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Case No:BR-2020-000450

Rolls Building London EC4A 1NL

Date: 9 August 2024

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

INSOLVENCY AND COMPANIES COURT (ChD)

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

RE EDWARD WOJAKOVSKI

BEFORE DEPUTY INSOLVENCY AND COMPANIES JUDGE RAQUEL AGNELLO

KC BETWEEN:

- (1) PAUL STEVEN COOPER**
- (2) PAUL ROBERT APPLETON**
- (3) ASHER MILLER**

**(in their capacity as Joint Trustees in Bankruptcy
of the estate of Edward Wojakovski)**

Applicant

s -and-

- (1) VLADIMIR DASHI (aka RUGOVA)**
- (2) INTELLIGENT LANGUAGES LIMITED**
- (3) INTELLIGENT LEGAL SOLUTIONS LIMITED**

Respondents

Ms Maria Kennedy (instructed by Wedlake Bell LLP) for the Applicants
Mr Neil Berragan (instructed by Neil Davies and Partners solicitors) for the Respondents

Hearing dates: 26 March 2024

JUDGMENT

Introduction

1. By application notice dated 25 August 2023, the Applicants, as joint trustees in bankruptcy of Mr Edward Wojakovski ('the Bankrupt') sought against the Respondents ('the Rs') orders for disclosure of certain documents as described in the draft order as well as an order for cross examination of the First Respondent ('Mr Dashi') pursuant to section 366 of the Insolvency Act 1986(IA 86). Mr Cooper, one of the Applicants has filed two witness statements in support of the application, being 22 August 2023 and 29 January 2024 and Mr Dashi has filed two witness statements dated 4 January 2024 and 25 March 2024 opposing the making of the order sought.

Factual Background summary

2. By order dated 20 November 2021, Mr Justice Zacaroli entered judgment against the Bankrupt for the sum of £12,994,642.43, held to be the sum extracted/misapplied by the Bankrupt from the Tonstate Group which the Bankrupt had run over a period of 13 years. On 16 January 2020, a freezing proprietary injunction was made against certain assets of the Bankrupt to assist with post judgment enforcement. On 15 October 2020, a bankruptcy order was made against the Bankrupt, with the Trustees in Bankruptcy being appointed on 18 December 2020. The Third Applicant was appointed as a conflicts trustee after this date but nothing turns upon that point for the purposes of these proceedings. On 27 July 2022, by a consent order, the Bankrupt was discharged 30 days after that date. Mr Dashi and the other Rs carried out, according to Mr Dashi's evidence, certain transcribing/translation services for the Bankrupt before he was made bankrupt. The Applicants raise issues relating to the services provided, the payment which was made as well as questioning Mr Dashi about his membership of private members clubs where he made the Bankrupt (after he was made bankrupt) his 'plus one' providing the Bankrupt with the ability to use the club and its facilities. Questions are also raised in relation to payments made by Mr Dashi after the bankruptcy order was made to lawyers acting on behalf of the Bankrupt. In his evidence, Mr Dashi has dealt with in some detail the payments made

and the issues raised. The Applicants maintain that, despite what is set out in the witness statements, it is appropriate to make the order for disclosure of documents as well as an order for Mr Dashi to attend to be examined.

Legal principles

3. There is essentially agreement between the parties in relation to the law applicable to applications pursuant to section 366 IA 86. This is an extraordinary power provided for the assistance of office holders both in personal and corporate insolvency (in section 236 IA 86). It requires a careful balancing exercise to be carried out by the court in recognition that (1) the exercise of such a power is by its very nature oppressive, but (2) capable of being appropriate where the office holder has established a reasonable requirement for the information to carry out his functions and (3) after the court has weighed the inconvenience and/or unreasonable burden to the respondent as against the reasonable requirement of the office holder. It is also, in my judgment, an important part of the balancing exercise to ensure that any order made remains focussed on what is really necessary and appropriate in the circumstances. Both parties quoted the following passages from well known cases.
 - (1) In ***British & Commonwealth Holdings Plc (Joint Administrators) v Spicer & Oppenheim*** [1993] AC 426 at 439-440, Lord Slynn explained that this is an “extraordinary power”, the limit to which lay:

“...not in a limitation by category of documents (‘reconstituting the company’s state of knowledge’) but in the fact that the applicant must satisfy the court that, after balancing all the relevant factors, there is a proper case for such an order to be made. The proper case is one where the administrator reasonably requires to see the documents to carry out his functions and the production does not impose an unnecessary and unreasonable burden on the person required to produce them in the light of the administrator’s requirements. An application is not necessarily unreasonable because it is inconvenient for the addressee of the application or causes him a lot of work or may make him vulnerable to future claims, or is addressed to a person who is not an officer or employee of or a contractor with the company in administration, but all these will be relevant factors, together no doubt with many others.”

