Neutral Citation Number: [2025] EWHC 415 (Ch)

Case No: BL-2022-001729

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 27/02/2025

Before :

HHJ PARFITT
(sitting as a judge of the High Court)

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Between :

(1) VANESSA WURM	**Claimants**
(2) ROSEMARIE WORM	
(3) VNESS LIMITED	
- and -	
(1) KASH AMINI	**Defendants**
(2) MASLIFE LIMITED	
(3) BAHADOR AMINI	
(4) LAUNDRY D2D LIMITED	
(5) PARS DC LIMITED	

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Andrew Butler KC (instructed by **Landmark Legal LLP**) for the **Claimants**
Michael Tomlinson KC (instructed by **Taylor Rose Limited**) for the **Defendants**

Hearing dates: 13 February 2025

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Approved Judgment

This judgment was handed down remotely at 10.30am on 27 February 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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HHJ PARFITT

HHJ Parfitt :

1. This is my judgment on the Third to Fifth Defendants' application dated 15 November 2024 to set aside a freezing order made by order of Trower J dated 8 October 2024 and continued by order of Richards J dated 15 October 2024 ("the FO").

2. The First Claimant and the First Defendant had a relationship between May 2019 and July 2022. The First Claimant was the relatively more wealthy partner. The First Claimant's case is that she paid the First Defendant some £3.7 million in the course of the relationship because, for the most part, he said he would invest it in the business of the Second Defendant in return for the Claimant having shares, and for the balance that he would invest it for the Claimant in cryptocurrencies. The Claimant's case is that contrary to those promises the First Defendant took the money for himself. The Third Defendant is the First Defendant's elder brother. The core allegation against him, and his companies who are the Fourth and Fifth Defendants, is that they have, in part, received the proceeds of the First Defendant's equitable fraud and so helped him keep the money away from the First Claimant.

3. On 27 January 2025, the Claimants obtained judgment against the First and Second Defendant for the sums claimed and an order for the First Defendant to account for what has become of the monies and any profits derived from that money. Judgement was entered following the First and Second Defendants failure to comply with an unless order relating to disclosure. On the same date as that judgment, the First Defendant had petitioned for his own bankruptcy and the Second Defendant had entered administration.

4. For convenience I will refer to the Third to Fifth Defendants as "the Applicants" for the purpose of this judgment and the First Claimant as the Claimant, unless I need to distinguish further.

5. The Applicants' case is that the FO should be discharged because (a) the Claimant cannot meet the merits test of "seriously arguable case" either (i) for the allegation of a "*Quistclose* Trust" or (ii) for the necessary allegation of dishonesty; and (b) there is insufficient risk of dissipation. The Applicants' case under (a)(ii) and (b) include that the inferences and suspicions which the Claimant relies on have no substantive basis and do not justify the continuance of the FO. Throughout the Applicants emphasise the two year gap between the start of the proceedings and them being joined in October 2024.

6. The job of counsel and the court was not made any easier by the approach taken to the creation of hearing bundles. In the event just under 4000 pages were provided to the court with numbering that was different to what had been provided for counsel just previously. Nevertheless, both sides wished the court to get on and determine the application. I note the Chancery Guide at appendix F paragraph 3 and suspect neither that nor the rest of the relevant guidance about bundles has been followed. For the most part counsel were able to make the points they wished without too much difficulty in finding the documents. There was, however, one relevant and substantive problem which I refer to in more detail below.

7. I have read and take into account the following affidavits and/or witness statements: the Third Defendant's dated 15 November 2024 and 11 February 2025; the First Claimant's

of 7 October 2024, 10 October 2024 and 3 February 2025. I also read, but I was rightly not referred to it, a statement by the Third Defendant's ex-wife dated 27 October 2024, which appeared to be more of a character reference rather than anything substantive.

8. In this judgment I address the points made by Mr Tomlinson, in the order set out above, because they were the substantial battleground during the hearing, but before doing so it is important to summarise the relevant parts of the statements of case.

The Statements of Case

9. The Claimant's case against the Applicants is dependent on the trust case against the First Defendant. The essential facts of that trust case are at paragraph 8 of the Amended Particulars of Claim dated 29 October 2024 ("APOC"). It is said the First Defendant, in order to persuade the Claimant to invest in the Second Defendant, promised the Claimant that any monies paid to him for that purpose would be used for the benefit of the Second Defendant and that the Claimant would be given shares in proportion to that investment. In addition, the First Defendant promised that if he was paid money by the Claimant to invest in cryptocurrencies then he would do so on her behalf. In reliance on those promises, the Claimant paid about £3.2m to the First Defendant to be invested in the Second Defendant and about £0.5m for crypto. It is alleged that the First Defendant did not use the monies for those purposes but for his own purposes, including other businesses but not that of the Second Defendant. To reduce it to its minimum, the core factual allegation is that the First Defendant wrongly took for himself the Claimant's money knowing such monies had been transferred to him over some time for the limited purposes stated.

