Neutral Citation Number: [2020] EWHC 660 (Ch)

Case No: BR-2019-000897

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
INSOLVENCY AND COMPANIES COURT
IN BANKRUPTCY

Royal Courts of Justice
Rolls Building, Fetter Lane, London, WC2A 2LL

Date: 19/03/2020

Before :

I.C.C. JUDGE JONES

- -

Between :

YAROSLAVNA LASYTSYA	**Applicant/ Respondent**
- and -	
(1) NINOS KOUMETTOU **(2) YIANNIS KOUMETTOU** **(Trustees in Bankruptcy of the Estate of Ms Lasytsya)**	**Respondents/ Applicants**

- -
- -

Ms Yaroslavna Lasytsya appeared in person
Ms K. Bond (instructed by **Howes Percival**) **for the Trustees**

Hearing dates: 5 March 2020

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....CHJ 19/03/20.....

I.C.C. JUDGE JONES

I.C.C. Judge Jones:

A) The Applications

1. On 9 January 2019 Ms Lasytsya was made bankrupt on her own application. The Respondents ("the Trustees") were appointed trustees in bankruptcy by the Secretary of State under ***section 296 of the Insolvency Act 1986*** ("the Act") on 7 February 2019. They obtained a search and seizure order under ***section 365 of the Act*** on 6 August 2019 and on 13 August 2019 an additional Order against third parties to assist execution. On 21 August 2019 the Tipstaff attended Ms Lasytsya's home together with a solicitor retained by the Trustees, the Trustees' case manager and four others from the firm of solicitors, people from a firm of auctioneers and an investigation agent. A storage unit and other business premises were also duly searched and property and documents seized. An additional order was made on 30 August 2019 against another third party resulting in seizure of the contents of a safe deposit box.

2. On 12 September 2019 Ms Lasytsya issued an application seeking the following relief (as summarised and not in this order): (i) the Orders of 6 and 13 August be set aside; or (ii) be varied to be limited to property belonging to the bankrupt's estate; and/or (iii) any items with a value of £200 or less should be returned; (iv) any items not belonging to the bankrupt's estate (whether owned by third parties or otherwise) should be returned; (v) notes of Ms Lasytsya's previous (20 May 2019) interview should be produced and transcripts of the hearings on 6 and 12 August should be provided; (vi) all photographs and videos taken during the searches on 21 August 2019 should be produced; (vii) copies of all hard copy documents seised should be provided; (viii) an injunction should be granted to restrain access to those documents until copies are provided; (ix) a witness statement should be served detailing what was seized except for the computers because the viewing of their contents is in dispute; and (x) only records on the computers relating to the bankruptcy estate or affairs should be retained and these should be identified by an independent barrister with the balance being returned.

3. On 5 February 2020 Ms Lasytsya issued an application for permission to commence contempt of Court proceedings against the Trustees and the solicitors they retained, Howes Percival LLP. The essential ground relied upon being (in summary) that the 6 August 2019 Order had been obtained by false statements made in the evidence relied upon at the without notice hearing. The Trustees on 18 December 2019 issued an application to suspend Ms Lasytsya's automatic discharge from bankruptcy under ***section 279(3) of the Act***. An interim order was made on 3 January 2020. Both applications are also before me together with applications to admit late evidence.

B) The Hearing/Case Management

4. Ms Bond, counsel for the Trustees, most properly pre-warned the Court that one day might be insufficient for the hearing bearing in mind the many issues and quantity of evidence. My decision not to re-list was based upon two concerns. First, that the applications raise very important issues involving the obtaining and execution of Orders which must be carefully monitored by the Court because of their potential

impact. Second, because the Court should act quickly to ensure, if it be the case, that a bankrupt fulfils the statutory duties in relation to a trustee that are alleged to have been breached.

5. Bearing in mind Ms Bond's appropriate warning, I case managed the hearing to ensure the following matters (at least) were addressed: (i) the information provided by Ms Lasytsya to the Trustees; (ii) whether the evidence provided to the Court in support of the applications under ***section 279(3) of the Act*** should be criticised in the context of merits, alleged misrepresentation and/or the duty on a hearing without notice to make full and frank disclosure and to present the application fairly; (iii) to ensure that the normal safeguards required for a ***section 365***, without notice Order were provided and implemented; (iv) to decide what should happen to the computers seised; (v) to decide how to resolve issues concerning which documents and property should be retained by the Trustees; and (vi) to address what should happen to the contempt and suspension of discharge applications. I did not need to decide the late evidence applications during the hearing.

6. I should record that Ms Bond was not instructed on the application for the ***section 365*** Order and no criticism concerning that application attaches to her. Indeed, to the contrary. At this hearing she provided all the assistance and skill required to enable the Court to deal with the matters specified in paragraph 5 above. I am grateful for the succinctness of her powerful submissions and the efficiency with which she dealt with the hearing. I should also record that Ms Lasytsya addressed the Court with courtesy and with the skill of an advocate that made me enquire whether she is a qualified lawyer. She is not but she presented her case with clarity and economy.

7. This judgment will inevitably be longer than I would like because of the quantity of information before me and the importance of the subject matter. However, I wish to make clear that I have approached the task of preparing it from a pragmatic perspective. It is clear both sides mistrust each other and the method of obtaining and executing the Orders has added to that unpleasant and unfortunately toxic atmosphere. The judgment, therefore, is also intended to provide guidance relevant to the future conduct of the bankruptcy, as well as decisions upon the specific issues. As part of that process I will start with the following introductory points.

C) Introductory Points

8. To answer a concern Ms Lasytsya has raised: The fact that the Trustees were appointed by the Secretary of State at the request of a judgment creditor, Inter Export LLC, does not mean that creditor has specific influence over the conduct of the bankruptcy. The decision to appoint was made by the Secretary of State, the appointees are insolvency practitioners and they act in accordance with their statutory duties and powers. The judgment creditor, as with all creditors, is concerned with the results of the bankruptcy. Enquiries can be made of the Trustees and assistance, including financial, can be provided to them by a creditor if required. However, the Trustees are not nominees or agents of one creditor. They are independent appointees acting in the interests of all creditors.

9. Ms Lasytsya is adamant that the findings against her of (I summarise) fraud underlying the Inter Export LLC judgment were in error. However, she has acknowledged that she is bound by them. That is correct and the judgment is as binding on the Trustees as it is on her because they are her privies. She cannot dispute its content with them because they were not party to the proceedings (see ***Shierson v Rastogi (a bankrupt)*** [2007] B.P.I.R. 891 at [38-42]).

10. The findings also mean that she has "bad character". If this is relevant to an alleged wrongdoing, it may be taken into consideration on the basis that her bad character may indicate that she is more likely than a person with good character to commit the act in question. However, it will not and cannot be taken to prove that she did because, obviously, the findings in the judgment will relate to different facts and matters.

11. I now turn to the law relevant to the application before me. I need to lay the foundations by setting out the duties of a bankrupt to deliver up property and to provide information. This will form the background for a ***section 365 of the Act 1986*** application. I will then address the law relevant to such an application taking into consideration the matters covered by Ms Lasytsya and the fact that the Orders made are embarrassingly defective.

D) Legal Duties

12. The allegation that Ms Lasytsya has not co-operated with the Trustees needs to be considered within the context of the very extensive duties upon a bankrupt prescribed by statute to ensure that the statutory purposes of the bankruptcy are achieved, including the collection, realisation and distribution of the bankruptcy estate.

13. The bankruptcy estate is defined in ***section 283 of the Act***. For the current purpose it is adequate to define it as including all property belonging to or vested in the bankrupt at the commencement of the bankruptcy excluding: (a) such tools, books, vehicles and other items of equipment as are necessary to the bankrupt for use personally by her in her employment, business or vocation; and (b) such clothing, bedding, furniture, household equipment and provisions as are necessary for satisfying the basic domestic needs of the bankrupt and her family.

14. ***Section 291 of the Act*** requires a bankrupt to provide to the Official Receiver *"an inventory of [her] estate and such other information … as the official receiver may reasonably require"*. If a trustee is appointed, the Official Receiver will pass over all property, books and papers obtained (***section 312(2) of the Act***). Therefore, the Trustees should at least have received such an inventory.