- (2) Also, in a later case, Mr Justice Robert Walker held:-

“The essential conditions for office-holders applying for relief under s.236 are to establish a reasonable requirement for information (a matter on which the onus is on the office-holders, but on which the views of the office-holders themselves are

normally entitled to a good deal of weight) and then for the Court to carry out a balancing exercise, weighing the potential importance of the information to the office-holders against the potential oppressiveness to the Respondents of being required to provide it."- **Sasea Finance Ltd (in liquidation) v KPMG (formerly KPMG Peat Marwick McLintock (No.1)** [1998] BCC 216 at 220F per Robert Walker J.

4. Mr Berragan submitted that the above test included asking what is the purpose of the order sought and how will it benefit anyone with a legitimate interest. In my judgment, this is too narrow a formulation of the relevant test to be applied. It does not appear from the case law. I accept that in assessing whether an office holder, in asserting a reasonable requirement, the court can consider the facts of the particular case and consider whether the requirement is necessary in all the circumstances.

5. According to the Applicants, the current application arises by reason of the Applicants discovering through their investigations, that various payments were made to R3 from the Bankrupt or on his behalf and certain payments were made by Mr Dashi to law firms instructed by the Bankrupt. The Applicants rely, in particular, on the following which they state they discovered during their investigations into the Bankrupt's affairs:-
 - (i) On 9 July 2020, the law firm, Candey Limited ("Candey") paid £50,000 to R3. Mr Dashi asserts this was a payment made in relation to work he asserted was carried out by R3 for the Bankrupt over a period of time prior to the bankruptcy order.
 - (ii) On 27 November 2020, R3 paid £15,000 to Rayden Solicitors ("Rayden"), who acted for the Bankrupt in matrimonial proceedings.
 - (iii) On 12 January 2021, R3 paid £4,800 to Keidan Harrison LLP ("KH"), who provided other legal services to the Bankrupt.
 - (iv) On or around 10-11 May 2021, R2 paid £7,000 to KH.
 - (iv) On 3 and 4 February 2021, R2 paid a total of £60,000 to Winter Restaurants Ltd in three tranches which the Applicants were informed

related to the purchase by Mr Dashi of a founder membership of Oswald's, being a private members' club. The Applicants have set out evidence of the Bankrupt's use of these facilities as Mr Dashi's plus one, including spending by the Bankrupt in the club restaurant.

6. The Applicants asserted that a further payment of £50,000 was made to Mr Dashi on 10 July 2021 from the Bankrupt, but this does not appear to have been made. Equally, there is no evidence of a payment made by Rs to Rayden in February-April 2021. Ms Kennedy on behalf of the Applicants did not press these payments and concentrated upon the payments identified above at paragraph 4 above. I agree with Mr Berragan that the evidence demonstrates payment of £50,000 made via Candey to R3 in July 2020 but no other payments made in the sum of £50,000. The Applicants assert that the origins of the payments set out above are not clear to the Applicants and they refer to a concern expressed by Mr Justice Zacaroli in his judgment in 2021 that through the ongoing funding of his legal expenses, the Bankrupt had been acting in breach of the freezing injunction. The Applicants rely upon the following passage from the judgment at paragraph 5:-

“It is of course possible, as Mr Wojakovski adamantly maintained, that his legal fees are being funded by friends concerned to ensure that he is afforded access to justice in relation to the ongoing disputes with the applicants and with his trustee in bankruptcy. That is not something that I could resolve on this application, however. Provided that I am satisfied, as I am, that the various matters to which Mr Fulton has referred give rise to a real risk that the ongoing funding of his legal expenses may be in breach of the WFO or the proprietary injunction, then I consider that on the facts of this case it is just and convenient to make the orders sought.”

