

**EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF THE VIRGIN ISLANDS**

**IN THE HIGH COURT OF JUSTICE
COMMERCIAL DIVISION**

CLAIM NO. BVIHC(COM)2024/0588

BETWEEN:

DOZ

Applicant

and

[1] VFN
[2] WKM
[3] OAK
[4] DJM

Respondents

IN CHAMBERS

Appearances:

Mr. Paul Chaisty KC and Dr. Jane Fedatova instructed by Conyers, Dill & Pearman for the Applicants/Respondents.

Mr. Brian Lacy, Ms. Holly Challenger, and Mr. Daniel Kessler instructed by Ogier, for the Xinhe/ the Respondent to the Discharge Application.

2026: January 26;¹
March 23.

JUDGMENT

¹ Further Submissions filed January 30th and February 4th, further evidence filed 20th February and 26th February by Xinhe re proceedings in Australia.

- [1] **Mangatal J (Ag.):** Before me on 26th January 2026 were two applications
- (1) The Notice of Application filed by the Respondents (a) Dynamic Day Enterprises Limited; (b) Summit Choice Management Limited; (c) Sharp Ally International Management Limited, and (d) Talent Sage Enterprises Limited (together “**the Respondents**”), filed 15th January 2025. This application (“**the Discharge Application**”) seeks to set aside and/or discharge the freezing order granted *ex parte* by Wallbank J on 29th November 2024, as varied on 19th December 2024 and on 24th February 2025 (“**the Injunction**”). The Injunction was varied on 19th December 2024 to insert a cap of U.S. \$45 Million in relation to the value of the assets restrained from removal, and on 24th February 2025 it was replaced by undertakings from the Respondents; and
 - (2) The Notice of Application for Continuation of the Injunction (“**the Continuation Application**”) filed by Shenzhen Xinhe Hongshi Investment and Consulting Co. Ltd (the Respondent to the Discharge Application “**Xinhe**”), on 4th December 2024.
- [2] The Injunction was sought in November 2024 in support of proceedings commenced by Xinhe in Australia seeking the appointment of provisional liquidators of Shandong Ruyi Technology Group Co. Limited (“**Ruyi**”) and its ultimate winding up. Both Xinhe and Ruyi were incorporated, not in Australia, but in the People’s Republic of China (“**the PRC**”).
- [3] The Injunction ordered on 29th November 2024, at paragraphs 5-8 (inclusive) provided as follows:
- “ Injunction**
- 5. Until the Return Date or further order of the Court, the Respondent(s) must not remove from the British Virgin Islands any of its assets which are in the British Virgin Islands, or in any way dispose of, deal with or diminish the value of any of its assets whether they are in or outside the British Virgin Islands that have been received or transferred to it from ShandongRuyi Technology Group Ltd or any of ShandongRuyi Technology Group Co Ltd. related and connected entities or persons.*

6. *Until the Return Date or further Order of the Court, each of the Respondents must not, whether by their directors, officers, employees, agents or otherwise cause or permit any changes to be made to the Register of members.*

7. *Paragraph 5 applies to all of the Respondent's assets whether or not they are in its own name, whether they are solely or jointly owned and whether the Respondent is interested in them legally, beneficially or otherwise. For the purpose of this order the Respondent's assets include any asset which it has the power, directly or indirectly, to dispose of or deal with as if it were its own. The Respondent is to be regarded as having such power if a third party holds or controls the asset in accordance with its direct or indirect instructions.*

