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NCN: [2021] EWHC 3873 (Ch)
No. BL-2021-001939

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

Rolls Building
Fetter Lane
London, EC4A 1NL

Friday, 29 October 2021

Before:

MR JUSTICE MILES

B E T W E E N :

BARCLAYS BANK PLC — Claimant

- and -

SCOTT DYLAN & 4 Ors. — Defendants

- and -

B E T W E E N :

BARCLAYS BANK PLC — Applicant

- and -

OLDCOA LTD (formerly Prop Co A Ltd) & 10 Ors. — Respondents

MR H. STONEFROST (instructed by Eversheds Sutherland (International) LLP) appeared on behalf of the Claimant.

THE DEFENDANTS and THE RESPONDENTS did not appear and were not represented.

A P P R O V E D J U D G M E N T
(V i a M i c r o s o f t T e a m s)

MR JUSTICE MILES:

Application for freezing orders

1 This is an application by Barclays Bank plc against four intended defendants. The claim arises in this way. The claimant opened bank accounts for a number of companies in a company called Fresh Thinking Group Limited and some of its subsidiaries (together described as "the Group"). It also has provided personal banking facilities to the first and second defendants. The bank accounts for the companies in the Group were opened on various dates from May 2021 to August 2021.

2 The first defendant is not a *de jure* director of any of the companies in the group but is intimately involved with it and the evidence suggests that he was the person who had control over the banking arrangements which were set up with the claimant bank. In particular he is the person who gave instructions for the various transfers to which I shall refer below and about which complaint is now made. He was also involved in the discussions leading to the bank agreeing to open bank accounts for companies in the Group.

3 The bank's evidence is that at about that time there were discussions between the bank and representatives of the companies in the Group to the effect that the bank would not be prepared to allow unauthorised borrowing, or unarranged borrowings, and that the companies in the Group would have to operate on the basis of their credit balances. The evidence about that is expressed in fairly broad or general terms and is based on statements made by a Ms Aitken of the bank.

4 The banking arrangements contained the bank's usual terms and conditions. These included the following. In para.4:

> "If Barclays receives an instruction, it will make a payment if … the customer has Sufficient Funds. The customer has Sufficient Funds if the cleared balance or any arranged overdraft or limit is enough to cover the payment."

5 At para.5 the following appears:

> "If the customer does not have Sufficient Funds for a payment Barclays may treat the instruction as a request for an unarranged overdraft. If Barclays allows the unarranged overdraft, the customer must repay the overdrawn amount on demand."

The clause also provides for the provision of interest on any unarranged overdraft at Barclays unarranged borrowing rate.

6 The bank bases its claim on a series of transfers that were made from some ten Group companies, which I shall refer to as "the Overdrawn Companies." There is also an eleventh company which has been referred to as one of the Overdrawn Companies in the court documents but the evidence shows that it did not make any of the payments about which complaint is now made. The bank has adduced evidence that the first defendant caused some 739 payments to be made via CHAPS

from accounts of the Overdrawn Companies to a company known as FOTP for a total amount of more than £38 million. There are also payments made by the main recipient company, FTOP, back to the Overdrawn Companies. The consequence of the intercompany payments being made in those two directions was that, as at 24 September 2021, the total overdraft for the Overdrawn Companies was some £13.7 million odd.

7 On 24 September 2021 the bank the suspended operation of the accounts. The various payments adding up that total of 739 were all below a threshold of £50,000 at which the payment request would have been referred to a particular officer within the bank. There is a pattern of payments, often consisting of many on the same day, of sums leaving the accounts of the Overdrawn Companies and being paid to FTOP. The bank accounts I was shown strongly suggest that at least the principal transfers into and out of the accounts of the Overdrawn Companies were the only activity of those companies and that they did not appear to conduct any other functions or business.

8 A number of the Overdrawn Companies were only incorporated very recently. The bank accounts I was shown showed that the companies did not have assets other than the amounts being paid into them by FTOP. I should say that counsel properly explained that that appeared to be the picture which could principally be drawn from the bank statements but that there may be some payments for some of the relevant companies which may suggest some other source of payments or assets.

