Neutral citation number: [2015] EWHC 2536 (Ch)

Case No: 6831 of 2006

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

The Rolls Building
7 Rolls Buildings
Fetter Lane
London
EC4A 1NL

Friday, 31st July 2015

BEFORE:

HIS HONOUR JUDGE HODGE QC sitting as a Judge of the High Court

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BETWEEN:

PAUL DAVID WOOD & ANOR

Applicants

- and -

TIMOTHY DARREN BAKER & ORS

Respondents

MS MARCIA SHEKERDEMIAN QC & MS HARRIET TER-BERG appeared on behalf of the **Applicant Trustees in Bankruptcy** (instructed by **STEPHENSON HARWOOD**)

The **Respondents** did not appear and were not represented

Approved Judgment

(Approved in Manchester on 1 September 2015 without reference to any papers)

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(Official Shorthand Writers to the Court)

HIS HONOUR JUDGE HODGE QC:

1. This is my extemporary judgment on a without notice application by the joint trustees in bankruptcy of the estate of Mr Timothy Darren Baker. They are Mr Paul David Wood and Mr Andrew Stephen McGill. The respondents to the application are the bankrupt himself together with two other individuals, Mr Andrew Farrar and Mr Satnam Singh, and also eight corporate entities.

2. The applicant trustees in bankruptcy are represented by Ms Marcia Shekerdemian QC leading Ms Harriet Ter-Berg. Since this is a without notice application no one appears before me for any of the respondents. I was first notified of this intended application on Wednesday 29 July and indicated that I would take it at 2 o' clock that afternoon. In fact, because of the extensive history of this matter, the applicants were not ready to proceed until 2pm yesterday, 30 July. By then I had pre-read the documents then available to me. They consisted of the supporting affidavits of the first-named applicant, one of the joint trustees in bankruptcy, Mr Paul David Wood, and also of the applicants' solicitor, Ms Judith Amanda Davidge of Stephenson Harwood.

3. Both affidavits were sworn yesterday, 30 July. Mr Wood's affidavit exhibits (as PDW1) an extensive range of documents occupying no less than four lever-arch files. Mr Wood's first affidavit comprises some 58 pages, over 336 paragraphs. Mr Wood had, by the time of yesterday's hearing, made a second affidavit updating the history of recent events. In that affidavit he referred to a further transfer of money between two of the corporate entities who are now respondents to the present application. I

have also had the benefit of reading the detailed written skeleton argument prepared by both counsel for the applicants.

4. Mr Shekerdemian addressed me for about two-and-a-quarter hours yesterday afternoon. That was some 50 per cent longer than the longer of the two time estimates she had given for the hearing. As a result, when those submissions concluded at about 4:15 yesterday, I felt that there was insufficient time to give a sufficiently detailed extemporary judgment. I therefore adjourned for judgment until 10 o' clock this morning. That has given Ms Shekerdemian and Ms Berg an opportunity overnight to draw my attention to another authority on the subject of the limited cross-undertaking in damages which is proffered by the applicants in this case. I have, of course, had regard to the three-page supplemental written note that was emailed to me shortly after 9 o' clock this morning.

5. Essentially what is sought by the applicants on this present application, in their capacity as the joint trustees in bankruptcy of Mr Baker, are injunctions freezing the business and assets, including various bank accounts of, or in the name of, the corporate respondents, in the case of the 11th respondent at the present time only up to a fixed sum of £180,000, but otherwise generally. Injunctions are also sought restraining the individual respondents from dealing with or dissipating the business and assets of the corporate entities, and injunctions restraining all of the respondents from dealing with or dissipating the shares in any of the corporate respondents.

6. The present application is made as a matter of urgency following investigations by Her Majesty's Revenue and Customs. A number of associates of the bankrupt, including the third and sixth respondents, Mr Farrar and Satnam Singh, were arrested on Thursday 23 July on suspicion of money-laundering and tax fraud. The bankrupt

and his relatively recent second wife were likewise arrested on Saturday 25 July upon their return by private jet from a holiday in the south of France, which was apparently paid for by the seventh respondent, Ample Investments Ltd.