10. It is then alleged that those facts gave rise to a *Quistclose* trust or trusts "requiring [the First Defendant and/or Second Defendant] to ensure that the Payments were used for the purposes set out…"

11. The allegations against the Applicants are made against that backdrop. It is alleged that about £221,000 of the Claimant's money (or its traceable proceeds) was paid by the First and/or Second Defendants to the Applicants (I was told that on the current evidence this sum is £230,000) between 23 July 2019 and 26 September 2022. Such payments, and any other similar payments, are said to have been a breach of the *Quistclose* trust in which the Applicants dishonestly assisted by receiving the money, knowing the same to be or likely to be derived from the Claimant or reckless as to that.

12. The allegations of dishonesty are contained in paragraphs 47 to 52 of the APOC. The particulars include: the Applicants' knowledge of the Claimant's relationship with the First Defendant and her relative wealth compared to his and the inference to be drawn from that that if substantial sums were being paid by the First Defendant to the Applicants then that was likely the Claimant's money; the receipt of the money without good reason; the payments becoming more frequent and in lump sums towards the end of the relationship; the lack of a constructive response to the Claimant's solicitors request for information of the Third Defendant from April 2024 onwards; the Third Defendant acquiring a £1.5m flat in March 2023 and a £240k Bentley (the date is not pleaded but in evidence said to be September 2022); and, the curious filings made by the Applicants at Companies House (I address these in more detail below)

13. The Applicants' defence to these allegations is dated 25 November 2024. This did not plead a case against the underlying trust allegation or the allegation of breach of trust (beyond a general denial of any dishonesty on the part of all defendants – or possibly denying participating in any dishonesty of D1 and D2 as the wording is "and further deny all allegations of dishonesty together with D1 and/or D2" and denying any involvement in any breach of trust of whatever kind).

14. The allegation of the Applicant having received money from the First Defendant was not admitted but it was said generally that the relevant paragraph of the APOC "did not contain full and accurate details of all transactions passing between [the Defendants]" and that the Third Defendant's business and personal transactions were separate from the matters in dispute.

15. Except for knowledge of the relationship, the various particulars were denied, with the following details: regret about the tone of the response to the Claimant's solicitors; the flat purchase was from funds from D4 and D5 and was not linked to the proceedings or the Claimant's money; the Bentley was purchased but was nothing to do with the Claimant's dealings with the First or Second Defendants; there was no link between the Third Defendant's resources and the Claimants.

16. It is worth noting here that there was no case put forward about the receipt of by the Applicants of money from the First Defendant. Although before me the Applicants' case was that MatchesFashion (see below) had been told to pay about £139k to the First Defendant "in escrow" and then this money was paid over to its owner, namely the Fourth Defendant.

Overarching Points

17. Mr Tomlinson emphasised that the burden was on the Claimant to show that the freezing order should continue. I did not understand Mr Butler to take issue with that, at least at a certain level of generality. It makes no difference to the outcome in this case but I suspect the position is that there is at least some burden on an applicant in these circumstances since the court has already confirmed the continuation of the freezing order on the return day.

18. However, since here the Applicants consented to the continuation of the order on the express basis that they reserved their right to apply to set aside or vary, it would be unfair to place them substantially in any more difficult position than they would have been if they had objected to the continuation when all the burden would be on the Claimant. It is more often than not the case that a freezing order respondent is not in a position to mount its challenge to the continuation of the freezing order by the return day or, perhaps less often, even to have reached a view on whether such a challenge will be made.

19. The practical arrangements parties need to reach to preserve their respective interests within the context of the limited time available on the typical return date should be managed pragmatically and not in a manner which creates perceived tactical advantage for one side or the other depending on whether the return date is adjourned or the express right to apply to set aside is varied. Not least because the parties will end up arguing over such advantage on the return day when the limited time will be better spent dealing with points which should matter.

20. The better formulation might be that in this type of situation it is for the applicant seeking to set aside or vary a freezing order to identify those respects in which it alleges the order should be set aside or varied and why and assuming those points address potentially relevant matters, i.e. they are context-coherent, then the Claimant will bear the overall burden of maintaining their order in the light of the points raised.

21. In substantive terms, and for Mr Tomlinson's reassurance, I have assumed the burden is on the Claimant throughout just as if the Claimant was seeking the continuation of the order.

22. There was a slight suggestion by Mr Tomlinson that the "seriously arguable case" test should flex by reference to the seriousness of a freezing order as one of the "nuclear weapons" in the court's interim armoury. Mr Butler referred to *Dos Santos v Unitel SA* [2024] EWCA Civ 1109 in which the Court of Appeal recently confirmed that the merits test for a freezing order was the same as interim injunctions generally and in particular Popplewell LJ at [128] saying the "nuclear" description was inapt given how the freezing order has developed since the 1980s and the recognition of its being "firmly rooted in the protection of prospective rights and interests in what is termed the enforcement principle". I also note, however, that at [130], Popplewell LJ emphasised the importance of ensuring that freezing orders do not operate unfairly and to give anxious scrutiny to "real risk of dissipation" and "just and convenient". I have done this in a separate section at the end of this judgment.