7. The above forms the basis of the issues upon in relation to which the Applicants seek further information from the Respondents. They assert that the replies provided to date by Mr Dashi and the details provided are insufficient for the Applicants to understand the transactions. They assert that they have a reasonable requirement to obtain the documents (and obtain an order for the examination of Mr Dashi) in order to carry out their functions. As office holders, their views are of course provided with a good deal of weight. They are concerned as to the source of the payment of £50,000 made to R3, the payments totalling £24,600 made to law firms by Mr Dashi for

funding the legal expenses of the Bankrupt. As part of this, they seek to understand the work which was carried out by the Rs for which payment of £50,000 was made.

8. The Applicants also consider that there has been a failure by Mr Dashi to cooperate with them. In particular, the evidence demonstrates an unwillingness on the part of Mr Dashi to be interviewed, including raising that he had some form of diplomatic immunity. There have also been numerous delays in producing documents including his solicitors asserting that documents being sought were covered by legal professional privilege which was clearly unsustainable on the evidence before me. The transcript of the interview which took place on 5 July 2022 is not one where there is a real willingness to reply to the questions. Some of the documents sought have been provided after the issue of these proceedings. I do not accept Mr Berragan's submission that Mr Dashi has willingly cooperated to the extent which he should have. I do accept that the witness statements of Mr Dashi which have been filed in these proceedings provide details of the various payments and both are sworn statements, incorporating a statement of truth. However a past unwillingness to cooperate does not, in my judgment, in itself, justify the making of the orders sought. It is a factor to be taken into account when balancing the factors.
9. The Applicants have set out a list of documents which are now being sought. These are set out in the draft order. I will set these out below and then deal with the position of the Rs. I will deal with whether I will grant the order under each heading because, in my judgment, there are differences between the various heads and whether an order should, in the exercise of my discretion and balancing the factors set out in the case law, be made. The draft order seeks :-
 - a. Documents (including recordings provided on any USB sticks or by emails) containing instructions from the Bankrupt to R1 which relate to the Bankrupt's litigation funding and memberships of private members clubs;
 - b. Any documents contained on the hard drive provided to the Bankrupt relating to the work undertaken by the Rs for, or on behalf of, the Bankrupt and correspondence in relation to the production of the hard drive;
 - c. Copies of all invoices in relation to work undertaken by the Rs for, or on behalf of, the Bankrupt;

- d. Documents in relation to the fixed fee arrangement between the Rs and the Bankrupt;
- e. Time records of all work undertaken on behalf of the Bankrupt by the Rs and Candey;
- f. Documents (including emails) between the Rs and any third parties in relation to the Bankrupt, including (but not limited to) the law firms Candey, KH and Rayden Solicitors;
- g. The account number and sort code of any direct debits or other payments made on behalf of the Bankrupt, an explanation as to what these payments were for and any documents explaining the terms of the payments;
- h. Copies of any invoices/receipts relating to transactions with or for or on behalf of the Bankrupt (including by an agent or nominee for the Bankrupt);
- i. A copy of the note prepared by John Hughes referenced in the First Witness Statement of Vladimir Dashi dated 5 January 2024 at paragraph 55; and
- j. The attachment to the email described in the draft order sent on 26 November 2020 at 13:06.

I will take each of these in turn or where appropriate together with another heading and refer to the numbering in the application notice as well as the list above:-

(a)& (b) [(ii)and (iii) application notice] The documents containing instructions on the hard drive (or by emails or other means) relating the Bankrupt's litigation funding and memberships of private clubs and any documents contained on the hard drive provided to the Bankrupt relating to the work undertaken by the Rs for, or on behalf of, the Bankrupt and correspondence in relation to the production of the hard drive

10. Despite the contents of the witness statements filed by Mr Dashi, the Applicants seek this order. At paragraph 12 of his witness statement dated 4 January 2024, he states that he has delivered up all documents that he has, by stating, *"I have no further documents to disclose or deliver up save as stated below [as set the witness*

