

**IN THE HIGH COURT OF JUSTICE**  
**CHANCERY DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 21/07/2017

**Before:**

**MRS JUSTICE ROSE**

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**Between :**

**JULIE ANNE PALMER AND NICHOLAS  
EDWARD REED (JOINT LIQUIDATORS OF  
CHANGTEL SOLUTIONS UK LIMITED (IN  
LIQUIDATION))**

**Applicants**

**- and -**

**JI-CHUEN JASON TSAI**

**Respondent**

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**MR STEPHEN ROBINS** (instructed by **Walker Morris LLP**) for the **Applicants**  
**MR ANDREW YOUNG** (instructed by **Neil Davies & Partners**) for the **Respondent**

Hearing dates: 12 - 16 June, 22 - 23 June

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**Judgment Approved**

**Mrs Justice Rose:**

**BACKGROUND**

1. This is the judgment on an application issued on 23 February 2017 for committal of the Respondent, Mr Tsai, for contempt of court. The Applicants are Julie Palmer and Nicholas Reed of Begbies Traynor (Central) LLP. On 5 June 2015 they were appointed to be the joint liquidators of a company Changtel Solutions UK Ltd (formerly Enta Technologies Ltd) ('Changtel'). They were represented at the hearing by Mr Robins of counsel. Mr Tsai used to be the director of Changtel. He was represented at the hearing before me by Mr Young of counsel, instructed by Neil Davies & Partners.
2. The Applicants are claimants in proceedings against Mr Tsai in the Companies Court issued on 15 February 2017. The application and points of claim include claims against Mr Tsai under sections 212, 213 and 214 of the Insolvency Act 1986 for damages for breach of duty and misfeasance, for a contribution to Changtel's assets because of fraudulent trading and wrongful trading in connection with the business of the company. Following a without notice hearing, on 15 February 2017 Birss J granted a worldwide freezing order. The freezing order was continued in force by order of Mann J following an *inter partes* hearing on 22 February 2017 ('the Freezing Order').
3. The Freezing Order has a penal notice written on the front page. Paragraph 5 prohibits Mr Tsai from removing from the jurisdiction any of his assets up to the value of £24,705,799.20 and from disposing of, dealing with or diminishing the value of any of his assets whether they are in or outside England and Wales up to the same value. Paragraph 6 made it clear that paragraph 5 applied to all of Mr Tsai's assets whether or not they were in his own name and whether they are solely or jointly owned. It also provided that for the purpose of the order, Mr Tsai's assets included any asset which he has the power, directly or indirectly, to dispose of or deal with as if it were his own. It went on to provide that Mr Tsai is to be regarded as having such power if a third party holds or controls the asset in accordance with his direct or indirect instructions.
4. The Freezing Order then set out a list of 19 assets which were specifically frozen. These included various properties in Birmingham and Telford, properties in Spain, Bulgaria and Turkey, three bank accounts, two with RBS plc and one with HSBC plc and various companies incorporated in the United States. There were the usual exceptions to the freezing of assets to allow expenditure on ordinary living expenses and legal advice and representation.
5. Paragraph 9 of the Freezing Order dealt with the disclosure by Mr Tsai of his assets. It provided that Mr Tsai must immediately and to the best of his ability inform the Applicants' solicitors of all his assets worldwide whether in his own name or not and whether solely or jointly owned, giving the value location and details of all such assets. Further, within two working days after being served with the order, Mr Tsai

was required to swear and serve on the Applicants' solicitors an affidavit setting out that information. I shall refer to paragraph 9 of the Freezing Order as 'the Disclosure Order'.

6. Paragraph 10 of the Freezing Order provided that Mr Tsai must immediately deliver up to the Applicants' solicitors each and every passport and travel document relating to him. I shall refer to paragraph 10 of the Freezing Order as "the Passport Order".
7. A copy of the Freezing Order and all the accompanying documents which the Applicants undertook to Birss J to serve on Mr Tsai were personally served on him by a process server, Mr Wright, on the evening of 15 February 2017.
8. Mr Tsai's first affirmation in purported compliance with the Freezing Order was made on 20 February 2017 ('the First Affirmation'). In a schedule to that First Affirmation, JT1, Mr Tsai listed the assets referred to in paragraph 7 of the order. He gave a commentary describing the asset and stating his interest, or lack of it, in that asset. He also included in JT1 a few additional assets of which the Applicants had not been aware.
9. In their work as liquidators, the Applicants have had access to Changtel's computer servers and hence to a great many documents generated by Mr Tsai and his family over the years. From this they have, they say, gleaned information which they allege shows that Mr Tsai's assets are much more extensive than he disclosed in JT1. The application for committal originally listed 36 separate breaches of the freezing order. On 10 May 2017 I granted permission, with the agreement of Mr Tsai, for an additional 16 breaches to be added so that there are now 52 alleged breaches in all. Broadly, the breaches alleged are (i) breaches by Mr Tsai of the Passport Order; (ii) his failure to disclose in his First Affirmation a wide range of assets including numerous bank accounts and properties in this country and overseas; and (iii) his giving false information in his First Affirmation about the ownership of the assets listed in JT1.
10. For the most part, Mr Tsai's defence to these allegations is that the assets disclosed are owned solely by family members, in particular his wife ('Mrs Tsai'), two of his wife's sisters, Shu Hua Chang and Ai Cheng Chang, his sister, Yi Lin Tsai and his brother in law Jen Yen Chu. He says that although he manages these assets on behalf of these third parties, he does not have a beneficial interest in the assets. He was therefore under no obligation to disclose them and the information he gave about them was true. The main areas of contention between the parties is therefore as to the beneficial ownership of these assets.

### **The law on liability for contempt**

11. There was no dispute between the parties as to the test that the court must apply when considering whether allegations of contempt have been made out. The burden of proof falls on the Applicants and the criminal standard of proof applies. A finding of contempt can be made only if I am satisfied beyond reasonable doubt that the breach of the Freezing Order alleged has occurred. In *JSC BTA Bank v Ereshchenko*

[2013] EWCA Civ 829 the Court of Appeal was considering allegations that Mr Ereshchenko had lied in written evidence he provided to the court. The Court of Appeal upheld the decision of Vos J (as he then was) in dismissing the application for committal. Vos J set out the principles to be applied in paragraph 132 of his judgment. So far as relevant to the present application these were as follows:

- a. the burden of proving the contempt that it alleges lies on the Applicants. Insofar as Mr Tsai raises a positive defence he carries an evidential burden which he must discharge before the burden is returned to the Applicants.
  - b. the criminal standard of proof applies, so that the Applicants' case must be proved beyond reasonable doubt – or so that the court is sure. In case the meaning of this formulation were unclear, Phipson on Evidence (17<sup>th</sup> edition, 2009 at paragraph 6.51) cites the Privy Council in *Walters v. R* [1969] 2 A.C. 26 as indicating that "[a] reasonable doubt is that quality or kind of doubt which when you are dealing with matters of importance in your own affairs you allow to influence you one way or another".
  - c. The court needs to exercise care when it is asked to draw inferences in order to prove contempt. The law in this respect is summarised in a passage in the judgment of Teare J in *JSC BTA Bank v Ablyazov* [2012] EWHC 237 (Comm). Circumstantial evidence can be relied on to establish guilt. It is however important to examine the evidence with care to see whether it reveals any other circumstances which are or may be of sufficient reliability and strength to weaken or destroy the Applicants' case. If, after considering the evidence, the court concludes that there is more than one reasonable inference to be drawn and at least one of them is inconsistent with a finding of contempt, the applicants fail. Where a contempt application is brought on the basis of almost entirely secondary evidence, the court should be particularly careful to ensure that any conclusion that a respondent is guilty is based upon cogent and reliable evidence from which a single inference of guilt, and only that inference, can be drawn.
12. As regards the mental element, contempt of court is, in general, a strict liability offence. Provided that the alleged contemnor intended to carry out the conduct which was prohibited, it is no answer to say that there was no direct intention to disobey the order. The court is not interested in examining the motive or intent behind the actions of an individual breaching the terms of an injunction.
  13. In the remainder of this judgment, where I make findings of fact or state that I am satisfied that an allegation has been proved, I make such findings and arrive at such conclusions on the basis that I am satisfied to the criminal standard of proof.
  14. As a further introductory point, I am not in this judgment expressing any view as to the extent of Mr Tsai's interest in any of the assets which he jointly owns with his wife. He was obliged by the Freezing Order to disclose the asset in which he has an interest even if that was jointly owned with another person. There may in future need to be further findings as to the extent of Mr Tsai's interest in any particular bank account or property. Nothing I say in this judgment should be taken as prejudging any such investigation in the future.

15. Conversely, there are some allegations which I have found have not been proven to the requisite standard. That does not mean, however, that a court in future when considering whether any judgment can be enforced against the relevant assets could not properly come to the conclusion that they are assets against which a judgment in favour of the Applicants can be enforced. The issue before me in respect of these assets is simply whether I am satisfied beyond reasonable doubt that Mr Tsai was in breach of the Freezing Order in failing to disclose them in his First Affirmation.

### **The law on penalty for contempt**

16. The maximum sentence that the Court can impose for contempt of court on a single occasion is two years: see section 14(1) of the Contempt of Court Act 1981. The reference in that section to ‘one occasion’ has been interpreted to mean the hearing at which sentence is imposed: see Arlidge, Eady & Smith on Contempt (4th edn 2011) and *Villiers v Villiers* [1994] 1 WLR 493 (CA). This means that the maximum sentence I can impose for whichever of these 52 allegations is proved is 24 months. A person committed to prison for contempt of court is entitled to unconditional release after serving half the sentence: Criminal Justice Act 2003 section 258.
17. In *Crystalmews Limited v Metterick* [2006] EWHC 3087 (Ch), Lawrence Collins J gave valuable guidance on the principles to be applied in sentencing for contempt consisting of a breach of a freezing order. He said:

"In contempt cases the object of the penalty is both to punish conduct in defiance of the court's order as well as serving a coercive function by holding out the threat of future punishment as a means of securing the protection which the injunction is primarily there to do."
18. He listed the matters which he took into account as being first, whether the applicant has been prejudiced by virtue of the contempt and whether the prejudice is capable of remedy; second, the extent to which the contemnor has acted under pressure; third, whether the breach of the order was deliberate or unintentional; fourth, the degree of culpability; fifth, whether the contemnor has been placed in breach of the order by reason of the conduct of others; sixth, whether the contemnor appreciates the seriousness of the deliberate breach; and seventh, whether the contemnor has cooperated.
19. Those factors were applied by Lewison J (as he then was) in *Aspect Capital Ltd v Christensen* [2010] EWHC 744 (Ch). Mr Christensen admitted breaches of an order that he deliver up computers and provide information about the whereabouts of confidential documents that he had unlawfully uploaded from the applicant's system. Lewison J added further relevant factors namely whether the contemnor has admitted his contempt and has entered the equivalent of a guilty plea; whether the contemnor has made a sincere apology for his contempt; whether the contemnor has been frank with the court in admitting his contempt; and finally the defendant's character and relevant antecedents.

20. In *Lightfoot v Lightfoot* (1989) 1 FLR 414 Lord Donaldson of Lymington MR stated that it would be consistent with the practice of the courts at a time when it was possible to impose an indefinite sentence for contempt, for the courts to consider imposing the full two year maximum when the contemnor was in continuing and wilful breach of court orders. In *JSC BTA Bank v Solodchenko and others* [2011] EWHC 2908 (Ch) Briggs J imposed a sentence of 18 months' imprisonment for breaches of provisions of an order requiring Mr Syrym Shalabayev to provide information about his assets and a concurrent sentence of six months for failing to provide an affidavit setting out that information. He explained that he had decided not to impose the maximum sentence because he compared the case before him with the case of *JSC BTA Bank v Stepanov* [2010] EWHC 794 (Ch). In *Stepanov* Roth J had imposed the maximum sentence but there the claimant bank had already obtained a judgment against the contemnor so that the contemnor's refusal to comply with his disclosure obligations had become an impediment in executing the judgment. In *Solodchenko* the proceedings were still at an interlocutory stage.
21. There were also contempt proceedings brought against Mr Kythreotis, the second defendant in the *Solodchenko* proceedings, for failure to comply with disclosure obligations. The Court of Appeal ([2011] EWCA Civ 1241) imposed a sentence of 21 months' imprisonment having regard to the need properly to punish the contemnor for his aggravated contempt and to deter others from disobeying court orders. Jackson LJ said, having reviewed many cases in which sentences for breaches of disclosure provisions in freezing orders had been handed down:
- “51. I shall not attempt to catalogue all those first instance decisions. What they show, collectively, is that any deliberate and substantial breach of the restraint provisions or the disclosure provisions of a freezing order is a serious matter. Such a breach normally attracts an immediate custodial sentence which is measured in months rather than weeks and may well exceed a year.”
22. In that case the Court of Appeal stated that in the case of continuing breach, out of fairness to the contemnor, the court may see fit to indicate (a) what portion of the sentence should be served in any event as punishment for past breaches and (b) what portion of the sentence the court might consider remitting in the event of prompt and full compliance thereafter. Jackson LJ, with whom Carnwath LJ and Lord Neuberger MR agreed, indicated that the punitive portion of Mr Kythreotis' sentence was nine months: if Mr Kythreotis complied fully with the disclosure order subsequently it would be open to him to apply to the court to vary the sentence of 21 months' imprisonment but not to less than nine months. He stated that the indication was not binding on any future court but may be of assistance.
23. I have borne in mind that imprisonment is always a punishment of last resort and I have considered in each case whether a sentence other than one of imprisonment might be sufficient and have also been careful to impose the minimum term for each allegation commensurate with the seriousness of the contempt.

24. I also bear in mind in general mitigation that, as I describe below, there was at least one stage in these proceedings at which Mr Tsai gave reasonably honest evidence, namely in his Third Affirmation. Indeed, some of the assets which are the subject of the allegations in the committal application only came to light because Mr Tsai disclosed them in that Third Affirmation. I also make it clear that although some of the evidence that I describe below might indicate that Mr Tsai has attempted to dissipate assets in breach of the Freezing Order, there is no allegation of dissipation and no evidence that any assets have in fact been put out of the reach of the Applicants as a result of Mr Tsai's conduct.
25. I have grouped those allegations of relating to similar assets together and directed that the sentences for failure to disclose, or giving false information about bank accounts should run concurrently and sentences for failure to disclose, or giving false information about real property should run concurrently. I have imposed sentences only in relation to those allegations on which the Applicants focused their attention. In the final paragraphs of the judgment I provide brief details of the other allegations setting out my conclusions in relation to them but not imposing any separate finding. I also deal there with the Applicants' application for a further disclosure order with a debaring provision providing that unless Mr Tsai now gives full disclosure of his assets, he should be debarred from defending the underlying claim against him.

### **The HMRC proceedings and the winding up of Changtel**

26. Changtel was wound up by order of the Court of Appeal in proceedings *HMRC v Changtel Solutions UK Ltd (formerly Enta Technologies Ltd)* following a judgment handed down on 28 January 2015 and reported at [2015] EWCA Civ 29. That judgment set out the background to the issue before the Court of Appeal which was the interaction between the court's jurisdiction to wind up a company on HMRC's petition in respect of unpaid tax assessments in circumstances where those tax assessments were the subject of an appeal to the First-tier Tribunal (Tax Chamber). HMRC had presented a petition against Changtel in respect of 15 VAT assessments creating a liability of £15.5 million including interest. HMRC contended that Changtel had engaged in a pattern of activity since 2006 whereby it had purportedly entered into a small number of extraordinary high-value export transactions each month just sufficient to reduce to a minimal level what would otherwise have been a substantial VAT liability to HMRC arising from its normal trading. HMRC contended that these export transactions never took place and were the essential element in a fraud perpetrated by Changtel on HMRC.
27. The chronology of the steps taken by HMRC to enforce these VAT assessments is important, the Applicants submit, because they triggered a number of transactions which are relevant to the allegations of contempt. HMRC first wrote to Changtel on 11 August 2012 challenging the company's VAT returns. The company issued notices of appeal against some of the VAT assessments. On 18 April 2013 HMRC presented their first petition to wind up the company in respect of the debts alleged. This petition was struck out on 6 June 2013 by Birss J on the grounds that its continuation was an abuse of the process of the court since HMRC had advertised it in breach of the parties' agreement not to do so.

28. On 7 June 2013 HMRC presented their second winding up petition and it was that petition which later became the subject of the proceedings before the Court of Appeal. On 20 August 2013, Tribunal Judge Kevin Poole undertook a one day hearing in the First-tier Tribunal to consider Changtel's application to extend time to appeal against the outstanding VAT assessments. HMRC submitted that the company's appeal had no real prospect of success. Judge Poole indicated orally that he would grant permission to appeal out of time and that he was not persuaded that the appeals were hopeless. HMRC did not appeal his decision to grant an extension of time. Changtel's appeal against the assessments was heard but judgment was reserved and was still awaited by the time the hearings on the petition took place.
29. On 21 March 2014 David Donaldson QC (sitting as a Deputy High Court Judge) granted the company an injunction restraining the advertisement of HMRC's petition and dismissed the petition. He granted permission to appeal on the question of the relationship between the petition proceedings and the proceedings in the Tribunal. New evidence was admitted before the Court of Appeal in which it was asserted that the company had misled the tax tribunal and the judge into thinking that the company was solvent and in a substantial way of business when in fact it had been running down its business since mid-2013.
30. The Court of Appeal's judgment records that Mr Tsai made two statements in response to this new evidence:

“In essence, Mr Tsai accepted that a series of statements made to the judge about the substantial nature of the company's business in January 2014 were false. He apologised. He also accepted that he had not told the judge that the company had sold its assets on 24 December 2013, and had itself been sold on 10 January 2014. He apologised that “at the [h]earing, financial information was presented regarding projected figures which were not accurate”.”
31. The Court of Appeal overturned the first instance judge's decision and considered afresh whether or not the debt relied upon by HMRC was disputed by the company in good faith on substantial grounds. The Court held that it was not. Vos LJ held that it was inescapable that the documentation had been fabricated and that Mr Tsai was fully aware that this was the case; the evidence the company had produced was “simply incredible” (paragraph 66). The first reason for disbelieving the company's evidence was Mr Tsai's admission that he had misled the Court and that this had been done deliberately in respect of matters that were crucial to the company's solvency.
32. Having found that there was no genuine dispute in respect of the VAT assessments the Court of Appeal discharged the order restraining the advertisement of the petition, dispensed with the need for advertisement and made an order for the compulsory winding up of Changtel.

### **Mr Tsai's responses to the Freezing Order**

33. As I have said, the Freezing Order was served on Mr Tsai on the evening of 15 February 2017. On the afternoon of 16 February, Mr Tsai emailed the Applicants' solicitors Walker Morris saying that he had received the Freezing Order and related documents and had spent that



day trying to find a barrister to represent him and attend the return date hearing on 22 February. He said that he had couriered his passport to their office that day and that he was working on the details of his asset list and was seeing his counsel the following afternoon. His barrister would help him serve the affidavit setting out the required information by the deadline of Monday 20 February 2017. The barrister Mr Tsai instructed at this point was Mr Paul Dean who acted for Mr Tsai under the Direct Access Scheme.

34. The First Affirmation made by Mr Tsai dated 20 February 2017 set out some personal information including that Mr Tsai had moved to the UK in 1983 and that his mother tongue is Chinese (although he later corrected this to Taiwanese). He said he does understand written and spoken English but that he struggles when English is spoken at speed, softly or quietly.
35. As regards the Passport Order, Mr Tsai states that he sent his British passport by overnight courier to the offices of Walker Morris on the morning of Thursday, 16 February 2017. He says the only other travel document he has is a Taiwanese passport. At the time the Freezing Order was made, that passport was in Taiwan in the possession of his travel agent whom he had instructed to apply for a visa for him to enter China. He says that as soon as he understood the terms of Order he instructed his travel agent to stop waiting for the Chinese visa and return his Taiwanese passport to him immediately via DHL. He expected it to arrive on the morning of Tuesday, 21 February 2017. Rather than place it in the hands of another third-party courier with the risk of delay, he said he would bring it with him to court on Wednesday 22 February.
36. As regards his assets, Mr Tsai introduced the schedule JT1. He said that based on his arithmetic, the assets listed in the schedule are worth about £6.3 million and his share of them is under £1 million.
37. At the return date of the Freezing Order, Paul Dean attended on behalf of Mr Tsai and was clearly expecting Mr Tsai to join him. However Mr Tsai did not appear. The injunction was continued in force in his absence by Mann J. We now know that he had failed to surrender his Taiwanese passport and had used it to travel to Taiwan.
38. On 3 March 2017 there was the first hearing of the committal application before Mann J. Mr Tsai returned to England in order to attend that hearing in person. He had changed his legal representation by this time having dispensed with the services of Mr Dean and instructed instead the firm Brett Wilson LLP. He was represented at the hearing by Andrew Bodnar of counsel. Shortly before the hearing he handed his Taiwanese passport to the Applicants' solicitors. At that hearing Mann J directed the listing of the application and a timetable for the service of evidence. In particular he directed that Mr Tsai by 17 March 2017 file and serve any evidence on which he wished to rely at the hearing of the application.
39. Mr Tsai made a second affirmation on 3 March 2017 to say simply that he had surrendered all his travel documents.

40. On 17 March 2017 Mr Tsai served his Third Affirmation in compliance with Mann J's order. In the Third Affirmation Mr Tsai apologised for failing to surrender his Taiwanese passport and explained that he had travelled to Taiwan to see his wife who was undergoing medical treatment. I describe further what he says about this in the Third Affirmation when I come to deal with the allegations of breach in relation to this failure.
41. As regards the asset disclosure given in his First Affirmation Ms Tsai stated in his Third Affirmation:
- “The first affidavit does not provide a full and complete picture of my assets. This is predominantly because I did not have access to a lot of the relevant information in the short period of time in which I was required to make disclosure. I can say that I now have a much clearer understanding of the obligations placed on me by the Freezing Order. I continue to have difficulty obtaining information from financial institutions in the UK and abroad particularly where accounts with banking institutions are not registered in my name. However, I have now been able to obtain much more information and I wish to make good my non-compliance with the Freezing Order by providing a detailed picture of my assets including my interest in property which, for cultural, familial and other reasons, may not be reflected in its legal title. Most importantly, both I and my wife consider that the property which either of us owns, however the ownership is structured, is part of the single matrimonial estate in which we have at least an equal interest.”
42. In the Third Affirmation Mr Tsai then described a large number of properties here and abroad and a large number of bank accounts in which he accepted that he had an interest. Many of these were items that he had included in JT1 but now he accepted that he had a beneficial interest in the property, whereas in JT1 he had said that it was solely owned by the person holding the legal title. He also gave details of many assets which had not been included in the Freezing Order or in JT1.
43. Following the service of the Third Affirmation, the Applicants applied to extend the Freezing Order to the assets that Mr Tsai had now disclosed. That gave rise to the making of a consent order by Marcus Smith J dated 31 March 2017. The consent order listed a further 47 bank accounts with banks in the UK, Bulgaria, Singapore, Spain, Shanghai, Hong Kong and Taiwan, a further five properties in Taiwan, England and Bulgaria, interests in two companies and in three cars.
44. It was the disclosure of those additional assets in the Third Affirmation which generated the 16 additional allegations of breach added to the committal application on 10 May 2017. On 12 April 2017 Mr Tsai gave notice that he had changed his legal team again. He had dispensed with the services of Brett Wilson LLP and had instructed the firm Neil Davies & Partners and new counsel Andrew Young to replace Andrew Bodnar.

