

ENGLAND AND WALES / JUDGMENT

Wenda Co Limited v Wang Jinhong & Ors

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[2025] EWHC 2648 (Comm) IN THE HIGH COURT OF JUSTICE BUSINESS AND PROPERTY
COURTS OF ENGLAND AND WALES LONDON CIRCUIT COMMERCIAL COURT (KBD)
Claim No. LM-2024-000091 Royal Courts of Justice, Rolls Building Fetter Lane, London,
EC4A 1NL Before: DEPUTY HIGH COURT JUDGE LANCE ASHWORTH KC Between:
WENDA CO LIMITED and

(1) WANG JINHONG

(2) SYNER LTD

(3) EFFS GLOBAL INVESTMENT CO LTD

(4) ROLAND FREDERICK PETIT

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- ----- Claimant Defendants Simon Milnes KC and James Gardner
(instructed by Sherrards Solicitors LLP) for the Claimant Anthony Jones (instructed by
Lawdit Solicitors Ltd) for the Defendants Hearing dates: 15th and 16th July 2025 Further
written submissions: 11th August 2025 Draft Judgment circulated: 15th October 2025
Judgment: 21st October 2025

- ----- APPROVED JUDGMENT

- ----- This judgment was handed down remotely at 10.30am on 21st
October 2025 by circulation to the parties or their representatives by e-mail and by release to
the National Archives. Lance Ashworth KC:

Introduction

1. On 25 November 2021, following a without notice hearing which lasted most of the day, Jacobs J made a proprietary and freezing injunction (“the Injunction”) in favour of the Claimant (“Wenda”) against the First, Second and Third Defendants (respectively “Ms Wang”, “Syner” and “Effs” and jointly “the Defendants”). The Fourth Defendant (“Mr Petit”) was not a party to the Injunction as Jacobs J was not satisfied there was a good arguable case against him.

2. On 11 April 2024, Ms Wang, Syner and Effs made an application to set aside the Injunction (“the Discharge Application”). On 22 November 2024, Wenda made a responsive application for the continuation of the Injunction until trial (“the Continuation Application”). It also made an application for permission to rely on an expert report from Ms Zhong. The Defendants consented to the application in respect of the expert evidence. Accordingly, I have to consider the Discharge Application and the Continuation Application.
3. Wenda was represented before me by Mr Simon Milnes KC and Mr James Gardner. Ms Wang, Syner and Effs were represented by Mr Anthony Jones. I am grateful to all 3, who addressed me orally, for their written and oral submissions.
4. As seems not to be unusual in such cases, the bundle provided to the Court was very large, running to almost 20,000 pages in addition to which there was an authorities bundle exceeding 1,000 pages. For a two day hearing with one day of pre-reading, to include reading two substantial skeleton arguments, this was an inordinate amount of documentation. As it was, I was referred to only a very small part of these bundles.
5. Because of events at the oral hearing, it became necessary to allow Wenda to submit a further short witness statement following the oral hearing with both parties being allowed to make short further written submissions in respect of that witness statement which they did on 11 August 2025.
6. The issues which arise on these applications are, in my judgment, as follows:
 - (a) Is the Discharge Application an abuse of process, because the Defendants had the opportunity to seek to discharge the Injunction in early 2022 but did not pursue that opportunity?
 - (b) If it would otherwise be an abuse of process, can the Defendants demonstrate good cause as to why they should be entitled to seek the discharge of the Injunction now?
 - (c) If the Discharge Application can be pursued, should either or both of the proprietary and freezing injunctions be set aside because there is no longer a seriously arguable claim?
 - (d) Was there a failure by Wenda to comply with its full and frank disclosure obligations when obtaining the Injunction from Jacobs J?
 - (e) If there was a failure to comply with the full and frank disclosure obligations, what if any sanction should the Court impose:
 - (i) Should no action be taken?
 - (ii) Should either or both of the proprietary and freezing injunctions be set aside?
 - (iii) If set aside, should either or both of the proprietary and freezing injunctions be regranted?
 - (iv) Should the Court impose some other sanction, such as making a costs order?
 - (f) Does it remain just and convenient for the injunctions to remain in effect?

Background

7. I am conscious that this claim is listed for trial to be heard in a window in January and February 2026. That is potentially relevant to the question of what order might be “just and convenient” in the event that I determine that the Injunction or any part of it should be set aside on the Discharge Application. However, it is also important to recognise that the decision I have to make at this stage is one which is based on the documentary evidence, including the witness statements of witnesses who have not been subject to cross-examination as they will be at trial. Accordingly, any views that I might express as to the facts will in no way bind the trial judge, who will have the advantage of live evidence and therefore be in a much better position to come to conclusions as to the facts on the full evidence. I will endeavour to set out those facts which appear not to be controversial and indicate where facts are in issue.
8. Wenda is a company based in Dalian, China that was founded in 1995 by Xiong Wei (“Mr Xiong”), who remains its Chairman and Legal Representative, and which manufactures and trades in food ingredient chemicals. Its main export markets are the Americas and Europe. Historically, its trading involved providing generous credit terms to its purchasers.
9. Ms Wang joined Wenda as its Chief Financial Officer in 2004. She became a 9% shareholder and director of Wenda in 2009, and remained a director until 2018 (initially it had been pleaded that she remained a director until 2020).
10. From emails which have been brought to my attention, it seems that by no later than 2011, Mr Xiong and Ms Wang were seeking a way of improving Wenda’s cashflow, which was impacted by the lengthy credit terms it was providing to its purchasers.
11. By 2012, it was decided to set up an English company to seek to raise finance through discounting of invoices. It is common ground that this was decided upon by Mr Xiong and Ms Wang. As to whose idea it was and what was said in the discussions between Mr Xiong and Ms Wang, in particular as to the terms on which the company would act, they lie at the heart of the dispute and will be determined at the trial. The parties are agreed that the arrangements were settled orally and neither party has produced any documentary evidence that I have been taken to which sets out or records the terms on which this was to operate. It will be a matter for determination at trial whether the arrangements gave rise to purely contractual relations between Wenda and Syner (as Ms Wang and Syner assert) or whether they gave rise to trust and fiduciary relations (as Wenda asserts).
12. Pursuant to those discussions, Syner was incorporated as a wholly owned subsidiary of Wenda in September 2012. Ms Wang was appointed as its director and remains its director to date. At all times between September 2012 and 2018, she was therefore a director of both Wenda and Syner. Also in 2012, Effs was incorporated in the BVI, for the purposes (it appears) of obtaining financing by way of invoice discounting on sales by Wenda to its own subsidiaries. Ms Wang was again the director of Effs.

13. As to Syner, it entered into an invoice discounting agreement with HSBC Invoice Financing (UK) Ltd ("HIF"), which was used to finance a large volume of transactions whereby food ingredient chemicals supplied by Wenda were sold to buyers outside China, especially Latin America. It is now clear (although this was not how the case was initially pleaded or presented to Jacobs J) that the buyers were invoiced by Syner, acting as principal. This allowed Syner then to factor the invoice through HIF. I was taken to the executed albeit undated agreement between HIF and Syner. Under that agreement Syner assigned to HIF all Existing Debts, all Future Debts, all Non-Notifiable Debts and agreed that each Debt created after the commencement of the agreement would automatically belong to HIF the moment it was created. There was a £2 million limit on the facility provided, the prepayment percentage was 80% (that is to say that the finance initially advanced would be 80% of the invoice sum) and there was a service charge of 0.40 per cent of the notified value of each debt. The agreement was guaranteed by Wenda.
14. Accordingly, all sums due in respect of invoices were due to HIF, not to Syner. Syner would send an invoice to the customer, with (as I was told) the details of HIF's bank account as being where payment should be made. Therefore, Syner would not receive payments directly from customers. Rather it appears that in practice HIF would have maintained a ledger to which the value of all invoices would be credited and all advances to Syner would be debited. As and when a payment was received by HIF from a customer, that would be credited to the account. If there were then unpaid invoices and the sum advanced by HIF to Syner was less than £2,000,000, HIF would then make an advance to Syner, so that the total sum advanced and outstanding would be 80% of the amount of the unpaid invoices. The effect of this is that all of the monies received by Syner would actually be received from HIF. This is potentially relevant to the way in which the claim against the Defendants is pleaded.
15. There is no similar invoice discounting agreement entered into by Effs with a third party funder, or at least not one which was included in the papers or drawn to my attention at the hearing.
16. Ms Wang relocated to the United Kingdom in order to be able to run the English part of the business, although she remained as chief financial officer of Wenda until 2014. It seems to be common ground that it was agreed that her rental expenses of living in London would be met by Wenda.
17. When a new Finance Director, Ms Chou Chunjing was appointed in September 2016 (Ms Wang remaining a director), Ms Chou claimed to have identified a shortfall in the sums which should have been remitted by Syner (and possibly by Effs) under the invoice discounting, which she said was in the region of US\$2-3 million. She reported this to Mr Xiong in November 2016. Mr Xiong authorised an investigation and suspended the use of Syner and Effs for invoice financing. In his first affidavit of 22 November 2021, Mr Xiong says that when the use of Syner and Effs was suspended, Ms Wang caused Syner and Effs to cease paying any invoice proceeds to Wenda. By that, he must mean that Ms Wang caused them not to pay any sums received from HIF, although whether there would have been any

further sums paid over by HIF once they were no longer being sold new invoices would seem unlikely.

