Neutral Citation Number: [2020] EWHC 560 (QB)

Case Nos: TLQ18/0230
QH16X0444
QB-2016-003040

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 9 June 2020

Before :

MR CLIVE SHELDON QC
SITTING AS A DEPUTY JUDGE OF THE HIGH COURT

- -

Between :

THE NEW YORK LASER CLINIC LIMITED	**Claimant / Applicant**
- and -	
(1) NATURASTUDIOS LIMITED **(2) JAMES HENRY ANDERSON** **(3) NATURA ACADEMY LIMITED** **(4) NATURA GROUP LIMITED** **(5) NATURAHEALTH LIMITED**	**Defendants / Respondents**

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Juliette Levy (instructed by **Cerulean Law**) for the **Claimant**
Stuart Cakebread (instructed by **Cerulean Law**) for the **First Defendant**
Duncan Macpherson (instructed by **Tenet Compliance and Litigation**) for the **Second and Third Defendants**
The **Fourth** and **Fifth Defendants** did not appear and were not represented

Hearing dates: January 27th & 28th 2020

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR CLIVE SHELDON QC
SITTING AS A DEPUTY JUDGE OF THE HIGH COURT

Clive Sheldon QC, sitting as a Judge of the High Court :

1. On October 30th 2019, Cavanagh J. issued a judgment in favour of New York Laser Clinic Limited ("NYLC"), and awarded damages against Naturastudios Limited in the sum of £3,876.830. On November 15th 2019, at an *ex parte* hearing, Her Honour Judge Coe QC, sitting as a Deputy High Court judge, made a post-judgment freezing order in favour of NYLC, as against 5 Respondents: (1) Naturastudios Limited; (2) James Henry Anderson; (3) Natura Academy Limited; (4) Natura Group Limited; and (5) Naturahealth Limited.

2. The matter came back before HHJ Coe QC at an *inter partes* hearing on November 26th 2019. There was not sufficient time to consider all of the issues. The order was continued, with some variations, and a direction was made that the matter be listed for a further hearing. That further hearing came before me on January 27th-28th 2020.

3. At the hearing before me, NYLC sought a continuation of the freezing order against each of the 5 Respondents. 2 of those Respondents, James Anderson and Natura Academy Limited, sought to discharge the freezing order made by HHJ Coe QC; and they resist the application to continue the order against them.

4. The evidence before me consists of: (1) the first affirmation of James Talfourd-Cook (November 14th 2019); (2) the fifth witness statement of Mr. Talfourd-Cook (August 1st 2019); (3) the sixth witness statement of Mr. Talfourd-Cook (October 10th 2019); (4) the sixth witness statement of Liane Atcheson (July 8th 2019); (5) the transcript of the application hearing on November 15th 2019, and the Claimant's skeleton argument for that hearing; (6) the affidavit of James Anderson (November 22nd 2019); (7) the third witness statement of Mr. Anderson (November 25th 2019); (8) the fourth witness statement of Mr. Anderson (January 21st 2020); (9) the seventh witness statement of Mr. Talfourd-Cook (January 23rd 2020); (10) the witness statement of Lane Bednash (January 23rd 2020); and (11) a letter from James Dewar, Associate Director, KPMG LLP (January 27th 2020). I am not taking into account the further witness statement provided by Mr. Anderson after the hearing. It merely seeks to make good some points made by his Counsel in submissions before me, and is not corroborated by any third party. I do take note, however, of the exhibit to that statement which consists of NYLC's latest accounts as these are important to the issues that I need to consider and were referred to by Ms. Levy in her submissions.

5. The nub of the argument made by Ms. Levy, acting on behalf of NYLC, before HHJ Coe QC at the *ex parte* hearing, and before me on the return date, was that each of the corporate Respondents are "ciphers" of Mr. Anderson, and that he has taken a number of steps to strip Naturastudios Limited of assets so as to make the company "judgment proof": to avoid making payment to NYLC in respect of the judgment that it has obtained. Ms. Levy has argued that the obvious inference is that if Mr. Anderson and his "ciphers" are not restrained, further dissipation of the assets of Naturastudios Limited will occur.

I. Summary of the underlying claim

6. NYLC operates a number of clinics providing non-invasive, aesthetic, procedures to their clients. Most of their income is derived from the provision of laser hair removal services. NYLC bought, via hire purchase contracts, a number of Magma Lasers for

their business. Naturastudios Limited, a company incorporated in Scotland, whose chief executive and sole shareholder was James Anderson, was the sole distributor of Magma Lasers in the United Kingdom, and induced NYLC to purchase the Magma Lasers.

7. NYLC experienced difficulties with the Magma Lasers and, on December 21st 2016, they issued proceedings against Naturastudios Limited in the High Court for damages for negligent misstatement. On October 22nd 2018, NYLC notified Naturastudios Limited that they wished to amend their claim to allege breach of collateral warranty, with a consequent claim for damages for loss of profits. This amendment was allowed on December 21st 2018.

8. A trial of the claim took place before Mr. Justice Cavanagh, commencing on October 8th 2019. On October 30th 2019, Cavanagh J. handed down judgment in which he found in favour of NYLC on both causes of action. As well as awarding damages against Naturastudios Limited in the sum of £3,876.830, Cavanagh J. ordered that Naturastudios Limited pay the costs of the claim. Naturastudios Limited were ordered to pay £250,000 on account of costs by November 13th 2019. This order has not been satisfied. NYLC also had liberty to make an application under section 51 of the Senior Courts Act 1981, which would enable the company (if so advised) to seek costs from Mr. Anderson personally. The judgment of Cavanagh J. is to be found at [2019] EWHC 2892 (QB). It can be seen from paragraph 260, that the learned judge awarded damages for loss of profits on the collateral warranty claim in the sum of £3,580,097.00.

II. Detailed Chronology

9. It is necessary for me to set out a detailed chronology of what took place, or what is alleged to have taken place, so that I can deal properly with the applications that were before me.

10. Mr. Anderson has worked in the aesthetics business since 2004. On January 23rd 2012, he incorporated Naturastudios Limited in Scotland. In July 2017, Naturastudios Limited registered the *Veinaway* trademark; in April 2018, Naturastudios Limited registered the *naturastudios* trademark.

11. On December 4th 2018, shortly after NYLC had issued an application to add the collateral warranty claim, a variety of steps were taken by Mr. Anderson with respect to the Respondent corporate entities. Naturastudios Limited passed a resolution to change its name to Natura Academy Limited. On December 11th 2018, the name was changed back to Naturastudios Limited. On December 13th 2018, Naturastudios International Limited (another entity which had been set up by Mr. Anderson) changed its name to Natura Academy Limited. On December 14th 2018, Mr. Anderson incorporated Naturahealth Limited.

12. The decision to allow NYLC to amend its particulars of claim was appealed. On January 23rd 2019, before the appeal was heard, Natura Group Limited was incorporated. On February 1st 2019 Freedman J. dismissed an application by Naturastudios Limited to vacate the trial date, which had previously been fixed within a window of January 11th to April 17th 2019. On February 13th 2019, the Court of

Appeal upheld the decision to permit the amendment to the particulars of claim, but adjourned the trial. A trial was subsequently fixed for 10 days from October 8th 2019.

13. On April 25th 2019, Naturastudios Limited filed unaudited accounts for the year ending June 30th 2018. These showed the company having net assets of £128,382, and having available cash of £142,837, an increase from £52,031 in the previous year.

14. In May 2019, Mr. Anderson met with BDG Group Limited. They are unlicensed insolvency practitioners. "BDG" stands for "Business Debts Gone". Their website states that

> "We can't of course do anything that breaks the law. But we can and will put ourselves as far as possible in your shoes, and represent your best interest to help you avoid proceedings and problems".

In addition, they refer to the fact that they have

> "no professional body to answer to or licence to protect, so we can fight your corner to the fullest extent the law allows without any professional body reprimanding us for using 'dirty tricks' against the people we are protecting you from."

15. I have seen a copy of BDG Group Ltd.'s terms and conditions. These provide that they agree to acquire "the Target Company" for a purchase consideration of £1. The purchaser's obligations include (i) the execution of a purchase and sale agreement with the shareholders of the Target Company; (ii) the appointment of directors to the Target Company upon acquisition; (iii) the change of the registered office of the Target Company; (iv) the change of the name of the Target Company should the Client require it; (v) communicating with creditors of the Target Company informing them that they have purchased the Target Company; (vi) dealing with all legal and statutory obligations of the Target Company as owners and directors; (vii) appointing an insolvency practitioner should it be necessary to instigate formal insolvency proceedings.

16. Mr. Anderson has said that he did not retain the services of the BDG Group Limited. Nevertheless, records at Companies House show that, on May 12th 2019, Mr. Anderson resigned as the sole director of Naturastudios Limited, and Mr. Kell was appointed in his place. In addition, Mr. Anderson transferred his sole shareholding of Naturastudios Limited to Mr. Kell; the registered office of Naturastudios Limited was changed to a location in Glasgow, which I am told is a bar; and Naturastudios Limited passed a resolution to change its name to Blue Checker Limited. These changes were not filed with Companies House until July 25th or 26th 2019, two months after they should have been reported.

17. In June 2019, Mr. Anderson purchased the property where Naturastudios Limited had its registered office (1 John's Place, Edinburgh) for £440,000. This property transfer was registered on July 5th 2019. In July 2019, Natura Academy Limited started trading, using the get-up, goodwill, logos and trademark of Naturastudios Limited.

18. On July 8th 2019, Naturastudios Limited applied for increased security for costs against NYLC and sought an interim costs order. (NYLC had been ordered to pay, and had paid, £60,000 in security for costs in June 2018). Mr. Anderson's statement accompanying that application made no mention of the various changes that had taken place to Naturastudios Limited as I have set out at paragraphs 16-17 above. The application was listed for August 14th 2019.

19. On July 24th 2019, unbeknown to NYCL, the trademarks, website domains and intellectual property titles of Naturastudios Limited were sold to Natura Academy Limited for the sum of £1,200; all of the stock and assets of Naturastudios Limited were sold to Natura Academy Limited for the sum of £10,550; and all of the IT equipment including software, computers and servers and telephone system of Naturastudios Limited were sold to Natura Academy Limited for £915. An invoice or receipt for these amounts, plus VAT, was shown to me. This is on Natura Academy Limited headed notepaper, which includes the "natura studios" logo, and gives its registered address as 1 Johns Place, Edinburgh.

20. On August 1st 2019, shortly after discovering the various changes to the ownership and directorship of Naturastudios Limited, NYLC filed evidence in the security for costs application referring to those changes. This evidence came as a surprise to the solicitors for Naturastudios Limited, Tenet Compliance and Litigation ("Tenet"). On August 5th 2019, Tenet sent an email to Ms. Levy, counsel for NYLC (who is instructed on a direct access basis), to say that the evidence has been reviewed and

> "clearly it has raised some concerning matters relating to our client. We are urgently seeking to understand the position concerning our client and their present status. For the avoidance of doubt we were not aware of any of the matters described concerning our client and in particular Mr. Anderson's resignation or transactions concerning Naturastudios and it is those matters were are presently seeking to understand."

21. On August 12th 2019, Tenet wrote to Ms. Levy to say that they will be coming off the record. The following day they informed the Court of this, and explained that they had been instructed by Mr. Anderson that Companies House had been incorrectly notified of changes to the directorship of Naturastudios Limited, that he had not authorized this and had not signed any documentation affirming his resignation. Further, that he had not transferred his interest in the company and had not signed any documentation in this regard. It was explained by Tenet that

> "The changes notified to Companies House erroneously came about after the Defendant sought some initial advice from the BDG group Ltd and this had involved Mr. Anderson providing those advisors with access to the Defendant's online Companies House account. Changes were made without Mr. Anderson's authority or his executing any documents to confirm those changes notified to Companies House. Mr. Anderson is seeking to amend the records at Companies House to reflect the correct position. It is the case that these events have arisen due to the current financial position of the

> Defendant and advice being sought by Mr. Anderson in this respect."

