Neutral Citation Number: [2023] EWHC 907 (Ch)

Claim No: BL-2020-001416

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

Rolls Building
Fetter Lane
London, EC4A 1NL

24 April 2023

Before :

MRS JUSTICE BACON

- -

Between :

WWRT LIMITED

Claimant

- and -

(1) SERHIY TYSHCHENKO
(2) OLENA TYSHCHENKO

Defendants

- -
- -

Andrew Ayres KC and **James Mitchell** (instructed by **Rosling King LLP**) for the **Claimant**
The **Second Defendant** appeared in person

Hearing dates: 20–22 March 2023

- -

Approved Judgment

This judgment was handed down remotely at 10 a.m. on 24 April 2023 by circulation to the parties or their representatives by email and by release to the National Archives.

Mrs Justice Bacon:

Introduction

1. This is the adjourned hearing of an application by the claimant (**WWRT**) to debar the second defendant (**Mrs Tyshchenko**) from defending the claim, and striking out her defence. In the alternative, the claimant seeks an unless order requiring Mrs Tyshchenko to comply with certain orders, with the sanction of debarring and striking out her defence if she does not do so.

2. The application is brought on the basis of WWRT's contention that Mrs Tyshchenko has repeatedly breached the worldwide freezing order that was made against her (and her ex-husband, the first defendant **Mr Tyshchenko**) in September 2020 and continued in April 2021. WWRT's application is not, however, made against Mr Tyshchenko.

3. WWRT's application was filed on 18 February 2022 and was originally listed to be heard on 20 June 2022. At that hearing I expressed concerns about whether Mrs Tyshchenko – who then, as now, was acting in person – had had time to prepare for the hearing, not least given the war in Ukraine, and the need to relocate relatives from that country. Having heard submissions from both parties I adjourned the hearing to the first available date after 1 September 2022. I also strongly encouraged Mrs Tyshchenko to try to get legal representation for the adjourned hearing.

4. In the event, this hearing has not been able to come on until now, not least because of the intervening hearing on 20–21 December 2022 of four applications by Mr and Mrs Tyshchenko to strike out or stay the claim, or otherwise revoke the worldwide freezing order imposed on them. I gave judgment on 25 January 2023 dismissing all of those applications (the **January 2023 judgment**).

5. As at previous hearings, WWRT was represented by Mr Ayres KC and Mr Mitchell. Mrs Tyshchenko again appeared in person.

6. WWRT has repeatedly contended that Mrs Tyshchenko is a litigant in person by choice. I reject that submission. As I will discuss in more detail below, the evidence before me supports Mrs Tyshchenko's submission that she is financially dependent on her ex-husband (and his mother), and does not have any significant income of her own. It appears that at Mrs Tyshchenko's recent bankruptcy hearing, funds were made available for her to be represented by solicitors and counsel. She said, however, that this had not been extended to the present hearing, and I have not seen anything to cast doubt on the veracity of that statement. It is also inherently unlikely that Mrs Tyshchenko would choose to defend in person the present very serious application, if she did in fact have the means to obtain legal representation.

7. Having said that, it is fair to record that Mrs Tyshchenko is a qualified Ukrainian lawyer, and also has an English law degree and completed the LPC. While English is not her mother tongue, her command of the language is excellent. While she struggled to find document references in the hearing bundles, and her submissions were sometimes somewhat unclear, she addressed the key factual points in the case, and also made submissions on the case-law, in her oral submissions and skeleton arguments for the hearing.

8. By the end of the hearing, I had a clear understanding of Mrs Tyshchenko's position. For the reasons which I set out below, I consider her submissions to be substantially well-founded. My conclusion is that WWRT's application should be dismissed.

Factual and procedural background

9. The January 2023 judgment sets out the factual background to these proceedings, and the chronology of the freezing orders and the various hearings since those freezing orders were made. I will not repeat that here. For present purposes, the following summary of the material events suffices.