9 The claimant also alleges that the first defendant knew of the referral threshold of £50,000 and therefore deliberately broke the payments down into smaller sums, often, as I have said, making many payments into the accounts of FTOP on a given day.

10 The claimant's case is that at the time the payments were made, the Overdrawn Companies were unable to repay the unauthorised overdraft. They point out that the first to fourth and seventh and eighth Overdrawn Companies had only been incorporated on 4 May 2021, that the sixth and seventh Overdrawn Companies had never filed any accounts, and that the ninth and tenth Overdrawn Companies had only a modest turnover. That list of companies by number is contained in the draft particulars of claim to which I was taken.

11 When the bank blocked the various accounts in September, it did not block a particular debit card for a company called Orb Group Holdings Limited because that card had never been used. On 29 September 2021 the first defendant caused it to make seven large payments which in total amounted to another £175,000. The claimant then blocked all the corporate debit cards.

12 On 7 October 2021 the claimant issued demands for immediate repayment of each of the overdraft balances, pursuant to clause 5.1.1 of the agreement. Since then there have been various communications between the bank and the first defendant and FTG. Those proposals and discussions have not led to any satisfactory resolution. I was taken to some of the correspondence and it seems to me that the concerns of the bank have not been fully or adequately addressed in the correspondence.

13 I should say a little more about the other defendants. The second defendant is the partner of the first defendant. They live together and have a joint account with the claimant. The second defendant is, according to the evidence, a personal trainer who has no day to day involvement with the business of the Group. As I shall mention in a moment, the first defendant caused large sums of money to be transferred from a bank account of FTOP to the first and second defendant's joint account.

14 The third defendant is thought to be the first defendant's aunt. The evidence suggests that she is domiciled in Turkey. The third defendant is not involved in the business of the Group in any way but the first defendant caused money to be transferred from the bank accounts of FTOP to bank accounts in her name. The total sums come to more than £2 million.

15 The fourth defendant is a longstanding business associate, neighbour and tenant of the first defendant. He is or has been a director of some of the companies in the Group. The first defendant made a payment to him of some £25,000 from the first and second defendant's joint account.

16 The claimant contends that there are three separate causes of action available to them. They say first that the first defendant is liable in deceit and, second, that he is liable for procuring a breach of the agreement, that is to say the terms and conditions of the banking relationship. The claimants bring a claim against all of the defendants in unjust enrichment in respect of sums received by them. Specifically the sums which are claimed to have been received by the defendants are, in respect of the first defendant, some £1.69 million credited to the first and second defendants' joint account, and two sums adding up to about £157,000 paid to private jet charter companies. The second defendant is said to have received the sum of £1.69 million-odd, paid into his joint account with the first defendant. The third defendant is said to have received sums totalling over £2 million from the accounts of FTOP and the fourth defendant is said to have received the sum of £25,000 which I have already mentioned.

17 The requirements for a freezing order are well known. First, the claimant must identify a cause of action against the relevant defendant and must show on the evidence as a whole that there is a good arguable case against that defendant. The claimant must be able to provide a plausible evidential basis for the claim. The court need not be persuaded to the balance of probabilities. Second, the claimant must show that there is a real risk of dissipation of assets that would normally be available to meet any judgment. It is not necessary to show an intention to defeat a judgment. It is sufficient to identify factors from which a risk of dissipation may be inferred. Dishonesty may be evidence of a risk of dissipation, particularly where the dishonest conduct is concerned with the events now forming the basis of the cause of action. The court has to be satisfied of this element in relation to each separate defendant.

18 Third, the court must be satisfied that it is just and convenient to make an order. Fourth, the applicant has an obligation of full and frank disclosure, including an obligation to draw to the court's attention weaknesses in the claim and any other areas of uncertainty or delay. Fifth, the court will generally require a claimant to give a cross-undertaking in damages, which is adequate to meet any reasonably expected

loss the respondents may suffer in the event that the court decides the injunction should not have been granted.

19 The first element is the claimant's claims against the defendants. As I have said, there are two causes of action brought against the first defendant. The first is in deceit. What is said is that by causing or procuring payments out of the Overdrawn Companies' accounts in amounts which were below the £50,000 threshold, the first defendant made a representation that no unauthorised substantial sums were being transferred out of the Overdrawn Companies' accounts. It is said that this was a false representation and was known to be false by the first defendant.