18. The investigation which was initiated apparently discovered that not only was there a shortfall in the sums which should have been paid over by Syner, but Syner had been remitting some sums to Effs in order to provide the financing it was meant to be providing, rather than Effs having entered into an invoice discounting agreement with a third party. It is an oddity which has been pointed out that Effs paid substantially more (US\$19,785,965.99) over to Wenda than the sums of which it was the invoice payee (US\$15,996,759.60). Wenda says that this can only be because Effs were receiving funds from Syner, which should have been paid by Syner to Wenda.
19. Further, in 2020 Wenda's solicitors discovered that a number of the documents provided by the Defendants in respect of the invoice financing by HIF were said by HSBC not to be recognised by them and not to be consistent with HSBC's own records.
20. In addition, it is said that in 2018 after Mr Xiong claims to have seen evidence of Ms Wang's dishonesty, he undertook a further investigation into rental expenses claimed by Ms Wang for a property at 37 Lewes Road in London. The invoices for the rental that she submitted purported to come from Princess Park Estates, which is a genuine estate agency. Mr Xiong exhibited documents which demonstrated that small subtle changes had been made on the invoices to the name of the website, the post code and the telephone number. He says that this revealed that Ms Wang had been submitting invoices for rental payments for the property for reimbursement by Wenda, as if she was renting it when in fact she had purchased the property in her own name. This, he says, amounted to further dishonesty on her part. He suggests that Ms Wang used some of the shortfall of the sums which were received from HIF and should have been remitted to Wenda to purchase the property. I was not taken to any detail of how this worked. This was relied on before Jacobs J when the injunction was initially granted.
21. Ms Wang accepts that these invoices were fabricated, but says that they were done so on the instruction of the finance department at Wenda, so that the sums could be reclaimed by Wenda as business expenses. If she is correct and assuming that the instruction was not one that she had caused to be issued (she being the Chief Financial Officer at the time), it is difficult to see how Wenda could have any complaint in that regard. The question of why the invoices were fabricated is a matter for trial and not one on which I can adjudicate. However, it remains a part of Wenda's case demonstrating dishonesty on the part of Ms Wang, on which they rely.
22. In addition to the above matters, Wenda claim that there are further illegitimate expenses which had been claimed by Ms Wang, albeit that these were not particularised in the evidence before Jacobs J, nor was any claim in respect of them included in the Particulars of Claim.

23. One further matter was referred to in the evidence before Jacobs J and appeared in one paragraph of the Particulars of Claim, which relates to a loan for US\$3.75 million in April
2017. The issues relating to this did not feature before me and while it remains a matter for trial, it is not something that I need to address further for the purposes of this Judgment, save to note that credit has been given for the US\$3.75 million in the table referred to in the following paragraph.
24. By the time of the hearing before Jacobs J in November 2021, Wenda had produced a table (at paragraph 64 of Mr Xiong's affidavit of 22 November 2021) setting out the sums it was claiming that the Defendants had not accounted for, which totalled over US\$4.35 million, after giving credit for the US\$3.75 million.
25. Wenda launched these proceedings in November 2021. They sought and were granted by Jacobs J without notice proprietary and freezing orders against the Defendants, but not against Mr Petit. The matter was presented to him by Mr Milnes. At that time, Wenda had drafted Particulars of Claim setting out their claim. It is noticeable that in those Particulars of Claim no claim was made by Wenda against Ms Wang on account of any fiduciary duties she owed directly to Wenda by reason of her being a director of Wenda. Nor is any such claim made now, even after the amendment which I will address below. It may be that the concept of directors owing fiduciary duties to companies is not one which exists as a matter of Chinese law, as it otherwise seems odd for such a claim not to have been included.
26. Jacobs J was understandably concerned by the apparent delay of more than 3 years between the conclusion of the investigation in 2018 and the application for without notice relief. He was of the view that this might be relevant to risk of dissipation, especially in circumstances where Ms Wang, who is now a British citizen, owns a property in London and may well own another in Bristol and is well established in this country. This all indicated a lack of urgency and a lack of a need for the application to be heard without notice. He was, however, persuaded by Mr Milnes that there was sufficient evidence of what he described as "relevant dishonesty in various aspects, which leads me to the conclusion that there is in this case a real risk of dissipation ...". The relevance, for the purposes of the applications before me, is that Wenda having chosen to proceed without notice to the Defendants was under a duty of full and frank disclosure.
27. Jacobs J considered first the freezing injunction because, as he noted, at that time it was thought that the requirements for a freezing injunction (needing to establish a good arguable case) were more onerous than those for a proprietary injunction (needing to establish a serious issue to be tried). The Court of Appeal has now made clear that the serious issue to be tried test applies both to freezing orders and to other interim injunctions (*Unitel SA v. Dos Santos* [2025] 2 WLR 255).
28. Jacobs J described the case advanced before him in the following terms: "The claimant would direct its buyers to pay Syner. Syner would use the invoice in order to obtain an advance of the agreed percentage of the invoice's face value from an invoice finance

company, which Syner would then pay to the claimant. The buyer would in due course pay Syner the full invoice value, and Syner would then repay the advance to the finance company with interest and would remit the balance proceeds to the claimant, net of certain expenses. That is the way in which matters were supposed to proceed, although matters were left largely in the hands of Ms. Wang, who by 2012 had moved to England.”

29. This was based on the way in which the claim was pleaded at that time. Because of the centrality of the change to the way the case is pleaded to the applications I have to determine, I set out the relevant passages as they stood as at the time of the hearing before Jacobs J: “The Second Defendant’s role as the Claimant’s agent, nominee and/or trustee
6. In about 2012, the Claimant incorporated the Second Defendant as its wholly owned subsidiary specifically for the purpose of handling an invoice financing arrangement on behalf of the Claimant.
7. From 2012 to about January 2017, the Claimant appointed and used the Second Defendant as its agent, nominee and/or trustee to handle monies under that invoice financing arrangement. The legal arrangements between the Claimant and the Second Defendant were not formally documented. The arrangement which the Claimant established and which the First and Second Defendant agreed to implement (and which the First Defendant as director of the Second Defendant was responsible for implementing) was that: 7.1. For so long as the Claimant chose to continue the arrangement, which the Claimant was free to determine at will, and in relation to such of its sale contracts with buyers located outside China as the Claimant chose to do so, the Claimant instructed its buyers to make payment of the invoiced amount to the Second Defendant. 7.2. The Second Defendant’s function and duty was: 7.2.1. To use the invoices (by which the Claimant’s buyers were instructed to pay the Second Defendant) to obtain invoice discounting finance, pursuant to which the financing company would advance an agreed percentage of the invoices’ face value to the Second Defendant; 7.2.2. To receive payment in due course of the full invoice value from the Claimant’s buyers; 7.2.3. Thereupon to repay the advance to the financing company together with the interest due under the financing facility; and 7.2.4. To account to the Claimant for the advances and the payments received from the Claimant’s buyers, net of (i) repayment of the advance to the financing company with interest and (ii) the cost of the First Defendant’s salary, the reasonable travel cost of the First Defendant’s periodic business trips to China as requested or approved by the Claimant, and the cost of preparing the requisite corporate filings to ensure that the Second Defendant remained in good standing to implement the aforesaid arrangement, including the cost of engaging accountants to prepare the Second Defendant’s accounts.
8. At all material times, subject only to the qualification set out in paragraph 7.3 above, the function and duties set out in paragraph 7.2 above were the sole and exclusive purpose for the Second Defendant’s existence and were the Second Defendant’s only legitimate business activity. ...