22. Mr. Anderson has maintained that position in his third witness statement. Mr. Anderson said he had never spoken to Mr. Kell or even heard of him. Mr. Anderson said that, as far as he was concerned, he continued to own Naturastudios Limited's shares and remained its sole director. That was why the matters were not mentioned in his witness statement for the security for costs application.

23. Although I have not conducted a "mini-trial" of the evidence, and the evidence of Mr. Anderson has not been subject to cross-examination, his evidence concerning his relationship with the BDG Group Ltd. and the various changes to the corporation is very troubling. Mr. Macpherson, on behalf of Mr. Anderson, acknowledged that the evidence was "peculiar". It seems to me that there is a good arguable case that Mr. Anderson's explanation that this was all a mistake is not truthful, and that this was all part of an attempt to dissipate assets, and move his business from Naturastudios Limited to Natura Academy Limited without that being noticed or appreciated by NYLC. The changes made to corporate structure and ownership of Naturastudios Limited were not notified to Companies House until after the company's assets had been transferred to Mr. Anderson and to his new trading vehicle Natura Academy Limited

24. I note that Mr. Anderson has not provided any evidence of what, if anything, he was advised to do by BDG Group Limited, even though such advice would not be subject to legal professional privilege. There is also no evidence from BDG Group Limited to say what they advised Mr. Anderson to do.

25. Moreover, although Mr. Anderson instructed Tenet to say that he would be reversing the changes, the only change he did reverse was the directorship. This raises considerable suspicions about Mr. Anderson's conduct. Mr. Anderson has not explained why he made the change to the directorship but not the other changes to the shareholding or the company's name. One reason for not reversing the name change could be that when insolvency proceedings are brought this would make no mention of the previous business name – a name which is closely associated in the eye of the market with the business that Mr. Anderson had been engaged in through the company, I note, in this regard, that there is no mention at all in the Interim Liquidators' Report of the previous business name. The company is referred to in its new name of Blue Checker Limited, which is also the name in the public announcement of the liquidation petition.

26. On August 14th 2019, Naturastudios Limited withdrew its application for security for costs. Naturastudios Limited was ordered to pay costs in the sum of around £22,000. Naturastudios Limited has not complied with that order. On September 12th 2019, further case management directions were made in respect of the forthcoming trial, and an unless order was made against Naturastudios Limited.

27. On September 25th 2019, Naturastudios Limited passed a resolution to wind the company up. On October 8th 2019, Naturastudios Limited petitioned to wind up the company.

28. On the same date, the trial of the claim brought by NYLC commenced. Naturastudios Limited did not attend. Mr. Anderson wrote to Ms. Levy to say that the company would not be attending the trial and had applied to the sheriff in Edinburgh to petition for liquidation. Instead of attending trial, Mr. Anderson attended an Aesthetics fair at Kensington Olympia. Mr. Talfourd-Cook gave evidence about this at the trial before Cavanagh J, and this is described in the Court's judgment at [18].

29. Mr. Talfourd-Cook told the Court that he attended a trade exhibition at Kensington Olympia on October 10th 2019. The exhibition was concerned with technologies and equipment for use in clinical and cosmetic procedures, and the most prominent stand belonged to Naturastudios Limited, and was occupied by Mr. Anderson and by Mr. Ringer, the company's national sales manager. Mr. Talfourd-Cook exhibited photographs which showed a large stand with the branding and name of Naturastudios Limited on it (the photograph that I have seen shows a stand under large wording "natura studios", and the stand contains a logo and a reference to "natura academy"), and which showed Mr. Anderson and Mr. Ringer speaking to customers behind the desk at the stand.

30. Mr. Talfourd-Cook also obtained various brochures and handouts from the stand. In his First Affirmation, Mr. Talfourd-Cook November 15th 2019, said that it was apparent that Naturastudios Limited was "to all intents and purposes carrying on business at the trade fair and looking to generate further business".

31. After the trial, on October 19th 2019, NYLC discovered the advertisement of the winding up petition by Blue Checker Ltd. (the new name for Naturastudios Limited), and they instructed solicitors in Scotland. On October 23rd 2019, NYLC filed answers to the petition, raising procedural and jurisdictional objections. On October 30th 2019, judgment in the underlying claim was handed down by Cavanagh J.

32. On November 11th 2019, Mr. Talfourd-Cook downloaded a brochure from the naturastudios.co.uk address. This front-page of the brochure showed the "natura studios" name and logo. The name of Naturastudios Limited was set out on the back page.

33. The *ex parte* hearing of NYLC's application for a freezing order was heard by HHJ Coe QC on November 15th 2019. Mr. Talfourd-Cook's first affirmation and exhibits were put before the learned judge. Mr. Talfourd-Cook referred, among other things, to the fact that he had undertaken searches from the register of the Intellectual Property Office which showed that Naturastudios Limited continued to own the trademark in the logo and product name of *Veinaway*, a product that it had been the exclusive distributor of. Similarly, Naturastudios Limited owned the trademark in the name *Naturastudios*. Mr. Anderson contended that the trademarks must be of some value to Naturastudios Limited as Veinaway is a very important product line for Naturastudios Limited, and the trademark of Naturastudios appears to have been intended by Mr. Anderson as the means by which he can transfer the business and goodwill of Naturastudios Limited to the other entities controlled by him.

34. Mr. Talfourd-Cook said that in his view Mr. Anderson was attempting and had put into place a plan to "walk away" from any liabilities or contingent liabilities of Naturastudios Limited. He also expressed the belief that Mr. Anderson and Naturastudios Limited would take steps to dissipate any assets in the company and

any assets that Mr. Anderson had already transferred out of the company to frustrate any possibility that NYLC may have of enforcing its judgment and costs orders.

35. With respect to possible defences that might be available to Naturastudios Limited, Mr. Talfourd-Cook said that to his knowledge there were no relevant matters that could be relied upon. Mr. Talfourd-Cook said that in case an undertaking was required by the Court to compensate for losses to the respondents, NYLC would comply with any order that the Court may make.

36. In her skeleton argument for the *ex parte* hearing, Ms. Levy set out the various corporate changes that had been made by Mr. Anderson, and contended that Naturastudios Limited was trading through some or all of these other vehicles. She referred to the recent Court of Appeal decision in *Emmott v. Michael Wilson & Partners Ltd.* [2019] 4 WLR 53, in which it had been stated by Gross LJ that it would usually be inappropriate in a post-judgment freezing injunction to include the "*Angel Bell*"[1] exception for the payment in the ordinary course of business. This was due to the policy of the law being strongly in favour of the enforcement of judgments. Ms. Levy contended that the Respondents could always ask the Court to vary the matter on the return date.

37. Ms. Levy also contended that this was a case where NYLC should not be required to give an undertaking, referring to the case of *VB Football Assets v. Blackpool Football Club (Properties) Ltd.* [2018] EWHC 1232 (Ch).

38. Ms. Levy also referred the learned judge to the *Chabra* jurisdiction of the Court, as justifying the order against Mr. Anderson and the proposed corporate defendants (that is, other than Naturastudios Limited). She contended that Naturastudios Limited was the *alter ego* of Mr. Anderson, who was the company's beneficial owner and controlling mind, and that the other proposed corporate defendants were all *alter egos* of Mr. Anderson and were being used in concert with Naturastudios Limited to further his personal interests. She contended that the injunction would be "ancillary and incidental" to the cause of action against Naturastudios Limited.

39. I have also seen a copy of the transcript of the hearing before HHJ Coe QC. From the transcript, it can be seen that reference was made by Ms. Levy to:

    i) an attempt having been made in Scotland to wind up Naturastudios Limited;

    ii) the various entities were being used as "ciphers" for Mr. Anderson and that Naturastudios Limited's business and goodwill was being run at the will and behest of Mr. Anderson through whichever vehicle suited him;

    iii) the fact that there were not separate websites or brochures for the different businesses;

    iv) the fact that the trademarks were still owned by Naturastudios Limited, and in the control of Mr. Anderson and Naturastudios Limited, although they were being used on behalf of other entities;

[1] See *Iraqi Ministry of Defence v. Arcepey Shipping Co SA* [1981] QB 65.

v) the transfer of the property of Naturastudios Limited to Mr. Anderson, with no explanation as to why;

vi) the case of *Chabra* in some detail. In this regard, Ms. Levy contended that Mr. Anderson's activities were not only on "all fours" with that case in terms of organizing his affairs through a complex structure of companies so that his assets were held by companies which were merely agents or nominees of his, but Mr. Anderson had the added benefit of being able to trade under the trademark Naturastudios; that it was more than arguable that the companies were the *alter ego* of Mr. Anderson and at least some of the assets would be available to meet NYCL's claims. It was argued that "when Mr. Anderson uses the trademark and goodwill with other vehicles and is the sole shareholder and director of the other entities . .. there is evidence that the assets of those other companies, vested in those companies, are beneficially his property." Ms. Levy said "assets of the current defendant [Naturastudios Limited] are assets that have been transferred to Mr. Anderson and as such those assets will be assets available to meet the debt because they shouldn't have been transferred to him. That's why we seek to capture the goodwill and the assets of the other companies because by using [these as he] sees fit, he is effectively divesting [Naturastudios Limited] of its assets into these companies."

vii) the fact that corporate vehicles have their own separate legal entity and personality. However, on the face of it, Natura Academy was using the goodwill and trademark of Naturastudios Limited;

viii) the fact that they did not know where the £440,000 was from the sale of the property. Ms. Levy said if by some "remote possibility" Mr. Anderson had actually paid value for that transfer, Naturastudios Limited would have a not insignificant sum, depending on what the equity in the asset had been;

ix) the fact that what was being sought was a world-wide freezing order, because it was necessary to attach assets in Scotland.

40. I have not seen a copy of the judgment but have seen a summary of the judgment from *Westlaw*. This states that:

> "Abstract
>
> The claimant applied for a post-judgment worldwide freezing order against the defendant, the defendant's sole director and shareholder (J) and three other companies allegedly controlled by J.
>
> The claimant had succeeded with claims for breach of collateral warranty and negligent misstatement against the defendant ([2019] EWHC 2892 (QB)). The judgment sum outstanding was approximately £4.1 million. The claimant made the without notice application following concerns that funds that were available to satisfy the judgment had been, and would continue to be, dissipated. It alleged that J, as the defendant's

controlling mind, was acting dishonestly; that he had taken assets out of the defendant; and that he was carrying on business as usual through companies he had set up and which he controlled. To substantiate its allegations against J, the claimant presented photos of him at a recent trade exhibition, and referred to correspondence from his solicitors which claimed that he had sold and transferred the defendant's assets by accident.

The claimant submitted that, in order to adequately protect it, it was necessary to grant the injunction against the defendant as well as against J and the other companies.

Held

Application granted.

The court was satisfied that the allegations of dissipation of assets were made out, and that an inference of dishonesty against J could be drawn, which justified the order sought. The idea that assets had been transferred accidentally was negated by the fact that no attempts had been made to undo those actions. The evidence showed that various different entities in almost identical form to the defendant seemed to be carrying on business as normal. The defendant's registered trademarks appeared to have been used by those entities. There were concerns that the entities were not real entities but used to move assets and goodwill away from the defendant. There were therefore attempts to avoid satisfaction of the judgment. It was clear from the decision in TSB Private Bank International SA v Chabra [1992] 1 W.L.R. 231, [1991] 7 WLUK 69 that the court had jurisdiction to join another party to the action, and to grant a freezing injunction against it, where that was necessary in order to make the freezing order against the defendant effective, Chabra applied. The court also had the power to make such an order under CPR r.3.3(4) and r.19.2. Accordingly, the court was satisfied that it had jurisdiction to make an order against J and the other entities on the basis that the defendant and J were likely to be the same, J was the controlling mind and the other entities had no separate existence. It was also appropriate to disapply the normal exception allowing a party subject to a freezing order to nevertheless make payments in the ordinary course of business, Michael Wilson and Partners Ltd v Emmott [2019] EWCA Civ 219, [2019] 4 W.L.R. 53, [2019] 2 WLUK 374 followed. Such an order was draconian because it would not enable any of the defendants to continue to operate. However, on the facts of the case, such an order was not excessive. Furthermore, it was open to the defendants to apply to the court to vary the terms of the order.”

