



Neutral Citation Number: [2024] 3340 EWHC (Ch)

Case No: CR-2024-001814

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**INSOLVENCY AND COMPANIES LIST**

7 Rolls Building  
Fetter Lane, London,  
EC4A 1NL

Date: 20 December 2024

**Before:**

**THE HONOURABLE MR JUSTICE THOMPSELL**

**IN THE MATTER OF:**  
**FARFETCH LIMITED (IN LIQUIDATION)**  
**AND THE CROSS-BORDER INSOLVENCY REGULATIONS 2006**

**Mr Ben Valentin K.C.** (instructed by **Pallas Partners LLP**) for the **Applicants**  
**Mr Matthew Abraham and Ms Annabelle Wang** (instructed by **Latham & Watkins**) for the  
**Respondents**

Hearing date: 3 December 2024  
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**Approved Judgment**

This judgment was handed down remotely at 10.30am on 20 December 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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**Mr Justice Thompsell:****1. Introduction**

1. This judgment relates to three application notices dated 30 September 2024. The Applicants, who are acting in their official position as the Joint Official Liquidators (“**JOLs**”) of Farfetch Limited, are seeking relief pursuant to Article 21 of the UNCITRAL Model Law on Cross-Border Insolvency (as set out in Schedule 1 to the Cross-Border Insolvency Regulations 2006) (the “**Model Law**”). The applications are made against three individuals (the “**Respondents**”), each of whom were members of the Company’s senior management, or at least the senior management of companies within the same group (the “**Group**”).
2. The Respondents are:
  - i) Mr José Manuel Ferreira Neves. He is a former director of the Company and the former Group Chief Executive Officer of the Farfetch Group.
  - ii) Ms Stephanie Nadine Phair. In common with the parties, for convenience, I will continue to refer to her by her maiden name, whilst acknowledging that this has changed following her marriage. She is a former Group President of the Group and was in that post at the time of the Company’s liquidation.
  - iii) Mr Elliot Gilbert Jordan. He is the former Group Chief Financial Officer of the Farfetch Group.
3. The JOLs seek orders that each Respondent: (1) attends an interview with the JOLs and their solicitors to be examined orally in relation to the Company’s affairs on specified issues; and (2) produces any documents within specified categories concerning the Company’s affairs which are in his/her possession or control.
4. The JOLs say they are seeking these orders because, in summary:
  - i) they are concerned that the Company may have been seriously mis-managed by members of the Company’s senior management (including the Respondents) prior to the Company’s insolvency;
  - ii) they are required (in accordance with their duties under Cayman law) to investigate the opaque circumstances and causes of the Company’s insolvency;
  - iii) over the course of several months, the Respondents have failed to respond to the JOLs’ reasonable requests for documents and information on a voluntary basis;
  - iv) the documents and information sought are likely to be critical to the JOLs’ investigations and it is essential that they are provided without further delay; and
  - v) the orders sought are therefore necessary to compel the Respondents to provide the documents and information sought.
5. The Respondents have resisted this order for reasons given below.