7. Monies started to move out of the accounts of the corporate respondents on 24 July, after the arrests of Mr Farrar and Mr Singh, but before the arrest of the bankrupt. Since those arrests, money has been transferred out of certain of the bank accounts of the corporate respondents in large sums. The evidence on that is to be found at paragraph 25 of Mr Wood's affidavit. He says that since the arrests, sums exceeding £260,000 have been moved out of certain of the bank accounts concerned. £150,000 was transferred overnight on 24 July 2015 in three separate tranches, and then on 28 July 2015 the bankrupt paid £30,000 into the account of his daughter, Makila (?), who Mr Wood believes to be only 11 years old.

8. Since then there have been further developments. Overnight on 28 and 29 July £79,000 was transferred out of one of the corporate accounts, although it is not known which. Happily, that transaction was reversed by the bank in question, as the applicants understand that the Revenue and Customs have managed to freeze two of the bank accounts. It is understood that that had been achieved extra-judicially, by means of a suspicious activity notice. Since then there has been the further development related in Mr Wood's second affidavit. On 30 July – that is to say the day the application was made to me – Ms Davidge had received communication from HMRC telling her that they had been notified that £180,000 had been paid into the bank account of the eleventh respondent, H & E (Assets) Ltd, at Santander in the previous few days from the bank account of the fourth respondent, Connect FI Ltd.

9. Mr Wood does not have the details, but Revenue and Customs have told Ms Davidge that Santander have indicated that if they are given the name they will be able to freeze the account. Mr Wood is aware that there is another director and two other shareholders apart from Ample Investments Ltd, the seventh respondent, in H & E (Assets) Ltd, but he is concerned that Mr Baker has caused a payment to be made into H & E (Assets) Ltd's account in an effort to hide the monies from Mr Wood as his joint trustee in bankruptcy.

10. This application is made on a without notice basis because it is feared that giving notice will cause the respondents to redouble their efforts to make monies properly belonging to the bankrupt more difficult for his trustees to recover. As matters stand, it is thought that there may be as much as £1,000,000 left in the corporate bank accounts. Naturally, the trustees in bankruptcy wish to preserve that money.

11. The applicants have made the court aware that in relation to recent events on which the trustees rely in support of this application all relevant information has come from Revenue and Customs, including by way of conversations between them and Ms Davidge. She has acted almost throughout the bankruptcy, ever since 2006, as solicitor for whichever trustee was then in office.

12. I should explain that this is a long-standing bankruptcy. The bankruptcy petition was presented as long ago as 12 May 2005 by a creditor, Phillips Ltd; and the bankruptcy order was made in relation to Mr Baker in the Shrewsbury County Court as long ago as 27 June 2005. The present trustees were appointed much more recently, in succession to other member of the relevant insolvency practice, Smith & Williamson. Mr McGill was appointed on 8 November 2013 and Mr Wood on 28 November 2014. Thus the present trustees are heavily dependent on information that they have

acquired from their predecessors and, in relation to the instant application, from Revenue and Customs. Indeed neither Ms Davidge nor the present trustees have any independent knowledge of these matters; and the trustees are not in a position independently to test what they have been told by Revenue and Customs.

13. The information which Revenue and Customs have been providing to the trustees has been provided pursuant to an order obtained by the trustees in bankruptcy from Registrar Derrett on 10 July 2015 pursuant to section 366 of the Insolvency Act 1986. Revenue and Customs had not opposed that order. Revenue and Customs are aware of the present application and it is understood that they do not make claim to any of the assets, the subject matter of these proceedings. They are a creditor in the bankruptcy, although they have not yet proved for any particular sum.