45. The committal application was listed for trial before me on 10 May 2017. At the start of the hearing Mr Young applied to adjourn the committal hearing and relist it on an expedited basis. This was because there had been a disagreement between Walker Morris and Neil Davies & Partners over the release of monies from the Freezing Order to enable legal work to commence. Mr Young submitted that funds had only been released a few days previously and that had not given the new legal team sufficient time to prepare for the hearing. Indeed Mr Young's instructions to represent Mr Tsai at the hearing extended only to his application for an adjournment and did not extend to defending the committal application itself. I granted that adjournment. There was also discussion at that hearing about Mr Tsai's ability to speak English. Mr Young submitted that although Mr Tsai has managed to get by living in this country for many years and doing business here he needed to have an interpreter at the hearing of the committal application. This was strenuously disputed by the Applicants who said that they had experience of Mr Tsai conversing and writing perfectly fluently in English.
46. In the order of 10 May 2017, I also directed that Mr Tsai file and serve any further evidence on which he wished to rely in response to the committal application by 24 May 2017, failing which he would be debarred from relying on any such evidence at the hearing.
47. On 24 May 2017 Mr Tsai filed his Fourth Affirmation. In this affirmation Mr Tsai retracted almost all of the admissions he had made in the Third Affirmation and reverted to his initial stance, namely that the assets covered by the allegations of breach were all owned both legally and beneficially by his family members and that he had no interest in them. To explain why he had made the Third Affirmation, Mr Tsai levelled serious allegations of professional incompetence against his former legal representatives Mr Dean of counsel and Mr Brett of Brett Wilson LLP. As against Mr Brett, Mr Tsai said he had been wrongly advised to the effect that any property owned by his wife was by virtue of his marriage to her *automatically* to be treated for this purpose as being in part his property and so liable to be disclosed. He says in his Fourth Affirmation:
- “It is now my understanding that the advice dispensed by Mr Brett was seriously flawed from the outset. I have now, with the assistance of an interpreter fluent in English and Mandarin, reviewed the profile of Mr Brett and I am shocked to discover that he was willing to act in a case so far beyond his skill set. ... Mr Brett is a solicitor that specialises in criminal and regulatory law whose only experience of civil law practice appears to be civil proceeds of crime law and practice. This concerns me greatly because the advice I needed concerned issues of chancery, property and issues relating to beneficial ownership.”
48. Mr Tsai also complains he was not put in a position by Mr Brett in which he was able to make informed decisions because the instructions he gave and the advice that was dispensed all took place without a Mandarin speaker being present to explain things to him. He goes on:

“11. I shall, throughout the course of this Fourth Affirmation refer to specific instances, but Mr Brett's consistent advice to me concerning any assets held by my wife [was] that I should declare them as assets owned by me because

I could be said to hold some kind of beneficial interest in the assets by virtue of our marriage. There was no attempt by Mr Brett to enquire as to how individual assets (owned by my wife) came into existence, how they were funded or any regard to the particular jurisdiction in which the assets were held”

49. He also complained that Mr Brett emailed him a copy of the Third Affirmation on 17 March 2017 at 14:44 which was only one hour and 16 minutes before it was required to be affirmed, filed and served. He had no time to have the document translated or to receive any advice as to its contents. He says:

“It is with a heavy heart that I must conclude that both Mr Dean and Brett Wilson LLP have not served my interests at all well and have left me in an invidious position of having to defend my liberty against this present application.”

### **The disclosure of Brett Wilson’s files**

50. Following the service of the Fourth Affirmation, the Applicants made an application for disclosure of Brett Wilson’s files on the grounds that Mr Tsai had waived privilege in his correspondence with his solicitors. That application was granted by order of Warren J dated 6 June 2017. A large amount of correspondence was disclosed by Brett Wilson to the Applicants. The disclosure included an attendance note made by Mr Brett on 14 March 2017 following his attendance on Mr Tsai and his son Andrew Tsai (‘the Brett Attendance Note’). The Brett Attendance Note records in detail the discussions that Mr Brett had with Mr Tsai and Andrew had about many of the assets which are the subject of the allegations in this committal application.
51. At one point in the meeting, the Note records that Andrew Tsai told Mr Brett that “there is a family concern over how honest we can be with [Mr Brett] and if it will hurt later.” Mr Brett then explained that he is an officer of the court and everything said to him was confidential.
52. Later that afternoon, at 16:11 on 14 March 2017, Mr Brett sent Mr Tsai a draft of the Third Affirmation saying:

“Dear Jason,

Thank you for coming in this morning. I attach a first working draft of the affidavit to be filed by Friday with some comments.

To summarise my advice, I do not think we will be able to make any progress in settlement negotiations until the Applicants are satisfied that we have made full and proper disclosure of all our assets. For the avoidance of any doubt, this includes any asset to which title may be registered in another name but in which you would be deemed

to have an interest. If there is further alleged material non-disclosure then this will aggravate the committal application and the Applicants will be keen to pursue it. It is very much in your best interests to take the Order seriously and to comply with it. This means that you must not move, dissipate or in any way deal with any of your assets anywhere in the world.”

53. When this email was put to Mr Tsai in cross-examination he accepted that he understood what it meant.
54. There was also then a telephone conversation the same afternoon between Mr Brett and Mr Tsai and Andrew Tsai recorded in an attendance note. It records that Mr Tsai and Andrew had received the draft affidavit and had a number of concerns with it. Mr Brett records that he told them:

“I understand concerns but I reiterate the primacy and importance of compliance with freezing injunction. If applicant still not satisfied a) we could not make any progress with claim and b) they will continue with contempt proceedings. Strongly advised to make full disclosure. Difficult for me to say how easy to enforce order in Far East but in any event I am an officer of the court and unable to do this”.

55. Mr Brett also noted that Mr Tsai’s credibility was “shot to pieces and we desperately need to try to rebuild this.”

56. On 15 March 2017 in the early morning Andrew emailed Mr Brett asking the following question:

“I am wondering whether Jason needs to declare his wife Jenny Chang’s assets/bank accounts that may be solely in her name and which he retains no benefit from or has no access to?”

57. Mr Brett replied a few minutes later as follows:

“Jason only needs to declare any assets/bank account in which he has an interest, regardless of legal title. It is not acceptable to move money into another person’s account and not disclose this as Jason would have a beneficial interest in its contents. The RBS accounts in the UK, for example, must be disclosed on Jason’s instructions yesterday. Your mother’s interest in Jason’s assets, however, are a very important issue in this case. If she has accounts in which he has no interest they do not need to be disclosed. I cannot advise on individual accounts without sight of the ledgers unfortunately.”

58. When this evidence was put to him in cross-examination, Mr Tsai could not maintain his assertion that Mr Brett had given him incorrect advice and fell back on saying only that he had been confused by Mr Brett's advice and had misunderstood it.
59. Having reviewed this material I find that it does not support Mr Tsai's evidence in his Fourth Affirmation as to the nature of the advice he had been given or his complaints about Mr Brett's professional conduct. On the contrary, I am fully satisfied that Mr Brett complied with his professional duties towards Mr Tsai and his duties as an officer of the court with, if I may say so, exemplary clarity and thoroughness.
60. The disclosure also showed that Mr Tsai's complaint that he had only had just over one hour to consider the Third Affirmation before it was required to be affirmed was totally untrue. He was sent a draft of the Third Affirmation at just after 4 pm on 14 March 2017; he and Mr Brett had a phone conversation about the draft that evening and there was subsequent email correspondence between Mr Brett and Andrew about various issues raised by the draft before a final version was sent through by Mr Brett to Mr Tsai and Andrew late in the evening on 16 March 2017. When this was put to him in cross-examination Mr Tsai had to agree that it was only the final version of the Third Affirmation that was sent to him shortly before it was due to be filed. He agreed that he had seen and commented on earlier versions. His statement in his Fourth Affirmation was therefore very misleading in this regard.

#### **The affirmations of Jen Yen Chu, Shu Hua Chang and Ai Chang Cheng**

61. In addition to his four affirmations, Mr Tsai served as evidence in support of his opposition to the committal application the three additional affirmations. These are by the three people in whose names bank accounts and other assets are held that the Applicants assert really belong to Mr Tsai. They are
  - a. Jen Yen Chu who is Mr Tsai's brother-in-law (his wife and Mrs Tsai are sisters). He is resident in Taiwan.
  - b. Shu Hua Chang who is Mr Tsai's sister-in-law (his wife's sister) and is also resident in Taiwan.
  - c. Ai Chang Cheng who is also Mr Tsai's sister-in law (another sister of Mrs Tsai) who is also resident in Taiwan.
62. Each of the affirmations is dated 2 May 2017 and states that it was affirmed in Taipei City, Taiwan before a lawyer called Jennifer Atkinson. Each is very short and simply lists each of the assets which is the subject of an allegation of breach, stating that that asset is solely owned by the deponent and that Mr Tsai has no interest in the asset. The deponents do not provide any information in addition to that contained in Mr Tsai's affirmations.

63. These affirmations raise a number of questions. First the backsheet of each copy included in the trial bundle sets out the address, contact details and reference of Neil Davies & Partners, Mr Tsai's current solicitors. However they bear the date 2 May 2017 as the date on which they were purportedly signed in Taipei. As I have mentioned the trial was adjourned on 10 May 2017 on the grounds that Neil Davies & Partners had been unable to carry out work for Mr Tsai on the application for committal because of the late release of the funds from the Freezing Order.
64. The witness statement of Mr Neil Davies filed for that occasion and dated 5 May 2017 stated that he had been unable to meet Mr Tsai to discuss the case until 3 May 2017. Mr Davies said that his firm had only been put in funds to defend Mr Tsai's position at 1:10 pm on 5 May 2017. He said further that the firm had been unable to take substantive instructions because Walker Morris had prevented monies being released to the firm and that there had been no resources available to pay for an interpreter: "there was no way that we could take appropriate instructions from Mr Tsai". Mr Davies said that the only money available to his firm before 5 May was £4,400 left over from disbursements released to pay for Brett Wilson's conduct of the case. He refers to a meeting that he held with Mr Tsai in conference with Mr Young with an interpreter present on Wednesday, 3 May 2017 which was after the applicants had authorised the release of £85,000 to the firm in respect of legal costs and expenses, albeit before the money actually arrived with them.
65. Nowhere in that lengthy witness statement describing all the steps that he had taken on behalf of Mr Tsai, did Mr Davies refer to having taken instructions from Mr Tsai and arranged for the making of these three affirmations in Taiwan. Yet, if these affirmations are what they purport to be, Neil Davies & Partners had undertaken a substantial amount of work to draft these affirmations on Mr Tsai's instructions and had arranged for them to be affirmed in Taipei.
66. What does seem clear is that Mr Tsai accepts that whoever drafted the affirmations did so purely on Mr Tsai's instructions as to what to include in them. He does not claim that the solicitors took instructions directly from the deponent or otherwise took any steps to check the truth of the contents of the affirmations. Mr Tsai says that he was merely conveying to the solicitor the information that the deponent provided to him. As I understood it, Mr Tsai also accepted that the lawyer in Taipei, Jennifer Atkinson, was not involved in the preparation of the affirmations nor was she required to explain the contents of them to the deponents whose signature she was witnessing.
67. Whatever the circumstances were in which these affirmations came to be drafted and signed, I have concluded that I can place no reliance whatever on their contents. Even if they are not complete fabrications, I doubt that the supposed deponents understood what they were signing or agreed with its contents. For the reasons which I describe below I consider that these three people would have done what Mr Tsai asked them to do whether the contents of these affirmations were true or not.

### **The hearing of the application for committal**

68. Following the adjournment of the hearing on 10 May, the service of the Fourth Affirmation and the disclosure of the Brett Wilson documents, the matter came on for trial before me on 12 June 2017. Throughout the seven day hearing Mr Tsai had the benefit of interpreters able to interpret between English and Mandarin. They not only interpreted questions and answers when he was in the witness box but sat with him throughout the proceedings to explain to him what was happening.

69. At the start of the hearing Mr Young, appearing for Mr Tsai addressed me in the following terms:

“MR YOUNG: My Lady, there has been a development which I need to draw to the court's attention. During the course of this morning, Mr Tsai broke down and admitted to his solicitors that his fourth affirmation was not completely correct. He has admitted this. It therefore means that the skeleton argument I have prepared, certainly in that respect, is something that I cannot rely on. He wants to make a clean breast of it and the suggestion is this, subject, of course, to your Ladyship's views: if we could have the court's indulgence, his solicitors could amend his fourth affirmation to actually show the correct position with regard to assets and it could be before the court in the morning.

MRS JUSTICE ROSE: Is the correct position actually the third affirmation?

MR YOUNG: Well, essentially there are some disputes over matrimonial property, and what Mr Tsai did -- quite wrongly, and he has held his hands up to this -- is he suggested they are entirely his wife's property when in fact they are joint assets. Now, that was completely wrong and he will now admit that and give full and frank disclosure.

MRS JUSTICE ROSE: I think we will open the case and then I think either you or Mr Robins can take him through either the third or fourth affirmations and we will elicit his evidence in that way. That way he will be on oath when he gives his evidence and he will have an interpreter and we can then be sure at least that the evidence he gives in the witness box is the evidence that he wishes to give in respect of these assets.

MR YOUNG: My Lady, yes.

MR ROBINS: My Lady, we would certainly not oppose my learned friend having an opportunity to clarify his client's evidence during a brief examination-in-chief if there is anything that Mr Tsai wants to correct in any of the evidence he has given, but of course he has had three bites of the cherry already, so needless to say we are quite surprised by this development.”



70. After entering the witness box Mr Tsai was taken through his Fourth Affirmation by Mr Young paragraph by paragraph and asked to say whether there were any corrections he wished to make to that particular paragraph. In fact Mr Tsai simply answered in respect of almost all the paragraphs that they were correct. He did not retract any of the accusations he made against his previous advisers Mr Dean or Mr Brett; he did not accept that any of the assets owned by other family members were in fact his assets as he had accepted in his Third Affirmation. At most he made a few changes to the detail of the wording of his Fourth Affirmation.
71. Mr Tsai was then cross-examined on many of the allegations pursued by the Applicants. I describe some of his evidence below. In general Mr Tsai stoutly maintained the position as set out in his Fourth Affirmation; he denied the truth of the admissions in his Third Affirmation and when challenged with those admissions he blamed the incorrect and confusing advice he had been given by Mr Brett to the effect that simply by virtue of the marriage relationship, he should disclose as his own the assets in his wife's name.
72. At the conclusion of this lengthy cross-examination but before his re-examination, there was then a break of three days in the proceedings because the trial had overrun and the court could only reconvene three days later. Mr Tsai remained in 'witness purdah' throughout that time.
73. On Day 6 of the trial, Mr Young started his re-examination asking Mr Tsai whether there was any particular reason why he was unable to remember some of the details in answer to Mr Robins' questions. No doubt he expected to elicit an answer from Mr Tsai referring to the medical problems which Mr Tsai had described in his affirmations as leaving him easily confused and with memory problems. Instead Mr Tsai said:
- “I just want to make known to the court and my Lady that I have made some errors and mistakes during my witness giving last week. I am sorry that I have wasted your time, and actually I don't know how it happened.”
74. After Mr Young had tried to steer him back onto his health condition Mr Tsai reiterated his wish to change his evidence:
- “All I want to say is I want the other counsel [*sc.* Mr Robins] to rely on my third affidavit, I think the items in the affidavit are more accurate if he wants to run quickly through those points again I will be quite happy for him to do so and probably only takes about an hour ...”
75. The result of this was that Mr Young understandably abandoned most of the rest of his prepared re-examination questions. This enabled Mr Tsai to be released from the witness box and to give further instructions to his legal team if he so wished.

76. After some discussion with counsel as to the best way forward I directed that Mr Robins should make his closing submissions, as he was eager to do, on the basis of the evidence that Mr Tsai had given in the witness box. Thereafter there was a short adjournment for Mr Young to take instructions as to what corrections Mr Tsai wished to make to the evidence he had given in the witness box before Mr Young started to make his own closing submissions.
77. Mr Robins then made his closing submissions on the basis of the evidence thus far. He had prepared a helpful Speaking Note comprising 149 paragraphs drawing together in respect of most of the 52 allegations the evidence on which the Applicants relied to establish breaches of the Freezing Order.
78. Later that afternoon, the court reconvened and Mr Young started his closing submissions by going through Mr Robins' Speaking Note saying which of the paragraphs Mr Tsai now admitted and which he still denied. By the end of Day 6, Mr Young had not been able to finish this exercise since he had not had time to take full instructions from Mr Tsai on the final paragraphs of the Speaking Note.
79. At the start of Day 7, Mr Young produced a further document called "Admissions of Ji-Chuen Jason Tsai" ("the Admissions Note"). The Admissions Note was in the form of a witness statement signed by Mr Tsai under a statement of truth and opened with the statement that Mr Tsai wished "to make full and frank admissions in circumstances where I admit that my oral evidence has in many parts been untrue". In fact although it did contain some admissions it also contained further evidence being put forward in denial of those allegations which Mr Tsai still contested. Unfortunately it also appeared to row back from some of the admissions he had instructed Mr Young to make by agreeing with some of the paragraphs in Mr Robins' Speaking Note the previous day. Mr Robins objected strongly to the Admissions Note being considered by the court admitted on a number of grounds, including that Mr Tsai had been subject to an 'unless' order as regards the service of evidence in the order made on 10 May 2017 and this evidence was by any measure produced very late.
80. My conclusions on these events is as follows. First, as I made clear to the parties at the hearing and to Mr Tsai, the court is always willing, at however late a stage in committal proceedings, to hear from an alleged contemnor if he wishes to correct previous untruthful evidence, make admissions and express remorse for those earlier untruths. Whatever 'unless' orders about the service of evidence have been made by the court in the past, there can be no time limit on a person who wishes to put aside previous untruthful denials and admit allegations of contempt.
81. That does not however determine what reliance the court should place on the Admissions Note. Mr Tsai has a history of making admissions and then retracting them on the grounds that they were wrongly made through no fault of his. Mr Robins drew my attention to the fact that when the court was adjourned for Mr Tsai to give instructions outside court to his legal team about which paragraphs of the Speaking Note he wished to admit, the Mandarin interpreter had, for some reason, remained in court rather than accompanying Mr Tsai. Further, on the final morning when Mr Young was attempting to convey to me the extent of Mr Tsai's admissions, it remained unclear in certain respects

whether his admissions as regards his beneficial interest in his wife's various assets were, as he put it, "because of his marriage". This was despite his Fourth Affirmation apparently making clear that he now did realise that his obligation to disclose assets did not extend automatically to his wife's assets simply by virtue of their marriage but only extended to those assets in which he really has a beneficial interest.

82. In the light of what has happened it would not be right to base my findings on liability on the admissions that Mr Tsai made in the final two days of the hearing. If I did so, I believe Mr Tsai would be strongly tempted to contend that the judgment should be impeached on the basis that his admissions on Day 6 of the trial were the result of poor advice, mental confusion or his inability to understand what was being asked of him. I have therefore concluded that the appropriate course is to consider in relation to each of the allegations whether, regardless of the admissions or otherwise made by Mr Tsai at the end of the hearing, I am satisfied beyond reasonable doubt that the allegation is true. When I come to consider the penalty to be imposed for any breaches which I found have been proved, there is a separate issue as to how far Mr Tsai's late admissions and expressions of remorse should weigh in the balance as mitigation.
83. There are some other preliminary matters which it is convenient to deal with at this point.

*Mr Tsai's health issues*

84. In his Fourth Affirmation at paragraph 49 Mr Tsai refers to his ill-health, describing the medication he takes following his treatment for thyroid cancer. He says that this induces drowsiness and confusion and that this, together with his poor hearing, has greatly affected his ability to understand his previous legal advisers. Later in the Fourth Affirmation he says:

"74. I am now 66 years old. In 2009 I was diagnosed with papillary carcinoma of the thyroid (cancer) and I required surgery.

75. I underwent a complete thyroidectomy (removal of the entire thyroid gland) by Dr Lee Chen Hsen of Taipei Veterans General Hospital on 27 February 2009. A large amount of cancerous material and the whole organ of thyroid gland were removed and I am in remission. I refer to these medical reports at [JT4 page 288] and [JT4 pages 289 to 290].

76. However, I must remain on daily medication (thyroxine 125mg daily) indefinitely to stay alive. The effects of my medical condition post-surgery and the side effects of the medication I must take daily have affected me greatly. These symptoms include confusion, poor memory, inability to concentrate and hold attention, chronic fatigue, and insomnia (that compounds my tiredness). I refer to the drugs advice sheet that warns of these side effects [JT4 page 291].

77. As I have explained above my hearing ability has deteriorated as I have aged. Unfortunately, this taken together with my dependence on medication has caused me to misunderstand several important aspects of this case, including advice dispensed by my former lawyers.

78. I received an Audiological Evaluation on 24 May 2017 that shows severe hearing problems [JT4 page 292].

79. Although I am told that I am lucky to still be alive after 5 years post-surgery, doctors in Taiwan and U.K. tell me that my life expectancy is reduced and further warn me that continuing to live a stressful life, as well as suffering from insomnia, will surely shorten my life further.

80. All of this has led to me being greatly confused and not dealing with matter as I could have when I was a younger man and fit.”

85. The medical evidence that Mr Tsai has placed before the court is very sparse and certainly does not support his contention that he is as ill as he claims:
- a. The document exhibited at JT4 page 288 is a print out of his general practitioner’s records listing all the problems that he has presented with over many years. It records ‘total thyroidectomy’ in February 2009 and then hypothyroidism in June 2009. It does not record any more recent problems other than gout.
  - b. The document exhibited at JT4 pages 289 and 290 is a one page “To Whom It May Concern” letter dated 11 May 2017 from the Taipei Veterans General Hospital certifying that Mr Tsai had a total thyroidectomy. It records the ‘provisional diagnosis’ as being papillary cancer of thyroid. Curiously it also purports to certify that he was a patient in that hospital on 11 May 2017 which was not correct. It does not refer to any long term sequelae from this operation.
  - c. The document exhibited at JT4 page 291 appears to be a photocopy of the information leaflet included in the packs of Levothyroxine prescribed for Mr Tsai. Mr Tsai has underlined some of the many possible side effects which the leaflet warns some people may experience when taking this medicine. These include confusion but also intolerance to heat, severe itching of the skin, fits, tremor, weight loss, and many other ranging from heart failure and coma to excitability and a “general feeling of being unwell”.
  - d. The ‘audiological evaluation’ exhibited at JT4 page 292 was carried out by Specsavers in Birmingham for the fee of £20. The partially-completed, one-page results sheet purports to show profound hearing loss in both ears at some ranges and recommends bilateral hearing aids.

86. From this evidence I conclude that Mr Tsai had his thyroid gland removed in 2009 and since that operation he has been taking a daily thyroxine supplement. There is no evidence that Mr Tsai has ever complained to any medical person that he is suffering from any of the possible side effects listed on the information leaflet included with his medication. There is no evidence that Mr Tsai has ever complained to a medical person about poor hearing or that he has tried to obtain or wear hearing aids to improve his hearing. If, which I strongly doubt, the audiological evaluation carried out by Specsavers on 24 May 2017 is a genuine document I do not accept it as evidencing any serious hearing impairment. I find that if Mr Tsai was really as ill as he claims there would be many more documents generated by GP or hospital visits. I find that Mr Tsai's supposed medical problems are a fabricated excuse and that he has no medical or hearing problems that have contributed to his conduct during the course of these proceedings.

*Mr Tsai's understanding of his obligations under the freezing order*

87. I have already explained that despite the Applicants' protestations that Mr Tsai is perfectly fluent in English both written and spoken, Mr Tsai had the benefit of an interpreter throughout the trial. He was cross-examined on his understanding of his obligations under the freezing order. His evidence was that he did understand the impact of the penal notice and he realised immediately that he needed to seek legal advice. I am fully satisfied that he understood his legal obligations under the Freezing Order at the latest by the time he made the First Affirmation. The obligation to hand over his passports is a simple obligation and he certainly understood it by the time he emailed Walker Morris on 16 February 2017. Although the wording of the Disclosure Order may be complicated the underlying concept - to make a list of all your assets all over the world - is not complicated.

*Mr Tsai's understanding of the difference between legal and beneficial ownership*

88. I have rejected Mr Tsai's evidence that his admissions in his Third Affirmation were based on a misunderstanding generated by his solicitor about whether he needed to disclose all of his wife's assets simply because she is his wife. However, I was initially concerned that Mr Tsai might not fully understand the difference between legal and beneficial ownership of assets. It was important therefore to be sure that Mr Tsai understood that the concept of beneficial ownership is very different from his authority, by reason of the grant to him of a third-party mandate by the holder of the bank account, to write cheques or otherwise authorise transactions dealing with the contents of the account on the holder's behalf.
89. Initially Mr Tsai rather avoided addressing the issue. When he was taken through his Fourth Affirmation in examination in chief, the issue was explored in respect of one of his wife's bank accounts with DBS bank in Singapore:

“Q. Now, could I ask you to look at your paragraph 113. Do you see the first sentence: "Account 001-034316-4-031 is my wife's account." Who is the beneficial owner?

A. Because of our marriage, so the account is joint account between me and my wife. Sorry, the name of the account is my wife's but I think because the virtue of my marriage, I think I am also the beneficiary owner to the account.

Q. So that is jointly owned by both Mr Tsai and his wife, is that correct, Mr Tsai?

A. The account name is hers.

Q. Yes. But what we are interested in is who actually owns the money, who has the right to it, who does it belong to?

A. Because of our marriage I think I should own half of the money in the account.

MRS JUSTICE ROSE: Well, regardless of your marriage, think about it this way: if you took some money out of that account and used it to buy yourself a new suit or a motorbike or something like that, would your wife say to you, "Hey, why have you done that, that's my money", or would she say "Well, that's all right, it is partly your money so you can use it to buy things for yourself"? That's what we are trying to get at here.