Approved Judgment**2. Background**

6. According to the Third Affidavit of Mr Kennedy, one of the two JOLs, the background to this application is as follows.
7. The Company is a Cayman-incorporated company which, until 30 January 2024, acted as the ultimate holding company for the Group, a global fashion enterprise with substantial operations in the United Kingdom.
8. The Company also acted as a financing vehicle for the Group. Within this role the Company issued two series of Notes (together the “**Notes**”): (a) US\$400m of 3.75% Convertible Senior Notes due 2027 (the “**2027 Notes**”) issued under an indenture dated 30 April 2020 and (b) US\$650m of 0% Convertible Senior Notes due 2030 issued under an indenture dated 17 November 2020. The proceeds of the Notes were on-lent by the Company to its indirect subsidiary (at the time), Farfetch UK Limited (“**FF UK**”), pursuant to: (a) a US\$400m loan dated 30 April 2020 and repayable no later than 1 May 2027; and (b) a US\$650m loan dated 17 November 2020 and repayable no later than 15 November 2030 (together, the “**Intercompany Loans**”).
9. On 18 December 2023, it was announced that the Company and its subsidiaries had entered into a transaction support agreement (the “**TSA**”) in support of a sale of all of the assets of Farfetch Holdings plc (“**FF PLC**”), there followed a sale of substantially all the assets of the Company (the “**Coupang Sale**”), to a company then known as Athena Topco LP, and later renamed as Surpique LP (“**Surpique**”). Surpique is an entity owned by Coupang, Inc. FF PLC is now known as FF Realisations plc and remains a direct subsidiary of the Company.
10. According to the announced terms of the Coupang Sale, the Company had agreed to release the Intercompany Loans. The effect of this, as the Company recognised in public statements, was that the 2027 Notes and other debts of the Company would not be paid. As expected, the Company failed to pay amounts due under the 2027 Notes as and when they fell due.
11. On 31 January 2024, Coupang released a press announcement stating that the Coupang Sale had been completed, apparently on the terms set out in the TSA and 18 December 2023 announcement.
12. On 2 February 2024, Wilmington Trust, National Association (the “**Petitioner**”), in its capacity as trustee of the 2027 Notes, presented a petition for the winding-up of the Company (the “**Petition**”). The Company did not object to the Petition and agreed that it should be wound up on the basis that it was unable to pay its debts. At a hearing on 9 February 2024, the Grand Court of the Cayman Islands (the “**Cayman Court**”) ordered the appointment of the JOLs as the official liquidators of the Company with the power to act jointly and severally.
13. By an application notice dated 22 March 2024, the JOLs applied for recognition in the United Kingdom of the Company’s liquidation as a foreign main proceeding pursuant to the Model Law. This resulted in an order providing for such recognition taking effect on 20 May 2024.

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14. At the hearing on 20 May 2024, ICC Judge Prentis, as well as granting the recognition application, recognised that additional orders may be applied for at a later stage, including orders seeking information from the Company’s directors.
15. The JOLs state their principal concern as being that the Company may have been seriously mis-managed by members of the Company’s senior management (including Mr Neves, Ms Phair and Mr Jordan) prior to the Coupang Sale. They say they regard it as critical to their investigation into the Company’s insolvency that the documents and information they seek are obtained without further delay. More specifically, the JOLs are concerned about, and wish to investigate:
- i) the circumstances leading to the Coupang Sale, under which the Company has effectively written off over US\$1 billion of debt obligations owed to it by way of the Intercompany Loans and has effectively been deprived of its ownership and interests in the Farfetch business as a whole and which took place (they say) without any public explanation in circumstances where, as recently as August 2023, the Company and its directors had stated publicly that its business was in good financial health;
  - ii) why there was (or it is claimed that there was) such a rapid and drastic deterioration in the Company’s finances;
  - iii) what attempts were made to market the Farfetch business (or parts of the business) prior to entering into the TSA and/or following the 18 December 2023 announcement (referred to above); and
  - iv) some specific questions put to individual Respondents (and Mr Neves in particular) as set out further below.
16. The Respondents argue that the above account is at best a partial explanation and point out that the sale was in fact approved by administrators of FF PLC, after efforts had been made to find a more advantageous sale and that the JOLs are already in receipt of both a formal statement by the administrators explaining the reasons for and the circumstances behind the sale and a large body of documentation from the Company’s former solicitors, which the JOLs do not yet appear to have digested.

**3. Applicable Legal Principles**

17. The Applicants have referred me to the following as the applicable legal principles for me to consider.
18. Article 21 of the Model Law provides (as relevant) as follows:

“(1) Upon recognition of a foreign proceeding, whether main or non-main, where necessary to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including–

...

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(d) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities;

...

(g) granting any additional relief that may be available to a British insolvency officeholder under the law of Great Britain, including any relief provided under paragraph 43 of Schedule B1 to the Insolvency Act 1986.

..."