statement]”. He states at paragraph 96, in relation to (ii) and (iii) of the application notice as follows, *“The material was returned to the Bankrupt at his request on a hard drive. I believe I handed it on to Candey. There is no further material I can disclose’ and ‘There is no such material in my possession, custody or control”*. In his second witness statement, he states, *“I told the trustees in interview that I passed the files back to the Bankrupt at his request. They were his files and his work products. ...I repeat I did not keep a copy of it as the Bankrupt had specifically requested of me.”* Ms Kennedy, on behalf of the Applicants, submits that the replies of Mr Dashi in his sworn witness statements do not deal with the issue adequately. She submits that there may well be correspondence in relation to the production of the hard drive, that Mr Dashi has not dealt with and whether any of the documents contained on the hard drive were copied onto the Rs’ computer systems or other storage systems or appear on emails of the Rs. She picks up a statement made by Mr Dashi at paragraph 42 where he states that, *“[he] had a huge number of documents in [his] possession which [he] had prepared, collected and indexed over the past few months”*. She submits an order needs to be made so that he can provide these documents referred to. Paragraph 42 goes on to say that Candey, the bankrupt’s solicitors at the time, were asking for the material to be delivered to their office in person. It then states, *“Critically Candey were asking for this material to be delivered to their office in person. I know that happened. I understand that has been passed on by Candey to the Applicants”*.

11. As I have set out above, the office holders need to establish a reasonable requirement for the order which they are seeking. Even giving weight to the view of the office holders in this case, in my judgment, there seems to be no purpose in making an order seeking documents which Mr Dashi asserts he does not have. Ms Kennedy sought to persuade me that as the Applicants are not satisfied with the replies provided by Mr Dashi in his witness statements, the order ought to be made. She also sought to persuade me that in so far as Mr Dashi repeats that he has no documents, there is no prejudice in making the order for him to confirm that he has no documents. I do not agree. Whilst it is true Mr Dashi’s conduct in not producing documents when asked as well as some of the excuses which have been given in relation to diplomatic immunity etc are indicative of someone who has been unwilling to produce

documentation, the current position is different. Mr Dashi has provided the statement that he has no further documents with a statement of truth. I have no grounds before me which would allow me to dismiss what has been set out in the statement. The Applicants produced no evidence to support that what is set out in those statements is untrue such that an order ought to be made. Mr Cooper states in his witness statement dated 29 January 2024 that Mr Dashi has failed to say (paragraph 12.1.2) how Mr Dashi extracted and handed over a single hard drive in one piece from what machine or how he deleted any local copies nor whether Mr Dashi has any cloud storage nor how Mr Dashi subsequently provided documents given that the alleged destruction must have taken place prior to Wedlake Bell's initial letter. He maintains that there must have been communications between Mr Dashi and the club in relation to ownership. Mr Dashi has stated (second witness statement) that there may have been whats app messages but he has changed his phone twice and he states he is no longer able to recover them. None of these explanations relating to documents on the hard drive are sought in the application notice or in the draft order. The application notice and the draft order seek documents and Ms Kennedy invited me to make the order for the documents to be produced, not for explanations to be provided by Mr Dashi relating to how he transferred the documents over to the Bankrupt and whether he also deleted the documents which may have been stored in the cloud or on his computer. These points appear to go towards the proposed making of an order for the private examination of Mr Dashi. I will return to that point later in this judgment.

12. In fact, the draft order submitted by the Applicants does not seek any form of further statement of truth from the Rs that they do not have in their possession custody or control the documents. The draft order envisages merely specifying to the solicitors for the Applicants the documents which are not in their custody possession or control and then the Rs are under no further obligation. In my judgement, based on the evidence before me which includes the witness statements of Mr Dashi, it is not necessary for the Applicants to have the Rs confirm something which has already been dealt with under two statements which contain statements of truth. As I have already set out above, there is no evidence from the Applicants challenging the statements made beyond that they do not believe them.

13. In considering the potential importance of the information sought to the Applicants as office holders against the potential oppressiveness to the Rs, I bear the following in mind. The Applicants are investigating payments made to the R3 totalling £50,000 and payments made by the Rs to law firms for the benefit of the Bankrupt's legal fees totalling £24,600. This is an extremely large and complex bankruptcy. This is clear from even a brief consideration of the judgment against the Bankrupt and the contents of the witness statements of Mr Cooper. These sums being investigated are extremely small compared with the costs which have already been incurred as well as the overall deficiency in the bankruptcy. Mr Dashi has sworn two witness statements which state he has no further documents. Mr Berragan submitted that the Rs have incurred legal expenses and time in preparing the statements and instructing lawyers. He submits that the Rs had searched for documents and did so before preparing the statements and there is no reason to compel the exercise to be carried out again because it has already been carried out. In my judgment, it is important that the sworn statements state that he has no further documents. It is in my judgment somewhat oppressive to seek an order for the exercise carried out to be repeated when there is no evidence that the Rs have further documents which they have not disclosed. Giving a good deal of weight to the views of the office holders is not the same as accepting that there is a requirement to make an order for documents which a sworn statement states are not in their custody possession or control. There is, in my judgment, no reasonable requirement to obtain the order sought to produce documents which the Rs have set out in a statement which are not in their custody possession or control.