14. The substantive claim brought by the trustees in bankruptcy, in aid of which the present injunctive relief is sought, is proposed to be made under section 363 of the Insolvency Act 1986. The draft application notice seeks declarations that the business and assets of each of the corporate respondents, including their bank accounts and any sums standing to the credit of those accounts, are held by each of the corporate respondents on trust for the bankrupt, or on behalf of him, or are otherwise owned and controlled by him and thus are subject to the operation of section 307 of the Insolvency Act, relating to after-acquired property. What is proposed is that notice will be served by the trustees in bankruptcy upon Mr Baker under section 307 of the Act, whereupon the business and assets of the corporate respondents will vest in the joint trustees and form part of the bankrupt's estate.

15. One of the undertakings that is proposed to be given by the joint trustees in bankruptcy is that they will serve the proposed section 307 notice upon the bankrupt

as soon as practicable. As I mentioned, Mr Baker was made bankrupt on 27 June 2005. He remains subject to bankruptcy, his discharge having been suspended indefinitely due to his failure to co-operate with his trustees. The single major creditor in the bankruptcy is the petitioning creditor, who has a judgment debt in excess of £222,000. There are said to be other creditors, and the present position is that the total known quantified debts are in the order of just over £556,000. There are presently few identified assets in the estate. The joint trustees presently hold a little under €45,000, with an expectation of a further €55,000 from Cyprus. In addition, there is an asserted interest by the trustees in disputed funds derived from a trust situated in Liechtenstein, amounting to just under £123,000, which are presently held in court and to which the Crown Prosecution Service also make claim. It is presently estimated that the costs of this application are in the order of £25,000. Having regard to the likely costs and expenses in the bankruptcy, there is a very significant deficiency, not only to the creditors but also to the trustees themselves.

16. There is available to the joint trustees an after-the-event insurance policy, but that covers only adverse costs orders made against the joint trustees. At some future point in time the insurers may extend cover to disbursements, but I am told that they are not meeting the applicants' costs, and insurance cover will not extend to any cross-undertaking for damages.

17. This is said to be a complex and protracted bankruptcy which has been punctuated by concerted efforts to trace, track down and unravel the bankrupt's property and affairs through an often tortuous network of individuals, companies and further business entities. The bankrupt has been convicted and sentenced on a number of occasions. In November 2006 he was convicted of conspiring to pervert the course of justice, for

which he was sentenced to a community service order. In July 2007 he was convicted, I think on his own plea of guilty, of a passport fraud and was sentenced to nine months' imprisonment. His efforts to obtain a false passport related to action he had taken to evade his obligations to his trustees in the bankruptcy. In March 2009 the bankrupt was convicted on a plea of guilty to an offence of invoice fraud for which he was sentenced to six years' imprisonment, although he in fact served less than four years: he was released from prison in August 2011. The trustees in bankruptcy acknowledge that there had been a gap in their investigations, or the investigations of their predecessors, after that sentence of imprisonment, and those investigations were only resumed, albeit with what is acknowledged to be no particular vigour, after his release in 2012. Since then the most significant activity before the recent discoveries has been with regard to the monies presently held in court and the trustees' dispute with the CPS over the entitlement to those monies.

18. I am satisfied on the evidence of Mr Wood that there has been a consistent and long-standing history of concealment by the bankrupt of his businesses and assets and evasion on his part of his bankruptcy obligations. Details of this are to be found in paragraph 20 of Ms Shekerdemian's skeleton argument. Ms Shekerdemian submits - and on the evidence that submission would appear to be well founded - that the bankrupt has demonstrated a way of working which involves interposing front men, or front companies, between his trustees and his business affairs, and he has also used what are ostensibly third party bank accounts. It is said that there is no reason to think that the bankrupt has changed his ways in this regard. The benefit of any doubt that might otherwise be warranted is said to be displaced by the wealth of evidence

recently uncovered by Revenue and Customs, which has led the joint trustees in bankruptcy to make the present application.

