Neutral citation number: [2023] EWHC 2625 (Ch)

IN THE HIGH COURT OF JUSTICE **Claim No. CR-2023-005663**

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
20th October 2023

INSOLVENCY AND COMPANIES LIST

COMPANIES COURT (ChD)

IN THE INTENDED MATTER OF VALOREM HOLDINGS LIMITED

AND IN THE INTENDED MATTER OF VALOREM CAPITAL ONE LIMITED

AND IN THE INTENDED MATTER OF VALOREM DISTRIBUTION LIMITED

AND IN THE INTENDED MATTER OF VALOREM BESPOKE LIMITED

AND IN THE INTENDED MATTER OF CP PARFUMS LIMITED

AND IN THE MATTER OF THE COMPANIES ACT 2006

Before Caroline Shea KC

sitting as a Deputy Judge of the Chancery Division

B E T W E E N:

DAVID VICTOR GAROFALO

Applicant/Intended Petitioner

-and-

(1) DAVID ADRIAN CRISP

Respondent/Respondent in an intended Petition

(2) YULIA CRISP

Respondent

(3) VALOREM HOLDINGS LIMITED

(4) VALOREM CAPITAL ONE LIMITED

(5) VALOREM DISTRIBUTION LIMITED
(6) VALOREM BESPOKE LIMITED
(7) CP PARFUMS LIMITED

Respondents in an intended Petition

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James Bailey KC and Jessica Brooke (instructed by **Olephant Solicitors**) for the **Intended Petitioner/Applicant**

The Intended Respondents did not appear and were not represented

Hearing dates: 6 October 2023 and 9 October 2023

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Introduction

1. The Petitioner in the intended petition has brought an application ("the Application") for interim relief against the First Respondent, who is a Respondent in the intended petition, and the Second Respondent, who is the wife of the First Respondent, but who is not a Respondent in the intended petition.

2. The Application is made *ex parte*, and the hearing of the Application was conducted in private. It was submitted, and I accept for reasons which will become obvious, that it was necessary to hear the application in private for the proper administration of justice in the light of CPR r39.2(3). Publicity prior to the service of any order would defeat the object of the order, which is to secure the administration, and to safeguard the books and records, of the group of companies to which the intended petition relates.

3. The Application was heard in private on 6 October 2023. The hearing was adjourned to 9 October 2023, to allow the Petitioner to provide further evidence as to the means of the Petitioner to fulfil his cross undertaking in damages, and to allow me time to consider my judgment. At the adjourned hearing, upon having read further evidence submitted in the interim, and upon hearing Mr Bailey KC, Counsel for the Petitioner, on the question of the Petitioner's means and the terms of the interim relief sought, I made the orders sought, subject to some minor alterations in the detail.

4. Upon approval of the Order, I issued a summary Note of Reasons outlining the basis on which I had reached my determination, since time did not permit a full judgment to be finalised prior to the point at which it was necessary for the Order to be made, and I considered it important as matter of procedural fairness and natural justice for the First and Second Respondents to be furnished with a summary of the reasons for making the Order, as well as the terms of the Order itself. In the event of any inconsistency or conflict between the Note of Reasons and this judgment, this judgment is to prevail.

5. I fixed a Return Date of 23 October 2023, some fourteen days after the hearing of the Application.

The English Companies

6. The five respondent companies to the intended petition ("the English Companies") are members of a group of six related companies ("the Group"), the central business of which involves the manufacture, distribution and sale of luxury perfumes throughout the world ("the Business"). The English Companies are:
   (1) Valorem Holdings Limited ("VHL"). VHL is a holding company, of which the remaining English Companies, together with a sixth, Dutch incorporated company called Valorem Europe B.V., are either directly or indirectly wholly owned subsidiaries
   (2) Valorem Capital One Limited ("VC1"), the primary trading entity of the Business
   (3) Valorem Distribution Limited ("VDL")
   (4) Valorem Bespoke Limited ("VBL")
   (5) CP Parfums Limited ("CPL").

7. Both the Petitioner and the First Respondent are directors of VHL and VC1. The First Respondent is the sole director of VDL and VBL. The directors of CPL are the First Respondent and VC1.

Final relief

8. By the intended petition, pursuant to ss. 994 and 996 of the Companies Act 2006 ("the 2006 Act") the Petitioner seeks wide ranging relief, based on alleged actions on the part of the First Respondent which the Petitioner claims have caused unfair prejudice to the English Companies. The relief sought includes (and to summarise) orders requiring or permitting:
   (1) the delivery up by the First Respondent of the English Companies' books and records;
   (2) the Petitioner to purchase the First Respondent's shares in Valorem Holdings Limited ("VHL");
   (3) the removal/resignation of the First Respondent as director of the English Companies;
   (4) the appointment of Dominic Fisher and Stephen Diederich as directors of VHL and VC1;
   (5) the appointment of the Petitioner, Mr Fisher and Mr Diederich as directors of VBL, VPL and CPL;

(6) all necessary accounts and enquiries, with consequential orders for payments.

The Application

9. By the Application, the Petitioner seeks orders pursuant to s.37 of the Senior Courts Act 1981; s.7 of the Civil Procedure Act 1997; CPR 25.1(1)(a), (c)(i), (c)(ii), (h), (i) and (j); and CPR 31.17 as follows (in summary)

(1) an Imaging Order against the First and Second Respondents

(2) injunctive relief against the First and Second Respondents,

(3) disclosure Orders against the First and Second Respondents

(4) a Passport Order against the First Respondent;

(5) prohibitory orders preventing the First and Second Respondents from contacting staff or customers, going within 100m of the Business's main premises at Greenhithe ("the Greenhithe Facility"), or otherwise engaging in the Business.

Evidence

10. In support of application for the purposes of the hearing on 6 October 2023, I read the affidavit evidence of

(1) David Victor Garofalo, the Petitioner;

(2) Jonathan Hawker, communications consultant;

(3) Gary Flood, private investigator appointed after the report of an investigation at the the Greenhithe Facility;

(4) Stephen Diederich, proposed new director of the English Companies;

(5) Dominic Fisher, proposed new director of the English Companies;

(6) Mark Preusch, US licensed private investigator providing a video conversation he had with the First Respondent;

(7) Simon Ayrton, solicitor, proposed Supervising Solicitor;

(8) Graeme Buller, expert in securing date from electronic devices;

(9) Connor James Cleak, expert in securing date from electronic devices;

(10) Danny James Edward Lewis, expert in securing date from electronic devices.