(c _____) [v -application notice] copies of all invoices in relation to work undertaken by the Respondents for, or on behalf of, the Bankrupt.

14. Ms Kennedy accepts that Mr Dashi has provided one invoice numbered 004 which does not have any itemisation of the work undertaken but is in the sum of £50,000. She relies on the contents of an email dated 8 July 2020 addressed to the Bankrupt from Mr Dashi which states, "*I am happy to do an itemised bill to explain what we have done thus far and how we intend to move forward in the future.*" She submits that therefore there must be further documents which provide the relevant

itemisation. She also points out that the brief narrative on the invoice contains no narrative relating to criminal advice and legal/administrative support. She also points out that the email suggests that their work took place over a period of three years but that the invoice covers a period of less than 1.5 years. Accordingly, she submits that it is likely that there are further documents which are covered by the description above and that the court should make the order sought. Mr Cooper states at paragraph 12.1.5 the fee agreed was £180,000.

15. Mr Dashi states in his witness statement dated 5 January 2024 that this is the invoice he has provided and effectively that there is no further invoice or invoices. In his second witness statement dated 25 March 2024, he states (paragraph 40),

'As to 12.1.5, I asked the Bankrupt back in 2020 about itemising a bill. Having seen my invoice, the Bankrupt said it was enough and that I should not waste my time with itemised bills. He was my client. He was happy with matters. I was therefore content with matters.'

16. As set out above, this is in a sworn statement produced by Mr Dashi. In my judgment, the Applicants have failed to establish that there is a reasonable requirement for the Rs to be ordered to produce documents (being other invoices) when there is sworn statement that no further invoices exists. I do not accept that submission made by Ms Kennedy that making such an order is of no prejudice as she submitted above. In my judgment that is not a reason to make the order sought. Prejudice is not the only part of the balancing exercise to be carried out. I do not accept that such an order should be made in those circumstances. The factors I have set out under the earlier heading are equally applicable here.

(c (vi) documents in relation to the fixed fee arrangement between the Respondents and the Bankrupt

17. The Applicants acknowledge that Mr Dashi states that this has already been provided, but complain that Mr Dashi has failed to provide any documents relating to discussion or negotiation as to how he and the Bankrupt agreed initially on the sum of £180,000 and later to the reduced fee of £50,000. The Applicants thereby seek the order on the basis that it is improbable that the figures were proposed and agreed in a vacuum without any discussion of what the sum covered in terms of period of

engagement, hours of work , number of transcripts, recordings, translations and other documents produced. Mr Cooper raises the fact that Mr Dashi and/or R3 have not sought to prove in the bankruptcy for the outstanding sum of the £180,000.

18. Mr Dashi states that he has provided the documents that he has and that no further documents are in his possession (custody or control). At paragraphs 29 – 40 of his first witness statement, Mr Dashi explains the background to his agreement with the Bankrupt, but he fails to provide details as to whether his negotiations were only carried out orally or some of it was evidenced in writing. He repeats at paragraph 40 that he asked the Bankrupt back in 2020 about itemising a bill and the Bankrupt said that he should not waste his time doing that. He appreciates that no proof was submitted in the bankruptcy for the balance, but he states at paragraph 71 that he was abroad at the time and that he believed then that creditors would not get paid. The application notice sought documents in relation to the arrangement made between Mr Dashi and the Bankrupt. The sworn statements set out that there are no documents. Mr Cooper asserts that there must be further documentation but Mr Dashi states that is not the case. For the same reasons as I have set out above in relation to earlier requests, I do not accept that there is a reasonable requirement to make the order sought which would compel the Rs to inform the Applicants solicitors that there are no further documents as is set out in the witness statements of Mr Dashi. In relation to all these headings I have dealt with above, I will deal with the issue of an order for examination later in this judgment.

(d)[(vii) application notice] Time records of all work undertaken on behalf of the Bankrupt by the Respondents and Candey.