19. As a result of the past investigations, a former trustee in bankruptcy, Mr Hickling, received information from a Mr Calvin Booth that vast sums of money had been paid through an account in the name of AC Partners on behalf of the bankrupt. That sort of conduct has been confirmed much more recently in interviews by Mr Farrar and Mr Satnam Singh with Revenue and Customs. A note of Mr Farrar's interview is to be found in bundle 4 at page 981. He told Revenue and Customs the bankrupt was in charge of a payroll business of the fifth respondent, Ashco (Birmingham) Ltd, and that he (Mr Farrar) had no actual involvement in the companies other than to pass on the banking and paperwork he received at his home to the bankrupt's home address. He told Revenue and Customs that the bank accounts of the second respondent, Consult Business Services (UK) Ltd, were controlled by the bankrupt and that he (Mr Farrar), who is a care assistant, had no control over them. He also said that he had set up five to six accounts for the bankrupt. A note of Mr Satnam Singh's interview with Revenue and Customs can be found at bundle 4, page 983. He told them that the bankrupt had asked Mr Singh to set up bank accounts for the seventh respondent, Ample Investments Ltd, the eighth respondent, Fast Admin Services Ltd, and another, non-respondent, company. He said that the bankrupt had provided all of the paperwork. He also said that the bankrupt had two personal motor vehicles, held in the names of the seventh respondent, Ample Investments Ltd, and Mr Singh himself. Mr Singh said that he had no dealings with the companies or the companies which were paying money to the bankrupt to undertake their payroll. He said that he does not understand how the ninth respondent, Printfast Limited, is run, even though he is a director of it.

20. Another individual, Mr Stephen Roberts, has told Revenue and Customs that the bankrupt is in total control of the businesses of the fifth respondent, Ashco (Birmingham) Ltd, and also of the second respondent, Consult Business Services (UK) Ltd. He has also told Revenue and Customs that the bankrupt owns two Porsche cars which had not been disclosed to the trustees in bankruptcy.

21. There is said to be no evidence that the corporate respondents have any legitimate freestanding business. Ostensibly some of them, in particular the second respondent (Consult), and possibly others, including one of the Ascho companies - although it is not clear which - have operated a payroll business; but, as Mr Wood has explained, the PAYE and National Insurance Contributions in question have not been paid, either in full or at all, to Revenue and Customs, with the consequence that tax, apparently in a six figure sum, is being lost each week. Revenue and Customs suspect that some of the client companies may be complicit in what they consider to be a payroll fraud. The joint trustees in bankruptcy acknowledge that they have no further details of this, and they also acknowledge the possibility that some of the client companies may have been entirely innocent. That said, the trustees' evidence is that whatever the corporate respondents had been doing, there is presently no evidence of any meaningful activity by Mr Farrar or Mr Singh, other than delivering the companies' post to the bankrupt. Certainly, beyond being named on the bank mandates, they do not appear to have undertaken any functions properly attributable to a company director. There has been an extensive examination of text message evidence - although it only extends to a date in 2014 - which suggests that the bankrupt has been pulling the strings behind the companies. Both Mr Farrar and Mr Singh have said as much in interview; and what they have said is said to be corroborated, not only by the text exchanges between them

and the bankrupt, but also by movements on the corporate respondents' bank accounts, to the extent that they have been traced, and by the fact that very significant sums have been spent for the bankrupt's personal benefit. Reliance is also placed on the fact that the bankrupt would appear to have attended a recent VAT inspection in respect of the seventh respondent (Ample) where he called himself Tim Jones.

22. In the course of her oral submissions Ms Shekerdemian accepted that it could not be said from the bank statements that the accounts of the corporate respondents have been operated purely for the personal benefit of the bankrupt. There are lots of payments out which are designated as "salary". That may, Ms Shekerdemian accepts, be consistent with a legitimate business; but she relies upon the fact that Revenue and Customs do not regard the business of the corporate respondents as legitimate.

23. So far as the text messages are concerned, Ms Shekerdemian acknowledged that the text traffic that is in evidence stops in May 2014 and that there is no such current traffic in evidence before the court. She also accept that there are a very large number of exchanges that, at least superficially, could be consistent with a legitimate business being carried on; but, she says, there are also a significant number of text messages that point to Mr Baker, the bankrupt, pulling the strings of those ostensibly conducting the business of the corporate respondents.