20 I am not persuaded that this cause of action reaches the standard of a good arguable case. It seems to me that, looking at the terms and conditions of the banking relationship, which I have already set out, the contract works in this way. The bank is required to make a payment if there are Sufficient Funds as defined in the customer's account. If there are not Sufficient Funds in the account the bank has no obligation to pay. On the other hand, if the customer does not have Sufficient Funds to pay, Barclays may treat the instruction as a request for an unarranged overdraft. It is then a matter for Barclays whether it allows the unarranged overdraft. If it does then the customer must repay the overdrawn amount on demand. Given these terms, I do not think that the conduct of the first defendant in making transfer requests, contained any representation that the bank had authorised an overdraft. It was entirely a matter for the bank itself whether to process those instructions and make the payment by way of unarranged overdraft. It was under no obligation to do so. I do not see how it can be realistically suggested that by giving an instruction the customer has made any representation as to the sufficiency of funds. Nor do I see how the customer can be treated as making a representation that any overdraft has been arranged. The bank knows itself whether an overdraft has been arranged.

21 The bank relies on the evidence of Ms Aitken to say that, in this case, the first defendant knew that the bank would not be prepared to enter into an arranged overdraft but that does not appear to me to make any significant difference. Under the terms and conditions, it was a matter for the bank to decide whether to make a payment where there were not Sufficient Funds and the bank in fact chose to do so. It may be that no particular human being within the bank realised that these payments were being made but that is not, as it seems to me, anything to the point. The bank knew that it had not arranged an overdraft for the companies and it knew what funds the companies in fact had. So I do not think that one can spell out of the instructions given by the customer a representation of the kind alleged.

22 The second way the bank puts its claims against the first defendant is that he induced or procured a breach of contract by the Overdrawn Companies. That argument depends on showing that the Overdrawn Companies were in breach of contract. The alleged breach of contract is a breach of what the draft pleading calls "the Agreement", which is the terms and conditions. I do not think that by seeking to instruct the bank to make a payment, the customer can be said to have breached that contract. As I have said, the contractual scheme is clear. Where there are not Sufficient Funds in a relevant account, it is a matter for the bank whether to pay and allow an unarranged overdraft. If it does so then the contract is complied with. There is no breach.

23 It was then said for the bank that the breach consists in part of an instruction being given in circumstances where the relevant company is not in a position to repay. I do not think that that would constitute a breach of contract. What the contract says is that where Barclays allows the unarranged overdraft, the customer must repay the overdrawn amount on demand. That is what the contract says and that is what the customer is required to do. It may be that there would be other possible claims, for example on behalf of the companies to reverse a transaction. It may for instance be that there are claims for breach of fiduciary duty, but as a matter of contract law, I do not think that putting in a request for payment, even in circumstances where the person making that request does not believe that the monies can immediately be repaid amounts to a breach of contract. For these reasons, I am not persuaded that there is a good arguable case on that basis either.

24 I should have said for completeness in relation to the second claim against the first defendant, that I do not think that the matter is affected by the evidence of Ms Aitken for two reasons. First, the pleaded case is that there was a breach of "the Agreement" which is defined as the contract contained in the terms and conditions. Second, I do not think it can realistically be argued that the general discussions with Ms Aitken could have changed the terms and conditions. It seems to me that, taking that evidence at its highest, the bank was explaining that it would not agree to what is called an "arranged overdraft". But that means that if the bank did chose to process a request where there were not Sufficient Funds, the provisions relating to unarranged overdrafts would apply. Tt was always for the bank itself simply to refuse to pay if there were insufficient funds in the account.

25 I turn to the claims in restitution. The way that the matter is put is that the defendants have unjustly benefited at the expenses of the bank. I was referred to a number of authorities, including *Investment Trust Companies (In Liquidation) v HMRC* [2017] UKSC 29, which discuss the question whether a series of coordinated or linked transactions can be treated together for the purpose of determining whether particular benefits have been received at the expense of a particular claimant. The authorities show that the question is highly fact- specific and involves mixed questions of fact and law. In circumstances where a series of steps is part of a scheme and is carefully coordinated the court may treat those steps together for the purpose of determining whether the payments or benefits have been received at the expense of the claimant. The discussion in the Supreme Court showed that the test is likely to turn in part on the causal links between the various steps in the chain and the extent to which they are coordinated.