11. Prior to the adjourned hearing on 9 October 2023, I was provided with and read the affidavits of

(1) Alexander Wilson, solicitor, a second proposed Supervising Solicitor;

(2) David Garofolo, the Petitioner (second affidavit) as to his means.

History of ownership and current shareholdings

12. The Petitioner is an angel investor. His first involvement with the business was in 2010, when he invested £50,000 for a 15% share in VC1, which the First Respondent was in the process of acquiring from its previous owner in administration. In May 2016, as part of a restructuring programme ("the 2016 Restructuring"), in return for a further investment of £250,000, the Petitioner increased his shareholding resulting in his owning 41.35% of the issued share capital of VC1, and becoming equal partners with the First Respondent, who owned an equal percentage of the shares. The remaining shares (approximately 17.3%) were held by 6 other individuals, all friends or family of the First Respondent, in holdings ranging from 1.34% to 4.69%. In 2018, a further restructuring took place ("the 2018 Restructuring") in which VHL was incorporated as the ultimate parent of all the companies in the Group. The First Respondent and the Petitioner were appointed as directors. The spread of shareholdings in VC1 was broadly replicated in VHL upon its incorporation.

13. At the time of the 2016 Restructuring, a number of documents were produced to govern the management, investment and relationship between the various companies and directors. By an executive service agreement dated 4 May 2016, VC1 appointed the First Respondent CEO at an annual salary of £100,000. By a non-executive service agreement in the form of a letter dated 4 May 2016, VC1 and the Petitioner agreed the terms on which he would act as non-executive director at an annual salary of £50,000. Of prime significance was the Relationship Agreement, entered into on 4 May 2016 by the Petitioner, The First Respondent, and VC1, and amended on 3 May 2018 to add VHL as a party at the time of the 2018 Restructuring. The Petitioner relies on the following terms:
    i. Recital F: the Petitioner and the First Respondent agreed to be equal partners in VHL and VC1, and they had mutual respect and confidence in one another both individually and in their respective roles within VC1;
    ii. Clause 3.2: the Petitioner acknowledged that the First Respondent worked best by being allowed free rein to develop and promote the business of the English Companies without undue interference. Equally, the First Respondent acknowledged that he valued the Petitioner's views as Chairman and personally as his mentor; and that on important issues the First

Respondent wished to be consulted as Chairman and decisions made collectively by the Board.

iii. Clause 3.2: The First Respondent, as CEO, was to be responsible for and entitled to manage the day to day running of VC1 and VHL, but agreed to refer to and consult with the Petitioner regarding any "DRM", being the Director Reserved Matters listed in the Schedule.

iv. The DRM include (i) any change in the jurisdiction where the English Companies' business is managed and controlled, and (ii) any decision which could reasonably be anticipated as adversely affecting the Profit and Loss Account and/or Balance Sheet and/or Cash-Flow of VC1, VHL or any subsidiary undertaking, by an amount equal to or greater than 10% within the next 12 months following the date when the First Respondent first became aware, or should have become aware, that such matter could adversely affect the English Companies in this way.

v. Clauses 4, 5 and 6 concern dispute resolution and deadlock provisions in respect of any dispute defined as "*a difference of dispute of whatever nature between* [the Petitioner] *and* [the First Respondent] *arising under or in connection with*" VC1 or VHL, their articles, or their management. The dispute resolution procedure contained a timetable for the steps to be taken including the parties communicating for at least 6 hours over the course of 12 days. It is submitted on behalf of the Petitioner that that procedure is not suitable for the resolution of the kind of issues underlying the Application, and in any event must be subject to an implied term that a party was entitled to make an application where the urgent assistance of the court is required.

Factual background/chronology

14. In this section, I summarise the events leading to the Application, further details of which are found in the affidavits of the Petitioner, Mr Hawker, Mr Flood and Mr Preusch. In around 2019 the Petitioner developed concerns that competitors based in the UEA were selling products mimicking the striking bottle design of the perfume sold by VC1, thereby breaching the Group's intellectual property rights ("IPR"). He raised his concerns with the First Respondent, who took limited steps to respond to or manage the threat. Over time the Petitioner became concerned that the First Respondent was not addressing the issue effectively, doing only the minimum

required to stave off the Petitioner's concerns. A suspicion began to form that there might be an association between the First Respondent and the Business's competitors. I note at this stage that the matters underlying this suspicion are not the foundation of this Application, but they explain why the Petitioner took the steps that he did.

15. In around February 2022, following the Russian incursion into Ukraine, the Petitioner says that he and the First Respondent agreed in discussions, as evidenced by subsequent emails, that the English Companies would cease supplying their products to Russia ("the Russia Agreement").

16. Upon the First Respondent continuing to fail to progress the IPR Issue adequately, the Petitioner instructed Mr Philip Reed, a business consultant engaged by the English Companies, to provide a confidential report regarding the business of the English Companies. His report identified a number of troubling issues:
    (1) The English Companies may have been involved in a furlough fraud ("the Furlough Fraud Issue");
    (2) The English Companies appeared to be distributing products containing a substance, butylphenyl methylpropional (known as "lilial"), which had been banned by the EU on the basis it is toxic to fertility ("the Lilial Issue"). The labels on the products containing lilial, that continued to be supplied to the market, had been altered to remove any reference to it, a process known as "overlabelling".
    (3) It seemed that the Business was continuing to fulfil orders placed from Russia, despatched (at least on paper) through a US based distributor ("the Russia Issue"). The suggestion is that the involvement of the US based distributor was a paper exercise, the suspicion being that notwithstanding the paper trail the products were being despatched directly from the Greenhithe Facility to retailers located within Russia, for sale within Russia.

17. The Petitioner's evidence is that he was unaware that the English Companies had continued to trade with Russia. He was sent monthly management reports and accounts by the First Respondent which on their face reported nil income from Russia. He later came to realise that the sum recorded for sales to the "Rest of the World" in the management accounts increased at the same time that the sums recorded for sales to Russia reduced to zero, by roughly the same amount. Prior to Mr Reed's

reports, the Petitioner had not noticed the connection those two elements of the management accounts.

18. Following receipt of Mr Reed's report, the Petitioner retained the services of Mr Preusch, a licensed private investigator, formerly a police officer, to conduct surveillance of the First Respondent on a business trip in the USA. Unknown to the First Respondent, Mr Preusch videoed a conversation that he struck up with the First Respondent in a hotel in Texas at which both were staying. During that conversation the First Respondent revealed that the English Companies' Russian exports were trading well, and had maintained business at pre-pandemic levels throughout the pandemic. He stated that he ignored what he termed as "government edicts", and that he had recently been to visit the Business's Russian distributor in New York.