10. In the premises: 10.1. The Second Defendant was the Claimant's agent, nominee and/or trustee for the receipt and handling of the Claimant's invoice proceeds, and owed to the Claimant the obligations of a trustee, alternatively owed fiduciary duties to the Claimant, in respect of its handling of the Claimant's monies under the arrangements described in paragraph 7 above. 10.2. The Claimant was the beneficial owner of (1) the advances received by the Second Defendant from the financing company; and (2) the invoice proceeds received by the Second Defendant from the Claimant's buyers, subject to the Second Defendant's duty and power to use the same as set out in subparagraph 7.2.4 above. 10.3. To the extent necessary, the Claimant will say that the Second Defendant was a trustee of the monies referred to in paragraph 7.2 above under an express or implied trust, in that: 10.3.1. The objective intention of the parties was that the Second Defendant was not free to use those monies for any purpose of its own; 10.3.2. The only monies being received and handled by the Second Defendant would be monies beneficially owned by the Claimant to which the Second Defendant's duties referred to in paragraph 7.2 above applied, and any advances and invoice proceeds received and handled by the Second Defendant would be mixed only with other such monies and with the Second Defendant's initial funding of operating cash (which consisted of US\$ 1 million in paid-up capital and US\$1.2 million cash injection), which was provided only in order to implement the aforesaid arrangement and which was (unless otherwise instructed by the Claimant, and no contrary instruction was given) to be retained and/or replenished so that about US\$2.2 million should remain held by the Second Defendant, and which was subject to the same duty to account for it to the Claimant. ... The Third Defendant as the Claimant's agent, nominee and/or trustee
13. Between 2012 to about January 2017, the First Defendant also caused the Claimant to appoint and use the Third Defendant as its agent, nominee and/or trustee to handle monies under that invoice financing arrangement. As with the Second Defendant, the legal arrangements between the Claimant and the Third Defendant were not formally documented, but were agreed to be on the same basis as described (in relation to the Second Defendant) in paragraph 7 above. ...
15. In the premises: 15.1. On those transactions where the Claimant requested its overseas buyers to make payment to the Third Defendant, and on any transactions in respect of which monies paid by the Claimant's overseas buyers came to be held by the Third Defendant, the Third Defendant was the Claimant's agent, nominee and/or trustee for the receipt and handling of the Claimant's invoice proceeds, and owed to the Claimant the obligations of a trustee alternatively owed fiduciary duties to the Claimant in respect of its handling of the Claimant's monies under the arrangements described in paragraph 13 above. 15.2. The Claimant was the beneficial owner, of (1) any advances received by the Third Defendant from a financing company; and (2) the invoice proceeds received by the Third Defendant from the Claimant's buyers, subject to the Third Defendant's duty and power to use the same as set out in sub-paragraph 7.2.4 above (as repeated mutatis mutandis in paragraph 13 above). 15.3. To the extent necessary, the Claimant will say that the Third Defendant was a trustee of the monies referred to in paragraph 15.1 – 15.2 above under an

express or implied trust, in that the objective intention of the parties was that the Third Defendant was not free to use those monies for any purpose of its own. 15.4. The First Defendant, as the Third Defendant's directing mind and will and as the person having actual control over the Third Defendant's implementation of the arrangement referred to in paragraph 13 above, was a trustee and/or was under a fiduciary duty to the Claimant in respect of that arrangement and in respect of her management and control of the Third Defendant."

30. In his affidavit in support of the injunctions, Mr Xiong said at paragraph 16: "I confirm that the Claimant and Syner established the invoice financing arrangement so as to operate as set out in paragraphs 7 - 8 of the Particulars of Claim, which are based on my instructions. The Claimant also appointed Effs in a similar manner, as set out in paragraph 13 of the Particulars of Claim, based on my instructions. It was mutually agreed and understood that this was how the invoice financing arrangement would be implemented. This was agreed verbally, not in any formal document."
31. Therefore, at that stage the case was put on the basis that the "seller" under the contract with the buyers was not Syner or Effs, but rather was Wenda and that Syner and Effs were simply acting as the receiving agent for the purposes of payment. There was an alternative claim on the basis of a purely contractual relationship, but this was very much a secondary case. Jacobs J concluded in respect of the application for a freezing order that there was as good arguable case against the Defendants: "the case advanced is that money has been taken which belonged to the claimant, or which should have been accounted for to the claimant. The money has, on the claimant's case, been taken and has not been accounted for either by the first or the second or third defendants, either individually or in combination."
32. The Defendants have at all times known that the way the case was advanced was not correct but rather that Syner (and, on one reading of the original Particulars of Claim, Effs, although this was disavowed in corrections submitted by Wenda) were the "sellers" and were not acting as agents as between Wenda and the buyers under the contracts. In the case of Syner, it is difficult to see how if they were merely payment agents HIF would have entered into the invoice discounting agreement as Syner would not have been able to sell to HIF the debts. It would normally be a necessary part of any invoice financing agreement that the company entering into the invoice financing with the bank was the owner of the debts i.e. that it was the seller under the contract with the buyer, rather than acting as an agent for a third party seller. However, that was not how it was presented to Jacobs J who simply had to decide on the evidence before him if there was a good arguable case, which he held that there was.
33. In addition to the agent/trustee claims advanced, there were claims in dishonest assistance and knowing receipt against each of the Defendants. Along with the breach of trust claims, these were said to give rise to proprietary claims. As to the proprietary claims, Jacobs J concluded: "the claimant has a perfectly sensible case, that any monies received by the second and third defendant over and above the moneys which were payable by way of finance charges, or on agreed expenses, were indeed monies which should be accounted for

to the claimant.”

34. Jacobs J recorded in his judgment that Mr Milnes had raised a number of points in his submissions by way of full and frank disclosure. He felt that most of them were points as to the merits of the causes of action which could be taken by the Defendants. He did not set them out in his judgment, but was of the view that none were such as to make the granting of the injunctions sought inappropriate.
35. Jacobs J listed a return date for 10 December 2021 with a time estimate of 1½ hours, recognising that this would, in effect, be a directions hearing for any application by the Defendants to set the injunctions aside. At that return date Jacobs J gave directions to bring the matter back for a fully contested one day hearing on the first available date after 18 February 2022, as well as making a confidentiality ring in respect of information that Ms Wang was required to provide as to her assets, she having said that she was afraid of what might happen if she were to give disclosure of assets which was open to others.
36. There followed further directions orders by Cockerill J (as she then was) on 17 January 2022 and Andrew Baker J on 28 February 2022 varying the directions and relisting the return date for the first open date after 22 April 2022 again with a time estimate of one day.
37. In fact the return date never happened. The Defendants did not file any evidence in response to the initial evidence on behalf of Wenda, nor did they take any steps to list the return date. In September 2022 they stated in correspondence that it was their intention to seek the discharge or variation of the freezing order, but did not do so. On 26 January 2024 (after the amendment to the Particulars of Claim I will describe below), the Defendants asked Wenda to consent to the lifting of the injunctions. Wenda not having consented, on 11 April 2024, the Defendants issued the Discharge Application.
38. In the meantime, the Defendants had filed a Defence to the original Particulars of Claim. In respect of the matter which lies at the heart of the Discharge Application, the Defendants denied any agency agreement as between Syner and Wenda or that Syner was fixed with duties as a trustee. The Defence set out at paragraph 7 the Defendants’ case as to what had been agreed between Wenda and Syner, which was effectively that Syner were to be the vendors of the goods to third parties, selling them on Syner’s own account. Syner were not physically going to deal with the goods, rather that would be done by or on behalf of Wenda. Syner would raise money by way of invoice financing, again for their own account, and had to warrant that they had unencumbered title to the debts. But they would then make a payment to Wenda of a sum said to be derived from Wenda’s standard price-setting formula known as a Cost Table. As to the timing of the payment, Syner pleaded it would pay Wenda a “substantial part” of the relevant sum due under the Cost Table formula within a reasonable period of receiving the initial payment from HIF, with the balance up to the sum due in accordance with the Cost Table within a reasonable period of receiving the remainder due from HIF. At paragraph 8, it was pleaded that the relationship between Wenda and Syner was not a trust relationship or one which involved Syner acting as agent, nominee or trustee

for Wenda in the handling of any monies. Rather, it was pleaded it was a purely contractual relationship.

39. While the Defence went on to address other allegations in the Particulars of Claim, it is not necessary to set those out in any detail. The Defendants deny any wrongdoing or any liability of the sort alleged by Wenda.
40. In Wenda's Reply, it was not accepted that the Defendants were right about the arrangements between Wenda and Syner (or those between Wenda and Effs). Rather Wenda doubled down on its position set out in the Particulars of Claim. Abuse of Process
41. Mr Jones on behalf of the Defendants accepts that the injunctions remain in place and that as a result of his clients not having taken the opportunity to seek to set them aside when given the opportunity to do so, in order to bring this application, his clients need to demonstrate a material change of circumstances as compared to the position in April

2022. Otherwise, the Discharge Application would be an abuse of process (XX v. YY

[2021] EWHC 3014 (Ch)). This is in accordance with the law as explained in cases such as Chanel Ltd v FW Woolworth & Co Ltd [1981] 1 WLR 485, CA and Emailgen Systems Corp v Exclaimer Ltd [2013] EWHC 167 (Comm). In the latter case, (albeit a case where the original order had been replaced by an undertaking until trial or further order, which is materially not different from this situation where there is an opportunity provided to challenge the original order which is not taken up) Teare J said that it was not open to the respondents to argue that the injunction ought never to have been granted, and the undertaking could therefore be discharged only for good cause. What is good cause will depend upon all the circumstances of the case, though typically a change of circumstances or the discovery of some new fact will be required (at [32]). Good Cause/Material Change of Circumstances

42. Mr Jones submits that there is good cause for the Court to discharge the injunctions, because there has been a material change of circumstances. That change of circumstances, he submits, is that in November 2023, the Claimant sought to amend its claim and provided a witness statement of Mr Xiong in support. That was Mr Xiong's 6th witness statement, dated almost exactly two years after the initial granting of the injunctions. It is to be noted that Mr Xiong had previously filed 5 witness statements after having sworn his affidavit in support of the injunction, a number of which were to correct errors in his initial affidavit. The number of corrections that have been made does beg the question of how detailed the investigation into the claim was before these proceedings were launched.