26 The bank submits that in this case the steps should be treated as a coordinated scheme and that in reality what has happened is that a series of payments have been channelled through FTOP to the individual defendants but ultimately sourced from the payments made by the Overdrawn Companies. The Overdrawn Companies were not, on the bank's case, going to be in a position to repay the overdrawn amounts and the bank says that the first defendant was aware of that. They say that the defendants (and the intermediate companies) gave no consideration for the payments. They say that in these circumstances the reality is that the source of the funds is the bank rather than the Overdrawn Companies themselves and that therefore they have a good claim in restitution against the defendants.

27 I am satisfied that there is a claim in restitution which meets the test of good arguable case. It seems to me that the question of the extent to which it is possible to treat a series of coordinated steps as effectively a composite is a difficult question of law and fact, that this is a developing area of the law and that on the facts there is a plausible evidential case for concluding that there was indeed a coordinated scheme, the purpose and effect of which was to extract money from the bank and transfer it ultimately to the individual defendants. I am also satisfied to the necessary standard that it is arguable that the enrichment of the defendants was unjust since the effect of the scheme was to extract money from the bank for no consideration.

28 The next question is whether there is a real risk of dissipation. The claimant accepts that its concerns about the risk of dissipation centre primarily on the conduct of the first defendant, but they say that some of the same considerations apply to the other defendants, given their closeness to one another. I will consider the position of the defendants in turn.

29 In relation to the first defendant, I have concluded that there is a real risk that he will dissipate his assets for a number of reasons. First, he caused or procured the many transactions which were part of a coordinated scheme that caused the Overdrawn Companies to enter into overdrafts in circumstances where, on the evidence, it was very unlikely they would ever be able to pay. Second, the Overdrawn Companies themselves do not appear to have had, at least in most cases, any trading operations and it appears from the evidence that they were simply used as a means of extracting funds from the bank. Third, I think there is some force in the bank's contention that the first defendant realised as a result of a payment he had tried to make in July that the bank had a system in place for specially scrutinising payments over £50,000 and he addressed that by making a very large number of payments for sums below that threshold. These features gives rise to serious concerns about his commercial probity.

30 Next, when the bank suspended the operation of the various accounts, the first defendant continued to use a corporate debit card that had not been suspended and paid a further £175,000 from this account. Next, I consider on the evidence that the first defendant has not provided a proper explanation to the bank of his conduct, in particular the reasons for the various payments made by the Overdrawn Companies to FTOP.

31 Next, there was a series of steps taken in September 2021 to seek to change the control, ownership and directorships of various of the companies. These events appear to have happened from 1 September 2021 onwards. They include a number of separate steps. A director of a number of the companies, Mr Jack Mason, ceased to be a director with effect from 1 September 2021 and, according to the records at Companies House, a new director, a Mr Alex Heredia, who is a Belizean and lives in Belize, was appointed in his place.

32 The bank then contacted Mr Heredia on 11 October 2021. He confirmed he had no knowledge or connection whatsoever with the first to eighth of the Overdrawn Companies and that his appointment to those companies was not with his consent, that he had spoken to solicitors in this jurisdiction to have his name removed from

the file and made a report to the police. His appointment as a director was terminated on 14 October 2021.

33 On 22 October 2021 a "Mr Stephen Linchel", described as British, with his service address at the company's registered office, was appointed as a director to each of the first to eighth defendants. The claimant has provided evidence in relation to a separate application which is also before me today to suggest that Mr Linchel has not been traceable, and that there are no records in recent years of him having any banking activities whatsoever within the UK. It has not been possible to identify him or his address.