Initial worldwide freezing order and its continuation

10. The initial freezing order was made at a without notice hearing on 4 September 2020. The defendants were then served (in the jurisdiction) and the application to continue the freezing order came back before the court on 10–12 March 2021. In the meantime, there were three consent orders (in September 2020, February 2021 and March 2021) varying the terms of the freezing order. In particular, the February and March 2021 consent orders contained provisions enabling Mrs Tyshchenko to access a TSB account (the **First TSB account**) and make transfers to that account from a second TSB account (the **Second TSB account**) as well as from two Nationwide accounts (the **First** and **Second Nationwide accounts**). As part of those orders, however, Mrs Tyshchenko agreed to provide WWRT's solicitors Rosling King with bank statements for the TSB and Nationwide accounts on a weekly basis, along with explanations of the direct and indirect sources of money paid into those accounts.

11. Following the March 2021 hearing, for the reasons given in my judgment of 21 April 2021: [2021] EWHC 939 (Ch) (**the April 2021 judgment**), the freezing orders were continued and orders were made for the defendants to be cross-examined on their assets. The defendants were ordered (jointly) to pay WWRT's costs of the application to continue the freezing order, with a payment on account of £150,000.

12. The worldwide freezing order contained the following provisions, in particular:

    i) A prohibition on the defendants removing from England and Wales or in any way disposing of, dealing with or diminishing the value of any of their assets whether they are in or outside England and Wales, up to the value of £65 million.

    ii) A provision confirming that the above prohibition applied to all of the defendants' assets, whether or not in their own names, whether solely or jointly owned, and whether the defendants were interested in them legally, beneficially or otherwise. The defendants' assets were, for the purposes of the order, defined as including any asset which they had the power, directly or indirectly to dispose of or deal with as if it were their own, including where a third party holds or controls the asset in accordance with their direct or indirect instructions.

    iii) Provisions recording that the above prohibition included in particular the family home at Tanglewood Villa in Surrey, a French property in the village of Mougins near Cannes (the **Mougins property**), or the net sale money after payment of any mortgages if the properties were sold; the shares, stock, warrants or any other like interests in any of the corporate bodies set out in Schedule B to the order; and any

interest under any trust or similar entity. The companies listed in Schedule B included Golden Arrow Europe Limited (**Golden Arrow**), Factor Capital Limited (**Factor Capital**) and Factor Petroleum Limited (**Factor Petroleum**).

iv) Provisions continuing Mrs Tyshchenko's obligations to provide weekly bank statements for the First TSB account and the First and Second Nationwide accounts. The obligation to provide statements for the Second TSB account remained for the period covered by the March 2021 consent order (19 January 2021 to 14 March 2021) but was not continued thereafter.

v) A weekly spending allowance of £10,000 between the defendants for their ordinary living expenses, plus a reasonable sum on legal advice and representation, provided that before spending any money the defendants were to tell WWRT's legal representatives where the money was to come from.

Cross-examination on assets hearings

13. The cross-examination order provided for both defendants to be cross-examined on their assets on the first available date after 21 August 2021. The order also required the defendants to provide to Rosling King copies of the documents listed in the schedule to the order by 21 July 2021.

14. The schedule listed a total of 56 categories of documents, including company documents, accounts and bank statements for 12 different companies (including Golden Arrow, Factor Capital and Factor Petroleum); bank statements for the last three years for all bank accounts (whether in or outside Russia or Ukraine) in which either of the defendants had a direct or indirect interest, regardless of the amount held in each bank; documents showing the source of the defendants' funds during the six month period preceding the grant of the worldwide freezing order; and documents showing the sources of funds from which Mr Tyshchenko's mother, Motrona Tyshchenko (**Motrona**), is said to have supported the defendants and their family since the grant of that order.

15. Mrs Tyshchenko provided various documents by way of disclosure during July–September 2021, and was then cross-examined on her assets on 16–17 September 2021. During the hearing, she agreed to provide various further documents and information.