15. There is a specific obligation upon the bankrupt under ***section 312(1) of the Act*** to *"deliver up to the trustee possession of any property, books, papers or other records of which [she] has possession or control and of which the trustee is required to take possession"*.

16. That duty is without prejudice to the general duty under ***section 333(1) of the Act*** to give to the trustee before and after discharge from bankruptcy *"such information as to*

[her] affairs, to attend on the trustee at such times, and do all such other things as the trustee may for the purposes of carrying out [their] functions … reasonably require". Under ***subsection (2)***, the bankrupt shall also give notice to the trustee within the twenty-one day prescribed period of any property acquired or devolved or any increase in income received at any time after the bankruptcy has commenced.

17. Those provisions are relevant to and will assist a trustee's duty under ***section 305(2) of the Act*** to get in, realise and distribute the bankrupt's estate. The bankrupt's estate automatically vests in the trustee upon appointment under ***section 306 of the Act*** and the trustee is required by ***section 311(1)*** to take *"possession of all books, papers and other records which relate to the bankrupt's estate or affairs and which belong to [her] or are in [her] possession or under [her] control (including any which would be privileged from disclosure in any proceedings"*.

18. The bankrupt's duties concerning the disclosure of property and the provision of information are so important that ***sections 352-356 of the Act*** provide that unless the bankrupt proves an absence of intent to defraud or conceal at the time of the following conduct, it is a criminal offence amongst other actions or omissions (as summarised):

    a) not to disclose to the best of the bankrupt's knowledge and belief *"all the property comprised in [her] estate to the official receiver or the trustee"*;

    b) not to deliver up possession of any part of the estate's property in the bankrupt's possession or control as the official receiver or trustee may direct if required by law to do so;

    c) to conceal any debt due or owed or any property of a value not less than the prescribed amount (£1,000) which is required to be delivered up by the official receiver or trustee, which equally applies to any concealment in the twelve months before the bankruptcy application or petition was presented or between then and the bankruptcy order;

    d) not to deliver up possession to the official receiver or trustee or as either may direct *"all books, papers, or other records relating to [her] estate or [her] affairs"*;

    e) to make any material omission in any statement made under those duties.

19. Those provisions are of obvious relevance to the decisions I must make but they also provide the foundations for the "way forward" between the parties. The "atmosphere" might improve if those provisions are used as the parties' starting point and they work towards their intended outcomes.

E) Section 365 of the Act

20. It is within that statutory context of duties that ***section 365 of the Act*** provides a search and seizure remedy by execution of a warrant in respect of property belonging to the bankrupt's estate and/or the books papers or records relating to the bankrupt's estate or affairs which are required to be delivered up to the office holder.

21. ***Section 365*** empowers the court to make a search and seizure order provided a bankruptcy order has been made and the application is made by the Official Receiver or the trustee in bankruptcy. The only other express test to be satisfied is that if a search warrant for third party premises is required, the court must be satisfied of concealment of bankruptcy estate property in premises not belonging to the bankrupt.

22. Case law establishes, however, that to obtain a warrant for seizure (from time to time described as a remedy of "last resort", although that wording does not appear in ***section 365***) it is necessary to establish: (i) a real risk that the property may otherwise be dissipated, destroyed or otherwise disposed of; (ii) the value of the property is proportionate to the remedy; and (iii) a balance will be achieved between protecting the rights of third parties affected and the need to recover the property for the purposes of the bankruptcy (see ***Williams v Mohammed (No 2)*** [2012] BPIR 238 [6]; and ***Nicholson v Favinka*** [2014] BPIR 692 at [4]).

23. The existence of the bankruptcy, the resulting statutory duties and the fact that a ***section 365*** Order is limited to property comprised in the bankrupt's estate and to books papers or records which relate to the bankrupt's estate or affairs, means this remedy is different to an "***Anton Pillar***" search and seizure order. Nevertheless, it contains the same mandatory requirement to permit the search of premises and, therefore, to intrude upon another's rights of ownership and/or possession. They may be the residential premises of the bankrupt and/or of others including, potentially, children, those who are elderly, vulnerable or unwell. They may be business premises and enforcement may interrupt or cause other harm to the business.

24. Therefore, the Court when deciding whether to grant a ***section 365*** Order will be concerned with the rights that may be affected. For example: the right to privacy in one's own home; the right to be fully protected against unjustified and arbitrary searches and seizures; the right to be heard in defence of a claim before an order is made. In the context of bankruptcy there is also to be borne in mind the principle in ***Re Condon Ex p. James,*** (1873-74) L.R. 9 Ch. App. 609, namely (in summary) that a trustee should not take full advantage of his legal rights if it is unfair to do so (see ***Lehman Brothers Australia Ltd (In Liquidation v MacNamara and Others*** [2020] EWCA Civ 321).

25. Those are all matters to be addressed with the Court upon the application. They will be relevant to the decision to make the Order and to what terms its execution should be subject. Those circumstances mean the Order should only be made if it is necessary and in the interests of justice. It requires a strong arguable case with clear evidence and the damage being prevented must be proportionate to the grant of this remedy. The court should also be addressed upon its appropriateness when other remedies might apply. For example, an order for a private examination under ***section 366 of the Act*** and the enforcement powers for delivery up of any property comprised in the bankrupt's estate under ***section 367***.

26. A method of reducing any potential injustice and harm is to include appropriate safeguards within the terms of execution. The need for specific safeguards and the third test of balance identified in paragraph 22 above will take into consideration the protection provided by the fact that the ***section 365*** order will be executed under a warrant.

27. The warrant is to be distinguished from the Order. The former is directed to the Tipstaff and Deputies whose role is to achieve entry, carry out the search, seize items covered by the order and hand them to the solicitors or other person(s) appointed for that purpose by the Order. The Tipstaff will provide a list of what is required by him to execute the warrant, for example, a locksmith, boxes and a suitable vehicle. It may also be noted that the Tipstaff often executes on a weekend normally Saturday and that exclusion of those days within the warrant is not usually appropriate. The Order is addressed to the parties. It needs to deal with the scope of the search and seizure and with the practical aspects which will be the responsibility of the solicitors and any other person permitted to attend the execution.

28. There is an obligation upon an applicant for a ***section 365*** Order to ensure an appropriate draft including the safeguards required is placed before the court. This includes a duty to identify and explain to the court what is expected to occur when the order is enforced including, for example, who may be present and any potential risks, including medical issues. The position of third parties should be considered. There may be questions of confidentiality and/or legal privilege. However, whilst the safeguards should be designed to protect the respondent and any third party who may be affected, the extent that is possible will depend upon the need to ensure the terms are consistent with the aims and purpose of the Order.

29. The Order should be readily understood by a layman and crystal clear as to what may be done under its terms. Namely, and in contrast to the terms of the 6, 13 and 30 August Orders as explained below, that a warrant shall be issued authorising the Tipstaff and his deputies:

    (a) to seize any property found as a result of the execution of the warrant which is comprised in the Bankrupt's estate which is, or any books, papers or records relating to the Bankrupt's estate or affairs which are, in the possession or under the control of the Bankrupt or any other person who is required to deliver the property, books, papers or records to the official receiver or trustee in bankruptcy and for that purpose
    (b) to break open any premises where the Bankrupt or anything that may be seized under the warrant is or is believed to be, including the premises of the Bankrupt listed in [the] Schedule [1] below, and any receptacle of the Bankrupt which contains or is believed to contain anything that may be so seized; [and if appropriate:
    (c) to search the premises listed in Schedule 2 below which do not belong to the Bankrupt.