34 In the period from 3 September 2021 to 24 September 2021, £7.4 million was drawn down on the accounts of the first to fourth of the Overdrawn Companies at a time when none of the companies appear to have had a properly appointed director. Moreover, the identity of the person who had significant control of the seventh of those companies, which owns the shares in the fifth and sixth and eighth of the companies, is unknown. On 5 October 2021 a notice was filed at Companies House which stated that Mr Heredia was a person with significant control, i.e. a PSC of the seventh company. Mr Heredia was asked by the bank whether he had received shares in the seventh respondent and was the correct person to be named as PSC and his response was that this information should be removed as well, as these were fraudulent appointments. On 22 October 2021 the name "Mr Stephen Linchel" was given as the sole director of the first to eighth respondents as well as the PSC for the seventh respondent.

35 In these circumstances, a number of concerns arise. First, it is unclear whether there was anyone properly in charge of the companies in the sense of a properly appointed director for at least some of the relevant period. Second, there is justified concern about the integrity of the people who have caused the entries to be changed at Companies House. It is unknown who that is at the moment. Third, very large sums appear to have been paid out of the bank accounts of some of the Overdrawn Companies at a time when it appears no properly appointed director of the companies was in place. Fourth, it is unknown who the PSC of the seventh respondent was for at least some of the period. Fifth, the bank's communications with Mr Heredia suggest that he at least considers that the entries in the register for Companies House for these companies, or at least some of them, were fraudulent. Six, there appears to be no trace of "Stephen Linchel".

36 Returning to the position of the first defendant, there are other factors not directly connected with the transactions in issue which also go to the risk of dissipation. These include some twenty-eight county court judgment against companies of which he was a director between 2016 to 2021, which suggests a general disregard for the interests of creditors. He has also made use of different names and aliases and appears to have been in prison twice for fraud. On 4 November 2019, he applied to the claimant for help to buy ISA and made a false declaration that he did not own and had never owned freehold or leasehold property at a time when he in fact owned two properties.

37 The next point is that the sums of money transferred to the first defendant, or into his joint account with the second defendant, are very substantial and appear ultimately

to derive from the unauthorised overdraft transactions. In all the circumstances, I am satisfied that there is a real risk that the first defendant will take steps to dissipate his assets. It seems to me that there is a strong case that he has acted in a commercially improper or immoral way and that he will continue to do so unless restrained by an order of the court.

38 I should say of course that this is an *ex parte* application and I am operating on the basis of the evidence put forward by the bank and have not heard the defendant's side of the story, but going on the basis of that evidence it seems to me that there is a clear case of risk of dissipation against the first defendant.

39 As for the second defendant, the main points which are made by the bank are these. First, that he is close to the first defendant and holds a joint bank account with him. They are partners and live at the same address. The amount of money which he has received, together with the first defendant, is very substantial, being in the order of £1.7 million. The first defendant also caused some £250,000 of that to be transferred into the second defendant's personal bank account. These very substantial sums do not appear to be sums for which the second defendant could conceivably have given any value or consideration. He was not apparently involved with the business. Generally speaking, where someone receives sums of that kind from a company with which he has no business connections, a question must be raised as to how that has come about. It seems to me that the key point is that he is very closely connected with the first defendant and there must be a real likelihood that the first defendant will be able to influence dispositions by the second defendant of his assets. It seems to me that in those circumstances a proper case has been made out.

40 Turning to the third defendant, she again has a close relationship with the first defendant. It is understood that she is his aunt. She has permitted very substantial sums of money, amounting to over £2 million, into her accounts. It seems possible on the evidence that these sums have been transferred for the purpose of acquiring assets in Turkey, including one or more hotels, but the evidence on that is inconclusive. It seems to me that there is a strong inference that she has received those monies for the first defendant and is holding them in some way for him and that she will act on the instructions of the first defendant in relation to those assets. In those circumstances, all of the factors I have already referred to in relation to the first defendant become relevant to her position and I am satisfied for all of those reasons that an appropriate case has been made out.