A. I can't withdraw any money from the bank account. The bank will not allow me to do so because the account is under her name.

MRS JUSTICE ROSE: That's not really an answer to my question, is it, Mr Tsai? Is it money that, if you could get at it, you could spend it because it is partly yours? That's what we are trying to get at.

A. I don't know how to answer your question because I can't withdraw any money from the account, so how come I can spend any money from the account?

MR YOUNG: Mr Tsai, could I ask you this question: if you wanted to take some money out of that account to spend it on yourself, would your wife have any objection?

A. She never asked me this question so I don't know."

90. But later in his examination in chief, when he was being asked about shares in a Bulgarian company he did answer the direct question:

"MR YOUNG: Mr Tsai, are you composed and ready to continue? Now, alleged breach 32. This is the Bulgarian company.

A. Yes.

Q. It was said you failed to disclose it. That was right, wasn't it?

A. Yes, that's correct.

Q. At paragraph 149, you say that your wife and yourself own all of the shares in the company.

A. My son also owned some shares of the company.

MRS JUSTICE ROSE: Which son?

A. His name is John, John Tsai.

MR YOUNG: Are you able to help us with the percentage?

A. I am not entirely sure. Perhaps one-third.

Q. Mr Tsai, you understand the difference between legal ownership and beneficial ownership, don't you?

A. Yes, I understand.

Q. Who had the beneficial ownership of the shares?

A. Three of us had the beneficial interest.

Q. Does that remain the case?

A. Yes, it remains the case.”

91. It is also significant in my judgment that Mr Tsai denies ownership of the home in which he lives at 2 The Coppice in Telford on the basis that it is owned by him, his wife and his son John as trustees for a charitable foundation. Mr Robins put to Mr Tsai that he had transferred his legal interest in 2 The Coppice from his name into the names of the trustees of the Foundation in order to divest himself of his assets following the hearing of HMRC's winding up petition. Mr Tsai's response was "I think you misunderstand the meaning of a trustee. As a trustee, we don't have any beneficial interest in the property and it was managed by the Charity Commission". I am therefore satisfied that Mr Tsai fully understands the difference between legal and beneficial ownership.
92. I find that any failures on Mr Tsai's part to comply with the Disclosure Order are not the result either of bad advice from his previous legal teams or because of a misunderstanding on his part, however arising, about the difference between legal and beneficial ownership or the difference between beneficial ownership and having a third-party mandate from the owner to deal with a bank account or other asset.

### **Findings as to Mr Tsai's credibility**

93. Having seen Mr Tsai give evidence and in the light of the matters I have described above, I have formed the view that Mr Tsai was a thoroughly dishonest witness and that almost all the answers he gave during his oral evidence in the witness box were deliberate lies aimed at misleading the court. I believe very little of what he said, unless it was adverse to his own interests. In forming that view I take into account the following matters. First there are Mr Tsai's frequent changes of stance between his different affirmations and during the course of the trial. That does not give me confidence that any of his evidence is true. Secondly, there is Mr Tsai's conduct when he wished to retract previous admissions in making serious allegations about professional misconduct against his previous legal teams. The evidence that was disclosed has shown that no incorrect advice was given and both Mr Dean and Mr Brett went out of their way to explain carefully to Mr Tsai what his obligations were under the Freezing Order. Thirdly there is Mr Tsai's insistence on the truthfulness of evidence which is wholly implausible in respect of many of the allegations of breach as I describe below.
94. I also take into account the overwhelming evidence of Mr Tsai's previous dishonest behaviour in the conduct of his financial and business dealings. I will now describe some of the more egregious examples of this.
95. First there is his conduct in the previous proceedings in the Court of Appeal. I have already explained how Mr Tsai had to concede that he misled the Court with false information about the solvency of Changtel and how that weighed with Vos LJ in concluding that the company should be wound up. Unfortunately the apology that Mr Tsai gave to the Court in respect of that dishonest evidence did not prevent him from immediately seeking to mislead the Court of Appeal again in a most serious manner.
96. On 5 February 2015, a letter was sent to the Court of Appeal purporting to come from a firm of lawyers in Taiwan called "Just Good Lawyers" (sic). The letter was signed by an Attorney in Office Chen Li Chen and sealed with an office stamp with the Chinese characters enclosed in a square. The letter stated that the signatory was acting on behalf of Shu Hua Chang who is the hundred percent shareholder of Changtel. The letter stated that she is willing to inject over £2.5 million into the capital of the company in exchange for shares if the winding up petition is to be dismissed. The letter concludes "I undertake that the funds are in our possession and we have irrevocable instructions to transfer the monies to HMRC if the Court of Appeal orders that the petition is to be dismissed upon payment being made as suggested".
97. This letter appears to have had no effect on the winding up of the company which is fortunate since the letter has been shown to be a complete fabrication. Mr Tsai accepted during his oral evidence that there was a typing error in the letterhead and that it should read "LAWYERS" and not "LAWERS". He attributed this to the fact that the people who work for Just Good Lawyers do not speak good English. In fact the evidence shows that sometime earlier, at the end of April 2013, Mr Tsai instructed one of his employees in England to make up a letterhead in the name of "Just Good Lawyers" at the address in Taipei and to make up a logo to include in the letterhead. The employee, Ryan Lee, promptly complied, producing a letterhead exactly like the one later used for the Court of Appeal letter. The first version sent



through by Ryan Lee contained the error, 'Lawers' instead of 'Lawyers'. Mr Tsai immediately pointed this out to him and Mr Lee sent through a corrected version shortly after.

98. When he was asked in cross-examination why he had fabricated this letterhead Mr Tsai replied that he was acting at the request of the law firm. His evidence was that Just Good Lawyers had asked him to create a letterhead for the firm so it would be easier for the law firm to send letters to Changtel. The implausibility of this explanation was made apparent by the fact that one of the early letters produced in this way was a letter dated 25 April 2013 purporting to be from Chen Li Chen of Just Good Lawyers saying that she was acting behalf of Mrs Yi Lin Tsai and threatening to sue Mr Tsai for over £1 million. The idea that a law firm, genuinely calling in a debt on behalf of one of its clients, would ask the debtor to create a letterhead for the law firm and expect the debtor then to draft and send to itself a letter before action threatening to sue itself is entirely preposterous.
99. Some months later when Mr Tsai came to concoct the letter to the Court of Appeal, he asked Mr Lee again to send him headed paper in the name of the Taiwanese law firm. In haste Mr Tsai accidentally used the version with the spelling mistake rather than the corrected version. Hence the error in the name on the letterhead sent to the Court of Appeal supposedly on behalf of Shu Hua Chang. This letter to the Court of Appeal was provided to Mr Tsai's counsel who unwittingly forwarded the fraudulent document to the court and referred to it in her skeleton argument for the hearing following the handing down of the judgment.
100. That was only one occasion on which Mr Tsai has fabricated documents in the name of a lawyer, Chen Li Chen supposedly working in Taipei. Many other documents were produced and put to Mr Tsai in cross-examination in which he used the name Chen Li Chen and the seal with Chinese characters to notarise documents such as copies of passport pages or bank statements that were then presented to banks and other institutions carrying out due diligence. Mr Tsai accepted that some of these were faked by him. He admitted he had the seal and he applied it using the name Chen Li Chen even though he has no authority to notarise documents. I was told later that Chen Li Chen is in fact the daughter of Jen Yen Chu and so Mr Tsai's niece. She has apparently provided him with a duplicate seal for this purpose.
101. There was also an instance of Mr Tsai asking his employee to create a backdated contract. In June 2013, that is a few days after HMRC presented the second winding up petition against Changtel, Mr Tsai wrote to one of his employees Colin Lee asking him to draft a simple agreement between Enta and Entanet signed on 1 April 2010 between Jen Yen Chu and Jason Tsai, commenting that it is urgent. Mr Lee replied that he would do it by the next day and an agreement was promptly produced by which both parties stated that they would be entitled but not obliged at any time to set off any sum payable or liability by the other party against any sum due or liability owed. It purported to be signed by Mr Tsai and Jen Yen Chu on 1 April 2010. When he was cross-examined about this Mr Tsai claimed he was unable to remember this incident and could not comment on it.

102. For all these reasons I regard Mr Tsai as a dishonest and manipulative person who has no qualms about fabricating important documents, lying to the court and expecting his work colleagues and family members to act dishonestly to assist him.
103. I accept Mr Robins' submission that the Third Affirmation is getting closest to the truth of the matter because this was prepared by Mr Brett following detailed discussions with Mr Tsai. That discussion took place after Mr Brett had assured Mr Tsai and Andrew at the meeting on 14 March 2017, as recorded in the Brett Attendance Note, that what was said at the meeting would remain confidential - as it would have done had Mr Tsai not later waived privilege.
104. I turn now to a consideration of the 52 alleged breaches.

#### **The Breaches of the Passport Order: Allegations 1, 2, 3 and 4**

105. Mr Tsai's immediate response to the service upon him of the Freezing Order was to email Walker Morris to say that he was couriering his British passport to them and was arranging for his Taiwanese passport to be returned from Taiwan. He confirmed this in his First Affirmation made on 20 February 2017 and said that he would bring the Taiwanese passport to court on the return date of 22 February 2017. In the event Mr Tsai did not do so but used his passport to leave the country and travel to Taiwan on 22 February 2017 returning on 2 March. Mr Robins confirmed at the hearing that Allegations 1 to 4 relate only to the Taiwanese passport.
106. In his Third Affirmation made on 17 March 2017 Mr Tsai gave the following explanation for his conduct:
  - “2. I am very sorry that I did not surrender my Taiwanese passport as agreed on 22 February. The truth is that I panicked. My wife was in Taiwan for medical treatment and I foolishly decided to leave the jurisdiction so that I could see her. I feared that otherwise I may not be able to see her for some time, or possibly at all. Instead of attending Court on 22 February, I flew to Taipei via Paris and Istanbul on the first available flight. My wife is suffering from acute coronary syndrome, mitral valve prolapse and angina. She is diabetic and she also suffers from hypertension.
  3. She is nearly 67 years old. On 16 February, she was advised to have an operation to replace her mitral valve. This is something that we needed to discuss given the potential danger in such an operation. She has not had this operation and she remains unwell but stable. She is not in hospital.
  4. I accept that my wife's ill health does not excuse my disobedience of the Freezing Order. I have not conducted myself as I should have done. I am taking all necessary steps to seek to rectify my earlier failure to adhere to the

terms of the Freezing Order. Nevertheless, I unreservedly wish to extend my apology to the Court and to the Applicant for my conduct.”

107. In the Fourth Affirmation Mr Tsai expanded on this explanation:

“28. I have explained in my Third Affirmation that my wife is in very poor health. My wife was subject to a medical examination on 03 February 2017. I refer to a medical report dated 16 February 2017 that demonstrates the extent of her poor health [JT4 pages 49 to 57]. I received this report (via my wife) at about the same time that I was served with the Freezing Injunction papers and had been expecting the report since the date of the examination on 03 February 2017.

29. The only reason I went to Taiwan on 22 February 2017 was to visit my wife who has serious health issues. The medical reports I have disclosed include CT (computer tomography of the blood vessels of the heart).

30. She has Acute Coronary syndrome (ACS), Mitral valve prolapse (MVP) with grade 3 systolic murmur, Angina Pectoris (chest pain and shortness of breath with activity and at rest). She has been diabetic for 21 years, with hypertension and anaemia. She has extensive intracranial artery stenosis, described as moderate to severe. She has severe degenerative changes to her cervical spine with stenosis and disc narrowing, particularly of C5-C6, accompanied by spur formation and intervertebral foramen stenosis. She is 67 years old this year and I am afraid that she is close to death.

31. She was advised on 16 February by the doctor (cardiologist) that it is better to do the heart operation but she could not make the decision on her own and relied upon me to help her make this decision. The operation does have a high risk of complications such as myocardial infarction (heart attack) and stroke due to her complex health issues.

32. I was frightened that I might not have a chance to go to see her in this critical time if I was unable to travel to Taiwan. My wife’s health problems persist and I refer to a recent report detailing my wife’s health difficulties [JT4 pages 73 to 74].”

108. He went on:

“38. I have explained that the 15 and 16 February 2017 were very significant days for me. I was served with complex court papers on the evening of 15 February 2017 at night time with a person having approached me as I sat in my

car. On the 16 February 2017 my wife contacted me to tell me about her test results and the vitally important decisions she had to make about her future. I genuinely feared that she was close to death. ...

“44. When I arrived in Taiwan it was late in the evening on 23 February 2017. I went straight to be at my wife’s bed side at her home. She was seriously ill. I did not tell her about the Freezing Injunction because I feared it would make her more poorly.

45. When I received notice of the Committal application and hearing I knew that I would have to travel back to the UK to clear my name and deal with it.

46. My time in Taiwan was spent by my wife’s bed side. I have explained that I arrived in Taiwan late in the evening on Thursday, 23 February 2017. On Friday, 24 February 2017 I was at my wife’s bed side. The weekend accounted for Saturday, 25 February 2017 and Sunday, 26 February 2017. Public holidays fell in Taiwan on Monday, 27 February and Tuesday, 28 February 2017 and I refer information obtained from <http://www.officeholidays.com/countries/taiwan/> in this respect [JT4 page 281]. My return flight to the UK (being a 17 hour flight) was on 02 March 2017 at 9am. I arrived back in the UK late on 02 March 2017 (about 8 pm) and spoke with Mr Brett. He told me to meet him at court in the morning and he took my passport from me. If the allegation or insinuation is that I travelled to Taiwan to move and hide assets (which I deny and to which there is no evidence) then time would simply not have allowed that to happen. There were only two working days i.e. 24 February and 02 March 2017 for the whole period I stayed in Taiwan.

47. To the extent that I may have breached any Freezing Order relating to the surrender of my Taiwanese passport I sincerely apologise and I hope that the Court will recognise these extraordinary circumstances.”

109. I have considered the medical information including in the exhibit to Mr Tsai’s Fourth Affirmation about his wife’s medical condition. There was a report dated 3 February 2017 from the Department of Radiology at the Taipei Veterans General Hospital. I assume this report relates to Mrs Tsai although as only parts of it are translated into English it is difficult to be sure. It records that a coronary CT angiography screening was performed on that date and sets out calcium scores and the results of the coronary angiograms. The conclusion is stated to be “presence of moderate atherosclerotic plaques in the coronary arteries, total Agatston score was 236.49.” I understand that a coronary calcium score of between 101 to 400 indicates at least moderate plaque, making mild coronary artery disease highly likely. Secondly it concludes “Single vessel disease at RCA, moderate stenosis at LCX and mild coronary artery disease at LAD”. There is also a report from the same Radiology Department of a low-dose CT screening of Mrs Tsai’s lung, also carried out on 3 February 2017. The conclusions are far from alarming, suggesting follow-up of one result in 12 months’ time and further evaluation of gallstones. There is certainly nothing in

these medical reports indicate that Mrs Tsai was in any grave danger. I have not seen any of the grave advice that Mrs Tsai was supposedly given on 16 February advising her to have an operation.

110. In cross-examination Mr Tsai maintained his evidence that he genuinely feared his wife was close to death; that when he visited her she had a nurse working by her side 24 hours a day and was too ill to leave the house. He also confirmed that he did not tell her about the freezing order because he was worried that this would upset her.
111. During Mr Tsai's cross examination a rather different picture emerged. This related to the transfer of a large amount of money from DBS bank accounts in Singapore into two accounts with Taipei Fubon Commercial Bank Ltd in Hong Kong. The disclosure of documents from Brett Wilson showed that there had been a discussion between Mr Brett, Mr Tsai and Andrew soon after the meeting on 14 March 2017 about a transfer of a very substantial amount of money from a DBS bank account in Singapore to the two Taipei Fubon bank accounts.
112. On 15 March 2017 there was the telephone conversation between Mr Brett, Andrew and Mr Tsai. The attendance note prepared by Mr Brett states:

“Have been conducting various further investigations. Believe DBS Singapore account is now nearly empty and large amount of money was transferred to a Taiwanese Bank in HK. How much? Probably about £10m. This is a very serious breach of the injunction. I think we need to disclose that immediately. I would want to discuss with AB [*sc. Andrew Bodnar of counsel*] but instinct tells me it should be disclosed before it is put to us.

Also we discussed amounts in wife's name. Difficult to know where to draw the line but if in doubt then disclose it. If money is paid in by Jason then he probably has interest in them. Particularly given what they say about Jason and his tendency to use nominee names to shield his financial dealings.

I will speak to AB and get back to them. Obviously won't do anything without their consent”

113. Shortly afterwards there was a further phone call in which Mr Brett confirmed Counsel's advice that they should disclose what had happened to the Applicants' solicitors immediately, even if it they could only state a rough amount of money and the destination bank in general terms.
114. Mr Brett sent himself an email recording what was said on 16 March 2017 when he attended a conference with Andrew Bodnar of counsel. He recorded that £8.6 million had been moved from DBS bank in Singapore on 10 March 2017 and that there had been £10.2 million in

total in the account. Counsel had asked how the movement was arranged and it appears Mr Tsai had responded that his wife in Taiwan had gone to Singapore to make the transfer.

115. On 25 March 2017 Mr Tsai wrote to Mr Brett raising queries about the enforceability of the Freezing Order against his wife and his son John who are British citizens but who reside abroad. He wanted to know whether they were subject to the jurisdiction of the court for the purposes of the Freezing Order. He asked whether, once the Applicants obtain the DBS Singapore bank statements and find out that “all monies were in fact transferred by my wife physically”, there was any possibility that the Applicants would issue a committal application against his wife separately from him.

116. When that email was put to Mr Tsai in cross-examination the following exchange took place:

“Q. And the second question you asked him: "Once they get DBS Singapore bank statements and they find out that all monies were in fact transferred by my wife physically, is there any possibility that they will issue a contempt order against my wife separately?" That was your second question, wasn't it?

A. Yes.

Q. The monies were transferred by your wife physically, Mr Tsai, weren't they?

A. Yes.

Q. She left Taiwan to go to Singapore and transferred the monies physically, didn't she?

A. Yes.

Q. So let's just rewind, Mr Tsai. You were served with the freezing order on 15 February, yes?

A. Yes.

Q. You dissipated the money from the Halifax account from 16 February onwards, didn't you?

A. Yes.

Q. You said you would deliver up your Taiwanese passport on 22 February, didn't you?

A. Yes.

Q. But you didn't, you used it to travel to Taiwan. Yes?

A. Yes.

Q. And you have said that you spent your time in Taiwan at your wife's bedside. That's what you have said, isn't it?

A. Yes.

Q. She was housebound with a nurse. That's your evidence, isn't it?

A. Yes.

Q. Close to death, was she?

A. Yes.

Q. And you didn't discuss the freezing order with her at all while you were there. That's right, is it?

A. No, not at all.

Q. So you came back to England on 2 March, didn't you?

A. Yes.

Q. At that point, your wife made a remarkable recovery, did she?

A. No. She was still not well when I left.

Q. But she was well enough to travel from Taiwan to Singapore, wasn't she?

A. No, it was -- I left her on 2 March and she went there on 9 March. That was quite some time.

Q. Seven days. So she staged a remarkable recovery in a week, yes?

A. I am not quite sure, but I know she is a very strong person. Strong minded and determined woman.

Q. She must be. She was well enough to transfer £8.6 million physically from Singapore to Taiwan, wasn't she?

MRS JUSTICE ROSE: What do you mean by "physically"?

MR ROBINS: It is Mr Tsai's word.

MRS JUSTICE ROSE: Yes. When you say she transferred the money "physically", I don't understand what that means. Do you mean she carried it out in cash or in gold bars, or do you mean just she went physically to the bank and instructed them to do it? What is it you are talking about there?

A. I apologise for my poor English. I meant she went to the bank in person.

MRS JUSTICE ROSE: So she went to the bank in Singapore in person to instruct them to transfer the money?

A. Yes, because they require her to sign.

MRS JUSTICE ROSE: Yes.

MR ROBINS: She did that on 9 March, you say, yes?

A. Yes.

Q. That's why you really went to Taiwan to see your wife, isn't it?

A. Absolutely not. Because I had no idea she was going to transfer money.

Q. You were worried that the money in the DBS accounts could be traced back to the company, weren't you?

A. No, no, I don't know. They are not related.

Q. You went to Taiwan to create a plan with your wife about moving the monies to different bank accounts, didn't you?

A. No, we never discussed this.”

117. Mr Robins then produced the bank statement for account 950-800-34328-2 with the Taipei Fubon Commercial Bank which showed:

- a. an inward remittance authorised by Mrs Tsai on 10 March 2017 of £1,800,000;
- b. an inward remittance authorised by Mrs Tsai on 13 March 2017 of £3,960,000
- c. an inward remittance authorised by Mrs Tsai on 14 March 2017 of £509,000.

118. Further there is a bank statement for an account with the same bank in the name of All Rich Co Ltd number 950-800-34327-8 showing:

- a. an inward remittance authorised by Shu Hua Chang on 28 February 2017 of £685,200
- b. an inward remittance authorised by Shu Hua Chang on 2 March 2017 of £1,650,000.



119. Mr Tsai was unable to explain how these transactions had been authorised by Shu Hua Chang in Singapore given that his evidence was that Shu Hua Chang was present with him and his wife in the house in Taipei during the entire time he was there from 28 February to 2 March.
120. I have no doubt that the facts are not as Mr Tsai said in his Third and Fourth Affirmations. I am satisfied that although Mrs Tsai may suffer from some ill-health, she was not desperately ill on 22 February 2017. Her illness was not the reason why Mr Tsai failed to hand over his Taiwanese passport. I find that he kept the passport in deliberate breach of the Freezing Order so that he could travel to Taiwan, explain to his wife what was happening in the present proceedings, and arrange for her to travel to Singapore to move money out of the DBS bank accounts into the Taipei Fubon bank accounts. It is too much of a coincidence to believe that if she had been so ill she would, without knowing anything about the Freezing Order, suddenly travel to Singapore to move many millions of pounds.
121. This was a serious and deliberate breach of the Passport Order which Mr Tsai tried to excuse by giving false evidence about his wife's health.

***Penalty for Breaches 1 - 4***

122. I treat these four breaches as a single contempt of the Passport Order. This is a serious and deliberate breach of the court's order. It is aggravated by the fact that Mr Tsai not only failed to hand over his passport but did so in order to use it to travel to Taiwan. It is also an aggravating feature that the excuse that Mr Tsai gave in both his Third and Fourth Affirmations and confirmed in his oral evidence about his wife's ill-health was false and by the fact that I am satisfied that the real purpose of his visit to Taiwan was to arrange for his wife to travel to Singapore to move money from her DBS bank account into another account. Although there are no allegations of dissipation of monies in this committal application, it is right to take into account the purpose of the breach of the Passport Order when considering the seriousness of that breach.
123. In mitigation I take into account that Mr Tsai did return to England for the first hearing of the committal application and handed over his Taiwanese passport on 3 March 2017. Further, his departure from the country did not in fact disrupt the conduct of the committal application and there is no allegation that the money has in fact been dissipated.
124. I consider the appropriate sentence for these breaches 15 months' imprisonment for each breach to run concurrently with each other.