24. Ms Shekerdemian also accepts that there is no consistent course of conduct by which the bankrupt has been taking money out of the companies to fund his own lifestyle, but at least some of the money has come out of the company bank accounts for that purpose. For example, the bank account of Ample was used to pay over £31,000 for the bankrupt's second wedding on 25 May 2015. The bank account of another

corporate respondent, Consult, was used to pay some £5,000 for a birthday dinner for the bankrupt on 18 July 2015 at a Michelin starred restaurant. That bank account has also been used to meet other apparently personal expenses.

25. Ample's bank account has recently been used to pay for what is described as a lavish trip by the bankrupt to the south of France. There is other evidence of the bankrupt using credit or debit cards in the name of corporate respondents for his own personal expenditure. Mr Shekerdemian acknowledges that the joint trustees in bankruptcy have only seen bank statements for one of the corporate respondents, Consult, and that they have not seen them for the other corporate respondents; but such evidence as is before the court is said to be a powerful indication of the bankrupt treating at least the corporate bank accounts of Consult, Ample and Connect as his own, and that he is using those companies both to conceal assets available to him, and which he should have disclosed to his joint trustees, and also to facilitate his evasion of his statutory obligations under section 333 of the Insolvency Act, which is a contempt of court.

26. I am satisfied on the evidence before the court that the applicants have raised a serious triable issue that Mr Baker is effectively the man behind the various corporate respondents, and that they are being used to shelter money, business and assets properly belonging to, and being carried on by, the bankrupt.

27. To what result does this then lead? The trustees in bankruptcy assert that the business and assets of the corporate respondents, and the shares in those entities, are beneficially owned by the bankrupt and have been acquired by him after the bankruptcy order made in relation to him as long ago as 2005. Those assets are therefore capable of being the subject of an after-acquired property notice under section 307. Once such notice has been served, its effect will be immediately to vest

ownership of those assets in the trustees in bankruptcy, with title relating back to the date on which the bankrupt himself acquired those assets, albeit subject to any accrued third party rights (by virtue of section 307(4)).

28. I was initially concerned, when I first read the papers in this case, as to whether, in advance of the service of any section 307 notice, the joint trustees in bankruptcy had any accrued cause of action. My concern was that, as a result of the Court of Appeal's decision in *The Veracruz* [1992] 1 Lloyd's Rep 353, without an accrued cause of action the joint trustees in bankruptcy could not obtain a Mareva injunction. In *The Veracruz* the Court of Appeal had taken the view that the sensible and desirable approach which had been adopted by Saville J in an earlier case, whereby the injunction was granted prior to the falling-in of an anticipated cause of action but its operation was suspended until the cause of action arose, was not open to the court. Had that concern remained a live one, I might have felt it necessary to adopt the expedient taken by Rix J in the case of *Re Q's Estate* [1999] 1 All ER (Comm) 499 at pages 510 to 511 of indicating that I would be prepared to grant freezing relief, but only after a section 307 notice had been served on the bankrupt, thereby allowing such a notice to be served by the joint trustees in bankruptcy in the knowledge that they could come back to court immediately and, subject to disclosure of any intervening change of circumstances, obtain such a freezing injunction from me. That is the course that I have taken in at least one other case where I was approached to grant a freezing injunction where there was no existing accrued cause of action. However, Ms Shekerdemian indicated that she was not actually seeking a proprietary freezing injunction. On examination, it seemed to me that what she was really seeking to do was to invoke the jurisdiction conferred on the court by CPR 25.1(1)(c)(i), namely seeking an interim order for the preservation of relevant

property, in the sense of property which was the subject of a claim or as to which a question might arise on a claim. It seemed to me that that was justified by the form of the declaratory relief claimed in the draft application notice, by which declarations were sought as to the beneficial ownership of the bank accounts and assets and, indeed, the ownership of the various corporate respondents. Thus it seems to me that the difficulties caused by the decision of the House of Lords in *The Siskina* do not arise.

29. Ms Shekerdemian makes the point that in addition to the trustees' ability to claim after-acquired property under section 307 of the Insolvency Act 1986, the bankrupt has been, and remains, under the separate obligation under section 333 of the Act to disclose after-acquired property to his trustees in order to facilitate the operation of section 307. She points out that a breach of section 333 is also a contempt of court.