19. Article 22(1) provides (as relevant) as follows:

"In granting or denying granting or denying relief under article 19 or 21, ... the court must be satisfied that the interests of the creditors (including any secured creditors or parties to hire-purchase agreements) and other interested persons, including if appropriate the debtor, are adequately protected."

20. The Respondents in their survey of relevant legislation draw my attention also to Article 22(2):

(2) The court may subject relief granted under article 19 or 21 to conditions it considers appropriate, including the provision by the foreign representative of security or caution for the proper performance of his functions."

21. The Applicants draw my attention to the following principles, drawn from those set out in *Picard v Fim Advisors LLP* [2011] 1 BCLC 129, at [21]-[24]:

- i) Article 21(1)(d) has both a jurisdictional and a discretionary component. The court must be satisfied that the information or examination sought concerns the debtor's assets, affairs, rights, obligations or liabilities. If it is so satisfied, then it has a discretion to order the delivery of that information or the examination.
- ii) In exercising that discretion, it must have regard to all relevant circumstances and ensure that the interests of the creditors and other interested persons (including the person against whom the order is sought) are adequately protected.
- iii) In determining whether relief should be granted under Article 21, it is appropriate for the Court to have regard to the principles upon which the Court will exercise its powers under ss.236 and 366 of the Insolvency Act 1986.

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22. They referred me further to the observation of Newey J in *Re Chesterfield United Inc* [2012] BCC 786, at 791 (para 21):
- “... the precise scope of art.21(1)(d) is unimportant for present purposes. The liquidators can, via art.21(1)(g), rely on s.236 of the Insolvency Act.”
23. This then takes us to s.236 of the Insolvency Act which includes:
- “(2) The court may, on the application of the office-holder, summon to appear before it—(a) any officer of the company, (b) any person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or (c) any person whom the court thinks capable of giving information concerning the promotion, formation, business, dealings, affairs or property of the company.
- (3) The court may require any such person as is mentioned in subsection (2) (a) to (c) to submit [to the court] an account of his dealings with the company or to produce any books, papers or other records in his possession or under his control relating to the company or the matters mentioned in paragraph (c) of the subsection.”
24. The principles on which the court will exercise its powers under s.236 of the Insolvency Act were summarised by Ralph Gibson LJ in *Re British & Commonwealth Holdings Plc* [1992] Ch 342, at 370-371) as follows:
- i) The discretion conferred on the court by s.236(2) is an unfettered and general one.
  - ii) That discretion nevertheless involves balancing the requirements of the office-holder to obtain information against the possible oppression to the person from whom information is sought.
  - iii) The power conferred by the section is an extraordinary one whose existence is due to the fact that the office-holder usually comes as a stranger to the relevant events.
  - iv) The power can be used not merely to obtain general information but to discover facts and documents related to contemplated claims, whether proceedings have been started or not, against the proposed witness or someone connected with him.
  - v) The power is directed to enabling the court to help the office-holder to complete his function as effectively and with as much expedition as possible, and to discover with as little expense and as much ease as possible, the facts surrounding any possible claim.
  - vi) In determining what the reasonable requirements of the office-holder are, and whether an order should be made, great weight is to be given to the views of the

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office-holder, who will have detailed knowledge of what problems exist in relation to the affairs of the company and what information is required.

- vii) Matters relevant to the balancing exercise will include the following:
- a) the case against a former officer will usually be stronger, since he owes both a fiduciary duty to the company and a statutory duty to assist the office-holder;
  - b) if, by giving the information sought, a third party risks exposing himself to liability that involves an element of oppression;
  - c) an order for oral examination is more likely to be oppressive than an order for the production of documents; and
  - d) if someone is suspected of wrongdoing, and in particular fraud, it is oppressive to require him to prove the case against himself on oath before any proceedings are brought.

25. In *Re Chesterfield United Inc* [2012] BCC 786, the court considered the position with respect to an application for disclosure by a foreign office-holder. At [13], Newey J held that:

“A proper case in which to grant relief under s.236 is one where an office-holder “reasonably requires” to see documents to carry out his functions ... If a foreign representative reasonably required material with a view to establishing whether a company has a valuable cause of action, relief was likely to be “necessary to protect the assets of the debtor or the interests of the creditors” under Article 21(1)”. For a recent example where an order requiring disclosure of documents was made in a cross-border insolvency context, see: *Leite v Amicorp (UK) Ltd* [2021] BCC 383.