8. *This prohibition includes the following assets in particular:*

a. any and all shares held in the Australian company, Forever Winner International Development (Australia) Pty Limited and the underlying property and assets of Forever Winner International Development (Australia) Pty Limited, including by [sic] not limited to the property collectively known as the Larundel Estate located in Victoria, Australia and comprising of:

i. Title No. 11363746 at 54 McMasters Road;

ii. Title No. 11363700 at 54 McMasters Road;

iii. Title No. 11363701 at 472 Elaine-Mount Mercer Road;

iv. Title No. 11363707 at 472 Elaine-Mount Mercer Road;

v. Title No. 11363708 at 932 Elaine- Mount Mercer Road;

vi. Title No. 9917514 at 25 Orells Road,

or the sale money if any of them have been sold;

b. and all shares held in Lempriere (Australia) Pty Limited and the underlying property and assets of Lempriere (Australia) Pty Limited;

c. any and all interest in the loan receivable from Lempriere (Australia) Limited, totalling AU\$79.5 million, which was assigned from CS Agriculture Pty Limited and is now payable to Hengyi Group Pty Limited and the Second Respondent, Summit Choice Management Limited, in the amounts of AU\$57.9 million and AU\$21.6 million, respectively."

- [4] Xinhe has a judgment and orders in its favour for a judgment debt against Ruyi obtained in the Courts of the PRC in the amount of approximately U.S.\$45 Million. Xinhe asserts that Ruyi wrongly disposed of its assets to the Respondents. In November 2024, Xinhe was pursuing Ruyi by way of liquidation proceedings in Australia. At that stage it did not bring any proceedings directly against any of the Respondents.

- [5] However, separately, Xinhe, on 22nd December 2025 filed proceedings against the Respondents and Ms. Chenran Qiu and sought to have the Court hear a freezing injunction application urgently, in other words, outside of the Court's usual listing process. It sought to have that application heard on the 26th January 2026, alongside the Discharge Application and the Continuation Application. The new claim, BVIHCOM 2025/0539, was filed on behalf of Xinhe by Ogier, the law firm that appears for Xinhe in this matter. Conyers, who appear for the Respondents herein, wrote to the BVI Registry in response to the request from Ogier, stating, amongst other things, that they were instructed to act on behalf of the 2nd to 5th Respondents and were in the process of taking instructions.
- [6] Conyers objected to the listing of this new application at the same time as the substantive hearing of the Discharge Application, which was fixed for hearing for the whole day on 26th January. The fixture of the hearing date of the Discharge Application occurred many months ago.
- [7] I, as the Judge asked to deal with the Certificate of Urgency (utilized in this jurisdiction to consider which matters necessitate urgent or early hearing), instructed the Registry to refuse the Listing Request, on the grounds that it did not meet the threshold for urgency. Further, that the freezing injunction application, which expressly indicated it was to be on notice, should be set down on a date after the 26th January, i.e. a date after the date for the hearing of the Discharge Application.
- [8] The Discharge Application seeks to have the Injunction set aside essentially for the following reasons:
- (1) The Injunction should never have been granted in the first place; Xinhe's position was unjustified and its status did not justify the granting of the Injunction.
 - (2) Non-Disclosure/no fair presentation on 29th November 2024; and

(3) A failure on the part of Xinhe to return to Court after it had served the Order, with variations, and inform the Court of material events and changes to the circumstances.

[9] Xinhe stoutly resists the set aside allegations and denies any non-disclosure or breach of the duty of full and frank disclosure on its part. It asks the Court to continue the Injunction. It seeks that even if the Court were to set aside the Injunction for breaches of the duty of full and frank disclosure, that the Court find it just to re-grant the Injunction in all the circumstances, as any breach was not intentional.

Background

[10] I now set out briefly some relevant background information.

[11] On the same day as the *ex parte* application came before Wallbank J, hours before the BVI hearing, the Federal Court in Australia (New South Wales) declined to appoint provisional liquidators of Ruyi. The Court declined to so appoint provisional liquidators on an *ex parte* basis.

[12] Xinhe on 9th December 2024, after the hearings on 29th November 2024 in Australia and in the BVI, filed an Amended Application in Australia and removed any request for the appointment of provisional liquidators.'

[13] Ruyi filed an application challenging the Australian Court's jurisdiction but that application was dismissed on 25th July 2025.