41. The order made by HHJ Coe QC stated that she had read the affirmation of Mr. Talfourd-Cook, a Director of NYLC, and accepted undertakings from NYLC that if the Court later finds that this order has caused loss to Natura Academy Limited, Natura Group Limited and Natura Health Limited (but not Naturastudios Limited or Mr. Anderson), and should be compensated for that loss, they would comply with any order that the Court may make. Further, that they would not seek to enforce the order outside of England and Wales, other than Scotland.

42. The terms of the order were that the 5 Respondents must not remove from England and Wales assets up to the value of £4,500,000, or dispose of or transfer any assets whether in or outside England and Wales up to the same value. Particular assets were referred to: (i) the property at 1 St. John's Place, Edinburgh; (ii) the goodwill, property and assets of the business known as "Naturastudios" TM carried on at various addresses in Scotland; (iii) the Veinway and Naturastudios trademarks; (iv) the goodwill, property and assets of Naturastudios Limited and any interest held by Mr. Anderson in them; (v) the goodwill, property and assets of Natura Academy Limited, Natura Group Limited, and Naturahealth Limited, and any interest held by Naturastudios Limited or Mr. Anderson in them.

43. In addition, HHJ Coe QC ordered that Mr. Anderson, Natura Academy Limited, Natura Group Limited, and Naturahealth Limited be joined as parties to the action; and ordered the Respondents to provide information about their assets.

44. On November 25th 2019, Mr. Anderson swore an affidavit in response to the order to provide information. With respect to Naturastudios Limited, he explained that the company was no longer trading, that a petition had been presented for a winding up order and that KPMG had been appointed as interim liquidators, with a hearing due on November 27th 2019. He said that the assets of Naturastudios Limited (now named Blue Checker Ltd) were in the sum of £25,000 held in their solicitor's client account, and were on account for fees for the insolvency and for KPMG. Mr. Anderson said that he believed the director's loan account stood at £259,437.50 before reconciliation; after reconciliation, he calculated that the loan account would stand at £154,937.50. Mr. Anderson referred to trademarks, including Veinaway and Naturastudios, and said that these are still registered to Naturastudios Limited, but had been sold to Natura Academy Limited for less than £5,000. He said that the transfer documents were yet to be filed. Mr. Anderson detailed his personal assets, including his various properties, and referred to a customer list which he said that he had created and maintained since he started to work and trade in the industry in 2004. Mr. Anderson said that the assets of Natura Academy Limited include stock, estimated at a value of £95,000; office equipment, trademarks, and £51,385.13 cash in the bank, some of which was money owed to HMRC. The other Respondents had no assets worth £5,000. Mr. Anderson said that they had not traded.

45. Mr. Anderson also explained that the property at 1 John's Place had been bought by him for £440,000: he said that he repaid the company mortgage, and the balance of £141,135 was assigned to the director's loan account. Further, Mr. Anderson explained that the stock, and assets, including trademarks, had been sold for the global amount of £15,198 (including VAT) in July 2019, with payment being made in August 2019. Mr. Anderson explained that Natura Academy Limited had paid £25,000 on behalf of Naturastudios Limited into the client account of the latter company's solicitors.

46. Mr. Anderson also prepared a witness statement, dated November 25th 2019 in which he sought to respond to the various points made against him by NYLC. He explained that he commenced working in the aesthetics industry in 2004, long before he incorporated Naturastudios Limited. He said that he had built up personal contacts and relationships over the years and had not transferred the benefit of his personal goodwill to Naturastudios Limited, including the customer lists and relationships with key suppliers.

47. Mr. Anderson explained that he had concluded that Naturastudios Limited was insolvent before the trial of the underlying claim had started, referring to the decision of the Board of Directors on September 25th 2019 resolving to apply for the winding up of the company. That was why he said that Naturastudios Limited did not attend the trial. Mr. Anderson said that he could not afford legal representation and was in no position to conduct the case himself. Mr. Anderson said that he had attended the trade show on behalf of Natura Academy Limited, which by this time had purchased the remaining assets of Naturastudios Limited.

48. Mr. Anderson said that he had considered that it was in the best interests of Naturastudios Limited to defend the claim brought by NYLC, and expected that their defence would succeed. He had spent considerable time and resources defending the claim, whilst at the same time building up the business of Naturastudios Limited. He had sought to prevent NYLC from issuing a press release about the claim, as he thought this would damage the business of Naturastudios Limited. An injunction application failed and the press release was issued. He said that the effect of this was to cause a slump in sales of the products associated with the claim by about £500,000. He said that the company were unable to meet the orders expected by the manufacturer and the distribution agreement was terminated.

49. Mr. Anderson said that he had incorporated Naturastudios International Limited as he had initially intended to restructure the business, unrelated to the litigation. That did not take place and, on December 13th 2018, the company's name was changed to Natura Academy Limited. The reason for this was that going forward, he planned for the training part of Naturastudios Limited's business to be run through a separate company. This did not happen and the company remained dormant until it acquired the remaining assets of Naturastudios Limited in the summer of 2019. Mr. Anderson said that the incorporation of Natura Group Limited had nothing to do with the litigation or as part of some plan to dissipate assets; rather it reflected his thoughts regarding the eventual restructuring of the company. His intention was for this company to be a holding company for Naturastudios Limited and the training company. The change of name of Naturastudios Limited to Natura Academy Limited was a mistake: it should have been Naturastudios International Limited. That was later rectified when the mistake was identified. Mr. Anderson asserted that had his intention been to hide assets, the last thing he would have done was to incorporate companies that were readily identifiable using the "Natura" name and where he was identified as the sole shareholder and director. I consider that there is not necessarily anything suspicious about these changes, and accept mistakes are sometimes made. It was suggested by Mr. Macpherson that Mr. Anderson was not a "detail person". This is a possible explanation for these changes.

50. Mr. Anderson said that Naturastudios Limited engaged fully with the litigation, but the costs were causing a strain on its business. This led to the application to increase

the level of security for costs made in July 2019. Ultimately, however, the financial position was such that Naturastudios Limited could not continue to fund its solicitors and counsel, and certainly not for a 10 day trial with three sets of expert witnesses. As a result, Tenet were dis-instructed. Since the last accounts were filed on June 30th 2018, Mr. Anderson said that the financial position of Naturastudios Limited had deteriorated significantly. Resources were committed to the litigation rather than being invested in stock.

51. Mr. Anderson has stated that the cost of the litigation crippled Naturastudios Limited, to the extent that the company could not pay its debts when they became due. At the time when Tenet came off the record, they had unbilled work in progress of about £40,000, excluding VAT. Naturastudios Limited had also missed a VAT return. Recognising that Naturastudios Limited was to be wound up, Mr. Anderson had decided to set up a new business through Natura Academy Limited. I accept that this may well be part of the explanation for Mr. Anderson's actions. It is likely that the cost of the litigation was having a significant effect on the financial position of Naturastudios Limited. It is not necessarily the whole explanation, however. There is a good arguable case that a potential judgment debt of several millions of pounds played a part in Mr. Anderson's thinking and actions.

52. Mr. Anderson said that once he had concluded that Naturastudios Limited could not continue to trade, transactions were entered into pursuant to which he purchased the property at 1 John's Place, and Natura Academy Limited purchased the remaining assets of Naturastudios Limited's business. He said that these transactions were documented and undertaken properly. Mr. Anderson does not explain, however, why it was not until September 25th 2019 that the decision was made to wind Naturastudios Limited up. The delay is troubling.

53. Mr. Anderson explained the circumstances behind his purchase of the office at 1 John's Place. He said that the property was acquired by Naturastudios Limited in 2017. He had intended to purchase it in his own name on the basis that the company would pay him rent for the use of the premises. He agreed a sale price with the vendor in the sum of £440,000. Fairly late in the transaction process, he learned that the builder had "opted in for VAT" and that this would be payable on top of the purchase price. As he was not VAT registered, and could not get a mortgage which included the VAT, he decided that Naturastudios Limited should purchase the office. That was purchased in part by a mortgage and the balance through Funding Circle for which he provided a guarantee.

54. Mr. Anderson said that in the summer of 2019 he was concerned that the company would not be in a position to continue to meet the mortgage payments. He therefore bought the property for £440,000 which he thought reflected fair value. This was funded by a personal mortgage which was used to repay the mortgage taken out by Naturastudios Limited, and the balance of £141,135 was allocated to the director's loan account. Mr. Anderson also explained that Naturastudios Limited's trademarks, website domains, Intellectual Property, stock assets and IT equipment were purchased "for value" by Natura Academy Limited.

55. Mr. Anderson says that Natura Academy Limited is currently undertaking the distribution of products on behalf of three of the suppliers for whom Naturastudios Limited had previously acted. Naturastudios Limited had been required to meet

minimum order quantities for these products and was not in a position to do so in circumstances where the company could no longer trade. Furthermore, he says that the contractual relationship with the suppliers would have been lost in any event once the insolvency process had been commenced. He says that he made the arrangements to assign the contract as a result of his good personal relationship with the companies concerned.

56. Mr. Anderson explained that the initial freezing order was having a detrimental effect on Natura Academy Limited. He said that (without the *Angel Bell* exception), the practical effect of the order was that the company, which has 21 members of staff, could not trade and business had been brought to an abrupt halt as the company could not deal with their assets or make payments in the ordinary course of business. He estimated that the company had lost at least £20,000 of revenue since the order was granted.

57. Mr. Anderson explained that the initial freezing order did not allow him sufficient funds to meet his ordinary living expenses, or to meet his legal fees.

58. At the return date of November 26th 2019, the parties agreed that there was not time to deal with all the matters that needed to be considered. It was ordered that there should be a further hearing and that, until that date, the freezing order against Mr. Anderson was discharged upon him giving undertakings that he would not transfer or diminish the value of his assets, in particular his properties and shares in the other Respondents, but this did not prevent him from incurring ordinary living expenses of up to £10,000 per month and up to £30,000 in respect of legal advice and representation.

59. It was ordered that the freezing injunction against Natura Academy Limited should be varied to make clear that the company were not prohibited from dealing with or disposing of any of their assets in the ordinary and proper course of their business (that is, the *Angel Bell* exception was provided for), and that NYLC undertook not to disclose to any third party the fact that a freezing order had been made against that company.

60. The freezing order against the other Respondents remained in the same terms as ordered on November 15th 2019.

61. Also on November 26th 2019, the winding-up petition of Naturastudios Limited was granted. On November 27th 2019, Mr. Anderson provided KPMG with a statement of affairs. On December 18th 2019, KPMG provided an interim liquidator's report. This stated that Mr. Anderson had told them that in July 2019, Naturastudios Limited had received a quote from their solicitors estimating that the costs of defending the action would be approximately £359,000, and that this was a sum which the company could not afford. It is not clear whether this refers to the costs of the entire proceedings from beginning to end, or just going forward to trial. If the latter, then the figure is a considerable exaggeration and would call into question Mr. Anderson's truthfulness in his dealings with KPMG. I cannot say, however, as the matter was not discussed in the evidence.