30. There should be a penal notice to explain the possible consequences of breach. The safeguards will depend upon the application and be decided on a case by case basis but normally, although subject to the facts, will follow these requirements, although this is only a guide provided in circumstances of the legitimate criticisms of the Orders for their absence of safeguards in this case:

    a) The supervising solicitor, who must stay throughout, needs to be identified within the order (whether by name or by description such as a "partner in the litigation department" of the relevant firm) and consideration given to whether it should be an independent solicitor or the solicitor with conduct of the

litigation. The supervisor should keep a record of the search and seizure and may be required to provide a report to the Court.

b) There will need to be identified representatives from the solicitors (normally, but depending upon the size of the premises and extent of the search, not more than two plus the lawyer with conduct of the litigation, who may also be the supervisor, and usually at least one should be female if a female occupier and/or children may be present) to inform those at the premises of the terms of the order and of their rights and obligations. These include the right to seek legal advice and the right to apply to the Court to challenge the Order. This will be ordered to be explained before execution is carried out unless that is impractical.

c) There should be terms identifying what should happen to anything delivered by the Tipstaff to the solicitors or other person(s) appointed for that purpose by the order. It may be appropriate to specify that in the event of dispute over seizure, whether raised by the respondent or a third party, the items in issue should not be accessed or otherwise dealt with pending directions of the court to be obtained on the return date or within 14 days (whichever is the earlier).

d) The solicitors/representatives will be required by the order to ensure that everything seized and handed into their care is listed in an appropriate manner (perhaps by dictation and/or photographs) and (as a matter of good practice) in any event photographed before it leaves the premises.

e) Attention should be drawn to the court to any potential difficulties that may arise in particular in respect of computers and other electronic devices, including mobile telephones if relevant. Not only may the person in possession need to continue to use them, they may contain files and applications that may not be within the scope of the Order. It may be appropriate, for example, to take an image of the data and those with expertise may be required to attend.

f) The Order will need to be served together with a note of the hearing. Not only is the bankrupt entitled to know what was said at the hearing but that information is also necessary to enable them to receive legal advice both as to implementation and challenge.

g) Consideration should be given to a return date on the basis that the respondent or a third party should not have to take positive steps to obtain a hearing when there has not been a between parties hearing and to ensure that the matter is aired in open court with the opportunity for all affected to attend.

31. The fact the application is made without notice to avoid “tipping off”, means there is a duty of full and frank disclosure and of fair presentation. The disclosure involves facts and matters which ought to be taken into consideration when deciding whether to make the Order and, if so, on what terms. This is not limited to disclosure of fact but includes anything which the judge ought to consider. It applies not only to matters known but also to those which would be known from inquiries which should reasonably have been made prior to the application.

32. The skeleton argument and/or oral submissions should draw attention to any potential weaknesses, unexplained matters, alternative remedies and any facts or law which might be relied upon to defend the application. The extent of this disclosure will depend upon the facts and circumstances including the time available to prepare and make the application.

33. The duties apply to the arguments and submissions, as well as the evidence. However, it is not a breach of the duty to make an incorrect submission or argument or to seek an order which may not be granted provided the application is presented fairly and the court still has knowledge of the material circumstances. An example of this principle being applied can be found in the judgment of Lord Justice Parker in ***Hispanica de Petroleos v Vencedora Oceanica Navigation (The Kapetan Markos)*** [1986] 1 Lloyd's Rep. 211 at 236, 2nd column. When considering a without notice application for a freezing order he observed: *"what happened was simply that they drew what may have been a wrong legal conclusion from the facts, or more probably made an assumption without giving the matter serious thought"*. An incorrect conclusion and an absence of serious thought can be criticised but, as the Court of Appeal observed, it is not a material misrepresentation or non-disclosure. It may be unfair presentation but that depends upon how it was presented.

F) The 6 and 13 August Applications, the Orders and Execution

34. The skeleton argument for the 6 August 2019 hearing is well drafted in the sense that it identifies a clear picture as to why a ***section 365 Order*** should be made. The matters relied upon are largely to be found in the reasons for judgment below and, therefore, need not be repeated. However, it does not deal with potential weaknesses, unexplained matters, alternative remedies or any facts or law which might be relied upon to defend the application. It has not been established that this failure to comply with the requirement of fair presentation was resolved at the hearing. The note of the hearing is brief. The extent to which that is relevant will depend upon the matters that should have been drawn to the attention of the Court. This will need to be addressed after the evidence has been analysed.

35. The note of the judgment, which I record has not been approved by the Judge but without indicating this was necessary, identifies the following reasons for the Order:

    a) A failure to co-operate with reasonable enquiries was illustrated by: (i) the pre-bankruptcy granting of a freezing order within the Inter Export LLC litigation *"reflecting the perceived risk of dissipation of assets"*; (ii) the failure to disclose ownership of Flat 33, Lavender Court and, instead, assertion of a tenancy; (iii) the failure to disclose at least one savings account; (iv) the failure to comply with the request for further information following her interview; and (v) instead exhibiting a *"pattern of stalling including work and claims to be unwell"*;.

    b) A real risk of asset disposal was evidenced by: (i) the diversion of payment for an invoice to her mother; (ii) the failure to disclose business records in storage; (iii) the failure to account for assets that historic bank accounts indicate she purchased; (iv) conflicting accounts concerning the existence of jewellery

valued at £150,000; (v) the failure to mention ownership of horses; (vi) the payment of rent on behalf of a company without reimbursement with the conclusion that it is likely the unit was used for her own, undisclosed purposes; and (vii) the *"well-founded"* concerns of the Trustees that false information has been provided and other information withheld to keep money, documents and assets out of their reach.

c) There was clear evidence that the application concerns high end and, therefore, valuable goods.

d) The balance was in favour of all three premises being searched. As to Flat 33, she appeared to be the only occupant, documents and property will probably be hers and any third party affected can apply for variation.

36. The 6 August Order provided that *"a Warrant is issued"* authorising the search of the three identified properties and for the prescribed officer of the court to seize: (i) *"All and any items of value including, but not necessarily limited to, designer and luxury goods, jewellery, fine art and antiques, which appear to be items owned legally or beneficially by the Bankrupt; (ii) Documents relating to the bankrupt's ownership of other property and assets such as horses; and (iii) Any books papers and/or records (in whatever form or media these are held) relating to the bankrupt's property, affairs and dealings including her financial and business interests"*. There was authority to *"break open the premises named"*. There is provision that any *"third party"* may apply to vary the Order on not less than two clear business days' notice.

37. The Order contains none of the other safeguard requirements identified under paragraph 30 above. It does not even make express reference to Ms Lasytsya having a right to apply to set it aside or to have it varied. It has been observed that there is no authority or guidance to the effect that such safeguards are required. However, for the reasons set out at paragraphs 23-28 above, they plainly are, although the extent of the safeguards will depend upon the needs of the case (see ***Nicholson v Fayinka*** [2014] B.P.I.R. 692 at [26]). I also agree with Ms Lasytsya's criticism of the failure to define "value". The items particularised will inevitably have "value" but the Order is not limited to them.

38. There is also, fundamentally, an absence of reference to property *"comprised in the bankrupt's estate"*. The Order should be drafted, and therefore restricted, to the terms of the power conferred by ***section 365 of the*** **Act** (see paragraph 29 above)**.** Instead what the Order permitted to be seized was property which were owned by Ms Lasytsya legally or beneficially and, therefore, excluded property which had vested in the Trustees under ***section 306 of the Act***, which are assets *"comprised in the bankrupt's estate"*.

39. The Order also applied to *"Documents relating to the Bankrupt's ownership of other property and assets such as horses"*. The same problem over ownership arises, namely the failure to take account of the vesting provision. Although this should be resolved by the additional order that there shall be seizure of *"Any books, papers and/or records (in whatever form or media these are held) relating to the bankrupt's property, affairs and dealings including her financial and business interests"*.

40. The Order made on paper on 13 August 2019 made third parties, Pink Hippo Self-Storage and Stonecot Homes, respondents. It required them to assist the execution of the 6 August Order at the premises described by opening the storage units and office space and providing all keys and security codes required for that purpose and for access. It is unclear why third parties were made respondents when they should be subject to the terms of the 6 August order as third parties as should have been explained by a penal notice and would be required to assist the Tipstaff in compliance with the warrant.

41. The Order on 30 August was in substantially the same terms as the 13 August 2019 order but applied to safety deposit box(es) at business premises. I have not been addressed upon that Order or its application and have not seen any documents concerning it but the same problems arise. These should be addressed even though the application does not expressly refer to that Order.

42. There are no safeguards in any of the Orders except for permission for third parties to apply to vary the 6 and 30 August 2019 Orders. I note in particular: the absence of a penal notice; the failure to require service of the Order with a note of the hearing and judgment; the absence of any provisions concerning explanation, the right to legal advice or to Ms Lasytsya's right to apply to the Court to discharge or vary the Order whether on notice or upon a return date. There is no mention of who may attend and when and what should happen if there is a dispute. I also note there is no reference to lists, photographs or to what should happen to anything seized.

