Neutral Citation Number: **[2024] EWHC 2568 (KB)**

Case No: KB-2024-002894

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10th October 2024

Before :

MR JUSTICE LINDEN

- -

Between :

MS SPYRIDOULA-MARIA ARMENIAKOU	**Applicant/ Claimant**
- and -	
MR JAMES ALEXANDER SCOTT THOMSON	**Respondent/ Defendant**

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Alastair Tomson and Zara McGlone (instructed by Stokoe Partnership Solicitors) for the Applicant/Claimant
Gideon Shirazi (instructed by Cooke, Young & Keidan LLP) for the Respondent/Defendant

Hearing date: 13 September 2024

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Mr Justice Linden:

Introduction

1. On 12 August 2024, at an urgent without notice hearing in the Commercial Court, His Honour Judge Pelling KC made an interim order ("the Interim Order") against the Respondent which included a freezing order ("the FO") in relation to his assets in England & Wales up to the value of £11 million, and an asset disclosure order ("the ADO") in relation to his assets worldwide. The

Judge's reasons are set out at [2024] EWHC 2136 (Comm). The Interim Order was made pursuant to section 25 of the Civil Jurisdiction and Judgments Act 1982 in support of proceedings which the Applicant intended to bring in Greece against her former husband, the Respondent, arising out of a mediation agreement which they reached on 12 June 2022 ("the Mediation Agreement") and which formed the basis for their divorce. The Judge also ordered that the proceedings be transferred to the general King's Bench Division.

2. On 9 September 2024, I rejected an application by the Respondent to vary the ADO so that he would not be required to comply with it before the return date, which was scheduled for 13 September 2024, or alternatively so that the required information was disclosed into a confidentiality club which did not include the Applicant or any of her current lawyers, whether in England or in Greece. However, I varied the ADO so that the information was required to be disclosed into a confidentiality club of which the members on the Applicant's side comprised only her lawyers in England, as had been proposed by the Applicant as an interim measure for pragmatic reasons. I also gave permission to the parties to rely on expert evidence of Greek law, and I extended the deadline for service of the Applicant's evidence in reply to the Respondent's to 1pm on 10 September 2024.

3. By the time of the return date the principal positions of the parties were as follows:

    i) By a written application dated 21 August 2024, the Applicant sought the continuation of the Interim Order. At the hearing before me, however, Mr Tomson contended that the FO should be extended to apply to the

Respondent's assets worldwide ("a WFO"). That was the Applicant's application to HHJ Pelling KC, which he had rejected. But Mr Tomson argued that a WFO was now appropriate in the light of the information which had been disclosed by the Respondent pursuant to the ADO. His case was that this information was false and/or inaccurate in material respects, that this increased the concern that the Respondent was likely to dissipate his assets and that this justified the Applicant's late change of position.

ii) The Respondent's application, dated 4 September 2024, was that the Interim Order should be discharged in its entirety on the grounds that its continuation was not justified, but also on the grounds of what he said were breaches of the duty of full and frank disclosure at the without notice hearing on 12 August. Mr Shirazi's fall-back position was that if the FO was to continue, the ADO should be discharged or varied so that it only applied to assets in England and Wales. Mr Shirazi resisted Mr Tomson's argument, which appeared for the first time in his skeleton argument exchanged on the day before the hearing, that the FO should apply worldwide. His position was that it would be unfair to extend the FO from a procedural point of view given the lack of notice and that, in any event, there was no justification for doing so.

The hearing

4. Mr Tomson's position in his skeleton argument was that the hearing should be held in private in what he said was "the usual way". He said that this was because of the confidential nature of the information before the court, including

the information which had been disclosed by the Respondent pursuant to the ADO. I did not accept that it would be necessary or proportionate to derogate from the open justice principle in this way and Mr Shirazi said that nor did he. I accepted, however, that dealing with the information which was subject to the confidentiality club in public would potentially defeat the object of the arguments in relation to the ADO (CPR Rule 39.2(3)(a)) and/or damage the confidentiality of the information (Rule 39.2(3)(c)). I therefore indicated that I was minded to deal with that information in private and subject to reporting restrictions and to conduct the rest of the hearing in public. Ultimately, Mr Tomson did not press the point and Counsel organised their submissions accordingly. I also directed Mr Tomson to file and serve a skeleton argument which redacted the information disclosed pursuant to the ADO and would therefore be available to the public, as well as a confidential unredacted version of his skeleton.

5. There were other applications and/objections which the parties wished to debate at the outset of the hearing. These were:

i) The Applicant's application for relief against sanctions dated 12 September 2024 following its failure to serve its reply evidence by the 1pm deadline on 10 September 2024. An application for an extension to 2.30pm was made at 1.22pm on 10 September 2024 but that deadline was not met in the event, the evidence being filed at 2:52pm.

ii) Mr Shirazi's objection, in any event, to the admission of the statement of Mr Antonios Kallergis dated 10 September 2024 on the grounds that

this was expert evidence for which permission had not been granted, and was not genuinely evidence in reply.

iii) Whether I should admit in evidence two witness statements and a supplementary expert report dated 11 September 2024 which were served on behalf of the Respondent.

6. I was concerned that one day was insufficient for the hearing, given that I had had limited reading time owing to the pressure of vacation business, and I did not want to waste time. I also indicated that I was unlikely to be able to give a decision that day. I therefore suggested to Counsel that I read the materials de bene esse, albeit this would be after the hearing, and then rule on all of the issues in the light of the arguments which they advanced. This was acceptable to both sides and the hearing proceeded. In the event, and despite Counsel abbreviating or cutting short their submissions, it did not finish until significantly after 5pm.

7. The information provided by the Respondent pursuant to the ADO comprised a first affirmation by the Respondent, dated 11 September 2024, which confirmed the truth of an asset list which he exhibited, and provided certain additional information. In his submissions in the parts of the hearing which were held in private, Mr Tomson challenged the veracity of key entries on the asset list and questioned others, reflecting a series of accusations, challenges and questions which had been put to the Respondent's solicitors in a letter dated 12 September 2024. Understandably, there had been no reply to that letter and Mr Shirazi also told me, in the course of the argument, and as part of his overall complaint that the Applicant's approach was unfair, that he did not have instructions on a number of the points taken by Mr Tomson.

8. At the end of the hearing I therefore directed that the Respondent reply to the 12 September letter and gave him until 18 September to do so. On 18 September, the Respondent provided a second affirmation dated 18 September 2024 which confirmed the truth of a detailed response from his solicitors of the same date, and provided certain additional information. However, this led to further solicitor's correspondence, which at the time of writing is continuing, as to whether the Respondent's evidence about his assets is accurate and truthful. Having read parts of the correspondence which were specifically drawn to my attention by the parties (which are all subject to the confidentiality club and not in the public domain) I have decided that it would not be appropriate for me to make findings on the material disclosed pursuant to the ADO without further submissions and in the context of a formal application, supported by and responded to by evidence. I explain this further, below.

Summary of decision

9. I have concluded as follows, for the reasons given below.

10. As far as the arguments about the admissibility of late evidence are concerned:

    i) I grant relief against sanctions in respect of the Applicant's reply evidence. Save in respect of Mr Kallergis' evidence, Mr Shirazi did not press this issue. The Applicant's breach was insignificant in the context of the case; at least one of the reasons for it was acceptable, namely that significant time had been wasted, at a crucial point in the timetable, with resisting the Respondent's unsuccessful application to vary the ADO and, in effect, attempting to enforce the order made by the Judge; overall it is in accordance with the overriding objective to admit it.

ii) I give permission for the Applicant to rely on the statement of Mr Kallergis. To the extent that this is expert evidence, and therefore subject to CPR Part 35, I give permission for the Applicant to rely on it although I note that Mr Kallergis appears to be reporting what is shown by computer data rather than giving opinion evidence. His evidence is evidence in reply in the sense that it is addressed to the Respondent's evidence that he was not responsible for the blocking of the Applicant's PYRs (as to which see, further, below), albeit I accept that this evidence could have been given "first time round". His evidence is not of decisive importance. Moreover, the Applicant raised similar points in her evidence which the Respondent chose not to address in his, although it appears that he has the technical ability to do so.

iii) I give permission to the Respondent to rely on the statements and supplemental opinion dated 11 September 2024. Like Mr Kallergis' statement it is debatable whether this is actually reply evidence but, as will be apparent, my overall approach has been to consider all of the evidence available at the time of the hearing, so far as it is consistent with fairness to do so, whilst bearing in mind the risks in placing undue weight on evidence which is served late and has not been responded to.

11. As far as the substantive issues are concerned, I have concluded that:

i) The FO should be continued.

ii) I am not prepared at this stage to widen its scope to apply worldwide. If the Applicant seeks such an order she should make a formal application on notice.

iii) I will leave open the question whether the ADO should be discharged or varied on the basis that the parties may make submissions on two legal issues raised by the Respondent, if he wishes to challenge the provisional view which I have expressed on these issues below. These issues were not dealt with sufficiently in Counsels' skeleton arguments or, because of lack of time, at the hearing. In the meantime, the ADO as varied will remain in place.

Background

12. The Applicant is a Greek national. After studying art, she worked as a graphic designer from 2003. The Respondent is a British national who was brought up in England. He has a degree in Computer Science and Artificial Intelligence from the University of Sussex. They met in Brighton in May 2017 and lived together in Greece from December 2017, before marrying in September 2018. They have a daughter who was born shortly after their marriage.

13. In 2018/2019 the Respondent developed a platform called VeriArti which was initially a digital art site which sold non-fungible tokens ("NFTs"). The Applicant says that she was the graphic designer for this business. The Respondent says that he financed the business as well as developing the technology.

14. The VeriArti platform was highly successful and it evolved to become a platform for blockchain based computer games, of which there were in the order of 12 on the platform by 2020. A blockchain is essentially a computerised 'ledger' which validates and records cryptocurrency transactions through an algorithm. Blockchain technology may also be used for trading NFTs and

virtual property in computer games. Well known examples of blockchains are Bitcoin, Ethereum, Ripple and Solana, each of which has its own cryptocurrency. Cryptocurrency may be held in digital wallets, which are software applications used to access the blockchain network for the cryptocurrency in question using a password "key". The cryptocurrency is not itself contained in the wallet, but in data spread around different computers connected to the internet. The wallet allows users to connect to this data, and represent it as the cryptocurrency owned by the user.

15. There are differences between the parties as to the precise chronology and as to their respective roles in the business which was developed. The Respondent was responsible for (at least) the technical side, for the structure of the business and for the financial side. He plainly regards the business as "his" and all of the decisions about the business being "his", rather than "theirs". He maintains that the Applicant has seriously exaggerated her role in it. He says that she had an administrative role and that she had no involvement of the management of the business or decision making. Her evidence is that she worked on the graphic design side and on managing the business and its logistics, including the day-to-day administration. She was the face of the business in Greece. She managed staffing, the lease for the business's headquarters in Greece, payments and charges of the business, tax etc, as well as promoting the business in the Greek national media. She says that it was agreed and understood that they were to be equal partners in the business; he denies this.

16. In October 2020, a Greek private limited company known as Bamboo Labs IKE ("Bamboo") was incorporated. The incorporation of Bamboo represented a

formalisation of the VeriArti business, which did not previously have a separate legal personality. The Applicant and the Respondent each held 50% of the shares in this company. She says that this reflected their position as equal partners. He denies this and says that her subscription was paid for *"with my money, not hers"*. The Applicant was appointed as the sole director of the company and general manager, and the Respondent was the CEO. She says this was in part because she is a native Greek speaker and understood the Greek administrative requirements, for which she was therefore responsible. The Respondent does not dispute this but says that the appointment was *"for formal reasons"* rather than reflecting the substance of their roles.