30. Ms Shekerdemian submits that the case of the joint trustees in bankruptcy can be characterised in a number of different ways. First, by characterising the relationship between the bankrupt and the corporate respondents as that of principal and agent; or, alternatively, she submits that the relationship between the bankrupt and the corporate respondents can be characterised as that of beneficiary and trustee. Although in his affidavit, at paragraphs 15 and 331, Mr Wood characterised the relevant trust relationship in terms of a resulting trust, Ms Shekerdemian prefers to characterise it as an express trust, depending on the precise terms of the relationship, which she acknowledges is fact-sensitive. Thirdly, Ms Shekerdemian submits that, if necessary, the court can pierce the corporate veil so as to identify the activities and assets of the corporate respondents as those of the bankrupt, who owns and controls them. She acknowledges that, following the decision of the Supreme Court in the case of Prest v

Petrodel Resources Ltd [2013] UKSC 34, reported at [2013] 2 AC 415, such cases of piercing the corporate veil are rare and should be regarded very much as a remedy of last resort; but she submits that the principle or doctrine of piercing the corporate veil may be invoked where a company has been interposed so as to enable the individual wrongfully to evade or frustrate his existing legal obligations. In particular, she referred me to passages in the leading judgment of Lord Sumption at paragraphs 25 through to 35, and also in the judgment of Lord Neuberger at paragraphs 81 to 82. It is sufficient for me to refer shortly to brief passages in Lord Sumption's judgment. At paragraph 28 Lord Sumption identified what he described as "the evasion principle" in these terms:

> "… the court may disregard the corporate veil if there is a legal right against the person in control of it which exists independently of the company's involvement, and a company is interposed so that the separate legal personality of the company will defeat the right or frustrate its enforcement."

31. At paragraphs 34 and 35 Lord Sumption referred to the broader principle whereby the corporate veil might be pierced only to prevent the abuse of corporate legal personality. He recognised that it might be an abuse of the separate legal personality of a company to use it to evade the law or to frustrate its enforcement; but he said that it was not an abuse to cause a legal liability to be incurred by the company in the first place. That was because it was not an abuse to rely upon the fact, provided it was a fact, that a liability was not the controller's because it was that of the company. Lord Sumption concluded that:

> "…there is a limited principle of English law which applies when a person is under an existing legal obligation or liability or subject to an existing legal restriction which he deliberately evades or whose enforcement he deliberately frustrates by interposing a company under his control. The

> court may then pierce the corporate veil for the purpose, and only for the purpose, of depriving the company or its controller of the advantage that they would otherwise have obtained by the company's separate legal personality. The principle is properly described as a limited one, because in almost every case where the test is satisfied, the facts will in practice disclose a legal relationship between the company and its controller which will make it unnecessary to pierce the corporate veil. Like Munby J in *Ben Hashem v Al Shayif*, I consider that if it is not necessary to pierce the corporate veil, it is not appropriate to do so, because on that footing there is no public policy imperative which justifies that course… But the recognition of a small residual category of cases where the abuse of the corporate veil to evade or frustrate the law can be addressed only by disregarding the legal personality of the company is, I believe, consistent with authority and with long-standing principles of legal policy."

32. Although piercing the corporate veil is a remedy of last resort, Ms Shekerdemian submitted that the corporate veil analysis, in terms of the evasion principle, was probably the most compelling analysis of the legal basis for the joint trustees in bankruptcy's application in the present case. She submits that, however the case is to be characterised for the purposes of this application, a good arguable case has been established. In summary, the bankrupt was, and remains, subject to an existing obligation to disclose after-acquired assets to his trustees. He has evaded that obligation by interposing some, or all, of the corporate respondents. His motivation is said to be clear, namely to evade the consequences of disclosure under section 333, and thus the expropriation of those assets under section 307. This is said to be an exercise in evasion by the bankrupt of his statutory obligations under section 333. The facts set out in Mr Wood's affidavit are said to provide powerful support for this analysis, under which the corporate respondents act as the bankrupt's agents and nominees for the purpose of holding assets on his behalf.