The *Quistclose* Trust

23. Mr Tomlinson said there was no arguable case for a *Quistclose* trust on the pleaded facts because at its highest the allegation amounted to nothing more than the Claimant paying money to the First Defendant over an extended period of time, in many separate payments, which were not segregated into a separate bank account, in return for a shareholding in the Second Defendant. There was nothing to indicate that a *Quistclose* trust might arise rather than a general accretion to the assets of the First Defendant and/or the Second Defendant in return for the shareholding or crypto investment. The failure of the monies to be separately held was itself fatal to the allegation of *Quistclose* trust. The court should not look at possible trusts more generally but take the Claimant's case as stated: a *Quistclose* trust and on the authorities those requirements were not met.

24. Mr Butler, for the Claimant, said that the pleaded facts were clearly within the *Quistclose* principles, as stated in the cases and summarised in **Lewin**, 20th ed. Whether or not monies were placed in a separate account was a potential indication of such a trust, depending on other factors as well, but was not a necessary requirement, nor one which was determinative of itself. It will all depend on the circumstances but the core distinction is between assets that accrue for the general benefit of the person receiving them and assets that are held to be used for a specific purpose so that if they are not so used, as alleged in this case, there is a breach of fiduciary duty. The various other judges who have seen this case and made freezing orders, either against the original defendants or the Applicants, have had no difficulty finding that the cause of action test has been met.

25. While I give little, if any, weight to the last point made by Mr Butler, in general I accept his core submission for the reasons which he gives: the allegation in this case, which is a simple one, is that the First Defendant took the Claimant's money (or money she

procured to be paid by the Third Claimant) because he promised to use it for her benefit – by investing in the Second Defendant in which she would be given a substantial shareholding or investing it for her in cryptocurrency – and used it not for those purposes but for his own purposes. The core wrong of the First Defendant is to abuse the trust placed in him by the First Claimant for his own gain, at her expense, and contrary to his promises to her about the purposes of gaining access to her funds.

26. These facts, if established, and I agree with Mr Tomlinson that they will need to be established by evidence as against the Applicants regardless of the default judgment, create a clear fiduciary obligation on the part of the First Defendant – he has taken another person's money on his promise to deal with it to their benefit, and a clear breach of that fiduciary obligation – he has used it as his own.

27. In my view for "seriously arguable case" purposes that should be the end of the analysis[1], there is strong case that the Claimant has lost the money and a strong case that that happened because the First Defendant took it, but Mr Tomlinson's point is that since the APOC categorises this as a "*Quistclose* trust" then it will be necessary to establish a seriously arguable case that this particular fiduciary obligation is one which can fit into the *Quistclose* type of trust.

28. Since *Quistclose* itself, and many of the other cases which have considered its application and extent, are cases of lenders seeking priority in an insolvency situation, the overlap with the present alleged facts is not exact. Indeed, the simplicity of the present allegations compared to the more complex overlapping or interrelationship of common law and fiduciary obligations in the typical *Quistclose* case is a feature that requires caution when applying some of the *Quistclose* cases to the Claimant's case here.

29. This is also a case where the key point, from a "what has gone wrong" point of view, is that the money has been misappropriated rather than a mere failed purpose, which will often arise without any wrongdoing on the part of those who are competing for the beneficial ownership of the disputed asset or indeed the person holding it.

30. The leading case on what is required for a *Quistclose* trust is *Twinsectra v Yardley* [2002] 2 AC 164. In addition, Mr Tomlinson took me to *Re Farepack Food and Gifts* [2006] EWHC 3273, Mann J [33] – [35]; *First City Monument Bank Plc v Zumax Nigeria Ltd* [2019] EWCA Civ 294, Nugee LJ at [22] – [23]; and, *Baldudak v Matteo* [2024] EWHC 167 (Ch) at [81] – [82].

31. The two points emphasised, rightly, by Mr Tomlinson were that it was not enough that the relevant assets were transferred for a particular purpose, even if such purpose might be a contractual restraint on the receiver's use of the assets; what was essential was an objective understanding that those assets were to remain separate from the assets of the receiver and so those assets in particular were to be used and only used for the stated purpose and were not at the free disposal of the receiver. And secondly, it was suggested

[1] *Ali v Dinc* [2022] EWCA Civ 34 where the trial judge's finding of an unpleaded *Quistclose* trust, on facts not entirely dissimilar to these (C's properties transferred to D on basis D would raise money for C), was upheld because the relevant facts were contained in the pleadings as was a trust allegation, just not a Quistclose trust. I was not referred to this case and I cite it for the point about pleadings and trial determination not to add to the *Quistclose* analysis (although Dame Sarah Worthington KC's summary of the *Quistclose* requirements from [229] is worth reading).

on the basis of various references to the money being kept "separate" or in a "segregated" account that the existence of such separation was a necessary precondition to the existence of a *Quistclose* trust.

32. I agree with Mr Tomlinson's first point: it would be an essential finding of *Quistclose* type trust that the arrangements were such that the provider of the asset was not disposing of their beneficial interest in it, save to the extent required for the application of the specific purpose and certainly that the transferred assets could not be at the free disposal of the immediate recipient. I disagree with how high Mr Tomlinson put his second point and agree with Mr Butler that holding the asset separately will always be relevant and may be determinative but is not a necessary precondition to the existence of a *Quistclose* trust.