43. The 6th witness statement was (relevantly for the purposes of this judgment) again corrective. It was said to be made to correct a point in his previous evidence relating to the role of Syner and to make a specific clarification in relation to the role of Effs. Mr Xiong referred back to the confirmation in his initial affidavit that paragraphs 7-8 of the Particulars of Claim were correct, which identified Wenda as the seller of goods to third parties and Syner as having only been an agent for the purposes of receiving payment.
44. However, Mr Xiong now sought to correct the identity of the party named as seller in the contracts in paragraphs 7 to 15 of that statement. He maintained that the sales were effectively made by Wenda as Syner did not have the ability to act as supplier of food ingredient chemicals. Syner's only role was merely as financing agent for Wenda. He said that he believed at the time and afterwards that Wenda was the named seller under the sales contracts with the overseas buyers in relation to the transactions that were financed through Syner. However, he said that in the process of preparing Wenda's documents and case for the proceedings (by which he meant providing disclosure and preparing witness statements), Wenda had retrieved contemporaneous documents which showed that his understanding of how the sales contract was documented was not correct. He said that Wenda had found an email of 17 January 2014 from Ms Wang to Nicholas Orloff of Wenda's Mexican subsidiary, which she had forwarded to Mr Xiong the same day. He said that as a result of that he was aware that the sale contract documents named Syner as the seller. He caused Wenda's own records to be compared and he said that this cross check showed that "the normal practice was that the sale contracts signed by the overseas buyers named Syner as the Seller, while another version naming [Wenda] as Seller was also kept on file at [Wenda]."
45. Mr Xiong went on to say that he did not recall reading Ms Wang's email at the time "nor do I recall being aware of the documentation procedure set out in the email. I believe that I must have received the email but not paid attention to it, as it related to the details of implementation of the invoice financing arrangement". Consequently, as a result of this newly (re)discovered information it was necessary to amend the Particulars of Claim, which amendments he had approved as true and correct.
46. He continued in his witness statement at paragraphs 16 to 19 to explain a correction to address the role of Effs and a difference between the arrangements as between Wenda and Effs compared with those between Wenda and Syner. He said that it had been agreed that Effs would be entitled to charge Wenda interest at 10% per annum on sums advanced to Wenda and that it could deduct 5% of the invoice value in order to have in hand monies to meet group expenses. He maintained that like Syner, it was never intended that Effs was to have any ability to decide on prices or contract terms with customers, and it was not entitled to make any profit on Wenda's overseas sales or out of the financing beyond the 10% interest it earned on any advanced sums.
47. Mr Xiong expressly stated that the information he had learned since his earlier evidence did not change or affect his evidence about what was agreed between Wenda and Ms Wang as to the basis on which Syner and Effs handled customer payments. He maintained that they

were “financing agents whose only role was to facilitate Wenda's access to financing and, in Effs' case, to assist Wenda's group's financial operations. Syner and Effs did not purchase the goods from [Wenda], and were not in any way trading in the goods in their own right. It was never agreed that Syner or Effs had any right to the goods, nor any right to earn any remuneration in return for acting as they did (save for the interest on sums advanced by Effs), nor any right to be involved in the arrangement at all”.

48. In paragraph 21 of his 6th witness statement, Mr Xiong explained that Wenda had credit facilities with a number of Chinese banks, including the Bank of China. He understood that Wenda could draw down money from its Chinese lending bank by presenting documentation relating to a sale contract, such as the sale contract document, the original bill of lading and proof of export credit guarantee cover from Sinasure. Wenda usually did obtain this type of financing from its Chinese bank on its overseas sales. In paragraph 23 he said that once it was agreed to arrange invoice discounting in England: “[Ms] Wang informed me that the Claimant could continue to obtain financing from Wenda's Chinese banks while at the same time obtaining financing from HSBC through Syner on those same transactions. The advantage which this offered to the Claimant was improved cashflow which we could use to assist the expansion of the Claimant's business. It of course involved incurring an interest cost on all the borrowing. Ms Wang had proposed this plan for obtaining financing both via Syner and from Chinese lenders on the same sales transactions and she remained in charge of implementing it. I was not aware of all the details of the arrangements, but I knew that the two parallel financing arrangements existed, and I gave my approval to that practice. ... However, I was aware that the arrangement would not be acceptable to the Claimant's Chinese lenders. Because of this, only a few senior people within the Claimant were aware of the overseas financing arrangements. Basically, within Wenda's team in China, it was meant to be known only by [Ms] Wang and her close assistants, Li Jin and Wang Qingli. Ms Chou Chunjing was informed of it when she joined the Claimant as CFO in 2016. I am not proud of the fact that this plan was adopted and I would not try to justify it.”
49. In light of the matters set out in Mr Xiong's witness statement, the Particulars of Claim were amended (the Defendants consenting to the amendments) so that the paragraphs quoted above now read (it is necessary to set them out in full so that the amendments can be properly seen): “The Second Defendant's role as the Claimant's agent, nominee and/or trustee
6. In about 2012, the Claimant incorporated the Second Defendant as its wholly owned subsidiary specifically for the purpose of handling an invoice financing arrangement on behalf of the Claimant.
7. From 2012 to about January 2017, the Claimant appointed and used the Second Defendant as its agent, nominee and/or trustee to handle monies under that invoice financing arrangement. The legal arrangements between the Claimant and the Second Defendant were not formally documented. The arrangement which the Claimant established and which the First and Second Defendant agreed to implement (and which the First Defendant as

director of the Second Defendant was responsible for implementing) was that: 7.1. For so long as the Claimant chose to continue the arrangement, which the Claimant was free to determine at will, and in relation to such of its sale contracts with buyers located outside China as the Claimant chose to do so, the Claimant caused its subsidiaries who negotiated the sales to request the buyer to execute a written sale contract document naming the Second Defendant as the seller, pursuant to which the buyer would be requested instructed its buyers to make payment of the invoiced amount to the Second Defendant. 7.2. The Second Defendant's function and duty was: 7.2.1. To use the invoices (by which the Claimant's buyers were instructed to pay the Second Defendant) to obtain invoice discounting finance, pursuant to which the financing company would advance an agreed percentage of the invoices' face value to the Second Defendant; 7.2.2. To receive payment in due course of the full invoice value from the Claimant's buyers; 7.2.3. Thereupon to repay the advance to the financing company together with the interest due under the financing facility; and 7.2.4. To account to the Claimant for the advances and the payments received from the Claimant's buyers, net of (i) repayment of the advance to the financing company with interest and (ii) the cost of the First Defendant's salary, the reasonable travel cost of the First Defendant's periodic business trips to China as requested or approved by the Claimant, and the cost of preparing the requisite corporate filings to ensure that the Second Defendant remained in good standing to implement the aforesaid arrangement, including the cost of engaging accountants to prepare the Second Defendant's accounts.

8. At all material times, subject only to the qualification set out in paragraph 7.3 above, the function and duties set out in paragraph 7.2 above were the sole and exclusive purpose for the Second Defendant's existence and were the Second Defendant's only legitimate business activity. ...
10. In the premises: 10.1. The Second Defendant was the Claimant's agent, nominee and/or trustee for the receipt and handling of the Claimant's invoice proceeds, and owed to the Claimant the obligations of a trustee, alternatively owed fiduciary duties to the Claimant, in respect of its handling of the Claimant's monies under the arrangements described in paragraph 7 above. 10.2. The Claimant was the beneficial owner of (1) the advances received by the Second Defendant from the financing company; and (2) the invoice proceeds received by the Second Defendant from the Claimant's buyers, subject to the Second Defendant's duty and power to use the same as set out in subparagraph 7.2.4 above. 10.3. To the extent necessary, the Claimant will say that the Second Defendant was a trustee of the monies referred to in paragraph 7.2 above under an express or implied trust, in that: 10.3.1. The objective intention of the parties was that the Second Defendant was not free to use those monies for any purpose of its own; 10.3.2. The only monies being received and handled by the Second Defendant would be monies beneficially owned by the Claimant to which the Second Defendant's duties referred to in paragraph 7.2 above applied, and any advances and invoice proceeds received and handled by the Second Defendant would be mixed only with other such monies and with the Second Defendant's initial funding of operating cash (which consisted of US\$ 1 million in paid-up capital and US\$1.2 million cash injection), which was

provided only in order to implement the aforesaid arrangement and which was (unless otherwise instructed by the Claimant, and no contrary instruction was given) to be retained and/or replenished so that about US\$2.2 million should remain held by the Second Defendant, and which was subject to the same duty to account for it to the Claimant. ... The Third Defendant as the Claimant's agent, nominee and/or trustee