43. There are occasions when the safeguards appear within the warrant. However, no warrant has been produced and it appears that the orders were treated as the warrants. In all those circumstances and for the reasons stated, the drafting of the Orders was inadequate and in breach of the duty of fair presentation. I will consider the consequences when deciding what, if any, relief Ms Lasytsya is entitled to.

44. The 6 and 13 August Orders were executed on 21 August 2019. There has not been time to investigate precisely what occurred during execution. I note, however, that the Trustees' evidence refers to time being given to Ms Lasytsya to obtain legal advice and to the start of the execution at her home being delayed. It appears that execution took place as though the appropriate safeguards were part of the Orders and, no doubt, the Tipstaff and deputies will have required that to occur in accordance with their experience. However, there are disputes and I will simply leave it there. For the purpose of this judgment it is unnecessary to go further. No issue has been raised concerning the manner of execution of the 30 August 2019 Order in respect of the safe deposit box. Its existence was identified from a document seized under the 6 August Order.

G) Ms Lasytsya's Claims of Misrepresentation, Non-Disclosure and Unfair Procedure

G1) Introduction

45. Ms Lasytsya raises serious allegations and complaints concerning the evidence relied upon to obtain the ***section 365*** Orders and how the application was presented to the

Judge. Many concern misrepresentation and non-disclosure which form the bases for the contempt permission application. There are also allegations of unfair presentation. She does so against the background assertion that she has co-operated and produced information requested where *"possible and where appropriate"*.

46. The starting point, therefore, is to identify the information she provided. It will then be convenient to set out her allegations before analysing the evidence and procedure in the context of those allegations. Whilst I will make findings from time to time, I will set out my decision upon what, if any, relief Ms Lasytsya is entitled to under a separate heading.

G2) Ms Lasytsya's Disclosure

47. Ms Lasytsya's disclosure begins with her bankruptcy application and its statement of assets and liabilities. It identifies Ms Lasytsa as a tenant of 33 Lavender Court who has resided there and carried on a self-employed consultancy business from that address for at least the last three years in the name "YLCS". She had not been a director of a company over the last 12 months. Over the last two years she had only one bank account, with HSBC, and had no assets except for nominal cash and shares plus about £21.5k owed by Manchester Shipping Limited and an £11,000 pending tax rebate. She was heavily insolvent and her income of £9k per month was essentially used in full for her normal, day to day expenditure. She had not been able to pay her debts since 1 December 2018 because of a *"reduction in my income, loss of customers/markets, customers failed to pay [and] too high overheads"*.

48. It is submitted on behalf of the Trustees that this last piece of information fails to disclose the judgment debt of £1.5m. obtained by Inter Export LLC was the principal reason she could not pay her debts at the time of the bankruptcy application. However, it seems to me that she answered the question which asks when she first became insolvent and although the further request for her reasons for being unable to pay her debts could refer to the date of application, it is understandable that she stated her reasons by reference to the former date. In any event the debt is included in the list of creditors.

49. The next piece of written information is the "Undischarged Bankrupt's Questionnaire" completed on 23 April 2019 also with a declaration of truth. Her former husband, Mr Townley, is identified as the owner of 33 Lavender Court. Her rent was £365 each month. Time has meant this was not addressed in any detail at the hearing and for that reason I will leave the matter there except to observe that it appears her rights derive from the divorce consent agreement with Mr Townley and the Trustees assert it is plain that she held a beneficial interest which was not disclosed in her bankruptcy application or in her questionnaire. She also disclosed a mortgage securing £65,000 in favour of Mr Sochin. Her occupation is described as a *"shipping projects and law consultant"*. Her salary was reduced to £4,600 a month. This left her £500 per month after normal expenditure. Ms Lasytsya was criticised for failing to comply with an income payments agreement in respect of that sum but it is not an issue for this hearing and I am not currently convinced from the papers I have read that there was a concluded agreement. I may be wrong.

50. Ms Lasytsya stated in the Questionnaire that she had provided full details of all her assets and liabilities to the Official Receiver but was not asked to deliver up books, papers and other records relating to the bankruptcy estate. She disclosed that her self-employed business, started in May 2015, had basic financial records, which she made and kept. It is also disclosed that the Inter Export LLC judgment caused her bankruptcy application. I note that this statement in any event effectively cures any previous non-disclosure. She had been a director of two companies, Nemetona Trading Ltd ("NTL") between 2009 and 2015 and Aurelius (UK) Trading Ltd 2006-2009. There were no gifts or sale at an undervalue of any property within 5 years prior to the bankruptcy.

51. Ms Lasytsya has exhibited her notes of a telephone conversation with the Adjudicator on 17 January 2019 and draws attention to the facts that she mentioned having boxes in storage with "Pink Hippo" and declared she had left a horse in France because of livery debts. The note records she was not certain whether any paperwork for her office was in that storage. She acknowledges in her evidence the delays in providing the trustees with documentation but explains this can be attributed to the volume and to her ill health. She complains that her ill health was not properly addressed or revealed on the application for the ***section 365*** Order.

52. Ms Lasytsa also relies upon her attendance at an interview by the Trustees on 20 May 2019 for which there are no notes. She says she was never asked about a great number of the issues relied upon to obtain the ***section 365*** Order.

53. It is correct that no notes were exhibited to the evidence. The Trustees did not record the meeting and they have provided reasons to explain why the notes of those attending have not been disclosed. The reasons essentially concern how Ms Lasytsa might misuse the notes. I am unimpressed by this purported explanation. There is no reason why notes should not be summarised or redacted when necessary and no justification for not otherwise disclosing a contemporaneous or subsequently written up record. That is not least because it would assist the memories of those present, provide information to those not present and potentially prevent dispute about what was or was not said. As a matter of good practice, the interviewee should be asked to approve the note as an accurate record. That has not occurred and it leaves the matter of what was said open to challenge.

G3) Ms Lasytsya's Criticisms of the Trustees' Evidence

54. Ms Lasytsya asserts that the evidence placed before the Court to obtain the ***section 365*** Order was misleading in many respects, as now summarised. Had full information been provided it would have demonstrated:

> The allegation of non-disclosure of a savings account refers to an empty account. The petition disclosed the judgment debt as a reason for insolvency. The only directorships not disclosed were one for only 6 months and two for companies dissolved at least 5 years before bankruptcy and they are not material. Invoices relating to Manchester Shipping Limited, said to be outstanding on 24 May 2019, were provided during the 20 May interview.

> There was no tenancy agreement to be provided for Flat 33 Lavender Court, occupation resulted from a divorce settlement. The financial consent order/divorce consent order were provided. Written submissions against her husband were also provided and the delay providing other documentation is attributable to ill health. The source of legal fees paid to Jones Nikolds was disclosed.
> Payments for the livery in Surrey of a horse owned by her mother had been disclosed to the Adjudicator and her parents have come to the UK regularly with visitor visas. There can be no non-disclosure of a horse when it was owned by mother since she purchased it in 2012 (passport and identify chip are in her name). The livery payments appear in the disclosed HSBC statements and were addressed during the 20 May interview.
> The HSBC bank statements provided to the Trustees evidence the loans to Mr Sochin which resulted in him receiving the jewellery collection in the absence of repayment. Information has not been withheld concerning the jewellery collection or her holding, appraising and selling jewellery for others and repairing jewellery.
> The Trustees' comments concerning Aurelius UK Limited and its purchases are based on irrelevant, baseless hearsay. Her purchases can be identified from disclosed credit card statements. The purchases by NTL are its, not bankruptcy estate property. There is no Swiss bank account except for BNP Paribas, which concerns the disclosed tax rebate.
> The horse in France had been sold, all documents are in France and the Trustees know of the stables' owner's claim in the bankruptcy. There are no tack and saddles or horsebox.
> The Skari Shipping Limited invoice purporting to request payment to her mother is a false document provided by her husband during the divorce.
> The "Thinkmoney accounts" identify the Pink Hippo Self-Storage payments and were pointed out during the 20 May interview and in a 1 July 2019 email.
> A photo of a car parked in her flat's allotted car parking space is not evidence of her ownership and it was/is not owned by her. She has no driving licence and no vehicle is owned. The car is a neighbour's.