33. For present "serious arguable case" purposes the summary contained in **Lewin** at 9-065 is sufficient. A useful, and obvious, reason why keeping the money separate cannot itself be determinative is that in circumstances which might otherwise give rise to a *Quistclose* trust, the receiver may well have a duty to keep the assets separate. It would be curious if the receiver's breach of that duty would itself extinguish the very trust that created it. In short, separate account and segregation is a matter of evidence or common feature, not necessary legal requirement.

34. One of the key aspects about the alleged trust in the APOC is that the transferred assets were not intended to belong to the First Defendant and could not be used for his own purposes. This factual component of the alleged *Quistclose* trust indicates that as formulated it meets Mr Tomlinson's first legal condition: the assets were meant to be treated separately and did not fall in with the receiver's general assets.

35. I disagree with Mr Tomlinson that the occasional nature of the transfer of the monies from the Claimant to the First Defendant in this case, the £3.7 million was paid or taken occasionally over more than 2 years, necessarily defeats the trust. This will be a matter for evidence at trial but at this stage on such evidence as the court has, there is a more than seriously arguable case that the First Defendant received the relevant monies for the purposes which remained throughout for the benefit of the Claimant (including such benefits as would come to her by way of the promised shareholding in the Second Defendant) but used those monies for his own purposes (and in particular not those of the Second Defendant). The frequency of the asset transfers does not change the core analysis but potentially, it will be a matter for trial, is relevant to why a separate account might not be required.

36. The objective assumption would be that as monies were taken, they were used for the Claimant's purposes and in accordance with the First Defendant's promises to the Claimant and then more money was taken or paid as required for those purposes and to meet those promises. The parties' personal relationship is part of the background to the trust involved throughout that process. What will matter is that the Claimant proves that the First Defendant knew at all times that these were not his monies.

37. In that regard, and for present purposes, the Claimant has at least a seriously arguable case that the transferred funds remained her property and the First Defendant wrongly used those funds as his own. This was a breach of trust and gives rise to the potential ancillary liability of the Applicants.

Dishonesty

38. In this case the facts and matters relied on regarding "dishonesty" in a general sense impact both the "serious issue to be tried" requirement and "risk of dissipation". The claim against the Applicants is ancillary to the alleged breach of trust against the First Defendant. It is said that they have knowingly or recklessly helped the First Defendant hide the Claimant's money so as to keep her from recovering it. If true, this would be the basis for a dishonest assistance claim and/or knowing receipt and it would also indicate a serious risk that the Applicants might dissipate their own assets so as to deprive the Claimant of the fruits of any judgment she might obtain against them. Clearly, those who are prepared to help a person keep assets away from their rightful owner are likely to do the same for themselves.

39. This interlinking was reflected in both parties' submissions. Mr Butler relied on the matters set out in the APOC and other matters arising out of the Applicant's evidence in support of the set aside application. The gist of these, in my words, was that overall there was a sufficient factual platform at this stage for negative inferences to be drawn against the Applicants both in respect of the receipt of monies from the First Defendant and in respect of there being a substantial risk of dissipation. Mr Tomlinson disagreed and pointed to two aspects of the evidence which demonstrated that the Claimant's expressed concerns amounted to nothing more than suspicions, arising in the context of a failed relationship, which had no substance and could not meet the required threshold for a FO, either as to the merits or the risk of dissipation.

40. Both the evidential points stressed by Mr Tomlinson related to the Applicants' dealings with an on-line fashion retailer, now in administration, called MatchesFashion ("MF"). The Applicants' case is that the Fourth Defendant had a contract with MF which during the relevant period generated more and more business for the Fourth Defendant, in the region of £2 million, and so substantial profit which could be taken from the business for the benefit of the Third Defendant. I was told that the Fourth Defendant's bank accounts showed receipts from MF of about £1.8 million. In answer to points Mr Butler made about some of the surrounding evidence regarding the MF arrangements, Mr Tomlinson said: look at the payments into the bank accounts, those are the best evidence of clean funds. The benefits received from MF explain the Third Defendant's buying the new flat and Bentley.

41. The second aspect of the MF contract relied on by the Applicants was that it explained the payment by the First Defendant of sums to the Fourth Defendant. The Applicants case is that, for the most part, these were monies owed by MF to the Fourth Defendant which MF paid to the First Defendant "in escrow" and so, necessarily, the First Defendant was bound to pay them over to the Fourth Defendant. This explanation demonstrated that the suspicion surrounding the transfer of funds from the First Defendant to the Fourth Defendant was unfounded. It demonstrated that the allegation against the Third Defendant that he "cannot have thought" there was a good reason for these payments and so either knew or was reckless about them being the Claimant's funds being syphoned off by the First Defendant was groundless: at all times knew these funds belonged to the Fourth Defendant because they were part of monies due from MF.