19. The Applicants accept that the Rs have provided a spreadsheet but assert that it provides almost no information about the work actually undertaken, merely what appears to be document names and numbers of minutes spent. The Applicants say the document does not provide an explanation as to what work was done in relation to each document, why there are two sheets and when the document was sent to the Bankrupt. The Applicants submit that it is unlikely that this is the only record retained by the Rs of the work carried out. The Applicants refer to the email dated 26 November 2020 which they believe was for the Bankrupt and which states, “*please [sic] have from you an indication of the amount I still owe you for both the criminal*

advice and legal / administrative support over the last 3 years". The Applicants state that no documents have been provided which detail or evidence any criminal advice or legal or administrative support being provided by the Rs to the Bankrupt. Mr Cooper asserts that Mr Dashi has not confirmed whether the spread sheet produced was prepared contemporaneously or since the dealings with the Applicants. These type of queries or details sought go, in my judgment, beyond what is sought by the Applicants in the application notice which relates to the documents. In my judgment, there is a risk that an application pursuant to section 366 IA 86 turns into some sort of running request by office holders for further information which is then in some way sought to be encapsulated in a court order despite not being set out in the application notice. The application notice seeks an order that the Rs provide the time records of all work undertaken. It does not seek any supporting documentation. In any event, in reply, Mr Dashi states he has provided the documents that he has, being the spreadsheet. For this reason as well as the reasons already set out above in relation to the earlier headings, in my judgment, the Applicants have not made out a reasonable requirement for an order being made seeking documents which a sworn statement has stated do not exist.

(f) [(viii) application notice]documents (including emails) between the Respondents and any third parties in relation to the Bankrupt, including (but not limited to) the law firms Candey, Keidan Harrison and Raydens

20. The Applicants submit that only one email has been produced as between the Rs and Candey and that Mr Dashi has failed to produce the response to this email and any emails which precede this email. There are also no emails between the Rs and Raydens or KH. In reply, Mr Dashi produces a further bundle of documentation which is exhibited to his first witness statement and then avers that the Applicants will already have the material. In my judgment, that reply does not state that there are no further emails relating to communications between Candey, Raydens, KH and the Rs, including emails of other documentation. For solicitors to receive such payments, checks would have had to be carried out. Mr Dashi has not dealt with anything relating to this category other than relying on pages 1-9 in the exhibit. Those documents do not relate to communications between the Rs and the firms of solicitors but relate to the payment to Rs of £50,000. In my judgment, it is no defence to assert,

as Mr Dashi does, that the Applicants have the relevant documents. The Applicants have in this case, established a reasonable requirement. There are concerns raised by the Applicants relating to the payment of a modest but relatively significant sums to solicitors in circumstances where the Rs assert the total received from the Bankrupt was £50,000 and the payments were made at a time when the bankruptcy order had been made. I have also considered the concerns relating to funding the Bankrupt despite the terms of the freezing order. I cannot see that the production of documentation under this heading creates a heavy burden upon the Rs as opposed to the reasonable requirement of the Applicants to ensure that the payments made effectively were the subject of checks, as well as understand the actual terms of the advances to the Bankrupt at a time when he was bankrupt and subject to a freezing order. I will make the order under this heading.

(g) [(ix) application notice] The account number and sort code of any direct debits or other payments made on behalf of the Bankrupt, an explanation as to what these payments were for and any documents explaining the terms of the payments

21. This relates to the total sum of £26,800 which Mr Dashi confirms was paid by the Rs to two different law firms as payments towards legal fees of the Bankrupt. It is to an extent already covered by the previous heading. There is also a reference to the sum of £50,000 which was paid to R3 in relation to the work done by Rs for the Bankrupt.

22. At paragraphs 47 to 65 Mr Dashi provides an explanation (really only in paragraphs 54 and 65) relating to the payment by him in relation to the Bankrupt's legal fees to various solicitors. He asserts that he advanced the sum of £26,800 to the Bankrupt's Lawyers in the hope that they would be able to gain access to further funds from which the Rs would then be paid. No documentation has been produced relating to the terms upon which these 'advances' have been made at a time when the bankruptcy order had been made and a freezing order was in place. I bear in mind the passage from the judgment of Mr Justice Zacaroli. Mr Dashi refers to a report prepared but this does