13. Between 2012 to about January 2017, the First Defendant also caused the Claimant to appoint and use the Third Defendant as its agent, nominee and/or trustee to handle monies under an that invoice financing arrangement. As with the Second Defendant, the legal arrangements between the Claimant and the Third Defendant were not formally documented., but They were agreed to be on the same basis as described (in relation to the Second Defendant) in paragraph 7 above., save that: 13.1. It was agreed between the Claimant and the First Defendant (including on behalf of Third Defendant) that the Third Defendant could charge interest at 10% per annum pro rata on amounts advanced by the Third Defendant to the Claimant, as the Third Defendant's fee for acting as financing agent to the Claimant (and that this and no more was all the Third Defendant could charge for so doing). 13.2. It was agreed between the Claimant and the First Defendant (including on behalf of Third Defendant) that, in order that the Third Defendant would have money on hand to pay group expenses, when making advances to the Claimant the Third Defendant could provisionally deduct 5% of the invoice value as and when the Third Defendant would need to do so in order to have the necessary monies on hand; and that the Third Defendant was required to inform the Claimant when it made such deductions, to keep the Claimant informed as to what group expenses it had paid, and to account to the Claimant for any monies that remained with the Third Defendant from such deductions that were not needed for payment of group expenses. 13.3. In practice, the Claimant chose only to authorise the use of the Third Defendant as a financing agent on sales by the Claimant to Wenda America, Inc. and Cape Food Ingredients Chile S. A. Av ("Cape"), both of which were subsidiaries of the Claimant. ...
15. In the premises: 15.1. On those transactions where the Third Defendant was involved such that the Claimant's said overseas subsidiaries as buyers were requested or instructed Claimant requested its overseas buyers to make payment to the Third Defendant, and on any transactions in respect of which monies paid by the Claimant's overseas subsidiaries as buyers came to be held by the Third Defendant, the Third Defendant was the Claimant's agent, nominee and/or trustee for the receipt and handling of the Claimant's invoice proceeds, and owed to the Claimant the obligations of a trustee alternatively owed fiduciary duties to the Claimant in respect of its handling of the Claimant's monies under the arrangements described in paragraph 13 above. 15.2. The Third Defendant held on trust for the Claimant and the Claimant was the beneficial owner, of (1) any advances received by the Third Defendant from a financing company; and (2) the invoice proceeds received by the Third Defendant from the Claimant's said overseas subsidiary buyers, subject to the Third Defendant's duty and power to use the same as set out in sub-paragraph 7.2.4 and 7.3 above (as repeated mutatis mutandis in paragraph 13 above), specifically the power to use them to reimburse itself for sums advanced to the of Claimant, satisfy accrued rights to interest and

pay group expenses; and also

- (3) any proceeds of invoice financing monies paid to the Second Defendant which came to be held by the Third Defendant. Further or alternatively, even if Effs did not hold the said advances and invoice proceeds on trust for the Claimant, the Third Defendant owed fiduciary duties to the Claimant which permitted the Third Defendant to retain those monies only where consistent with its duty and powers referred to in paragraph 13 above and hereinabove. 15.3. To the extent necessary, the Claimant will say that the Third Defendant was a trustee of the monies referred to in paragraph 15.1 – 15.2 above under an express or implied trust, in that the objective intention of the parties was that the Third Defendant was not free to use those monies for any purpose of its own. 15.4. The First Defendant, as the Third Defendant's directing mind and will and as the person having actual control over the Third Defendant's implementation of the arrangement referred to in paragraph 13 above, was a trustee and/or was under a fiduciary duty to the Claimant in respect of that arrangement and in respect of her management and control of the Third Defendant."
50. Mr Jones submits that the change in Wenda's case as to who the seller was under the contracts with buyers from Wenda to Syner (or Effs, if that is how the original Particulars of Claim are properly to be read) was a material change in circumstances and therefore a good cause which opens the door to allow the Defendants to pursue the Discharge Application. He submitted that in light of the change, the Defendants do not understand how Wenda can maintain its claim that it has a beneficial entitlement to the proceeds of the contractual relationships, or any causes of action in equity against Syner at all. He further submitted that the case against the Defendants was just as weak as the case had been against Mr Petit, the 4th Defendant, in respect of whom Jacobs J held that there was not a good arguable case or serious issue to be tried.
51. For Wenda, Mr Milnes and Mr Gardner submitted that the nature of Wenda's claim has not changed. Mr Gardner, who addressed me orally on this, submitted that the original claim might be construed as there having been some form of equitable assignment by Wenda in favour of Syner of the sums due from the buyers to Wenda, so that Syner was entitled to the payments under the sales contracts, not Wenda. Accordingly, he submitted there was no difference under the Amended Particulars of Claim. While this was an ingenious argument, this was not the way it was presented to Jacobs J, nor does the word assignment appear in the Particulars of Claim. However, it is still Wenda's case that Syner was the agent or nominee for Wenda and that Wenda is entitled to an account of monies and/or sums to be received by Syner said to have been held on trust for Wenda. There is no problem in principle in a person undertaking to hold a specified debt on trust in the future i.e. as and when it arises. All that has changed is that the seller was Syner, not Wenda. Mr Gardner made a valiant submission to this effect, namely that there was a factual difference, but not a material one in terms of impacting the merits of the claim.

52. Further, Mr Milnes submitted, even if there is a change in the way in which the case is being advanced by Wenda now, this was always known to the Defendants and they could have made these points on the return date hearing. Therefore, it is said, that it is not open to the Defendants to say that they could not have complained about this before and therefore this is not a material change in circumstances.
53. In my judgment, Mr Jones is correct to submit that there is good cause so as to allow the Defendants to pursue the Discharge Application. There has been a material change in circumstances, namely the change in the way that the case is now put. There is a very significant difference, in my judgment, on the one hand between a claim that Wenda were the contracting parties with the buyers and that Syner and Effs were merely agents for the purposes of receiving payment of invoices from the buyers and/or the invoice discounters under a fiduciary duty to pay over the sums received to Wenda (after subtraction of expenses) and on the other a claim that Syner and Effs were the contracting parties with the buyers and that by reason of an oral agreement with Wenda they were to hold the sums they received from the invoice discounters on trust for Wenda. It was on the basis of the first of these scenarios that the matter was pleaded and advanced before Jacobs J, it being Mr Xiong's evidence before him that the first of these scenarios had been expressly verbally agreed. That is now not Wenda's case. There can be no doubt that amounts to a change in circumstances. It is one which in my judgment is material as it is relevant to the whole of the original claim.
54. I reject Mr Milnes' submission that because the Defendants knew all along that Syner was the seller under the contracts, they could have taken this point on the return date and cannot now claim it is a material change in circumstances. Had they come back to Court on the return date and said this, Wenda would have disputed this (as evidenced by their Reply having disputed it). Given that the parties are agreed that the arrangements between Wenda, Syner and Effs were all concluded orally, the Judge would have been left in a position where he could not have decided who was right about this, but still would have said that there is a serious issue to be tried. It therefore would not have assisted the Defendants to have sought to take the point on the return date. It is only because Wenda now agrees with the Defendants that Syner was the seller under the contracts that it is now open to the Defendants to challenge the granting of the Injunction.
55. It follows that in my judgment, the Defendants' Discharge Application is not an abuse of process. Set aside because there is no longer a seriously arguable claim
56. In my judgment, even though there has been a good cause for allowing the Defendants to pursue the Discharge Application, it does not follow that there is no longer a seriously arguable claim to support the proprietary and/or freezing injunctions.
57. Although the way that Wenda gets there is somewhat different under the Amended Particulars of Claim, it remains Wenda's case that Syner and Effs are each obliged to account to them as trustees for monies received. The monies have been received not from buyers

(and paragraph 10.2(2) of the Amended Particulars of Claim would seem to be wrong) but from HIF in the case of Syner. Wenda continue to plead that it was the beneficial owner of such sums and Syner was a trustee of the monies received. Whether or not what Ms Wang and Mr Xiong agreed was that the receipts from HIF would be held on trust for Wenda or was that there was to be a purely contractual relationship between Wenda and Syner turns upon the Court's assessment at trial of what the parties said as well as a detailed review of any contemporaneous documentation and an assessment of the background facts. These would include that it would be unusual (but not impossible) for Syner as a wholly owned subsidiary of Wenda to have a purely contractual relationship which allowed Syner to retain profit which would otherwise have accrued to Wenda. These are matters for the trial and not the sorts of issues that can be determined on an application of this nature, where the Court is deploying the same test as that for summary judgment. Accordingly, there remains a serious issue to be tried as between Syner and Effs on the one hand and Wenda on the other as to how the arrangements were to work, if not exactly the same serious issue as the one that Jacobs J was addressed on in November 2021.