**The Yi Lin Tsai bank account RBS 4905: Allegations 5, 6 and 7**

125. Allegations 5, 6, and 7 relate to the RBA bank account 10074905 ('RBS 4905'). This bank account is held in the name of Mr Tsai's sister, Yi Lin Tsai.
126. In the Schedule JT1 to Mr Tsai's First Affirmation, he referred to this account saying: "Owned by Mrs Tsai, Closed in 2014". In his Third Affirmation he stated only that this account is closed. In his Fourth Affirmation Mr Tsai said that the reference in JT1 to Mrs Tsai was to his sister Yi Lin Tsai and not to his wife. He said that Yi Lin Tsai is the sole owner of RBS 4905 and that it was closed in 2015. He said there that he was not a signatory on the account and he did not have a beneficial interest in it. This was one of the few corrections Mr Tsai wanted to make to his Fourth Affirmation when he was taken through it by Mr Young in examination in chief. He said that he was a signatory and that it was their shared money. However in cross-examination by Mr Robins he retracted this on the basis that it was an error and returned to his position that this money was only his sister's and not his.
127. RBS 4905 is the subject of three alleged breaches:
- a. Allegation 5 – that Mr Tsai lied about it in his First Affirmation when he said that it was owned solely by Mrs Tsai.
  - b. Allegation 6 - that Mr Tsai lied in his First Affirmation when he said that the account had been closed in 2014.
  - c. Allegation 7 - he failed to disclose his beneficial ownership.
128. By the end of the hearing, the Applicants accepted that this account had in fact been closed albeit in 2015 rather than 2014. As a result of that concession, Allegations 6 and 7 cannot be pursued. However Allegation 5 that Mr Tsai lied about this bank account when he said that it was owned solely by Yi Lin Tsai is still pursued. Further the beneficial ownership of this bank account is also important for several other allegations because it is the account into which monies generated by the various properties which are also the subject of allegations of breach have been paid in the past by Mr Tsai.
129. I find that Allegation 5 is proven because I am satisfied that Mr Tsai treated this account as his general bank account and operated it for his own purposes without any regard to the interests or instructions of his sister. The documentary evidence establishes the following facts.
130. The invoices to Changtel from Taiwanese suppliers. Mr Tsai deposited into this account a large number of cheques written by him on Changtel's bank account. I am satisfied that on a number of occasions in 2010, Mr Tsai fabricated an invoice from a purported Taiwanese supplier to the Company, wrote out a cheque drawn on the Company's bank account for the amount of the invoice, marked the invoice in his own handwriting to indicate that it had been paid giving that cheque number; wrote on the cheque stub of that cheque in the cheque

book the amount, the date and the name of the invoicing supplier but in fact made the cheque payable not to the supplier but to his sister Mrs Yi Lin Tsai. He then paid that cheque into RBS 4905.

131. There is indisputable evidence that this took place in relation to:
- a. an invoice from Clevo Co dated 1 July 2010 purporting to charge £54,215 for new product development
  - b. an invoice from Clevo Co dated 30 July 2010 purporting to charge £99,450 for sales commission
  - c. an invoice from Comex Telecom Corp dated 3 November 2011 purporting to charge £99,980 for “sales commission charge”
  - d. an invoice from Consolidated Marketing Corporation dated 1 July 2010 purporting to charge £99,585 for “commission payable the selling memory”
  - e. an invoice from Sunny Technologies Co Ltd dated 21 November 2011 purporting to charge £79,690 for “commission payable”
132. There are five other cheques where the cheque stub gives the name of a supplier but the cheque drawn on the Company’s account is made payable to Mrs Yi Lin Tsai and not to the supplier.
133. Mr Tsai’s explanation for this was as follows. In 2010 there was a financial crisis worldwide and Taiwanese people like his sister wanted to keep sterling in their bank accounts rather than Taiwanese currency. His sister therefore paid Changtel’s Taiwanese suppliers in Taiwanese currency in Taiwan and these cheques were to reimburse her for these payments from the Company’s money in sterling. The suppliers were prepared to accept this unorthodox method of payment, Mr Tsai said, because they knew his sister very well and these were small sums of money as far as they were concerned. He accepted that this kind of payment arrangement is wrong but he acted he said upon his sister’s request. His evidence was that there were about six companies which accepted the payment arrangement with his sister and the total value per month was up to £600,000.
134. I reject this explanation as completely implausible. The supposed friendship between a large supplier and Yi Lin Tsai would not persuade the supplier either to forego the benefit of payment in sterling itself or to risk the accounting complications that would arise from implementing this arrangement on such a substantial scale. There is also the point that Mr Robins put to Mr Tsai that most of these cheques were for amounts just short of £100,000. That was because the Company’s auditors did not investigate payments below that amount. Mr Tsai denied that that was the reason, but I find that is a much more plausible explanation for this series of payments than the explanation Mr Tsai has given.

135. There is no possible reason why Mr Tsai would want to pay such substantial amounts of Changtel's money to his sister. This account must hold his personal money and he was transferring funds from Changtel's account into his own account, held in his sister's name, for his own benefit. That is a very clear indication that the money in RBS 4905 was his.
136. Receipt of monies from various properties The evidence also shows that monies from properties rented out by Mr Tsai were paid into this account and expenses for those properties were paid out of this account. For example, there is email correspondence between Mr Tsai and the estate agent concerning the return of deposit money for 44 Temple House (discussed in relation to Allegation 49 below). That is a property the legal title to which is held by Mr Tsai's wife. However, the agent was instructed on 11 June 2012 to pay the money into a bank account Mr Tsai described as his bank account, namely RBC 4905. Similarly when money needed to be refunded to Mr Tsai in respect of the different potential tenant, he instructed the agent on 23 April 2014 to pay the money into RBS 4905.
137. Mr Tsai also accepted that he had used a debit card on the RBS 4905 account to pay for a flight he had taken from Gatwick to Las Vegas.
138. I find that Mr Tsai and not his sister was the owner of the money in this account. Allegation 5 is therefore proven.

***Penalty for breach 5***

139. I regard this as one of the less serious breaches of the Disclosure Order. It is accepted that the account was in fact closed in 2015 and so Mr Tsai was not required to disclose it. That does not excuse giving false information about the account in his First Affirmation, and he persisted in maintaining that false story in his Fourth Affirmation and retracted in cross-examination the admission he had made when making corrections to his Fourth Affirmation during his examination in chief. Mr Tsai did not admit this breach during his counsel's closing submissions at the end of the trial but maintained to the end the false account of his sister being good friends with the accounts handlers in these suppliers and their agreeing to accept payment from her in Taiwanese currency for which these sterling payments were supposedly reimbursement.
140. The appropriate penalty for breach 5 is 4 months' imprisonment. This sentence will run concurrently with the sentences for breaches 9, 15, 16, 18, 39, 40, 41, 44, 42, 44 and 45.

**The Halifax current account 10978660: Allegation 16**

141. Allegation 16 is that Mr Tsai failed to disclose the existence of, and his interest in, a Halifax current account number 10978660. This account is held in his own name.

142. Mr Tsai did not disclose this account in JT1 or his First Affirmation. On the contrary, in that Affirmation he described his shock at discovering that certain other bank accounts of his had been frozen. He also said that he wanted to retain the services of Mr Dean of counsel but Mr Dean had asked to be paid in advance. Mr Tsai said in his First Affirmation “That has not been possible because all my money has been frozen by the Order”. He went on to say that not only had his accounts been frozen but the order had also inadvertently frozen his wife’s bank account so that she could not pay Mr Dean on his behalf. It was on that basis that he asked for the return date of 22 February 2017 to be adjourned because he had not been given an opportunity to react to the allegations made against him. The impression he gave therefore was that he had no access to any money at all. In his Third Affirmation he disclosed this bank account and said there was about £80 in it.
143. At the time when the Freezing Order was granted, the Applicants had not discovered the Halifax current account 10978660 and had not therefore notified Halifax of the Freezing Order. The bank statement now produced by the Applicants for account 10978660 shows that at the time of the Freezing Order the account had a balance not of £80 but of £5,520. In the days immediately after the service of the Freezing Order on 15 February 2017 substantial amounts of money were withdrawn by Mr Tsai. He continued to operate this bank account for what appear to be daily living expenses.
144. In his Fourth Affirmation Mr Tsai accepted that he had failed to disclose the Halifax current account. He said that when he discovered that all his accounts were frozen and that he could not withdraw any money for living expenses, he panicked because he was not sure how he was going to feed himself and meet his commitments.
145. In cross-examination Mr Tsai accepted that he had lied in his First Affirmation when he said he had no access to money. He accepted that he had failed to disclose the account because he hoped to take out all the money before the Applicants found out about it. His evidence is that he used the money for various purposes including paying off an old debt he owed to a friend of £9,000. Another payment was of £4,500 to the Taiwan Blind Development Association, a charity which Mr Tsai said relied heavily on regular payments from the Tsai Foundation to care for people.
146. I find that Mr Tsai deliberately failed to disclose this Halifax current account in breach of the Disclosure Order.

***Penalty for breach 16***

147. It is an aggravating feature of this breach that it was deliberately done in order to frustrate the Freezing Order by removing the money from the current account. His concealment of this account also allowed him to give an entirely false impression of his dire financial predicament in his First Affirmation, claiming that he had no funds available even to instruct a barrister to represent him. However I take into account in mitigation first that Mr Tsai admitted this breach (although it would be difficult for him to gainsay the bank statement). It is also a

mitigating factor that Mr Tsai has paid back into the frozen account all the money that he withdrew from the account. The sums of money are not large. The appropriate sentence for this breach is 4 months' imprisonment to run concurrently with the sentences for breaches 5, 9, 15, 18, 39, 40, 41, 42, 44 and 45.

**Assets in the name of Mrs Tsai, Mr Tsai's wife**

148. There are a number of assets apparently owned by Mrs Tsai which the Applicants assert are held by her as a nominee for Mr Tsai so that he was in breach of his disclosure obligations by failing to disclose his beneficial interest in those assets. Mrs Tsai's assets are held in a number of names; Ruth Tsai, Jenny Chang (her maiden name) and Chang Yueh-Taou Tsai.
149. I have set out earlier the advice given by Mr Brett at his meeting with Mr Tsai and Andrew and in the subsequent emails. It was perfectly clear from that advice that Mr Brett was drawing a distinction between those assets held by Mrs Tsai in which Mr Tsai had no interest and which did not need to be disclosed and those assets belonging to his wife in which Mr Tsai did have a beneficial interest which he did need to disclose. There is nothing in his advice to the effect that the mere fact of their marriage means that Mr Tsai had to include her assets in his disclosure. Nonetheless in his cross- examination Mr Tsai persisted in saying that Mr Brett's advice led him to believe that he has an interest in his wife's account simply because he is her husband – or at least he was confused into thinking that was the position.
150. **Two bank accounts with RBS: Allegations 9 and 15.** There are two bank accounts in the name of Mrs Tsai:
- a. RBS account number 10125402. This bank account was disclosed by Mr Tsai in his First Affirmation but he said in JT1 it was solely owned by Mrs Tsai and he had no interest in the money. He said that it contained £116,000. In his Third Affirmation Mr Tsai accepted he had a beneficial interest in this account but in his Fourth Affirmation he retracted this admission on the basis that it was made because of Mr Brett's incorrect advice. This account is the subject of Allegation 9 alleging that he falsely stated that it was owned solely by Mrs Tsai.
  - b. Account number 10127057. Mr Tsai did not refer to this account in his First Affirmation. He disclosed its existence in his Third Affirmation and accepted he had a beneficial interest in this account but in his Fourth Affirmation he retracted this admission on the basis that it was made because of Mr Brett's incorrect advice. This account is the subject of Allegation 15 alleging that Mr Tsai failed to disclose existence of, and interest in this account. Mr Tsai has not given any value of the contents of this account. The only

evidence appears to be a bank statement in February 2015 showing a substantial balance fluctuating between £109,000 and £204,000.

151. I am satisfied that both bank accounts in fact contain Mr Tsai's money. As regards RBS 10125402, the Brett Attendance Note shows that Mr Tsai did accept when this was discussed at the meeting that this money was effectively his. The Note states "client accepts uses this account for own purposes – client's and wife".
152. In relation to RBS 10127057 the Brett Attendance Note records that Mr Tsai told Mr Brett that he has legal authority over the bank account. There are also cashline card requests on these accounts purportedly signed by Mrs Tsai giving Mr Tsai authority to operate the accounts. The bank statement for this account dated 19 February 2015 is in fact in Mr Tsai's name rather than his wife's name. Moreover, it shows a large number of online transactions in receipts and withdrawals of many tens of thousands of pounds.
153. Mr Tsai's evidence as to the operation of these accounts was as follows.

"A. My wife wanted me to manage her accounts and then if she sent a letter to her bank, my third party authority could be cancelled at any time. My new lawyer told me I shouldn't have any beneficial interest in those bank accounts because I was simply a manager of the bank account.

MRS JUSTICE ROSE: Why did your wife want you to manage her bank accounts?

A. Because she was not living in the UK, she was living in Taiwan.

MRS JUSTICE ROSE: Yes, but all the transactions are all made online, aren't they, or over the telephone, when we saw the bank statements. Why can't she do that online?

A. She has never done any transactions online before and she is scared of IT stuff.

MR ROBINS: In fact, Mr Tsai, I think you confirmed earlier that your wife doesn't even have an email account. Is that right?

A. I didn't say she didn't have an email address. What I meant was she had an email address but she hasn't been using her email address for many, many years. And if she did use it --

MRS JUSTICE ROSE: She used to use email but she doesn't now?

A. No.

THE INTERPRETER: My Lady, can the interpreter double check what Mr Tsai said?

MRS JUSTICE ROSE: Yes.

THE INTERPRETER: Thank you.

A. So the purpose of her email address was for her to receive emails and she never replied to any of her emails. She used a more -- other apps such as WeChat and WhatsApp to communicate and to talk.

MR ROBINS: Sorry, I thought she was frightened of IT, but she is using all the latest apps, is she?

A. When she used WeChat or WhatsApp, she could only send voice messages. She didn't type any text and we had to set up those two accounts for her so she could just use them.

MRS JUSTICE ROSE: Right, thank you.

MR ROBINS: You said she hadn't used email for many, many years. "Many, many" sounds like a long time. Is that ten years, nine years, eight years? What do you mean?

A. I would say four or five years."

154. I reject that evidence as false. I find that Mr Tsai controlled these accounts because the money in them was his and not his wife's. I find therefore that Allegations 9 and 15 are proven.

***Penalties for Breaches 9 and 15***

155. These are serious breaches of the Disclosure Order by either giving false information about assets or failing to disclose assets. Although Mr Tsai admitted these breaches in his Third Affirmation he retracted those admissions in his later evidence and on the final day of the trial his attitude was ambivalent. Although the evidence is sketchy it appears that these accounts contained material sums of money.

156. The appropriate sentence for these two offences is 10 months imprisonment for each to run concurrently with each other and with the sentences for breaches 5, 16, 18, 39, 40, 41, 42, 44 and 45.

157. **Two bank accounts with Julius Baer & Co bank in Hong Kong: Allegations 41 and 42** There are two bank accounts with Julius Baer & Co bank in Hong Kong which the Applicants allege contain money owned by Mr Tsai. They are:

a. Julius Baer & Co bank in Hong Kong account 9835508 in the name of Sonic Luck Ltd containing £2,062,020. This is the subject of Allegation 41 that Mr Tsai failed to disclose his interest in this money;



- b. Julius Baer & Co bank in Hong Kong account 9835568 in Mrs Tsai's name (Jenny Chang) containing £32,822. This is the subject of Allegation 42 that Mr Tsai failed to disclose his interest in it.
158. These accounts were not referred to by Mr Tsai in his First Affirmation and were disclosed for the first time in his Third Affirmation. In his Third Affirmation, Mr Tsai accepted that he had a beneficial interest in this money. In his Fourth Affirmation he retracted that admission saying that he has no interest in the money in these accounts and no rights to deal with the accounts. He says "Mr Brett advised me to identify the asset as my wife owned it and I may have a beneficial interest in it. I believe that was the wrong advice.". His oral evidence in chief was that it is all his wife's money and he has no interest in it. He said he knows nothing about it; his wife has never given him any information about the purpose of the accounts and there was no possibility that the money in some way came from him.
159. I am satisfied that what Mr Tsai said in his Third Affirmation is true and that he has a beneficial interest in these monies. I have rejected Mr Tsai's explanation as to why he instructed Mr Brett to include these accounts in his Third Affirmation following the meeting on 14 March 2017. Mr Brett's advice was clear that Mr Tsai did not have to disclose accounts if they were solely his wife's money. He did not tell him that he needed to disclose accounts in his wife's name either simply because they were married or because he had third-party mandate rights over those accounts. The only explanation there can be for Mr Tsai asking Mr Brett to include these in his Third Affirmation is that these monies are jointly owned by him and Mrs Tsai.
160. There is also the evidence from the 'know your client' information provided by Mr and Mrs Tsai to Julius Baer & Co bank when they were opening these account in the name of Mrs Tsai in February or March 2015. It describes how Mr and Mrs Tsai together have built up their net worth gradually over the years. In the section headed "Origin of Wealth" the information provided by Mr and Mrs Tsai states that the funds come from their hard work over many years selling affordable computer components and the income they receive from the Enta business. In the section headed 'Origin of Assets' in respect of the \$200,000 wired to open the account it says "from family business".
161. Mr Tsai described this information as "an advert, probably exaggerated". He denied all knowledge of Mrs Tsai opening this bank account and said this was the first time he had seen this Julius Baer document. This is wholly implausible since the email address given as the designated email address (jennytiger429@gmail.com) is one that other evidence shows was set up and controlled by Mr Tsai.
162. I find that the money in these Julius Baer & Co accounts was money generated by Mr and Mrs Tsai jointly through their business. Mr Tsai is therefore at least the joint owner of it and these accounts should have been disclosed by Mr Tsai in his First Affirmation. It was a breach of the freezing order that he failed to disclose them.

***Penalties for breaches 41 and 42***

163. Mr Tsai's failure to disclose the existence of these two substantial overseas bank accounts was a serious and inexcusable breach of the Disclosure Order. Although he initially admitted this, he disputed his ownership in his Fourth Affirmation and maintained that denial throughout his oral evidence. In the Admissions Note at the end of the trial, although he says that he believes he has a beneficial interest in these accounts he says he did not initially disclose them because he did not know the account numbers. He says "I was surprised to find out that I do in fact have an interest in these accounts after a discussion I had with my wife on 13 March 2017". I reject any suggestion that he was not aware of the existence and details of these accounts or that he only found out about his beneficial interest in them in March 2017. The bank accounts are clearly designed to hold monies generated by their jointly run business. Mr Tsai deserves no credit for his admissions and he has expressed no remorse.
164. The appropriate sentence for these two breaches is 18 months' imprisonment for each to run concurrently with each other and with the sentences for breaches 5, 9, 15, 16, 18, 39, 40, 44 and 45.
165. **Taipei Fubon Commercial Bank accounts in Hong Kong: Allegations 39 and 40** There are two bank accounts with Taipei Fubon Commercial Bank containing money which the Applicants contend belongs to Mr Tsai. These are:
- a. Taipei Fubon Commercial Bank in Hong Kong account number 950-800-34328-3 containing a balance of £6,338,012. This is registered in Mrs Tsai's name. It is the subject of Allegation 39 that Mr Tsai failed to disclose this account and his interest in the money;
  - b. Taipei Fubon Commercial Bank in Hong Kong number 950-800-34327-8 containing a balance of £3,927,702. This account is registered in the name of All Rich Co Ltd which, as I understand it, is a corporate vehicle wholly owned by Mrs Tsai. It is the subject of Allegation 40 that Mr Tsai failed to disclose this account and his interest in the money.
166. These two Taipei Fubon accounts were not disclosed in Mr Tsai's First Affirmation. In his Third Affirmation he disclosed them and said he had an interest in the contents of these accounts. In his Fourth Affirmation he retracted these admission saying that he had no interest in the monies and no rights to deal with the account. He explained his admission in his Third Affirmation as being based on the incorrect advice from Mr Brett that he should identify any asset of his wife as something in which he holds a beneficial interest.
167. In his oral evidence Mr Tsai maintained his denial of any interest in these monies.

"MR YOUNG: Now look at alleged breach 39. This is the Taipei Fubon Commercial Bank.

A. Yes.

Q. Now turn to paragraph 166. You tell us that there's £6,338,012 in this account and it is registered solely in your wife's name. Is that correct?

A. That's correct.

Q. Well, that's a lot of money, wouldn't you agree?

A. Yes, it should be.

Q. Do you know where that money came from?

A. I am not sure. The money was her money and she didn't tell me where or how she got the money. I think she probably inherited this amount of money.

Q. Have you ever had any discussions with your wife about the money she may have inherited?

A. She inherited the money from her dad. Her dad died over 30 years ago and then she inherited the money from him.

MRS JUSTICE ROSE: Her father died over 30 years ago.

A. Yes, he died in 1983.

MRS JUSTICE ROSE: Did he have a wife?

A. He had.

MRS JUSTICE ROSE: We have heard that she has the two sisters. Does she have any other brothers and sisters?

A. Yes, she does.

MRS JUSTICE ROSE: What other brothers and sisters does she have?

A. There are nine. She has basically eight siblings, so nine children in her family, including herself.

MRS JUSTICE ROSE: And before she became so ill, your wife, what was her work? What did she do for a living?

A. She didn't work in Taiwan.

MRS JUSTICE ROSE: Did she work anywhere?

A. She worked in the UK before.

MRS JUSTICE ROSE: What work did she do in the UK?

A. In 1990, she and -- she helped me start our business in the UK.

MRS JUSTICE ROSE: Right.

MR YOUNG: You tell us that your wife has eight siblings. Are they all wealthy?

A. They are very wealthy.

Q. When you say very wealthy, do you mean they have equivalent wealth to your wife, is your wife a lot richer?

A. Her siblings are wealthier than her.

Q. Are you able to tell us the name of your wife's late father?

A. So his name is Wun-Shu Chang.

...

MR YOUNG: Was your late father-in-law well known in Taiwan?

A. Yes, he was very well known in Taiwan.

Q. Are you able to tell us the nature of his business?

A. So he was the chairman of the Association of Import and Export in Taiwan and his business covered the field of import and the trade. His business also covered oil, rice, bean and sugar.

Q. Can you tell us if your wife knows about the litigation that is taking place today?

A. She doesn't know this litigation at all. I am afraid to tell her.

Q. Did you discuss your wife's wealth with Mr Brett?

A. I think he didn't ask about my wife's wealth.

MRS JUSTICE ROSE: If you just listen to the question again and answer the question.

MR YOUNG: Did you discuss your wife's wealth with Mr Brett?

A. No.

Q. Do you still think that Mr Brett's advice to you was wrong?

A. Yes, his advice was wrong.”

168. As I have described earlier in relation to Allegations 1 – 4, much of the money in these accounts was transferred there from other accounts in March 2017 when Mrs Tsai went from Taipei to DBS Bank Singapore to give instructions for very large sums of money to be moved from DBS to these Taipei Fubon accounts following Mr Tsai’s visit. I find Mr Tsai knew that his wife was going to carry out those transactions; his evidence that he did not tell her about these proceedings is false. I entirely reject Mr Tsai’s evidence that he believes this money may have come from his wife’s inheritance from her wealthy father.

169. As to whether Mrs Tsai has inherited a fortune from her wealthy father, I have already described how Mr and Mrs Tsai explained to Julius Baer & Co where their money came from when they opened the two bank accounts with that bank. I accept Mr Robins’ submission that if Mrs Tsai really had independent wealth as a result of inheriting money 30 years ago from her father they would have mentioned that then. There is further evidence that Mrs Tsai did not in fact inherit a great deal of money and was not independently wealthy. In email correspondence with Andrew in June 2008 in which they were discussing Andrew’s proposed marriage to Pui Lai, Mr Tsai said:

“When I married your Mum, I had nothing apart from a very small land in Guan-Miao in Tainan, which I sold to my 4<sup>th</sup> brother when I was 35 years old for \$10,000.

Everything we have now was earned by Mum and myself through intelligent and hard-working”

170. Mr Tsai denied that what he had said in his email was true or that it was inconsistent with him and his wife benefiting from a very substantial inheritance. He said that he was trying to encourage his son and his future wife to work hard for themselves. I reject that evidence. If Mrs Tsai was independently wealthy, Andrew would have known that by the time he reached adulthood. I find that the money in these accounts was not from any inheritance of Mrs Tsai; that Mr Tsai knew about these accounts and that the money in them was money generated by the Company’s business in England.

***Penalties for breaches 39 and 40***

171. I regard these as particularly serious breaches of the Disclosure Order. The bank accounts contained very substantial sums which had been moved there after the Freezing Order had been served on Mr Tsai. Although there is no allegation of dissipation in this committal application it is an aggravating feature of a non-disclosure breach that the non-disclosure was aimed at enabling monies to be moved or hidden. Mr Tsai deserves no credit for any admissions. He says in his Admissions Note that he did not know of the movement of the money from the DBS bank accounts to the Taipei Fubon bank accounts until 13 March 2017. He also says that the reason for his wife’s decision to move the assets was “for easy accessibility to the money in Taiwan and for life insurance purposes”. I reject that suggestion that it was a coincidence that shortly after the Freezing Order and Mr Tsai’s visit to Taiwan, Mrs Tsai travelled to Singapore and moved millions of pounds into different bank accounts.