not provide the details of the terms upon which the advances were made to the solicitors. At paragraph 96, Mr Dashi merely asserts that this has already been explained to the Applicants and that they will already have the material. This does not

say that Mr Dashi does not have the relevant documentation. Mr Cooper requires the documents as is clear from his statements because of the timing of the payments made (post bankruptcy) as well as the lack of details relating to the terms of the advances. Again, in my judgment it is not defence for the Rs to assert such documents are already in the hands of the Applicants. There is nothing before me to indicate that details relating to the terms of the advances have been disclosed or details about the source of the funds paid. I do not accept Mr Berragan's submission that the terms of the advances were connected to a future annulment of the bankruptcy. The evidence fails to support anything of that nature and the Applicants are entitled to documentation which shows the terms of the advances made. In my judgment, there is a reasonable requirement for the production of documents under this heading and I will make the order under this heading. Again the burden upon Mr Dashi does not appear to be a heavy one and certainly no submissions along those lines have been made before me.

23. In relation to the payment made to R3 of £50,000, details of that payment being in relation to the work done has been provided in the witness statements of Mr Dashi. The payments came from solicitors who had acted on behalf of the Bankrupt, namely Candey. From the evidence, details of the bank account of R3 has already been provided and this also appears in the Applicants' evidence in support of this application. The invoice for £50,000 has also been provided. The time sheets have been provided. In my judgment, on this particular part of this heading, there is no reasonable requirement to make any further order.

24. The other part of (ix) relates to the payments the Applicants aver were made by Mr Dashi on behalf of the Bankrupt in relation to the club, being to Oswald's or Winter Restaurants Ltd. Mr Dashi sets out in his evidence that he paid to become a member of the private members club. The Applicants raise questions relating to Mr Dashi's membership of the club and in particular raise the issue that Mr Dashi made payment of about £60,000 to the club. Details of those payments, made in two tranches, are set out in the bank statements provided by Mr Dashi which are in the evidence. I can see no reasonable requirement for further details of bank accounts as these have been identified.

25. In so far as this heading is pursued to be able to seek details of other payments not identified to date, Mr Dashi has set out in his witness statement that no further payments were received or made. Accordingly, in line with what I have already set out above, there is no reasonable requirement in relation to seeking bank details of other payments where the sworn statement states there were no other payments.

26. As to seeking any documentation relating to the acquisition of Mr Dashi of a membership, the exhibit to Mr Dashi's first witness statement contains the email exchanges with the Club which also includes emails sent on behalf of the Applicants. Those documents set out that the club had a discretion who to accept as a member and also who to allow as a plus one. The details relating to the payments are already in the hands of the Applicants. At paragraph 34 of his second witness statement, Mr Dashi states that there may well have been Whats App messages but since then he has changed phone twice and that he no longer has access to those messages. That is his sworn statement. In my judgment, nothing further falls under this part of the heading. As Mr Dashi asserts he no longer has the messages, there is no reasonable requirement for the production of documentation which is not in his possession custody or control.

No further order beyond what is set out above is granted under this heading.

(g) (x) copies of any invoices/receipts relating to transactions with or for or on behalf of the Bankrupt (including by an agent or nominee for the Bankrupt)

27. The Applicants do not point to any further transactions than the ones already disclosed and set out in Mr Dashi's witness statement. The statement made by Mr Cooper at paragraph 12.1.10 does not identify any transactions to which this heading relates. It refers to the absence of membership documentation which is not invoices or receipts. Ms Kennedy referred to the lacking documentation in relation to the payments made to the solicitors totalling £26,800. I have already made an order above under a different heading which dealt with this point. In the circumstances, any further order under this heading, appears unnecessary and seems to be duplicative of other headings.

28. There are two additional headings set out in Ms Kennedy's skeleton which do not form part of the application notice., which I set out below :-

- i. A copy of a note prepared by John Hughes which is referenced by Mr Dashi at paragraph 55 of his first witness statement. The Applicants sent two emails dated 15 and also 17 January 2024 seeking the document, but have not received a reply as at the date of the hearing. Mr Dashi states at paragraph 29 of his second witness statement that he does not have a copy of the note he referred to.
- ii. The attachment to the email sent on 26 November 2020 at 13.06 from the email address set out in the draft order which is one of a chain of emails which are exhibited to Mr Dashi's first witness statement and which the Applicants consider related to the work conducted by Rs for the Bankrupt. The Applicants chased for the attachment in the same emails and again received no reply. In his second witness statement, Mr Dashi states he has no further documentation, but the statement in this respect is not entirely clear. Mr Cooper's second witness statement seeks disclosure of a number of documents referred to in Mr Dashi's first witness statement, but only this one and (i) above are being pursued before me.