55. She also asserts that the grounds for risk of disposal identified in the skeleton argument for the Trustees are unsustainable:

> The spreadsheet showing expenditure of £40k over two years does not evidence the purchase of property now part of the bankruptcy estate. For example, £12,000 paid to Harrods relates largely to lunches, groceries and day to day expenditure. The spreadsheet should not include payments from NTL's account with Nordea Bank for its business. Insofar as she benefited from such payments, she did so because of her work for the company. For example, it purchased a commissioned office table for her to work at. The jewellery collection was sold under an 8 July 2016 agreement with Mr Sochin. The jewellery collection does not belong to her. Legal fees were paid by Mr Sochin's companies. The 2012 pre-nuptial agreement identifies her horse, the jewellery and other items but she no longer owned them at the time of bankruptcy. For example, the objets d'art were transferred to her husband on divorce. Payments of rent for Stonecot Business Centre resulted from a licence to occupy having been granted to Balfour Worldwide Limited, which she signed as a director. The payments were on behalf of and to be reimbursed by

the company, whether directly or indirectly through Mr Sochin or his other business entities.

G4) The Trustees' Evidence

56. The main witness statement in support of the 6 August 2019 application for a ***section 365*** Order was made by Kerri Cramphorn, the case manager, on 23 July 2019. It starts in paragraph 4 by accurately summarising the application without and without needing to refer to the Inter Export LLC judgment debt. That is referred to in some detail in paragraph 5. The 17 March 2017 judgment is relevant disclosure because it raises the bad character direction previously mentioned. There was nothing wrong with that or the presentation of that evidence.

57. The statement next refers to the "Undischarged Bankrupt's Questionnaire". Paragraph 8 provides an accurate summary of the information. The undisclosed directorships are identified: Balfour Worldwide Limited (6 June – 20 December 2017); Rhadgrid Limited (dissolved – 28 August 2013 – 18 August 2014); Aurelius Commodities Trading Ltd (13 August 2007 until dissolution on 6 December 2011); and Array Jewellery Limited (13 May 2009 to dissolution on 6 December 2011). It also states that a joint liquidator of Global Pipe Supplies Limited (compulsorily wound up on 30 September 2013) asserts she was a *de facto* director. This information is also accurate insofar as it is a statement of information received. Although it is lacking in detail concerning the basis for the de facto director allegation, it is not in dispute that she was a shadow director.

58. Paragraph 9 refers to the request for YLCS's books and records including HMRC returns and also the 33 Lavender Court tenancy agreement. Brief details of the 20 May interview are provided in paragraph 10. It is said that at the meeting's conclusion, it was agreed that all outstanding information and copy documents would be provided and an income payments agreement would be made for £502.50 each month. As mentioned, no contemporaneous record is exhibited.

59. An email was sent by the Trustees to Ms Lasytsya on 24 May setting out the information required (paragraph 12). It is to be remembered that these requests arise within the context of the extensive duties identified above. There follows in paragraph 13 a summary of the email response, an extension of a deadline to 24 June 2019 and notification on 25 June from Ms Lasytsya that she had been unwell and was negotiating an extension to her contract with Skari Shipping. It is stated that the outstanding information and copy documents were not provided. This evidence is accurate.

60. Some information was provided by email sent on 8 July 2019. This is summarised in paragraph 14. It is to be noted that within the information provided, Ms Lasytsya stated: (i) she had no jewellery collection, it having been sold to repay a debt of £115,000 and taken by Mr Sochin when he visited London in September 2018 and (ii) she was no longer using the riding stables in Surrey for which she had been making payments. Ms Cramphorn states that she concluded from this information that Ms Lasytsya had not disclosed as an asset the horse she kept at the stables for which livery cost £1,100 per month. She had stated it was her mother's horse but Ms

Cramphorn observed that she knew they lived in the Ukraine and was unaware of them visiting the UK.

61. It is apparent the conclusion is reached by adding two and two to make five. However, there is no misstatement or non-disclosure of information in that paragraph. ***The Kapetan Markos*** decision as considered above applies. This may go to the issue whether there was fair presentation but the cause for any criticism is clear from the face of the evidence.

62. Ms Cramphorn in paragraph 15 sets out a list of all the documents/evidence which had not been provided. There is an issue over that in respect of sub-paragraphs 15.3, 15.7 and 15.8. However, the immediate question which ought to have been identified for the Court in the context of fair process is whether a second interview and/or other investigations or remedy were required before a ***section 365*** Order should be made. There is no indication this was raised but this will need to be considered further within the context of the evidence and hearing taken together.

63. This is an example, however, of the importance of a note of the one interview which did take place. The need for a second interview and/or further investigations must depend in part upon the content of the first. Ms Lasytsa also made the point that the Trustees failed to take into consideration the effects of her debilitating illness upon her ability to comply with the Trustees' requests. I will bear that in mind when addressing the further evidence but listening and testing her argument during the hearing, it had to be concluded and she agreed that this was not in fact a justification for not providing the books and records as requested and as she said she would.

64. It is asserted in paragraph 16 of the evidence that Ms Cramphorn believes there is cause for concluding Ms Lasytsya had a jewellery design business. This she links to the evidence of the closure of the business of Aurelius UK Ltd. She suggests that there is evidence that Ms Lasytsa may have retained stock in the region of £140,000.

65. There is no evidence to substantiate that conclusion other than speculation. As a matter of fair process, it should not have been stated or only made by identifying its vague and speculative bases. However, it is not based upon misrepresentation, non-disclosure or any form of deception. The absence of evidence is apparent from what is written in the statement. It too falls within the ***Kapetan Markos*** decision (above), whilst remaining a matter relevant to fair presentation to be addressed later when viewing the evidence as one.

66. Ms Cramphorn states that the trustees *"do not have any further information in [respect of jewellery design being more than a hobby and something of a commercial enterprise] because of the bankrupt's failure to provide full and frank disclosure of her property, assets and business dealings"* (paragraph 20). That, of course, depends upon whether there was disclosure to provide. As such it takes the matter no further except to raise again the question of the need for a second interview and/or further investigations or remedies.

67. Paragraph 19's review of bank statements identified *"extensive purchases of designer and luxury goods as well as the purchase of jewellery, fine art, antiques and/or other valuable items on auction websites ... also extensive payments made to credit cards and PayPal but [he has]not, to date, been able to secure any ... statements"*. She

"suspect[s] … these will reveal similar purchases although the Bankrupt has not disclosed any assets of this nature".

68. What stands out from this evidence is that whilst there is foundation for speculation that Ms Lasytsya may have purchased and continue to own undisclosed assets, there is no reference to the assertion having been previously raised with Ms Lasytsya. That said, there is no misrepresentation or non-disclosure and this too can only go to the issue of unfair presentation.

69. Paragraph 19 also appears to link this possibility of non-disclosure by Ms Lasytsya to payments made by NTL for fine art, antiques and jewellery between September 2012 and January 2015. Yet nothing is identified to indicate receipt of such items by Ms Lasytsya. Therefore, the conclusions at paragraph 68 above equally apply to this part of the evidence.

70. Ms Lasytsya is understandably unhappy about the overall impression paragraph 19 provides and she also refers to the skeleton argument in support of the application to emphasise just cause for her complaints. It asserts at paragraph 9(iii) that the bank account from which the payments were made was hers. It is plain from the evidence that it was the company's. That is an error and one that the note of judgment suggests was not drawn to the attention of the Judge and was not appreciated. However, a skeleton argument is not evidence and does not contain representations of fact. It is counsel's understanding of the case for the purposes of identifying the case intended to be made. Whilst it was a mistaken submission relevant to fair process, it cannot be relied upon to allege misrepresentation or non-disclosure.

71. It is then stated in Ms Cramphorn's evidence, without indication of source, that the Trustees had been advised she has one, perhaps two Swiss bank accounts but that they had been unable to obtain confirmation. The source of this advice was not mentioned and should have been. The first possible account with BNP Paribas was previously disclosed and its payment of capital gains tax on the sale of shares held through the account is the cause for the above-mentioned HMRC rebate. Ms Lasytsya states there is no other account. This is another issue which could have been discussed further in interview. However, I do consider this to be potentially misleading insofar as it raises inference. It is again, a matter for the issue of fair procedure.