19. The Petitioner then instructed Mr Flood, a UK based private investigator who was a former detective inspector with the Metropolitan Police. At Mr Flood's suggestion he then instructed Animus Associates ("Animus") who depoloyed Moscow based operatives to make test purchases in Russia of the branded products of the English Companies. Their report states that they were able to purchase the products from leading department stores in Moscow in August 2023.

20. Following these revelations the Petitioner instructed Mr Fisher, whom he had previously engaged for regulatory consultancy in respect of his business affairs, to report the situation to the Office of Financial Sanctions Implementation.

21. On 11 August 2023 the Petitioner and Mr Reed visited the Greenhithe Facility, and whilst there uncovered certain documents of concern, including: a packing list for 4 pallets of perfumes dated 14 August 2022 issued in the name of VC1 with a Russian entity, UParfume LLC, which has a Moscow address, named as the recipient; an invoice dated 15 August 2022 issued to Profun International Trading Group ("Profun"), which is an importer of goods into Russia based in New York, and a distributor linked to Mr Crisp, for approximately 4 pallets of luxury goods; a Dangerous Goods Note dated 17 August 2022 identifying VC1 as the exporter and UParfume LLC as consignee; and a sales report dated 4 August 2023 further identifying a number of sales to Profun.

22. I am told that the matter has now been referred to HMRC which is conducting its own investigation. Whilst HMRC has shared limited information with the Petitioner through Mr Fisher, it has not revealed the details of the investigation, nor does it know when (or indeed whether) HMRC will seek to approach the First Respondent to detain or arrest him.

The Petitioner's response

23. The Petitioner's evidence is that in light of these discoveries he has lost all faith and confidence in the First Respondent. He has grave concerns about the market reaction when news of the Russia Issue becomes public, as it will if the Orders sought are made, and if and when HMRC takes enforcement action against the First Respondent. The Petitioner has obtained the report of Mr Hawker, a specialist crisis communications consultant, to advise how to protect the English Companies from loss and damage arising from the First Respondent's acts. Mr Hawker's evidence is that, from a public relations perspective, it is essential that swift action should be taken to remove the wrongdoer from the organisation, and that any other course of action is likely to be terminal for the Business. Based on this advice, the Petitioner has developed a detailed business management plan, identifying the steps required to limit the damage, to manage public perception, and to effect a smooth transition from the existing management and governance of the English Companies, until now left largely in the hands of the First Respondent, to new directors and management, with the experience and skills to manage the Business effectively.

24. The Petitioner is concerned to ensure that the First and Second Respondents are apprised of none of these matters prior to the arrival of the First Respondent in the United Kingdom on Tuesday 10 October 2023. He is scheduled to have a routine business meeting with the Petitioner near Victoria. It is intended that any orders made pursuant to the Application be served on him at that meeting; or, if he has been arrested prior to it, on his release from custody. If the First Respondent were to be forewarned either of this Application or of the HMRC investigation the Petitioner fears he would cancel his visit to the United Kingdom, thus creating considerable difficulties as regards service. The effect of any orders that were made after that point

in time would be compromised, jeopardising the damage limitation measures the Petitioner has been advised to take.

25. The Petitioner is aware that the First and Second Respondents conduct much of the business of the English Companies from personal sky.com email addresses, using laptops and mobile phones which have with them when they travel. The Petitioner believes that much of the information relating to the acts of wrongdoing, and relevant therefore to the petition, and indeed to the smooth running of the Business, will reside on or be accessible from those devices. If the First and Second Respondents were to have notice of the Application prior to being served, the risk is that they will dispose of the information, or the devices themselves, and may fail to come into the jurisdiction at all.

26. It was submitted, and I so find, that these risks justify the hearing of the Application in private, and its contents remaining private up to the moment of service of any order I make.

27. Accordingly, the Petitioner seeks, by way of interim relief on an urgent basis, removal of the First Respondent from his directorships of the English Companies, the appointment of Messrs Fisher and Diederich to be directors of VHL and VC1, and the appointment of the same two persons and the Petitioner to be directors of VDL, VCL and CPL. He also seeks an Imaging Order in order to harvest the information relating to the operations of the English Companies from the electronic devices of the First Respondent and also those of the Second Respondent, together with orders to deliver up the English Companies' books and accounts, prohibition on certain acts relating to staff employed by the English Companies, and ancillary orders.

The First and Second Respondents' position

28. The First Respondent is permitted to spend only 45 days per annum in the United Kingdom to preserve his tax status. His residential address, which he shares with the Second Respondent, is in Carshalton, Surrey. The Second Respondent is not a director of any of the English Companies (although she holds directorships of other companies in the jurisdiction), nor a shareholder in them. She is employed by them in the role of Head of Distribution for the Business. She is understood to be resident in the UK,

whilst spending much of her time abroad. At the time of the hearing, it was thought that she was in Dubai, but no evidence of her whereabouts was available.

The Claim and the Application

29. It is against that factual background that the Petitioner intends to bring the petition. He seeks urgent interim relief to implement the strategy he has been advised to follow, and to put into operation the business management plan. I was told that the basis of the claim is mismanagement, not misconduct, and that that is germane to the route which the Petitioner has chosen. The petition is brought under s.994 of the 2006 Act ("s.994"); the basis for the claim as to unfair prejudice is the Russia Issue. As a preliminary matter, upon review of the evidence, I make it clear that for the purposes of considering the Application I take into account neither the Lilial Issue nor the Furlough Fraud Issue. The evidence on both those matters is hearsay, comprising matters which Mr Reed has reported were told to him by unnamed members of staff at the Greenhithe Facility. They may well be based on sound evidence, but none has been presented to me, and I do not consider the evidence in its present form to be a sound basis on which to grant the relief sought in the Application. It is otherwise with the Russia Issue, for reasons I come on to below.

30. From the outset I bear in mind the high hurdle facing the Petitioner if he is to be granted the interim relief he seeks, on an urgent basis. He must establish that he has a viable unfair prejudice claim pursuant to s.994, and that he has a real prospect of obtaining on the petition the relief he seeks pursuant to s.996 of the 2006 Act ("s.996"). He must also satisfy the court of the reasons for the urgency. Before turning to the test for the grant of interim relief in the form sought, I consider the nature and strength of the underlying claims.

Unfair Prejudice

31. To invoke the relief available under a s.994 petition, it must be established that the affairs of the company have been conducted in a matter which is unfair and that this conduct, or its results, have prejudiced the interests of the petitioner of or the shareholders generally.