41 As to the fourth defendant, he received a much smaller sum than the other defendants, being some £25,000, nor does he have the same kind of personal relationship with the first defendant as the other defendants. On the other hand, it appears that he was closely connected with the group of companies through which the payments have been made. He was, or is, the sole *de jure* director of FTOP and FTG, the companies that received the payments from the Overdrawn Companies. He is a one third shareholder in FTG and he says that the first defendant was the person who should deal with the claimant on behalf of the Group. There is also the point that the sum of money he received, £25,000, was received from the first defendant, rather than from one of the companies. It also appears that he was involved in the attempt to restructure the Group in September, which appears to me arguably to have been done in order to disguise the connections of the various

defendants with the companies. In these circumstances, I am satisfied that there is a risk of dissipation in relation to the fourth defendant.

42 I am also satisfied that it is just and convenient to make an order and that the claimant has given sufficient cross-undertaking in damages.

43 The claimant has pointed out a number of features of the case, complying with its duty of full and frank disclosure, which might affect the merits of the case and of the application. Those are set out in the evidence of Mr Cooper in support of the application and my attention has been again drawn to them by counsel. Counsel has confirmed that there is nothing further that should be brought to the court's attention. The court is dependent on the compliance by a party and its lawyers with that duty, but having considered those matters carefully, I do not think there is anything in them that causes me to reach a different view.

44 In relation to the third defendant, there is also the question of service out of the jurisdiction as she appears to be resident in Turkey, as I have already said. I am satisfied this is a proper case in terms of CPR PD-6B under gateways 3.1(3) and 3.1(16). The claimant also seeks an order that the terms of the order should not be disclosed to the third defendant for a certain period because of their intention to seek orders against the third defendant in Turkey in support of the order. That is something I will discuss with counsel along with the other terms of the draft order.

Application to appoint provisional liquidators

45 This is a separate application by the bank for the appointment of provisional liquidators in respect of eleven companies. Earlier today I gave judgment in relation to an application by the bank against four personal defendants and this judgment is to be read together with that one. In my earlier judgment I set out the background and in the course of doing so referred to the Overdrawn Companies. The Overdrawn Companies are the same companies which are now the subject matter of this application and are the respondents to it.

46 The principles to be applied are these.

47 First, section 135 of the Insolvency Act 1986 provides that the court may at any time after the presentation of a winding up petition appoint a liquidator provisionally. The jurisdiction has been considered in a number of cases, including *Commissioners for HMRC v Rochdale Drinks Distributors Limited* [2011] EWCA Civ 1116 where Rimer LJ made the following points concerning the grounds on which a court can appoint a provisional liquidator:

(a) The court must be satisfied that it is likely that the petitioner will obtain a winding up order on the hearing of the petition.

(b) The judge in that case in focusing on a disposition of assets took too narrow a view.

(c) The usual basis on which an appointment is made is because of a risk of jeopardy to the company's assets. This does not refer only to the dissipation of assets in

the sense used in freezing orders, but also includes the serious risk that the assets may not continue to be available to the company.

(d) The circumstances for the appointment of a provisional liquidator are not confined to jeopardy of that nature but include cases where there are questions as to the integrity of the company's management and the quality of its accounting and record keeping function where it will be an important part of a liquidator's function to ensure that he obtains control of its books and records so that it can engage in all the necessary transactions and investigations.

48 Lewison LJ, who agreed with Rimer LJ, pointed out that the appointment of provisional liquidators is one of the most intrusive interim remedies in the court's armoury. It will normally stop the company trading and cause the company's employees to lose their jobs, and in deciding whether to grant or refuse an interim remedy, the overriding principle is the court should take whichever course seems likely to cause the least irremediable prejudice to one party or the other. The court will take into account the balance of prejudice and the extent to which the company could be compensated by an award of damages or enforcement of a cross-undertaking and the likelihood of the remedy turning out to have been wrongly granted or withheld, that is to say the court's opinion of the relative strengths of the parties' case. In the case of provisional liquidation, the case is the strength of the petition to wind up the company.

49 I am satisfied that each of the eleven companies is unable to pay its undisputed debts and is likely to be wound up. Each of the companies has an unauthorised overdraft with the bank. The bank made demands for repayment on 7 October 2021. None of those amounts have been repaid. Mr Scott Dylan, who has been the main point of contact of the group of companies with the bank, has acknowledged their demands. He has made a number of suggestions as to the options for dealing with the unauthorised overdrafts, but none has come to anything.