17. The Applicant says that it was agreed that Bamboo would be the centre of operations, and that all of the staff would work in Greece. The intention was that Bamboo would issue invoices to a UK company (which was to be set up by the Respondent) for its services. She believes that money came into the business via an account in the name of the UK entity and was transferred to Bamboo to pay for overheads. She says that she understood that the UK company would be jointly owned by the parties, as would any other company through which the business was conducted. Moreover, the entire operations of the business – whatever its brand name - would always go through Bamboo. This is disputed by the Respondent.

18. In December 2020 the Respondent incorporated Vulcan Forged Limited, a UK company, to provide a blockchain based gaming eco system. This business was and is based in the UK. The Respondent was and is the sole shareholder and director of the company. The Applicant says that she was not aware of the

details of the incorporation of Vulcan Forged Limited until May 2022. Although the fact of its formation was in keeping with what had been agreed, the fact that the Respondent was sole shareholder was not consistent with their agreement that all of their business would be owned by Bamboo.

19. The VeriArti business was then rebranded as "Vulcan Forged" at the beginning of 2021 and the business issued a cryptocurrency known as PYR. The Respondent describes Vulan Forged as a game design studio. Through Vulcan Forged, the Respondent developed a number of online video games, including "VulcanVerse", which is a virtual world, or metaverse, in which a player has a character which interacts with other players. Customers buy PYR tokens with "real" money through official global online exchanges in order to access the VulcanVerse. Vulcan Forged was one of the first to offer digital land in these games, and VulcanVerse initially had 10,000 digital plots of land which could be bought by players. Members can also use PYR to trade on the platform, to upgrade their status in a game, to develop their "land" and to trade or buy weapons etc. Each time a member enters into a transaction on the platform, Vulcan Forged receives a commission.

20. Vulcan Forged grew rapidly and achieved great success as a result of which the Applicant and the Respondent became very wealthy in a very short space of time. It has over 200,000 member users worldwide, and is advertised as a global online community or ecosystem. The value of PYRs was at its peak in December 2021 when the tokens were traded at over USD 49.74 each, although their value as at 11 August 2024 was around USD 2.67. Vulcan Forged has around 120 personnel and there is ongoing technical development on new and

existing games, blockchain technology, a new metaverse offshoot known as Metascapes, and its own cryptocurrency exchange.

21. It is common ground that the accounts for Vulcan Forged Limited in respect of year ending 31 December 2021 which were filed at Companies House show that it was dormant in 2021 when this is clearly not the case. The accounts for 2022 are also more than 10 months overdue. The Applicant relies on this as part of her contention that the Respondent has been opaque and evasive about the UK business. Although the Respondent is the sole director of the company, and says that he is the driving force between the Vulcan Forged business, he says that he does not know why the company accountant filed accounts for a dormant company in 2021 and that he was totally unaware of this. He says that he cannot see the relevance of this point to the issue of dissipation of assets. He does not explain the lateness of the 2022 accounts.

22. The Respondent says that he turned to a Singaporean company known as Jenga for advice as to how the overall business should be structured. They advised that he set up a company in the British Virgin Islands to issue the PYR tokens, and that that company should be owned by a foundation based in Singapore in order to avoid what he describes as *"unnecessary income tax"*. Jenga also advised that there should be a third company which would convert tokens into real currency. Accordingly:

    i) On 20 February 2021, the Respondent set up Vulcan Forged Foundation Ltd ("Vulcan Foundation"), a Singaporean company, with him as the sole shareholder and director, which was to own the BVI company. Its

business activity is listed as 'Development of Software and Applications (except Games and Cybersecurity)'.

ii) On 23 February 2021, he set up a BVI company also called Vulcan Forged Ltd ("BVI Co"), which is a fully owned subsidiary of Vulcan Foundation. This was to be the issuer of the PYR tokens.

iii) On 12 April 2021, another Singaporean company, Elysium Tech Ptd. Ltd ("Elysium Tech") was incorporated with the Applicant as sole shareholder and director. This was the company which would convert tokens into real currency.

23. The Applicant says that the Respondent told her that he would establish a company in Singapore which would be a branch of Bamboo and therefore effectively jointly owned by them. She only later found out, in May 2022, that he had set up the two Singaporean companies, (contrary to their agreement) neither of which was owned by Bamboo. She says that she was not involved in the incorporation of Elysium Tech and that she knew nothing about having been appointed the sole shareholder of this company. The signature which appears on the share certificate and notes of the 'First directors meeting' on 12 April 2021 is not hers, although it purports to be. She has produced evidence of the Respondent corresponding from his email address as if he was her, sending her ID documents to set up the company, (she says) without her knowledge. She says that she believes that the Respondent was setting up Elysium Tech so as to use it to receive profits which should have gone to Bamboo as profits of the overall Vulcan Forged business.

24. The Respondent disputes these claims. He says that, although she was not involved in the business, the Applicant was aware of the existence of all of these companies as he had talked to her about them several times; she was well aware of being the sole shareholder and director of Elysium Tech and of the use of her documents for the purpose of incorporating it. As far as he recalls, she was sole shareholder because Elysium Tech was supposed to charge Vulcan Foundation for its services and he was advised that it would not look like an arm's length transaction if he was the ultimate shareholder of both companies. Nor was there ever any discussion or agreement that these companies would be owned by Bamboo.

25. The Respondent says that, in any event, he only took these steps on Jenga's advice. He later realised that the structure was perhaps too complex and in the end he never actually implemented the business changes to fit the corporate structure. Mr Tomson casts doubt on this claim. He says that the business' own White Paper suggested the structure including that Vulcan Foundation in Singapore would be the governance and public facing entity providing the platform for marketing and community development. Consistently with this, Vulcan Forged's terms and conditions and privacy policy are stated to be governed by Singapore law. Moreover, the organogram of the Vulcan Forged business which appears on its website includes a suite of Elysium products which are identified under a separate Elysium umbrella.

26. The relationship between the Applicant and the Respondent deteriorated over the course of 2021 and ultimately broke down in early 2022 after the Applicant discovered that the Respondent was having an affair with a member of

Bamboo's staff in Greece, Ms Zafirakis. Her account is that in 2021 he became more distant and was acting as if he was sole owner and director of the business rather than a 50/50 partner. She says that he also tried to exclude her from key projects and would give vague answers when she asked him about the business. She says that from January 2022 he because increasingly aggressive and maintained that Vulcan Forged belonged to him. He says that he was working very long hours as a result of the rapid expansion of the business, and that she has mischaracterised the stress and pressure which he was under and the toll on his mental health which the breakdown of their marriage was taking.

27. In April 2022 the Applicant discovered the affair. The Respondent said that he would break it off but did not do so. She says that the Respondent was also trying to restructure Bamboo without her agreement by making changes to staff roles. At one point he issued a paper which showed the Applicant having been removed as director and replaced by Ms Zafirakis.

28. The Applicant says that she had grown very distrustful of the Respondent and feared that he was in the process of cutting her out of the business and concealing its assets and profits. She therefore decided, given that she was sole director and joint shareholder, to conduct a search of Bamboo's offices including the Respondent's computer, as well as their shared computer at home, in order to find out what was really going on. She says that it was as a result of these searches that she discovered the information about the corporate structure established by the Respondent in February/April 2021, which I have summarised above. She says that she also found out that in February 2021, when Vulcan Forged was issuing pre-sales agreements for PYR, no payments had

been made into any of the business' bank accounts. Moreover, she discovered that the Respondent had a bank account with NatWest Bank which contained approximately £20 million which she believes is attributable to these presales agreements (the Respondent says that she had known of the account for a long time as he had frequently shown her the bank balance, and that the money was his from sales of PYR founder tokens). The Applicant also discovered evidence of the Respondent helping members of his family to set up bank accounts in various jurisdictions, she believes, so as to conceal money which would otherwise have come into Bamboo's accounts (the Respondent says he was simply helping family and friends to set up their own cryptocurrency accounts and was not sending them money as a means of concealing or dissipating assets).

29. The Applicant says that in the light of these discoveries she instructed her lawyers in Greece to initiate legal proceedings to dissolve their marriage, and to ensure that the Respondent provided all relevant details about Bamboo, the other companies that had been established, and their marital assets. In her capacity as the sole director of Bamboo, she decided that she would take control of the company and exclude the Respondent until she found out exactly what was going on.

30. On 6 June 2022 the Applicant's lawyers wrote to the Respondent on her own behalf and on behalf of Bamboo. The letter said, amongst other things, that she had recently learned of the corporate structure summarised above and that she believed that he had been using these companies to divert money away from Bamboo, which was inconsistent with the agreement that they would share the

profits of the business on a 50:50 basis. The Respondent was invited to attend a meeting with his lawyers to discuss how the issues could be resolved. The letter also instructed the Respondent to stay away from the marital home, and not to enter Bamboo's premises (whose locks had been changed) without the Applicant's approval as its director. He was instructed to cease to act as CEO and to hand over, at the proposed meeting, all company property, keys, codes, security codes email and corporate account codes, bank account codes and crypto-wallets, documents, storage devices, and any wallets or other places where he kept money belonging to Bamboo. There would also be an internal audit. It appears that Bamboo staff were also locked out that day whilst this "audit" took place, and they were not permitted to return to the office until 10 June 2022.

31. The meeting took place on 8 June 2022 and was attended by the parties and their lawyers. The Applicant's evidence is that at this meeting they discussed their respective positions but failed to reach any conclusion owing to the Respondent's behaviour. In particular, in the course of the conversation he admitted that he had initially been lying about his assets. During the meeting he left the room and went into another, private, office where he proceeded surreptitiously to use a company computer to make various transfers and execution orders. These included, at least, transferring the entire "reserve / safe operating reserve" of the company's PYR cryptocurrencies (amounting to EUR 26,649,411), which were held in a corporate reserve 'super-wallet', into his personal crypto wallet. This came to the attention of the others at the meeting and his own lawyers told him that he should not be taking such steps but, later that evening, he made a further transfer of the reserves to another wallet.

32. The Respondent does not deny this evidence but explains that he transferred the cryptocurrency because he believed that the Applicant had compromised the security of the company's PYR tokens. He says (and the Applicant denies) that at the 8 June meeting, and on several occasions afterwards, the Applicant told him that she had been involved in "*a great deal of improper and illegal conduct"*. He says that she boasted that she had engaged a 7-person team of crypto experts and hackers who had been hacking him and Bamboo employees for at least 2 months. This included hacking/mirroring his mobile phone and his home computers, placing listeners on his crypto wallets and setting up hidden cameras and microphones in his offices and the offices of other Bamboo employees. The Respondent also relies on a witness statement from a Bamboo employee, Aikaterini Tsaraosi, dated 11 September 2024, who says (amongst other things) that on 10 June 2022 the Applicant said to Bamboo staff that "we" had been monitoring their computers for weeks. There is also a statement from a second Bamboo employee who says that they agree with the statement of the first.

33. The Respondent says that on 8 June he realised that he had no choice in the moment other than to move the at-risk assets to new secure wallets. However, he does not deny that he did so surreptitiously, nor directly address the Applicant's evidence as to the further steps which he took that evening despite being told not to do so by his own lawyers.