33. I accept those submissions, in relation at least to all of the corporate respondents, other than the eleventh, H & E (Assets) Ltd. That entity was only introduced into the proposed relief at the commencement of the hearing yesterday afternoon, and in consequence of the evidence to be found within Mr Wood's second affidavit. As to that corporate entity, Ms Shekerdemian relies upon the principle identified by Mummery J in the case of *TSB Private Bank International v Chabra* [1992] 1 WLR 231. Ms Shekerdemian also took me to the decision of Burton J in the case of *Joint Stock Co VTB Bank v Skurikhin* [2012] EWHC 3916 (Comm). She took me to paragraphs 37 to 39. It seems to me that the effect of the observations in those two authorities is that the joint trustees in bankruptcy do have an arguable claim against H & E (Assets) Ltd, but only to the extent of the sum of £180,000 paid into H & E (Assets) Ltd's Santander account from the Connect FI Account, that of the fourth respondent.

34. I am satisfied on the evidence, and for the reasons I have given, that the joint trustees in bankruptcy have demonstrated a good arguable case for the injunctive relief sought. I am satisfied that there is a real risk of dissipation of further company monies at the instance and behest of the first respondent, the bankrupt, and that such risk would be exacerbated if notice were to be given of this application for interim injunctive relief. I am satisfied that this was an appropriate case for making an application without notice to any of the respondents. I say that notwithstanding the fact that a recent attempt to divert monies on the night of 28 / 29 July in the sum of £79,000 has effectively been reversed as a result of extra-judicial action by Revenue and Customs. There can be no assurance that similar money transfers will similarly be reversed.

35. It is, notwithstanding that result, appropriate to grant interim injunctive relief to the joint trustees in bankruptcy on this without notice application. Ms Shekerdemian has sought to comply with the joint trustees' obligations of full and frank disclosure, and of identifying other possible defences that might have been advanced by the respondents to this application, had they attended before the court, at paragraphs 26 through to 31 of her written skeleton argument.

36. It remains for me to consider two matters: First, the cross-undertaking in damages and, secondly, the terms of any order. Ms Shekerdemian submits that, in real terms, there are no assets presently available to back up any undertaking in damages. It is not possible to make any realistic estimate as to the likely level of damages that may flow to the respondents from the grant of this relief. The worst-case scenario would encompass claims made by client companies against the corporate respondents.

37. As originally drafted - and deliberately so - there was to be no provision in the order to facilitate transactions in the ordinary course of the corporate respondents' business. That was because it was not considered that there was a legitimate business, although it was recognised that if there was, the order sought could paralyse that business. Against that background, Ms Shekerdemian had to face the fact that the petitioning creditor is not able to offer any fortification of the cross-undertaking in damages, and there is no other source. Revenue and Customs would not provide fortification, and the after-the-event insurance cover does not cover it.

38. What is proposed is that the cross-undertaking in damages should be limited to the amount of the monies and the net realisable value of the unpledged assets in the bankrupt's estate taken into the custody or under the control of the applicants in the course of their administration of the bankruptcy less the costs, expenses or other

disbursements of the bankruptcy. In support of that limited undertaking, I was taken to paragraphs 66 through to 86 of the Court of Appeal's decision in the case of *JSC Mezhdunarodniy Promyshlenniy Bank v Sergei Viktorovich Pugachev* [2015] EWCA Civ 139. In the written note supplementing her oral submissions that I received from Ms Shekerdemian this morning, reliance was also placed on the decision of Laddie J in the case of *RBG (Resources) Plc v Rastogi* [2002] BPIR 1008.