72. Ms Bond made a forceful submission that whilst paragraph 19 might be criticised on its own, the evidence is material and should be viewed differently when taking into consideration the fact that its content is not the only indication that Ms Lasytsya bought expensive jewellery and other items for which she has made no disclosure. In other words, that the evidence on this point needs to be read as one when the allegation will have merit.

73. I agree the evidence must be looked at together but it is not presented in that light within paragraph 19. It is presented as though each item is itself enough evidence of the assertion. Paragraph 19 presents a speculative case that Ms Lasytsya owns valuable art, antiques, jewellery and other designer/luxury goods which have not been disclosed. Whereas Ms Cramphorn asserts *"it is more likely than not"*. Nevertheless, whilst that goes to the issue of fair procedure, these are still opinions or assertions not misrepresentation or instances of non-disclosure.

74. Paragraphs 21-22 of Ms Cramphorn's evidence concern the horse in France and the horses in Cobham. The existence of a County Court judgment for delivery up of the passport and proof of ownership of the horse in France (paragraph 21) together with associated correspondence (paragraph 21) support the contention that she failed to disclose this French asset. Ms Lasytsya accepts ownership but explains she thought she had agreed in 2015 that the French stables owner could sell the horse to recoup the livery fees and they had the passport and registration documents.

75. I see this on its own as insufficient to justify the application but it is a weight to be added to the scales. Although the evidence concerning ownership is in dispute in respect of Cobham and that reduces its weight, I reach the same conclusion. It is unnecessary to set out further details as discussed at the hearing before me. The real questions do not concern misrepresentation or non-disclosure but whether the Trustees should have made further inquiries or sought different relief before commencing a ***section 365*** application and whether the duty of fair presentation was met. Both questions depend upon all the evidence being considered and upon the catalyst relied upon to justify the application. Ms Bond identified that as the diversion of the Skari Shipping Ltd invoice payment for US$9,800 to her mother (paragraph 23).

76. The evidence of the information concerning that invoice appears accurate and there is no non-disclosure. The conclusion of Ms Cramphorn is that it is *"more likely than not"* that payments due from that company were diverted to Ms Lasytysa's mother. It is certainly a valid conclusion for that invoice based upon its wording of the invoice. What needed to be considered on the hearing of the application is whether it is relevant that only one invoice has been identified and that the invoice itself identifies the redirection of payment suggesting an absence of concealed and possibly wrongful diversion. In addition, whether a second interview should have been sought and/or further investigations made and/or alternative remedies applied for and/or whether the application for a ***section 365*** Order was proportionate in the context of the relatively small sum involved. These matters do not appear to have been referred to the Judge on 6 August 2019 but again, they are matters concerning fair procedure not misrepresentation or non-disclosure.

77. An argument for a second interview would have been that Ms Lasytsya might have a reasonable explanation. Her evidence in support of the application asserts that the invoice, produced to the Trustees by her husband with whom she has had antagonistic divorce proceedings, is a forgery. Even without hearing that, the document appears potentially strange in its form without, for example, any heading.

78. The payments to Pink Hippo Self-Storage had been put to Ms Lasytsya (paragraph 25) and it was disclosed in Ms Cramphorn's evidence that she said she *"kept her business records in storage"* there. Nothing appears to be made of that except for a note that *"there are no payments to Pink Hippo visible on the statements for the Think Money account"*. Nothing more is said.

79. The conclusion of Ms Cramphorn from the evidence as a whole (paragraph 26) was that:

> *"the Bankrupt has failed deliberately to provide a full and frank disclosure of her business dealings and/or disclosure of her property and assets. Her honesty and integrity are doubtful*

> *and it appears more likely than not that significant amounts of valuable property, including jewellery, fine art and antiques, will be found at [Flat 33 Lavender Court] together with her business records. Alternatively her business records and other valuable items may be in storage with Pink Hippo. It also seems more likely that not that the Bankrupt has access to money held in bank accounts, which she has failed to disclose to date, whether in the UK, Switzerland or the Ukraine".*

80. In my judgment that conclusion does not rely upon misrepresentation or non-disclosure. It is opinion and assertion which falls within the boundary of the ***Kaptean Markos*** decision. I will consider the issue of fair procedure later.

81. A witness statement from Ms Nigh of Howes Percival dated 1 August 2019 was also relied upon. This provides the following evidence to support the application (as summarised):

> Hearsay evidence to support the contention that payments from Manchester Shipping Limited of more than one invoice were requested by Ms Lasytsya to be diverted to her parents. Therefore, adding to the Skari Shipping invoice.
>
> Evidence from a pre-nuptial agreement that as at 6 January 2012 Ms Lasytsya owned objets d'art worth some £25,000, a jewellery collection of £150,000, an Irish horse valued at £10,000 and a Boulonnaise horse valued to £3,000. None of those assets had been disclosed as assets of the bankruptcy estate. It was also noted that whilst on 8 July 2019 Ms Lasytsya claimed her jewellery collection had repaid a debt of £115,000 due to NTS, in interview on 20 May 2019 she said Mr Sochin paid £150,000 for it.
>
> Hearsay evidence confirming she purchased the Boulonnaise horse in January 2011 and liveried it in France. Livery fees have not been paid since late 2015.

82. Ms Lasytsa explained at the hearing before me that the payment to her mother was to cover medical costs and was not a diversion of funds. The 2012 pre-nuptial agreement was superseded by the divorce settlement with the objets d'art being retained by her husband. The horses and the jewellery have been addressed above.

83. There is no misrepresentation or non-disclosure by the Trustees through Ms Nigh within this evidence. The underlying question being whether these matters should have been put to Ms Lasytsa in a second interview and/or further investigated and/or alternative relief sought rather than a ***section 365 Order*** be sought.

84. A second witness statement of Ms Nigh was relied upon at the 6 August 2019 application to extend the Order to include Stonecot Business Centre. This was on the basis that Ms Lasytsya had made and not apparently been repaid, regular rental payments to Stonecot Business referenced "Balfour W Ltd" from 9 February 2018 to 25 November 2018. It was assumed the payments were for serviced offices. It was disclosed that this had been put to Ms Lasytsa during the 20 May 2019 interview and that she had stated the rent was paid on behalf of Skari Shipping and reclaimed by invoice. The invoices provided to the Trustees did not substantiate that assertion.

85. Enquiries on site on 1 August 2019 had produced the information that Ms Lasytsya *"runs Balfour Worldwide Limited from Stonecot Business Centre … the Bankrupt … signed the Application Form for a Licence … and had been asked to leave because of*

rent arrears … [in respect of which she was first written to] in October 2018 … The Bankrupt gave Notice to Quit … on 25 June 2019 … [but was] not released from any obligations until 31 July 2019 … The Bankrupt no longer has access to the building … computers, diaries and a large amount of paperwork [were] left at the office … there is a substantial amount of equipment, documents and records left behind". It was concluded that *"it is entirely possible that the Bankrupt may try to clear out of the office over the week"*.

86. The evidence also informed that a search of Companies House showed Ms Lasytsya had been appointed a director on 6 June 2017 and resigned on 20 December 2017. On 18 May 2018 the company became the subject of a world-wide freezing order. The conclusion Ms Nigh presented was that: *"it is more likely than not that the business books and records … at Stonecot Business Centre are the Bankrupt's personal books and records and do not belong to [the company]. Taking the Licence for the office … in the name of [the company] was presumably a matter of convenience and/or a cynical attempt by the Bankrupt to ensure that she would not have any personal liability for the rent"*.

87. The last sentences quoted in paragraphs 85 and 86 above are both speculative opinions but particularly the second one. However, there is no misstatement of fact and there is no suggestion of non-disclosure. The evidence presents a peculiar scenario requiring an explanation. Ms Lasytsya's complaint must be limited to fair presentation or alternative remedy and to the absence of any further interview to put these matters to her whether as a matter of principle or because the sums in issue should have made that the proportionate approach. I need only summarise the explanation she provides as being that the payment and recovery of rent is tied up with her business dealings with Mr Sochin. She accepts that there were computers belonging to her in the office and these had not been previously delivered up or even disclosed. She also kept books relevant to shipping and business management there. There were some 4-5 boxes of paperwork, some of which would have been hers.