32. In establishing prejudice a petitioner must show that he is substantially in a worse position as a result of the unfair conduct: Hollington, at 7-01, 7-28, 7-33 and 7-57.

33. The concept of unfair prejudice must be understood within the context of company law; non-compliance with respondent shareholders' duties will generally indicate that unfair prejudice has occurred: see Arden LJ (as she then was) in *Re Tobian Properties Ltd* [2013] Bus LR 753, at [21].

34. The company affairs referred to in s.994 can include the affairs of wholly-owned subsidiaries with common directors if the affairs of the subsidiary are being conducted in a manner which damages the subsidiary and so the value of the holding company: per David Richards J (as he then was) in *Re Coroin* [2012] EXHC 2343 at [628]; *Re Canterbury Travels (London) Ltd* [2010] EWHC 1464 (Ch) at [18] [19].

35. Equitable principles are also invoked by the petitioner. There are a number of circumstances in which the role of equitable principles arises, including an association formed or continued on the basis of a personal relationship involving mutual confidence: *Ebrahimi v Westbourne Galleries Ltd* [1973] AC 360 at 379D-G. Also relied on are directors' duties as set out in ss. 171-177 of the 2006 Act, in particular, the requirements that

    (1) a director must act in accordance with the company's constitution and only exercise their powers for the purposes for which they are conferred (s.171);

    (2) a director must act in the way s/he considers, in good faith, would be most likely to promote the success of the company (s.172).

    (3) a director must exercise reasonable care, skill and diligence (s.174).

36. The allegations take place against the backdrop of the Russia (Sanctions) (EU Exit) Regulations ("the 2019 Regulations"). By regulation 46B of the 2019 Regulations, it is provided that

> ***Luxury Goods***
> ***46B. –***
> *(1) The export of luxury goods to, or for use in, Russia is prohibited.*
> *(2) A person must not directly or indirectly—*
> *(a) supply or deliver luxury goods from a third country to a place in Russia;*
> *(b) make luxury goods available to a person connected with Russia;*

(c) make luxury goods available for use in Russia.

37. By regulation 21(1) of and paragraph 7 of Schedule 3A to the 2019 Regulations (as amended), included in the definition of "luxury goods" are "*perfumes, toilet waters and cosmetics, provided the sale price exceeds £250 per 6.25 litre*". The evidence is that the English Companies' goods are sold globally, including in Russia, for significantly higher than that price.

38. I find that on the evidence before me there is an exceptionally strong *prima facie* case that there has been unfair conduct within the meaning of s.994, on the following grounds. The evidence shows to a very high probative degree that the First Respondent has been causing the English Companies' products to be sold to Russia. I rely on the following evidence: (1) the statements made by the First Respondent to Mr Preusch during the conversation recorded in the hotel, to the effect that the sales income from Russia since the epidemic had held up at pre-pandemic levels; (2) the paperwork uncovered by Mr Reed and the Petitioner, which shows invoices, despatch notes and sales reports for products to be despatched to Russia from the Greenhithe Facility in 2022 and also in August 2023; (3) the reports form the Animus operatives that the English Companies' products were on sale in Russian retail outlets as recently as August 2023.

39. As to this last, it is conceivable that the products available for sale in Russia were despatched prior to the 2019 Regulations coming into force. But in view of the First Respondent's assertions as recorded on video, and the documents uncovered, it seems highly likely that products were being despatched after the coming into force of the 2019 Regulations, and that he knew that to be the case. The fact that products were for sale in Russia is consistent with the central allegations against the First Respondent, but that allegation would hold up even were it to be found that the products on sale were in fact despatched prior to the prohibition being imposed.

40. I have considered the status, in particular the admissibility, of the video evidence. Mr Preusch in his affidavit asserts that he did not act in contravention of any enactment of United States Federal Law nor of the Law of Texas, where the conversation was recorded. He states that he is authorised to share the recording under section 4(c) of

the Texas Penal Code, section 16.02, which provides that it is an affirmative defence to prosecution if one of the parties to the communication has given prior consent to the interception (which Mr Preusch confirms that he did and does). I was not taken to the underlying law to confirm the legal position. The evidence is that Mr Preusch is a former police officer and presently a licensed private investigator, from which facts I was invited to infer that his statement of the law was reliable. Because of the strength of the documentary evidence emanating from the Greenhithe Facility search on 11 August 2023, I am willing to allow that inference, without which the question of admissibility would remain at large, to operate for present purposes. I would expect the legal provisions making good Mr Preusch's assertion to be brought to the Court's attention at the hearing on the Return Date.

41. There is equally strong *prima facie* evidence that the First Respondent knew that despatching products to Russia was a breach of (1) the Relationship Agreement, (2) the Russia Agreement, and (3) the 2019 Regulations. The first and second of those operate together: clause 4 of the Relationship Agreement expressly refers to the importance of the two men's personal relationship, and requires that they work together with openness, transparency and in utmost food faith in all their dealings with each other. The Petitioner's evidence is that he and the First Respondent spoke together soon after the Russian invasion of Ukraine and agreed to cease supplying products to Russia. Subsequent email traffic between them is consistent with the Russia Agreement: an email exchange between 15 March 2022 and 18 April 2022 making express references to the cessation of the English Companies' trade with Russia is consistent with the Russia Agreement, and strongly suggests that it had been implemented in full. For the First Respondent to have continued to cause the English Companies to trade with Russia was a clear breach of the terms of that Agreement, and of the fiduciary duties arising thereunder.

42. The management accounts sent directly by the First Respondent to the Petitioner show no income from Russia since March 2022. Given the strong evidence that products had been sold into Russia, the most likely explanation in my judgment is that the management accounts had been massaged, and did not reflect the true position. The increase in income shown from "the Rest of the World" was very close to the income from the previous years' sales to Russia, sales which the First Respondent told Mr

Preusch had held up at the same level since the invasion. For the purposes of the Application I find that there is a high likelihood that this suspicion will prove to be well founded when the underlying documents are considered.

43. Similarly, I find it highly likely that the First Respondent was aware of the 2019 Regulations and was knowingly in breach of them. His reference to Mr Preusch to taking no notice of "*government edicts*" must in the context be a reference to that legislation. The clear tenor of his assertion is that he knew of the 2019 Regulations and continued to sell products to Russia knowing that he was in breach of them.