50 The companies have not disputed the debts. As I shall explain in a little more detail in the course of this judgment, it seems to me there is a distinction between the position of the first to tenth respondents, and the eleventh respondent, Orb Group Holdings Limited. In particular, at this stage I note that the overdraft of that respondent at about £160,000 is significantly lower than the amounts owed by the other respondents. The bank makes a point that it has still not been paid and the respondent has not come up with any proposals of a satisfactory kind for repayment of the debt.

51 The next factor, or series of factors, concerns the court's exercise of its discretion in this case. I have explained in my earlier judgment the various steps that appear to have been taken to seek to restructure the Group in the sense of changing its directors and/or shareholders and have explained the position in relation to the first to eighth respondents, who appear to have no *de jure* directors between 1 September 2021 and 22 October 2021. I have also explained the communications with Mr Heredia and the apparent appointment on 22 October 2021 of "Stephen Linchel". I have also mentioned the steps taken by the bank to seek to trace him. In a little more detail, on 25 October the bank instructed Tremark Associates Limited, who are specialist enquiry agents, to make enquiries to locate him. They were unable to find

any trace of Stephen Linchel. Separately the bank has itself undertaken extensive searches of banking transactions with Barclays itself. There has been no match for the name Linchel since 2017, either as a person instructing a payment to be made or being named as a beneficiary. In addition, the applicant bank is a member of a scheme provided by Vocal Link which collates data from most, if not all, UK financial institutions for the purposes of fraud monitoring and prevention. The applicant has searched every single BACS, direct debit and Faster Payment process throughout the UK clearing system for the last thirteen months, and not a single payment was discovered involving the name Linchel. This is striking, given that the filing at Companies House states that he is resident within the UK.

52 The next point of relevance is that during the period from 3 September 2021 to 24 September 2021 some £7.4 million was drawn down on the accounts of the first and fourth defendants at a time when none of the companies appear to have had a properly appointed director. The identity of the person who has significant control of the seventh respondent, which owns the shares in the fifth to sixth and eighth respondents, is unknown. I have already outlined the evidence in relation to that in my earlier judgment.

53 I have also been taken today through the bank statements for the first to tenth respondents in respect of the period running up to the closing of the accounts in September 2021. All of them show the same pattern. That is to say payments being made out of those companies to FTOP and payments being made into those companies from the account of FTOP. The amounts of those payments were less than the £50,000 threshold which I had mentioned in my earlier judgment. The number and scale of the payments shows that there appears to have been a concerted scheme to remove monies from the first to tenth respondents by way of overdraft and to pay those monies to the companies at the top of the structure, including FTOP.

54 In that regard, the evidence shows that the instructions were given by Scott Dylan, who is not himself a director of the various companies.

55 There are other points to be made. The first to fourth respondents were very recently incorporated and there is no evidence of them having any trading activities. Although some of the other respondents have been in existence for somewhat longer, they have not filed accounts at Companies House.

56 In these circumstances, I am fully satisfied that the way in which the companies have been run, that is to say the first to tenth respondents, gives rise to serious concerns about their corporate governance, whether they have been properly run and controlled and whether there are in fact other people including Mr Scott Dylan who have in practice been running the companies, possibly as a *de facto* or shadow director.

57 The position of the eleventh respondent appears to me to be somewhat different. The bank statements show payments of a different kind being made. It appears that many of the entries are payroll payments, which suggests that it has its own employees or is in some way responsible for paying employees relating in some way to the group of companies. The amount claimed against it is significantly less than in the case of the other respondents. Its last accounts, as at 3 June 2020, show that it

has net assets of over £1 million. I do not think that the same concerns about the corporate governance of that respondent apply as for the others. The bank points out that it appears in some way that it may have been involved in the restructuring steps that were taken from September onwards, but as I understand it, the real point that is made is that the directors of the eleventh respondent, that is to say Mr Mason and Mr Antrobus, appear to be familiar with the kinds of steps that were taken in relation to the restructuring. It seems to me it stands in a different position from the other respondents.