26. I do not think that the Respondents disagree with any of the analysis above. However, in their skeleton argument they have sought to emphasise the centrality of the balancing principle that should be at the heart of the exercise of the discretion. They referred me in particular to the speech of Lord Slynn in *British & Commonwealth Holdings* [1993] AC 426 at p.439:

“...it is plain that this is an extraordinary power and that the discretion must be exercised after a careful balancing of the factors involved - on the one hand the reasonable requirements of the administrator to carry out his task, on the other the need to avoid making an order which is wholly unreasonable, unnecessary or 'oppressive' to the person concerned.”

27. The Respondents also point out also that the balancing exercise set out by Lord Slynn in *British & Commonwealth* was examined in greater detail in the judgment of Ralph Gibson LJ in the Court of Appeal ([1992] Ch 342), and which was approved by the House of Lords at p.435, where he set out at p.343 (references omitted):

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“The matters which are relevant to the balancing of the requirements of the office holder against the risk of oppression to the person against whom the order is sought include the following.

(a) The case for making an order against an officer or former officer of the company will usually be stronger than it would be against a third party because officers owe a fiduciary duty to the company and are under a statutory duty (s. 235 of the 1986 Act) to assist the office-holder.

(b) If, by giving the information sought, a third party risks exposing himself to liability, that involves an element of oppression;

(c) An order for an oral examination is more likely to be oppressive than an order for the production of documents;

(d) If someone is suspected of wrongdoing, and in particular fraud, it is oppressive to require him to prove the case against himself on oath before any proceedings are brought.”

28. They refer me also to dicta of Lord Newey in *Re Chesterfield United Inc* [2012] B.C.C. 786 at [13] to the effect that the office-holder must show a “reasonable requirement” for the information sought under s.236 IA 1986, which overlaps with the requirement to establish that relief is “necessary to protect the assets of the debtor or interests of creditors”, as well as to dicta of Kitchin J in *Re XL Communications Group Plc (In Liquidation)* [2005] EWHC 2413 (Ch) at [35] to the effect that it is not sufficient to simply state that information is required for the office-holder to carry out its functions without any further explanation.
29. They put particular emphasis on the decision of Sir Nicolas Browne-Wilkinson VC in *Re Cloverbay Ltd (No.2)* [1991] Ch. 90 (“*Cloverbay*”) where the court dismissed an appeal against the lower court’s decision to refuse to order an oral examination of two employees of a bank who had dealt with the company’s accounts, notwithstanding the substantial weight given to the administrators’ views that the information sought by examination was required, on the basis, explained on page 104 that:
- “...to order pre-trial depositions from parties suspected of fraud or dishonest behaviour is very oppressive. The courts have always been astute to protect the interests of those accused of fraud in the civil courts and to require the plaintiff to prove his case against them. To use section 236 of the Insolvency Act 1986 so as to run contrary to that attitude is, in my judgment, oppressive.”
30. Sir Browne-Wilkinson considered in this case that answers to a written questionnaire would be “*wholly adequate*” to give the administrators the information that they needed.
31. A public oral examination was similarly refused in *Official Receiver v Deuss* [2021] B.C.C. 257, again partly on the grounds that an examination would be oppressive in the



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circumstances and that the witness involved had offered to provide an affidavit confirming his knowledge of the relevant matters and to provide responsive information (see at [71]-[75]). The court also observed (at [27]) that an examination should not be used to conduct a “fishing expedition”.