16. Mr Tyshchenko's cross-examination was initially listed to take place at the same hearing, but was repeatedly adjourned due to his failure to attend on the basis of purported reasons described in the January 2023 judgment. Eventually a bench warrant was issued for his arrest, and Mr Tyshchenko was arrested and brought before the court on 29 June 2022, with his cross-examination taking place over the next two days.

Debarring application

17. Meanwhile, contending that Mrs Tyshchenko was in such serious breach of her obligations under the freezing order and disclosure orders, the debarring application was issued by WWRT on 18 February 2022. WWRT's draft order was accompanied by a schedule of default with 42 points which WWRT said that Mrs Tyshchenko should comply with if the court was minded (in the alternative) to make an unless order.

18. The original June 2022 listing for the debarring application was adjourned for the reasons set out above. The adjournment order provided for WWRT to consider revising the schedule of default. The revised schedule was served on 5 July 2022.

Bankruptcy of Mrs Tyshchenko

19. On 31 May 2021 Mrs Tyshchenko petitioned for her bankruptcy, and was adjudged bankrupt on 1 June 2021. Her interest in Tanglewood Villa then vested in her trustees in bankruptcy upon their appointment. On 1 September 2021 she applied to annul the bankruptcy order on the basis that she had negotiated a bank loan to repay her debts. That application was dismissed on 26 May 2022.

20. On 27 February 2023, at a hearing where Mrs Tyshchenko was represented by solicitors and junior counsel, an order was made which among other things required Mrs Tyshchenko to give vacant possession of Tanglewood Villa by 31 July 2023. The order for vacant possession was stayed by order of this court dated 4 April 2023, pending Mrs Tyshchenko's appeal of the 27 February order.

Evidence for the hearing

21. For the purposes of this hearing, WWRT relies on four witness statements from Ms Hannah Sharp, a partner at Rosling King, dated February 2022, June 2022, August 2022 and March 2023. WWRT has also revised the schedule of default further since 5 July 2022. The version used at the hearing was the re-re-amended schedule of default, running to eight pages with multiple amendments marked up in different colours. I did not find this document particularly easy to follow.

22. Mrs Tyshchenko has put in a statement in opposition to the application dated May 2022, and a witness statement dated June 2022. In addition to the evidence set out in these documents, she has made further submissions as to the facts in two skeleton arguments for the hearing, and in her oral submissions. Not all of the factual points made in her submissions were fully canvassed in her evidence, which is perhaps unsurprising given that Mrs Tyshchenko was acting as a litigant in person. While Mr Ayres did say that some of Mrs Tyshchenko's submissions should be rejected as implausible and/or contrary to the other evidence before me, he did not submit that I should disregard any of her submissions simply on the grounds that they were not comprehensively addressed in her evidence. The right approach is, in my judgment, to take account of all of Mrs Tyshchenko's submissions, having regard to the extent to which those are supported by the evidence which she has served and the other evidence before me, as well as considering their inherent plausibility.

23. Neither Ms Sharp nor Mrs Tyshchenko were cross-examined at this hearing. Mr Ayres submitted, however, that I should have regard where relevant to Mrs Tyshchenko's evidence at her cross-examination on assets hearing in September 2021, and Mr Tyshchenko's evidence at his cross-examination on assets hearing in June 2022. Where appropriate I have referred to these in my assessment of the evidence, and references to the defendants' cross-examination evidence are therefore references to the September 2021 and June 2022 hearings.

Legal principles

24. The court's powers to make orders to control its own process and procedure, so as to ensure the effective conduct of litigation, are well-known. CPR r. 3.4(2) provides that the court may strike out a statement of case where it appears to the court that there has been a failure to comply with a rule, practice direction or court order. CPR r. 3.1(3) also provides a specific basis on which the court may make an unless order providing for a statement of case to be struck out; the order may also provide for the relevant party to be debarred from further participation in the proceedings in the event of non-compliance. The court also has the power to strike out a defence and debar a defendant from defending proceedings as part of its inherent jurisdiction to regulate its proceedings: *JSC BTA Bank v Ablyazov (No. 8)* [2012] EWCA Civ 1411, [2013] 1 WLR 1331, §168.