42. A further general point made by Mr Tomlinson was that there was a two year gap between the Claimant launching the proceedings against the First and Second

Defendants and then joining the Applicants and getting the FO. This delay pointed against the risk of any dissipation and also demonstrated that the case against the Applicants was an afterthought and, as the Third Defendant believed, "vexatious and vindictive".

43. Mr Butler explained that much of those two years had been spent dealing with applications by the First and Second Defendants, which were unsuccessful, and attempts to get the First and Second Defendants to take their disclosure obligations seriously and comprehensively. I am told that it was not until July 2024 that some limited useful disclosure was given. Ultimately, full disclosure was not provided and following breach of an unless order in that respect judgment was entered. The judgment against the First Defendant includes an obligation on him to account for the full £3.7 million received and any profits thereon. The Claimant is still trying to find out what has happened to her misappropriated monies. The Claimant says there is a strong case that the First Defendant's brother is mixed up in this. It is accepted that substantial sums were transferred from the First Defendant to the Fourth Defendant and those payments accelerated and increased as time went on.

44. I agree that the starting point for assessing dishonesty, as relevant to the strength of the Claimant's case, is the Claimant's allegation that some £3.7 million has been taken from her and that the First Defendant has not demonstrated where that money is or what happened to it. It is to be hoped that more information will become available. For present purposes I accept that the Claimant has a real prospect of showing that £3.7 million has been taken from her by the First Defendant. This gives rise to the next practical issue for trial which will be, where is it and/or has any of it gone to the Applicants?

45. Mr Butler summarised at paragraph 16 of his skeleton that following the limited July 2024 disclosure it became apparent that, in round numbers, about £86,000 had been paid to the Third Defendant, £100,000 to the Fourth Defendant and £35,000 to the Fifth Defendant (another £10,500 to the Third Defendant was identified in December 2024) . These were just what the Claimant had been able to identify on the basis of the information available. In broad terms the Applicants had received £230,000 from the First Defendant, which it is to be inferred would have come from the Claimant's misappropriated funds.

46. It is part of the Claimant's inferential case that the Applicants did not have substantial resources prior to the period during which the First Defendant started to take her money but subsequently the Third Defendant, in particular, has improved his lifestyle. In particular acquiring a £1.5m flat and a Bentley (c. £34k or so deposit and then c. £3.8k a month).

47. It is against those inferential allegations that the Applicants seek to explain the source of these funds and hence the importance of Mr Tomlinson's two points summarised above and concerning the income to the Applicants coming from MF.

48. There was a discrepancy between the parties' assertions before me about the funds shown as coming from MF into the Fourth Defendant's bank account. The Claimant had totted up the figures in the bank accounts exhibited to the Third Defendant's affidavit of 15 November 2024, in support of the application, and reached a figure of about £570,000 (net). Mr Tomlinson's pupil had put the bank statement data into a

spreadsheet and reached a figure of just under £1.9 million (inclusive of VAT I think but it does not matter for present purposes).

49. I asked counsel to look into it because I assumed the information base would have been the same and it was only a matter of counting the right numbers. I have been told that the difference arose from the further bank records which were put into the bundles by the Applicants' solicitors, at short notice and without warning so far as the Claimants were concerned.

50. I agree with Mr Butler, who had already criticised the unfairness of the bundle preparation in his skeleton, that such documents should not have been in evidence and are not exhibited for the purpose of the hearing before me. I also consider it would be disproportionate to ignore them altogether. Nevertheless, the most I can say at the moment is that the Third Defendant says his extra wealth can be explained by reference to the income being received from MF but then only exhibited bank statements showing some £570,000 of receipts. I recognise that unexhibited statements include additional payments but those do not have the benefit of having been vouched for by a statement of truth or sworn affidavit.

51. The weight, if that is still the right word in an interim context, that I can give the general assertion about MF income is undermined by the circumstances in which the bank statements have been put before the court. It is striking to only have exhibited about a third of the statements, by value, showing payments given their potential significance to the Applicant's position, not least because at paragraph 18 of the affidavit, the figure of £2m is given. This might have been done to avoid the Claimant seeing the bulk of the statements with sufficient time to do forensic work on them (of any kind) or it might just be an error or equivalent. I, of course, make no findings about this on this hearing. But these types of suspicions are an inevitable consequence of what the Applicants have done.

52. The Claimant pointed to further anomalies in the Applicants' evidence about MF: for example, the document exhibited as being "the contract" between MF and the Fourth Defendant was no such thing; the invoices, such as they were, given the lack of VAT numbers or naming consistency, did not account for or tie in with the receipts shown in the exhibited bank statements (this point might also be impacted by the extra bank statements); and, a lack of VAT returns which would give possible support for the legitimacy of funds coming into the business (and having to pay VAT is a disincentive to overreport trading income). Mr Tomlinson's robust response to these points was to say it did not matter because the statements were the thing: these showed real payments from MF, a real company, which could only be explicable by payment for services rendered. This showed that the Claimant's suspicions were groundless.