58. Even if there was a purely contractual relationship between Syner/Effs and Wenda, that would not mean that there is not still a serious issue to be tried as to whether Syner/Effs were contractually obliged to account to Wenda for the sums received from HIF and whether they have done so. If it was a purely contractual obligation, that would not give rise to an entitlement to seek a proprietary injunction, but would still be sufficient for the freezing order, assuming it was otherwise appropriate to grant such an order.
59. The other changes made in the Amended Particulars of Claim in the claim against Effs, which acknowledged an entitlement to charge interest at 10% per annum on monies advanced, do not in my judgment cause the claim against Effs to be one that does not raise a serious issue to be tried. These are relatively minor amendments of a clarificatory nature and do not cause what otherwise gives rise to a serious issue to be tried no longer to be such. And to be fair to Mr Jones, he effectively accepted this in the course of his oral submissions.
60. As far as the position of Ms Wang is concerned, Mr Jones did not submit that if there remained a serious issue to be tried on the case against Syner or Effs as trustees, there could not be a serious issue to be tried as to Ms Wang's liability in equity to Wenda. Given that there is no attack on the decision of Jacobs J in this regard, I do not need to consider whether Wenda is correct on its analysis set out in the Amended Particulars of Claim as to her potential liability, such as to be the basis for a proprietary injunction. Whether Wenda is entitled to proprietary relief against her will be a matter for trial and I say no more on that topic.
61. I reject the suggestion that the change in case should lead to the conclusion that the case is as weak as the case had been against Mr Petit in respect of whom Jacobs J held that there was not a good arguable case or serious issue to be tried. His reasoning for not making an order against Mr Petit was set out at paragraph 39 of his judgment, namely that Mr Petit's involvement in the matters giving rise to the claim was not established; he had become a

director of Effs but only after the relevant monies had been taken. That reasoning, even on the amended case, does not apply to any of the other Defendants.

62. In passing, it is right to note that while Mr Jones did make it clear that Ms Wang denied “in strong terms” that she was dishonest in connection with the double invoicing scheme that I am going to address shortly, he did not submit that Jacobs J was wrong to find that there was a real risk of dissipation of assets by the Defendants, nor that the Court should now grant the Discharge Application on the basis that no such risk had been made out. Full and frank disclosure
63. The law as to the requirements on an applicant for without notice relief, including for injunctive relief such as was sought and granted here, is well known. As Males LJ said in *Derma Med Ltd v. Ally* [2024] EWCA Civ 175 at [29]: “The importance of full and frank disclosure by a claimant when applying for an order without notice to the defendant has been emphasised many times. The leading statements of principle remain those set out in the well-known case of *Brink’s Mat Ltd v Elcombe* [1988] 1 WLR 1350, although there are many other more recent summaries of the applicable principles to be found in the cases. One very full such summary was by Mrs Justice Carr in *Tugushev v Orlov* [2019] EWHC 2031 (Comm) at [7]: ‘i) The duty of an applicant for a without notice injunction is to make full and accurate disclosure of all material facts and to draw the court’s attention to significant factual, legal and procedural aspects of the case; ii) It is a high duty and of the first importance to ensure the integrity of the court’s process. It is the necessary corollary of the court being prepared to depart from the principle that it will hear both sides before reaching a decision, a basic principle of fairness. Derogation from that principle is an exceptional course adopted in cases of extreme urgency or the need for secrecy. The court must be able to rely on the party who appears alone to present the argument in a way which is not merely designed to promote its own interests but in a fair and even-handed manner, drawing attention to evidence and arguments which it can reasonably anticipate the absent party would wish to make; iii) Full disclosure must be linked with fair presentation. The judge must be able to have complete confidence in the thoroughness and objectivity of those presenting the case for the applicant. Thus, for example, it is not sufficient merely to exhibit numerous documents; iv) An applicant must make proper enquiries before making the application. He must investigate the cause of action asserted and the facts relied on before identifying and addressing any likely defences. The duty to disclose extends to matters of which the applicant would have been aware had reasonable enquiries been made. The urgency of a particular case may make it necessary for evidence to be in a less tidy or complete form than is desirable. But no amount of urgency or practical difficulty can justify a failure to identify the relevant cause of action and principal facts to be relied on;
- v) Material facts are those which it is material for the judge to know in dealing with the application as made. The duty requires an applicant to make the court aware of the issues likely to arise and the possible difficulties in the claim, but need not extend to a detailed analysis of every possible point which may arise. It extends to matters of intention and for

example to disclosure of related proceedings in another jurisdiction; vi) Where facts are material in the broad sense, there will be degrees of relevance and a due sense of proportion must be kept. Sensible limits have to be drawn, particularly in more complex and heavy commercial cases where the opportunity to raise arguments about non-disclosure will be all the greater. The question is not whether the evidence in support could have been improved (or one to be approached with the benefit of hindsight). The primary question is whether in all the circumstances its effect was such as to mislead the court in any material respect; vii) A defendant must identify clearly the alleged failures, rather than adopt a scatter gun approach. A dispute about full and frank disclosure should not be allowed to turn into a mini-trial of the merits; viii) In general terms it is inappropriate to seek to set aside a freezing order for non-disclosure where proof of non-disclosure depends on proof of facts which are themselves in issue in the action, unless the facts are truly so plain that they can be readily and summarily established, otherwise the application to set aside the freezing order is liable to become a form of preliminary trial in which the judge is asked to make findings (albeit provisionally) on issues which should be more properly reserved for the trial itself; ix) If material non-disclosure is established, the court will be astute to ensure that a claimant who obtains injunctive relief without full disclosure is deprived of any advantage he may thereby have derived;

- x) Whether or not the non-disclosure was innocent is an important consideration, but not necessarily decisive. Immediate discharge (without renewal) is likely to be the court's starting point, at least when the failure is substantial or deliberate. It has been said on more than one occasion that it will only be in exceptional circumstances in cases of deliberate non-disclosure or misrepresentation that an order would not be discharged; xi) The court will discharge the order even if the order would still have been made had the relevant matter(s) been brought to its attention at the without notice hearing. This is a penal approach and intentionally so, by way of deterrent to ensure that applicants in future abide by their duties; xii) The court nevertheless has a discretion to continue the injunction (or impose a fresh injunction) despite a failure to disclose. Although the discretion should be exercised sparingly, the overriding consideration will always be the interests of justice. Such consideration will include examination of i) the importance of the facts not disclosed to the issues before the judge ii) the need to encourage proper compliance with the duty of full and frank disclosure and to deter non-compliance iii) whether or not and to what extent the failure was culpable iv) the injustice to a claimant which may occur if an order is discharged leaving a defendant free to dissipate assets, although a strong case on the merits will never be a good excuse for a failure to disclose material facts; xiii) The interests of justice may sometimes require that a freezing order be continued and that a failure of disclosure can be marked in some other way, for example by a suitable costs order. The court thus has at its disposal a range of options in the event of non-disclosure.'

64. Males LJ continued at paragraphs [30]-[31]: Although this was said in the context of an application for a freezing “30. order, the principles are of general application. I would draw particular attention, as relevant in the present case, to the fact that the overriding consideration when deciding whether to continue an injunction or grant a fresh injunction despite a failure of disclosure is the interests of justice; and to the need to maintain a due sense of proportion in complex cases. This latter point was made by Mr Justice Toulson in *Crown Resources AG v Vinogradsky* (15 June 2001) and was adopted by the Court of Appeal in *Kazakhstan Kagazy Plc v Arip* [2014] EWCA Civ 381, [2014] 1 CLC 451 at [36]: ‘... where facts are material in the broad sense in which that expression is used, there are degrees of relevance and it is important to preserve a due sense of proportion. The overriding objectives apply here as in any matter in which the Court is required to exercise its discretion. ... I would add that the more complex the case, the more fertile is the ground for raising arguments about non-disclosure and the more important it is, in my view, that the judge should not lose sight of the wood for the trees. ... In applying the broad test of materiality, sensible limits have to be drawn. Otherwise there would be no limit to the points of prejudice which could be advanced under the guise of discretion.’
31. A further point which merits emphasis is that even when there has been a failure of full and frank disclosure, the interests of justice may sometimes require that a without notice order be continued and that a failure of disclosure be marked in some other way, for example by a suitable costs order. A court needs to consider the range of options available to it in such an event.
65. The point made by Carr J (as she then was) in paragraph [7(vii)] of her decision in *Tugushev v Orlov* reflected what Males J (as he then was) had said in *National Bank Trust v. Yurov* [2016] EWHC 1913 (Comm) at [14] as to the need to set out in the application notice, or failing that in the witness statement, clearly and prominently a succinct statement of the grounds relied upon as being a failure of full and frank disclosure.
66. The application notice in this case did not set out the grounds relied on. The witness statement of Michael Coyle in support of the Discharge Application does not set out clearly and prominently a succinct statement on the grounds relied on. Nor did Mr Jones’ skeleton argument. This is obviously not a satisfactory approach to have been adopted by the Defendants. Rather it was left to Wenda in its evidence in answer to identify the matters which it understood the Defendants were saying should have been drawn to the attention of the Court by Wenda under its obligation of full and frank disclosure but were not namely (1) the issue as to who was the contracting party; (2) the issue of Effs’ entitlement to charge interest and (3) Wenda’s duplicate record keeping system.
67. In his oral submissions, Mr Jones for the Defendants did not seek to go beyond these as the areas where he said there was a lack of full and frank disclosure. His initial submission was that the fact that Wenda had advanced the case on the basis that it was the seller, not Syner

or Effs, and had failed to set out that Effs had an entitlement to charge interest (although he, in my judgment rightly, did not seriously press this failure as a full and frank disclosure issue) as well as the duplicate record keeping, but had later come to disclose these matters in Mr Xiong's 6th witness statement in November 2023 demonstrated that there was no proper investigation of the case before the application for the Injunction was made. These were matters that he says should have been ascertained if not before then at least in the three year period between the end of the initial investigation and the application for the Injunction.