25. The powers to make orders of this nature are often exercised in cases where a defendant has defaulted in their obligations to provide disclosure under a freezing order. In practice, given the seriousness of the sanction of striking-out or debarring a defendant, in most cases it will be appropriate for the court to make an unless order rather than an immediate debarring order, an example being *Palmer v Tsai* [2017] EWHC 1860 (Ch), §§313–6.

26. An immediate debarring order (not preceded by an unless order) may, however, be appropriate in cases where the fairness of the trial would otherwise be put in jeopardy: *Al-Najjar v Majeed* [2022] EWHC 363 (Ch), §§6–7. In *Arrow Nominees v Blackledge* [2000] 2 BCLC 167, §54, Clarke LJ said that:

> "where a litigant's conduct puts the fairness of the trial in jeopardy, where it is such that any judgment in favour of the litigant would have to be regarded as unsafe, or where it amounts to such an abuse of the process of the court as to render further proceedings unsatisfactory and to prevent the court from doing justice, the court is entitled – indeed I would hold bound – to refuse to allow that litigant to take further part in the proceedings and (where appropriate) to determine the proceedings against him. The reason, as it seems to me, is that it is no part of the court's function to proceed to trial if to do so would give rise to a substantial risk of injustice."

27. In *Hayden v Charlton* [2010] EWHC 3144 (QB), a claim was struck out and judgment entered for the defendants, without a prior unless order, on the basis of numerous factors identified at §75:

> "First, … there has been a deliberate and wholesale non-compliance with the rules and orders of the court by the claimants, amounting to a total disregard of the court's orders. Second, the claimant's conduct of the litigation and their breaches of the case management directions of the court are contrary to the overriding objective, and have resulted in a serious delay to the progress of the actions. … As a result, the trial window has been lost … Third, there has been no proper explanation for these failures, which in my view, as a matter of reality, remain unexplained. Fourth … the most recent failures follow a pre-existing pattern for the claimants' conduct of the litigation of delay, defaults and disobedience to court orders. Fifth, the claimants made no attempt to respond to these applications, save for the last

> minute appearance by Mr Starte … Sixth, the significant prejudicial and oppressive effect that the claimants' conduct of the litigation has had on the defendants, who as litigants in person have been placed in the position where it is they who have had to struggle to progress the actions brought against them."

28. Having considered these authorities, in *Al-Najjar* an immediate debarring order was made by Leech J in circumstances where he was satisfied that the defendants' failure to plead to the core allegations in the case, failure to give disclosure and failure to serve substantive witness statements addressing the issues made it "almost impossible for the Claimants to understand the case which they have to meet at trial" (§12). The defendants were, he considered, "responsible for a deliberate obfuscation of the disclosure process and of the material upon which the Claimants needed to rely in order to prove their case and to establish the scope of the Defendants' accounting obligations" (§14).

29. While in *Al-Najjar* the essential basis for the debarring order was that the defendants' conduct had caused a serious risk to the court's ability to conduct a fair trial, a debarring order may also be made where the conduct of the defendant creates a substantial risk of injustice, by concealing assets so as to preventing a successful claimant from enforcing the judgment following trial: *Ablyazov (No. 8)*, §183.

30. The *Ablayazov* case was, however, an example on somewhat extreme facts, where Mr Ablyazov had already been held to be in contempt of court due to his failure to disclose his assets, and had been sentenced to 22 months in prison. Mr Ablyazov absconded, and Teare J then ordered that his defence would be struck out unless he surrendered to the jurisdiction, filed an affidavit disclosing his worldwide assets and fully complied with the disclosure order (those orders being upheld by the Court of Appeal). Even then, it is notable that the judge did not make an immediate order debarring Mr Ablyazov from defending the case, but gave him one last opportunity to rectify his defaults.