88. Ms Nigh also informed the court that an investigator visited Flat 33 Lavender Court to find all the curtains and blinds closed with no evidence of anyone at home. Its parking space occupied by a Mini Cooper "S" with a cherished number plate, "X1010 XX". It is concluded that Ms Lasytsya had failed to disclose this as an asset of the bankruptcy estate.

89. Again, there is no misrepresentation or non-disclosure, unless it was known that Ms Lasytsya does not drive, and the conclusion is speculative. On the evidence presented, it could have been someone else's vehicle. It is now accepted that the vehicle belongs to Ms Lasytsya's neighbour who used the car parking space. Whilst Ms Bond refers to the cumulation of evidence, this is an example of the conclusion being unfair presentation but falling within the words of the Court of Appeal in ***The Kapetan Markos*** (above).

90. In a third witness statement dated 5 August 2019, Ms Nigh referred to the claims of the liquidator of Global Pipe Supplies Limited that Ms Lasytsya was a *de facto* director of that company having *"identified claims to recover monies paid out of the bank accounts in the name of GPSL from the Bankrupt but the bankruptcy Order intervened before proceedings were filed"*. The payments concern: €2,500 for jewellery; the purchase of shoes for about €1300; US$2,278.50 for wine; about

US$8,750 for jewellery; and US$2,000 to auctioneers all during 2013. This was relied upon as a pattern of spending and it was stated: *there is a good prospect that the Bankrupt still has some of these purchases either at [Flat 33 Lavender Court] or at the Pink Hippo Self-Storage Unit"* in the summer of 2019.

91. The contention of *"good prospect"* is another example of speculative opinion. Ms Lasytsya drew attention to the fact that she had informed the Trustees that she had been a shadow director and this was not mentioned in the evidence of Ms Nigh. She also informed the Court that no claims have resulted from the liquidator's assertions. That also draws attention to the fact that any items purchased using company funds would belong to the company. However, again these are matters for the issue of fair presentation not evidence based upon misrepresentation or non-disclosure.

92. The application for the Order made on 30 August 2019 relied upon a fifth witness statement of Ms Nigh dated 23 August 2019. This referred to a handwritten list of jewellery found at Flat 33 Lavender Court with estimated values totalling £34,000. No such jewellery was found by the search but the address "Box 4702, 19 Cheval Place, SW7 EW1" was written on the top left-hand corner of the list; a safe deposit address. It was noted that the list was undated but suggested there was a "tip off" and removal risk if ownership of a safe deposit box was raised with the company providing the facility. This evidence too does not include any misrepresentation or non-disclosure.

H) Decision upon the Application to set aside the Orders for Misrepresentation, Non-Disclosure and/or Unfair Procedure

93. My analysis of the evidence leads to the conclusion that there is no basis for assertions of misrepresentation or non-disclosure. The duty of full and frank disclosure was not breached.

94. This is a finding which will carry through to the application for permission to bring contempt proceedings. I have not decided that application because it has not been argued before me as yet and there may be other matters relied upon. However, it is plain permission will not be granted if there are not.

95. However, the analysis has identified considerable cause for concern as to procedural fairness. There are many criticisms of the manner in which the evidence of Ms Cramphorn's evidence was drafted. There is the failure to present a note of the 20 May interview. The skeleton argument in support of the ***section 365*** application fails to do more than identify the merits of the application. There is no indication within the Note of Judgment that oral submissions were made to cure the deficiencies by drawing attention to any potential weaknesses, unexplained matters within the evidence or to any facts or law which might be relied upon to defend the application. There is no reference to alternative remedies. It appears from the Note of Judgment that the hearing was based purely upon counsel answering questions asked by the Judge and nothing was said of substance when asked if anything else should be brought to the Court's attention.

96. In addition, the drafting of the Orders was deficient. Not only were the items to be seized misdescribed by reference to legal and beneficial ownership but there was an almost total absence of the safeguards normally required.

97. Those failings support the application for the Orders to be set aside. However, I have decided that this remedy is inappropriate for three reasons, each being necessary. First, because a fair presentation would nevertheless have presented a case for a ***section 365*** Order. Second, because assets and documents seized which form part of the bankruptcy estate and/or should be delivered up to the Trustees under a bankrupt's statutory duty should be retained in accordance with the statutory rights of the Trustees to keep them. Third, because the Orders have been executed. I will explain those reasons in turn.

98. In my judgment the evidence for the 6, 13 and 30 August applications presented strong arguable cases subject to issues of proportionality, which would include consideration of alternative remedies (see in particular, paragraphs 20-22 and 25 above). The last of the orders has the strength of the absence of any disclosure of a safety deposit box, whether the contents are owned by Ms Lasytsya or held by her on behalf of another. The other two orders can be justified on the merits because of the evidence of the payment of two invoices having been potentially diverted, business records in storage not having been provided and the potential for other assets and records being held in premises licensed to a company but paid for by Ms Lasytsya.

99. That evidence was to be considered against a background of facts and matters which on their own did not merit a ***section 365*** Order but added to the grounds to justify the conclusion that this strong arguable case did. For example, the failure to provide information requested, the issues over the jewellery collection, horses and other valuable objects provided background to sustain the conclusion that there was a real risk of dissipation of property with a sufficient value for which the need to recover outweighed the need to protect the rights of others against execution.

100. I am concerned that fair presentation would have caused considerable room for debate at the 6 August hearing over the issues of proportionality. In particular, when the need for a second interview or further investigations had to be addressed without any notes of the 20 May 2019 interview being disclosed. In addition, there was plainly an argument that the remedies of private examination and consequential exercise of the court's enforcement powers under ***sections 366 and 367 of the Insolvency Act 1986*** were the proportionate route.

101. In my judgment the key is whether the evidence is strong enough to justify the conclusion of a risk of dissipation should a second interview and/or further investigations and/or a ***sections 366*** application been pursued instead. That conclusion is to be reached at an interim, without notice hearing level even though execution may result in a *fait accompli*. On balance I am satisfied that the line of proportionality is crossed by the strength of the arguable case.

102. It is also right to take into consideration what was found. Whilst that is hindsight, it is permissible to consider it because it is to be remembered that it should not be hindsight. The duties of a bankrupt mean that the items seized (or at least those not in dispute as to ownership by the bankruptcy estate) should have been disclosed before the orders were sought. I will identify the assets seized below but they are sufficient in

quantity and value to support my conclusion remembering that this is being decided without yet being able to consider any claims that the property does not form part of the bankruptcy estate.

103. The second reason is the fundamental point that the Trustees are entitled to hold the property and documents seized in accordance with their statutory rights and powers under ***the Insolvency Act 1986*** provided they are assets of the bankruptcy estate and/or they are books, papers or records relating to Ms Lasytsya's estate or affairs. The only reason for deciding otherwise would be if it was considered wrong for those rights to be exercised whether on grounds of proportionality and/or in compliance with the principle in ***Ex p. James*** (above). To decide it was wrong because of unfair presentation would still mean that the relevant assets and documents would nevertheless remain in the hands of the Trustees by reason of the relevant provisions of ***the Insolvency Act 1986***. The right to invoke the principle in ***Ex p. James*** (above) has not been established at this stage.

104. This means any penal approach to be applied because of unfair presentation should be limited to costs. That is not an approach to be criticised because any adverse decision will penalise the party responsible, assuming such a remedy is appropriate. It will not penalise the creditors by interfering with their statutory rights to receive such share of bankruptcy realisations as they may be entitled to.

105. The third reason is that the Orders have been executed. Therefore, the real issue is what should happen to the property and documents seized. The orders do not deal with that. Therefore, the defects in the Orders can be addressed when deciding whether to make a new Order to apply to what has been seized and retained without discharging the existing Orders.