172. The appropriate sentence for these two offences is 18 months' imprisonment to run concurrently with each other and with the sentences for breaches 5, 9, 15, 16, 18, 41, 42, 44 and 45.
173. **Apartment 44, Temple House, 24 Temple Street Birmingham B2, 5BG ('44 Temple House'): Allegation 49** In his First Affirmation Mr Tsai listed 44 Temple House in JT1 with a value of £120,000. He said in JT1 that 44 Temple House was solely owned by Mrs Tsai and he would have no interest in the property if it was sold. In his Third Affirmation he said that legal title to 44 Temple House is registered in his wife's name but he accepted that he also has a beneficial interest in this property. He then retracted this admission in his Fourth Affirmation, again on the basis that he had been misled by Mr Brett's advice. 44 Temple House is the subject of Allegation 49 that Mr Tsai falsely stated that he had no interest in it.
174. The Land Registry TR1 form for 44 Temple House is purportedly signed by Mrs Tsai but her signature is witnessed by Chen Li Chen in Taiwan albeit this time without the Chen Li Chen seal. The TR1 is undated but attached to it is a contract for the transfer to Mrs Tsai which is stated 9 December 2011.
175. In his oral evidence Mr Tsai maintained his denial that he held any interest in 44 Temple House. In his evidence in chief, Mr Tsai said that the property was bought by his wife in 2011 and is in her sole name. In cross-examination his evidence was that Mrs Tsai bought 44 Temple House as a place to stay in during her shopping trips to Birmingham. He said the flat is small and was cheap to buy and his wife does not like living in the countryside.
176. I am satisfied that Mr Tsai has an interest in 44 Temple House and that it is not solely the property of Mrs Tsai. The Applicants have found a tenancy agreement relating to 44 Temple House dated March 2014 in which the landlord is stated to be not Mrs Tsai but Shu Hua Chang and the tenant is Mr Tsai's son John. Mr Tsai in cross-examination denied any knowledge of this document. He was therefore unable to explain why the property was being let out to his son, who lives in Las Vegas by his sister-in-law who was not the owner of the property and why the address given for both landlord and tenant was 2 The Coppice, where neither of them lives.
177. The evidence shows that deposit monies taken from an earlier tenant of 44 Temple House in June 2012 was, on Mr Tsai's instruction, paid into the Yi Lin Tsai bank account RBS 4905. Mr Tsai's evidence was that his wife had told him to transfer the deposit into his sister's bank account but he could not explain why she would have done this rather than instructing him to pay the deposit into one of the bank accounts she has in this country in her own name. Further there is evidence that the electricity bill addressed to Mrs Tsai for 44 Temple House in July 2013 was paid by a cheque drawn on RBS 4905, the account in Yi Lin Tsai's name. Mr Tsai was again unable to explain why his sister should be paying his wife's electricity bill:

“Q. You were paying the bills with money from the YL Tsai account because Apartment 44 is one of your properties?”

A. I think your saying is not logical. I only acted upon my wife's instruction. I didn't own the property.

Q. So you are saying your wife instructed you to take money out of your sister's account to pay an electricity bill for your wife's property?

A. Yes. It may be because between -- they had agreement in Taiwan.

Q. Mr Tsai, it is because it is one of your properties.

A. Impossible.

MRS JUSTICE ROSE: Well, and also the money in the YL Tsai account, it is being put to you, is actually not your sister's money, it is your money.

A. Like I mentioned before, I managed the bank account of YL Tsai and the money on YL Tsai's bank account was not mine.

MRS JUSTICE ROSE: But I still don't understand why your sister is paying the electricity bill for your wife's apartment. I can understand why your wife would want your sister to pay the electricity bill, but I can't understand why your sister would want to pay the bill.

A. Like I mentioned earlier, they had -- perhaps they had an agreement in Taiwan. They had a very close relationship. I don't know the actual reason why.”

178. I regard this evidence is wholly implausible. I am satisfied on the evidence that although 44 Temple House is in Mrs Tsai's name it in fact belongs to Mr Tsai and he manages it not on his wife's behalf but because it is one of his portfolio of properties. That is why the finances are all dealt with through RBS 4905 and not through any of his wife's bank accounts.

***Penalty for breach 49***

179. This is a serious breach of the Disclosure Order. The correct identification of real property owned by a respondent in this jurisdiction is particularly important as regards freezing relief. Mr Tsai deserves no credit for admissions in relation to 44 Temple House. He stoutly maintained his implausible story and even in his Admissions Note at the end of the trial his stance as regards this property was ambivalent. He said “due to our marriage, I admit that I have a beneficial interest in this property” and still asserted that he was unaware of the tenancy agreement between Shu Hua Chang and John because this is not his property but his wife's. The only mitigation is that the property is not particularly valuable.

180. The appropriate penalty for this breach is 16 months' imprisonment to run concurrently with the sentences for breaches 20/21/22, 23/24, 25/26, 27/28, 29, 47 and 48.
181. **Apartment M 505, Block 2, Av del Parque, Malaga ('505 Malaga')**. This is the subject of Allegation 37 that Mr Tsai falsely stated in his First Affirmation that this asset is solely owned by his wife. Another property is **Apartment 202, 2<sup>nd</sup> Floor, Section B, Isla De Poniete, Benalmadena, Spain ('202 Benalmadena')** This is the subject of Allegation 38 that Mr Tsai falsely stated in his First Affirmation that this asset is solely owned by his wife.
182. In schedule JT1 to his First Affirmation Mr Tsai said that 505 Malaga is a one bedroom, one bathroom aparthotel which has been solely owned by his wife since 1996. He gives its value as £40,000. He said that 202 Benalmadena is a two bedroom, two bathroom flat also solely owned by Mrs Tsai since 1996. He gives its value as £150,000. He said in respect of both of them that he would have no interest in the properties if they were sold. In his Third Affirmation Mr Tsai admitted that these properties were both jointly owned by him and his wife. He later retracted that evidence saying that he mistakenly believed on the basis of Mr Brett's advice that he should disclose these simply because they were owned by his wife.
183. Mr Tsai's evidence in cross-examination was that Mrs Tsai went to Spain for pleasure, she liked travelling the rest of the world and looking for investment opportunities. She only bought properties which she liked. These are very small apartments located at the seaside. She bought these when she was enjoying a prolonged stay in Spain.
184. Mr Tsai's evidence about his wife buying these properties when she was staying in Spain is implausible. However these were purchased a long time ago, they are not valuable and it does appear that Mrs Tsai also worked in the family business in England and may have chosen to invest some of her income in these properties. Although I reject Mr Tsai's evidence that his admissions in his Third Affirmation were prompted by erroneous advice given to him by Mr Brett, there is no evidence that Mr Tsai has dealt with these properties in any way. I am not satisfied beyond reasonable doubt that these are his properties or that he has a beneficial interest in them.
185. Mrs Tsai also owns two properties in Taipei. One is **12F-1, No 6, Tan King Road, TanShui, Xing Pei City 25161 ('Tan King Road')** and the other is an office property at **12F-1, 200, Section 1, Dun Hua South Road, Taipei ('Dun Hua South Road')**: **Allegations 29, 34 and 35**. These are both the subject of Allegation 29 that Mr Tsai did not disclose his interest in either of these in his First Affirmation. They are also linked with Allegations 34 and 35 where it is alleged that Mr Tsai failed to disclose his interests in the companies which own the Dun Hua South Road properties, as described below. I regard allegations 34 and 35 as duplicating Allegations 29 since it does not appear that the companies had any function other than to hold the properties.



186. These properties were not mentioned at all in JT1, but in the Third Affirmation Mr Tsai admitted that his wife bought Tan King Road in 2008 for about £400,000 and that he has an interest in this property. He said also that his wife bought Dun Hua South Road in 1998 for £200,000. He said that his wife sold Dun Hua South Road to a company called Sunrise Property Development Corporation ('Sunrise'). He says he no longer has any interest in that company and therefore he has no interest in Dun Hua South Road.
187. In his Fourth Affirmation, Mr Tsai says that the Tan King Road property is owned by his wife and he has no interest in it; again he blames Mr Brett's bad advice for what he said in the Third Affirmation.
188. There is some evidence of Mr Tsai treating the Tan King Road as his own in that he gave it as his address when he signed a contract for the maintenance of properties in Las Vegas. But he explained this on the basis that when he was in Taiwan he lived at that address even though it was his wife's property. I am not convinced that Mr Tsai has a beneficial interest in Tan King Road. I therefore do not find that Allegation 29 have been proven to the necessary standard as regards that asset.
189. The evidence as regards Dun Hua South Road is more complicated. Mr Tsai states in his Third Affirmation that his wife bought it and then sold it to Sunrise. Mr Tsai accepts in a later paragraph in his Third Affirmation that he used to own shares in Sunrise. But he says Sunrise is wholly owned by Richman Investment Company Ltd (a company incorporated in Anguilla) which in turn is wholly owned by Lead Summit Ltd (a company incorporated in the Seychelles). He said in his Third Affirmation that he owned shares in Lead Summit until 2015 but that he no longer has any interest in any of these companies.
190. However, the evidence Mr Tsai gave during his examination in chief as to how he divested himself of shares the company Lead Summit which directly or indirectly owned Dun Hua South Road was unconvincing:
- “Q. Okay, all right. Let's just break this down: you accept you used to have shares in Lead Summit?
- A. Yes.
- Q. I think you have told us that although you had shares, you can't exactly remember what the percentage of your shareholding was, is that right?
- A. That's right.
- Q. All right. In 2015, when you say you ceased to have an interest, what did you do with that interest?
- A. Again, I did some paperwork in relation to my shares but no actual money involved.
- Q. All right. Now, the shares: did you give the shares or sell the shares to somebody else?

A. I should be -- so I should have given my shares to someone because there was no money involved.

Q. I want to be very careful on what is being said here, Mr Tsai. When you say "I should", do you mean that you did, or do you mean something else?

A. I gave my shares to someone –

Q. You gave your shares to somebody?

A. -- because there was no actual money involved.

Q. All right. Can you tell us who it was you gave the shares to?

A. I gave my shares to other shareholders, but I don't know who they were. I just signed my name on the paperwork.

MRS JUSTICE ROSE: Are they members of your family or are they completely different people?

A. They should be my family members.

MRS JUSTICE ROSE: Were they your family members, were they not, or you don't know?

A. I am not hundred per cent sure because I was asked to sign my name, so I just signed my name.

MRS JUSTICE ROSE: Who asked you to sign your name?

A. An agent.

MRS JUSTICE ROSE: What kind of agent?

A. It's an overseas investment agent.

MRS JUSTICE ROSE: So an overseas investment agent asked you to sign a document, and you signed it, and that involved you giving away your shares in Lead Summit but you don't know to whom you gave them. Is that your evidence?

A. That's correct. I just -- I forget what happened.”

191. When it was pointed out to him by Mr Robins that this transaction took place around the time that the Changtel winding up order was made by the Court of Appeal in January 2015 he denied that this was an example of him trying to hide his assets from HMRC.
192. The position as to the ownership of Dun Hua South Road is rather unclear. However, I am satisfied that Mr Tsai did own an interest in the company which owned these premises and I reject his evidence that he divested himself of that interest in 2015. I therefore find that

Allegation 29 has been proved to the requisite standard and that Mr Tsai was under an obligation to disclose direct or indirect interest in Dun Hua South Road in his First Affirmation.

***Penalty for breach 29 and breaches 33 and 34 in relation to Dun Hua South Road/ Sunrise Property Developments Ltd and Lead Summit***

193. This is a serious breach of the freezing order because real property whether in the UK or overseas is of particular interest to a claimant taking steps to ensure that a future judgment can be enforced. There is no mitigation for this breach. In his Admissions Note, Mr Tsai persisted in his denial of any interest in this property even though he admits that his shares in Sunrise was sold for a nominal value on the instruction of his wife. The appropriate penalty for these breaches taken together is 18 months' imprisonment to run concurrently with the sentences for breaches 20/21/22, 23/24, 25/26, 47, 48 and 49.

**Assets in the name of Shu Hua Chang**

194. There are a number of assets apparently owned by Shu Hua Chang (Mrs Tsai's sister and hence Mr Tsai's sister-in-law) which the Applicants assert are held by her as a nominee for Mr Tsai so that he was in breach of his disclosure obligations by failing to disclose his beneficial interest in those assets. In relation to all these assets the Applicants' case is that although Shu Hua Chang may exist and may indeed be Mr Tsai's sister-in-law she is only the nominal owner of all these assets and the beneficial owner is in fact Mr Tsai. There are points to be made in relation to each of the individual assets but it is useful to deal first with the more general point about the use of Shu Hua Chang's name by Mr Tsai.
195. Mr Tsai's evidence is that his sister in law is a very wealthy woman who has built a successful business trading in rice, beans and other foodstuffs. She also, he says, inherited money from her and Mrs Tsai's father.
196. The involvement of Shu Hua Chang in Mr Tsai's finances was discussed at some length at the meeting with Mr Brett on 14 March 2017 as recorded in the Brett Attendance Note. In the context of the ownership of 1 The Coppice, (discussed below) Mr Brett reminded Mr Tsai that the Applicants allege that she is not a real person. Mr Brett said at the meeting that as part of his duties as an officer of the court if Mr Tsai tells him that Shu Hua Chang is made up or is a name that he uses for his business, Mr Brett cannot then put forward evidence to the contrary because he knows that not to be true. The Brett Attendance Note then goes on: ('NMB' being Mr Brett)

“NMB thinks we need to deal with the SH Chang problem, he doesn't think the liquidator is going to believe she is a successful business woman. NMB says the email evidence is compelling and contemporaneous. NMB says if we are going to accept that SH Chang is a symbolic name, he would rather do that now than further down the line. Credibility damaged and NMB would like to make repairs to that, NMB is not pushing client to say anything or not

tell the truth. Client says she won't come forward and make an affidavit. NMB says that is difficult, High Court judge won't see why a successful business woman wouldn't go to a local solicitor and give an affidavit. Client says traditional business that doesn't have credibility would be difficult to have an affidavit.

...

Client speaks with Andrew - thinks it is going to be difficult to prove SH Chang. NMB asks outright, is SH Chang a name uses to disguise own business dealings. Yes.”

197. When this passage was put to Mr Tsai in cross-examination he said he could not remember this part of the meeting and that he was confused about what was said.
198. Subsequently Mr Brett sent Mr Tsai draft letters that he wanted Mr Tsai to arrange for Shu Hua Chang (together with Ai Chang Cheng and Jen Yen Chu discussed below) to sign releasing information about the bank accounts held in their name. Mr Tsai wrote back to Mr Brett on 21 March 2017 saying:

“It is going to be difficult for SH Chang, AC Cheng, Jen-Yen Chu to sign those letters.

In fact they were frightened and don't want to be involved any more in “figure head” things related to me and my wife.

They don't understand English at all and they think that they might be in prison for money laundering. It means seriously to them that if they sign anything again they are involved again.

Even my wife she thinks those accounts are in her own name and she can't allow anyone including myself to know the bank details and statements etc”

199. As I described earlier, there is in the evidence before me an affirmation purportedly made by Shu Hua Chang. I have explained why I can place no reliance on the truth of that affirmation (see paragraphs 61 onwards above). There is plenty of other evidence also that satisfies me Shu Hua Chang was a nominee name used by Mr Tsai to hold assets on his behalf:
- a. Mr Tsai set up an email address shiaochuen@gmail.com which he used without any apparent reference back to Shu Hua Chang. Mr Tsai said in cross-examination that Shu Hua Chang does not know how to use email and he used that address on her behalf. However

it was clear from other documentary evidence that Mr Tsai sent and received emails from this account on matters which had nothing to do with Shu Hua Chang's business.

- b. Mr Tsai also set up another email address ShuHuaChang@entagroup.com which he used generally for his business dealings on matters which had nothing to do with Shu Hua Chang.
- c. As I described below in relation to the loan purportedly from Shu Hua Chang to Andrew, Mr Tsai assured Andrew that the use of Shu Hua Chang's name in the loan of £1.4 million was "symbolic" only. This is discussed further in relation to Allegation 35 which relates to that loan.

200. I therefore find that on many occasions Mr Tsai used the name Shu Hua Chang for his own business dealings without recourse to her even if on other occasions he may have been acting on her behalf.

201. I now turn to consider the specific assets held in Shu Hua Chang's name.

202. **Apartment 338 Canal Wharf, 14 Waterfront Walk, Birmingham B1 1SR ('338 Canal Wharf'): Allegations 23 and 24** In schedule JT1 to his First Affirmation, Mr Tsai described 338 Canal Wharf as a one-bedroom flat which was solely owned by Shu Hua Chang who is his sister-in-law and lives in Taiwan. He said "I will have no interest if this property was sold". He gave the value of the apartment as £130,000.

203. In his Third Affirmation Mr Tsai said that 338 Canal Wharf is registered in the name of Shu Hua Chang but in fact he and his wife are the beneficial owners of the property which was purchased on 25 March 2013 for the sum of £171,735. In his Fourth Affirmation Mr Tsai retracted this admission and stated that 338 Canal Wharf is owned by Shu Hua Chang. He says that he manages the flat on her behalf. He appears to explain away the admission in his Third Affirmation by the following:

"In Taiwanese culture when you help a family relative with possessions and properties, we treat it and take care of it as our own. In my Third Affirmation, I did not object as Nick Brett drafted the document in such a way to claim beneficial ownership in the property. However, I have no interest in the property. Only Shu Hua Chang can sell it and claim the proceeds."

204. He then referred to the affirmation from Shu Hua Chang purporting to confirm this. 338 Canal Wharf is the subject of Allegation 23 that Mr Tsai falsely said that it was solely owned by Shu Hua Chang and Allegation 24 that Mr Tsai failed to disclose his beneficial interest in it. The extract from the Land Registry Property Register shows the title absolute in 338 Canal Wharf as owned by Shu Hua Chang of 2 The

Coppice. Mr Tsai said in evidence that this was a mistake it should be 1 The Coppice not 2 The Coppice, because 1 The Coppice is owned by Shu Hua Chang. In cross-examination Mr Tsai continued to deny that he had any beneficial interest in 338 Canal Wharf. He said that when the paragraphs in his Third Affirmation were written he was very confused.

205. I am satisfied that 338 Canal Wharf does belong beneficially to Mr Tsai. 338 Canal Wharf was discussed at the meeting with Mr Brett on 14 March 2017. The Brett Attendance Note records that although it is registered in the name of Shu Hua Chang “on the basis of what client just said, clients and wife’s ppty”.
206. 338 Canal Wharf was let out to tenants and it is clear from the email traffic that Mr Tsai dealt with all the matters relating to the incoming and outgoing tenants. Mr Tsai said that he was simply managing this on Shu Hua Chang’s behalf. However he arranged for the rent to be paid into RSB 4905 which is an account the name of Yi Lin Tsai (Mr Tsai’s sister) and not in the name of Shu Hua Chang. Mr Tsai said that this was because Shu Hua Chang did not have a UK bank account and she did not want to incur expensive charges for having the rent paid into a foreign bank account. He says he either gave the rent to Shu Hua Chang when he returned to Taiwan or transferred money to her bank account when the rent had accumulated to a certain amount.
207. I reject that explanation. If Shu Hua Chang was really a woman with a substantial business who owned and rented out property in this country, there is no reason why she should not have her own bank account rather than having the money paid in to Mr Tsai’s sister’s account and relying on Mr Tsai to bring her the money on an ad hoc basis.

***Penalty for breaches 23 and 24***

208. These are serious breaches of the Disclosure Order because an interest in a property in this country is a valuable asset against which the Applicants will be able to enforce any future judgment against Mr Tsai. In his Admissions Note Mr Tsai did unambiguously admit that 338 Canal Wharf is beneficially owned by him and his wife and that he used Shu Hua Chang’s name to disguise his own dealings. Although this admission came much too late to save any court time or expense on the part of the Applicants I will give Mr Tsai some credit for this late admission. The appropriate penalty for these breaches, taken together, is 16 months’ imprisonment to run concurrently with the sentences for breaches 20/21/22, 25/26, 27/28, 29, 47, 48 and 49.
209. **1 The Coppice, Old Park Telford TF3 4TF (“1 The Coppice”): Allegations 25 and 26.** 1 The Coppice is a detached house with four bedrooms. It is connected by a covered walkway to 2 The Coppice which is where Mr Tsai lives.

210. In the schedule JT1 to his First Affirmation Mr Tsai says he sold this property to Shu Hua Chang in 2005 but the registration of the transaction was delayed until May 2013 due to an error on the part of HM Land Registry. He stated that he will have no interest in the property if it was sold. He gives the value as £400,000.
211. In his Third Affirmation Mr Tsai said that he and his wife purchased the land on which they built 1 The Coppice in 1994. He said “The reality is that it is part of the estate and my wife and I own the entire beneficial interest in this property. Whilst it is registered in the name of Shu Hua Chang, who is my sister-in-law, she lives in Taiwan and she has no beneficial interest in this property.”
212. In his Fourth Affirmation Mr Tsai retracted this admission and asserted that it is owned by Shu Hua Chang and he assisted her with the purchase of this property in 2005. He does not give any explanation as to why he admitted owning this in his Third Affirmation but refers to Shu Hua Chang’s affirmation setting out the nature of her interest in 1 The Coppice. There is a Land Registry TR1 form among the documents dated 20 May 2013 recording the transfer of the property from Jason Tsai to Shu Hua Chang for consideration of £225,000. That date is shortly after HMRC presented the first winding up petition but before that petition was struck out. This asset is the subject of the Allegation 25 that Mr Tsai falsely said that this property was solely owned by Shu Hua Chang and Allegation 26 that Mr Tsai failed to disclose that he has a beneficial interest in it.
213. Mr Tsai denied this breach when he was cross-examined about it by Mr Robins. He said that the paragraph in his Third Affirmation was written by his solicitor and he did not object to what his solicitor wrote. He maintained his evidence that the transfer of title from him to Shu Hua Chang in fact took place in 2005 and that it was an error on the part of the Land Registry that it was only registered on 20 May 2013.
214. I reject the suggestion that there was some earlier transfer in 2005 and that the Land Registry made an error in failing to record this until 20 May 2013. One would expect to see some evidence of correspondence with the Land Registry about this if it was indeed the case. I find, rather, that the transfer was a sham prompted by the presentation of HMRC’s first winding up petition.
215. The property at 1 The Coppice is part of the same dwelling as 2 The Coppice where Mr Tsai lives. It does not make sense for half of his home to be owned by his sister-in-law.
216. 1 The Coppice was discussed by Mr Tsai with Mr Brett as recorded in the Brett Attendance Note. At the first point when 1 The Coppice is mentioned, the Note records that Mr Tsai said that the plot of land on which it stands was initially purchased in Mr Tsai’s own name in 1994. He said it is now used for entertaining family members and visitors. Mr Tsai said that he sold it to Shu Hua Chang in 2005 for £241,000 and that he now manages it for her. Mr Brett then explained that they should get evidence of Shu Hua Chang’s successful commodities business in Taiwan. Later in the meeting, after Mr Brett has assured Andrew and Mr Tsai of the confidentiality of information

given to him at the meeting, the Note records that Mr Brett asked outright is Shu Hua Chang a name Mr Tsai uses to disguise his own business dealings. The answer was ‘yes’. The Note goes on:

“So client owns beneficial interest in 1 The Coppice – yes? NMB says to a certain extent it doesn’t matter if we admit to accepting the money from 2 The Coppice. 1TC is now worth about £500k. No one lives there now. NMB says so what we can acceptably say is that client and foundation occupy TC ‘complex’. NMB says it looks more clear with the charitable foundation, client and the foundation occupy TC complex - business and home”

217. On the basis of this evidence I am satisfied that 1 The Coppice is still beneficially owned by Mr Tsai and that the transfer of the legal title, if indeed it took place at all, was not a genuine transaction and did not affect the beneficial ownership of the property.

***Penalty for breaches 25 and 26***

218. These are serious breaches of the Disclosure Order because an interest in a property in this country is a valuable asset against which the Applicants will be able to enforce any future judgment against Mr Tsai. In his Admissions Note Mr Tsai did unambiguously admit that 1 The Coppice is beneficially owned by him and his wife, although he still maintains that the transfer of legal title took place in 2005. Although this admission came much too late to save any court time or expense on the part of the Applicants I will give Mr Tsai some credit for this late admission. The appropriate penalty for these breaches, taken together, is 16 months’ imprisonment to run concurrently with the sentences for breaches 20/21/22, 23/24, 27/28, 29, 47, 48 and 49.

219. **33 Park Lane, Old Park, Telford, TF3 4TE (‘33 Park Lane’): Allegation 47.** 33 Park Lane is a small white house just next to 1 and 2 The Coppice. It is not connected to the larger The Coppice buildings. It is registered in the name of Shu Hua Chang. 33 Park Lane is the subject of Allegation 47 that Mr Tsai failed to disclose his beneficial interest in it.