62. The report also referred to the approach to the BDG Group which had offered a rescue process for a payment of £5,000, but this process had not been proceeded with. The

report refers to the appointment of Mr. Kell as replacement director and 100% shareholder, and says that the former appointment was subsequently reversed.

63. The report refers to the acquisition by Mr. Anderson of the freehold property and that Natura Academy Limited acquired the business and assets of the company. KPMG stated that "We are advised the purpose of this was to protect the business as a going concern, to ensure the Company's employees remained in employment and to obtain full value for the assets."

64. The report says that "We are investigating the pre liquidation sale of the Company's freehold property, business and assets to connected parties in July 2019 and are considering whether it may be appropriate to commence any action against the parties involved."

65. The report refers to a summary of the Director's Statement of Affairs for the Company as at November 27th 2019. KPMG note that they have not carried out an audit of this information, and that the figures do not take into account the costs of the liquidation.

66. The statement of affairs refers to unsecured creditors, including HMRC which is owed £362,000 in respect of VAT. The Statement of Affairs refers to a debt owed to NYLC of £22,000, but not to the much more substantial judgment debt. Nevertheless, there is a note to the Statement of Affairs prepared by KPMG which state that "We have received a significant claim of £4,172,822.16 from NYLC which is materially greater than the SOA balance shown. We are investigating this difference." In argument before me, Ms. Levy suggested that the failure of Mr. Anderson to set out the judgment debt in his Statement of Affairs was another example of his "dishonesty". I agree that this is a strange omission, especially as KPMG refer to them "investigating this difference", which implies that the information about the award came from NYLC and not Mr. Anderson himself. This gives rise to, at the very least, a suspicion that Mr. Anderson was not totally forthcoming with KPMG.

67. On January 24th 2020, KPMG were replaced as liquidators by CBM Partners UK Limited, a firm of licensed insolvency practitioners, preferred by NYLC.

68. On January 21st 2020, NYLC discovered on the naturastudios.co.uk website terms and conditions of Natura Academy Limited. These identify Naturastudios Limited as the "seller" and provide an address which was an earlier registered address of that company. Although Mr. Anderson has not provided any evidence about this, it was suggested to me by his Counsel that this was just because they had not caught up with all the paperwork. This seems to me to be a plausible explanation, and I do not consider that the ongoing use of these terms and conditions supports a case of dishonesty or lack of truthfulness.

69. Also on January 21st January 2020, Mr. Anderson submitted a further witness statement. Mr. Anderson says that he has been asked to repay £79,000 which relates to the Director's Loan Account, and says that he is willing to do so if the undertaking that he gave to the Court on November 26th 2019 is discharged. He says that KPMG had not raised any concerns to date regarding the two transactions at the centre of NYLC's concerns: the sale to him of the property, and the sale to Natura Academy Limited of the trademarks and other matters.

70. Mr. Lane Bednash, a director of CMB Partners (UK) Ltd. has provided a witness statement in which he states that in conversation with KPMG they had expressed a preliminary view that the business and assets of Naturastudios Limited had been transferred at "a substantial undervalue". This was vigorously disputed by KPMG in a letter written on January 27th 2020, and handed to me on the first day of the hearing.

71. KPMG's letter said that the freezing order had hampered its work as a liquidator, as they had to balance their obligations to adhere to insolvency law with the risk of breaching the order. They had done skeletal investigative work relating to the transactions which preceded their appointment. Doing more work may have breached the terms of the freezing order. It was stated that Mr. Bednash's statement contained "material untruths" about a conversation which they had had. In particular, it was stated by KPMG that in their conversation it was said that "we had not performed sufficient work to form a view on whether there had been any potential claims that could be raised in relation to antecedent transactions." As a result of KPMG's letter, I do not rely on Mr. Bednash's witness statement when analysing the question of whether there were any sales at undervalue.

72. Mr. Anderson has referred to the trademarks and says that the transfer documents relating to the sale to Natura Academy Limited are yet to be filed with the Intellectual Property Office. He said that only the Naturastudios trademark was in use and he had no intention of diminishing its value. At the hearing before me, Ms. Levy showed me that the Veinaway trademark also appeared to be in use, contrary to what Mr. Anderson had said. Materials on the naturastudios website contained a brochure concerning the Veinaway product, and a brochure obtained in November 2019 bearing the logo "natura studios" displayed the Veinaway trademark in a few places, including on a page describing the Veinaway System for vein removal. Ms. Levy said that this was another untruth of Mr. Anderson. The failure to mention *Veinaway* does add to my unease about some of Mr. Anderson's evidence. If there was a proper explanation, given the presence of the trademarks on the literature, I would have expected this to have been mentioned in Mr. Anderson's evidence submitted before the return date.

73. Mr. Anderson described the damage caused by the freezing order. Not only was he unable to settle his debt with the liquidator, but he was unable to invest in Natura Academy Limited, and had had to give up an opportunity to invest in a product that he had recently been introduced to on a business trip to Asia.

74. In his 7th witness statement, prepared on January 23rd 2020, Mr. Talfourd-Cook, has sought to estimate the market value of Natura Academy Limited, based on evidence provided by Mr. Anderson and figures provided by Mr. Anderson's counsel for the earlier *inter partes* hearing, where he stated that the company had monthly income of £120,000 and overheads of approximately £94,000. Mr. Talfourd-Cook says that on a conservative estimate the value of the business would be £1,829,434. That estimation seems to be a plausible one to me.

75. Mr. Talfourd-Cook says that NYLC's resources have not been strained by requiring it to fund the litigation. He also asserts that the company will comply with any order made by the Court in relation to its cross-undertaking in damages, just as it has complied with all costs orders and orders for security made in the litigation.

III. The relevant law

76. There was no real dispute between the parties as to the relevant law. Their disagreements focused on the application of the case law to the facts of the present case. I shall set out the relevant legal principles that will guide me in arriving at my decision.

77. Freezing injunctions (formerly commonly known as *Mareva* injunctions) can be granted post-judgment in aid of execution, whether or not a pre-judgment order has been obtained. In *Emmott v. Michael Wilson & Partners Ltd.* [2019] EWCA Civ 219, Gross LJ explained at [53] that:

> "post-judgment Mareva injunctions are granted to facilitate execution, by guarding against a risk of dissipation over the period between judgment and the process of execution taking effect, where the judgment would remain unsatisfied if injunctive relief was refused ... [P]ost-judgment Mareva injunctions can no longer be described as rare . . . Whether pre- or post-judgment, a Mareva injunction is not intended to confer a preference in insolvency . . . and does not form a part of execution itself."

Gross LJ. also noted at [56] (in the context of discussing the *Angel Bell* exception) that the policy of the law was "strongly in favour of the enforcement of judgments".

78. Freezing injunctions, whether before or after judgment, can be obtained against third parties. This was described to me as the *Chabra* jurisdiction, after the judgment of Mummery J. in *T.S.B. Private Bank International S.A. v. Chabra* [1992] 1 WLR 231. *Chabra* was a pre-judgment case concerning a defendant (Mr. Chabra) who, it was claimed, had failed to honour a guarantee given by him in respect of debts owed to the bank. The Court ordered an injunction against Mr. Chabra restraining him from removing from the jurisdiction, or otherwise disposing of or dealing with his assets within the jurisdiction, including his shares in a company of which he was the majority shareholder. He was also restrained from dealing with the company's assets within the jurisdiction. The Court also ordered the company to be added as a second defendant to the underlying claim, and the company was restrained from otherwise disposing of dealing with its assets.

79. At p.238F-G of his judgment, Mummery J. observed that:

> "I am of the view that there is a good arguable case that there are assets, apparently vested in the company, which may be beneficially the property of Mr. Chabra and therefore available to satisfy the plaintiff's claims against him if established at trial. I am also of the view that it is arguable that the company was, in fact, at relevant times the alter ego of Mr. Chabra and that its assets, or at least some of its assets, may be available to meet the plaintiff's claims against him if established."

At p.240B-D, Mummery J. stated that:

> "If the court has power to make an order against the company, the available evidence points strongly, in my view, to the need for an injunction against it. There is a good arguable case that some of the assets held in its name are the beneficial assets of Mr. Chabra either on the basis that the company holds them on trust for or as nominee for him, or on the basis that the company is nothing more than a convenient repository for Mr. Chabra's assets. It is, therefore, important that any such assets should be available to the plaintiff to satisfy any judgment it may obtain against Mr. Chabra. If no injunction is made against the company, there is a real risk that it will dispose of assets so as to defeat the plaintiff's chances of satisfying the judgment that it may obtain. The effect of the company disposing of its assets would also be indirectly to reduce the value of any shareholding which Mr. Chabra had, and may still have, in the company. The disposal would have the direct effect of diminishing the prospects of any assets vested in the company which may be Mr. Chabra's beneficial assets, being available in the United Kingdom to meet the plaintiff's judgment."

At p.241HA-242B, Mummery J. stated that:

> "the claim to a similar injunction against the company is also ancillary and incidental to the claim against Mr. Chabra and the court has power to grant such an injunction in an appropriate case. It does not follow that, because the court has no jurisdiction to grant a Mareva injunction against the company, if it were the sole defendant, the court has no jurisdiction to grant an injunction against the company as ancillary to, or incidental, to the cause of action against Mr. Chabra . . . I agree that such a course is an exceptional one, but I do not accept that it is one that the court has no jurisdiction to take."

80. Since the decision in *Chabra*, the scope of the jurisdiction has also been broadened. In *HM Revenue & Customs v. Clayton Egleton* [2006] EWHC 2313 (Ch), Briggs J. stated at [41] that "the jurisdiction to grant freezing orders against third parties is not rigidly restricted by the *Chabra* requirement to show that, at the time when the order is sought, the third party is already holding or in control of assets beneficially owned by the defendant."

81. In *Basra v. Poole* [2007] EWHC 3528 (Ch), Warren J. explained at [9] that

> "the applicant would need to show a good arguable case for one of the following: (a) assets being held by the third party belonging to the defendant; (b) a disposition of assets by the defendant to the third party liable to be set aside under section 423 of the Insolvency Act 1986, which concerns transactions defrauding creditors; or (c) an impending insolvency in the course of which the trustee in bankruptcy or liquidator would be able to recover for the benefit of creditors, for instance,

> where the transfer is at an undervalue or constitutes a preference."

82. As has been explained by Steven Gee QC in *Commercial Injunctions* (6th ed. 2016) at 13-006, "There does not have to be a causal link between the claim against the defendant and the basis on which the third party may be liable. The jurisdiction recognises that the third party is a separate person from the defendant, and does not involve piercing the corporate veil."

83. The test which should be applied by the Court on a grant of a freezing injunction against a non-party is as follows:

(1) has the claimant established a "good reason to suppose" as against the non-party that the assets of or held by the non-party would be susceptible to a procedure which would lead to compulsory satisfaction of the claim or a judgment;

(2) has the claimant established that there is a "real risk of dissipation of assets" and that the judgment will remain unsatisfied if an injunction is not granted.

(3) is the Court satisfied that it is just and convenient to exercise the jurisdiction, which is exceptional and to be exercised with caution.

See *Gee* at 13-007; and *Lakatamia Shipping Co. Ltd. v. Su* [2014] EWCA Civ 636 at [32].

84. In *Basra v. Poole*, Warren J. emphasised that the possible claim against a third party needed to be "clearly formulated" (following the decision of the House of Lords in *Fourie v. Le Roux* [2007] 1 WLR 320).

85. The content of the duty of full and frank disclosure was recently summarised by Cook J. in Alliance Bank v Zhunus [2015] EWHC 714 (Comm) at [66]

> "(1) The duty on the applicant in such circumstances goes beyond merely identifying points of defence which might be taken against him, important though that is.
>
> (2) The applicant has to show the utmost good faith, identifying the crucial points for and against the application and not rely on general statements and the mere exhibiting of numerous documents.
>
> (3) The applicant has to investigate the nature of the claim asserted and the facts relied on before applying, and has to identify any likely defences. He has to disclose all facts which reasonably could or would be taken into account by the Court. The duty is not restricted to matters of fact but extends to matters of law.
>
> (4) The applicant also has a duty to investigate the facts and fairly to present the evidence.