I) Application for Variation

106. The last reason also means the Orders will not be varied to ensure compliance with the terms of ***section 365 of the Act*** notwithstanding the matters identified at paragraphs 38-41 above. Instead it is to be ordered that the property and documents seized are to be retained by the Trustees subject to further order of the court provided the property is comprised in the Bankrupt's estate and the books, papers or records relate to the Bankrupt's estate or affairs. This new Order will give effect to the intentions of the Judges when making the August Orders and to the Trustees' statutory rights and Ms Lasytsya's statutory duties. There should be provision for Ms Lasytsya and any third partly claiming a right to ownership and/or possession to apply to vary the Order and/or for directions to determine the dispute if needed.

J) The Application for Items to be returned

107. Ms Lasytsya asks for the return of items with a value of not more than £200 and of all items which are not part of the bankruptcy estate. She is entitled to the latter but not necessarily the former. There is no general principle that items with an individual value of not more than £200 should not be collected and realized for the benefit of the

bankruptcy. Ms Lasytsya has referred to advice on a Citizens' Advice web-site but that can be no more than guidance from an organisation which provides valuable assistance.

108. The list of items produced to me during the hearing and described as a "compromise list" includes furniture, many handbags, jewellery and a considerable quantity of clothing and shoes. This was on the basis, as stated by Ms Cramphorn, that *"the bankrupt had been left with more than a reasonable amount of shoes, bags and clothes"*. That is in dispute in particular because insufficient business clothes (etcetera) remained,

109. Some of those items are of very low value and the total value of 525 items, to be divided into 225 lots, is £13,878.70. That value by auctioneers retained by the Trustees is disputed but they are estimates for auction. Whilst Ms Cramphorn refers to *"the sheer volume of items in the house, the majority of which were high end designer clothes, shoes, bags and jewellery"*, the estimates do not really match items fitting that description. To assist the parties to negotiate and only for that purpose, my impression (not a finding of fact) is that whilst most of the handbags and jewellery should probably be retained, the clothes (including underwear) and shoes should probably be returned with the desk fan.

110. There is another auctioneer's estimate of 414 lots which have an estimate of £120,000 and a reserve of £77,180. There has not been time to examine the differences or to consider what was or was not properly seized bearing in mind the exclusion from a bankrupt's estate of: (i) tools, books and other items of equipment necessary to the bankrupt for use personally by in employment, business or vocation; and (ii) such clothing, bedding, furniture, household equipment and provisions as are necessary for satisfying the basic domestic needs of the bankrupt and family. Nor have I been able to consider the issue as to whether items have already been wrongly sold.

111. The parties must seek to agree what, if anything, should be returned. If there is a dispute, directions will be required. It is envisaged that the dispute will be decided at County Court level unless there is a matter of principle which requires a decision of an I.C.C. Judge.

K) The Application for Notes of the 20 May Interview and for Transcripts

112. A Note of the 20 May 2019 interview should be provided either in contemporaneous form or written up from contemporaneous notes. It may be redacted, if appropriate, but the note should be adequate to identify the questions asked and the answers given.

113. As to provision of a transcript of the 6 August hearing, there should always be a sufficiently detailed note of a without notice hearing (including judgment) to provide a fair record of what was said. If so, it will be for each party to decide whether they wish to request a transcript. If funding is a problem, a request can be made for authorisation that it be provided at public expense. Urgency may mean that a less detailed note appears upon execution of the order made but the detailed note should follow.

114. Only the Trustees' solicitors will know if the note(s) produced to date is/are sufficiently detailed. If not, they should obtain a transcript and provide a copy to Ms Lasytsya. It may be that this judgment makes it less relevant to have one but it is necessary that the party who did not attend knows what occurred. This applies for both hearings (the 13 August order being made without a hearing). If no note has been provided to date, a detailed note can be provided to avoid the need for a transcript.

L) The Application for Photographs and Videos

115. I can identify no reason why photographs and videos of the execution of the Orders should not be disclosed on the basis that they shall only be used for the purposes of or connected with these proceedings. The parties should agree appropriate terms.

M) The Application for Copies of the Documents Seized and an Injunction to Restrain Access in the meantime

116. Now that documents can be photographed and/or scanned for nominal cost by those reviewing them, the application for copies of documents seized should not provide a practical problem. There may be cases for which difficulties arise in respect of entitlement to documents and/or the need to preserve confidentiality or secrecy, for example, and specific directions may be needed. There may also be cases for which the quantity of documentation seized presents logistical problems. However, I do not understand this to be the case. If directions are needed, they can be sought upon handing down. As a matter of practice it may always be sensible to photograph the documents when being delivered up to the supervising officer. I will not make an injunction to prevent access by the Trustees pending copies being provided. That would interfere with the Trustees' statutory rights and powers

N) An Application for a Witness Statement Identifying what has been Seized

117. There should already be a report by the supervising officer to include the lists of everything seized and removed from the premises together with supporting photographs or videos. In this case there was no supervisor appointed but the solicitor having conduct of the litigation may be able to provide such a report. In its absence, there should be a witness statement to avoid any confusion.

O) An Application that Computers should not be viewed by the Trustees, all information which they are not entitled to have should be identified and returned

118. Computers have been seized from the home and elsewhere. They may not be assets of the bankruptcy estate because they may be tools of trade or equipment necessary to satisfying the basic domestic needs of the bankrupt and family. They may even fall within the personal exception referred to and illustrated by the decision that personal correspondence will not form part of the bankruptcy estate (see ***Haig v Aitken*** [2001]

Ch 110). Underlying that decision was the offensive nature of the invasion of privacy and the general exclusion of personal assets from an estate, for example damages for personal injury. However, even if that is so, it is to be noted that their content may or is likely to contain material which should be disclosed to the Trustees pursuant to Ms Lasytsya's statutory duties as bankrupt.

119. Taking into consideration those duties as described above, I have decided that my suggestion discussed in court and sent to the parties by email from my clerk on 9 March 2020 should stand. Namely

1) Ms Lasytsa should have electronic copies of the contents of all computers seized (assuming there is no specific issue to be raised on hand-down to prevent this with regard to any specific file or application).

2) Starting with her personal computer, she should identify those files she contends do not fall within those statutory duties and give reasons.

3) That should be done at a meeting which should be recorded and for which there should be an agreed note recording the files the Trustees agree not to look at, those they agree to hand back and those which are in dispute.

4) Insofar as time permits, the Trustees should provide their reasons in writing for disagreeing with Ms Lasytsya's objections.

120. Insofar as there is a dispute, directions should be sought. This can be by an urgent appointment if necessary. There will be no appointment of an independent party. I will hear how the suggestion has progressed when this judgment is handed-down.

P) Conclusion - Summary of the Decisions

121. I have decided:

i) I will dismiss the application to discharge the Orders but will consider at the appropriate time whether any cost consequences should flow from the failure to fulfil the duty of fair presentation (see paragraphs 93-105 above).

ii) There will be no variation but a new order will be made to address what should happen to the property and documents seized in the form identified at paragraph 106 above.

iii) The parties should seek to agree what should be retained by the Trustees but apply for any required directions upon hand-down unless in practice that is too early (see paragraphs 107-111 above).

iv) A Note of the 20 May interview should be provided in accordance with the guidelines given above (see paragraph 112 above). Transcripts of the hearings should be obtained by the Trustees unless the Note(s) provided or to be provided are sufficiently detailed to provide a fair view of each hearing (see paragraphs 113-114 above).

v) Copies of photographs and videos of the search and seizures should be provided on the basis that they are to be used only for the purposes of or connected with these proceedings. The parties should agree terms (see paragraph 115 above).

vi) I should not need to order copies of documents. I will consider any logistical difficulties providing them on hand-down. There will be no injunction restraining access to documents as asked (see paragraph 116 above).

vii) There should be a witness statement identifying what has been seized, absent a report (see paragraph 117 above).

viii) Ms Lasytsya having received copies of the contents of the computers seized as provided above should identify those files and applications she asserts should not be kept by the Trustees. Discussion should ensue and directions be sought if necessary (see paragraphs 118-120 above).

122. The application for permission to bring contempt proceedings will be addressed at the hand-down of this judgment to ascertain whether any grounds remain following this decision that there was no misrepresentation or non-disclosure for the purposes of the 6 August 2019 hearing.

123. The application for suspension was addressed during the hearing before me and the resulting continuation of the interim order has presumably been sealed.

Order Accordingly