31. While each case will turn on its own facts, it will be an unusual case where an immediate debarring order is made without a prior unless order, where what is said is not that a fair trial is likely to be jeopardised, but rather that the defaults give rise to the risk of a successful claimant not being able to enforce the judgment following the trial. As the courts have emphasised, the court's power to strike out a statement of case is one of the most powerful weapons in the court's case management armoury, and should only be deployed as a sanction of last resort. It is likely only to be imposed for a serious and deliberate breach, and the court must consider very carefully whether it is appropriate, proportionate and justified in all the circumstances of the case: *Marcan Shipping v Kefalas* [2007] EWCA Civ 463, [2007] 1 WLR 1864, §36; *Walsham Chalet Park v Tallington Lakes* [2014] EWCA Civ 1607, §44; *Michael Wilson v Sinclair* [2015] EWCA Civ 774, §34; *Byers v Samba* [2020] EWHC 853 (Ch), §120.

32. When assessing the overall proportionality and justification for a debarring order, the court will have regard to all of the circumstances of the case. Particular factors to consider will include the seriousness of the breach, the extent to which it is excusable and the consequences of the breach: *Byers v Samba*, §123.

33. As to the way in which the court will assess the evidence of breach of its orders by the party alleged to be in default, in some cases (such as *Ablyazov*) the application for an

unless order or immediate debarring order will have been preceded by contempt proceedings. A finding of contempt, however, is not a necessary precondition to the making of such an order; and where no such finding has been made, it will be necessary for the court to establish whether its orders have in fact been breached, on the basis of the ordinary civil standard of proof: *Logicrose v Southend United Football Club*, The Times, 5 March 1988.

34. The starting point in that regard is that the potentially draconian nature of a freezing order is such that it must be strictly construed: *JSC BTA Bank v Ablyazov (No. 10)* [2015] UKSC 64, [2015] 1 WLR 4754, §19. Where there is a dispute as to whether there has in fact been a breach of the order, Mr Ayres submitted that the court's approach should be as set out in *Coyne v DRC Distribution* [2008] EWCA Civ 488, §58:

> "it is well-settled practice that if a court finds itself faced with conflicting statements on affidavit evidence, it is usually in no position to resolve them, and to make findings as to the disputed facts, without first having the benefit of the cross-examination of the witness. Nor will it ordinarily attempt to do so. The basic principle is that, until there has been such cross-examination, it is ordinarily not possible for the court to disbelieve the word of the witness in his affidavit and it will not do so. This is not an inflexible principle: it may in certain circumstances be open to the court to reject an untested piece of evidence on the basis that it is manifestly incredible, either because it is inherently so or because it is shown to be so by other facts that are admitted or by reliable documents."

35. A similar approach must, in my judgment, apply to matters of fact going to the question of whether any breach of a freezing order is deliberate and/or excusable. The court must in that regard carefully consider the evidence before it, and may conclude that the explanations put forward by the defaulting party are implausible or inherently unreliable. If, however, the defaulting party puts forward an explanation for their conduct which is plausible, in the context of the other material before the court, I do not consider that it would be proper for the court to reject that summarily at a hearing at which that party has not been cross-examined.

36. As a final point, Mr Ayres properly accepted that a debarring order for failing to pay costs ordered in the course of proceedings might be contrary to Article 6 ECHR where there is evidence showing that the party in default lacks the means to pay. He noted, however, that a submission of impecuniosity in such circumstances should be supported by detailed and cogent evidence: *Michael Wilson v Sinclair* [2017] EWHC 2424 (Comm), §28.

Alleged breaches of the freezing orders and cross-examination order

37. WWRT relies on the following alleged breaches by Mrs Tyshchenko of the freezing orders and the cross-examination order:

    i) Dealing with interests in companies, and disclosure of company information.

    ii) Temporary removal of assets from the jurisdiction.

iii) Failures to provide information as to her source of funds, and Motrona's assets.

iv) Incomplete disclosure of WhatsApp messages.

v) Breaches of the spending limits in the freezing orders.

vi) Failures to disclose certain bank statements.

vii) The failure to pay the interim costs order of £150,000 following the April 2021 judgment.

viii) Other miscellaneous breaches.