[14] The Liquidation Application in Australia has gone through various stages, with the substantive application listed for a 3- day hearing 22nd -24th April 2026 at which there is expected to be oral evidence and cross-examination. Some of the issues that will have to be determined are concerned with the status of Ruyi in Australia

and as to whether it carries on business there. Ruyi has been opposing the proceedings since 4th December 2024 and challenges any assertion that it carried on business in Australia.

Whether the Injunction should have been Granted at all

[15] Before me the decision of Briggs J, as he then was, in **Revenue Customs Commissioners v Egleton**² and my own decision in **Parles A.S.**,³ (which refers to the **Egleton** decision), were cited. My decision, and to a much lesser extent, **Egleton**, were also referred to by Counsel before the Judge at the *ex parte* hearing, albeit not in any great detail.

[16] Xinhe's Counsel relied upon these decisions in its written submissions prepared for the *ex parte* hearing to argue that it could, as a creditor, bring an application for an injunction in the BVI in support of the Australian proceedings, because there were, as obtained in **Egleton**, exceptional circumstances here. Those circumstances were stated to be that it sought an imminent appointment of provisional liquidators. Those exceptional circumstances supposedly put the *ex parte* application outside of the usual position where, as pointed out in **Egleton**, if a freezing order has to be obtained pending the making of a winding up order, it should be a provisional liquidator rather than a petitioning creditor who seeks and obtains such an order.

New Point Raised/ New Emphasis Placed

[17] At the hearing before me, Counsel for Xinhe raised what looked to me to be a completely new argument. It certainly differed from what was in the written submissions prepared for the *ex parte* hearing. It was submitted that it had been "*impractical*" to apply for provisional liquidators before making and securing *ex parte* orders in the BVI due to a requirement under Australian law to notify the

² [2006] EWHC 2313.

³ BVIHCOM 2022/0123.

Company/ Ruyi of any appointment of provisional liquidators within 24 hours of the relevant Court order.

[18] Reference was made by Counsel Mr. Lacy to the evidence of “Karen” in support of the BVI *ex parte* application at paragraph [98] in which she said that Australian Counsel had “advised” that orders in respect of provisional liquidators “*must be served on Ruyi within 24 hours.*” There had at the *ex parte* hearing been no other evidence to support such a proposition, nor reference to any legal authority.

[19] It is fair to say that in light of the way in which the argument was advanced at the hearing on 26th January, the Court and Counsel for the Respondents, Mr. Chaisty KC expressed some surprise that the law in Australia was such that service in 24 hours was mandatory and that there was no discretion or flexibility in relation to this period. Mr. Lacy argued that it was this position that brought matters within **Egleton** and the exceptional circumstances in which a Court would entertain a petitioning creditor and consider relief in its favour. I must say that this, what I will describe as a “*twist in the plot*”, was mighty strange, viewed against the backdrop where that very morning of the *ex parte* application in BVI, in Australia Xinhe had clearly been busily applying for the appointment of provisional liquidators and had then been refused that application.

[20] Be that as it may, as a result of this new slant to the arguments advanced by Xinhe, at the end of the hearing on 26th January, I ordered that Xinhe should investigate the legal position in Australia further, and produce short submissions, with the Respondents to reply. The order limited the submissions to five pages, and provided as follows:

“The Respondent [Xinhe] shall by 12 noon on Friday 30th January 2026 file written submissions (of no more than 5 pages in length) and legal authority on Australian law on the limited point of notification within 24 hours of the appointment of provisional liquidators, further to the evidence at paragraph 98 of the First Affidavit of Sin Kit Wing Karen filed on 27th November 2024.

The Applicants [the Respondents] shall by 4 p.m. on Wednesday, 4th February 2026, file written submissions (of not more than 5 pages in length) and legal authority, if any, in reply.

...