34. On 9 June 2022 the Applicant's lawyers wrote to the Respondent's complaining about these matters.

35. There was a further meeting on 10 June 2022. The Applicant's evidence is that the Respondent was, again, dishonest about how much money he had, showing the lawyers empty crypto wallets when he had other crypto wallets with significant sums in them. She says that he was evasive even when presented with evidence although he eventually admitted, when shown evidence by the Applicant of his personal bank account with NatWest Bank, and when his own lawyers had challenged him, that he had bank accounts at various banks in England, one of which was NatWest Bank account, and that he had approximately £22 million in that account.

36. The Respondent does not address this meeting in his evidence although he says, later in his first affidavit, that the Applicant was well aware of the NatWest account. He states, however, that on 10 June 2022 he served an extrajudicial notice on the Applicant ("the 10 June notice") to which she did not reply, and that her failure to do so confirms that his account of her boasting about hacking/monitoring for two months etc is true. He also relies on her failure to disclose her alleged hacking activities and to exhibit this notice to her affidavit dated 12 August 2022 ("first affidavit") in support of her application to HHJ Pelling KC as a breach of the duty of full and frank disclosure.

37. The Applicant says that she does not recall receiving the 10 June notice and that the person who appears to have been served with it is her landlady's husband, who lived in the flat above her. In any event, her first affidavit discloses that she searched the Respondent's computers without his knowledge, the lock out and the search/audit, albeit not in as much detail as appears in the evidence served on behalf of the Respondent. Moreover, the 10 June notice does not specifically

refer to her boasting about hacking etc although it complains bitterly about the lock out on 6 June and the searches that took place at that point. I am also told that the allegation about the Applicant boasting about prior hacking of the devices of the Respondent and Bamboo staff, and the Respondent's explanation for his transferring the PYRs into his personal wallet on 8 June 2022, appeared for the first time in his first affidavit despite lengthy written exchanges between the parties in the intervening more than two years.

38. On 11 June 2022, the parties entered into a written preliminary agreement to settle the arrangements in relation to their divorce. The Preliminary Agreement is not referred to by the Applicant in her first affidavit and nor is the document exhibited. The Respondent relies on this as a further breach of the duty of full and frank disclosure, and I deal with this point below. In broad terms, it was agreed that the Respondent would:

i) Pay alimony to the Applicant of EUR 50,000 per month for 48 months;

ii) Pay her a lump sum of £10 million;

iii) Set up a trust for their daughter in the sum of £2 million;

iv) Transfer to the Applicant 250,000 Vulcan Forged PYRs (which had a value of approximately EUR 1 million at that point in time);

v) Transfer to the Applicant 11 million Edverse tokens ('EDVs'). Moreover, from 15 December 2023, at the Applicant's request and provided that he was financially able to do so, the Respondent would be obliged to buy the EDVs back from her at a price of US$ 1.2 per token i.e. for a total of US$ 13,200,000 (or EUR 12 million at the then

applicable exchange rates). In effect, this gave the Applicant a guaranteed minimum value for the EDVs, subject to the Respondent having the money to pay her for them.

39. The Applicant says that she understood from the Respondent that the EDVs were owned by him and in his possession, and that there was no doubt that he would be in a position to transfer them to her as part of the divorce settlement. In effect the overall deal was worth EUR 30 million to her. This was a 50/50 split of their notional wealth for negotiating purposes, which was at least EUR 62 million (though the Respondent disputes this). In exchange, the Applicant would, amongst other things, transfer her interest in Bamboo to the Respondent and facilitate contact between him and their daughter as well as giving him the Ferrari. She would also declare that she retained no other claim against him in respect of marital property, her contribution, or participation in the proceeds of the marriage etc, and otherwise waived any such claims.

40. By way of explanation in relation to the EDVs, at the beginning of 2022 the Respondent had become aware of a project which was being developed by Edverse Ltd ("Edverse"), a company which was co-founded by Mr Gautam Arjun. Part of that project was the development and launch of a cryptocurrency for the Edverse platform, i.e. the EDV tokens. The Respondent invested US$ 300,000 in the Edverse project which, subject to various caveats, entitled him to receive 21,428,571 EDVs once they were issued. There was a second agreement whereby he would receive 1,428,570 EDVs for services as an adviser to Edverse. The Applicant says in her first affidavit that initially the Respondent represented that he only had the 1,428,570 EDVs and showed them the

agreement relating to them but, when he was challenged on the basis that it was known that he had been an investor in Edverse, as well as an adviser, he admitted to that he had a further 22 million EDVs. Again, this allegation of lying/evasive behaviour is not specifically addressed by the Respondent in his evidence.

41. The Preliminary Agreement said that the Respondent would transfer ("will also transfer") 50% of his PYR and 50% of his EDVs to the Applicant. These and the various other amounts which were to be paid or transferred would be *"given as following:…*

> *"…*
>
> *c) the 11th/3/2022 presale agreement of [the Respondent's] EDVS as regards the 50% of those EDVS will be delegated to [the Applicant] and she will obtain the EDVS when they will be issued at the end of July 2022…"* (emphasis added)

42. The Respondent draws particular attention to this provision as it supports his evidence that, contrary to her case as explained in her first affidavit, he made clear to the Applicant that the EDVs had not at that point been issued. He says that her claim that she was misled in this regard is therefore unfounded. Moreover, the Respondent says that he told the Applicant that the EDVs were expected to be issued at the end of July 2022, as is also reflected in the provision. He also points out that his evidence, and the witness statement of Mr Arjun, supports his case that this was genuinely his understanding. The evidence is that Edverse's intention had been to launch the EDVs in the first half of June 2022 but, in late May 2022, the launch had been postponed because market conditions

were unfavourable. At the beginning of June the Respondent was then told by Mr Arjun that the aim was to launch in early July but there was also a chance that it would launch at the end of July. The Respondent had not been told of any further postponement as of 12 June 2022.

43. The parties met again on 12 June 2022 and they entered into the Mediation Agreement. So far as material, this formalised the elements of the agreement which had been reached on 11 June 2022, summarised at [38] above. The original agreement was recorded in Greek and in English. However, the version exhibited to the Applicant's first affidavit was the official independent translation of the Greek version which was signed by the parties and then provided to, and sealed by, the Greek court as part of its order dissolving their marriage.

44. As far as the EDVs were concerned, the Mediation Agreement exhibited by the Applicant provided that:

> *"The second party will deposit into the first party's account the sum of ten million (10,000,000) English pounds and will also transfer to the first party two hundred and fifty thousand (250,000) PYR crypto-coins and eleven million (11,000,000) EDV crypto-coins now in his possession, for the full settlement of the first party's claim in respect of the property acquired during their marriage (from the beginning until lawful dissolution), her contribution, her participation in acquired property, etc."* (emphasis added)

45. It went on to say that *"the foregoing shall be paid/transferred as follows"*:

"…

b) Upon the signing of the uncontested divorce agreement, [the Respondent] will remit to the aforementioned bank account the sum of three million (3,000,000) English pounds. On the same day, [the Respondent] will remit to [the Applicant] the amount of two hundred and fifty thousand (250,000) PYR crypto-coins. The said remittance – transfer will be made upon notice by [the Applicant]to [the Respondent] of [the Applicant's] the crypto wallet, to which [the Respondent] will transfer the said PYR crypto-coins. The [Applicant] shall be under the obligation not to make available on the market the PYR crypto-coins, in whole or in part, for a period of three (3) months, while after expiration of the aforesaid period of three months, she may not transfer more than fifty (50%) thereof per calendar month.

c) The eleven million (11,000,000) EDV crypto-coins will be remitted – transferred in the same manner, as described above, which were already pre-purchased by [the Respondent] on 11-3-2022. The said transfer will be made upon the signing of a SAFT agreement between the parties.

From 15/12/2023 and thereafter, [the Respondent] – upon the request of [the Applicant] and provided he is financially capable of doing so – will be obliged to purchase the aforesaid EDV crypto-coins from [the Applicant] at the price of 1.2 U.S. dollars each." (emphasis added)

46. The Respondent alleges a breach of the duty of full and frank disclosure on the part of the Applicant in that she did not exhibit to her first affidavit the original English version of the Mediation Agreement. She says that this is because the

version which mattered in law was the version which was the basis on which their marriage was dissolved by order of the court. But, in any event, the original English version does not assist the Respondent's case. It referred to the transfer of 11 million EDVs *"that he owns"*. It also said that the EDVs had been *"pre-bought"* and *"will be transferred to"* the Applicant in the same way as he would transfer the PYRs. The text of this document is consistent with the Applicant's case that there was no real doubt as to the Respondent's ability to perform his obligation to transfer the EDVs and that this part of the Mediation Agreement was represented and understood to be genuinely worth at least EUR 12 million to her.

47. It is common ground that after the Mediation Agreement was entered into there were negotiations between the lawyers to extend certain deadlines under the agreement, and amendments were then made by way of an Amendment Agreement dated 13 July 2022. As far as the EDVs are concerned, the evidence of the Respondent and Mr Arjun is that on 4 July 2022 the latter had messaged the former to say that the launch would probably take place within the next couple of weeks. The Respondent says that his lawyers were concerned to ensure that he would not be in breach of his obligations under the Mediation Agreement if he was not in a position to transfer the EDVs by the time the divorce was formalised. He says that there was no suggestion from the Applicant, when the matter was raised, that she was surprised to learn that he did not have the EDVs.

48. The Applicant's position is that this was the first time that the Respondent had disclosed that the EDVs did not exist and had not in fact been issued or

circulated by Edverse. She and her lawyers were very surprised when they were told this. However, the Respondent said that they were going to be issued imminently and that if it did not happen in advance of the divorce being finalised it would be very shortly afterwards. It was on the basis of this assurance that she was willing to accept the EDVs as part of the settlement.

49. Consistently with the Applicant's overall evidence on this point, I note that there is an email from her lawyers to the Respondent's dated 25 July 2022 which says (in Greek) that the Respondent had assured them that he would receive the EDVs on 14 July 2022. The Respondent's lawyers did not deny this. There was a further email dated 26 July 2022 in which the Applicant's lawyers said (in English) that the EDVs *"have not been published yet (even though he was declaring clearly that this was going to happen on 14-7-22)"*. This email was forwarded to the Respondent by his lawyers so that he could respond to certain questions about the EDVs (see further below). In his response, he did not deny that he had given this assurance. However, in his first affidavit the Respondent denies that he said, at any point, that the EDVs would be issued imminently, although he did think that they would be launched by the end of July 2022/the launch was "around the corner" because that is what he had been told by Mr Arjun.

50. Following the amendments, the agreement between the parties continued to state that the EDVs were now in the Respondent's possession but, as far as the timing of transfer is concerned, it now said:

> *"c) Upon the signing of the uncontested divorce agreement in front of the notary, eleven million (11,000,000) EDV crypto-coins will be remitted –*

> *transferred in the same way, as described above, which were already pre-purchased by the second party on 11-3-2022. The transfer shall be executed by the indication of a crypto-wallet in the name of [the Applicant], from [the Applicant] to [the Respondent], to which (crypto-wallet) [the Respondent] shall transfer the said EDV crypto-coins. If at the time of signing the above-mentioned consensual divorce agreement, the above-mentioned EDVS have not been issued in full, [the Respondent] shall transfer them to [the Applicant] without delay after they have been issued and have become part of its full ownership and possession."* (emphasis added)

51. By law, there was then a required period of at least 10 days before the next stage, which was the signing of the uncontested divorce deed before a notary.