220. This property was not mentioned by Mr Tsai in his First Affirmation or his Third Affirmation. It was not discussed in the Brett Attendance Note. In his Fourth Affirmation Mr Tsai denies that he has any beneficial interest in this property, stating that it is owned by Shu Hua Chang. 33 Park Lane was included in the order made by Marcus Smith J on 31 March 2017. That was an order made by consent, following the service of the Third Affirmation, to continue the Freezing Order in effect in relation to the assets which Mr Tsai accepted should be the subject of the Freezing Order because he had a beneficial interest in them. Paragraph 18 of the Marcus Smith J order therefore freezes “the property known as and situate at 33 Park Lane, Old Park, Telford, Shropshire, TF3 4TE, or the net sale money after payment of any mortgage if it has been sold;”.



221. In his oral evidence in chief and in cross-examination, Mr Tsai continued to deny that he had any interest in this property. It was put to him by Mr Robins that he must have accepted that he had an interest in this property in order for it to be included in the Marcus Smith J order. In response Mr Tsai fell back on accusing his former solicitors of failing in their professional duties towards him by agreeing the consent order with the opposing solicitors without consulting him or even showing him the order:

“MR ROBINS: Do you see on the second page halfway down, it says, "By consent it is ordered that".

A. Yes.

Q. This is an order that you consented to, isn't it?

A. Yes. This is consent between the two solicitors --

MRS JUSTICE ROSE: Wait for the question, please.

MR ROBINS: It was an order that you consented to, wasn't it, Mr Tsai?

A. No, this is a consent by the solicitors.

Q. The solicitors aren't being sued, are they, Mr Tsai?

A. As I remembered, this is consent made by two solicitors, hence the adjournment.

Q. So you say your solicitors consented to this without telling you about it, do you? Is that what you are going to say?

A. They didn't ask me anything. They gave the consent.

Q. Mr Tsai, your answers are predictable. You gave instructions to your solicitors to consent to this order, didn't you?

A. As I said, they did not specifically ask me about it because this is very similar to the previous ones.

Q. This order extended the freezing order to cover lots of additional assets in which you admitted at that point in time to having an interest. That's what this order does, isn't it?

A. Yes.

Q. So you had admitted to having an interest in all these assets and this extends the freezing order to cover them, yes?

A. As I said earlier, and it is true, they did not ask me anything and there was an adjournment. But they didn't ask me anything.

Q. You had admitted to having an interest in all of these assets and this order extended the freezing order to cover them, didn't it?

A. That should not have been the case, no.

Q. Well, on page 5, number 18 is 33 Park Lane. Do you see that?

A. Yes.

Q. And you consented to the freezing order covering that property because you have a beneficial interest in it, don't you?

A. No. I didn't really pay a lot of attention to this, but this one was covered in the first freezing order.

Q. No, it wasn't. The liquidators hadn't discovered it by the time of the first freezing order. It was covered by the third freezing order because they had discovered it by that point and you had admitted to having an interest in it. That's right, isn't it?

A. Yes, I remember now. This was added after the third affirmation.

Q. Yes, you consented to the freezing order covering 33 Park Lane because you admitted to having an interest in it. That's right, isn't it?

A. Yes, correct. This is based on the third affirmation.

Q. And the third affirmation is true, isn't it?

A. No.

Q. So your evidence is that you never saw this order before and seeing it now, you realise that it is just a colossal mistake?

A. No. Basically after third affirmation, naturally they added this to the order and nobody asked me.

Q. You didn't see this order at the time then?

A. Yes, I saw it afterwards. After the court order.

Q. Afterwards. But not before?

A. No, I was shown the draft by my solicitor. I didn't object to anything because it was based on my third affirmation.

Q. And you didn't object because your third affirmation is true, isn't it?

A. It was not true but I didn't notice it and it was a mistake.

Q. In fact, Mr Tsai, you paid close and careful attention to the draft order, didn't you?

A. No.”

222. Mr Tsai’s evidence that his solicitors agreed the Marcus Smith J order without his instructions or consent is contradicted by email traffic showing that Mr Tsai emailed Mr Brett on 31 March 2017 saying that he had spotted a mistake in the draft version of the order relating to a different asset.
223. Although there is less evidence of Mr Tsai using 33 Park Lane as his own property, I am nonetheless satisfied that it is his property and not beneficially owned by Shu Hua Chang. It is just next door to where Mr and Mrs Tsai and it does not appear to have been rented out. I can think of no reason why Shu Hua Chang would want to own this property in her own right. I consider that Mr Tsai accepted at the time of the making of the Marcus Smith J order that he owned an interest in this property and that was the true position.

***Penalty for breach 47***

224. This is a serious breach of the Disclosure Order because an interest in a property in this country is a valuable asset against which the Applicants will be able to enforce any future judgment against Mr Tsai. In his Admissions Note Mr Tsai did unambiguously admit that 33 Park Lane is beneficially owned by him and his wife and he admits that he did review the draft version of the Marcus Smith J order. Although this admission came much too late to save any court time or expense on the part of the Applicants I will give Mr Tsai some credit for this late admission. The appropriate penalty for this breach is 16 months’ imprisonment to run concurrently with the sentences for breaches 20/21/22, 23/24, 25/26, 27/28, 29, 48 and 49.
225. **Loan to Entatech UK Ltd in the sum of £2,311,730 (“the Entatech loan”): Allegation 50.** In his First Affirmation Mr Tsai said that Shu Hua Chang made a loan to Changtel in 2014 to support the company’s cash flow. He said the loan is due to be repaid to her personally by 20 April 2018. He said in JT1 “I have included details of this loan because I am anxious to avoid a technical breach or allegation of breach of the Order. However, the loan is not my asset because when it is repaid the money will go to my sister-in-law, not to me.”
226. The Applicants contend that this loan was in fact made by Mr Tsai to the company and not by Shu Hua Chang. It is therefore a receivable owed to him. This loan is the subject of Allegation 50 in that he denied having an interest in this loan.

227. There is a loan agreement dated 16 December 2013 between Shu Hua Chang as lender and Mr Tsai as director of Enta Technologies Ltd recording that Shu Hua Chang is providing £2 million as a loan to assist the company in its business operations. It appears to be common ground however that the amount of the loan was in fact initially £2.5 million and the company has repaid £188,270, leaving the balance included in the Allegation. The agreement records that no security is being given for the loan, there will be no interest accruing but the loan will need to be repaid on demand in whole or in part by giving one month's notice. The loan agreement is signed by Shu Hua Chang witnessed by Chen Li Chen stamped with the Chen Li Chen seal and signed by Mr Tsai witnessed by his secretary in Telford.
228. In his Third Affirmation Mr Tsai said although the loan documentation is in the name of Shu Hua Chang he in fact made the Entatech loan. In his Fourth Affirmation Mr Tsai retracted his admission. He said "Mr Brett advised me to identify this asset as my wife's sister extended it and I may have a beneficial interest in it. I believe that was the wrong advice. I do not have any beneficial interest in it."
229. Subsequently in August 2015 Shu Hua Chang submitted a proof of debt in the winding up of the Company claiming £2 million as a loan to the company. Mr Tsai accepted that he had filled in this proof of debt because Shu Hua Chang cannot write in English. The form purports to be signed by Shu Hua Chang herself giving the address of 1 The Coppice. Shortly after the proof of debt was submitted, there is an email exchange between Mr Tsai and a colleague at the company in which Mr Tsai expresses consternation that someone has worked out merely from the email address Shiaochuen@gmail.com and his mobile phone number that those contact details relate to him rather than to Shu Hua Chang.
230. In his oral evidence in chief Mr Tsai explained why Shu Hua Chang made this loan. He said that she had some spare money at the time and Entatech was experiencing cash flow difficulties so she wanted to help this company:
- "MR YOUNG. Thank you. Now let's look at alleged breach 50, duplicate complaint about a loan to Entatech UK Ltd. This is a substantial loan of some 2.3 million. Why did your wife's sister Shu-Hua Chang make that loan?
- A. Because at that time she had some spare money and Entatech UK Ltd suffered cash flow difficulties so she was to help this company.
- Q. Any particular reason why your wife didn't lend that money?
- A. Because Shu-Hua Chang had spare money and she was willing to help.
- Q. But it is also true that your wife had spare money in various bank accounts, isn't it?
- A. I am not sure about the arrangement between them. They have a very close relationship. Perhaps my wife persuaded her sister to offer help to the company.

MRS JUSTICE ROSE: Do you know whether that happened or not? When you say "perhaps", is that your evidence that that happened?

A. It is only my guess.

MR YOUNG: This is a large sum of money. Was it secured?

A. It is not secured.

Q. Do you know where the source of the money was coming from? Where did Shu-Hua Chang get it from?

A. I don't know.

Q. Did you ever ask?

A. Never asked.

Q. Was there any kind of due diligence at this time, any money laundering checks?

A. No, we didn't carry out any due diligence.

Q. Is it possible that in some way this money originally came from you, Mr Tsai?

A. Not possible."

231. I am satisfied that the money for the Entatech Loan came from Mr Tsai and not from Shu Hua Chang so that it is a receivable owned by him and not by her. The Brett Attendance Note records that when the loan was discussed Mr Tsai told Mr Brett "Client lent money, not sister-in-law, benefit of loan is an asset that belongs to Client".

232. Further, the loan agreement purports to be witnessed by Chen Li Chen in Taiwan. As I have described that is a name and a seal that Mr Tsai commonly used fraudulently to notarise or witness signatures and documents. Although Mr Tsai insisted in his cross-examination that this was a genuine document and not one which he had forged, the handwriting is his handwriting and the name of the law firm is also stated incorrectly. It is unlikely that Chen Li Chen would have failed properly to add the correct name for her law firm which is supposed to be "Just Good Lawyers" whereas the address given of the witness is only "Just Good" without the word "Lawyers".

***Penalty in relation to Breach 50***

233. This is a serious breach of the Disclosure Order aggravated by the fact that the purpose of the breach was to continue the concealment of the fact that a dishonest proof of debt had been submitted, purporting to come from a third party rather than from Mr Tsai himself. In his

Admissions Note Mr Tsai admitted that he and his wife made the loan though he still contends that the loan agreement was signed by Shu Hua Chang and witnessed by Chen Li Chen. I take into account that the value of this receivable from the Company as an asset against which the judgment in favour of the Company can be enforced must be negligible. The appropriate penalty for this breach is 6 months' imprisonment.

234. **A loan £1.4 million to Andrew Tsai ('the loan to Andrew'): Allegation 35.** It is common ground that £1.4 million was loaned to Andrew and his wife Pui-Lai Tsai to buy a property at 39 Tavistock Terrace, Islington, London. I understand that that is or was their home. Mr Tsai says that the money was loaned by Shu Hua Chang to Andrew and that she shortly afterwards converted the loan into a gift. The Applicants contend that the money was in fact loaned by Mr Tsai and not by Shu Hua Chang and that the deed purporting to evidence its conversion into a gift is a sham document. They therefore assert that the money is a receivable owed by Andrew to Mr Tsai. The loan to Andrew is the subject of Allegation 35 that Mr Tsai failed to disclose it.
235. The loan to Andrew was not mentioned by Mr Tsai in his First Affirmation. In his Third Affirmation he said that in 2014 he and his wife made a gift to their son Andrew and his wife in the sum of £1.4 million, this was not a loan. In his Fourth Affirmation Mr Tsai retracted that evidence and stated that the loan was a gift from Shu Hua Chang.
236. So far as the documentary evidence is concerned, there is a formal loan agreement between Shu Hua Chang, Andrew Tsai and Pui Lai Tsai although the copy in the documents before me is unsigned and undated. Clause 5 of the loan agreement provides that at the Lender's discretion, the Loan shall become repayable upon an "Event of Repayment". It then goes on to define what is an Event of Repayment. The definition includes Andrew and Pui Lai Tsai "behaving in a manner such as to compromise their relationship with the Lender".
237. There is an email exchange between Mr Tsai and Andrew in the beginning of June 2014 where Andrew attempted to remove that element of the definition of an Event of Repayment and Mr Tsai insisted that it be retained. Andrew wrote to his father on 2 June 2014 saying:

"Dear Dad,

I'm a bit unclear by that specific point, as it's very ambiguous- 'compromise the relationship' could mean anything, especially as it is between the lender (Chang Shu-Hua) and us, not between you and us. It might even be possible to

say that our relationship with Chang Shu Hua is already ‘compromised’ right now because we haven’t seen each other for years. Is there anything else we can replace it with?”

238. Mr Tsai replied the next day saying:

“You can re-word it to the relationship between the borrowers and the first borrower’s parents. It is designed to guarantee a good moral relationship between you and us. SH Chang is just a symbolic name as you know.”

239. Andrew then replied:

“Thanks I have kept the document as you have said, I understand that the name is just symbolic. The document is attached.”

240. There is also what purports to be a deed of gift dated 19 August 2014 between Shu Hua Chang and Andrew. The recital to this deed states that the donee is the nephew of the donor and out of natural love and affection, the donor transferred the sum of £1.4 million to the donee on 12 August 2014 which was accepted by the donee. The donor now wishes the sum to become a gift.

241. The loan to Andrew is also referred to in the affirmation which purports to be made by Shu Hua Chang in which she says that she gave them this money.

242. In his evidence in chief, Mr Tsai said that Shu Hua Chang is a very wealthy woman. Although she has three children of her own she made this gift of £1.4 million. Mr Tsai denied knowing where Shu Hua Chang had got the money from to make the loan and he denied that the money had come from him either directly or indirectly. As to why she made this gift to Andrew, Mr Tsai said:

“MR YOUNG: Can you tell us why she might have made a gift of 1.4 million?”

A. It is because when my son was little, he stayed with Shu-Hua Chang and he had a close relationship with Shu-Hua Chang. And also between at age of 15 and at age of 18, my son frequently visited her in Taiwan.

Q. The 1.4 million she gave to your son and his wife, do you know the source of that money?

A. From her bank account.

Q. Do you know how that money got into the bank account? A. It was her money. I don't know how she got the money.

Q. Did you ever make any payments to Shu-Hua Chang directly?

A. No.

Q. Did you arrange for any payment to be made to her indirectly?

A. No.

...

MR YOUNG: All right. So you can't help us as to the source of Shu-Hua Chang's money that was given to your son and his wife?

A. That's right, it was her money. I don't know where she got the money from.”

243. He was also asked in chief about what he meant when he used the word “symbolic” in the exchange of emails with Andrew. His explanation was as follows:

“MRS JUSTICE ROSE: What you are being asked about is in the emails between you and your son, you referred to the name Shu-Hua Chang being a symbolic name or being used in a symbolic manner, and you are being asked what did you mean by that when you used that phrase?

A. What I meant by symbolic name, I told my son that Shu-Hua Chang loan agreement is only symbolic, you don't need to be afraid. Shu-Hua Chang would not ask you to pay Shu-Hua Chang back. But however, my son was still very concerned by this Shu-Hua Chang loan agreement so in the end, I made a deed of gift -- sorry, the interpreter's correction. So in the end, there was a deed of gift between Shu-Hua Chang and my son.

MR YOUNG: I would just like to be clear on this: are you sure you have just not been using the same Shu-Hua Chang for your own purposes?

A. Not for my purpose to use.”

244. In cross examination Mr Tsai maintained his denial that he had his wife had made the loan. As to why he had admitted it in his Third Affirmation he said:

“I was not in a stable status at that time caused by my health problem. I had cancer and I was on medication and my mind was in a mess and I had a limited time which was only over one hour comment on the document was provided



to me by my solicitor at 2:44 in the afternoon and I prepared for the document after that and gave it back to him at 4 o'clock in the afternoon”

245. I am entirely satisfied that this loan was made by Mr Tsai either alone or jointly with his wife and not by Shu Hua Chang. The exchange of emails between Andrew and his father at the time makes this clear. There is, in addition, all the earlier evidence I have described about Mr Tsai’s use of Shu Hua Chang as a nominee or a symbolic name for his financial dealings. Andrew clearly did not believe there was any reason for his aunt to loan him this money since he had not seen her for many years.
246. On the question whether the loan had been converted into a gift shortly after the money was handed over, I find that the purported gift deed dated 19 August 2014 is a sham document. The Brett Attendance Note records a discussion on 14 March 2017 with Andrew and Mr Tsai in which they were still talking about the £1.4 million as a loan and not a gift. Mr Tsai had no explanation when cross-examined as to why they were talking about a loan at that meeting with Mr Brett if the gift deed was genuine. Bearing in mind the other evidence showing Mr Tsai’s propensity to backdate documents I am satisfied that this gift deed does not reflect the legal position.

***Penalty in respect of Breach 35***

247. I do not regard this as one of the more serious breaches of the Disclosure Order, although certainly Mr Tsai should have disclosed it in his First Affirmation. Although I am satisfied that the money given to Andrew and his wife came from Mr Tsai and not from Shu Hua Chang, the value of this as a receivable is doubtful. It is not uncommon for parents to loan money to their children to purchase a home without any real expectation that the money will be paid back. Such transfers of money may start out as loans but both parties recognise that the loan may ultimately turn into a gift if the child’s income does not sustain repayment in the future. Mr Tsai maintains in his Admissions Note that this was always intended to be a gift from him and his wife to his son. However a sentence of imprisonment is appropriate because the breach was facilitated by the creation of sham documents aimed at disguising Mr Tsai’s assets. The appropriate sentence for this breach is 4 weeks’ imprisonment.

**Other bank accounts in the names of Mr Tsai’s family members**

248. **BBVA and Solbank accounts in Spain: Allegations 44 and 45** In addition to the bank accounts I have already considered there are a further 18 Spanish bank accounts which the Applicants assert contain money belonging in whole or in part to Mr Tsai:
- a. There are nine bank accounts with Banco Bilbao Vizcaya Argentaria, S.A (‘BBVA’) in Spain; three in the name Ai Chang Cheng (BBVA bank accounts numbers ending 78010, 47025 and 47032); three in the name of Shu Hua Chang (BBVA bank accounts numbers ending 78027, 48028 and 48035) and three in the name of Jen Yen Chu (BBVA bank accounts numbers ending 18129,

10024 and 49039). These are the subject of Allegation 44 that Mr Tsai failed to disclose his interest in these bank accounts. Most of these accounts have small balances, the largest being slightly over €17,000.

b. There are nine bank accounts with Solbank three in the name of Ai Chang Cheng (Solbank accounts ending 32606, 70202 and 93037); three in the name of Shu Hua Chang (Solbank accounts ending 32507, 80203 and 20306) and three in the name of Jen Yen Chu (Solbank accounts ending 45711, 10206 and 50309). These are the subject of Allegation 45 that Mr Tsai failed to disclose his interest in them. All these accounts have small balances of under £500.

249. These bank accounts were not mentioned in Mr Tsai's First Affirmation. They are included in his Third Affirmation where Mr Tsai states that he has an interest in all these bank accounts. In his Fourth Affirmation he retracts these admissions and states that he has no interest in the monies in these accounts and no rights to deal with the accounts. He says "Mr Brett advised me to identify the asset as my relatives own them and I may have a beneficial interest in it. I believe that was the wrong advice." In his oral evidence in chief he continued to deny any knowledge of the accounts or where the money in them had come from. He stated that none of the money could have come from him either directly or indirectly.

250. I reject that evidence and I am fully satisfied that the BBVA and Solbank accounts are all accounts in which Mr Tsai has a beneficial interest. They should have been disclosed in the First Affirmation and Mr Tsai's attempt to retract his admissions in relation to them in his Third Affirmation is wrong.

251. This is apparent from the way in which the bank accounts came to be included in the Third Affirmation. The formerly privileged documents disclosed from Brett Wilson show that when the first draft of what became the Third Affirmation was sent to Mr Tsai by Mr Brett on 14 March 2017 there was a space-holding paragraph stating simply "Banco Bilbao in Spain" with a side-note from Mr Brett saying "please confirm whether you hold this account or not. If so, please provide details". Details of the six accounts in the names of Shu Hua Chang and Jen Yen Chu were then provided by Mr Tsai or Andrew and incorporated by Mr Brett into the next draft of the affirmation. At some slightly later point the other three accounts in the name of Ai Chang Cheng were added into the draft before it was signed by Mr Tsai. There is evidence that Mr Tsai read this draft carefully because he made small corrections to the text. Mr Tsai was challenged by Mr Robins as to why he had included these accounts given that his explanation about Mr Brett's wrong advice could not apply since none of these accounts was owned by his wife. The following exchange took place:

"Q. Mr Tsai, this marriage reason that you keep talking about wouldn't apply to Jen-Yen Chu or Ai-Chang Cheng, would it?"

A. Because my wife can control these bank accounts, so I thought if she could control those bank accounts, I should have some interest in the bank accounts.

Q. So your wife controls the Ai-Chang Cheng, Shu-Hua Chang and Jen-Yen Chu bank accounts now, does she?  
THE INTERPRETER: Sorry, Mr Tsai pointed out that the interpreter's made error. She shouldn't use "control", this word. It should be "third party authority".

MR ROBINS: Mr Tsai, your English is good enough to correct the interpreter, is it? That's very impressive.

A. "Control" is a simple English word. I just don't have a good hearing ability.

MRS JUSTICE ROSE: So your evidence is that because your wife has a third party authority on these accounts in - - these are both her sisters, aren't they? -- her sisters' names, you thought that you needed to include them in the third affirmation?

A. Yes, yes. That was an error.

MR ROBINS: Mr Tsai, you accepted that you had an interest in these accounts because they are your property.

A. No, they are not. Banks don't know me.”

252. I reject this evidence. There no suggestion in anything that Mr Brett is recorded as having told Mr Tsai and Andrew that would confuse him into believing that he had to disclose bank accounts as being his assets merely because his wife had a third-party mandate to operate the accounts in her sisters' names. Such a suggestion would be very strange. I find that Mr Tsai instructed Mr Brett to include these 18 bank accounts in the Third Affirmation because his evidence then that the money in them was his was true.

***Penalties in relation to Breaches 44 and 45***

253. In mitigation of the penalty for these breaches I take into account that it appears that the amounts of money in these accounts is very small. I do not however give Mr Tsai any discount for having made admissions in the Admissions Note because I do not accept what he says there which was that he was “surprised to find out” that he has an interest in these accounts after discussion he had with his wife on 13 March 2017. The penalties for these breaches is 10 months' imprisonment to run concurrently with each other and with the sentences for breaches 5, 9, 15, 16, 18, 39, 40, 41 and 42.

254. **DBS Bank accounts in Singapore: Allegation 18** I have already referred to these bank accounts in the context of Mr Tsai's breaches of the Passport Order. The two bank accounts with DBS bank in Singapore are:

- a. account number 001-034316-4-031 in the name of Mrs Tsai; and
- b. account number 0013-000725-1 in the name of Jen Yen Chu who is Mr Tsai's brother-in-law.

255. These are the subject of Allegation 18 that Mr Tsai failed to disclose the existence of these in his First Affirmation.
256. Mr Tsai did disclose these in his Third Affirmation, although he described them as “former bank accounts”. In his Fourth Affirmation he stated that he had no interest in either of the accounts. As regards his wife's account, Mr Tsai referred to Mr Brett's “seriously defective” advice that any assets owned by his wife were co-owned by him by virtue of his marriage. As regards Jen Yen Chu's account he states that this was his brother-in-law's account and that the dividends which the Applicants have identified as being paid into this account by Entanet International Ltd were monies to which Jen Yen Chu was entitled.
257. I am satisfied that the funds in these accounts belong to Mr Tsai. As regards the account in his wife's name, this was discussed at the meeting on 14 March 2017 with Mr Brett as recorded in the Brett Attendance Note. The Note records “client accepts that he has an interest in this account, client really doesn't know what is in it, but accepts that we have an interest in these funds.” It goes on to say “Client must understand that he can't move money in them or he is in breach of the order ... Client is breaching order if he moves money in accounts abroad, this would be further contempt and perhaps imprisonment.” There is also evidence that monies from a rental property in Turkey that Mr Tsai accepted in JT1 and his First Affirmation was owned jointly by him and his wife were paid into the DBS account ending 4-031.
258. As regards the Jen Yen Chu account, Jen Yen Chu is another person whom Mr Tsai described as a person involved in “figure head” things relating to him and Mrs Tsai in his email of 21 March 2017. The Brett Attendance Note records that they discussed the dividends paid to Jen Yen Chu and Mr Tsai is recorded as having said “JYC is a symbolic name and client received it, it went into the DBS account”.

***Penalty in respect of Breach 18***

259. Mr Tsai's failure to disclose these accounts is a serious breach of the Disclosure Order particularly since I am satisfied that part of the reason he failed to disclose them was so as to enable Mrs Tsai subsequently to transfer most of the money out these accounts into the Taipei Fubon accounts. In his Admissions Note Mr Tsai says that he did not initially disclose these accounts as he did not know the account numbers and was not a signatory to them. He says he was surprised to find out that he does in fact have an interest in them after discussion he had with his wife on 13 March 2017. I reject that suggestion and conclude that there is no mitigation for Mr Tsai's failure to disclose these accounts. The appropriate penalty for this breach is 18 months' imprisonment to run concurrently with the sentences for breaches 5, 9, 15, 16, 39, 40, 41, 42, 44 and 45.