Further Developments in Australia

- [21] The evidence before me on 26th January 2026 was that on 19th November 2025, Stewart J made a freezing order in Australia against Forever Winner International Development (Australia) Pty Ltd. ("**FWID Australia**"), the seller of the Larundel Estate. This order prevented FWID Australia from removing any of its assets in Australia up to the unencumbered value of AUD\$ 10,832,620, the net proceeds of sale.
- [22] On 20th February 2026, Xinhe filed new evidence in these proceedings indicating that FWID Australia sought leave to appeal Stewart J's decision and that the application for leave to appeal was refused by Beach J. On 26th February 2026, this Court was provided by Xinhe with Beach J's reasons/ judgment setting out the basis upon which leave to appeal was refused.

Discussion and Analysis

- [23] Many arguments have been addressed to me by both sides, and I do not intend to, and cannot set them all out in detail. However, I have considered them all, along with the supporting evidence and authorities. That said, it is very plain to me that the Injunction should be discharged because it was ordered/made on a false or incorrect premise and should never have been made at all.
- [24] I say, respectfully, that this Injunction was defective, because the fact of the matter was that, by the time of the hearing in the BVI, the application for the appointment of provisional liquidators in Australia had been refused. Thus, the appointment of provisional liquidators could not, and could no longer, have been said to be imminent. Whether appreciated then, or whether circumstances having changed, it

also was not the case that the appointment of Liquidators was imminent. Further, in neither **Egleton** nor in **Parles S.A.** was it said that a creditor merely had to present a winding up petition to justify applying for a freezing order in case, as Mr. Chaisty K.C. puts it in his Skeleton Argument ("**SKA**"), a liquidator was one day appointed and chose to do something.

[25] In **Egleton** (at paragraphs [43]-[54] Briggs J made the following important points:

- (1) The case before him was the first case in which petitioners obtained freezing orders against respondents whose only alleged liabilities were to the company the subject of the petition. It was stressed that the context was not just one where such orders had not been previously made, but was one where specific statutory measures exist "designed to protect or preserve the effectiveness of the process to be carried out pursuant to a winding up order" (Para 43). Briggs J rejected contentions as to a lack of jurisdiction to make orders.
- (2) As to the question of discretion, there are powerful reasons why if a freezing order has to be obtained pending the making of a winding up order it should be a provisional liquidator rather than a petitioning creditor who seeks and obtains them.
- (3) In the case before him, subject to certain features of the case, the freezing order should not have been made.
- (4) At paragraph [52], the Judge indicated that 'The feature which persuaded me otherwise is that there is now less than a week before the hearing of the winding- up petition.' There was also reference to the fact that it was the intention of HMRC to "immediately" seek the appointment of provisional liquidators.
- (5) Significantly, at paragraph [52], it is to be noted that the Judge indicated that the respondents 'did not advance any persuasive reasons why an application for a provisional liquidator ought to have been refused. I consider that I should assume that my discharge of the present orders would very shortly thereafter be followed by the

obtaining by a provisional liquidator of more or less identical orders against the same respondents.”

(6) The Judge was therefore prepared to allow a short- term continuation and this also meant that this situation would continue until a liquidator if appointed should have the opportunity to consider his position. It follows plainly that if no order of appointment was made, or the liquidator did not pursue an application, the orders would fall away.

(7) At paragraph [54], Briggs J stressed the exceptionality of the circumstances. He stated ‘ It follows that my affirmative conclusion should be regarded as entirely exceptional’.

[26] In **Parles**, I made extensive reference to **Egleton**. At paragraph [92] I discuss the discretionary considerations referred to by Briggs J in **Egleton**, particularly that one of the reasons why it should be the provisional liquidator and not the petitioning creditor who seeks and obtains freezing order relief is that it is the officeholder rather than the creditor who is the guardian of the interest of all the company’s stakeholders who is best placed to make an independent judgment as to the wisdom of bringing proceedings against third parties, and as to the appropriateness of obtaining interim measures including freezing orders pending the conclusion of those proceedings. See paragraphs [93]-[95] of **Parles** where the matters of exceptionality and special features such as those in **Egleton**, are discussed.