52. On 13 July 2022 the 250,000 PYRs were transferred to the Applicant's two crypto wallets. However, almost immediately after this she realised that her wallets had been blacklisted i.e. she could not deal freely with the PYRs which they contained. On 20 July 2022, the Respondent accepted that he had been responsible for this. Although varying explanations were given for his actions, it appears from his email of this date that he was purporting unilaterally to enforce the agreement that the Applicant could not trade the PYRs at all for 3 months after the Mediation Agreement by preventing her from doing so. He said that the restriction would be lifted automatically after 3 months. There were various further exchanges in relation to this matter, in which the Applicant's lawyers argued that he had no right to blacklist the PYRs, but he refused to lift the blacklisting.

53. On 22 July 2022, Edverse informed the Respondent that the launch of the EDVs would not be taking place in the second half of July as planned, Edverse having been advised not to launch owing to *"the market sentiments"*. No date or expected date for the launch was given but it was said that Edverse would *"go for [launch] once we see continued strong positive market sentiment"*. The Respondent did not pass this information on to the Applicant.

54. In the 25 and 26 July 2022 emails to which I have referred, the Applicant's lawyers complained about the Respondent blacklisting the PYRs which had been transferred to the Applicant, and (amongst other things) requested an update on the EDV matter from the Respondent directly. The Respondent's lawyers forwarded his answer to the request for an update on 26 July 2022. This said that the Respondent had no special information about Edverse: *"When they choose to generate the token is entirely up to them, not me, they told me the end of July, they may or may not postpone that, I know many companies have decided to wait until there is a better market condition"*. I note that at the time that he wrote this he knew that these companies included Edverse, which had in fact cancelled or postponed the launch of the EDVs. Understandably, Mr Tomson submits that what he said was a lie or, at the very least, deliberately misleading.

55. The parties signed a divorce deed before a notary and their marriage was dissolved by mutual agreement on 27 July 2022.

56. The Respondent has paid the lump sum of £10 million in instalments and has established a trust in favour of their daughter as agreed. He has also paid the alimony sums although the Applicant says that many of the payments were late

such that, on 6 June 2024, she threatened to report the matter to the police. The Respondent's position (see, for example his letter of 23 June 2024) is that the payments to which he agreed in the Mediation Agreement are *"exorbitant"* and that it is impossible for him to pay them. In a telephone conversation on 30 July 2024 his lawyers sought to renegotiate the agreement on the basis that he could not afford them. The Applicant does not believe that he cannot afford the payments and gives evidence that he and his new partner live a lavish lifestyle: *"he frequently stays at very expensive hotels…flies in private jets…has recently opened a boutique for his fiancée and purchased an expensive car for her, and…is planning to buy a villa in Kifissia, which is one of the most expensive parts of Athens"*. The Respondent does not deny the specifics of what she alleges and accepts that he is *"not poor"* but says that his financial position has been gradually declining since 2023.

57. As far as the PYRs are concerned, on 18 October 2022 the Respondent's lawyers notified the Applicant's that the PYRs were to be unblocked on the following day. This duly took place but, when the Applicant transferred the PYRs out of the unblocked wallet into another wallet, this was challenged by the Respondent's lawyers within minutes. In November 2023, after the Applicant had decided that she wished to liquidate the PYRs, it was discovered that although one of her crypto wallets had been unblocked on 19 October 2022, another one, in which the Applicant held the vast majority of the PYRs (230,000), had been blacklisted. As at the date of her application, that remained the position.

58. The Applicant says that the Respondent was responsible for this. The account which carried out the blacklisting was account 1430. This was also the account which was the recipient of all PYR tokens when they were launched and which was the main operational account for PYRs which was used for distributing funds and managing recovery operations. This was also the account which coordinated with major trading platforms to issue 50 million new PYRs after a hack in 2021. It was also the account which removed the blacklisting in October 2022, apparently at the behest of the Respondent. The Applicant believes that the Respondent or an entity under his control operated Account 1430 at all material times and that the blocker of her PYRs must therefore be him. Further confirmatory detail in relation to the evidence about account 1430 is supplied by Mr Kallergis in his statement.

59. The Respondent says that he does not know who is responsible for the blacklisting of the PYRs and he has offered to help the Applicant try to sort out the problem. He suggests that one of the team of hackers referred to (he says) by the Applicant on 8 June and subsequently may have done it, and that her hatred for him is such that he cannot exclude the possibility that she has orchestrated the situation so as to accuse him falsely *"and demand more".* However, again, he does not address her evidence about account 1430 and his use and control of this account.

60. The position in relation to the EDVs is that, in September 2022, Edverse stated that the launch would be postponed further owing to market conditions and the Applicant was notified of this in October by the Respondent's lawyers. No launch has taken place and neither the Respondent nor Mr Arjun indicates a

timeframe for it. The best that Mr Arjun can say is that this is still a live project and that he is *"confident that soon we should hopefully have some good news on this"*.

61. The Applicant says that she waited until December 2023 before making further inquiries about what was happening in relation to the EDVs. I note that in WhatsApp messages between the Applicant and the Respondent on 5 and 6 June 2024 the Applicant asked when she was going to get the EDVs and the Respondent told her that Edverse had closed: *"That's an indisputable fact"*. When he was asked when they had closed he said they *"didn't close, they didn't even launch! That's the industry I'm afraid"*. However, internet searches conducted by the Applicant's English lawyers showed that Edverse had launched and is an active business. When the Applicant's lawyers wrote to the Respondent, on 10 June 2024, raising this issue and asking for proof of his entitlement to the EDVs he did not reply. He was therefore personally served with the letter on 14 June 2024 but still did not reply.

62. The Respondent admits that he lied in the WhatsApp messages but says that he did so because he was frustrated with the Applicant's complaints about the alimony payments, and that he corrected the position a few days later when he went to pick up their daughter. However, this is disputed and there is no independent evidence of him doing so.

63. On 28 August 2024, the Respondent offered to arrange for his EDVs to be transferred to the Applicant directly if/when they are launched and he says that Edverse is willing to enter into such an arrangement. Mr Arjun does not address this claim.

The issues in relation to the freezing order

64. There was no issue as to the power of the court, under section 25 of the Civil Jurisdiction and Judgments Act 1982, to grant an interim freezing order pursuant to CPR rule 25.1(1) in support of proceedings abroad, including a WFO. The overall legal framework applicable to the question whether to do so in a particular case was also uncontroversial. In effect the court must determine whether, if the substantive proceedings were before an English court, the conditions for the grant of a freezing order would be satisfied and, if so, whether the fact that the English court has no jurisdiction other than under section 25 of the 1982 Act makes it inexpedient to grant relief: see *Refco Inc v Eastern Trading Co* [1999] 1 Lloyds Rep 159.

65. In the light of the authorities including *United States of America v Abacha & Others* [2015] 1 WLR 1917 at [30] it was common ground that the Applicant is required to satisfy the court that:

i) The English Court has personal jurisdiction over the Respondent;

ii) The Applicant is bringing civil proceedings outside England and Wales;

iii) She has a good arguable case in those proceedings;

iv) The Respondent has assets in this jurisdiction;

v) There is a real risk of unjustified dissipation by the Respondent of the assets which are sought to be frozen, such that without the freezing order judgment in the foreign proceedings will go unsatisfied;

vi) It is not inexpedient to grant the relief sought: see section 25(2) of the 1982 Act; and

vii) It is just and convenient to grant the relief sought: see section 37(1) of the Senior Courts Act 1981.

66. Mr Shirazi helpfully indicated that questions i), ii) and iv), above, were conceded as was vi) save in relation to the application of the ADO to assets outside England & Wales.

Does the Applicant have a good arguable case in the proceedings in Greece?

The test

67. As Mr Shirazi pointed out at the hearing before me, a difference of judicial opinion had arisen as to the approach to the *"good arguable case"* test in the light of the decision of the Court of Appeal in *Lakatamia Shipping Co Ltd v Morimoto* [2020] 2 All ER (Comm) 359. Happily, since the hearing the Court of Appeal has handed down its judgment in *Isabel dos Santos v Unitel SA* [2024] EWCA Civ 1109 which clarifies the position. In the *Unitel* case the Court of Appeal confirmed that the test is as stated by Mustill J (as he then was) in *Ninemia Maritime Corp v Trave Schiffahrtsgesellschaft mbH & Co KG, The Niedersachen* [1983] 2 Lloyds Reports 600 (approved by the Court of Appeal at [1983] 1 WLR 1412) i.e:

> "*…the right course is to adopt the test of a good arguable case, in the sense of a case which is more than barely capable of serious argument, and yet not necessarily one which the Judge believes to have a better than a 50 per cent chance of success."*

68. In *Unitel* the Court of Appeal also held that this test is to be equated with the "serious issue to be tried" test under *American Cyanamid Co v Ethicon Ltd* [1975] AC 396 (see [106], [122] and [132] of *Unitel*). Popplewell LJ explained that this test, in turn, is to be equated with the "real prospect of success" test for the purposes of summary judgment. As he pointed out, in *American Cyanamid* Lord Diplock said that the merits test in the context of interim injunctions is whether there is a "real prospect" of the claim succeeding at trial (at 408A-B). Popplewell LJ went on to say, at [126]:

> *"What the summary judgment test of 'real prospect of success' means has been the subject of considerable jurisprudence which it is not necessary to explore at length… It is not enough that the defence or claim respectively is merely arguable; it must carry some degree of conviction... … A claim which is more than merely arguable and carries some degree of conviction is no different in substance from one which is more than barely capable of serious argument, which is the Niedersachsen test. I respectfully agree with the observation made by the Chancellor… that there is no perceptible difference between the two tests."*

69. Popplewell LJ accepted that freezing order relief is invasive and that such orders can operate harshly. However at [130] he said that he could not see any logic in seeking to control the grant of freezing orders through a heightened merits test as a gateway:

> "*Rather, the invasive nature of the relief should be taken into account in considering the other aspects of the test which are required to be fulfilled; in the safeguards built into the wording of the orders in the form of*

> *exceptions; and in the application of the cross-undertaking in damages. I understand the concern that freezing orders should not be granted too readily, and fully endorse the proposition that care should be taken to ensure that they do not operate unfairly. It is always necessary to give anxious scrutiny not only to the second limb of the test, real risk of dissipation, but also to the third, whether it is just and convenient to make the order".*

70. He went on to say:

> *"It is by reference to the just and convenient criterion that the apparent strength of the claim may fall again for consideration…. just as it does where interim injunctions may be finally determinative.."*

The Applicant's case in the Greek proceedings

71. The Applicant commenced proceedings in the Greek courts on 20 August 2024. The claims on which she relies for the purposes of the FO are, in relation to the EDVs, misrepresentation and breach of contract. Her claim in relation to the PYRs is for breach of contract.

72. The misrepresentation claim in relation to the EDVs relies on amongst other things, Article 914 of the Greek Civil Code which provides that "Anyone who causes damage to another unlawfully and with fault is liable for compensation". Her case is that she was misled by the Respondent into giving up the rights which she would otherwise have had in relation to the divorce, under Article 1400 of the Code, and that she has suffered loss as a result of accepting the terms relating to EDVs rather than an equivalent value of cash or other assets.

