 was notably wider than the three categories of section 133 of the Act of 1986. In particular it was not limited to the debtor but included anyone whom the court suspected might have relevant property or information. In contrast the class of persons in section 133 is limited to those who might be said to have had responsibility for the company.*" See per Peter Gibson J at page 358A. The court also pointed to the absence from the provision of the Insolvency Act under consideration of any wording equivalent to section 25(6) of the Bankruptcy Act, which I have already set out above. Finally, the Court of Appeal saw no need to infer from a territorial limitation in the first statutory provision a like limitation in a section relating to public examination.

14. Throughout his judgment Peter Gibson J, who delivered the leading judgment, emphasised what I might call the public regulatory nature of the jurisdiction which was there under consideration. It would only arise in the context of the compulsory winding-up of an English company or of a foreign company having a sufficient connection with the English jurisdiction to justify its winding-up here. The jurisdiction can only be invoked on the application of one publicly appointed official, the Official Receiver. Peter Gibson J also pointed out that the class of persons amenable to the section 133 jurisdiction, being limited to those who might be said to have had responsibility for the company, is more limited than that to which section 25 of the Bankruptcy Act applied.

15. Section 133 of the Insolvency Act, like CPR 71.2, enables orders to be made against an officer of the company, so the last point is not in itself a point of distinction between the two different jurisdictions. However the class is in the first case limited in that only those who have been officers of an English company, or of a company with a sufficient connection with the English jurisdiction to justify its winding-up here, are amenable to an order. The public interest in investigating the affairs of such a company which "has come to a calamitous end" pointed to the need for such persons to be amenable to this jurisdiction, regardless of where they live.

16. As Mr Macey-Dare pointed out, CPR 71.2 "is not limited to any particular type of proceedings. It applies in any proceedings before the English courts in which a money judgment (which includes a costs order) may be given. It also applies to any judicial or arbitral proceedings in any other court or tribunal in which a money judgment or monetary award is given or made, which can be recognised and enforced in England in the same manner as a judgment of the English court. This includes:

    a) *Money judgments given by other courts in the EU (26 countries) or EFTA (four countries) and enforceable as judgments in England under the Judgments Regulation/the Lugano Convention and CPR 74.*

    b) *Monetary awards made by arbitral tribunals in any other* ***New York Convention*** *country (141 countries) and enforceable as judgments in England under sections 101-3 of the Arbitration Act 1996 and CPR 62.18.*"

    Indeed, as Mr Macey-Dare also pointed out, only 52 countries are not parties to the **New York Convention.** Only one of these (Taiwan) is a significant trading nation. In this way, submitted Mr Macey-Dare, CPR 71.2 "*is capable of applying to a vastly wider range of persons than section 133 of the Insolvency Act 1986. It applies to any person who is or (on Vitol's case) ever was an officer of a company which litigates anywhere in Europe (and beyond), or which arbitrates practically anywhere in the world, even though neither the company, nor the dispute giving rise to the judgment or award, have anything more to do with England, than that the UK and the country in which the litigation or arbitration took place have both signed up to the same recognition and enforcement treaty.*"

17. Both Hirst LJ and Peter Gibson J in ***In re Seagull*** emphasised that what the court was there concerned with was ascertaining who came within the legislative grasp or intendment of the section. The efficient and thorough conduct of an investigation into the affairs of a failed company pointed to an overriding public interest. No such public interest is engaged where what is under consideration is the enforcement of private law obligations which may have little or no connection with the English jurisdiction. I do not consider that the decision of the Court of Appeal in ***In re Seagull*** provides any justification for holding that an order made under CPR 71.2(1)(b) may be served out of the jurisdiction.

18. The court is not in such circumstances wholly powerless to assist a judgment creditor. It may issue a letter of request to the judicial authorities of the country in which the officer who it is desired to examine is resident, either under CPR 34.13 or, in the European Union context, CPR 34.23.

19. I did not hear argument on the question whether, in such circumstances, the two orders made under CPR 71.2 should be set aside or simply the single order permitting their service out of the jurisdiction. I will if necessary hear further argument on this point but I shall set aside the latter order without which in most cases a substantive order would be of little utility. Mr Gerassimos Kalogiratos is of advanced years and is in poor health. It is accepted that he is and will remain unfit to travel to England and he is therefore most unlikely to do so. I have concluded that the substantive order as against Mr Ioannis Kalogiratos must in any event be set aside on the separate ground to which I next turn. In these circumstances it is in this case in fact academic to consider further whether the court has jurisdiction to make an order under CPR 71.2(1)(b) directed to a person who is ordinarily resident out of the jurisdiction. Since that question does not here arise, I need not decide it and I prefer to express no view on it.