32. The Respondents also referred the court to *Re Atlantic Computers Plc (in administration)* [1998] B.C.C. 200 at 208B–209A to substantiate the proposition that s.236 cannot be used by the liquidator to obtain special advantages in actual or contemplated litigation against the defendant and to dicta of Brightman J in *Re Bletchley Boat Co. Ltd* [1974] 1 W.L.R. 630 at p.637 to the effect that:

“...the court ought to act with very great care indeed before it directs the private examination of a person who is already, or is about to be, the defendant to an action, so that the private examination might be said to be assisting the company to get a favourable judgment in the action which it has already started, or is about to start, and is not merely assisting the liquidator in a general way.”

#### **4. The Objections of Ms Phair and of Mr Jordan**

##### *Provision of written answers to questions*

33. Ms Phair and Mr Jordan say that they are willing to provide, and have prepared, substantive written responses to the JOLs’ written requests, which, they consider, substantially replicate the information sought in the Applications. They say that they are also willing to provide further written responses to any additional questions or reasonable follow-up questions should they be required.
34. They have hitherto however refused to share any answers without being given comfort that confidentiality restrictions be agreed or imposed by the court.
35. Their concerns here arise because they harbour suspicions that information provided to the JOLs will be shared with the loan note creditors. The concern is exacerbated by the fact that the lawyers appointed by the JOLs previously acted for an ad hoc group comprising some of the loan note creditors and by the fact that certain of the loan note creditors are represented on the Liquidation Committee and likely will receive information from the JOLs in that regard.
36. The JOLs argue that no confidentiality obligation is required as both they, and the members of the Liquidation Committee, are anyway bound by the law of the Cayman Islands to treat information received in a confidential matter and to use it only for the purposes of the liquidation.
37. The Respondents have proposed a form of wording in a draft order to deal with these matters, requiring the JOLs not to share any information provided with members of the Liquidation Committee unless those persons had first agreed to keep information confidential. This was objected to on behalf of the JOLs both on the grounds that it was unnecessary and also on the grounds that they could not agree to anything which might constrain their duties. They argue that they would be put into an impossible position if on the one hand they were obliged to consult on the matter with the Liquidation

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Committee and needed to disclose information for this purpose, but on the other hand they could not because a member of the committee had refused to provide a confidentiality undertaking.

38. During the hearing we discussed variations on the wording proposed by the Respondents. A variation emerged by which the order would recite the fact that the information was of a confidential nature and the duties to respect that confidentiality under the law of the Cayman Islands, and that the JOLs would not pass the information to a member of the Liquidation Committee without drawing the attention of that member to such obligations of confidentiality (and pointing out that these would persist even after that member had ceased to be a member of the Liquidation Committee) and had received an acknowledgement of that notice from the relevant member.
39. Whilst I could see the argument that it was not strictly necessary to deal with confidentiality within the order, since the confidentiality matter was already prescribed under the law of the Cayman Islands, I could also understand the Respondents' concerns and I could see a benefit, and no real difficulty, in having the members of the Liquidation Committee acknowledge these obligations. This seemed to me akin to the practice whereby persons in receipt of information protected by the Official Secrets Act are made to sign to confirm that they understand this, even though the Act will apply whether or not they acknowledge the point.
40. I determined that I would approve an order containing such provisions. I did not see this giving rise to any breach of any duty on the JOLs not to fetter their powers or discretions since this matter was being imposed by court order rather than being agreed and was, in effect, the price of receiving the information. As a practical matter, I could not see that this would prevent the due administration of the liquidation since there is obvious sense in withholding information from a member of the Liquidation Committee who deliberately fails to acknowledge the confidentiality relating to the information.

***Submission to questioning under oath***

41. Ms Phair and Mr Jordan also argue that the order for them to be made subject to oral examination should be refused, as it would be heavy-handed, unnecessary and oppressive, arguing that they were each employed by FFUK, not the Company, and have never been directors of the Company and as such, they have never owed directors duties to the Company.
42. I do not find this point persuasive of itself. Ms Phair held various positions in the management of the Group and in such capacities is likely to know a great deal about the matters about which the JOLs require information and also sometimes attended board meetings of the Company. Mr Jordan was Chief Financial Officer of the Company until he resigned and also periodically attended Board and committee meetings of the Company in that capacity.
43. However, I do agree with the point made by Mr Abraham on behalf of these Respondents that it is premature to order an oral hearing. There is at present no good reason (and none has been provided by the JOLs) as to why Ms Phair and Mr Jordan should be required to give information orally, rather than via written responses.