73. It is fair to say that a degree of "clarification" of the Applicant's case under this head has proved necessary:

i) In her first affidavit she complained that the Respondent represented to her and her lawyers that he had been issued with the EDVs and therefore had them in his *"possession"*. The first point at which it was revealed that they had not in fact yet been issued or circulated by Edverse, so that he did not have any in his possession, was when there were the negotiations to extend some of the deadlines agreed in the Mediation Agreement.

ii) When the Respondent pointed out, in his first affidavit, that it was apparent from the Preliminary Agreement (see [41], above) that he could not have told her that the EDVs had been issued, she said, in her second affidavit dated 10 September 2024, that her terminology in her first affidavit may inadvertently have given rise to confusion. Her and her lawyers' technical understanding of how cryptocurrencies are created and distributed is limited but she understood from the Respondent that the 22 million EDVs had been created and existed in some sort of central wallet owned by Edverse, that he owned them and therefore "possessed" them, but that they had not yet been issued or transferred to him directly.

iii) She says that what the Respondent did not explain at the material time is that the EDVs did not exist at all, that his right to them was if and when they were created, and that that right was in any event heavily caveated. Instead, he repeatedly assured her and her lawyers that the EDVs would

definitely be launched imminently/by the end of July, and they believed him.

iv) Had she been aware of the true position she would not have accepted the EDVs in lieu of cash or realisable assets of a value of at least EUR 12 million.

74. The Applicant also claims breach of contract in relation to the EDVs. There is no dispute that the Mediation Agreement is in principle enforceable in the Greek courts. Her claim based on, amongst other things, Articles 287 and 288 of the Greek Civil Code is that, in breach of contract, the Respondent has failed to transfer the 11 million EDVs to her. The terms of the Amendment Agreement are acknowledged – i.e. that the obligation to transfer arises once the EDVs have been issued - but it is said that if the reason for the delay in issuing the EDVs is in any way attributable to the Respondent then he will be liable in damages. Moreover, it is alleged that he is responsible for the delay in that he has provided advice to the Edverse business in his capacity as adviser and investor, including advice about potential dates for the launch of the EDVs.

75. In relation to the PYRs, the allegation of breach of contract is based on Article 288 of the Greek Civil Code which imposes an obligation of good faith on contractual parties, including in relation to the performance of the contract, which is to be assessed objectively. The short point is that, in breach of contract, the Respondent has, since they were transferred, blocked her from being able to dispose of the PYRs as she sees fit and, as a result, she has suffered loss.

76. The Applicant claims damages representing the value of the blocked PYRs; and damages representing the value which the EDVs were agreed to represent in the

Mediation and Amendment Agreements (i.e. EUR 12.2 million), as well as compensation of EUR 300,000 for emotional distress.

77. For the purposes of her application to this court the Applicant relies on the expert evidence of Ms Dafni Kasimati, a member of the Athens Bar Association, set out in reports dated 9 August and 10 September 2024 (replying to the Respondent's expert). Ms Kasimati explains the relevant legal framework in detail and her evidence indicates, in effect, that the Applicant has a good arguable case if her evidence is accepted.

The Respondent's position

78. The Respondent relies on expert reports from Mr Vassilios-Maximos Stavropoulos, also a member of the Athens Bar Association, dated 4 and 10 September 2024. His overall opinion is that the Applicant's claims in the Greek proceedings are "very weak", albeit on the assumption that the Respondent's evidence is accepted where there is a factual dispute.

79. In relation to the misrepresentation claim his principal point is that upon entering the Amendment Agreement the Applicant waived her right to claim damages for misrepresentation given the terms of the Mediation Agreement and given that, by the time of the Amendment Agreement at the latest, she was aware that the EDVs had not been issued or released to the Respondent. She was therefore also aware that he did not have them in his ownership, possession or control. Asked, in his first report, what the Applicant would need to prove if the Respondent did make the representations alleged by her prior to the Amendment Agreement, Mr Stavropoulos' answers are not as clear as they might be, but he says this:

> *"27. In accordance with the article 914 of the GCC and its interpretation, Ms Armeniakou must prove:*
>
> *(i) That Mr Thomson knew or ought to have known that the EDVs were not going to be issued imminently (or at all), and fraudulently and deliberately and generally by acting unlawfully, he presented to Ms Armeniakou false facts about their status and not the truth.*
>
> *(ii) That Mr Thomson acting as above mentioned influenced Ms Armeniakou to proceed, relying on this false representation, with an agreement she would not have accepted had she known the truth.*
>
> *(iii) That Ms Aremniakou has suffered specific property damage and this is casually linked to the aforementioned unlawful and attributable acts of Mr Thomson."*

80. Asked what the position would be if the Respondent made the alleged representations honestly, Mr Stavropoulos appeared to say that this would be fatal to the Applicant's claim but he went on to conclude, at [31] of his first report:

> *"Thus if we assume that what Mr Thomson was telling to Ms Armeniakou at the time was not true and accurate, he could be alleged for misrepresentation claim only if he knew or if he ought to know that these representations were not true."*

81. As far as the claim in contract in respect of the EDVs is concerned, Mr Stavropoulos' essential point is that, following the Amendment Agreement, the obligation to transfer the EDVs to the Applicant only arises when the EDVs are

transferred to the Respondent. As they have not been, no claim in contract arises.

82. As far as the PYRs are concerned, Mr Stavropoulos' position is that the PYRs were transferred to the Applicant. Even if the Respondent has subsequently blocked the Applicant's disposal of them, he has fulfilled his contractual obligation to transfer them. The Applicant might have claims arising out of the blacklisting, if it were proved that the Respondent was responsible, but they would be of a different legal nature, although he does not specify what their nature would be. He says that even if the Respondent was responsible that would not mean that the Applicant was entitled to their value at the time of blocking as that would result in her unjust enrichment given that she would retain the PYRs and be compensated for their loss.

83. Mr Shirazi relied on the evidence of Mr Stavropoulos to submit that the Applicant does not have a good arguable case on any of her claims in the Greek proceedings. In relation to the misrepresentation claim he also characterised the Applicant's evidence as to what was said and understood at the material time as contrary to what is apparent from the Preliminary Agreement and *"confused…. internally inconsistent and incredible"*. Moreover he emphasised the evidence which supported the view that, at least until 22 July 2022, the Respondent had no reason to think other than that the EDVs would be issued by the end of July.

84. Mr Shirazi also submitted that there were problems with the Applicant's case on reliance. She could not reasonably have relied on the representations which she alleges given that she knew that the EDVs had not been issued, and particularly given that her evidence is very much to the effect that she did not

trust the Respondent and that he had changed his account between the Mediation Agreement and the Amendment Agreement which, in any event, negatives reliance.

85. And Mr Shirazi submitted that there is a problem with the Applicant's case on inducement. On 26 July 2022, the Respondent made her lawyers aware of the uncertainty surrounding the EDVs when he said (truthfully, according to Mr Shirazi) *"When they choose to generate the token is entirely up to them, not me, they told me the end of July, they may or may not postpone that, I know many companies have decided to wait until there is a better market condition"*. This was at a point when she could have decided not to go ahead with the formalisation of the divorce and yet she did so.

86. As far as the PYRs are concerned, Mr Shirazi submitted Mr Stavropoulos' opinion should be preferred as to whether there is a valid claim in contract given that under most legal systems contracts are discharged by performance. But, more importantly, the case that the Respondent was responsible for the continuing blacklisting of the PYRs is *"a bare assertion"*. Taken at its highest, the evidence merely shows that the Respondent could have been responsible. But it also strongly suggests that he was not, given his denial and given that he has offered to assist her to try to discover who is responsible and to remedy the problem. This is not consistent with him having blocked the wallet.

Discussion and conclusion on "good arguable case"

87. I am quite satisfied that the Applicant has a good arguable case in relation to, at least, the misrepresentation claim and the claim in relation to the PYRs.

88. As far as the misrepresentation claim is concerned, I acknowledge that there are evidential issues between the parties as to what was said by the Respondent in relation to the EDVs. But, as matters stand, there is a substantial evidential foundation for the Applicant's case that she was persuaded to accept the EDVs on the basis that they existed and there was no doubt that they would be transferred to her imminently, and that they would have a value to her of at least EUR 12 million. With the exception of the Preliminary Agreement, the agreements between the parties said that the Respondent owned or possessed the EDVs. All of the agreements said that the EDVs would be transferred in essentially the same terms as they said that the cash and the PYRs, which were not contingent assets, would be. They did not indicate any doubt at all about this. The Preliminary Agreement itself states that the EDVs *"will be issued at the end of July 2022"* and there is contemporaneous evidence in the form of the unchallenged emails from the Applicant's lawyers, dated 25 and 26 July 2022, that the Respondent was saying that it would be by 14 July 2022. The Respondent's own evidence that he understood, at the time of the Amendment Agreement, that the EDVs would be issued by the end of July and that he made this clear to the Applicant, is also consistent with this aspect of her case.

89. As to the Respondent's argument that everything that he said was consistent with his understanding at the time, there is a substantial evidential basis for the Applicant's case that, at all material times, the Respondent knew that there was at least a significant risk that the EDVs would not be issued imminently. Part of this argument is that he was only entitled to the EDVs if they were issued. The SAFT (Simple Agreement for Future Tokens) agreement between him and Edverse was also heavily caveated. It permitted Edverse to delay doing so *"in*

its full discretion" and to terminate the agreement and refund the payment by the investor (here $US 300,000). Moreover, the intended launch had in fact been delayed in late May 2022 and what the Respondent says he had been told by Edverse in early June – that the aim was to launch in early July but there was also a chance that it would be in late July – combined with the importance of favourable market conditions, adds to the argument that there was uncertainty and that the Respondent was therefore not in a position to make definitive statements or commitments that the EDVs would be transferred to the Applicant or would be transferred imminently. There is therefore a substantial evidential basis for the conclusion that, rather than state the true position, he nevertheless did make such statements and commitments when he knew or ought to have known that this was far from certain.

90. The Respondent's credibility is also undermined by his email answer to the request for an update on 26 July 2022. As noted above, he told the Applicant that the proposed end of July launch *"may or may not"* be postponed when he knew that it had been postponed indefinitely four days earlier. This does not assist his case that he dealt with this issue in good faith. It also undermines the Respondent's case on reliance and inducement although I accept that there are arguments on this issue which may need to be explored at trial in the Greek proceedings.

91. In her second report Ms Kasimati says that, subject to proof, the Respondent's alleged false statements constitute a basis for pecuniary damages under Article 914 of the Greek Civil Code. They may also breach the good faith requirement in Articles 197 and 200 on the basis that the Respondent should have informed

the Applicant that there was a risk the EDVs might not be transferred imminently if he had any reason to doubt that they would be. He would also be in breach of Article 288 if he knew, at the time of entering the relevant contracts, that he might not be able to perform his obligations because he had reason to doubt that he would imminently be in possession of the EDVs, contrary to what he had represented.

92. She goes on to say:

> *"Any lack of certainty was something the Defendant should have conveyed to the Claimant in order to comply with his duty of good faith, and his failure to do so (on the basis of the Claimant's evidence) means he is arguably liable for misrepresentation as she has alleged in her claim in the Greek proceedings."*

93. As for Mr Stavropoulos' waiver argument, Ms Kasimati says that several decisions of the Greek court have confirmed that a party cannot be prevented by waiver from an action in misrepresentation if they were unaware of the misrepresentation at the time of the waiver.

94. On the evidence currently available, then, there appears to be a substantial legal basis for the misrepresentation claim in the Greek proceedings. In these circumstances, the merits of the breach of contract claim in respect of EDVs may not matter. However, this claim appears to depend on there being evidence that the Respondent was responsible for the delay in the issuing of the EDVs. Although the Respondent was an investor in, and an advisor to, Edverse, and although it appears that he expressed views on the timing of the launch in the exchanges at the beginning of June 2022, on the evidence available I do not

accept that there is a good arguable case in relation to this claim. In short, there is no specific evidence that the Respondent sought to delay the issuing of EDVs by Edverse. Indeed, the exchanges in June 2022 suggest that he was arguing for an early launch.