44. On the basis of those findings, as to which there is a very strong *prima facie* evidential basis, I find that the conduct of the First Respondent was unfair. I also find that prejudice has been caused to the English Companies as a result. The conduct of the First Respondent was in clear breach of the Relationship Agreement, his fiduciary duties, the Russia Agreement, and his statutory duties as a director. The report of Mr Hawker states unequivocally that severe reputational damage will be suffered by the English Companies upon news of the breach of the 2019 Regulations becoming public, as it is bound to become following either HMRC's enforcement measures or the service of any order made by this Court. That reputational damage is severe enough to jeopardise the future viability of the English Companies, as retailers and end users become aware of the situation. There is strong *prima facie* evidence that the unfair conduct of the First Respondent has clearly prejudiced the English Companies to the point of threatening their very existence.

45. It was properly brought to my attention that where a shareholders' agreement provides a remedy in circumstances where unfairly prejudicial conduct is alleged, this may negate a finding of unfair prejudice: *Hollington* at 7-80. The dispute mechanism in the Relationship Agreement stipulates that where a dispute arises 6 hours must be spent in face to face discussions over a period of 12 days. I agree with the submission of Mr Bailey that is inappropriate for, and cannot be construed as intended to apply to, a situation in which urgent relief is required; *a fortiori* where it is necessary for that relief to be obtained *ex parte*. Alternatively, as a matter of obviousness, reasonableness and business efficacy, it would be reasonable for a like term must be implied.

46. I find accordingly that there is a very strong prospect that the Petitioner will succeed in establishing unfair prejudice under s.994. If the threshold test under s.994 is satisfied, s.996 provides wide powers to grant relief, as follows.

> *(1) If the court is satisfied that a petition under this Part is well founded, it may make such order as it thinks fit for giving relief in respect of the matters complained of.*
> *(2) Without prejudice to the generality of subsection (1), the court's order may–*
> *(a) regulate the conduct of the company's affairs in the future;*
> *(b) require the company–*
> *(i) to refrain from doing or continuing an act complained of, or*
> *(ii) to do an act that the petitioner has complained it has omitted to do;*
> *(c) authorise civil proceedings to be brought in the name and on behalf of the company by such person or persons and on such terms as the court may direct;*
> *(d) require the company not to make any, or any specified, alterations in its articles without the leave of the court;*
> *(e) provide for the purchase of the shares of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, the reduction of the company's capital accordingly*.

47. On the question of the purchase of the First Respondent's shares, in line with his duty to ensure the Court is fully appraised of all potentially relevant law, Mr Bailey referred me to the authorities on the question of what should happen if there is a dispute as to whose shareholding should be purchased by whom. Although the frankness is welcome, reference to those authorities is perhaps somewhat premature in view of the early stage of proceedings. Certainly on the basis of the Petitioner's *prima facie* evidential case, were there to be any suggestion of the First Respondent seeking to buy out the Petitioner's share I would have little hesitation in holding that the Petitioner was the most suitable to continue the business, in line with the guidance given in *Oak Investment Partners XII Ltd Partnership v Boughtwood* [2009] 1 BCLC 453 at [3], [4] and [120], that where one party had behaved much worse than the other, it is that party who should be required to sell.

48. On the issue of the court's power and willingness to order the reconstitution of the Board, and the court taking a flexible approach regarding such grant of relief as may be appropriate to the facts of the case, I was taken to *Hawkes v Cuddy (No.2)* [2008]

B.C.C. 390, in which Lewison J (as he then was) made an order giving one party the ability to enlarge the board of the company, thereby giving him control of it (at [290]).

49. I am satisfied that the removal of the First Respondent as director, the appointment to the English Companies' Boards of the Petitioner, Mr Diederich and Mr Fisher, and the purchase by the Petitioner of the First Respondent's shares in the English Companies, are orders which could be granted as final relief on a s.994 petition under s.996. I am also satisfied on the evidence before me that there is a strong prospect of the Petitioner succeeding in the claim for such relief.

Injunctive relief

50. The preliminary question for the purposes of the Application is whether the court has the power to order the interim relief sought, in terms of the removal of the First Respondent as directors of the English and appointment of others in his place. The power to grant interim relief in support of a s.994 petition arises under s.37 of the Senior Courts Act 1981 ("the SCA 1981") under which the Court has power to make interlocutory orders by way of injunction, or the appointment of a receiver, in all cases in which it appears to be just and convenient to do so. The removal of directors by way of interim relief had been recognised as relief that is capable of being granted in certain circumstances: *Re Premiere Care Holdings Ltd* [2021] EWHC 1595. The grant of such relief will be rare, but it need not be the case that such intrusion be limited to no more than is "essential", as suggested by Harman J in *Re A Company* [1985] BCLC 80 (at 82-83).

51. The test is whether it is just and convenient to grant an order, although in the ordinary case intrusion should be kept to the minimum of what the court considers necessary and appropriate: *Re Premiere Care Holdings Ltd* [2021] EWHC 1595 (at [55]). As far as I am aware, such power has not previously been exercised in this jurisdiction (although the outcome in *Shih Hua Investment Co Ltd v Zhang Aidong* [2017] 3 HKC 393 has been brought to my attention), but I am satisfied that I have the jurisdiction to grant interim belief on this basis.

52. As for the general principles governing the grant of injunctive relief in support of a S.994 petition, the well known principles established in the leading authority of *American Cyanamid Co v Ethicon Ltd (No.1)* [1975] A.C. 396 HL apply by analogy: see *Re Posgate & Denby (Agencies)* [1986] 2 BCC 99345, acknowledging that

> *[o]ne cannot literally ask whether damages would be an adequate remedy because sec. 461* [the relevant section under the predecessor to the 2006 Act] *does not provide for an award of damages at common law. But the section allows the court to order various forms of financial compensation ...*

53. I accept the submission that in the light of these authorities the questions to be asked are:

    (1) Is there a serious issue to be tried?

    (2) If there is, does the balance of convenience lie in favour of granting or refusing the interlocutory relief sought, specifically:

        a. If the claimant were to succeed at the trial in establishing his right to a permanent injunction, would he be adequately compensated by an award of damages? If he would, and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted.

        b. If damages would not provide an adequate remedy for the claimant, the court should then consider whether, if the defendant succeeded at trial, he would be adequately compensated under the claimant's undertaking. If he would, and the claimant would be in a financial position to pay them, there would be no reason upon this ground to refuse an interlocutory injunction.

        c. Where there is doubt as to the adequacy of the respective remedies in damages available to either party or to both, the question of balance of convenience arises. These will vary from case to case. Where other factors appear to be evenly balanced measures should be taken to preserve the *status quo*.