> (5) There is a high duty to draw the Court's attention to significant factual, legal and procedural aspects of the case.
>
> (6) Full disclosure has to be linked with fair presentation. The judge has to have complete confidence in the thoroughness and the objectivity of those presenting the case for the applicant.
>
> (7) It is the undoubted duty of counsel to draw to the judge's attention weaknesses in his case and to make sure the judge understands what might be said on the other side even if the judge says he has read the papers."

86. In *Rogachev v. Goryainov* [2019] EWHC 1529 (QB), Morris J. stated at [78]) that "the court should adopt a sensible and proportionate approach to applications to set aside a freezing order for non-disclosure". At [79], Morris J. observed that:

> "As regards the consequences of failure to make full and frank disclosure, the Court has a discretion whether or not to discharge an order obtained ex parte and whether or not to grant fresh injunctive relief . . . it is not for every omission that the injunction will automatically be discharged, whether immediate discharge is justified depends on the importance of the fact for the issues which were to be decided by the judge on the application. . . . Where there is non-disclosure of a material fact, whilst discharge is not automatic, it would only be in exceptional circumstances that a court would not discharge an order where there has been deliberate non-disclosure or misrepresentation".

87. There are further legal principles that I will refer to later, in the context of some of the arguments and my analysis.

IV. Discharging the injunction

88. Mr. Macpherson has made a number of arguments to support his application to discharge the injunction granted on November 15th 2019 and continued (in its varied form) on November 26th 2019.

89. Mr. Macpherson contends that the freezing order should be discharged because at the hearing on November 15th 2019, NYLC breached its duty of full and frank disclosure by: (a) failing to identify any cause of action against Mr. Anderson or Natura Academy Limited; (b) failing to limit the freezing order to an appropriate sum; (c) failing to identify the weakness in the cross-undertaking; (d) failing to identify that NYLC sought the freezing order in aid of the intended liquidator of Naturastudios Limited or point the court to the correct test; (e) failing to identify England & Wales was not a suitable jurisdiction; and (g) failing to identify obvious defences to the potential claims. Mr. Macpherson contends that the breaches are so substantial that the Court should discharge the freezing order. Ms. Levy, on behalf of NYLC, contends that there is no basis to discharge the freezing order. She contends that the freezing order (as subsequently varied) was properly obtained and that full and frank disclosure was provided.

90. I shall consider each of Mr. Macpherson's points in turn.

(a) Identifying and formulating a cause of action

91. Mr. Macpherson contended that at the *ex parte* hearing before HHJ Coe QC, NYLC failed to set out any cause of action against Mr. Anderson or Natura Academy Ltd and, in any event, did not clearly formulate any such cause of action. In my judgment, there is no basis to this submission.

92. Ms. Levy referred HHJ Coe QC to the *Chabra* case in some detail and sought to demonstrate the similarities between the two cases. Ms. Levy contended that Mr. Anderson was holding property (1 John's Place) on trust for Naturastudios Ltd, as the circumstances surrounding its purchase were unclear and the timing was suspicious. Ms. Levy submitted to HHJ Coe QC that there was a "remote" possibility that the purchase price had been paid by Mr. Anderson, and if there was then this would be available to the company. I consider that on the evidence available to NYLC at the time, and put before the Court, there was sufficient material to demonstrate a good arguable case that a clearly formulated cause of action – that the 1 John's Place property was beneficially owned by Naturastudios Limited – had been made out.

93. With respect to Natura Academy Limited, Ms. Levy contended that Natura Academy Limited appeared to be carrying on the business of Naturastudios Limited, using the latter company's get up and trademarks, as well as the same website and brochures. At the very least, Ms. Levy contended, Natura Academy Limited was holding the assets of Naturastudios Limited. At the hearing before me, Mr. Macpherson accepted that November 15th 2019, HHJ Coe QC could have concluded that there was good arguable case that these assets of Naturastudios Limited were being held on trust. At that point, NYLC did not know that assets had been transferred: just that Natura Academy Limited appeared to be carrying on Naturastudios Limited's business. I agree.

94. In my judgment, the cause of action in respect of both Mr. Anderson and Natura Academy Limited were clearly formulated before HHJ Coe QC, and there was, at that point in time, a good arguable case against them.

(b) failing to limit the freezing order to an appropriate sum

95. Mr. Macpherson contended that at the *ex parte* hearing before HHJ Coe QC, there was no legal justification for seeking an order in the sum of £4.5 million. It was contended that the maximum sum that NYLC should have sought to freeze was around £128,000, based on Naturastudios Limited latest financial statements (for the year-ended June 30th 2018), which showed the company having net assets of £128,382. Mr. Macpherson contended that the amount the court can freeze is linked directly to the cause of action on which the claimant relies.

96. Ms. Levy contended that it was appropriate to obtain an order in the amount of the judgement debt of £4.5 million. There was no way of knowing at the time of the application what the value of the assets held by the non-party Respondents was.

97. I agree with Ms. Levy. At the time of the hearing before HHJ Coe QC the value of the assets held by Mr. Anderson and/or Natura Academy Limited that may have belonged to Naturastudios Limited was simply not known.

(c) failing to identify the weakness in the cross-undertaking;

98. Mr. Macpherson contended that NYLC failed to inform HHJ Coe QC at the *ex parte* hearing that there was good reason to consider that the cross-undertaking in damages made in respect of Natura Academy Limited (as well as Natura Group Limited and Naturahealth Limited) lacked any value. It was contended that there was a real risk on November 15th 2019 that one or more of the non-party defendants would suffer significant damages if the freezing order was wrongly granted, especially as the *Angel Bell* exception had not been granted, and that this should have been raised with the judge. Mr. Macpherson contended that NYLC should have pointed out that: (a) NYLC had failed to file their accounts; (b) Mr. Talfourd-Cook had said in evidence that NYLC's business was suffering and that their directors had run out of money.

99. In the course of his submissions, Mr. Macpherson referred me to the decision of Scott J. in the case of *Manor Electronics Ltd. v. Dickson* [1988] R.P.C. 618. That case was not concerned with freezing injunctions, but other forms of injunctive relief obtained *ex parte*. At p.7 of his judgment, Scott J. discussed the purpose of giving a cross-undertaking in damages: that is, to protect a person subject to interlocutory orders in case the orders should turn out to have been wrongly granted. Scott J. observed that the evidence in support of the order often includes some reference to the financial worth of the applicant. Where there is no reference, "the assumption will be that the applicant's financial substance is adequate for the purpose of the cross-undertaking that he has given".

100. In her submissions, Ms. Levy accepted that she did not draw HHJ Coe QC's attention to the facts and matters set out in Mr. Talfourd-Cook's evidence with respect to the financial difficulties facing NYLC. She contended that this was not material at the relevant time and there was an obvious need for relief. The transcript shows that Ms. Levy had referred the learned judge to the decision of *VB Football Assets v. Blackpool Football Club (Properties) Limited* [2018] EWHC 1232 (Ch), for the proposition that the Court has the jurisdiction as to whether to require a cross-undertaking or not.

101. It is clear from the transcript of the hearing before HHJ Coe QC that the learned judge was concerned about the impact of the proposed freezing order on the corporate respondents. In response to these concerns what had initially been described by Ms. Levy as an "offer" of undertakings by NYLC was made concrete in the final order made by HHJ Coe QC. Given the learned judge's concern that undertakings should be provided, it was incumbent on Ms. Levy to draw HHJ Coe QC's attention to the information about NYLC's financial affairs and that this constituted a failure to make full and frank disclosure. HHJ Coe QC would have been left with the impression that the company was good for any undertaking when that may not have been the case.

102. Nevertheless, I do not consider in the exercise of my discretion that the injunction granted by HHJ Coe QC on November 15th 2019, and then renewed on November 26th 2019, should be discharged.

103. At the time of the hearing before HHJ Coe QC on November 15th 2019 there was evidence supporting an obvious need for relief, as assets belonging to Naturastudios Limited appeared to have been dissipated and were being used by Natura Academy Ltd, and there was a realistic prospect that they would be further dissipated if no order was put in place. Furthermore, it was clear to HHJ Coe QC that there would be a further hearing in respect of the order in under two weeks: the return date was set for November 26th 2019. In the circumstances, although I consider that the evidence of NYLC's financial position was a relevant matter that should have been drawn to HHJ Coe QC's attention, I did not form the view that the failure to bring this information to the learned judge's attention was deliberate. I also do not consider that that information was so important that had it been supplied it would have made any material difference to the outcome at the *ex parte* hearing. Indeed, this conclusion is strongly supported by the fact of what took place at the further hearing 11 days later.

104. On November 26th 2019, although there was not time for the Court to consider all of the issues, HHJ Coe QC did have before her written argument on behalf of Mr. Anderson and Natura Academy Limited which drew the learned judge's attention to the argument on non-disclosure. The written argument for those respondents contended that the freezing injunction was "literally strangling the business of" Natura Academy Limited and the undertaking provided to Natura Academy Limited was "worthless as the evidence (which was not drawn to the attention of the court at the without notice hearing) suggest that the Claimant does not have the resources to compensate" Natura Academy Limited for the damage being caused by the order. In spite of this material being before her, HHJ Coe QC did not discharge the order on November 26th 2019, but agreed that it should be continued with, among things, the *Angel Bell* exception being applied to Natura Academy Limited.

(d) Failure to direct the court to the correct legal test

105. Mr. Macpherson contended that although NYLC mentioned to HHJ Coe QC that Naturastudios Limited had petitioned for an order placing it into insolvent liquidation, there had been a failure: (a) to identify that the freezing order sought was to assist the future liquidator; and (b) to point the court to the test set out in *HM Revenue & Customs v Egleton* [2006] EWHC 2313 (Ch).

106. *Egleton* was a case involving a petition by HMRC to wind up a company (Egleton) that was believed to be involved with a 'Carousel' VAT fraud. Pending determination of the petition, HMRC obtained a without notice order against the sole director of Egleton and others under the *Chabra* jurisdiction. On the return date before Briggs J, the learned judge concluded at [54] that:

> "In the ordinary course, creditors should not expect to be able to obtain freezing orders against potential judgment debtors of the company sought to be wound up, save in entirely exceptional cases (and I cannot envisage what they might be) where the ordinary course of the appointment of a provisional liquidator with the duty and power to make those decisions on behalf of the company and all its stakeholders is either impossible or impracticable."

107. Three reasons were given by Briggs J. for his conclusion:

> "48. … The first reason is that generally, the obtaining of a freezing order necessitates a commitment not merely to freeze the assets of a potential wrongdoer, but to proceed diligently with the establishment of a claim against him, and the obtaining of a judgment to be satisfied out of those frozen assets. …
>
> 49. Secondly, and closely related to the first point, is the point that it is the officeholder rather than the creditor who as the guardian of the interests of all the company's stakeholders is best placed to make an independent judgment as to the wisdom of bringing proceedings against third parties, and as to the appropriateness of obtaining interim measures including freezing orders pending the conclusion of those proceedings. …
>
> 50. Thirdly, there will be an inevitable element of duplication involved in any application for a freezing order by a creditor rather than an officeholder, because of the creditor's inability to bring the substantive proceedings."

108. Mr. Macpherson contended that the present case was analogous to *Egleton*, save that the application was being made post-judgment, rather than ancillary to the winding up petition. Mr. Macpherson contended that the *Egleton* test should have been drawn to the attention of HHJ Coe QC, and if it had been it is contended that she would have refused to make the freezing order against Mr. Anderson and Natura Academy Limited. It was neither impossible nor impracticable for NYLC to seek the appointment of an interim liquidator in Scotland.