20. The substantive order made against Ioannis Kalogiratos must in my judgment be set aside in any event on the ground that he was not when it was made an officer of Capri. Note 71.2.6 at page 1867 of the White Book, dealing with the words "an officer" in CPR 71.2(1)(b) reads:

"*In interpreting identical words in a previous rule it was held that 'an officer' included former officers (**Société Generale v. J.M. Farin & Co**. [1904] 1 KB 794).*"

If this is so, Practice Direction 71PD.1, Form N316A use of which it mandates in making an application, and Form N39, which is the standard form order, all require reconsideration. The first two require details to be given of the officer's position in the company. Form N39, which states that the relevant person "is" an officer of the company, requires him to produce at court all documents in the judgment debtor's control which relate to the judgment debtor's means of paying the judgment debt. Plainly a former director will have no enforceable right of access to such documents.

21. The rule under consideration in ***Société Generale v. Farin*** was Order XLII., r.32 which provided:

"*When a judgment or order is for the recovery or payment of money, the party entitled to enforce it may apply to the court or a judge for an order that the debtor liable under such judgment or order, or in the case of a corporation that any officer thereof, be orally examined, as to whether any and what debts are owing to the debtor, and whether the debtor has any and what other property or means of satisfying the judgment or order, before a judge or an officer of the Court as the Court or judge shall appoint... and the Court or judge may make an order for the attendance and examination of such debtor, or of any other person, and for the production of any books or documents.*"

This rule was considered in ***Irwell v. Eden***, [1887] 18 QBD 588. There the judgment debtor was an individual but as he was unavailable the judgment creditor sought an order against a person who had been his manager. It was held by the Court of Appeal, which consisted of Lord Esher MR and Bowen Li-, that the words "or any other person" did not, in the case of an individual debtor, include any other person than himself The court did say that in the case of a corporation it did not include anyone but officers of the corporation, but that question did not actually arise for decision and still less did there arise the question whether the rule might include a former officer.

22. In ***Société Generale v. Farin*** the person against whom the order was sought was a director of the judgment debtor when judgment was given against it. He alleged that he had ceased to be an officer of the company before the order directing his examination was made but he did not appeal against the making of the order which was served upon him. Moreover he attended before the examiner appointed under it and answered certain questions before declining to go further. The Court of Appeal held that there was nothing in the wording of the rule which restricted its application to those who were at the time of the making of an order officers of the corporation against which judgment had been obtained. Although the court did not expressly refer to it, the wording of the rule did of course include the reference to "any other person" which words are in context certainly wide enough to embrace someone who was a director of the judgment debtor at the time when the judgment was given against it, as Mr Staenglen in that case was.

23. Although I am sceptical about the circumstances in which Mr Ioannis Kalogiratos resigned as a Director of Capri, it does appear that his resignation took effect before judgment was given against Capri. Given the wording of CPR 71.2(1)(b), the Practice Direction and the prescribed forms I find it impossible to conclude that an order can be made against someone who is not at the time when the order is made an existing officer of the judgment debtor company. This is an obviously inconvenient conclusion which renders it all too easy to evade the potential application of the rule. Against that it has to be said that it seems unlikely that it was intended that a court entertaining an application under CPR 71.2(1)(b) should be required to consider the closeness of the "officer's" current connection with the running of the company. Given that any order is by definition intended to assist in establishing the extent and whereabouts of the judgment debtor's current means to pay the judgment debt, it is not immediately obvious that the court should countenance the making of orders against those who have in the past been but are no longer officers of the judgment debtor. However if not everyone who has once been an officer should be made the subject of an order, what criteria should guide the court in its consideration of an application? Rule 71.2(4) provides that an application may be dealt with by a court officer without a hearing, and rule 71.2(5) provides that "*if the application notice complies with paragraph (3), an order to attend court will be issued in the terms of paragraph (6).*" (My emphasis). Paragraph (3) provides that the application notice must be in the form and contain the information required by the relevant practice direction. That, as I have shown, includes describing the "*officer's*" current position in the company and presupposes that he or she is currently an officer of that company. All these considerations militate in favour of the conclusion that an order cannot be made against someone who is not at the time when the order is made an officer of the company. In my judgment the order made requiring the attendance at court for questioning of Mr Ioannis Kalogiratos should on this ground be set aside.

24. I should record that it was accepted, indeed asserted, on behalf of Mr Ioannis Kalogiratos that as against him in his capacity as a former director of Capri the procedure under CPR 34.23 is available.

Luke Parsons QC and Poonam Melwani (instructed by Stephenson Harwood) for the claimant.
Thomas Macey-Dare (instructed by Hill Dickinson) for the defendant.