54. It was submitted that the court will generally be more reluctant to grant a mandatory injunction than a prohibitory injunction: *Nottingham Building Society v Eurodynamic* Systems Plc [1993] FSR 468, per Chadwick J (at 474). Whilst there has since that case was decided been some judicial debate as to the correctness of that proposition,

for the purposes of this Application, bearing in the mind the fact the First and Second Respondents are neither represented nor on notice of it, I am content to apply the test in accordance with its most rigorous formulation.

55. It was also submitted that I should bear in mind the following propositions:
    a. As a general rule on a s.994 petition it is desirable to preserve the *status quo*, or not change it more than is absolutely necessary, although this guideline only seems to be important if a change in the *status quo* would "*affect the remedy which may be available*": *Pringle v Callard* [2008] 2 B.C.L.C. 505 at [24]-[26].
    b. The court should have regard to the risk of the remedy sought at trial being frustrated unless the injunction is granted: *Re Posgate & Denby (Agencies)* (1986) 2 BCC 99352 at 99358-9; *Hollington* at 8-040.
    c. The court should focus on the likely outcome of the petition:*Re Wako Giken (HK) Co Ltd* [2010] 4 HKLRD 121 at [12].
    d. In *Dilato Holdings Pty Limited* [2015] EWHC 592, a decision of Mr Justice Morgan, the court considered whether damages would be an adequate remedy, and found they would not in circumstances where the claimant was running a risk which came about from one director running the company to the exclusion of the other.
    e. In *Shih Hua Investment Co Ltd v Zhang Aidong* [2017] 3 HKC 393, the court (whilst acknowledging that the power to make such an order was to be used sparingly) granted interim injunctive relief replacing the existing directors of a solvent and profitable business with suitable independent professionals (rather than appointing receivers).
    f. Although not a s.994 case, as regards putting in a less intrusive regime than receivers pursuant to s.37 of the SCA 1981, in *Don King Productions Inc v Warren & Ors* [2000] BCC 263 (at 271B, 273H) Neuberger J (as he then was) was content, on the facts of that case, to order a protective regime to be policed by an independent accountant in order to avoid the adverse consequences of appointing a receiver.

56. In reaching my decision on whether to make the changes sought to the constitution of the Boards, I take into account the strong *prima facie* case of the First Respondent's

wrongdoing, in breach of his quasi-partnership, equitable and statutory duties. I find that there is a serious issue to be decided, and there is in my judgment a very high degree of assurance that the Petitioner will succeed at trial. I find that damages would not be an adequate remedy for the Petitioner where the evidence shows that failing to remove the First Respondent as director is likely to cause the Business to collapse. By contrast damages would be an adequate remedy for the First Respondent, should the injunctive relief prove to be wrongly granted, in that his lost salary and the value of his shares at today's date are capable of quantification, and he will be protected by the Petitioner's cross undertaking in damages.

57. In considering the balance of convenience I note the strength of the evidence from an apparently independent source, with demonstrable experience and expertise in this area, that his is the best course of action to take; the fact that the viability of the English Companies is threatened as a result of the First Respondent's breaches; the fact that the threat will manifest immediately the Russia Issue becomes known to the public; and the evidence that the only way to mitigate the damage will be to have removed the wrongdoer from office and install a credible new management team ahead of the news becoming public. I note also the considered and detailed business management plan, demonstrating the care and thought which has been put into identifying a route map towards managing the fallout of the Russi Issue becoming public knowledge. The credentials and experience of Messrs Fisher and Diederich, and indeed of the Petitioner, seem well suited to the roles they propose to take, and to the implementation of the business management plan.

58. The alternative of installing a receiver now instead of the proposed new directors would be less than satisfactory: it would leave the management of the English Companies in the hands of persons who will be unable to hit the ground running in contrast to the proposed new directors; it risks sending a message to the market that the English Companies are in deep trouble and unable to manage their own way out of it; and it will be expensive. In my view the installation of the named directors is a less intrusive step to take, and will produce a more satisfactory outcome.

59. I consider that the relief sought at trial will be frustrated if the orders are not made now. I further take into account that the orders regarding changes to the boards of the

English Companies are sought until the Return Date or further order, on the express basis that the First Respondent will have the chance to address the Court with a view to reversing those orders at any time following service of the order, and in any event by no later than the Return Date. I consider mandatory injunctions are justified on the facts of this case. Taking all those matters into account I am satisfied that relief should be granted in these exceptional circumstances. Accordingly, I will make the orders removing the First Respondent as director of the English Companies, and installing the Petitioner (where he is not already a director) together with Messrs Fisher and Diedrich as directors of the English Companies, until the Return Date or further order.

Imaging Order

60. The power of the court to make imaging orders derives from section 7 of the Civil Procedure Act 1997, CPR Part 25.1. *TBD (Owen Holland) Ltd v Simons (Practice Note)* [2021] 1 WLR 992 provides guidance as follows:

> *177. For over a decade, it has been technically possible for forensic computer experts to take complete copies, referred to as images, of the contents of storage media incorporated in or associated with computers, without affecting the data stored there. Over time, this capability has been extended to smart phones and cloud storage.*
>
> *178. In the present context, imaging has both advantages and disadvantages. The key advantages are that (i) it is a relatively non-intrusive process which does not involve any removal of documents and (ii) it enables all digital evidence to be preserved for subsequent analysis. The key disadvantage is that imaging is, by its very nature, incapable of discrimination between information that is relevant to the issues in the proceedings and information that is irrelevant, or between business information and personal information, or between information that is subject to legal professional privilege and information that is not. Thus imaging can only ever be a preservation step, and it must be followed by proper consideration of the issues of disclosure and inspection of the documents preserved by the imaging process.*
>
> *179. The availability of imaging has important consequences for search orders which in my experience have frequently been disregarded. The first is that, if what is needed is a remedy to preserve evidence in order to ensure that it cannot be altered, destroyed or hidden, then in many cases an order requiring the respondent to permit imaging of its digital devices and cloud storage ("an imaging order") will be the most effective means of achieving that objective. The second, which follows from the first, is that, if an imaging order is made, then that may well make a traditional search order unnecessary, or at least may enable the scope of the search order to be significantly restricted e g to articles as opposed to documents.*

61. The law provides no specific legal test governing the grant of an Imaging Order. It was submitted, and I accept, that the appropriate test is the search test set out at [138]

of *Simon*, taken from the judgment of Ormrod LJ in *Anton Pillar*. First, there must be an extremely strong *prima facie* case. Secondly, the damage, potential or actual, must be very serious for the applicant. Thirdly, there must be clear evidence that the defendants have in their possession incriminating documents or things, and that there is a real possibility that they may destroy such material before any application *inter partes* can be made.