109. Ms. Levy accepted that she did not refer the learned judge to *Egleton*. It was not thought to be relevant and, even if it had been drawn to HHJ Coe QC's attention, it would not have made any difference. The circumstances were that a petition had been made by Naturastudios Ltd. for the appointment of an interim liquidator, and this was being resisted by NYLC. The freezing order needed to be made expeditiously and that was what happened: judgment was handed down on October 30th 2019, and as soon as the evidence could be put together the application for a freezing order was made. It would have made little sense for NYLC to issue proceedings in Scotland, and seek to bring solicitors and counsel up to speed on what had taken place when there was a legal team in England and Wales that had been dealing with the matters for some time.

110. I agree with Ms. Levy's submissions. The hearing on the application for a freezing order had taken place very shortly after Cavanagh J. had handed down his judgment on the substantive claim brought by NYLC. Given the evidence that was available to NYLC about dissipation of assets, it was necessary for a Court to consider the matter quickly. It made far more sense for the party, and legal representative, which had the most knowledge about the background and the issues to bring the matter to Court, especially where the situation at the time with the petition for an interim liquidator was fluid.

111. In those circumstances, therefore, I do not consider that it was incumbent on Ms. Levy to draw the Court's attention to the *Egleton* case. Furthermore, even if she had done, it is most doubtful that this would have made any difference to the outcome.

(e) failing to identify that England & Wales was not a suitable jurisdiction

112. Mr. Anderson and Natura Academy Ltd. do not submit to the jurisdiction. Mr. Macpherson contends that all of the Respondents are based in Scotland, which is where their assets are, and there is a suitable alternative process taking place in Scotland by way of appointment of an interim liquidator. This should have been raised with HHJ Coe QC so that if the learned judge did have jurisdiction she could have exercised her discretion not to grant the order.

113. Ms. Levy pointed out that the Court did have jurisdiction as a result of the underlying action itself which had been brought in England and Wales. This was not a case, therefore, where section 25 of the Civil Jurisdiction and Judgments Act 1982 applied.

114. I agree with Ms. Levy. I have no doubt that HHJ Coe QC did have jurisdiction to consider the application for the freezing injunction. A judgment had already been made against Naturastudios Limited by the High Court in England and Wales. It was ancillary to that judgment, and the order that had been made by Cavanagh J., that the application for freezing relief was made. It had been made clear to HHJ Coe QC that the order being sought was a world-wide order because, as Ms. Levy had argued "we need to attach assets in Scotland". I do not consider that Ms. Levy needed to say more about the matter to HHJ Coe QC.

(f) failure to identify obvious potential defences to the claim

115. Mr. Macpherson contends that at the *ex parte* hearing before HHJ Coe QC on November 15th 2019, NYLC failed to acknowledge any possibility that the non-party respondents might have defences to any potential claim. Indeed, Mr. Talfourd-Cook's had simply stated that "I do not believe that there are any innocent explanations for the steps taken by Natura and Mr. Anderson". Mr. Macpherson contended that NYLC should have investigated and identified possible defences, and that the company had (a) failed to raise the possibility that Mr. Anderson and Natura Academy had acted in good faith or legitimately; and (b) failed to investigate the true market value of 1 John's Place.

116. I do not consider that there is any basis to this contention. Before HHJ Coe QC, Ms. Levy had referred the learning judge to the "remote" possibility that the property at 1 John's Place was sold to Mr. Anderson at value.

117. With respect to the cause of action against Natura Academy Limited, NYLC did not know at the *ex parte* hearing that the assets had been transferred to that company, or what (if any) price had been paid for them. What NYLC did know was that Natura Academy Limited appeared to be carrying on the business of Naturastudios Limited; and an investigation which had been carried out by NYLC at the Intellectual Property Office showed that Naturastudios Limited continued to own the trademark in the logo and product name of Veinaway, and continued to own the trademark in the name Naturastudios; and that these trademarks appeared to be in use by Natura Academy Limited. It is, in my judgment, unrealistic to have expected NYLC to investigate any potential defences, as this would have depended on questioning Mr. Anderson about what had taken place, and there was a risk that this would lead him to take further steps to dissipate assets which might belong to Naturastudios Limited.

(g) no evidence of risk of dissipation

118. Mr. Macpherson further contended that the test that NYLC proposed to HHJ Coe QC on November 15th 2019 was wrong: it was not whether the assets of Naturastudios Limited would be dissipated, but whether the assets of Mr. Anderson or Natura Academy Limited would be dissipated if no freezing order was granted. Mr. Macpherson says that this was never addressed. Ms. Levy contends that this was obvious as a matter of inference. Mr. Anderson had dissipated assets in the past, and used the various companies as his ciphers. There was no reason why he would do not the same again to avoid the judgment debt if not restrained.

119. I agree with Ms. Levy's submission here. The evidence that was put before HHJ Coe QC, and the submissions made to the learned judge, were that Mr. Anderson had already taken active steps to dissipate Naturastudios Limited's assets: into his own name or into other vehicles. It was obvious that if Mr. Anderson had taken such steps previously that he may do the same again if unrestrained by the Court. With respect to Mr. Anderson's own assets, at the time of the *ex parte* hearing it was not known what assets he owned and how easy it would be to put them beyond reach of the judgment creditor. Given that there was a good arguable case that he had dissipated assets belonging to one of his corporate vehicles – Naturastudios Limited – there was plainly a real risk that he might do the same with his own assets.

Conclusion

120. Looking at the matter in the round, I consider that the freezing order granted by HHJ Coe QC on November 15th 2019, and subsequently (with variations) on November 26th 2019, was properly granted and/or should not be discharged. The learned judge was taken to the key judicial authority -- *Chabra* – and was presented with evidence to demonstrate that assets of Naturastudios Limited had been transferred to other parties for no obvious reason other than to seek to keep those assets out of the hands of NYLC as a potential judgment creditor. At that point in time, the evidence available to NYLC, and which was put before the Court, showed that there was a good arguable case against those third parties.

121. Once judgment had been entered into against Naturastudios Limited and given the Court's policy imperative in favour of the enforcement of judgments, it was appropriate for HHJ Coe QC to be asked to restrain further dissipation of assets, even in circumstances where Naturastudios Limited was going through the liquidation process. The details of that process were still developing, and the learned judge was not in a position to know what other creditors there might be.

V. Renewing the freezing order

122. Although I consider that the freezing order granted by HHJ Coe QC should not be discharged, that does not mean that the freezing order should be continued now. I have had the opportunity to consider the up-to-date evidence, and to hear arguments from Counsel over a period of two days. Furthermore, the circumstances have moved on somewhat, with the appointment by NYLC of a liquidator, CMB Partners Ltd., in place of KPMG.

123. Ms. Levy, on behalf of NYLC, argued that the freezing order should be continued as against Naturastudios Ltd, its sole director, shareholder and controlling mind Mr. Anderson, and three other companies he has incorporated over the last 17 months all of which appear to be no more than his "ciphers". NYLC is owed the sum of £4,422,105.92 in damages, costs and interest.

124. What is being sought is a post-judgment freezing order, and so it is not necessary to assess the likelihood of NYLC establishing its underlying case. It is necessary to grant the order as against the various respondents until the judgment debt has been met. This is because Mr. Anderson has in the past stripped Naturastudios Limited of its assets, and he (and his ciphers) must be prevented from further dissipation of their assets to prevent the judgment debt from being satisfied.

125. Ms. Levy contended that there is in the case only one real defendant – Mr. Anderson. This is epitomised by the fact that he maintains that the goodwill of Naturastudios – including the client lists – belong to him. However, Mr. Anderson seeks to hide behind the corporate veil to hide assets and defeat creditors. The way that Mr. Anderson organizes his affairs means that they can be transferred at any time. Ms. Levy also contended that Mr. Anderson would be liable as a director to make good to the liquidator the transfers at an undervalue.

126. Ms. Levy referred to the fact that NYLC is the principal creditor in the liquidation of Naturastudios Limited, and is entitled to the Court's protection not just as a judgment creditor but also as the primary creditor in the liquidation. Mr. Anderson is not the subject of the liquidation, but Ms. Levy contends that he will be called upon to restore the value of the assets that he stripped from Naturastudios Limited. Ms. Levy submits that Mr. Anderson could wind up Natura Academy Limited at any time, and move on to his next cipher.

127. Ms. Levy points out that the assets of Mr. Anderson include those which are beneficially those of Naturastudios Limited or that Naturastudios Limited's assets are beneficially his, bringing this matter within the scope of the *Chabra* jurisdiction. Ms. Levy also emphasised before me that the judgment debtor does not resist this order, and neither does the newly appointed liquidator.

128. Ms. Levy referred me to the possible application that NYLC may make against Mr. Anderson for a non-party costs order under section 51 of the Senior Courts Act 1981. Ms. Levy pointed out that this had been anticipated in the order made by Cavanagh J. on October 30th 2019, and had been intimated to Mr. Anderson on November 25th 2019, when a letter was sent to Tenet asking for disclosure by Mr. Anderson of the identity of all parties that had provided funding to Naturastudios Limited to defend the substantive proceedings, and for Tenet to disclose the identity of the parties who had paid their fees and disbursements.

129. Mr. Cakebread, acting on behalf of the liquidator of Blue Checker Ltd (the new name for Naturastudios Limited) contends that it is necessary for there to be a freezing order against Natura Academy Limited. That company is a successful trading company, and Mr. Anderson's *modus operandi* has been to transfer assets. It is sensible to have them frozen in Natura Academy Ltd, so that there is a clear and precise target for the liquidator. The freezing order will save costs for all the creditors, noting that other than NYLC there are other creditors, including HMRC which is owed more than

£300,000. NYLC has better knowledge and understanding of the issues than the liquidator which has just been appointed. It makes sense therefore for NYLC to obtain the order.

130. Mr. Cakebread expressed concern about the sale of Naturastudios Limited's assets to Natura Academy Limited. The invoice was on the company's headed notepaper, but was addressed to itself. The sale was for the sum of £12,000 odd (plus VAT), and it was a matter of major concern as to whether this sale was at an undervalue. He noted that KPMG had said in its interim report that they were investigating the pre-liquidation sale of these assets, and considering whether it was appropriate to commence any action.

131. Mr. Cakebread submitted that the liquidator did not consider that it would be hampered by the freezing order in carrying out its functions. If necessary, the liquidator would turn to the major creditor – NYLC – if costs issues arise.

132. Mr. Cakebread said that at this point in time it is difficult to know who owns what. Mr. Anderson says that he owns the customer list that was used by Naturastudios Limited. As the situation is fluid, it is essential that there is a "clampdown" on every person who can dissipate assets.

133. Mr. Cakebread contended that a director is not entitled to run down a business and then transfer assets. If the business was run down, this would have constituted a breach of duty to the company, and this may require the director to compensate the company.

134. Mr. Macpherson called into doubt the approach being taken by the liquidator. He submitted that this was "unexpected". There is no *Angel Bell* exception for the company in liquidation and so the liquidator cannot incur ordinary business expenses. The position adopted by the liquidator was, he submitted. "extraordinary", and calls into question its objectivity. Mr. Macpherson emphasised that the liquidator had been appointed by NYLC.

135. Mr. Macpherson contended that the freezing order should not be renewed because: (a) NYLC had still failed to identify any cause of action against Mr. Anderson or Natura Academy Limited, and was not in position to ask for any sum; (b) any application for a freezing order should be sought by the liquidator, not NYLC; (c) England & Wales is not a suitable jurisdiction; (d) there is no evidence of any risk of dissipation; and (e) NYLC's undertaking in damages is insufficient.

136. Although this is NYLC's application, I consider that it is useful to adjudge the merits of the application against Mr. Macpherson's contentions, and (if appropriate) then consider overall whether it is just and convenient to continue the injunction.