95. As far as the claim in respect of the PYRs is concerned, Ms Kasimati states that, under Article 200 of the Greek Civil Code, the Mediation Agreement and the Amendment Agreement must be interpreted on the basis of the true intentions of the parties, with attention to the principles of good faith and business ethics. Article 288 also required the Respondent to act in good faith when executing contractual obligations, ensuring that the Applicant could exercise her rights as the legitimate owner of the tokens. Moreover, Articles 330 and 335 of the Civil Code establish the Respondent's liability for breach caused by intentional misconduct or negligence and provide for compensation where performance becomes impossible owing to the debtor's fault. Contrary to Mr Stavropoulos' argument, Ms Kasimati states that if it is proved that the Respondent wrongfully blocked transferred PYRs, the Applicant is not claiming an additional benefit but rather compensatory damages for the value lost as a result of the Respondent's breach of contract because she has not been able to sell or deal with the PYRs. Article 297 of the Civil Code specifically provides for compensation when a party fails to perform an obligation. The Court can therefore award the Applicant the value of the PYRs at the time of the breach, without any issue of unjust enrichment.

96. Ms Kasimati's account of Greek law is unsurprising. It would be odd if the Respondent was permitted, under the agreement between the parties, to render

assets worth in the order of EUR 1 million to the Applicant worthless by blocking them at the time of, or subsequent to, the transfer to her. It would also be very surprising if she would be left without a remedy in damages to reflect any loss which she suffered as the result of being prevented from disposing of them at a time of her choosing (subject to the terms of the contract).

97. That leaves, of course, the evidential issue as to whether the Respondent is responsible for blocking the PYRs. At this stage it is sufficient to state that there is a substantial basis for the allegation that he is. The evidence about account 1430, about his initially unilaterally blocking the PYRs, about his objection to the Applicant transferring the PYRs to another wallet when they were unblocked on 19 October 2022, and about his concern about her liquidating all of the PYRs at once is consistent with the Applicant's case that he acts unilaterally when he considers that he is justified in doing so, and that he has done so (again) on this occasion.

98. The Respondent suggests an answer to the question who else would block them – one of the hackers she boasted about on and after 8 June 2022 – but the evidence about whether there were any hackers is problematic, as I have pointed out. Nor is it clear why any of her team who carried out the internal audit would have a reason to do this. He suggests that she may have orchestrated the situation in order to apply pressure to him but his willingness to make this suggestion is equally capable of supporting the view that his resentment of her, and his view that the Mediation Agreement was overly generous to her, provide a motive for him to block her PYRs. I appreciate that he has offered to try to help the Applicant to sort the issue out but, again, this may or may not be tactical on his

part. What cannot be said, in my view, is that she does not have a good arguable case that he is the culprit.

Real risk of unjustified dissipation?

The guidance in the caselaw

99. The parties both relied on the helpful summary of the principles adopted by Haddon-Cave LJ in *Lakatamia* (supra) at [34]:

> *"(1) The claimant must show a real risk, judged objectively, that a future judgment would not be met because of an unjustified dissipation of assets. In this context dissipation means putting the assets out of reach of a judgment whether by concealment or transfer.*
>
> *(2) The risk of dissipation must be established by solid evidence; mere inference or generalised assertion is not sufficient.*
>
> *(3) ..*
>
> *(4) It is not enough to establish a sufficient risk of dissipation merely to establish a good arguable case that the defendant has been guilty of dishonesty; it is necessary to scrutinise the evidence to see whether the dishonesty in question points to the conclusion that assets may be dissipated. It is also necessary to take account of whether there appear at the interlocutory stage to be properly arguable answers to the allegations of dishonesty.*
>
> *(5) The respondent's former use of offshore structures is relevant but does not itself equate to a risk of dissipation. Businesses and individuals often*

use offshore structures as part of the normal and legitimate way in which they deal with their assets. Such legitimate reasons may properly include tax planning, privacy and the use of limited liability structures.

(6) What must be threatened is unjustified dissipation. The purpose..is not to provide the claimant with security; it is to restrain a defendant from evading justice by disposing of, or concealing, assets otherwise than in the normal course of business in a way which will have the effect of making it judgment proof..If the defendant is not threatening to change the existing way of handling their assets, it will not be sufficient to show that such continued conduct would prejudice the claimant's ability to enforce a judgment...

(7) Each case is fact specific and relevant factors must be looked at cumulatively."

The parties' submissions

100. Mr Tomson submitted that there is solid evidence of a real risk of unjustified dissipation. He relied on the materials which were before HHJ Pelling KC but he also submitted that the risk had become even more apparent in the light of the information disclosed by the Respondent pursuant to the ADO, material aspects of which were clearly false. His and Mr Shirazi's submissions on this information were made in a part of the hearing which was private, as I have noted.

101. Mr Shirazi made various points in support of his submission that there is no evidence of a real risk of dissipation. He said that the Respondent would not

take the risk of dissipating his assets in order to defeat a judgment of the Greek courts given his personal ties to Greece, including the fact that his daughter lives there. He said that the Respondent's actions were not those of a person who wished to dissipate his assets in order to defeat a judgment in the Greek proceedings. On any view, he had complied with the bulk of his obligations under the Mediation Agreement and the case that he had not in relation to PYRs, and/or had deliberately misrepresented the position in relation to the EDVs was weak. It was evident from the fact that he had offered to assist with the PYR blacklisting issue and to arrange for the EDVs to be transferred directly to the Applicant that he was not seeking to dissipate those assets. Moreover, the Applicant's failure to take up the offer in relation to the EDVs was an indication that she recognised that no such risk existed.

102. Furthermore, there was no *"solid evidence"* in support of the Applicant's case. In this connection Mr Shirazi developed an argument which drew a distinction between evidence and assertion and he submitted, in some detail, that various passages from the Applicant's evidence amounted to the latter rather than the former. Much of what the Applicant said was of no evidential value and should be excluded or disregarded. Moreover, her allegations of dishonesty, even if well founded (which he denied), did not point to dissipation. These were bare allegations which suggested a level of misunderstanding between acrimonious former spouses and/or remarks taken out of context, rather than indicating some kind of nefarious intent. The Applicant's assertions about the success of the business and the Respondent's lifestyle were also no more than that, and of no assistance.

103. Moreover, the Respondent's words and actions had to be viewed in the context of the Applicant's conduct. In this connection Mr Shirazi referred, by way of example, to the Respondent's actions at the 8 June 2022 meeting in moving Bamboo's PYRs to his personal wallet. It was inevitable that this would be detected by the Applicant as the relevant blockchain was public, so these were hardly the actions of a person who was intending to conceal what he was doing.

104. The Respondent had explained the position in relation to the offshore companies set up at the beginning of 2021 and this did not constitute evidence of him manipulating assets through international accounts and companies. The filing of dormant accounts for Vulcan Forged Limited for 2021 was an honest mistake and it did not make sense to suggest that it was evidence that, in very different circumstances, and some time later, there was a risk that he would dissipate his assets.

Discussion and conclusion

105. I am satisfied that there is solid evidence of a real risk of unjustified dissipation by the Respondent of his assets if no order is made. I have reached this conclusion on the basis of the evidence summarised above and assuming for these purposes, without accepting, that the information which the Respondent has provided pursuant to the ADO up to and including 18 September 2024 is accurate.

106. The starting point is that I accept Mr Tomson's submission that the structuring and operation of the Vulcan Forged and associated businesses is opaque on the evidence. The Respondent does not provide a clear or detailed account of how they operate. It is common ground that the offshore entities to which I have

referred were set up at the beginning of 2021 with the intention that key aspects of the business would operate through them, and the Respondent's evidence that he never actually implemented the business changes to fit the structure is questionable, not least in the light of the fact that the contractual rights of its customers are governed by Singaporean law. There is also evidence that the Respondent made use of the Applicant's identity and identity documents to create the impression that Elysium Tech and Vulcan Foundation were operating at arm's length when, on the Respondent's own evidence, that was not the reality.

107. The lack of transparency in the Respondent's business activities is compounded by the fact that Vulcan Forged Limited, which the Respondent implies is the principal vehicle for the business, has filed highly misleading accounts for 2021 and no accounts thereafter. In the context of the evidence as a whole, I do not accept the Respondent's claim that he was unaware that the 2021 accounts stated that the company was dormant. As the sole director of the company, this is inconceivable given that the accountants would require input and sign off from him. As I have noted, he does not address the question why the 2022 accounts are late. These considerations, in turn, support the view that the Respondent's lack of transparency is deliberate. His professed bafflement as to how this, obviously relevant, evidence can support the Applicant's case compounds the concerns about him.

108. Secondly, the dispute between the parties arises in the context of a highly acrimonious divorce, as Mr Shirazi points out. It is plain from the Respondent's own evidence and the correspondence that he is hostile towards the Applicant

(and she may well be towards him), that he considers that she played no real part in building up the business, and that he deeply resents what he sees as her taking or claiming what is his. He also considers that the Mediation Agreement was forced on him, that its terms are exorbitant, that he cannot afford them and that he wishes to renegotiate. And he maintains that the Applicant is acting in bad faith in bringing the Greek proceedings: she has lied about her role in the business, she has contrived the blocking of the PYRs in order to exert leverage over him, and she is lying about her understanding of the position in relation to the EDVs, and more generally. She also tricked him into being locked out of Bamboo's offices on 6 June 2022 and, he says, boasted that she had a team of hackers who had been hacking his devices and those of Bamboo employees for several weeks. Whilst these points about his attitude and potential motive for dissipation would not be sufficient in themselves, they do indicate (especially in the context of the evidence as a whole) that there is a real risk that he would feel justified in taking matters into his own hands.

109. Thirdly, the Applicant gives various examples of the Respondent lying about his assets in the context of the negotiations which led to the Mediation Agreement, apparently so as to minimise the sums which he would be required to pay her. A number of these examples are not specifically challenged by him in his evidence. He also clearly misled her about the issuing of the EDVs in his email of 26 July 2022 and there is a powerful evidence that he did so throughout their discussions on this topic in mid-2022 when he stated in the written agreements that he owned or possessed the tokens and said that they would be transferred imminently, giving the clear impression through the buy-back mechanism that this was a highly valuable term of the agreement in which the

Applicant could have a high degree of confidence. The advantage to him of doing so was, of course, that she therefore did not insist on cash or its equivalent value. Moreover, he lied to her again in June 2024 when he said that the Edverse business had closed/never launched.

110. Fourthly, there is also evidence of the Respondent taking steps to put assets beyond the reach or control of the Applicant if he feels that he is justified in doing so. He does not deny that he did this on 8 June 2022, albeit he seeks to explain his actions, and there is a powerful case that he has done so in relation to the PYRs despite his denial. As I have indicated, I am highly sceptical of his explanation for his actions on 8 June 2022 given that he acted surreptitiously, and took further steps that evening even after he had been told not to by his lawyers, and given that the evidence that the Applicant was boasting about having a team of hackers is less than compelling. Even if he is not responsible for the current blocking of the PYRs in the Applicant's wallet(s) he admits that he took unilateral action to block them in July 2022, albeit he says that such action was justified.