68. It became clear in the course of Mr Jones' oral submissions that his main complaint was as to the duplicate invoicing and what that showed. These are partly the matters dealt with at paragraphs 12 to 13 of Mr Xiong's 6th witness statement as to the correct identity of the seller (see paragraph 44 above) and partly the matters set out at paragraphs 21 to 24 of that statement, which I have set out at paragraph 48 above. Mr Xiong said that these latter paragraphs were not corrections to his earlier evidence but were offered by way of clarification.
69. What is material for the judge to know in dealing with an application is to be decided by the court and not by the assessment of the applicant or the applicant's legal advisers (*Brinks-Mat Ltd. v. Elcombe* [1988] 1 WLR 1350 at 1356G-H). In my judgment, the two sets of invoices and the double financing were matters which should have been disclosed on the without notice hearing, notwithstanding Mr Xiong's explanations in his 10th witness statement which I address below. Although Mr Milnes tried to suggest that these were not material matters, he eventually said in his oral submissions that it would have been "far wiser" to have disclosed the double financing at the time of the hearing before Jacobs J. Had that been disclosed, it would have disclosed the existence of the two sets of invoices and would have caused Wenda to have put its case in a different way to that which it was advanced before Jacobs J.
70. In my judgment, it would have been material for Jacobs J to have known that there was what must have been a dishonest scheme operated by Wenda with Mr Xiong's knowledge of double financing the same sales, once under the agreement between Syner and HIF and once under the arrangements with Chinese banks (who, contrary to Mr Xiong's suggestion in my judgment would have been highly unlikely to have been secured by a trade credit protection policy as that policy would hardly have paid out in respect of false invoices). This was a scheme which was clearly dishonest and one that Mr Xiong would not try to justify (indeed it is difficult to see how this would not end in disaster for Wenda as it would have borrowed monies twice on one sale, but would only recoup monies from the buyer in respect of one invoice). Had this been disclosed to Jacobs J, it would have caused him to consider where the real dishonesty lay, that is to say whether it was solely to be laid at the door of Ms Wang as it was portrayed, or whether at the very least Wenda was party to the dishonesty. It may not have made a difference to the ultimate outcome as he may well have concluded that Wenda's dishonesty did not bear on the claim against the Defendants, but that is not the relevant question as to whether it should have been disclosed. In my judgment

it was information which should have been put before the Judge, especially given that equitable relief was being sought.

71. Mr Jones made the point that in Mr Xiong's 6th witness statement he sought to distance himself from the emails of January 2014 by saying that he was merely copied in on these and did not read them in any detail, which Mr Jones said was untrue. I have been shown emails going back to December 2011 between Geissler Silva of Wenda's Brazilian subsidiary, Mr Xiong and Ms Wang asking about the production of duplicate contracts in the name of Wenda and in the name of Syner. Then there were further emails in October 2013 between Mr Silva, Mr Xiong and Ms Wang addressing the Syner processes, including email correspondence from Mr Xiong in which he referred to discussions he and Mr Silva had had in Brazil on this topic (it is not clear if Ms Wang was involved in these discussions). The Syner processes were proposed by Mr Silva and not Ms Wang as Mr Xiong had said in his 6th witness statement in respect of the January 2014 emails. Those emails were part of the chain which commenced in October 2013, to which Mr Xiong was a party. Accordingly, Mr Jones submitted, Mr Xiong was much more intimately involved in the production of the 2 sets of invoices, one in the name of Syner to be used in the invoice discounting arrangements with HIF and one in the name of Wenda to be used for raising finance in China, than he was prepared to admit even at this stage.
72. Mr Jones submitted that in light of these emails, what Mr Xiong was doing in his affidavit in support of the Injunction application before Jacobs J was putting forward a false case and/or that there had been a lack of proper rigour in the investigation. These are two very different submissions. He expanded on the first submission by saying that Mr Xiong's knowledge as presented to Jacobs J was not true because he knew that Syner was the seller and also knew about the double financing. Therefore, to Mr Xiong's knowledge this presentation was not true. This was deliberate. As to the second, he said that what Mr Xiong said as to who the seller was and therefore what the arrangements between Syner and Wenda were, must not have been checked by anyone else against relevant available documentation, the documentation Mr Xiong referred to in his 6th witness statement having always been available to Wenda. He says that the Court should have been told that notwithstanding that Wenda was seeking equitable relief, Wenda was the beneficiary of an acknowledged fraudulent invoice financing scheme, being the Chinese one. Had the Court been told this, he submitted, the Court would not have granted equitable relief and therefore it should be taken away as a punishment. It seemed at times that Mr Jones might have only been seeking discharge of the proprietary injunction, and although I do not proceed on the basis he was limiting the relief sought to this, it is right to note that it would be entirely possible to discharge the proprietary injunction but leave in place the freezing injunction.
73. Mr Milnes complained that the allegation of deliberately putting forward a false case was not one which had been made before, let alone in a clear and succinct statement as required by the Yurov decision and therefore it could not be pursued. If contrary to that submission, I were to allow it to be pursued, he sought permission to put in further evidence from Mr

Xiong (who was in China) as to why this was not explained in the affidavit put before Jacobs J and in particular to answer the submission that it was a deliberately false case that Wenda through Mr Xiong had advanced. This, he submitted, was particularly important in the context of the issue of any continuation or regrant of the Injunction were the Court to conclude (as I now have) that there had been a failure of full and frank disclosure.

74. In Mr Xiong's 9th witness statement dated 1 July 2025, which is his reply witness statement for the purposes of the trial, he had said at paragraph 25.3.3: "At paragraphs 20-24 of my 6th WS I said that Wang Jinhong had mentioned to me the opportunity for double financing before the arrangements with Syner were finalised. This was my recollection when I prepared my 6th WS, I had no memory of discussions with Wang Jinhong about double financing prior to this and it is only through the process of preparing this witness statement that I was reminded that this was something that was being discussed as early as November 2011.'
75. I therefore wondered what more he might say in respect of the allegation that he had deliberately put forward a false case to Jacobs J. I did not decide at that point whether it should be open to Mr Jones to pursue that allegation, however, given the gravity of it and its centrality to Mr Jones' submissions, I gave permission for a further witness statement to be put in and for the parties to put in short written additional submissions on that statement. If it were to turn out that Mr Xiong admitted he had deliberately presented a false picture on the without notice hearing, that would obviously be material.
76. Mr Xiong put in a 10th witness statement dated 23 July 2025. As to the 2 sets of invoices, he confirmed that what he had said in his 6th witness statement was true, namely that he did not appreciate "that there were also sales contracts naming Syner as the seller when preparing for and attending the Injunction Hearing" before Jacobs J. Had he known that there were sale contracts naming Syner as the seller, he would have ensured that this was stated accurately both in the Particulars of Claim and when it came to explaining the position at the hearing itself. He acknowledged that this would have required him to explain to the Court why there were two sets of sales contracts and that it was connected to the double financing. This cannot be read literally as the emails referred to above from 2011, 2013 and 2014 show that he did know at that time that there were two sets of invoices. I take it to mean that he did not recollect in 2021 that there had been two sets of invoices.
77. As to the reasons for failure to disclose the double financing, he says that although he was aware that this had happened, "it was simply not an issue I gave any thought to at the time Wenda was preparing for the Injunction hearing. I had given careful consideration to the need for Wenda to comply with its duty of full and frank disclosure" before setting out how he understood the duty at the time, which was "to ensure the Court had all the information it needed to show this information was true and accurate and that Wenda had not overstated or exaggerated its claim. To me this meant showing not just the value of sales through Syner and Effs, but also what Wenda should give Syner and Effs credit for." He did not understand that the duty extended to disclosing other operational practices such as the double

financing. He went on to explain that he relied on Wenda's then financial manager as well as Wenda's Vice President and that he personally reviewed only a limited number of the underlying documents. He said that had he considered the double financing was something which Wenda was under a duty to disclose, he would have had no hesitation in taking steps to ensure the Judge was told about it. His failure to do so was not deliberate or done knowingly or intentionally and he apologised unreservedly for not ensuring the Court had the full picture at the time of the Injunction hearing. No evidence was submitted from Wenda's solicitors as to what they had told him about the duty of full and frank disclosure and whether it was in terms which were reflected in this 10th witness statement.