(a) <u>Does NYLC have a clearly formulated cause of action against the respondents, and a good arguable case?</u>

137. Mr. Macpherson contended that NYLC had finally identified a possible cause of action – sale at an undervalue – but this was not clearly formulated, and there was not a good arguable case to support this matter. The evidence of Mr. Bednash that KPMG

had said that the business and assets of Naturastudios Limited had been sold at a "substantial undervalue" was strongly contested.

138. With respect to the property at 1 Johns Place, it was pointed out that NYLC have been aware of the sale price for some time, and have not obtained a retrospective valuation. Indeed, a valuation prepared by surveyors showed that the price of £440,000 paid by Mr. Anderson was a reasonable one.

139. Further, Mr. Macpherson contended that Mr. Talfourd-Cook raised for the first time in the application for a freezing order the possibility that NYLC will make an application for costs against Mr. Anderson. This could not be the basis of any order as it lacks clarity and evidence to reach the 'good arguable case' threshold. Mr. Macpherson referred to the fact that Mr. Anderson had already stated that he did not fund the litigation.

140. Mr. Macpherson also contended that the various causes of action being referred to by the liquidator were inchoate, and could not be relied upon to found a freezing order.

141. In my judgment, there is no clearly formulated cause of action against Mr. Anderson with respect to the property at 1 John's Place which meets the good arguable case threshold. Mr. Anderson has provided evidence to explain the background to the sale of the property at 1 John's Place, both initially when the property was bought by Naturastudios Limited and subsequently when it was purchased by him. NYLC has not been able to persuade me that Mr. Anderson's explanation of the initial purchase by Naturastudios Limited was not correct. It sounds plausible to me, given what he says about the late addition of VAT and that he is not VAT registered.

142. Mr. Anderson says that he purchased the property at 1 John's Place in May 2019 because he was concerned that Naturastudios Limited would not be able to meet the mortgage. Whatever the reason, the evidence available to me is that the property was sold for its proper value of £440,000: there is recent surveyor's evidence to support this, and Ms. Levy accepted that her client cannot say that the property would have been sold at a higher price than £440,000. I also see no reason why the property had to be sold at a price which included VAT. Even if did, the VAT amount would have had to be accounted for to HMRC, and would not have been an asset of Naturastudios Limited. The evidence that I have seen is that the £440,000 was accounted for by Mr. Anderson taking over Naturastudios' mortgage, and the remainder was a director's loan. The use of the director's loan facility appears to be something that Mr. Anderson took advantage of on a regular basis. However, there is no evidence that it was not legitimate or appropriate for him to do so, and based on the value of his personal assets it appears that he was always able to pay back the loan if called to do so. This continues to be the case.

143. In the circumstances, it is not possible to argue that the sale of the property at 1 John's Place was at an undervalue. Furthermore, it cannot sensibly be argued that, per *Chabra*, the property at 1 John's Place is beneficially owned by Naturastudios Limited. At most, there is a remaining balance on the director's loan account that is due and owing from Mr. Anderson, but this is something that he is able to pay and would ordinarily be called upon to pay as part of the liquidation. Mr. Anderson has been unable to make this payment as a result of the freezing order.

144. With respect to the sale of the trademarks, stock and assets to Natura Academy Limited, as I will explain below, there is a good arguable case that these were sold at an undervalue. It has been argued by Ms. Levy that, as a director of Naturastudios Limited, Mr. Anderson could be liable to make good the undervalue. In these circumstances, I consider that a clearly formulated cause of action, in respect of which there is a good arguable case, is made against Mr. Anderson.

145. As for other potential claims against Mr. Anderson articulated before me by the liquidator, I agree with Mr. Macpherson that these are inchoate and it is not possible for me to say, at this stage, that there is a good arguable case on any of them against Mr. Anderson. If, after further investigation by the liquidator, there are realistic claims to be brought against Mr. Anderson, then it seems to me that these should be dealt with in the ordinary way as part of the liquidation, using the various powers available to the liquidator.

146. Ms. Levy has contended that NYLC may have a claim against Mr. Anderson under section 51 of the Senior Courts Act 1981 to recover the company's costs (which exceed £500,000) from him personally. The basis for this claim has not been properly explained to me, and I do not have sufficient evidence to find that there is a good arguable case against Mr. Anderson under section 51. I note that Mr. Anderson has stated that he did not fund the litigation personally, and I have seen no evidence to contradict this.

147. I have also been referred to the evidence of Mr. Anderson that he owns customer lists. It is suggested that this cannot be the case and that he must hold the customer lists on behalf of Naturastudios Limited. I see no reason why that has to be the case. As Mr. Anderson has said, and I have no reason to doubt, he created and maintained a customer list since starting to work and trade in the industry in 2004. He says that he has no idea what the value of the list is, but considers it to be his asset. Given that Mr. Anderson was working in the aesthetics industry for eight years before he set up Naturastudios Limited it seems likely that he had created a customer list for his own use. What he did with that customer list and how, and whether, it was added to during the period when Mr. Anderson operated his business through Naturastudios Limited is simply not known to me. In the circumstances, I do not consider that a good arguable case has been made in respect of the customer lists.

148. With respect to Natura Academy Limited, it is known that the company bought trademarks (Naturasun, Veinaway and Naturastudios) from Naturastudios Ltd for the sum of £1,200. Mr. Anderson has not provided any explanation as to how that sum was arrived at. There is clearly evidence that the trademarks continue to be used prominently on the publicity and marketing put out by Natura Academy Limited. The trademarks must have some real value, otherwise they would not be used in this way. There is, it seems to me, a good arguable case that the value of these trademarks was far greater than the sum of £1,200, and so the sale of the trademarks by Natura Academy Ltd was at a substantial undervalue. In my judgment, therefore, there is a clearly formulated cause of action against Natura Academy Limited with respect to the trademarks and a good arguable case that that cause of action will be made out.

149. The same applies, in my judgment, to the stock and assets that were sold by Naturastudios Limited to Natura Academy Limited for the sum of £12,000. No explanation has been provided by Mr. Anderson as to how this sum was arrived at.

Mr. Anderson explained in his Third Witness Statement that, as at November 25th 2019, Natura Academy Limited was "currently undertaking the distribution of products on behalf of 3 of the suppliers for whom the First Defendant formerly acted as a distributor." Mr. Anderson also explains that he informed the suppliers that he was establishing a business through a new company (Natura Academy Limited) and wished them to supply equipment to that new company. This was agreed to, although the arrangement had not been reduced to writing. Mr. Anderson has not put a value on what appears to have been an assignment of the distribution contracts. It is very possible that the value would be put at more than £12,000, especially when Mr. Anderson has pointed out that in the month of October alone, Natura Academy was making sales of £123,972.44. I appreciate that this may include sales of items other than the distribution of products for the 3 suppliers referred to by Mr. Anderson, but he has not provided evidence of this.

150. There is, it seems to me, a good arguable case that the value of the stock and assets that was sold to Natura Academy Limited was far greater than the sum of £12,000. In the circumstances, it seems to me there is a clearly formulated cause of action against Natura Academy Limited with respect to the stock and assets – that they were purchased at an undervalue -- and a good arguable case that that cause of action will be made out.

151. In the circumstances, therefore, I consider that there are clearly formulated causes of action against Mr. Anderson and Natura Health Limited in respect of which there is a good arguable case.

(b) <u>any application for a freezing order should be sought by the liquidator, not NYLC</u>

152. Mr. Macpherson contends that even now the appropriate course of action should be for the liquidator to apply for a freezing order, rather than NYLC. He says that the Court should not simply continue the injunction because the liquidator CMB Partners Ltd wishes it to be continued.

153. A freezing order can be maintained in force even after a winding up order or a bankruptcy order has been made, provided that the purpose of the order is to preserve the assets held by or for the defendant, for the creditors as a whole. See *The Mercantile Group (Europe) AG v. Aiyela* [1993] FSR 745, where a freezing order was continued against the wife of a judgment debtor, in spite of the fact that the judgment debtor had been made bankrupt. See also *Eco Quest Plc. v. GFI Consultants Ltd.* [2014] EWHC 4329 (QB) at [84], citing Gee, Commercial Injunctions (now at 3-006).

154. In *Eco Quest*, Richard Salter QC, sitting as a Deputy Judge, made it clear that this was an exceptional course of action. The learned judge noted at [86] that

> "The fact that a freezing injunction can be maintained in force even after a bankruptcy order has been made does not, of course, mean that it should be so maintained."

On the facts of that case, the learned judge found that there were a number of factors which, exceptionally, made it appropriate to continue the freezing order. Those factors included that the underlying trust claim brought by the applicant

> "necessarily relates to assets claimed to be beneficially owned by [Eco Quest Plc]. Those assets will not form part of the assets to be dealt with in the various insolvencies. However, there may be some overlap and some uncertainty as to the position. The maintenance of the freezing injunction may therefore help to preserve assets which are properly the subject of the trust claim":

See *Eco Quest* at [86.1]. In addition, the learned judge held [at 86.3] that the claimant, Eco Quest Plc, may have

> "a greater incentive and/or has greater resources to ensure the proper application of [the bankrupts'] assets than their Trustee in Bankruptcy."

155. In *Eco Quest*, Richard Salter QC went on to say at [88] that:

> "The freezing injunction must, however, be shaped so that its purpose is to preserve the assets held by or for each of the defendants, for the creditors of that defendant as a whole, and not just for EQ. It must therefore be varied so as to include provisos expressly enabling the Trustee in Bankruptcy to perform his duties for the benefit of the creditors of each defendant as a whole without further reference to this court."

156. The approach taken in *Eco Quest* was followed by Lionel Persey QC, sitting as a Deputy Judge, in *Bank and Clients Plc v King* [2017] EWHC 3099 (Comm). The learned judge noted that in the case before him at [67]:

> "The Bank may well have a greater incentive to locate, trace and to bring into account the Defendants' assets than any Trustee in bankruptcy".

At [68], the learned judge held that, in the circumstances, the "just and convenient course here is to grant a freezing injunction in essentially the terms sought by the Bank".

157. I do not consider that there are exceptional circumstances here which would justify continuing the freezing order indefinitely.

158. In the present case, unlike in *Eco Quest*, there is no trust claim available to NYLC as against any of the respondents. Furthermore, unlike in *Eco Quest* and the *Bank* case, there is no evidence before me that NYLC has a greater incentive, or ability, to ensure the proper application of Naturastudios Limited's assets than the liquidator. Although NYLC is plainly the primary creditor of Naturastudios Limited, HMRC is also owed a significant sum of money: £367,000.

159. In addition, I have real concerns about the financial resources of NYLC. At the hearing before me, Ms. Levy acknowledged that the latest accounts of the company did not show NYLC to be in a "healthy" position. Indeed, the company's accounts show that as at September 29th 2018, NYLC had £2,253 cash at hand, and its net asset

position was negative £362,999. There are also real concerns about the ability of the directors to assist in this regard.

160. I do not consider, however, that this justifies a refusal to grant any form of freezing order at this point in time. The new liquidator has just been appointed, and was not in a position to argue out the case at the return date. It was, in my judgment, better that this was done by NYLC, as they were familiar with all of the facts and circumstances; and it was necessary for this to be done, if only to hold the ring before the liquidator was properly acquainted with the matter.

161. I do not, therefore, refuse to continue the injunction for this reason. However, if I am to grant an injunction (taking into account the further factors with which I have to deal), any order would have to be time limited. Any order would only be for the short-term so as to preserve the position, and prevent the possible dissipation of Natura Academy Limited's assets, until the newly-appointed liquidator has been given a reasonable period of time to assess the overall situation and determine what, if any, steps it needs to take including whether it wishes to obtain its own injunction.

