



# CASE DIGEST

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## RE IAHP GROUP HOLDINGS LIMITED; BUCKNALL V RIZVI [2025] EWHC 2069 (Ch)

### KEY TAKEAWAYS:

1. In the circumstances of the case, Mellor J found that it was just and convenient to grant a worldwide freezing order of over £5 million and the proprietary injunction sought, reinforced with an order for provision of information.
2. To the extent that the injunction might cause damage to the Respondents, Mellor J was satisfied that there was adequate protection in a capped cross-undertaking of £200,000.

### ISSUE

In the context of the granting of a proprietary injunction, a worldwide freezing order and provisions for disclosure of information, consideration of whether a cross-undertaking in damages should be capped in the circumstances of the case.

### FACTUAL BACKGROUND

IAHP Group Holdings Limited ('the Company') was the holding company for a group of companies collectively known as the "RDCP Group". A winding up petition was presented against the Company and the Company was wound up. The Applicants were appointed as provisional liquidators and, subsequently, as full liquidators. The Respondents, husband and wife, were the only acting directors and shareholders at all material times bar one. On the date the winding up petition was presented, the Respondents caused the Company's name to be changed, files notices at Companies House purporting to terminate their appointments as directors with retroactive effect, and purported to appoint the nanny of their children as a director with retroactive effect.

### UNDERLYING CLAIM FOR MISFEASANCE

#### S.212 INSOLVENCY ACT 1986

Summary remedy against delinquent directors, liquidators, etc.

1) This section applies if in the course of the winding up of a company it appears that a person who -

(a) is or has been an officer of the company,

(b) has acted as a liquidator...or administrative receiver of the company, or

(c) not being a person falling within paragraph (a) or (b), is or has been concerned, or has taken part, in the promotion, formation or management of the company,

has **misapplied** or **retained**, or **become accountable for**, any money or other property of the company, or been **guilty** of any **misfeasance** or **breach of any fiduciary duty** in relation to the company.

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## APPLICABLE PRINCIPLES

### Unlawful Distributions

Liquidators' primary case that, when the Respondents' conduct is viewed as a whole, the long series of unlawful diversions of the Company's property to or for the Respondents' benefit/convenience ('the Diversions') were **ultra vires, unlawful** and therefore, **unratifiable**.

Lord Walker in *Progress Property v Moore* [2011] 1 WLR 1 (SC) at [28]

"If a controlling shareholder simply treats a company as his own property...his **state of mind** (and fellow directors) is **irrelevant**. It does not matter whether they were consciously in breach of duty, or just woefully ignorant of their duties. What they do is enough by itself to establish the unlawful character of the transaction."

### Directors Duties

Liquidators also relied on the **separate fiduciary obligation** which a director owes to cause the company to keep proper records of its transactions, and to provide an account of his own dealings with company property, of which he is being treated as a trustee (*Re Shahi Tandoori Restaurant Ltd* [2021] EWHC 337 (Ch); [2021] All ER (D) 31 (Mar) at [32])

Obligation of a director once payments have been identified for the director to demonstrate that such payments were **legitimate** (*Re Idessa (UK) Ltd* [2011] EWHC 804 (Ch); [2012] 1 BCLC 80 at [28]).

It is **not** open for a director to recreate history (i.e. the basis upon which they have historically received money from a company (*Re Bronia Buchanan Associates Ltd* [2021] EWHC 2740 (Ch); [2022] 1 BCLC 501 at [85] to [86])).

### The Alleged Diversions

Overall, it appeared to Mellor J to be strongly arguable that the Diversions pleaded in Particulars of Claim revealed a wide range of **random personal expenditure** and **round sum withdrawals**.

There was, therefore, no dispute as to the position of nearly all the alleged Diversions. The justification for them was that they have to be **set off** against payments into the Company made by Mr Rizvi, whose case was that they were all shareholder loans to the Company.

### The Position of the First Respondent

Counsel for the Liquidators focused particularly on six 'Category A' payments (the first five to Mr Rizvi and the final one titled Director Loans) totalling £3,895,124.24.