62. I was also asked to take into account the approach taken to Doorstep Disclosure Orders (DDOs), which are said by the White Book (at paragraph 25.1.27) to be a less intrusive version of search orders. It was submitted that the test applied in the case of DDOs can be of assistance, since there is no legal test for the grant of Imaging Orders, and since like Imaging Orders DDOs are a softer version of a search order. In the end, whilst this approach allows nuance and a certain elasticity in the application of the test, I have proceeded on the basis that the test applied in the case of search orders should be applied here, in the context of what would be, if granted, draconian and far reaching orders.

63. In applying that test, and the propositions formulated in the authorities referred to above, I am satisfied that the Imaging Order ought to be made. As I have found, there is an extremely strong *prima facie* case that the First Respondent has acted in breach of duty, and that the Petitioner will succeed in his s.994/s.996 application at trial. The damage to the Petitioner, and to the English Companies, is already considerable (albeit latent at this point in time) and will only worsen if the Imaging Order is not made. The evidence of the First and Second Respondents' use of private sky.com email addresses, accessed through portable electronic devices that they routinely take with them whilst travelling, is strong. The fear that they might use those devices to destroy evidence is rational and justified in view of the very wrongdoing on which the Petition is predicated. The First Respondent appears to consider himself above the law; whilst there is no specific evidence of contempt for court orders, nonetheless his attitude to the 2019 Regulations is suggestive at the very least of a conscious decision not to comply with the law when to do so would adversely affect his private and commercial interests, and a willingness to take the risk of sanctions (in the case of the 2019 Regulations, a prison sentence of up to 10 years can be imposed).

64. In my judgment, and to adopt the wording of the *Simon* Practice Note, what is needed is a remedy to preserve evidence in order to ensure that it cannot be altered, destroyed or hidden. An order requiring the First and Second Respondents to permit imaging of their digital devices and cloud storage will be the most effective means of achieving that objective. Further, if an imaging order is made, that will make a traditional search order unnecessary, and indeed no such order is presently sought.

65. Whilst there is little direct evidence concerning the position of the Second Respondent, her position in the English Companies, together with her relationship with the First Respondent, and her habitual use of a private sky.com email address, mean it is reasonable to conclude that she is likely to be involved in or at least aware of the wrongdoing, and justifies the fear that there is a real risk that she would aim to destroy evidence. Further protection for her position, and indeed that of the First Respondent, is afforded by the limit to the scope of the Imaging Order to the effect that no disclosure or inspection will take place of the records recovered prior to the Return Date, at which the question can be revisited.

66. In the light of all those considerations, I have reached the view that the balance of convenience lies with the Petitioner, and that the Imaging Order is justified and ought to be made.

Delivery up/provision of information

67. The Petitioner seeks orders for the preservation and delivery up of documents and electronic materials. The jurisdiction to grant such orders is said to derive from a number of jurisdictions. This includes s.37 of the SCA 1981, whereby the court can make an order if it is just and reasonable to do so. The s.37 jurisdiction can arise in the context of CPR r.25.1(1)(c)(i) and (ii); and also on the basis that the relief falls within s996(1) and (2)(a). I am reminded, in relation to s.37, of *MacLaine Watson & Co Ltd v International Tin Council (No.2)* [1987] 1 W.L.R. 1711, at 1716C, in which it is said that

> *the court should not shrink, if it is of the opinion that an injunction is necessary for the proper protection of a party to the action, from granting relief, notwithstanding it may in its terms be of a novel character*.

68. Free standing disclosure orders have been made in reliance on s.37: see *MacLaine Watson & Co Ltd v International Tin Council (No.2)* [1987] 1 W.L.R. 1711, in which the Court of Appeal upheld a decision to grant an injunction requiring the disclosure of assets with a view to enforcing a judgment debt. Moreover, a court has jurisdiction to make ancillary orders to ensure the effectiveness of earlier orders.

69. Next, the Petitioner has a common law right to the books and records of VC1 and VHL. He will have the like common law right in relation to VBL, VDL and CPL if he is made a director of those companies. The source and scope of the right was considered by the Court of Appeal in *Oxford Legal Group Ltd v Sibbasbridge Services plc* [2008] 2 BCLC 381 ([12], [24], [44]). Of particular relevance to this case are the propositions that (1) it was not open to the court to refuse assistance in case where it had no reason to think that the director was using the right to inspect for improper purposes; and (2) even if there is a serious question to be tried on the issue of improper purpose the court may conclude that the balance of convenience favours an immediate order.

70. I have reached the conclusion that the preservation and delivery up orders ought to be made. They are just and reasonable within the meaning of s.37 of the SCA 1981, and ought in any event to be made by reference to the common law right of the Petitioner to the books and records of the English Companies, of all of which he will be a director following the order being made. There is no reason to think that the Petitioner wants sight of the records for any improper purpose. I consider that the order is necessary for the proper protection of the Petitioner and of the English Companies. The orders are just and reasonable in the light of the facts of this case, and of the orders I have already made. The balance of convenience favours an immediate order.

Passport orders

71. The Court has power to make an order depriving a respondent of their passport under s.37(1) of the SCA 1981 *Lakatamia Shipping Company Ltd v Su* [2021] EWCA Civ 1187 (at [3]). The discretion exists both before and post judgment: *Moss v Martin* [2022] EWHC 2385 (Comm) at [31].

72. The applicable principles were summarised by Zacaroli J in *Corbiere Limited v Xu* [2018] EWHC 112 (Ch) at [31] to [34]:

> *(1) First, it is necessary to consider the harm that would be done to the defendant in making the order;*
> *(2) Second, it is necessary to consider the harm to the Claimants if no order is made. In Bayer v Winter AG itself* [[1986] 1 WLR 497 at pp.502-503], *where the order was sought in aid of an order for disclosure, Fox LJ noted that if the defendant left the United Kingdom, then the plaintiffs were at risk that they would be unable to obtain the information, noting that while within the jurisdiction the defendant could be compelled to attend for cross-examination;*
> *(3) Third, the essential question is whether the order was reasonable and necessary, ancillary to the due performance of the court's functions;*
> *(4) Fourth, recognising that the order interferes with individual liberty, it should be for a period of time that was no longer than necessary to enable the plaintiffs to serve the orders to which the restraint order was ancillary, and to endeavour to obtain from the defendant the information referred to in those orders;*
> *(5) Fifth, Fox LJ noted that the court had both the power, and the duty – where an order such as an order for disclosure had been made – to take such steps "as will enable the order to have effect as completely and successfully as the powers of the court can procure".*

73. There are two competing factors at play which the court is required to balance: the need for the court to do whatever is necessary to support its orders to ensure they are not futile, and the fact that an aspect of the liberty of the respondent is concerned: *Kuwait Airways Corporation v Iraq Airways Co* [2010] EWCA Civ 741. My attention was also drawn to the Court of Appeal decision in *JSC Mezhdunarodny Promyshlenniy Bank v Pugachev* [2015] EWCA Civ 1108 at [36]-[37], in which the legal principles were identified as those set out by Mostyn J in *Young v Young* [2012] EWHC 138 (Fam) at [26] (in which a passport order was sought and granted *before and until* trial), to which I have had regard.