(c) <u>England and Wales is not a suitable jurisdiction</u>

162. Mr. Macpherson contended that the Court should refuse to grant the order sought on the basis that England and Wales is not a suitable jurisdiction. Mr. Anderson and Natura Academy Limited do not submit to the jurisdiction, and even if the Court has jurisdiction, it should exercise its discretion not to grant relief as it is not just and convenient or expedient to make an order in England and Wales where all of the Respondents are based in Scotland, along with their assets, and there is a suitable alternative process in Scotland by way of appointment of an interim liquidator.

163. In my judgment, these arguments are not well made. I have already addressed this point above at paragraphs 112-114 above, when dealing with the application to discharge the injunction.

(d) <u>No evidence of any risk of dissipation</u>

164. Mr. Macpherson contends that there is no evidence that there is now any risk of dissipation by Mr. Anderson or Natura Academy Limited. It was pointed out that Mr. Anderson has disclosed substantial property assets in Scotland that exceed the value of any potential claim against him by the liquidator of Naturastudios Limited. Mr. Macpherson says that these assets are illiquid, that Mr. Anderson lives in Edinburgh, and owns and runs Natura Academy as his full-time occupation. This was not a case with companies in multiple jurisdictions and layers of companies. As for Natura Academy Ltd, the company has 21 members of staff, and there is no evidence that this trading business will dissipate any of its assets.

165. Ms. Levy contends that there is a risk of dissipation, and it is only necessary to look at the history of this matter to support this. Mr. Anderson could, she submits, wind up Natura Academy Limited tomorrow and move its assets to another entity. That is what he has done previously.

166. As set out above, I have concerns about some of Mr. Anderson's evidence, and about some of his actions. Nevertheless, I agree with Mr. Macpherson that there is no evidence that there is any risk of dissipation by Mr. Anderson of his own assets.

167. There is no evidence that Mr. Anderson has previously dissipated any of his personal assets to avoid payment of the judgment. The evidence of dissipation relates to assets belonging to Naturastudios Limited. There is no suggestion that Mr. Anderson has failed to disclose details of his assets in response to the order for disclosure. Furthermore, Mr. Anderson's main assets are illiquid, and heavily mortgaged, and the evidence is that Mr. Anderson continues to live and work in Scotland. In my judgment, it is unlikely in all of these circumstances that Mr. Anderson will seek to put these assets outside of the reach of the liquidator. Indeed, to the contrary, the evidence that I have seen is that Mr. Anderson wishes to repay his director's loan to Naturastudios Limited, which will therefore assist the liquidator, but has been prevented from doing so as a result of the injunction.

168. In the circumstances, therefore, I do not consider that the freezing order should continue as against Mr. Anderson.

169. The situation is different, however, with respect to Natura Academy Limited. There is evidence that in his capacity as director Mr. Anderson may well have dissipated, or sought to dissipate, assets belonging to Naturastudios Limited so as to prevent these getting into the hands of the potential judgment creditor: namely, the sale of the trademarks and stock and assets of Naturastudios Limited at a price which, in my judgment, plainly calls for far more explanation.

170. Furthermore, as I have explained above, the changes to the name, directorship and shareholding of Naturastudios Limited are troubling, and give rise to a real risk that Mr. Anderson, in his capacity as director, would behave similarly in the future with respect to Natura Academy's assets if he decided that that was necessary to keep his "business" afloat and avoid paying the judgment debt of NYLC.

(e) <u>Inadequacy of the undertaking in damages</u>

171. Mr. Macpherson has contended that absence of the *Angel Bell* exception in the initial freezing order caused substantial damage to Natura Academy Limited. Mr. Anderson believed that it had lost at least £20,000 in revenue, and there was also other substantial damage which could not be quantified. Although the *Angel Bell* exception was provided for on November 26th 2019, Mr. Macpherson alleged that Natura Academy Limited had, as a result of the freezing order, lost a business investment opportunity that would have brought in £65,000 profit over the next 12 months. Mr. Macpherson contended that it was reasonable to suggest that Natura Academy Limited may suffer a loss of up to £50,000 for each month that the freezing order continues.

172. Mr. Macpherson contended that there remained a good arguable case that NYLC would be unable to satisfy any order made against it if the Court later finds that the order causes loss to Natura Academy Limited and decides that that company should be compensated for that loss. Mr. Macpherson contends that the order should not be granted. Alternatively, the undertaking needed to be fortified by way of bank guarantee or other security.

173. Ms. Levy contended that there was no reason why NYLC should be required to maintain its undertaking, given the evidence provided by Mr. Anderson, Naturastudios Limited, and Natura Academy Limited. Ms. Levy contended that Mr. Anderson and Natura Academy Limited did not require an undertaking. Mr. Anderson was himself a major debtor to Naturastudios Limited in the sum of £79,000. There was also no real evidence of damage sustained by Natura Academy, and the *Angel Bell* exception will continue to apply. Ms. Levy referred me in this regard to *VB Football Assets v. Blackpool Football Club (Properties) Ltd.* [2018] EWHC 1232 (Ch).

174. I accept that whether or not to require a party to give a cross-undertaking in damages is a matter for the discretion of the Court. However, I do not consider that the *VB Football Assets* provides any real assistance in this case. That was a case in which the Respondents had not complied with a judgment debt, but had asserted the existence of assets sufficient to discharge that debt. In those circumstances, Marcus Smith J. held at [35(2)(d)] that the fact that the freezing order exists and continues was "a matter of the Respondents' own conduct", as it could meet the debt had it wanted to, accordingly any difficulties occasioned by the freezing order were "for the Respondent's own account". That is a far cry from the present case, where the defendant to the underlying claim is in liquidation.

175. In circumstances where the *Angel Bell* exception applies, it is possible that this will limit the difficulties occasioned by the freezing order, even if it does not eliminate them entirely. I have said that there is a good arguable case that the sale of trademarks, stock and assets to Natura Academy Limited was made at an undervalue. However, it is not possible for me to say so for sure, and that is not my role at this stage. Accordingly, I have to acknowledge that there is a possibility that this cause of action against Natura Academy Limited will not be made out, and that the Court might be called upon to award compensation to Natura Academy Limited. I cannot say, therefore, that Natura Academy Limited is not an "innocent" third party (c.f. *Banco National De Comercio Exterior S.N.C. v. Empresa De Telecommunicaciones De Cuba S.A.* [2007] EWCA Civ 662). In these circumstances, I consider that it would be appropriate for NYLC to continue giving an undertaking in damages to Natura Academy Limited.

176. Based on NYLC's latest accounts, as well as the evidence of Mr. Talfourd-Cook about the finances of the various directors who have been funding the litigation, I am not satisfied that a mere undertaking to pay damages by NYLC is sufficient. I consider, therefore, that some fortification of damages is required. There has been no formal application for fortification, but Mr. Macpherson has contended that a sum of £50,000 per month that the freezing order continues was reasonable. That seems to me to be a rather exaggerated figure, given that the *Angel Bell* exception will remain in place.

177. In this regard, I bear in mind the judgment of Popplewell J. in *Phoenix Group Foundation v Cochrane* [2018] EWHC 2179 (Comm), where he explained at [14] that

> "an applicant for fortification must satisfy three requirements. First, that the court can make an intelligent estimate which is informed and realistic, although not necessarily entirely scientific, of the likely amount of any loss which might be

> suffered by the applicant by reason of making the freezing order. Secondly, that the applicant has shown a sufficient level of risk of loss to require fortification, that is has shown a good arguable case to that effect. Thirdly, that the making of the interim order is or was a cause without which the relevant loss would not be, or would not have been, suffered."

178. I consider that if an order is granted, doing the best I can on the materials with which I have been provided about the business of Natura Health Limited, and bearing in mind that the *Angel Bell* exception would continue to apply, the sum that needs to be covered by the undertaking would be £10,000 per month.

Exercise of discretion

179. As already explained, I consider that NYLC has established a "good reason to suppose" as against Natura Academy Limited, that that company's assets would be susceptible to a procedure which would lead to compulsory satisfaction of NYLC's judgment. I also consider that there is a "real risk of dissipation of assets" by Natura Academy Limited if an injunction is not granted against that company. I do not consider that the same can be said of Mr. Anderson in respect of the risk of dissipation.

180. As for whether it is just and convenient to exercise the jurisdiction, which is exceptional and to be exercised with caution, I consider that it is. I am mindful of the Court's strong policy in favour of enforcing judgments. The conduct surrounding the BDG Group Ltd. and the corporate changes to Naturastudios Limited are suspicious and troubling, as is the valuation of the sale of the stock, assets and trademarks to Natura Academy Limited. There are also other aspects of the evidence of Mr. Anderson which are suspicious or call for further examination. On the other hand, although a freezing order as against Natura Academy Limited could impact on the company's business, I consider that the *Angel Bell* exception should afford the company considerable protection.

181. Naturastudios Limited (now Blue Checker Ltd.) must also remain subject to the order. That company is the judgment debtor, and there is good reason to suppose that that company's assets were dissipated. The liquidator of that company supports the continuation of the order against the company, and I see no reason to question that support.

182. I am told that Natura Group Limited and Naturahealth Limited are dormant companies, but I have not heard submissions as to why they should not be subject to the order. As it is possible that assets of Natura Academy Limited could be used by those companies, it seems to me appropriate that they should also remain the subject of the order.

Conclusion: the appropriate order

183. Against this background, I am only prepared to grant the freezing injunction for the short-term, and if there is satisfactory evidence that NYLC is in a position to satisfy an undertaking in damages as regards Natura Academy Limited in the sum of £10,000 per month for the duration of the order.

184. The duration of the order will be for the period reasonably needed by the newly-appointed liquidator to assess the overall situation and determine what, if any, steps it needs to take on behalf of all the creditors.

185. The order must also be shaped so that its purpose is to preserve the assets held by Naturastudios Limited (in its new name Blue Checker Ltd.) for that company's creditors as a whole, and not just for NYLC. The order must include provisos expressly enabling the liquidator to perform its duties for the benefit of all the creditors as a whole without further reference to this court, until the reasonable period of time that I have referred to has expired.

186. Based on the evidence presented at the hearing, I did not know what was a "reasonable" period of time. Accordingly, after sending out a draft of my judgment, and before finalising the order, I invited the parties, including the liquidator, to make submissions as to what would be a "reasonable" period of time for the liquidator to assess the situation and determine what steps it needs to take in the liquidation, including whether it needs to obtain its own injunction. I was informed by the liquidator that six months from the date of the hand-down was necessary, and this period was agreed by NYLC. This period was not opposed by Natura Academy Limited and Mr. Anderson.

187. NYLC have provided evidence to support their ability to satisfy the undertaking in damages for £10,000 per month, for a period of six months from hand-down of the judgment. The evidence shows that this sum could be payable by the company itself and, if that proves not to be the case, arrangements have been made by which third parties will ensure that the company can satisfy the undertaking. The liquidator has also informed me that it is prepared to offer an undertaking on behalf of Blue Checker Limited to reserve realised assets in the liquidation up to the sum of £30,000 for the purpose of fortifying the undertaking of NYLC. The evidence and proposed arrangements have not been challenged by Natura Academy Limited or Mr. Anderson.

188. In the circumstances, I was satisfied that NYLC, whether on their own or with the support of others, could satisfy an undertaking in damages for £10,000 per month, for the period of six-months from hand-down of the judgment.

189. I was due to hand down the judgment on March 12th 2020, but was unable to do so due to illness. The lockdown resulting from the coronavirus pandemic then ensued, and hand-down is now taking place on June 9th 2020. As a consequence, I have invited the parties to update the Court as to the time now required for the liquidator to carry out the necessary steps referred to above, and as to the present ability of NYLC to satisfy an undertaking in damages.

190. I shall consider the updated position, and hear arguments from the parties as to the precise terms of the order that I shall make in line with this judgment.