39. I am satisfied on the authorities that the extent of any cross-undertaking in damages is essentially a matter for the judge of first instance and that the essential test is one of fairness. As Lewison LJ said at paragraph 77 of the judgment in the Pugachev case: "… it is, then, fairness rather than likelihood of loss that leads to the requirement of a cross-undertaking". In the present case, I have to bear in mind that none of the respondents is at present before the court. As Ms Shekerdemian acknowledges (at paragraph 7 of her supplemental note), none of the respondents have yet put their case in rebuttal. She submits that the documents and evidence presently before the court provide cogent *prima facie* evidence of wrongdoing and evasion by the bankrupt of his statutory liabilities. There is said to be strong evidence that the relevant assets are in the process of being dissipated. A freezing order is crucial if the trustees in bankruptcy are to have any hope and prospect of recovering assets. If the court now requires an unlimited undertaking, or one requiring the trustees to risk their own assets, the trustees' claims to significant assets will, it is said, be stifled. Ms Shekerdemian submits that an early return date may minimise any injustice, and that at that stage the respondents, if they so wish, may resist the continuation of any injunction on the grounds that a limited cross-undertaking is not appropriate.

40. I have to attempt to strike a balance between the interests of the trustees in bankruptcy, who are represented before me, and those of the respondents, who are not. In my judgment, the appropriate balance to strike, at least at this stage, without prejudice to what may happen on the return date, is to accept an undertaking limited to the amount of the monies and the net realisable value of the unpledged assets in the bankrupt's estate taken into the custody or under the control of the applicants in the course of their administration of the bankruptcy, but not at this stage to include the additional words "less the costs, expenses or other disbursements of the bankruptcy". Whether that limitation should be accepted is, in my judgment, a matter (1) for the return day going forward, and (2) for any application that may hereafter be made to enforce the cross-undertaking in relation to the period between now and the return date. Just because a cross-undertaking in damages has been given does not necessarily mean that it would be enforced, or enforced in full; but it does seem to me that the question whether the costs, expenses or other disbursements of the bankruptcy should be excepted from the limited scope of the undertaking is properly a matter not to be decided on this without notice application, and without any possibility of representations from any of the respondents. So I will accept a limited cross-undertaking but without the words "less the costs, expenses or other disbursements of the bankruptcy".

41. I turn then to the other terms of the freezing injunction in what I understand to be its most recent iteration. There is, I think, possibly a slight mismatch between the 11 identified respondents and paragraph 1 of the order, which also identifies two individuals, Marcus Davies and John Hadley. It seems to me that they should now come out. They did appear as respondents 12 and 13 in what I think was the second

iteration of the order, but they no longer appear as named respondents so therefore they must come out of paragraph 1.

42. It seems to me that the terms of the freezing injunction itself are appropriate and follow from the reasons I have already given. Likewise with the proposed paragraph 6. However, it does seem to me that it would not be appropriate to require the provision of information paragraphs (numbers 7 and 8), at least in advance of the return date. It seems to me that whether information should be required to be provided is not something that I should pre-judge without the benefit of representations from the respondents.

43. Unlike a previous iteration of the draft order, and in the light of my observations yesterday, there are now (at paragraph 9) exceptions to the order in relation to the making of payments in the ordinary course of the corporate respondents' business. It seems to me that paragraph 9 (1) should simply say that this order does not prohibit the corporate respondents from making payments in the ordinary course of their business without requiring the applicant's written consent, not to be unreasonably withheld, and without requiring the rather elaborate provisions of paragraph 9, which effectively would require the joint trustees to conduct an oversight of the whole of the ongoing business of the corporate respondents. That may be something for the return day; but it seems to me that paragraph 9 (1) should simply stop with the words "from making payments in the ordinary course of their businesses". The corporate respondents will of course be on risk if they do make payments that fall outwith that permission.

44. Paragraph 9 (2) is appropriate in terms of expenditure of a reasonable sum on legal advice and representation; and I see no reason why that should not include the usual

provision that before spending any money, the respondent must tell the applicants' legal representatives where the money is to come from. Given that there is no fixed spending limit, paragraph 9 (3) seems to me to be redundant. I will of course provide for the costs of this interim application to be reserved. I have already indicated that the concluding words of undertaking 1 in schedule B will come out. Other than that, it seems to me that the terms of the order are satisfactory.