Mellor J explained that Mr Rizvi had a high digital profile and liked to portray himself as something of a **guru** when it comes to private investment and acquisition of businesses. His **acquisition of certain companies** lay behind the first five Category A payments.

It was submitted on Mr Rizvi's behalf, despite the Respondents not being given notice of the application, that he was lending substantial sums to the Company. Counsel for the Liquidators submitted that Mr Rizvi needed to **establish** the personal loan from him to the Company, without which he would have no set-off.

Counsel for the Liquidators suggested that the lengthy and complex explanations put forward on behalf of the Respondents, including the existence of an alleged strange arrangement with an Indian partnership, were largely **smoke and mirrors** designed to divert attention away from the Respondents, essentially, plundering the funds in the Company as their own to be deployed for their benefit and convenience, with **virtually no corporate governance**.

### Interim Relief Sought

Mellor J granted an Order containing a **proprietary injunction**, a **worldwide freezing order** and **provisions for the disclosure of information** against the Respondents as a result of finding that:

- the Liquidators plainly had a **good arguable case**;
  - there was a **real risk of unjustified dissipation**;
  - the **length of time** that had passed since the Liquidators were appointed **did not disentitle them** to the interim relief sought;
  - a **real risk of dissipation remained** even if the Respondents had already taken steps to attempt to put some assets beyond reach;
  - the Respondents had **assets** within and outside the jurisdiction; and
  - that granting interim relief was **just and convenient**.
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## CROSS-UNDERTAKING IN DAMAGES

Counsel for the Liquidator accepted that the starting point is that an unlimited undertaking in damages should be provided (JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev [2015] EWCA Civ 139 at [68] to [84]).

Newey J summarised the applicable principles in Hunt v Ubhi [2023] EWCA Civ 417; 2023 Bus LR 1827 at [29]:

- it may be appropriate to depart from the "default position" where the applicant has no personal interest in the litigation;
- the fact that the claimant is a liquidator of an insolvent company is a highly relevant factor;
- the mere fact that litigation is being brought by a liquidator of an insolvent company does not compel the conclusion that the cross-undertaking should be capped;
- the burden lies on the applicant who says he should not be required to give an unlimited cross-undertaking to demonstrate why;
- it can be relevant to consider whether one or more creditors could be expected to indemnify the applicant;
- the availability of insurance can be significant;
- a defendant need not show that the freezing order is likely to cause him a loss before a cross-undertaking of unlimited amount is required;
- whether a cross-undertaking should be of unlimited amount is a separate question from whether an applicant should fortify the cross-undertaking by the provision of security.

In light of those principles, Mellor J considered that a cap on the cross-undertaking of £200,000 would provide sufficient protection for the Respondents on the facts of the case.

Counsel for the Liquidators submitted that the nature and extent of any undertaking in damages required from an insolvency office-holder is intensely fact-sensitive.

Mellor J agreed that there is a "wide spectrum of circumstances".

Mellor J found that in this case there did not appear to have been any recognisable corporate governance of the Company as between directors.

In the absence of any funds and in circumstances where Investec have refused to fund, the Liquidators sought and obtained "cross-undertaking in damages insurance".

- This is an insurance product which ensures that liquidators have access to sums within the policy limit to satisfy any call upon them to provide cross-undertaking in damages.
- The CUDI insurance was capped in the sum of £200,000.

Mellor J outlined the Liquidators' position as having no skin in the game personally, having initiated the Application (and the underlying misfeasance proceedings) in the interests of the Company's creditors in pursuit of their duties and statutory functions as liquidators of the Company.

As such, the Liquidators submitted that it was appropriate to seek to limit the sums upon which the cross-undertaking in damages was based to the indemnity from the CUDI policy and any recoveries in the liquidation of the Company.

ALEXANDER'S PRACTICE ENCOMPASSES  
INSOLVENCY, ARBITRATION AND  
COMMERCIAL CHANCERY. THIS  
INCLUDES CONSIDERABLE CROSS-  
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