74. Additionally, the following propositions are relevant.
    (1) Passport order should be granted for limited periods of time, and normally confined to support the enforcement of another court order. *Harrington & Charles Trading Company Limited v Mehta* [2022] EWHC 1811 (Ch) at [6]. But where a respondent's own behaviour causes the delay, the order can be extended: *Lakatamia Shipping Company v Su* [2021] EWCA Civ 1187 at [41]

(2) A passport order may be granted to restrain a respondent from leaving the jurisdiction until a disclosure order has been complied with: *Corbiere Ltd v Xu* [2018] EWHC 112 (Ch) at [39].

(3) Equally, a passport might continue to be confiscated where a respondent has failed to provide disclosure to the satisfaction of the court, so that it is the court which will determine whether the disclosure obligations have been met: *Grosvenor Property Developers Ltd v Varma* [2019] EWHC 2466 (Ch) at [4].

75. In order to obtain an order, the applicant will have to establish probable cause for believing that the respondent is about to quit the jurisdiction. *Moss v Martin* [2022] EWHC 2385 (Comm) at [45]:

> *If the evidence, viewed objectively, demonstrates a real risk that the defendant will leave this country in order to frustrate the court's processes, that is sufficient to give the court jurisdiction, provided that the restriction is proportionate in all the circumstances of the case.*

76. I have reached the conclusion that the Passport Order ought to be made. I bear in mind the loss of liberty to the First Respondent, but also that the speed of return of his passports (he is believed to have multiple passports because of his extensive travelling) is in his own hands: if he complies with the other orders, they will be returned to him. I have not only the power but also the duty, given I am also making an order for disclosure, to take such steps as will enable the order to have effect as completely and successfully as the powers of the court can procure.

77. I consider that the First Respondent is a flight risk in view of his frequency of travel, the fact he is not resident in the United Kingdom, and the fact that he has shown himself to be willing to sidestep and flout the law when it serves his interests. I consider this adds up to a real risk that he would leave the jurisdiction to frustrate the court's purposes, in particular in relation to the Imaging Order, but also in relation to the ancillary orders concerning cooperation with the Petitioner in managing the handover of information concerning the English Companies, for example, sending a neutral response to any emails addressed to him concerning the business, and ensuring that they are redirected to the Petitioner or other director. Any flight from the jurisdiction would compromise the effect of the Imaging Order, if he were to flee

before the Imaging Order could be implemented. The temporary restriction on his liberty is in my judgment justified and proportionate in all the circumstances.

78. Further orders ancillary to those considered above were sought, for example, an order preventing the First and Second Respondents from contacting staff of the English Companies or attending within 100m of the Greenhithe Facility. Those further orders are necessary to support the operation and effect of the principal orders, and I will grant them in the terms directed at the adjourned hearing on 9 October 2023.

Urgency

79. Although the matters giving rise to the Application became known in July/August 2023, the Petitioner has suffered some ill health (caused he says by the stress of the position he found himself after discovering the First Respondent's wrongdoing) which has delayed progress. Moreover, he was keen to obtain professional input on how to manage the way out of the looming crisis, and to formulate a detailed management business plan to implement the recommended strategy, so that he could demonstrate to the Court the commercial and business rationales of the orders sought. I accept that the Petitioner has acted as swiftly as he has been able. In my judgment that time was well spent in terms of providing a cogent and persuasive case for the changes sought to the management and governance of the English Companies.

80. It is also obvious why the orders must be made prior to the First Respondent landing in the United Kingdom. Though it has not shared any plans with the Petitioner, it is quite possible that HMRC may take steps to stop or arrest the First Respondent on the flight or soon after landing in the jurisdiction on Tuesday. At that point, the First Respondent will appreciate the position he is in, and absent the court orders may well seek to leave the jurisdiction and/or destroy his electronic devices and/or other relevant evidence. Accordingly, it is clear to me that the Petitioner is entitled to the relief sought both *ex parte* and on short notice to the court, with no notice to the First Respondent.

Cross undertaking

81. In his affidavit, the Petitioner gave evidence that he had assets in the region of £5m, and was therefore good for his cross undertaking in damages which he accepts he must give. I invited him to produce supporting evidence as to his means, which he did

by his second affidavit and exhibits before the adjourned hearing on 9 October 2023. He is prepared to undertake to (1) maintain the sum of £100,000 in an account controlled by his solicitors, and (2) keep a brokerage account currently valued at £1,339,359, and any proceeds thereof, in England and Wales, with provision for topping it up to £1million if the value of the account/proceeds fall below that level. In my judgment, for present purposes those measures sufficiently fortify the cross undertaking in damages.

Full and frank disclosure

82. Mr Bailey was well aware of the duty on him and on the First Petitioner to make full and frank disclosure of evidence and law which may be adverse to his case. Those matters are addressed at paragraph 127 of his very helpful skeleton argument and were developed in oral submissions at the first hearing on 6 October 2023. In the interests of brevity, I shall not set those out here, in view of my decision that none of the matters raised cause me to reconsider my findings or my determination.

83. The detailed order was finalised at the adjourned hearing on 9 October 2023. No further consequential orders or directions are necessary.

Addendum

84. By email dated 17 October 2023 I received a request to approve a Consent Order to vary the Order of 9 October to change the time limit for compliance with paragraph 20.3 of the Order requiring the Frist and Second Respondent to produce copies of and access to any electronic files containing the information in respect of which the order was made; new wording agreed by the parties to replace paragraph 13 which prohibited certain acts concerning the use and access of passwords and prompts for relevant online accounts prior to being informed that the Imaging Order had been completed; and discontinuance of the Passport Order together with an order that the Supervising Solicitors return his passports to the First Respondent. I approved the order in the terms sought.

85. I have been informed today that the parties are lodging a consent order to adjourn the Return Date hearing.