29. Neither of the two matters above are part of the application notice. Additionally from what I have set out above, Mr Dashi states that he does not have the documentation. I have no evidence that Mr Dashi's statement is such that I can go behind it. Accordingly, I will make no order in relation to these two matters. They really do not fall within the application notice and section 366 but are matters arising from reference to documents in a statement.

The application seeking an order to examine Mr Dashi

30. Despite what appears to have been reticence on the part of Mr Dashi to attend the interview with the Applicants and their solicitors, Mr Dashi did attend an interview. I accept some of his disclosure has been somewhat piecemeal in this case, but I also note that he has now provided two witness statements in these proceedings. The Applicants are not content with the replies provided by Mr Dashi. They also rely on what they see is Mr Dashi's failure to cooperate and provide documentation when asked as well as the excuses provided which I have referred to earlier in his

judgment. As I have set out above, Mr Cooper raises issues relating to how the documents were transferred on the hard drive, including whether any were on cloud storage or stored on the computer. Essentially the Applicants submit that the answers provided by Mr Dashi are such that an examination of him is the most appropriate way to assist the Applicants, “*in getting to the truth of his knowledge and activities for the former Bankrup*”. (Paragraph 13 of witness statement of Mr Cooper dated 29 January 2024)

31. Ms Kennedy submits in her skeleton and before me that the order seeking the attendance of Mr Dashi for examination is necessary in order to assist them to understand the documents provided and the extent of the Rs’ relationship with the Bankrupt. She submitted that the documents produced reveal a lack of clarity for example relating to the work carried out by Mr Dashi/R3 or the payments which have been made. I reject that submission. The documents provided are clear, alongside the content of the statements of Mr Dashi. The payments which have been made have been identified and explanations have been provided. This is not a case where the documents themselves lack clarity. The details provided in relation to the time spent is not as detailed as it could have been, but that in itself does not mean that an order for examination should be made.
32. I have ordered documents relating to the advances made to law firms to be produced. Questions may arise therefrom but that, in my judgment, is no reason to make an order for examination at this stage. As to the perceived lack of clarity relied upon by Ms Kennedy, Mr Dashi has explained in his statements the work he carried out. It may be that the Applicants do not like what is being said, but there is in my judgment, no reasonable requirement based on the documents or explanations provided being unclear. An order for examination is not made because, as Ms Kennedy appears to suggest, there is no unnecessary or unreasonable burden. The test as is set out above relates to the potential importance of the information to the office holders against the potential oppressiveness to the Rs of being required to provide the documentation or attend for the purposes of examination. There must be a reasonable requirement for the examination and that is not made out, in my judgment, based on their being some need to understand or even the explanations provided to date.

33. Mr Cooper's statement set out above about 'getting to the truth' appears to be relying on a need to examine Mr Dashi because Mr Cooper believes he is not telling the truth.

Mr Dashi's position is that no order should be made against him. I note that Mr Dashi has not been asked to attend a further interview to respond to any questions arising from the content of the two witness statements he has sworn and/or any new documents produced. In those circumstances, I will not make an order for his examination. Mr

Cooper's statement that he needs to get to the truth is based on his view that Mr Dashi is not telling the truth in his witness statements. In my judgment, no evidence has been produced which allow me to hold that the statements made by Mr Dashi are untrue. I do not consider that the Applicants have made out a reasonable requirement on the grounds relied upon before me that there is some need to understand the documents which have been produced. The factors I have set out under the various headings are equally applicable here. Mr Berragan opposed an order but did not assert that the Rs believe they no longer have to cooperate with the Applicants. In so far as further questions, such as those raised by Mr Cooper in relation to the particulars of the transfer of documents on the hard drive, these can be dealt with outside of there being a need for a court order for examination. In any event, as I have set out above, the grounds for this application related to the documents which were being sought and the need to clarify them. Issues relating to how all the documents were transferred on the hard drive is not part of the application notice. It remains always open to the Applicants as office holders, to seek a new order in so far as Mr Dashi fails to cooperate in the future, including failing to attend a further interview.