53. I do not agree with Mr Tomlinson that for present interim purposes the MF payments, whether supported by the exhibited statements or the additional statements put in the bundle later, determine the question against the Claimant. The bank statement evidence of MF payments must be taken together with all the other evidence that bears on the dishonesty / risk of dissipation issues and also bearing in mind the interim nature of the present questions: essentially is it just and convenient to impose an FO on the Applicants pending trial or further order? This evidence includes the good points, on the present untested evidence, that Mr Butler has urged on the court regarding the MF "contract" and the legitimacy of that potential business.

54. In addition is what the Third Defendant has said in his affidavit about the payments received by the Applicants from the First Defendant. Mr Butler pointed to these as raising concerns rather than ameliorating them and I agree.

55. I will set the Third Defendant's words out in full, since they largely speak for themselves in this respect. The context is the Third Defendant explaining that MF paid money to the First Defendant, some 21 payments over 10 months between October 2020 and July 2021 in a total of about £125,000, which was then paid to the Fourth Defendant, whose money, he says, it always was:

> 26. In this period, I was divorcing from my current ex-wife. Due to the divorce proceedings, I was suffering from severe mental distress. Additionally, the COVID-19 pandemic was in progress and the relevant regulations affected the businesses. In the circumstances, I asked D1 to help me with the businesses and decided that the funds coming from MatchesFashion should be held in escrow in D1's Metro Bank account. I made these decisions on the following grounds.
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> 27. Firstly, I was not in a position to fully focus on my businesses due to the mental distress of my family situation specially with my 8-year-old daughter processing this incident. Secondly, I wished to assist D1 with his cashflow increase during the uncertain period of the pandemic as he had asked for help. It is a very common practice in business for funds of the same company to be transferred in different accounts in order to demonstrate increased cashflow. Such practice allows better cashflow and offers higher security for investors and lenders.
>
> 28. For the same purpose as explained at paragraph 27, in May 2020 I further transferred the sum of £15,0000. Adding up the sums, it is evident that £139,000 were held in escrow in D1's metro bank account for me and my businesses, this is also confirmed by D1's Affidavits as stated at paragraph 22 above.
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> 29. D1 directly transferred to me the sum of £102,464 from the £139,013.56. The remaining £37,000, D1 explained to me that he transferred them to his personal Lloyds Bank Account. with registration 32315060 and sort code, 30 94 65. The purpose of this transfer was to demonstrate further cashflow for his business. He has been advised that transferring money from one account to another is indicative of a healthy cashflow and it would allow the business to receive funding from banks and potential investors.
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> 30. In D1's personal Lloyd's bank account, D4 and I have transferred another £15,234 for the purposes of cashflow. I also made a transfer of £5,000 in May 2020 and an additional £10,000 in October 2022. Upon obtaining the Freezing Order, C1 and her legal representatives tried to police D1's and D2's business accounts. It appeared that they communicated with the banks and put obstacles in the withdrawal of funds for litigation purposes and ordinary expenses. As a result, both D1's Metro and Lloyds account were closed. D1 was advised by his bank to urgently transfer all his money to another account, and he asked if he could use my account. Consequently, D1 transferred from his Lloyds account, £117,568 which included the £37,000 owed from MatchesFashion, and £30,234 that I had previously sent to D1, as I previously explained.

56. These explanations are internally contradictory: the need for help with the business and the expressed wish to help the First Defendant; and, the business benefit of moving cash between that business's accounts compared to putting cash in the First Defendant's

account (who was not part of the Applicant's business); but then, the First Defendant apparently making use of the Fourth Defendant's cash to give the impression of better cashflow for his own business, albeit by transfers involving D1's personal accounts. There is also no attempt to balance the general statements about "the funds coming from Matches Fashion", which suggests the totality of them against the reality of the actual payments alleged to have been made either directly to the Fourth Defendant by MF (which could have been derived from the bank statements) or to the First Defendant for the Fourth Defendant (and no evidence or at least documentation evidencing how these instructions were given and why they were followed) and the payments out by the First Defendant to the Fourth Defendant (again how and why such instructions were given and in what circumstances). In short, the propositions asserted by the Third Defendant, which may or may not be true, lack practical coherence or persuasiveness at this stage.

57. Moreover, the Third Defendant's ready acceptance of a practice of moving money around to give a possibly false impression of improved cashflow, since it must involve, or make more likely, double counting raises serious concerns in a risk of dissipation context and suggests a propensity toward sharp practice. So do the remarks in paragraph 30 about seemingly giving the First Defendant a safe haven for funds otherwise caught by the freezing order and being critical of the Claimants for "policing" the First Defendant's bank accounts, which is rather the point of a FO, and likewise the possible suggestion that his divorce gives an explanation for moving money to the First Defendant.

58. Mr Tomlinson told me that the Claimants' solicitors were told about the assistance in the freezing order context, but this does not allay the concerns about what the Third Defendant has said and what it potentially demonstrates about his attitude to transparency and straightforwardness so far as assets are concerned.

59. A further point made by Mr Tomlinson was that only an honest person would put this in this way. This was also unpersuasive. A person who thought it right to put serving his own perceived interest above complying with court orders would do just what the Third Defendant says he has done and explain it in just this way. In short, from his perspective, there is nothing wrong with helping his brother be protected from unfair court orders and the Claimant's vindictive claims.