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44. If these written responses prove inadequate, even after a further round of clarification, then a time may come when the JOLs may be able to demonstrate that an oral examination is appropriate as the balance between allowing the JOLs to obtain information necessary for the proper conduct of the liquidation and avoiding oppression of these Respondents has shifted. However, at the present time, since the JOLs have not yet properly digested the documentary evidence that they have already obtained, still hope to obtain further documentary evidence from other source, and have not yet seen the written witness evidence from these Respondents, it is clear to me that there is no good reason to balance against the potential for oppression so as to justify ordering the Respondents to submit to oral examination.
45. Particularly in circumstances where the JOLs have indicated that they have suspicions of mismanagement, it would be most unfair to put these Respondents to oral examination without being able to provide to them what documentary evidence the JOLs may be able to acquire. The JOLs plainly suspect Ms Phair and Mr Jordan of wrongdoing, and as we have noted above, cases like *Cloverbay* warn of the dangers of oppression in requiring a person suspected of wrongdoing to prove the case against him on oath, before proceedings have been brought.
46. Accordingly, I am refusing this element of the JOLs' application. Such refusal should not preclude any future application for oral examination should the circumstances change.

***Provision of documents***

47. The final aspect of the order being sought against these Respondents is for them to provide any documents that they are holding that may be relevant to the questions being asked by the liquidators.
48. Mr Jordan has stated within a sworn affidavit that he holds no such documents. There is no reason to disbelieve him on this, and it is therefore otiose to make any such order against him.
49. Ms Phair holds a mobile phone which gives her access to some information (although it is not clear whether this access may have been terminated) and which may itself hold some information. Ms Phair complains that it would be extremely difficult to interrogate this information on this platform. The JOLs suggest that the information held on the mobile phone could be imaged and then interrogated. I have expressed some strong doubts as to whether this would actually give access to relevant information as it seems to me more likely that this information, or the bulk of it would be stored on the cloud or an external server rather than on the mobile phone itself. I also consider that any interrogation of the information on the mobile phone would best be done after the JOLs have exhausted their other sources of information.
50. For the moment, I consider that the important thing is to hold the ring so that no information that is available to Ms Phair is lost. I will order, therefore, that the information on the mobile phone is imaged and that the image created of this information is held by Ms Phair's lawyers against the possibility that it may be required to be searched as a result of a further order.

Approved Judgment**4. The Objections of Mr Neves**

51. Mr Neves' principal objection to this order, is that he considers that he is outside the jurisdiction of the English court, and that it would be inappropriate for the court to use its powers in respect of someone who is now a resident in Brazil.
52. Some very late evidence was filed in the form of an official document suggesting that Mr Neves is now a resident of Brazil. The JOLs also produced for the court late evidence that Mr Neves had been duly served because the service was at an address used by a company of which he remained a director, and where he had given that address as his address as director.
53. There was a suggestion during the hearing that Mr Neves might (provided it is made clear that he is not thereby submitting himself to the English courts if the English courts do not already have jurisdiction) provide an affidavit confirming his residency arrangements.
54. There was really no time at the hearing to get to the bottom of this point to understand whether Mr Neves might, notwithstanding the evidence of his residency, still be considered to be resident in the United Kingdom for the relevant purposes or in any case susceptible to the jurisdiction of the court as he had been served at a valid address for service.
55. Accordingly, I determined that this element of the application should be adjourned.

**5. Conclusion**

56. The conclusions of this court were clearly flagged during the course of the hearing. Counsel for each of the parties agreed to draw up an order reflecting these conclusions. It was hoped on each side that the parties might also be able to reach a conclusion on how to deal with the question of Mr Neves' residence and susceptibility to the jurisdiction of the English courts.
57. It was agreed that costs would be dealt with at a further hearing.