## **2 The Coppice: Allegations 27/28**

260. 2 The Coppice is a substantial dwelling in Telford and is where Mr Tsai currently lives. In the schedule JT1 to his First Affirmation he describes it as a four-bedroom bungalow with four bathrooms and an ‘internal swimming pool’. He gives its value as £650,000. He says that it is solely owned by the Tsai Lau-Chi Charitable Foundation and that he would have no benefit if the property is sold. The Applicants assert that the purported transfer of 2 The Coppice to the Tsai Lau-Chi Charitable Foundation (‘the Foundation’) is a sham and the property is still owned beneficially by Mr Tsai. The Foundation is not a legal entity so when Mr Tsai refers to transferring the property to the Foundation he means that he transferred it to the trustees of the Foundation that is himself, Mrs Tsai and John Tsai.
261. 2 The Coppice is the subject of Allegation 27 that Mr Tsai falsely said in his First Affirmation that he sold 2 The Coppice to the Foundation on 25 September 2013 and Allegation 28 that Mr Tsai failed to disclose his beneficial interest in 2 The Coppice.
262. In his Third Affirmation Mr Tsai says: (footnote omitted)
- “The property known as 2 The Coppice was my family home. My wife and I purchased the property on 8 December 1989. We held the title to the property as joint tenants. On 25 September 2013, we sold this property to the Tsai Lau-Chi Charitable Foundation for £650,000 which was market value. I am a trustee of the Foundation (a UK registered charitable trust number 1069997) and, in my capacity as trustee, I currently permit myself to live there rent free. I undertake work on behalf of the Trust from these premises. The property was purchased by the trust funds acquired by the trust via donations from Enta Technologies since 1998. I consider that I no longer have any personal interest in this property.”
263. Mr Tsai expanded on this evidence in his Fourth Affirmation. He describes the work of the Foundation which was set up in 1998. Its work is conducted through the Taiwan Blind Development Association of Taiwan and through the Telford Chinese School UK. He says that he continues to live in 2 The Coppice free of charge as he treats it as an office for planning activities for the Foundation and he also manages its maintenance, carries out repairs and so forth as a trustee and as a manager. Mr Tsai maintained this evidence in the witness box. He described how the Foundation bought 2 The Coppice from him and his wife in early 2015 using part of the proceeds of the sale of a property in Canary Wharf which it had sold for £910,000. He could not remember what had happened to the £600,000 that the Foundation paid him and his wife.
264. I am satisfied that this transfer of title of 2 The Coppice to the Foundation’s trustees was a sham. There is plenty of evidence that Mr Tsai treated the Foundation as another entity which he could use for his own and his family’s private purposes to acquire properties and to move money around. Andrew and his wife appear to have been given substantial amounts of money by the Foundation by submitting invoices

for generically worded services such as providing “office accommodation” or other work which I am satisfied was not in fact performed by them. The money in the Foundation was treated by the family as one source of money available to them to pay their rent or general living expenses. Indeed it appears that Andrew expected the Foundation to pay for his wedding at the Kensington Roof Gardens including the flowers and a string quartet, although ultimately Mr Tsai told him to invoice the Company for these expenses rather than the Foundation.

265. Mr Robins also put to Mr Tsai that the timing of this supposed transfer of 2 The Coppice, in September 2013, was after the hearing of the winding up petition and at the same time as he transferred the business and assets out of the company Enta Technologies Ltd. That is the transfer of assets for which he later had to apologise to the Court of Appeal.
266. Mr Tsai accepts that he lives in 2 The Coppice rent free. He says that this is because he does a lot of work for the Foundation, gardening and DIY. I do not accept that any work that Mr Tsai undertakes managing the property in which he is actually living is appropriately recompensed by a rent-free arrangement for this apparently substantial, luxury dwelling.

***Penalty for breaches 27/28***

267. The false information given about the ownership of this house is a serious breach of Mr Tsai’s obligations under the Freezing Order. It also has been facilitated by the creation of sham documents. It is a valuable property against which the Applicants would be entitled to enforce any judgment obtained against Mr Tsai on behalf of the Company. There is little to be said in mitigation of this breach particularly given the timing of the transfer and that Mr Tsai seems to be unable to account for the purchase price that he and Mrs Tsai received from the Foundation. The appropriate penalty for these breaches is 18 months’ imprisonment to run concurrently with each other and with the sentences for breaches 20/21/22, 23/24, 25/26, 29, 47, 48 and 49.

**Assets in the name of Ai Chang Cheng**

268. Ai Chang Cheng is another sister of Mrs Tsai and hence Mr Tsai’s sister-in-law. Various assets of which she is the legal owner are alleged by the Applicants to be Mr Tsai’s assets. I have already described the affirmation served by Mr Tsai purporting to be made by Ai Chang Cheng and explained why I do not rely on its contents. Ai Chang Cheng one of the people to whom Mr Tsai referred as acting as a “figure head” for his business dealings in his email to Mr Brett dated 21 March 2017 where he was explaining why she would be unwilling to sign a letter instructing the bank where she held various accounts to release information relating to those accounts. Mr Tsai accepted that he had fraudulently notarised copies of Ai Chang Cheng’s passport using the name and the seal of Chen Li Chen on 18 March 2015. This shows that Mr Tsai used her name in fraudulent dealings for his own convenience.

269. **Apartment 214, 51 Sherborne Street, Birmingham B16 8FP ('214 Sherborne Street'): Allegations 20, 21 and 22** In schedule JT1 to Mr Tsai's First Affirmation he described 214 Sherborne Street as a duplex flat with two bedrooms, three bathrooms and a car parking space. He says that he would have no interest in this property if it was sold, it is solely owned by Ai Chang Cheng who is his sister-in-law and lives in Taiwan. He states that he had a tenancy agreement to occupy the flat from 1 August 2015 to 31 July 2016. The Applicants assert that what Mr Tsai said about having a tenancy and about the property being owned by Ai Chang Cheng was false and also that he is the beneficial owner of it. 214 Sherborne Street is the subject of Allegation 20 that he falsely he said that he had a tenancy between 1 August 2015 and 31 July 2016, Allegation 21 that he falsely said that it was solely owned by Ai Chang Cheng and Allegation 22 that he failed to disclose his beneficial interest in it.
270. In his Third Affirmation Mr Tsai said that although 214 Sherborne Street is registered in the name of Ai Chang Cheng, he and his wife own the beneficial interest in this property. In his Fourth Affirmation he retracts this admission and, relying on the affirmation from Ai Chang Cheng, asserts that he has no beneficial interest in the property. He also said that he did not have a tenancy of the flat at any time. He gives the same explanation of his previous admission as he gave in relation to 338 Canal Wharf, namely that in Taiwanese culture when you help a family relative with property you take care of it as if it was your own and so he did not object when Mr Brett drafted the Third Affirmation in such a way as to claim beneficial ownership in 214 Sherborne Street.
271. The official copy of the register of title from the Land Registry indicates that the property was transferred to Ai Chang Cheng on 7 November 2013, although Mr Tsai's evidence was that the transfer took place much earlier. It records the proprietor as being Ai Chang Cheng giving her address as 214 Sherborne Street and also 2 The Coppice.
272. I am satisfied that Mr Tsai is truly the beneficial owner of 214 Sherborne Street. The Brett Attendance Note records that Mr Tsai accepted that he was the true owner of this property with his wife and that they held it jointly. The Attendance Note says:
- “Apt 241 [*sc.* 214] – Ai Chang Cheng – sister in law as well, client is true owner of that with wife. Jointly held with wife.”
273. There is evidence that 214 Sherborne Street was let out to tenants and that Mr Tsai managed the lettings. As with other properties, the rent was paid by tenants not into an account in the name of Ai Chang Cheng but into Mr Tsai's RBS 4905 account (in the name of Mr Tsai's sister Yi Lin Tsai). I reject Mr Tsai's evidence that this was because Ai Chang Cheng could not open a UK bank account herself because that required her to be here in person and that was not convenient for her. I find that the rent was paid into that bank account because it was Mr Tsai's property and he was entitled to the rent.

274. Mr Tsai gave 214 Sherborne Street as his address when making a witness statement in the HMRC litigation in November 2015 and when he was giving an undertaking under section 7 of the Company Directors Disqualification Act 1986. Mr Tsai's explanation for this was that he used the address of the rented out apartment for "legal documents that are not sensitive and not pleasant". He said that if such documents were sent to his home, they would be seen by his family but if they were sent to a rented property the tenants would not open them. I reject that evidence as wholly implausible and I find that he gave that as his address because it is one of the properties that he effectively owns.

***Penalties for breaches 20, 21, and 22***

275. The false information given about the ownership of this asset is a serious breach of Mr Tsai's obligations under the Freezing Order. It is a valuable property against which the Applicants would be entitled to enforce any judgment obtained against Mr Tsai on behalf of the Company. In his Admissions Note, Mr Tsai said that his evidence in his Third Affirmation was the truth and that he and Mrs Tsai own the beneficial interest in this property. He still maintains that the property was registered in her name in 2004 not in November 2013. I will give Mr Tsai some discount for that late admission. The appropriate penalty for these breaches is 16 months' imprisonment to run concurrently with each other and with the sentences for breaches 23/24, 25/26, 27/28, 29, 47, 48 and 49.

**Other alleged breaches: real estate in England**

276. **332 Canal Wharf, 14 Waterfront Walk, Birmingham, B1 1SR ("332 Canal Wharf"): Allegation 48** In JT1 and his First Affirmation, Mr Tsai said that this property is a two bedroom, two bathroom apartment owned by his son Andrew who bought it in 2012. Mr Tsai said he would have no interest if this property were sold. In his Third Affirmation he confirmed that his son Andrew and Andrew's wife Pui Lai own the entire beneficial interest in 332 Canal Wharf. In his Fourth Affirmation he said that this flat had been bought with a donation of £247,300 supposedly from Shu Hua Chang to Andrew and Andrew's wife Pui Lai as evidenced by a deed of gift dated 23 April 2012. 338 Canal Wharf is the subject of Allegation 48 that Mr Tsai failed to disclose his interest in the property.

277. Mr Tsai accepted that 332 Canal Wharf was previously registered in the name of Chun Yin Chu who is the daughter of Jen Yen Chu (Mr Tsai's brother-in-law) and so Andrew's cousin. When it was owned by Chun Yin Chu, Mr Tsai said he managed it on her behalf. However once again it is apparent that the rent payable in respect of the property was always paid into the Yi Lin Tsai account RBS 4905. This was the case despite the fact that there is a UK bank account with HSBC opened in 2005 in the name of Chun Yin Chu over which Mr Tsai has a third-party mandate. I can think of no reason why, given the existence of this bank account, the rental for 332 Canal Wharf was paid into RBS 4905 rather than into Chun Yin Chu's bank account except that these are all nominees for Mr Tsai who moves money and properties about amongst these nominees at his own convenience.



278. There is then the Land Registry TR1 form recording the transfer of 332 Canal Wharf on 23 March 2012 from Chun Yin Chu to Andrew and Pui Lai for a consideration of £247,500. Andrew's and Pui Lai's signatures are witnessed by Mr Tsai and Chun Yin Chu's signature is purportedly witnessed by the Taiwan lawyer Chen Li Chen, with the Chen Li Chen Seal stamped on it.
279. There is evidence that the service charges for 332 Canal Wharf were still being invoiced to Chun Yin Chu care of Mr Tsai at 2 The Coppice in March 2013, that is about a year after the supposed transfer of the property into the names of Andrew and his wife. There is also evidence that Mr Tsai continued to manage the tenancies for 332 Canal Wharf after the supposed transfer and that the tenants were instructed to pay charges such as the monthly Internet charge not to Andrew or his wife but to the RBS 4905 account in February 2014. I do not accept Mr Tsai's explanation that he managed this property on behalf of Andrew because Andrew lived in London and he was closer to the apartment in Birmingham. That would not provide any reason why Internet charges paid by the tenants should be paid to RBS 4905 rather than to Andrew. The evidence shows that Mr Tsai treated 332 Canal Wharf in the same way as the other properties in his portfolio.
280. I am satisfied that 332 Canal Wharf belongs beneficially to Mr Tsai. It certainly belonged to him prior to the transfer Andrew in 2012 because he received the rental from the tenants into his own account RBS 4905. I am satisfied that the transfer document does not record a genuine transaction. I am sure that Mr Tsai himself attached the name and stamp of Chen Li Chen and I very much doubt that Chun Yin Chu signed the document at all.

***Penalty for breach 48***

281. The false information given about the ownership of this asset is a serious breach of Mr Tsai's obligations under the Freezing Order. This is a valuable property against which the Applicants would be entitled to enforce any judgment obtained against Mr Tsai on behalf of the Company. In his Admissions Note, Mr Tsai admits that Chun Yin Chu was another nominee used to disguise his own business dealings. But he still asserts that Chun Yin Chu signed the document actually witnessed by Chen Li Chen and he asserts that it was a genuine transfer from her to Andrew and Pui-Lai. I do not accept that. I do not accept his assertion that he had nothing to do with the property after the transfer as the evidence is clear to the contrary. I therefore do not regard Mr Tsai as deserving of any discount in respect of a late admission as regards this property. The appropriate sentence is 18 months' imprisonment to run concurrently with the sentences for breaches 20/21/22, 23/24, 25/26, 27/28, 29, 47 and 49.

**Other alleged breaches**

282. There are a number of other bank accounts and other assets which are the subject of allegations which were not pursued so vigorously by the Applicants at trial. In relation to these I consider that the appropriate way to deal with them is to base my findings as to liability on what Mr Tsai said in his Third Affirmation but not to impose any additional penalty in respect of any of them that are proven.

283. **RBS Account 10095996: Allegation 8** This account was mentioned in the Freezing Order. In JT1 and his First Affirmation Mr Tsai said that he was not aware of it. Allegation 8 is that this must be false since it was registered in his own name. In his Third Affirmation Mr Tsai refers to an account number 10095596 and it is not clear whether this is a typographical error for 10095996. If it is, then Mr Tsai says of this account that it is now closed. I make no finding as to whether what Mr Tsai said in JT1 was true or not.
284. **RBS account 10819772 and RBS account 10819781: Allegations 10 and 11** Allegation 10 is that Mr Tsai falsely stated that account 108109772 contained £59,000. In JT1 Mr Tsai referred to an RBS bank account number 10819773. He said that it was solely owned by him, it had £59,000 in it and it was not included in the Freezing Order. Allegation 10 refers to an account number 10819772, rather than 9773 and it seems that this is the correct number and that the number given in JT1 had the incorrect final digit. The allegation is that RBS confirmed that the account referred to in JT1 did not contain £59,000 but contained only about £800. Allegation 11 is that there was another account number 10819781 which Mr Tsai had failed to disclose and which contained £57,460. In his Third Affirmation Mr Tsai refers to an RBS account 10819772 which he describes as his current account and he refers to account number 10819781 as his savings account. The allegations as regards these accounts are rather unclear and I am not satisfied that this is anything more than an error on the part of Mr Tsai in confusing his current account with his savings account. I am therefore not satisfied that there has been a breach of the Disclosure Order.
285. **RBS account 10076584: Allegation 12** The Applicants have found references to this bank account in various documents in the course of their investigations. It was not disclosed in the First Affirmation. In his Third Affirmation Mr Tsai says that this was his current account but is now closed. There seems to be no evidence to dispute this. This allegation is therefore not proven.
286. **RBS account 10814046: Allegation 13** The Applicants have found a reference to this in a bank statement discovered in the course of their investigations. It was not referred to by Mr Tsai in his First Affirmation. In his Third Affirmation he says that this account was closed in May 2015. There seems to be no evidence to dispute this and this allegation is therefore not proven.
287. **RBS account 11421704: Allegation 14** The Applicants have found a reference to this account in the documents uncovered during the course of their investigations. It was not disclosed in Mr Tsai's First Affirmation. In his Third Affirmation Mr Tsai says that this account is dormant. He says that he checked with his local branch on 30 March 2017 but they were unable to locate it. In the light of this evidence I find that this allegation is not proven.
288. **Procredit Bank, Bulgaria IBAN number BG18PRCB92301029446617: Allegation 17.** The Applicants found evidence that Mr Tsai had a bank account with Procredit Bank. This was not disclosed in his First Affirmation. In his Third Affirmation Mr Tsai said that he had an interest in this account, the account was set up by his property agent in Bulgaria in the name of Ji-Chuen Tsai and Yueh Taoh Chang Tsai. He said he thought that the balance is the equivalent of about £8000. In his Fourth Affirmation he did not retract this admission but said

that he had not operated the account for many years and had forgotten about it. I consider this to be a technical breach only of the Disclosure Order and impose no separate penalty.

289. **First Commercial Bank in Taipei account 10250162741: Allegation 19** The Applicants located a bank statement for this account in the joint names of Mr and Mrs Tsai. Mr Tsai failed to disclose this in his First Affirmation. In his Third Affirmation he referred to this bank account admitting that it was his and saying that the balance was worth the equivalent of about £65. In his Fourth Affirmation he says that this was opened more than 30 years ago and has not had any activity. He had forgotten its existence. I consider this to be a technical breach only of the Disclosure Order and impose no separate penalty.
290. **JJJ Newport LLC/9136 Honey Maple Avenue, Las Vegas and JJJ Marina Estates LLC/1901 Newport Bay Drive, Las Vegas: Allegations 30 and 31** In his First Affirmation, Mr Tsai disclosed the existence of JJJ Newport LLC stating that it is owned by him, Mrs Tsai and John Tsai and that it is a corporate vehicle owning a detached house at 1901, Newport Bay Drive in Las Vegas. He gave the value of it as £510,000 and said that he would have one third of the benefit of it if it was sold. In fact on investigation the Applicants found that the property owned by JJJ Newport LLC is not that house but another house, 9136 Honey Maple Avenue in Las Vegas. The Newport Bay Drive house is owned by different corporate vehicle called JJJ Marina Estates LLC which was not disclosed by Mr Tsai. In his Third Affirmation Mr Tsai admitted that he has an interest in JJJ Newport LLC which owns a number of properties in Las Vegas including 9136 Honey Maple Avenue and he says that he does not have any interest in JJJ Marina Estates. Allegation 30 is that Mr Tsai therefore gave incorrect information about the property owned by JJJ Newport LLC and Allegation 31 is that he failed to disclose the existence of JJJ Marina Estates LLC.
291. In his Fourth Affirmation Mr Tsai says that he mixed up the companies because he did not have any records to hand at the time. He says that he has had no interest in JJJ Newport LLC since 2010 and that the property was purchased after he ceased have an interest in the company. He says that he has had no interest in JJJ Marina Estates LLC since January 2015. He maintained that evidence in examination in chief. He said that he disposed of his one third interest in JJJ Newport LLC in 2010 to his wife and his son but did not receive any money for that from them. The Honey Maple Avenue property he says is valued at about £100,000. He said further that he thinks that his son lived at the 1901 Newport Bay Drive property at least between 2008 and 2015. As regards JJJ Marina Estates LLC he said that until 2015 he had about 5% share in the company.
292. As regards these allegations I accept Mr Tsai's evidence that the misdescription of the property owned by JJJ Newport LLC in JT1 was a simple mistake. Mr Tsai's evidence in examination in chief was not challenged in cross examination. I therefore make no findings as regards these two allegations.

293. **Bulgata OOD, Bulgaria/Apartment B-22, Golden Sands Complex, Varna, Bulgaria: Allegation 32.** Allegation 32 is that Mr Tsai failed to disclose his interest in a Bulgarian company called Bulgata OOD. It is alleged that he is the manager of the company and the shareholders are purportedly John Tsai and Mrs Tsai. In his Third Affirmation Mr Tsai accepts that he has a one third shareholding in this company and that the company owns this property at Golden Sands in Bulgaria. In his Fourth Affirmation Mr Tsai says that he accepts that he and his wife owned the shares in this Bulgarian company and that it owns a flat in the Golden Sands Complex in Bulgaria. He gives the value at about £100,000. He says:

“Owing to the time pressures in having to provide all of this information, my bad health, poor memory and inadequate legal advice I omitted to provide information about this company. Also it has always been managed by the estate agent locally and the annual return has been negative since 2005 due to its nature of short seasonal holiday property (10 weeks rentable in summer per year). The rental income cannot cover the cost of maintenance and agency fees at all”.

294. In examination in chief, Mr Tsai said in fact his son John also own some of the shares of the company and he thought that they owned one third each. Other than that, he maintained the evidence given in the Fourth Affirmation and this was not challenged in cross examination.

295. I find that this was a breach of the Disclosure Order but I am prepared to accept Mr Tsai’s explanation that he forgot about this property because it is managed by local agents. Mr Tsai has admitted the breach and has not retracted that admission. I therefore impose no separate penalty in relation to this breach.

296. **Red Porsche: Allegation 36** When Mr Tsai was served with the Freezing Order, he was stopped in the road by the process server Mr Wright whilst he was driving a red Porsche car. Mr Tsai referred to the incident in the body of his First Affirmation but he did not list the car in JT1. In his Third Affirmation he also states that his wife owns the red Porsche which she bought in 1994 but he says that he makes use of this and another Porsche Cayenne. In his Fourth Affirmation he says that the car has an estimated value of less than £5000. He says it is his wife’s vehicle and he is looking after it while she is absent from the UK. He maintained this evidence in examination in chief and this was not challenged in cross examination. I make no finding as to this asset since it seems of limited value.

297. **Halifax savings accounts 10978868 and 10978769: Allegation 43** These accounts are held in Mr Tsai’s own name and he failed to disclose them in his First Affirmation. He disclosed these in his Third Affirmation saying that the balances were zero. This was not challenged by the Applicants in cross- examination. I find that Mr Tsai’s acceptance in his Third Affirmation that he should have disclosed these accounts is true but I am prepared to treat this as a technical breach only and not impose a separate sentence.

298. **Bank accounts with Sinopac in Taipei numbered 046-004-002550-8 and 046-008-0001688-2: Allegation 46** Mr Tsai failed to disclose these two bank accounts in his First Affirmation. In his Third Affirmation he disclosed these. In his Fourth Affirmation Mr Tsai confirmed this admission stating that he opened these accounts more than 10 years ago and that they have a small balance and are effectively dormant. He maintained this evidence in examination in chief and this was not challenged in cross-examination. I find that Mr Tsai was in breach of the Disclosure Order in relation to these accounts but I impose no separate penalty.
299. **Loan to Andrew and Pui Lai Tsai of £210,000: Allegation 52** The Applicants allege that Mr Tsai has failed to disclose any interest in a loan that he made to his son and daughter-in-law on 3 October 2009. This loan was not disclosed in either Mr Tsai's First or Third Affirmation. In his Fourth Affirmation Mr Tsai says that this was not a loan but a gift made by his wife and him to his son and daughter-in-law because they were in a position to be able to help their children. I make no finding as to this allegation. As I stated in relation to Allegation 35, it is often the case that loans made by parents are ultimately not enforced and it is unlikely that this would ever be a valuable asset against which any judgment against Mr Tsai could be enforced.
300. **Failure to provide documents requested by the Applicants to substantiate assets: Allegation 51** I considered that this allegation is part and parcel of the overall conduct of Mr Tsai in failing to make disclosure, changing his evidence both before and during the course of the trial and generally making failing to abide by both the spirit and the letter of the Freezing Order. However as I have taken that conduct into account as an aggravating factor when sentencing for the substantive breaches, I do not impose a separate penalty in relation to this breach.

### **Overall penalty**

301. The decisions I have reached on the appropriate penalty for each allegation I have found proven are summarised in the Schedule to this judgment. At this point I must step back and consider the fairness of the total sentence of imprisonment to be imposed on Mr Tsai.
302. Having regard to the limit of 24 months' imprisonment that can be imposed as a maximum penalty, a total period of 18 months' imprisonment is the appropriate sentence for Mr Tsai's breaches of the Freezing Order. Although the main thrust of the committal application has been the failures of Mr Tsai to disclose information and the false information he has given in purported compliance with the Freezing Order I consider it is appropriate to indicate that the punitive portion of this sentence is 12 months. If Mr Tsai were now to show that he will comply fully with the Freezing Order it would be open to him to apply to the court to vary the sentence of 18 months' imprisonment but not to less than 12 months. This is not, of course, binding on any future court.