58 The next factor is that the bank has not to my mind been provided by the companies with a satisfactory explanation of the coordinated scheme by which it appears that very large amounts have ultimately been extracted from the bank by way of overdrafts run up by the first to eleventh respondents. The bank has sought various explanations but what has been said so far does not appear to be a proper explanation. The main point that seems to be made by Mr Dylan on behalf of the various respondent companies is that the bank is aware of the overdraft that was run up. There is not much evidence about how the situation was able to develop in the way that it did, but the simple fact is that, as a result of the various payments that have been made, the bank has been left in an exposed position where the Overdrawn Companies owe more than £13 million, where the Overdrawn Companies do not appear to have made the payments for business purposes of their own, and where it must have been plain to those instructing the payments to be made that the Overdrawn Companies would be unlikely to be able to repay the amounts of the overdrafts.

59 For these reasons I am satisfied in relation to the first to tenth respondents that there are very serious questions about the integrity of the people in control of the companies and that it is necessary for provisional liquidators to be appointed to obtain control of the companies' books and records and investigate the transfers and seek to preserve the companies' assets, which may include claims against the individuals who have procured the payments to be made.

60 I have also carefully considered the potential impact of the appointment on the businesses of the companies. In relation to the first to tenth respondents, I am satisfied that the evidence shows that in the period up to September 2021 when the accounts were frozen, they do not appear to have had separate trading activities. The payments into and out of the accounts seem to have been restricted to payments being made to and from FTOP. There is no evidence of them having separate employees. Some of them, as I have said, were only incorporated very shortly before the payments started to be made. Others have not filed any accounts and there is no evidence of any independent trading activities by those companies.

61 I have also outlined the evidence about the restructuring that appears to have taken place in September, which appears on the face of it to be designed to distance various individuals from the transactions and disguise the activities of the companies. Again, that tends to suggest that the companies are being treated together as an amalgam. The purpose of the companies seems to have been to remove monies from the bank and transfer them to the companies higher up in the Group and I do not see that there is any substantial likelihood of prejudice, or significant prejudice, being caused to those companies.

62 I have mentioned a couple of times that the first to fourth respondents were only incorporated recently. That is also true of the seventh and eighth respondents. I think the position of the eleventh respondent has to be distinguished from that of the others. There is reasonable evidence for supposing that that company has its own employees, based on the payroll payments which I have mentioned. Counsel for the bank says that that needs to be weighed against the prospects of an order for the winding up of the company being made and the fact that the bank is offering a cross-undertaking in damages, but generally where one is dealing with the appointment of provisional liquidators which are, as Lewison LJ said, the most intrusive perhaps of all forms of interlocutory order, it is not enough to say that the company could be able to call on a cross-undertaking in damages. It is often very difficult, if not impossible, to assess the amount of damages where a trading company is placed into provisional liquidation, since the entirely of its business is likely to be lost.

63 I record that Mr Kenyon has provided the evidence on behalf of the bank in relation to this application, has set out a number of matters in discharge of the obligation of any applicant to make full and frank disclosure, and counsel has confirmed there are no further matters which the bank considers should be brought to my attention. I have considered those carefully and will not set them out again here.

64 There is a technical matter, which is that under the Corporate Insolvency and Governance Act 2020 (Coronavirus) (Amendment of Schedule 10) Regulations 2021, which came into force on 29 September 2021, a winding up petition may not be presented save where a number of conditions are fulfilled, which are set out in para.1 to the amended Schedule 10, but the court may make an order in respect of a specified debt that conditions B and C shall not apply. I am satisfied in the circumstances of this case that I should make an order that conditions C and B shall not apply. It seems to me that those conditions, which essentially require notice to be given to the debtor before the creditor may present a petition, if complied with here, would undermine the purpose of the provisional liquidation order, as it would provide the respondents with notice before the provisional liquidators were appointed and would therefore enable steps to be taken to remove assets or records of the company before the provisional liquidators were appointed.

65 In these circumstances, I will give the bank permission to present winding up petitions without fulfilling conditions B and C and will make an order which will take effect on the presentation of those petitions for the appointment of provisional liquidators to the first to tenth respondents. I have been provided with details of the proposed provisional liquidators. I understand that there has been liaison with the Official Receiver's office and that there is no objection to the appointment of those provisional liquidators. I will now discuss the appropriate order with counsel for the bank.