78. In his further written submissions on this witness statement, Mr Jones said that it was not credible that Mr Xiong had forgotten about there being invoices with Syner as the seller. And further that Wenda's lawyers would have apprised Mr Xiong of the seriousness and scope of the duty of full and frank disclosure and therefore it is inconceivable that Mr Xiong would have been left in any doubt but that any apparently dishonest conduct on the part of Wenda (like running a duplicate financing operation) would need to have been disclosed.
79. In their further written submissions, Mr Milnes and Mr Gardner maintained the position that the Defendants raising this allegation for the first time in oral submissions was "extraordinary and unsatisfactory". They complained that permitting a further witness statement and further written submissions was not a satisfactory solution to this either. Nonetheless they went on to say that Mr Xiong's evidence showed that, at the time of the without notice application, he did not know about the two sets of invoices, that is to say he had forgotten about them 8 years later. And that he did not appreciate that the double financing practice, though irrelevant to Wenda's claim, would fall within the full and frank duty because a judge would consider it relevant to an overall assessment of whether injunctive relief should be granted without notice or generally. They submit that this evidence is plausible and it cannot fairly be summarised as demonstrably unsupportable as it would have to be for me to be able to make findings against him on a summary basis, relying on *Okpabi v Royal Dutch Shell Plc* [2021] 1 WLR 1294 at [22], [107], [110].
80. In my judgment, Mr Milnes and Mr Gardner are correct on this. First, it is very unsatisfactory for this issue to have been raised in oral submissions for the first time. If an allegation of deliberate failure was going to be made, it should have been made in the application notice or the supporting witness statement. Even if it had been only an allegation which became clear after the issue of the application, which is not alleged, it would have been incumbent on the Defendants to have spelled out in correspondence in advance of the hearing that this point was going to be taken. It was not done. It did not even feature (or at least not in any clear way) in Mr Jones' skeleton argument. On that basis, it is not something which is open to the Defendants to seek to rely on in support of the Discharge Application.

81. Secondly, in my judgment on the basis of the decision in Okpabi (and other authorities) it is not open to me to disbelieve what Mr Xiong says in his 10th witness statement, at least without the benefit of cross-examination, which was not sought, unless it is demonstrably unsupportable. That is not to say that I do not have doubts as to Mr Xiong's claim of having forgotten about the two sets of invoices which would have led to him having to explain these away. I find it surprising that he should have done so given that the practice must have continued until 2016 when Wenda terminated the arrangements with Syner and Effs, but I cannot conclude it is wholly implausible. Likewise, I have some doubts as to his explanation as to his understanding of the full and frank duty given the experience of his solicitors in matters such as this, but again it is not wholly implausible.
82. Accordingly, in my judgment, it is not a finding that is open to me to make that Mr Xiong deliberately put forward a false case, nor that he deliberately and knowingly withheld the existence of the two sets of invoices and the double financing from the Court on the without notice hearing.
83. That does not mean that if the matters were material, as I have held they were, there has not been a failure of full and frank disclosure. Mr Jones' second complaint namely that there had been a lack of proper rigour in the investigation is one which in my judgment is correct. This is not a case where there was great urgency so that it was necessary for evidence to be in a less tidy or complete form than is desirable. The investigation had apparently concluded in 2018, but it took another 3 years for the application to be brought to Court. There was plenty of time for a much deeper investigation to have been carried out which would have disclosed the matters which Mr Xiong set out in his 6th witness statement at the time of the hearing before Jacobs J. I accept that as a party gets closer to trial, further details are likely to emerge, but these were all matters which were clear from documents which had always been in Wenda's control. Before seeking draconian relief by way of freezing and proprietary injunctions, it is incumbent on the applicant to undertake a rigorous search for relevant documents. It is clear that in this case, Wenda did not do so.
84. Mr Milnes submitted that the documents showed that Ms Wang was fully aware of the double invoicing and the obtaining of finance on the two sets of invoices for the same goods with different sellers named. He said she was consciously and knowingly involved in it, but she had not addressed this at all. That may be the case, but it is not an issue for me. If there was a failure to give full and frank disclosure, which I have held there was, it does not matter that Ms Wang knew about those matters or even was consciously and knowingly involved in them. The Court did not know about these matters and, by proceeding without notice, the Court was deprived of hearing from Ms Wang. Sanction
85. Having determined that there was a failure of the duty to give full and frank disclosure, but that it was not deliberate, the question arises as to what the appropriate order is that the Court should make.

86. Mr Jones submits that, in accordance with the principle set out in paragraph 7(ix) of the Tugushev judgment the Court should be astute to deprive Wenda of any advantage it derived from the non-disclosure, that is to say that the Injunction should be discharged. I am also conscious of paragraph 7(xi) of that judgment in which it was said that the court will discharge the order even if it would still have been made had the relevant matters been brought to its attention at the without notice hearing, that this is a penal approach and intentionally so, by way of deterrent to ensure that applicants in future abide by their duties. However, that follows paragraph 7(x) where Carr J stressed that whether or not the non-disclosure was innocent is an important consideration before going on to deal with deliberate non-disclosure. In my judgment what Carr J said in paragraph 7(xi) was in the context of a deliberate non-disclosure case, that is that if there was a deliberate non-disclosure, even if the order made would have been the same, the order will still be set aside.
87. Mr Milnes submitted that there is actually no link between the non-disclosure and the relief granted, that is to say that the non-disclosure did not lead to the advantage obtained by Wenda of getting the Injunction. In my judgment this is to take too narrow a view of the materiality of the non-disclosure in this case.
88. He also presses the comments of Males LJ in the *Derma Med Ltd. v. Ally* case at paragraphs [30]-[31] set out above. He submits that the overriding consideration when deciding whether to continue the injunction or grant a fresh injunction despite a failure of disclosure is the interest of justice. He says that even if these matters had been disclosed, the Court would still have granted proprietary and freezing injunctions, albeit it would have been on the basis of the case now advanced. That remains a case in dishonesty against the Defendants, who have embezzled monies owing to Wenda. While they deny it, there is (he says) ample evidence of dishonesty on the part of Ms Wang. He points in particular to the apparent forging of HIF documents and the forging of rental invoices. While I am not in a position to come to any firm conclusions on these issues which will be addressed at the trial, Wenda appears to have a strong case in this respect. He also made submissions as to Ms Wang's conduct in the course of the proceedings, those matters being set out in paragraph 22 of Mr Marmor's 14 th witness statement, although these were countered, in my judgment effectively, by Mr Jones pointing to the highly confrontational nature of this litigation. I note that no contempt applications have been brought against Ms Wang on account of alleged breaches of the Court's orders. I do not draw any conclusions from these matters as to Ms Wang's honesty or otherwise.
89. As set out above, Mr Jones did not seek to attack the conclusions of Jacobs J on the risk of dissipation. Given that the trial in this case is only a matter of months away, it is difficult to see what Ms Wang, in particular, would obtain from the Injunction being discharged other than the ability to seek to make herself judgment proof before the trial. She has not pointed to any specific hardship which is being caused to her by the Injunction, over and above the inevitable hardship that being subject to an order of this nature will cause. Nor have Syner

or Effs. It is noticeable that in the draft Order accompanying their application, the Defendants do not seek an enquiry as to damages on the cross undertaking given by Wenda, but rather payment of a sum “as a result of the hardship suffered” by them. This appears to be a claim for general damages as opposed to any specific damages.

90. In my judgment, given all of the matters set out above, while not understating the seriousness of the non-deliberate failure of Wenda to comply with its obligation to give full and frank disclosure, this is a case where the interests of justice do require the Injunction to be maintained until trial or further order. To discharge the Injunction at this stage would lead to the very real risk that Ms Wang would indeed take steps to make herself judgment proof. That risk of dissipation identified by Jacobs J when initially granting the injunction remains and, if anything, will have increased as the litigation nears its conclusion.
91. It follows that in my judgment it is just and convenient that the Injunction should continue.
92. However, there must be a sanction imposed on Wenda. In my judgment and in the exercise of my discretion, the appropriate way of marking the failure to give full and frank disclosure is to make a costs order. This will satisfy the interests of justice in this particular case on these facts. The order should be that Wenda should pay the costs of the Discharge Application and of its Continuation Application to the Defendants and that those costs should be payable on the indemnity basis.
93. This will extend to all of the costs of these applications, including the costs of the additional witness statement and further submissions notwithstanding that the Defendants did not take the point of deliberate non-disclosure in the correct manner and I have ultimately ruled against the Defendants on that issue.
94. If they are not agreed, it is appropriate either to assess those costs on a summary basis or, if it is not possible to do so, to make a payment on account of those costs to be paid within 14 days after the hearing at which I will consider the quantum of those costs.
95. I invite Counsel to submit an order reflecting this judgment agreed as far as it can be. In the event that the parties are unable to agree the order in full, including the quantum of costs, this matter should be listed as soon as possible before me for a two hour hearing. 27

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