111. These points lead, cumulatively, to the conclusion that the Applicant has satisfied the real risk of dissipation requirement without the need to accept all of her evidence that the Respondent was systematically sidelining her from 2021 onwards on the basis that it was "his" and not "their" business, as was the wealth which it was generating, as well as keeping her in the dark as to his business activities. But his evidence on this subject does little to undermine the plausibility of her account. Similarly, the evidence suggests that he remains a wealthy individual who is nevertheless maintaining that it is impossible for him

to meet the alimony payments to which he agreed when in fact he is able to do so. And there is evidence, albeit that he offers an explanation, that he has been assisting members of his family to set up bank accounts.

112. I have taken into account Mr Shirazi's argument that the hostility between the parties is likely to have led to exaggeration or misunderstanding on both sides. However, I do not accept the Applicant's case is based purely on assertion rather than evidence. I agree that aspects of the Applicant's evidence are unsourced assertion and/or hearsay and I have given these aspects little or no weight. But, as I have pointed out, key aspects of what she says are objectively verified and/or confirmed or unchallenged by the Respondent. There are other aspects which I have no reason to disbelieve, particularly when the lack of credibility of key aspects of the Respondent's evidence is taken into account.

113. I have also taken account of the Respondent's offers in respect of the PYRs and the EDVs, but these considerations do not outweigh the points which I have made above. Both offers are capable of being tactical. If the Respondent is responsible for the continuing blacklisting of the PYRs, and there is substantial evidence that he is, there is no reason to think that he will solve the problem. Even if the offer for the EDVs to be transferred directly to the Applicant would be agreeable to Edverse, it amounts to no more than an offer to transfer a qualified right to the EDVs if they are issued, in circumstances where there is no clear indication as to whether and, if so when, they will be issued, and where the Respondent is not able, under the SAFT to which he is party, to require that they are issued. The Applicant's clear evidence is to the effect that she would

not have accepted such an offer had it been made at the time of the Mediation Agreement and there is no reason to think that she would accept it now.

114. Moreover, it is a non sequitur to argue that the fact that the Respondent is prepared to make such offers is evidence that he would not dissipate his assets in order to defeat her claims for damages. Mr Shirazi submitted that the offers show that he would not dissipate the assets which she claims, but her claim is actually for damages to reflect the loss which she says she has suffered as a result of being misled and/or his failure to comply with his obligations under the Mediation Agreement. The argument that her failure to accept the Respondent's offers indicates that she does not actually believe that there is a risk of dissipation is yet more implausible.

Is it just and convenient to continue the FO?

115. Mr Shirazi submitted that it is not, even if the Applicant has satisfied the good arguable case requirement and there was a real risk of dissipation. His points were:

i) The claim is weak/very weak. A freezing order is an exceptionally onerous one and has a material effect on the personal and business activities of the person to whom it applies. Here, the legal experts agree that a result in the Greek proceedings cannot be expected for at least 3 years so that the risk of harm to the Respondent is significant.

ii) The Applicant has unclean hands. This refers principally to the Respondent's evidence about "a campaign of hacking". It is also said

that the Applicant transferred her PYRs to a different wallet in breach of contract.

iii) The central issue in the dispute between the parties relates to the EDVs. These are not in existence, the FO therefore does not preserve them and, in any event, the Respondent is willing for them to be transferred to the Applicant direct.

iv) This is a family dispute in which the court should be slow to intervene. The grant of a FO is likely to exacerbate the conflict rather than to ameliorate it.

v) The Applicant's conduct has been oppressive in that she has failed to comply with orders of the court and has contacted a wide number of individuals associated with the Respondent.

116. None of these points is compelling and nor are they cumulatively so:

i) I do not agree that the misrepresentation claim in respect of the EDVs or the claim in respect of the PYRs are weak. On the contrary, the evidence currently suggests that the Applicant has a cogent case. I accept that a freezing order is an inherently intrusive measure and have taken this into account. The Respondent has not given evidence of any particular difficulties which the continuation of the FO would cause him.

ii) The evidence that the Applicant has unclean hands is not compelling, as I have pointed out. She did lock the Respondent out of the Bamboo business and conduct a search of his and the business computer systems but the case that she acted unlawfully under Greek law, given her

position as joint shareholder and sole director, has not been made out. In any event, neither this feature of the case nor any breach of contract in moving her PYR from one wallet to another, taken in isolation or in combination with Mr Shirazi's other points, persuades me that it would not be just and convenient to continue the FO.

iii) I have addressed Mr Shirazi's argument in relation to the preservation of the EDVs. The point of the order would be to preserve assets on which a judgment in damages would bite, rather than necessarily to preserve the EDVs themselves.

iv) I accept that this is a family dispute which would be better resolved by negotiation and agreement than by litigation, but this cannot be a weighty reason not to seek to prevent the Respondent from defeating the Applicant's claim in the Greek proceedings by dissipating his assets.

v) I do not accept that the Applicant's conduct of this litigation has been oppressive. There have been delays on both sides and, insofar as the Applicant has delayed in taking procedural steps, these delays have not been substantial and have not been such as to render it unjust or inconvenient to continue the FO.

117. For all of these reasons, and subject to the full and frank disclosure issues which I address below, I consider that it is just and convenient to continue the FO.

Full and frank disclosure

The guidance in the caselaw

118. Carr J (as she then was) provided a helpful distillation of the principles in her judgment in *Tugushev v Orlov & Others* [2019] EWHC 2031 (Comm) at [7]:

i) *"The duty of an applicant for a without notice injunction is to make full and accurate disclosure of all material facts and to draw the court's attention to significant factual, legal and procedural aspects of the case;*

ii) *It is a high duty and of the first importance to ensure the integrity of the court's process. It is the necessary corollary of the court being prepared to depart from the principle that it will hear both sides before reaching a decision, a basic principle of fairness. Derogation from that principle is an exceptional course adopted in cases of extreme urgency or the need for secrecy. The court must be able to rely on the party who appears alone to present the argument in a way which is not merely designed to promote its own interests but in a fair and even-handed manner, drawing attention to evidence and arguments which it can reasonably anticipate the absent party would wish to make;*

iii) *Full disclosure must be linked with fair presentation. The judge must be able to have complete confidence in the thoroughness and objectivity of those presenting the case for the applicant. Thus, for example, it is not sufficient merely to exhibit numerous documents;*

iv) *An applicant must make proper enquiries before making the application. He must investigate the cause of action asserted and the facts relied on before identifying and addressing any likely defences. The duty to disclose extends to matters of which the applicant would have been aware had reasonable enquiries been made. The urgency of a particular*

case may make it necessary for evidence to be in a less tidy or complete form than is desirable. But no amount of urgency or practical difficulty can justify a failure to identify the relevant cause of action and principal facts to be relied on;

v) *Material facts are those which it is material for the judge to know in dealing with the application as made. The duty requires an applicant to make the court aware of the issues likely to arise and the possible difficulties in the claim, but need not extend to a detailed analysis of every possible point which may arise. It extends to matters of intention and for example to disclosure of related proceedings in another jurisdiction;*

vi) *Where facts are material in the broad sense, there will be degrees of relevance and a due sense of proportion must be kept. Sensible limits have to be drawn, particularly in more complex and heavy commercial cases where the opportunity to raise arguments about non-disclosure will be all the greater. The question is not whether the evidence in support could have been improved (or one to be approached with the benefit of hindsight). The primary question is whether in all the circumstances its effect was such as to mislead the court in any material respect;*

vii) *A defendant must identify clearly the alleged failures, rather than adopt a scatter gun approach. A dispute about full and frank disclosure should not be allowed to turn into a mini-trial of the merits;*

viii) *In general terms it is inappropriate to seek to set aside a freezing order for non-disclosure where proof of non-disclosure depends on proof of facts which are themselves in issue in the action, unless the facts are truly so plain that they can be readily and summarily established, otherwise the application to set aside the freezing order is liable to become a form of preliminary trial in which the judge is asked to make findings (albeit provisionally) on issues which should be more properly reserved for the trial itself;*

ix) *If material non-disclosure is established, the court will be astute to ensure that a claimant who obtains injunctive relief without full disclosure is deprived of any advantage he may thereby have derived;*

x) *Whether or not the non-disclosure was innocent is an important consideration, but not necessarily decisive. Immediate discharge (without renewal) is likely to be the court's starting point, at least when the failure is substantial or deliberate. It has been said on more than one occasion that it will only be in exceptional circumstances in cases of deliberate non-disclosure or misrepresentation that an order would not be discharged;*

xi) *The court will discharge the order even if the order would still have been made had the relevant matter(s) been brought to its attention at the without notice hearing. This is a penal approach and intentionally so, by way of deterrent to ensure that applicants in future abide by their duties;*

xii) *The court nevertheless has a discretion to continue the injunction (or impose a fresh injunction) despite a failure to disclose. Although the discretion should be exercised sparingly, the overriding consideration will always be the interests of justice. Such consideration will include examination of i) the importance of the facts not disclosed to the issues before the judge ii) the need to encourage proper compliance with the duty of full and frank disclosure and to deter non-compliance iii) whether or not and to what extent the failure was culpable iv) the injustice to a claimant which may occur if an order is discharged leaving a defendant free to dissipate assets, although a strong case on the merits will never be a good excuse for a failure to disclose material facts;*

xiii) *The interests of justice may sometimes require that a freezing order be continued and that a failure of disclosure can be marked in some other way, for example by a suitable costs order. The court thus has at its disposal a range of options in the event of non-disclosure."*

The points taken by the Respondent

119. In his skeleton argument, Mr Shirazi grouped his points under headings, some of which went directly to the decision to grant the FO and some directly to the ADO.

120. The first of the headings in relation to the FO was *"non-disclosure of the nature of the claim"*. Under this heading, he complained that:

i) The Applicant did not disclose the Preliminary Agreement, which undermined her misrepresentation case;

ii) She did not disclose the original English version of the Mediation Agreement when this was a relevant document;

iii) The claim advanced in the Greek proceedings differs materially from the claim which she said, in her first affidavit, she intended to bring.

121. Under the heading "*non-disclosure of campaign of unlawful activities"* Mr Shirazi made the following complaints:

i) The Applicant did not disclose the 10 June 2022 notice in which the Respondent had set out details of her unlawful obtaining of evidence;

ii) She did not disclose that she had wrongly accessed the PYR blacklisting wallet and then misled the court by suggesting that the Respondent's reaction on 8 June 2022 – when he transferred Bamboo's PYRs to his personal crypto wallet - was a basis for inferring a real risk of dissipation.

122. Under the heading *"non-disclosure of the weakness of the evidence"* Mr Shirazi argued that the Applicant failed to disclose to the Judge that her evidence did not comply with the CPR and that much of it consisted of bare assertions.

123. Under the heading *"non-disclosure of true delay"* he argued that the Applicant appeared to have been preparing her without notice application from 24 June 2024 when she obtained English translations of the documents from the divorce proceedings.

124. Turning to the points which directly affected the ADO, under the heading "*non disclosures relating to information order"* Mr Shirazi argued that Mr Tomson

failed to draw two points of law to the Judge's attention in relation to the question whether the court could make a worldwide ADO. These were that:

i) The Judge had no power to order disclosure of information for use abroad in these circumstances. Mr Shirazi's argument was that this was the effect of *Green v CT Group Holdings Limited* [2024] 2 All ER (Comm) 342 where Mr Charles Hollander KC (sitting as a Deputy High Court Judge) held that *Norwich Pharmacal* relief is not available to obtain evidence for the purpose of using it in foreign civil proceedings. The common law governing such applications is, in effect, subject to the requirements of Evidence (Proceedings in other Jurisdictions) Act 1975 and the requirements of that Act must therefore be satisfied before an order for the provision of evidence or information for such use will be made. Mr Shirazi submitted that no meaningful distinction could be drawn between *Norwich Pharmacal* orders and freezing orders for these purposes.

ii) In any event, CPR Rule 25.1(1)(g) provides that an ADO may be made in respect of property or assets *"which are or may be the subject of an application for a freezing injunction"*. Here, the Judge had refused the application for a WFO and so the Respondent's assets other than in this jurisdiction were not, and would not be, the subject of an application for a freezing injunction. Rule 25.1(1)(g) therefore did not apply.