60. Further concerns are raised by the Claimants with regard to the statutory accounts signed by the Third Defendant for his companies. The court's attention was drawn to the accounts of the Fourth Defendant for year ends 2022 and 2023. In both accounts were refiled, for year end 2022 on 22 January 2024 (original filing 29 December 2023) and, for year end 2023 on 9 October 2024 (original filing 30 September 2024). The Claimant infers that both of these were linked to events in the litigation – the failure of the First Defendant's strike out application on 9 November 2023 leading, it is alleged, to an increase in D4's net assets in January 2024 so as to launder some of the Claimant's money and the proceedings and FO bringing in the Applicants on 8 October 2024 – the change being to substantially reduce the Fourth Defendant's net asset value. The Third Defendant says these changes were just normal accounting issues and nothing to do with the litigation. The Claimant says the Applicants' then counsel showed the 30 September 2024 version to the Claimant's counsel in court on 8 October only for the change, reducing the net asset value from £370,000 to £100, to happen the next day.

61. I cannot determine any of these issues on this application. I do, however, consider relevant how the Third Defendant's explanation about the second of these changes appears to lack substance, even at an interim stage. In the Third Defendant's affidavit of 15 November 2024 he explained the October 2024 change by saying it was being discussed with his accountant well before it happened. He exhibited documents said to explain this but those documents showed irrelevant email exchanges between himself, a mortgage broker and an accountant on 31 January and 1 February 2023 about a letter the broker wanted the accountant to write regarding the impact of removing funds from the business (presumably for the flat mortgage). The broker was not happy with the proposed letter and wanted the accountant to add particular phrasing drafted by the broker. All this was months before the first filing of the accountants, let alone the refiling. The explanation given by the Third Defendant, relying on exhibited documents, fell apart as soon as those documents were looked at.

62. Once the Claimant identified this problem, the Third Defendant provided a letter from a firm of accountants, not signed by any named individual, dated 12 February 2025 and saying: "we confirm the accounts were amended due to an error in Fixed Assets, after confirmation from you the fixed assets were corrected, and amended accounts were filed on 9 October 2024". Of itself this would not preclude the concern expressed by the Claimant because the letter would remain true if what happened was that the Third Defendant called the accountant on the morning of 9 October and told him to reduce the value of fixed assets so that the net assets would be £100 and refile. I emphasise I have no idea what actually happened.

63. The general point is that this and the other points under discussion, give rise to, at this stage, an overarching lack of frankness and candour on the part of the Applicants. This may well not survive trial, but I am concerned with whether it would be appropriate to give the Claimant protection against the risk of steps being taken by the Applicants to render themselves judgment proof or judgment protected and the Claimant has persuaded me that the approach taken by the Third Defendant to accounting obligations and his evidence to the court support a finding that there is such a risk in this case.

64. The other points I need to address specifically include the Third Defendant's limited attempts to comply with the disclosure orders under the FO. This consisted of nothing more than a brief list of assets without any details or narrative. I agree that this is part of the material which points to a concern regarding the lack of seriousness with which the Third Defendant treats court orders or the lack of seriousness with which he treats needing to comply with them fully and completely and to the best of his ability.

65. The Claimant wrote pre-action correspondence to the Third Defendant which invited him to explain the questions about his asset position but he did not provide any explanation but responded with a considerable degree of hostility aimed at the Claimant's solicitor. The Third Defendant has rightly expressed regret for this and I take Mr Tomlinson's point about it being a human response. But, it remains the case that no explanation was provided when the Third Defendant was asked to and the objective consequence of the Third Defendant's conduct is to increase the concern about what might be uncovered as further and better disclosure is obtained. The same point can be made about the lack of any explanation for the payments from the First Defendant in the Applicants' defence. There have been occasions when an innocent person would set out the key relevant facts and the Third Defendant has not taken those opportunities.

66. Mr Tomlinson made the good point that the court should focus on the nature of the assets under discussion. The Third Defendant has a flat with, on current evidence, substantial equity of about £500,000 plus. This would easily cover the present envisaged judgment against the Applicants. It is by its nature an asset that is not readily dissipated.

67. Mr Butler pointed out that a property's asset value can be diminished by charged borrowing or sale or partial alienation.

68. For present purposes it is largely a question of impression based on all the various strands of evidence which point potentially to the Applicants having received funds and having done so to assist the First Defendant in hiding the Claimant's assets or reckless about the Claimant's rights. On balance, I consider that the Claimant has crossed the seriously arguable case regarding dishonesty in relation to the potential participation in the First Defendant's equitable fraud.

69. I also find that the Claimant has demonstrated a sufficient risk of dissipation regarding the Applicant's assets to justify the FO remaining in place.