The Further Submissions concerning Australian Law

[27] In the further submissions filed on behalf of Xinhe, arguments and points have gone far beyond what was the limited scope of the order that I made on 26th January, and I do not intend to address any further new points in dealing with the Applications properly before me on this hearing. The crux of the matter is that, although Xinhe claims to have received advice about Rule 6.2 of the Federal Court (Corporation) Rules of Australia (“**FCCR**”) being mandatory in nature, or interpreted it that way in giving evidence before the BVI Court, it seems clear, (as

indeed was this Court's judicial instinct), that there is discretion in relation to applicable time periods. At paragraph 5 of the Respondent's Further Submissions, Counsel Mr. Lacy candidly concedes as follows:

"From further research this week (and not previously advised to, or known by, Xinhe), it appears that-although the language in Rule 6.2 is mandatory and specifically relates to the appointment of provisional liquidators-it may be possible for the Australian Court in its discretion to disapply Rule 6.2, under Rule 1.3 and Schedule 2 Item 1 of the FCCR, Rule 1.34 of the FCR, and/or Sections 23 and 37M-37P of the FCAA."

[28] It is now therefore in my view plain that any mandatory 24-hour requirement in Australia could have been /can be disapplied and that the alleged difficulties created by Australian law do not exist. I agree with the Respondents' Further Submissions (at paragraph 7), that such so-called difficulties could have readily been addressed so as to obtain more time and thus do not provide any justification, or special justification circumstance, of going first in the BVI.

[29] On any fair view, and proper analysis of the caselaw, facts, circumstances and evidence in this case, it could not be said that there were exceptional circumstances such as to make this case an outlier or attracting a positive exercise of the Court's discretion.

[30] I have a lot of sympathy for the Judge who was being presented with developments happening a few hours before, and put in an affidavit sent to the Court a few minutes before the start of the hearing. The result was that in my view, the Judge did not get to read and absorb the contents or true impact of the development in Australia whereby the Court had refused the application for the appointment of provisional liquidators. Further, it now appears that no real effort was made to pause and present the BVI Court with an accurate picture of the

relevant facts and the law. There was a need to investigate the situation properly and to ensure that what was being put forward on behalf of Xinhe was accurate. In the circumstances, there really does not seem to have been any need to proceed with, what amounts to undue haste in making the *ex parte* application, indeed whether before, or after the ruling in Australia, refusing to appoint provisional liquidators *ex parte*.

[31] I have read the transcript of the BVI *ex parte* hearing, and the submissions advanced on behalf of Xinhe at the *ex parte* hearing. It really was quite unfortunate, and I say that respectfully, that some faulty and erroneous submissions were made to the Judge. Obviously, I appreciate that circumstances had been changing rapidly, and a submission had to be made to the Court in circumstances where, Xinhe's legal team were, as Mr. Chaisty K.C. puts it, waking up to the news from Australia. Mistakes can, and often are made in the rush and confusion that frequently surround so called urgent *ex parte* applications. However, it is even worse for the Judge who has to rely on Counsel's assistance in order to properly understand and grapple with new and unfolding developments in the case.

[32] It was submitted to the Judge that the decision in Australia (refusing the appointment of provisional liquidators) "increases the need for a freezing injunction in the BVI." In oral submissions, as stated previously, Mr. Lacy now raised an angle that orders in respect of the appointment of provisional liquidators must be served on Ruyi within 24 hours and so that was what made the BVI application even more urgent.