125. Mr Shirazi submitted that his arguments were consistent with Gee on Commercial Injunctions, 7th Edition, at 23-009 but, if not, Gee was wrong. For the purposes of the full and frank disclosure issue, his complaint was that Mr

Tomson had not drawn these legal issues to the attention of the Judge, both of which were points which stood in the way of his application for a worldwide ADO. He also relied on these points as the foundation for his argument that the ADO should not be continued or should be varied in any event, even if the FO was not.

126. In his oral submissions Mr Shirazi added a complaint that Mr Tomson did not draw attention to the fact that the Applicant was outside the jurisdiction and that therefore the undertaking which she gave as part of the Interim Order, not to make collateral use of the information disclosed pursuant to the ADO, may be difficult to enforce. He should also have pointed out that the risk of the Applicant not complying with her undertaking was higher given the potential relevance of the information to the underlying issues between the parties. Mr Tomson also ought to have suggested to the Judge that the information be disclosed into a confidentiality club pending the return date.

Discussion and conclusions

127. I was not satisfied that there was a breach of the duty of full and frank disclosure by the Applicant or that it was in the interest of justice for the FO to be discharged in the light of the failings alleged by Mr Shirazi. I will take each of his points in turn given that he said that he relied on all of them, albeit only some were developed orally for understandable reasons.

"non-disclosure of the nature of the claim"

128. As far as the points under this heading are concerned, Mr Shirazi's best point was in relation to the non-disclosure of the Preliminary Agreement, which

contradicted the Applicant's first affidavit, at least on a literal reading of what she said. The Applicant does not suggest that the non-disclosure was inadvertent. Her position is that she did not disclose it because the Mediation Agreement and the Amendment Agreement were the documents which mattered given that they superseded the Preliminary Agreement and were legally enforceable. Moreover, her position is that, whilst she accepts that her language in her first affidavit may have given rise to confusion, there is no inconsistency between the Preliminary Agreement and what she intended to say i.e. that she understood that the EDV tokens were in existence but had not yet been issued *to the Respondent* although they would be imminently.

129. I accept that the Preliminary Agreement ought to have been exhibited and attention ought to have been drawn to provision relied on by Mr Shirazi (cited at [41], above). However, I also accept the Applicant's case that it was not perceived that there was any inconsistency between her overall case and what the Preliminary Agreement said, particularly given the terms of the subsequent, legally binding, documents which, as explained in more detail above, stated that the Respondent owned/possessed the EDVs and that they would be transferred. The non-disclosure was therefore innocent. Her evidence in her first affidavit that she relied on the Respondent's statements that the tokens would be issued *"imminently"* is not contradicted by the Preliminary Agreement. There are also degrees of materiality and, for the reasons explained more fully above, the terms of the Preliminary Agreement were not such as to have been likely to have altered the Judge's decision. Nor was he misled. In my judgment it would not be in the interests of justice for the FO to be discharged on the basis of this point whether taken in isolation or in combination with Mr Shirazi's other points.

130. As for the complaint about failure to exhibit the original English version of the Mediation Agreement, I have dealt with this at [46] above. It was not material, not least given that the document supported rather than undermined the Applicant's case.

131. Similarly, there is nothing in the complaint that the claims in the Greek proceedings are different to those which had been indicated to the Judge at the without notice hearing. The proposed claims identified to him are made in the Greek proceedings in materially the same terms. The fact that she has brought additional claims does not amount to a material non-disclosure and those claims are not relied on by the Applicant for the purposes of her application.

"*non-disclosure of campaign of unlawful activities"*

132. As to the points under this heading:

i) I have dealt with these arguments, above.

ii) I accept that the Applicant does not recall having received the 10 June 2022 notice, and the evidence supports the conclusion that she did not. In any event the substance of the steps by the Applicant complained of by the Respondent in this notice was apparent from the evidence before the Judge.

iii) The Applicant cannot be criticised for failing to disclose the Respondent's explanation for his behaviour on 8 June 2022 when this explanation had not been provided by him at the time when she made her application. Nor was the explanation a compelling one for the

reasons which I have given. In any event, the substance of the internal audit on or after 6 June 2022 was before the Judge.

"non-disclosure of the weakness of the evidence"

133. I have dealt with, and largely rejected, Mr Shirazi's arguments on assertion versus evidence. This point seriously underestimates the ability of the judiciary to evaluate the evidence or information on which a case is based. In the case of HHJ Pelling KC, this was an experienced Judge who had evidently read into the case and was perfectly able to assess the quality of the Applicant's evidence and the weight which it should be given. As is quite apparent from the Judge's judgment, it would have been patronising and was entirely unnecessary for Mr Tomson to address him on the need for solid evidence and the difference between evidence and assertion.

"non-disclosure of true delay"

134. As for this allegation, the Applicant accepts that she had been considering whether to take action against the Respondent in recent months but says that what triggered her decision to do so was the conversation, on 30 July 2024, between her and the Respondent's lawyers in which the latter indicated that he was experiencing financial difficulties and wished to reduce his monthly payment obligations, combined with his persistent lack of transparency. In her first affidavit the Applicant set out the chronology which led to her decision so that the Judge was fully informed. I note that HHJ Pelling KC also specifically considered the question of delay. He said, at [11] of his judgment, that he did not infer from the fact that there had been some delay in the commencement of the proceedings that the Applicant had no real concern about the dissipation

assets. I do not accept that there was any material non-disclosure in relation to delay or that the Judge's view on this issue would have been affected by it being drawn to his attention that the Applicant had sought translations of the Greek documents at the end of June.

The arguments in relation to the ADO

135. As for the points made under the heading "non-disclosures relating to information order", I will take the points on the risk of collateral use first. The Judge was plainly aware that the Applicant resides out of the jurisdiction and of the nature of the dispute between the parties. Moreover, she gave an undertaking not to make collateral use of the information disclosed pursuant to the ADO. As Mr Tomson points out, the issue is now moot in any event given that the Respondent agreed that the information could be disclosed into a confidentiality club.

136. In relation to the mismatch between the scope of the FO and the scope of the ADO, after judgment had been given and when the drafting of the Interim Order was being finalised with the Judge, Mr Tomson specifically drew attention to the fact that the proposed ADO would apply worldwide, notwithstanding that the Judge had refused a WFO. The Judge made the point that this would not normally be the approach and that the order would normally be limited to England and Wales, as the FO was. Mr Tomson asked for the ADO to be made on a worldwide basis nevertheless given the Judge's reasons for refusing a WFO (which, applying *ICICI Bank Uk plc v Diminco NV* [2014] 2 CLC 647, were that it was not just and convenient or expedient to make a worldwide order given that there were assets in the jurisdiction: see [16]-[17] of his judgment); "given

the nature of the case and the international dimension" and given that this would protect the Applicant.

137. My provisional view is therefore that there was no material non-disclosure:

i) The point about the mismatch was drawn to the Judge's attention, he was alive to it and he decided to make a worldwide order. The scope of the ADO was a matter for the discretion of the Judge, which he exercised in the Applicant's favour, pursuant to his power under section 37 of the Senior Courts Act 1981. As Gee says at 23-009, there is no rule that an ADO must be coextensive with an FO and nor is there any rule that an ADO cannot be made in aid of the enforcement or execution of a judgment of a foreign court.

ii) The answer to Mr Shirazi's argument based on *Green* is likely to be that the information which was ordered to be disclosed in the present case was not for use as evidence in foreign civil proceedings in the relevant sense: it is for use in the proceedings relating to the freezing order, which are being conducted in this jurisdiction, and for the purposes of policing that order.

138. Even if I am wrong in my provisional response to Mr Shirazi's legal arguments I would not set aside the FO. It would not be in the interests of justice to do so given that these arguments are specific to a discrete order which the Judge made and any failure of disclosure was at worst inadvertent/innocent – Gee, in fact, supports the Appellant's position that the Judge had a discretion in the matter - and did not affect the FO which had been made.

139. However, time did not permit Mr Shirazi to develop his argument on *Green* at the hearing and Mr Tomson did not address it in any detail in writing or orally. Nor was the relationship between section 37 and Rule 25(1)(g) explored in argument. The determination of these issues goes not just to the issue of full and frank disclosure in relation to the ADO, but also to Mr Shirazi's application to set aside or vary the ADO. I am reluctant to give a ruling on these points without them being argued fully given that my decision would potentially be of wider application. For these reasons, and one further reason, I have concluded that I should give the parties an opportunity to make submissions on the legal issues raised by Mr Shirazi in relation to the ADO if he wishes to pursue these points. Subject to the next point, it may be sufficient that any such submissions are made in writing.

The Applicant's argument that the FO should be expanded to a WFO

140. The further reason is this. I accept Mr Shirazi's submission that it would not be fair to the Respondent, in the circumstances of this case, to expand the scope of the FO without giving him a proper opportunity to put his case against it. There was no application notice seeking to do so, and the first notice of the Applicant's new position was in Mr Tomson's skeleton argument the day before the hearing, as I have noted. Mr Shirazi's skeleton argument therefore did not address this argument or deal with the legal issues which arose in relation to it. The basis for the argument that the FO should now apply worldwide was that, it was alleged, the Respondent had given false and incomplete information about his assets and their value in breach of the ADO, and therefore potentially in contempt of court. There had not been time to put in evidence in response to this allegation and Mr

Shirazi told me that he was without instructions in relation to potentially important points given Mr Tomson's (very serious) accusations against the Respondent at the hearing. The available time for argument was also limited.

141. I had hoped that giving the Respondent an opportunity to put in evidence in response to the Applicant's letter of 12 September 2024 would address this imbalance, but the evidence which he provided on 18 September is disputed on behalf of the Applicant. As I have noted, there is continuing correspondence in relation to these issues in which each side argues that the other is entirely wrong and the Respondent's solicitors argue that he is being traduced.

142. The situation which I have described arose in large part because the Respondent failed to comply with the ADO and sought, instead, to vary it late in the day. However, given the way in which events have unfolded, and in the light of the exchanges between the parties since the hearing which raise a number of detailed evidential points, I have concluded that it would not be fair for me to make findings on the issues relating to the accuracy of the information provided by the Respondent pursuant to the ADO without the parties making formal submissions, and on the basis of evidence rather than the copying to the court of items of solicitor's correspondence. Similarly, nor should I expand the scope of the FO on the basis that the Respondent's disclosure is false or inaccurate, in the absence of a formal application, supported and responded to by evidence, and without further submissions on the evidential and legal issues in relation to such an application.

143. That being so and given the relevance of the scope of the FO to, at least, the arguments under Rule 25.1(g) I consider that the fairer course is to invite the

parties to reflect on their positions in the light of this judgment, to consider whether any further application in respect of the WFO or submissions in relation to the ADO are necessary and to notify the court accordingly.

144. I will reserve the determination of any such applications or arguments to myself for obvious reasons.