### **DEBARRING ORDER**

303. The Liquidators also seek an order providing for Mr Tsai to be debarred from defending the claims against him unless he provides proper asset disclosure in compliance with the Freezing Order, including documents to substantiate his contentions about his assets.
304. Such a debarring order is appropriate in order to incentivise Mr Tsai to provide proper asset disclosure. The authorities identified below make clear that the Court should be ready to make a debarring order in support of a freezing order, in order to provide a respondent with an incentive to comply, and that this power should be exercised in particular in cases where the respondent has absconded from the jurisdiction and has acted in breach of asset disclosure obligations in a freezing order.
305. In *Stolzenberg v CIBC Mellon Trust Co Ltd* [2004] EWCA Civ 827, (*‘Stolzenberg’*) the Court of Appeal upheld the decision of Etherton J (as he then was) not to set aside judgment entered against the appellants because the appellants had failed to comply with previous ‘unless’ orders made to secure compliance with freezing orders. Those ‘unless’ orders had been made because of a complete failure on the part of the appellants to respond to the disclosure orders and the appellants continued to fail to take any steps to comply with the ‘unless’ orders. Arden LJ (with whom Ward LJ and Sir William Aldous concurred) said at [161]:
- “[The] legitimate aim in imposing a sanction is to secure compliance with court orders, which in the instant case were made to ensure the effectiveness of freezing orders. The imposition of a sanction is proportionate if it is reasonably necessary for achieving that aim. The essence of the right of access to court is not destroyed because the litigant has the opportunity to seek relief against the sanction.”
306. In *Lexi Holdings plc v Luqman* [2007] EWCA Civ 1501 (*‘Lexi Holdings’*), David Richards J had, on the application of the administrators of the claimant company made a series of interlocutory orders including world-wide freezing orders, orders for disclosure of assets, disclosure of the location of various misappropriated assets and for the disclosure and preservation of documents. The Court of Appeal noted at paragraph 8 of its judgment that the administrators had found only a few documents in the company’s offices and that there was evidence that the company documents had been removed, concealed or destroyed. The administrators applied to Briggs J for ‘unless’ orders against one of the defendants in the action who was not an officer, shareholder or creditor of the company. That defendant was the father of the managing director of the claimant company who, the Court of Appeal recorded, was in prison having been sentenced to 18 months for contempt of court. The application for an order debarring the defendant from defending the action was made on the grounds that he had not complied with the order for the disclosure of assets because his written evidence that he had no property or assets or only negligible assets to disclose was incredible.
307. Briggs J had refused to make an ‘unless’ order debarring the defendant from defending the claim against him if he failed to comply with the disclosure aspects of a freezing order. The Court of Appeal reversed the judge and imposed an ‘unless’ order. Mummery LJ concluded

that on the material before the court, the defendant's evidence was incredible and that the judge should have made an 'unless' order, which, if not complied with, would result automatically in the defendant being debarred from defending the claim against him.

308. In *JSC BTA Bank v Ablyazov (No 3)* [2011] 1 All ER 1093, Christopher Clarke J concluded that he was entitled to make a debarring order to secure compliance with the court's orders for disclosure of information pursuant to a freezing order, even though there was an extant application challenging the jurisdiction of the court to hear the proceedings against a foreign defendant. This case also concerned the disclosure requirement imposed to police a freezing order. He said at [138]:

“In my judgment if the court makes an order for disclosure for information or documents it is entitled, in the event of non-compliance, to order that if such non-compliance is persisted in the Claimant will be at liberty to enter judgment. Were it otherwise, in many cases the order will be without effect”.

309. The Court's power to make orders in these terms in this context and the appropriateness of doing so were confirmed by *JSC BTA Bank v Ablyazov* [2012] EWHC 455 (Comm). Teare J's judgment was given in circumstances where he had heard a two week committal application against Mr Ablyazov but Mr Ablyazov failed to attend the hearing when judgment finding him to be in contempt was handed down, imposing an immediate custodial sentence of 22 months imprisonment. But Mr Ablyazov had gone into hiding so the warrant for committal could not be executed. It was in those circumstances that the claimant bank issued the application for a further disclosure order including a debarring provision.

310. Teare J recognised that in theory a further disclosure order would give the claimant an opportunity to bring forward a further contempt application arising out of the same facts. But he said any such application would face formidable problems because Mr Ablyazov had already been sentenced for failing to disclose the assets which were the subject of the first contempt application and had received almost the maximum available sentence. He therefore decided to make the further disclosure order which was sought. He then turned to consider whether he should direct that unless Mr Ablyazov complies with the two orders which he proposed to make, his defences to the action against him should be struck out and the claimant would be at liberty to enter judgment in default. The judge made clear that the 'unless' order was sought to bring further pressure on Mr Ablyazov to comply with the disclosure order. He held that that was legitimate in principle and supported by authority: “Were it otherwise, the court would be powerless when faced with a defendant who refused to comply with an order for the disclosure of his assets and when sentenced to be imprisoned for his contempt of court went into hiding in order to avoid the execution of that sanction.” (paragraph [51]). He emphasised

“52. The unless order would not be made because the court is indignant that the defendant has flouted the court's disclosure order, but because the unless order may cause the defendant to reconsider his position and comply,

belatedly, with the disclosure order. Whether it is appropriate to make such an order in any particular case will depend upon a consideration of the particular circumstances of the case.”

311. Accordingly, Teare J made an order that Mr Ablyazov be debarred from defending the claims made against him unless he surrendered to the Tipstaff and made proper disclosure of all his assets and dealings with them. Teare J’s decision was upheld by the Court of Appeal ([2012] EWCA Civ 1411). Rix LJ (with whom Maurice Kay LJ agreed) reviewed the domestic and Strasbourg jurisprudence on the power of the court to make orders and impose sanctions in aid of a freezing order as well as issues of fairness and proportionality. He too stressed the purpose of the ‘unless’ order:

“116. Thus the judge granted the unless orders, not because the fairness of a trial had been or was likely to be prejudiced in relation to the determination of its issues in themselves, but so that orders of the court, which had been made in the interests of justice, could be supported against a recalcitrant litigant; so that that recalcitrant litigant, Mr Ablyazov, could be encouraged, by the threat that otherwise his litigation would be lost, to comply with the orders of the court and its pursuit thereby of the interests of justice; and so that the opposing party in the litigation, the bank, would not be unfairly prejudiced by the need to conduct litigation which Mr Ablyazov was both treating with contempt and at the same time seeking to make, ultimately, more or less worthless. In such circumstances, without proper compliance with the orders of the court there was a substantial risk of injustice”.

312. The Applicants submit that the present case is an appropriate one for the making of a debarring order in the terms set out above. In circumstances where he has demonstrably lied about his assets, Mr Tsai should be incentivised to tell the truth and to provide documentary evidence to substantiate his explanations.

*Discussion on the application for a debarring order*

313. I do not consider that it is appropriate in this case to impose a debarring order. In this case, unlike in the *Stolzenberg* case there has been no ‘unless’ order made against Mr Tsai putting him on notice that he faces the risk of being precluded from defending the proceedings if he fails to comply with the Freezing Order

314. The position here is different from the position in the other cases where debarring orders have been granted, because here the Applicants have had access over several months to all the documents held by the claimant company. As is apparent from my discussion of the 52 allegations of contempt, their detailed analysis of that documentation, and the investigations prompted by that information have enabled them to identify a large number of assets which Mr Tsai had not disclosed. The situation here is different from that in the *Ablyazov* litigation



where the claimants were powerless to find out any information about his assets other than through the disclosure orders of the court or from that in *Lexi Holdings* where the administrators found only very few documents left in the company's offices.

315. I am also concerned that there are both conceptual and practical issues arising here from an attempt to combine the execution of a warrant the committal with an 'unless' order in the terms sought. None of the cases to which I have been referred combine the two forms of relief. In *Lexi Holdings* there seems to have been no 'unless' order made against the former managing director who was imprisoned for 18 months for contempt. It would be impracticable, in my judgment, to impose an obligation on Mr Tsai to make a further affirmation in circumstances where he is shortly to be placed in custody for some months. If I were to make a debarring order in the terms sought, I would need to set the date for compliance many months into the future because we do not know precisely when Mr Tsai will be released or how much opportunity he will have whilst he is in custody to make any inquiries that he needs to make in order to finally to give full disclosure. Conceptually I also consider it is inappropriate to combine the two kinds of sanction. I recognise of course that the debarring order is not a punishment for past behaviour but an incentive to better future conduct. But the committal to prison has two functions and one of those is also to encourage compliance with the order already made. I referred at the start of this judgment to the guidance of the Court of Appeal in *Solodchenko* [2011] EWCA Civ in a case of continuing breach the court may indicate what portion of the sentence should be served in any event as punishment for past breaches and what portion the court might consider remitting in the event of prompt and full compliance thereafter. That, it seems to me, is the better way to deal with incentivising full disclosure rather than combining a prison sentence with a debarring order.
316. In the circumstances in the exercise of my discretion I will not make a debarring order. However that situation may change if the Applicants become aware at some later stage of additional assets which Mr Tsai has failed to disclose and of which the court has not been made aware.

## CONCLUSION

317. **I therefore impose an overall sentence of 18 months' imprisonment.** The sentences for the individual breaches for which I have imposed a term of imprisonment are:
- a. For the breaches relating to the passport order 1, 2, 3 and 4: 15 months' for each breach to run concurrently;
  - b. For the breaches relating to the bank accounts breaches 5 (4 months), 9 (10 months), 15 (10 months), 16 (4 months), 18 (18 months), 39 (18 months), 40 (18 months), 41 (18 months), 42 (18 months), 44 (10 months) and 45 (10 months) to run concurrently;
  - c. For the breaches relating to real property breaches 20/21/22 (16 months), 23/24 (16 months), 25/26 (16 months), 27/28 (18 months), 29 (18 months), 47 (16 months), 48 (18 months) and 49 (16 months) to run concurrently;

- d. For breach 35 (loan to Andrew), four weeks;
- e. For breach 50 (loan to Entatech), 6 months.

318. The breaches that I have found to be proven but for which no separate penalty is imposed are breaches 17, 19, 32, 43 and 46.

319. The allegations that I have found to be not proven are 10, 11, 12, 13, 14, 29 (as regards Tan King Road), 37, 38

320. The allegations in relation to which I have made no finding are 8, 30, 31, 36 and 52.

321. Allegations 6 and 7 were not pursued. Allegations 33, 34 and 51 are taken into account in relation to other alleged breaches.

*POST SCRIPT*

322. After this judgment was in an advanced state of preparation, I received a letter from Mr Tsai's solicitors Neil Davies & Partners dated 13 July 2017 asking me to adjourn handing down judgment to September 2017. The letter attached a copy of an interim report of a clinical psychologist Dr Philip S Moore BSc, DClinPsy who recommends that a full psychological assessment be carried out on Mr Tsai, a process that may take about 9 weeks. During Dr Moore's preliminary visit, Mr Tsai completed a psychometric self-report measure of his mood. His answers indicated a 'severe' level of depression anxiety and stress. Mr Tsai reported that he had investigated over the internet methods of hanging to cause suicide whilst being detained.

323. Mr Tsai also completed for Dr Moore a standardised cognitive assessment of initial memory, delayed memory, concentration, speed of information processing and executive function. Dr Moore records that Mr Tsai's initial memory score "put him in the bottom 0.5 percent compared to age related healthy peers". After a short delay, Mr Tsai's memory faded at an accelerated rate "meaning his delayed memory score is less than the bottom 0.1 percent compared to age related healthy peers". Dr Moore concludes that Mr Tsai "appears to have 'severe' cognitive dysfunction" and that he should be urgently assessed by a neurologist. Mr Tsai should also be considered as an active suicide risk.

324. I decided that I should not adjourn the handing down of this judgment. The description of Mr Tsai's behaviour when he was being examined by Dr Moore is entirely inconsistent with his conduct during the trial. In giving evidence Mr Tsai displayed no difficulties with either short term or long term memory, with levels of concentration or with tiredness. His answers to questions were at all times pertinent and coherent, even if, as I have held, they were mostly untrue. He showed throughout his time in the witness box a comprehensive and immediate grasp

of his case on the many different assets about which he was questioned; a full recollection of the contents of his affirmations and of the chronology of the earlier Court of Appeal proceedings.

325. Mr Tsai’s behaviour in the recent litigation was not out of character as Dr Moore appears to have been told. It was in keeping with much dishonest behaviour over a number of years both in his general business dealings and his conduct during the earlier court proceedings brought by HMRC. Mr Tsai has been a man of substantial resources, both financial and intellectual. I do not believe that he has suffered the kind of serious, debilitating cognitive impairment that Dr Moore describes over that whole period without seeking medical assistance and there is no evidence of that.

I accept that the period between the end of the trial and the hand down of judgment must be a very worrying time for Mr Tsai. I see no point prolonging that period given that his anxiety and stress cannot of itself be a reason to defer handing down of the judgment and is not a reason to desist from imposing the appropriate custodial sentence.

**CASE NO CR-2013-005582**

**JULIE ANNE PALMER AND NICHOLAS EDWARD REED  
(JOINT LIQUIDATORS OF CHANGTEL SOLUTIONS UK LIMITED  
(IN LIQUIDATION))**

**- and -**

**JI-CHUEN JASON TSAI  
SCHEDULE TO JUDGMENT ON  
APPLICATION TO COMMIT FOR CONTEMPT**

**SUMMARY OF FINDINGS**

<b>Allegation</b>	<b>Description</b>	<b>Liability [paras of judgment]</b>	<b>Penalty</b>
1 to 4	Failure to deliver up Taiwanese passport either immediately or on the return date 22 February 2017; use of Taiwanese passport to travel to Taiwan on 22 February 2017; failed to deliver up Taiwanese passport until 3 March 2017	Proven [105] – [124]	15 months’ imprisonment for each count to run concurrently

5, 6 and 7	RBS acc. no. 10074905 sort code 16-33-17 – Allegation 5 - falsely stated that it was owned solely by Mrs Tsai. Allegation 6 – falsely stated that it had been closed in 2014. Allegation 7 – failed to disclose beneficial interest	Proven [125] – [140]  Not pursued  Not pursued	4 months’ imprisonment to run concurrently with the sentences for breaches 9, 15, 16, 18, 39, 40, 41, 42, 44 and 45
8	RBS acc. no. 10095996 sort code 16-20-29 – falsely stated he was not aware of it.	No finding [283]	n/a
9	RBS acc. no. 10125402 sort code 16-13-05 - falsely stated that it was solely owned by Mrs Tsai.	Proven [150] – [156]	10 months’ imprisonment to run concurrently with the sentences for breaches 5, 15, 16, 18, 39, 40, 41, 42, 44 and 45
10	RBS acc. no. 10819772 sort code 16-33-17 – falsely stated that it contained £59,000.	Not proven [284]	n/a
11	RBS acc. no. 10819781 which contained £57,460 - failed to disclose beneficial ownership	Not proven [284]	n/a
12	RBS acc. no. 10076584 sort code 16-33-17 - failed to disclose existence of, and interest in this account	Not proven [285]	n/a
13	RBS acc. no. 10814046 sort code 16-33-17 - failed to disclose existence of, and interest in this account	Not proven [286]	n/a
14	RBS acc. no. 11421704 sort code 16-33-18	Not proven [287]	n/a

	- failed to disclose existence of, and interest in this account		
15	RBS acc. no. 10127057 sort code 16-13-05 - failed to disclose existence of, and interest in this account.	Proven [150] – [156]	10 months' imprisonment to run concurrently with sentences for breaches 5, 9, 16, 18, 39, 40, 41, 42, 44 and 45
16	Halifax acc. no. 10978660 sort code 11-00-58 - failed to disclose existence of, and interest in this account	Proven [141] – [147]	4 months' imprisonment to run concurrently with the sentences for breaches 5, 9, 15, 18, 39, 40, 41, 42, 44 and 45
17	Procredit Bank, Bulgaria acc IBAN number BG18PRCB92301029446617 - failed to disclose existence of, and interest in this account	Proven [288]	No separate penalty
18	DBS bank accounts in Singapore account number 001-034316-4-031 in the name of Mrs Tsai and account number 0013-000725-1 in the name of Jen Yen Chu – failed to disclose the existence of and his interest in these accounts	Proven [254] – [259]	18 months' imprisonment to run concurrently with the sentences for breaches 5, 9, 15, 16, 39, 40, 41, 42, 44 and 45
19	First Commercial Bank, Taipei acc. no. 10250162741 -- failed to disclose existence of, and interest in,	Proven [289]	No separate penalty
20/21/22	Apartment 214, 51 Sherborne Street, Birmingham B16 8FP (approx value £350,000) – falsely stated that he had a tenancy 1 August 2015 to 31 July 2016	Proven [269] – [275]	16 months' imprisonment to run concurrently with each other and with the sentences for breaches 23/24, 25/26, 27/28, 29, 47, 48 and 49

	<ul style="list-style-type: none"> <li>– falsely stated that the property was owned by Ai-Chang Cheng</li> <li>– failed to disclose his beneficial interest in the property</li> </ul>		
23/24	<p>Apartment 338, Canal Wharf, 14 Waterfront Walk, Birmingham B1 1SR (approx value £130,000)</p> <ul style="list-style-type: none"> <li>– falsely stated that it was solely owned by Shu Hua Chang</li> <li>– failed to disclose his beneficial interest in it</li> </ul>	Proven [202] – [208]	16 months' imprisonment to run concurrently with each other and with the sentences for breaches 20/21/22, 25/26, 27/28, 29, 47, 48 and 49
25/26	<p>1 The Coppice, Old Park, Telford TF3 4TF (approx value £400,000)</p> <ul style="list-style-type: none"> <li>– falsely stated that it was solely owned by Shu Hua Chang</li> <li>– failed to disclose his beneficial interest in the property</li> </ul>	Proven [209] - [218]	16 months' imprisonment to run concurrently with the sentences for breaches 20/21/22, 23/24, 27/28, 29, 47, 48 and 49
27/28	<p>2 The Coppice, Old Park, Telford TF3 4TF (approx value £650,000)</p> <ul style="list-style-type: none"> <li>– falsely stated that he had sold the property to the Tsai Lau-Chi Charitable Foundation on 25.09.13.</li> <li>– failed to disclose his beneficial interest in it</li> </ul>	Proven [260] - [267]	18 months' imprisonment to run concurrently with the sentences for breaches 20/21/22, 23/24, 25/26, 29, 47, 48 and 49
29	<p>Residential property at 12F-1, No 6, Tan King Road, TanShui, Xing Pei City 25161 ('Tan King Road') and office property at 12F-1, 200, Section 1, Dun Hua South Road, Taipei ('Dun Hua South Road')</p> <ul style="list-style-type: none"> <li>– failed to disclose his interest in these properties</li> </ul>	<p>Not proven as regards Tan King Road [185] -[188]</p> <p>Proven as regards Dun Hua South Road [185] – [193]</p>	<p>n/a</p> <p>18 months' imprisonment to run concurrently with the sentences for breaches 20/21/22, 23/24, 25/26, 27/28, 47, 48 and 49</p>

30	JJJ Newport LLC/ 9136 Honey Maple Avenue, Las Vegas -- gave false information about the property owned by this company by saying that it was 1901 Newport Bay Drive Las Vegas.	No finding [290] – [292]	n/a
31	JJJ Marina Estates LLC/ 1901 Newport Bay Drive Las Vegas, -failed to disclose interest in this company.	No finding [290] – [292]	n/a
32	Bulgata OOD, Bulgaria/Apartment B-22, Golden Sands Complex, Varna, Bulgaria -- failed to disclose interest in this company	Proven [293] - [295]	No separate penalty
33	Sunrise Property Development Ltd - failed to disclose his interest his Taiwanese company (which owns, directly or indirectly, Dun Hua South Road).	See Allegation 29	See Allegation 29
34	Lead Summit Ltd (incorporated in the Seychelles) or Richman Investment Co Ltd (incorporated in Anguilla).	See Allegation 29	See Allegation 29
35	Receivable in respect of loan of £1.4 million to Andrew Tsai – failed to disclose interest in this receivable	Proven [234] – [247]	Four weeks' imprisonment
36	Porsche car Registration N6YTC - failed to disclose interest in this asset	No finding [296]	n/a
37	Edificio Benal Beach, Apartment M 505, Block 2, Av del Parque, Malaga, Spain (approx value £40,000)	Not proven [181] – [184]	n/a

	- falsely stated that property was wholly owned by Mrs Tsai		
38	Apartment 202, 2 <sup>nd</sup> Floor, Section B, Isla De Poniete, Benalmadena, Spain. (approx value £150,000) – Falsely stated that property was wholly owned by Mrs Tsai	Not proven [181] – [184]	n/a
39	Taipei Fubon Commercial Bank acc. no. 950-800-34328-3 - failed to disclose existence of or interest in account with balance of £6,338,012	Proven [165] – [172]	18 months' imprisonment to run concurrently with the sentences for breaches 5, 9, 15, 16, 18, 40, 41, 42, 44 and 45
40	Taipei Fubon Commercial Bank acc. no. 950-800-34327-8 - Failed to disclose existence of or interest in account with balance of £3,927,702	Proven [165] – [172]	18 months' imprisonment to run concurrently with the sentences for breaches 5, 9, 15, 16, 18, 39, 41, 42, 44 and 45.
41	Julius Baer & Co Ltd bank in Hong Kong acc. no. 9835508 - failed to disclose his interest in this account holding balance of £2,062,020	Proven [157] – [164]	18 months' imprisonment to run concurrently with the sentences for breaches 5, 9, 15, 16, 18, 39, 40, 42, 44 and 45
42	Julius Baer & Co Ltd bank in Hong Kong acc. no. 9835568 -- failed to disclose the existence of and his interest in this account holding balance of £32,822	Proven [157] – [164]	18 months' imprisonment to run concurrently with the sentences for breaches 5, 9, 15, 16, 18, 39, 40, 41, 44 and 45
43	Halifax bank acc. nos. 10978868 and 10978769 - failed to disclose the existence of and his interest in these savings accounts	Proven [297]	No separate penalty



44	Nine bank accounts with Banco Bilbao Vizcaya Argentaria, S.A ('BBVA') in Spain; three in the name Ai Chang Cheng (BBVA bank accounts numbers ending 78010, 47025 and 47032); three in the name of Shu Hua Chang (BBVA bank accounts numbers ending 78027, 48028 and 48035) and three in the name of Jen-Yen Chu (BBVA bank accounts numbers ending 18129, 10024 and 49039) – failed to disclose the existence of and his interest in them	Proven [248] – [253]	10 months' imprisonment to run concurrently with the sentences for breaches 5, 9, 15, 16, 18, 39, 40, 41, 42 and 45
45	Nine bank accounts with Solbank three in the name of Ai Chang Cheng (Solbank accounts ending 32606, 70202 and 93037); three in the name of Shu Hua Chang (Solbank accounts ending 32507, 80203 and 20306) and three in the name of Jen Yen Chu (Solbank accounts ending 45711, 10206 and 50309) – failed to disclose the existence of and his interest in them	Proven [248] – [253]	10 months' imprisonment to run concurrently with the sentences for breaches 5, 9, 15, 16, 18, 39, 40, 41, 42 and 44
46	Bank accounts with Sinopac in Taipei numbered 046-004-002550-8 and 046-008-0001688-2 - failed to disclose the existence of and his interests in these accounts	Proven [298]	No separate penalty
47	33 Park Lane, Old Park, Telford, Shropshire, TF3 4TE – failed to disclose an interest in this asset	Proven [219] – [224]	16 months' imprisonment to run concurrently with the sentences for breaches 20/21/22, 23/24, 25/26, 27/28, 29, 48 and 49
48	332 Canal Wharf, 14 Waterfront Walk, Birmingham, B1 1SR (approx value £250,000) - failed to disclose interest in this asset	Proven [276] – [281]	18 months' imprisonment to run concurrently with the sentences for breaches

			20/21/22, 23/24, 25/26, 27/28, 29, 47 and 49
49	Apartment 44, Temple House, 24 Temple Street, Birmingham, B2 5BG (approx value £120,000) – falsely stated that the asset is solely owned by his wife	Proven [173] – [180]	16 months' imprisonment to run concurrently with sentences for breaches 20/21/22, 23/24, 25/26, 27/28, 29, 47 and 48
50	Receivable in respect of loan to Entatech in the sum of £2,311,730 – falsely stated that this receivable was owned by Shu Hu Chang	Proven [225] – [233]	6 months' imprisonment
51	Failure to provide documents which the Liquidators have reasonably requested to substantiate his asset disclosure.	Taken into account in sentencing for other breaches [300]	
52	Failure to disclose his interest in a loan to Andrew Tsai and Pui Lai Tsai in the sum of £210,000	No finding [299]	n/a