[33] I have already dealt with the fact that there was no merit whatsoever in this point about difficulties created by Australian law. In relation to other aspects of Xinhe's submission about increased urgency, I can do no better than to quote parts of sub-paragraph 9(6) of Mr. Chaisty K.C.'s SKA for the 26th January hearing. There,

quoting from portions of the transcript at the *ex parte* hearing, learned King's Counsel contended as follows:

"... It was submitted that the decision in Australia '*increases the need for a freezing order injunction in the BVI.*'" This submission is made, it seems, in reliance on claims as to the risk of dissipation and not the status of Ruyi or the impact of the refusal to appoint provisional liquidators on the exceptionality issue and, what had previously been addressed and presented on the basis that proceedings were 'imminent'...It is said "*And so the purpose we say for the Australian proceedings will be that a liquidator will come in*" (there is no explanation as to how that could be submitted in those certain terms).....An argument is presented on behalf of Xinhe as to exceptionality and events in Australia which, with respect, make little or no sense. It is said that because the Australian Court declined to appoint provisional liquidators, because it seems to have been of the view that assets had already gone and there was no urgency, the position of the Respondent [Xinhe] in the BVI was 'strengthened'. So far as can be understood, it may be that what was submitted was as to risk of dissipation and that the fact that there would not be provisional liquidators was the exceptional feature. **This is to turn the authorities on their head where it was the prospect of liquidation or provisional liquidation in a very short time that merited the exceptionality of allowing a creditor to get involved and which is how the Respondent was originally presenting its case.** Now the Respondent argued that because there would be no provisional liquidators but because a winding up process had been started there was in some way a stronger case to advance for a freezing order in the BVI. This possibly coupled with the submission which is very confusing but seems to say the Court should assume that a provisional liquidator would be appointed 'either next week or the week after'...There was absolutely no basis for that contention...The *ex parte* application in the BVI had been said to be in support of an urgent application in Australia. By the time of the hearing in the BVI there was obviously no urgent application in Australia, and the appointment of provisional liquidators was not viable."
(Emphasis provided)

[34] In my view, at the *ex parte* hearing, the law was not presented properly or fairly to take account of the known significant change of circumstances.

- [35] The proper exercise of discretion required the Court on 29th November 2024 to refuse to make an order and it is now just that this Court discharge the Order, which has unjustifiably been in place for over 14 months.
- [36] The Court can discharge the Order on the basis of the substantial points I have already discussed, and there may be no need to go into the allegations of a breach of the duty of full and frank disclosure too deeply or at all. However, in the event that I am wrong on the basis discussed above, and for completeness, I do so.
- [37] There is some overlap with these points when considering whether there was a breach of the duty of full and frank disclosure.
- [38] As discussed in the recent decision in **J & J Snack Foods v Peters**⁴ at paragraphs 17-18, the duty is to draw the Court's attention to not just factual, but legal and procedural aspects of the case.
- [39] In his 2nd Affidavit, Mr. Materne, the CEO of LempriereGroup, who was authorized to swear an affidavit on behalf of the Respondents ("**Matarine 2**") makes a number of points as to matters which Xinhe did not disclose at the *ex parte* hearing, and as to other considerations which I consider sound, and accept. At sub-paragraph 38b (i) and (ii), it was pointed out that Counsel did not explain that the judge who refused to appoint the provisional liquidators in Australia did not consider the underlying proceedings to be urgent due to the fact that the judgment was obtained by Xinhe in late 2021, and due to the delay in taking steps in Australia to recognise the 4 PRC Judgments. Also, Counsel did not explain and disclose that at the *ex parte* hearing in Australia Counsel admitted that the best evidence of further potential dissipation of assets and some assets owned by Ruyi is that the Larundel Estate has been listed for sale, and that Xinhe was aware that the

⁴ [2025] EWHC 436.

Larundel Estate was on sale from as far back as February 2020, prior to the PRC Judgment. Also, that the Judge in Australia found that 'there is a suspicion, but no evidence, that there will be further dissipation of assets.'

[40] At paragraph 41 of *Materne2*, it is pointed out that Counsel failed to explain to the BVI Court that Counsel in the Australian proceedings described Xinhe as 'a very small part of a very big queue' and that the Respondent is a minority creditor of Ruyi. It would seem to me that this should have been said to the BVI Court, in any event, whatever was said in Australia. This would have helped to put the Injunction Application in proper context. This does, along with other matters, tend to support an argument raised by the Applicants that the BVI application was made in the interests of the Respondent alone, seeking to leapfrog over other creditors. It also amply demonstrates just why the reasoning in **Egleton** is sound and crucial as to the usual practice of the office holder provisional liquidators being the appropriate parties to make such decisions about seeking orders.