70. There is an overall sense, at present, that the Applicants' position is opaque and unsatisfactory. The existence of the real prospect case of dishonesty directly related to the hiding of funds to keep the Claimant out of her money strongly supports the existence of a risk of dissipation. So does the Applicants' conduct regarding statutory accounts and their approach to the litigation, the various assertions made about what was going on with cash and bank accounts in his affidavit and the various questions about the mechanics of the relationship between the Applicants and MF. The weight I attach to these matters is much stronger, at this time, than the weight I can give to the MF receipts, even though they are supported by entries in bank statements, and even though at trial they are evidence capable of demonstrating the Applicants are innocent of the allegations made against them. I should explain that I am not using "weight" here in the sense it would have at trial, when there is a see-saw pivoting on balance of probability but more like a spring scale which needs to be pulled down far enough, bearing in mind all relevant evidence either way, to reach "seriously arguable", for the merits test, or sufficient to justify an injunction otherwise.

71. Furthermore, the concerns I have for the Claimant's ability to enforce any judgment against the Applicants without the protection from the court of a FO are not outweighed in the circumstances of this case by the existence of the flat as an asset. This is not just because of how easy it is to reduce the value of that asset before the Claimant might know about it (although it is) but also a more general sense at present that because of the factors mentioned the relative immovability of the flat is not a factor of sufficient magnetism to turn the overall balance against the Claimant.

Just and Convenient

72. In *Dos Santos* at [130], Lord Justice Popplewell said:

> 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. Although this has been expressed as the third limb of the test, it is ultimately the whole test expressed in s. 37 Senior Courts Act 1981, and should be considered in every case, having regard among other things to the effect of granting, or not granting, the order. It may come to the forefront in the context of applications to set aside a freezing order, or to vary it so as to permit particular expenditure or transactional activity, the restraint of which represents the invasive nature of the order. It is by reference to the just and convenient criterion that the apparent strength of the claim may fall again for consideration…

73. Mr Tomlinson and Mr Butler both made reference to the "just and convenient" test at the end of their written and oral submissions but rather as a vehicle of looking back and saying given what I have said, it would be just and convenient to grant the application / continue the injunction. In my experience, both in practice and judicially, this was conventional. However, it is worth noting that Popplewell LJ's guidance goes further than this and encourages the court to give separate anxious scrutiny to the "just and convenient" criteria. I will do so.

74. I start with the risk to the Claimant. In my view while the Claimant gets over serious issue to be tried, it is also the case that there are serious grounds for considering that her former partner has done what he can to obfuscate and obscure where her assets have gone. The Claimant remains largely in the dark in this respect. It is to be hoped that the involvement of professionals in the administration and bankruptcy of the Second and First Defendant, and the order requiring the First Defendant to account, will improve visibility for the Claimant and her advisors as to what has gone on. No doubt the disclosure process will still require a lot of work.

75. This obfuscation is also reflected in the approach taken in the witness statement and exhibits and then document bundles by the Applicants. This could be down to innocent mistakes or it could be part of a deliberate approach to hinder the Claimant or a mixture. Regardless, for present purposes the impact for the Claimant's case is that she has lost £3.7 million and cannot find what has become of it. There is a serious risk that the cavalier attitude to accuracy and exactness, both in terms of proof (e.g. asserting in reliance on documents that do not support the assertion) and completeness (e.g. only exhibiting partial bank statements) and generally, is part of a strategy designed to frustrate the Claimant's getting her money back.

76. It is legitimate and appropriate, in particular at this stage when the document record is partial and dependent on what the Applicants have volunteered, for the Claimant to rely on inferences such as the Third Defendant's increased wealth coinciding with the expropriation of the Claimant's funds. Of course, the MF receipts may ultimately explain this but that at present, and on the evidence, does not reduce the Claimant's inferential case to something fanciful or insubstantial. On the contrary, putting all relevant evidence together my view is that there is a considerable risk that the Third Defendant has helped his brother hide the Claimant's money.

77. The court's power to grant and/or continue the FO is a way of giving some protection to the Claimant, given the risk of dissipation identified, and restoring some of the imbalance created by all the relevant documents being in the control of the Defendants. As it was put by Popplewell LJ – in circumstances where the Claimant has a real risk to her prospective rights, the court can use its injunctive power to assist.

78. If the FO is not maintained there is a serious risk that the Claimant's rights, as against the Applicants, will be rendered a lot less valuable. Faced with a risk of losing the case, I have little doubt that the Applicants will take steps to put assets out of the Claimants reach.

79. From the Applicants' point of view the FO is an interference with their property (this point would be less strong if and to the extent the Claimant is ultimately able to trace into assets in the Applicants' hands). It is subject to the usual exceptions about everyday expenses and the like and the Claimant has provided a cross-undertaking in damages, which although points have been raised in writing about the properties evidenced as fortifying the undertaking, appears to me on the evidence good for its purpose.

80. In short, on the material before me, the potential harm to the Claimant in discharging the FO outweighs the harm to the Applicants in keeping it in place and the Claimant has met the prerequisites for obtaining such an order (seriously arguable case, assets and risk of dissipation). For this reason, and this will be a common feature of successful freezing order applications, the interests of justice strongly favour the continuation of the order. It would be contrary to the overriding objective and/or generally the administration of justice for a potential victim such as the Claimant to find herself losing again because the losing defendant has made itself judgment proof. This would be to ignore the enforcement principle referred to in *Dos Santos.*

Conclusion

81. The application is dismissed.