[41] Xinhe also failed to take the degree of care required to investigate, for example, the Australian so-called mandatory law points properly, before making submissions to the BVI Court on an *ex parte* basis. The legal propositions advanced were, quite frankly, not soundly based, and in essence, were unfortunately, misleading.

[42] In the course of opposing the allegations that a fair and proper presentation had not been made at the *ex parte* hearing, Mr. Lacy sought to refer to the transcript of other proceedings before Wallbank J, i.e. the Variation Hearing, which occurred after the *ex parte* hearing, on 19th December 2024. This is an unusual situation, in which the Judge who sat on the *ex parte* hearing is saying in a later hearing, not being the hearing of a discharge application itself, what he understood of what was before him at the *ex parte* stage. I appreciate that Wallbank J was recorded as saying that he understood the unusual nature of what was before him, and

submitted before him at the *ex parte* hearing, and that he understood that what was being argued before him was that because the provisional liquidators had not been appointed in Australia, the BVI Court was even more pressed to grant the freezing injunctive relief. However, from what was said it seems plain that the full extent of the judgment of Briggs J in **Egleton** had not been put before the learned Judge. Also, Wallbank J several times expressed the view at the Variation hearing that he was not convinced that there was any good basis upon which the freezing order that he made *ex parte* should remain in place at all. However, this was said at a hearing at which the set aside application could not be heard by him that day, as it was not fixed for hearing, and there would have been insufficient time. Further, as Mr. Chaisty K.C. pointed out in the arguments before me, the Judge did not once make mention of any appreciation, or mention at all, the unusual and exceptional basis which Mr. Lacy argues on behalf of Xinhe is the basis on which Xinhe relied, which concerns the alleged 24- hour mandatory Australian law provision. All told, I do not think that the transcript of the Variation Hearing of 19th December 2024 takes the matter much further. But in any event, it does not assist Xinhe in maintaining that the Injunction/Undertakings should remain in place.

Duty to Return to Court and Change of Circumstances

[43] As Mr. Chaisty KC reminds, the duty of full and frank disclosure includes a duty to return to Court to indicate changes in the circumstances. See for example, the decision in **Network Telecom v Telephone Systems**⁵ at para.[75]. Xinhe did not come back to Court to describe its new financial arrangement with Yinchuan whereby it entered into a debt transfer agreement transferring part of the Judgment Debt to Yinchuan. The Respondents say that they did not learn of this transfer until they were served with the new proceedings in BVIH(COM) 2025/0539.

[44] As to these new proceedings, they have been filed long after the proceedings and allegations made in late 2024; nearly two years after. Yet in between, Xinhe has

⁵ [2003] EWHC 2890.

indeed, as described by the Respondents, 'held onto the Injunction in the capacity as a creditor assisting a liquidation process' -para 16 of the Respondents' SKA.

[45] In its concluding submissions at paragraph 102 of its SKA, Xinhe asks that if the Court finds that for some technical reason the Injunction should not continue, it is invited not to release the BVI Companies/ the Respondents from their undertakings without hearing argument in the new proceedings BVIH(COM) 2025/0539.

[46] I take the view that the Respondents are quite correct to characterize these new proceedings as belated, Xinhe making as it now does for the first time its own direct claims against the Respondents, raising the allegations referred to in November 2024- concerning under value and putting assets beyond the reach of Xinhe as a creditor. No explanation has been provided as to why Xinhe waited so long to commence such proceedings.

[47] I have already indicated that I refused Xinhe's listing request for me to hear the new application at the hearing on 26th January. The Respondents point out (at paragraph 46 of the SKA) that they have not yet responded to the application as issued and that they did not come here to address any application on that matter. I note that despite my ruling on the Certificate of Urgency, Ogier have still seen fit to go ahead and file a Supplemental Bundle relating to the new proceedings. At the hearing, Mr. Lacy was at pains to try and say that this was just so that if necessary either party could make brief reference to the new proceedings. Be that as it may, this Court has no intention of delving into that application.

[48] As I have said, the Injunction ought to be discharged on substantive grounds, but in any event, I also am of the view that there has been a breach of the duty of full and frank disclosure. I do not regard the breach as deliberate. As to the question of a re-grant, I remind myself that the authorities suggest that great care must be

taken when considering a re-grant. It is plain to me that this would not be an appropriate case for a re-grant because there was and is no proper foundation for the grant of the Injunction in the first place, as there is a lack of exceptional circumstances as discussed above. I also would not be minded to consider a re-grant because of the seriousness of the breaches of duty.

- [49] In terms of other substantive points, there is also no cogent evidence to show that there is a good arguable case that Xinhe will obtain a winding up order in Australia. Reference was made by Xinhe to the jurisdiction challenge proceedings by Ruyi in which Ruyi sought to have orders set aside for want of jurisdiction. Ruyi lost that application, and in the course of his judgment Stewart J recorded that "...the defendant (Ruyi) accepts that the plaintiff (the Respondent/Xinhe) has done enough by way of evidence at this stage to establish at least an arguable case." However, the context and question there related to whether the question of whether Ruyi does or does not carry on business in Australia is a question of a true jurisdictional requirement, as contended by Ruyi. Or is it a matter upon which the Court must be satisfied before the power to wind up the defendant under a particular section of the law can be exercised, that matter being a matter which must be established on a final basis on a balance of probabilities, as contended by Xinhe. Stewart J found against Ruyi on the true jurisdictional requirement point, and that was the context in which he made the comment as to what was accepted by Ruyi. The Judge did not make a finding about a good arguable case that Xinhe can have Ruyi woundup in Australia. Mr. Lacy referred me to the decision of Jack J (Ag) in **VTB Bank (Public Joint Stock Company) v Micros Group Limited et al.** ⁶ Counsel cited that decision as authority for the proposition that this Court could rely upon judgments by other Courts at the interlocutory stage in relation to the question whether there is a good arguable case. However, there have been no Court findings in Australia as to there being a good arguable case that Xinhe will obtain a winding up order in relation to Ruyi in Australia. Further, the question is

⁶ BVIHC(COM) 2018/0067, at paragraphs [84]-[86].

not simply about whether Ruyi is indebted to Xinhe or whether there is a Judgment Debt. The question is whether there is a good arguable case concerning the Liquidation Proceedings prospects in Australia.

The Relevance, if any, of the Freezing Order against FWID (Australia) and refusal of Leave to Appeal

- [50] Whilst this Court appreciates the update from Xinhe as to the happenings with FWID (Australia), in my judgment, none of those developments affect the matters which this Court has had to consider in the instant Applications, considerations of comity notwithstanding. I agree with Mr. Chaisty KC that FWID (Australia) is not a party to these proceedings or the Discharge Application. Such that any lack of contest on certain matters in those proceedings in Australia, recorded by the Judge in those proceedings, do not and cannot amount to findings by the Court as to a good arguable case.
- [51] In any event, I have to decide the Discharge Application and Continuation Applications before me on a principled basis, based on sound legal principles accepted as applicable in this jurisdiction in relation to the exceptionality of applications by petitioning creditors as opposed to joint provisional liquidators in liquidation proceedings, as discussed in **Egleton**.
- [52] In the circumstances, the Injunction/Undertakings are therefore discharged, and the Orders are set aside. Costs are awarded to the Respondents against Xinhe, to be assessed if not agreed within 21 days. The Continuation Application is also dismissed, with costs to the Respondents.
- [53] It just remains for me to thank Counsel on both sides and their teams for their helpful submissions.

Ingrid Mangatal
High Court Judge (Ag.)



BY THE COURT

Deputy Registrar