38. In addition, WWRT relies on various points which it says go to my discretion as to whether to make an immediate debarring order, or in the alternative an unless order with the sanction of debarring.

39. WWRT's overarching submission is not that the breaches create a risk of jeopardising the fairness of the trial, but that this is an *Ablyazov*-type case where the breaches create a substantial risk that it will not be able to enforce a judgment following the trial, if it is ultimately successful.

40. I will address the alleged breaches in turn.

(1) Dealing with interests in companies, and disclosure of company information

41. WWRT says that Mrs Tyshchenko has dealt with or disposed of her interests in three companies in breach of the freezing order: the Gymnastics LLP, Golden Arrow and Factor Capital.

42. It also complains that, contrary to the schedule to the cross-examination order, Mrs Tyshchenko has failed to provide sufficient documents evidencing her earnings from the Gymnastics LLP, and has not provided documents evidencing her interests in Golden Arrow, Navigator Plus, Factor Capital, Factor Petroleum, Wind Solar Invest Limited (**Wind Solar**), and the French company Sci du Grand Chene, which owned the Mougins property. In addition, WWRT says that Mrs Tyshchenko has failed to provide documents evidencing the amount for which the Mougins property was sold, and the amount (if any) paid to the defendants from the proceeds of sale.

Gymnastics LLP

43. When the freezing order was made, Mrs Tyshchenko had a 40% interest in a gymnastics teaching partnership, then known as the Maria Stolbova Rhythmic Gymnastics Academy LLP. (It is now known as RGA Champions LLP; for convenience I will refer to it as the **Gymnastics LLP**.) The remaining 60% interest was held by an unconnected third party, Maria Sirota.

44. It is not disputed that during the course of August 2021, Mrs Tyshchenko's interest was transferred to her eldest daughter Mariia Tyshchenko (**Mariia**). A letter from Mariia dated 18 June 2022 stated that she was holding that share of the LLP "in the interests of my mother". Around the same time, it appears that Ms Sirota left the partnership. At Mrs Tyshchenko's cross-examination on assets, she said that Ms Sirota's interest had

temporarily been transferred to Mariia. On or around 11 July 2022, that interest (i.e. 60% of the partnership) was transferred to Motrona.

45. WWRT objects both to the transfer of Mrs Tyshchenko's interest to Mariia, and to the transfer of 60% of the partnership to Motrona. The schedule of default states that Mrs Tyshchenko should take all reasonable steps to arrange for the transfer back to herself of "her interest" in the Gymnastics LLP.

46. As to the transfer of Mrs Tyshchenko's 40% interest to Mariia, Mrs Tyshchenko said that following her bankruptcy she was notified by Companies House that as an undischarged bankrupt she was no longer permitted to be a partner in the business. She therefore transferred her legal interest in the LLP to Mariia, while retaining the beneficial interest as set out in Mariia's letter of June 2022.

47. Mr Ayres is right to say that Mrs Tyshchenko should have agreed to vary the freezing order in order to permit that transfer. I do not think, however, that this is a serious breach of the order. Mrs Tyshchenko has given a plausible and coherent explanation for the transfer of her interest, and she does not claim to have disposed of her beneficial interest in the LLP. I certainly do not think that this in any way creates a risk to WWRT's enforcement of a judgment post-trial.

48. Regarding the transfer of Ms Sirota's interest to Mariia and then to Motrona, that would only be caught by the freezing order if it was established that that 60% share of the LLP was in fact beneficially owned by Mrs Tyshchenko once it was transferred from Ms Sirota to Mariia. WWRT asserts that this was indeed the case, saying that Motrona, Mariia and other family members are "merely ciphers or at best nominees for D2 (or Ds)". That is a broad and vague assertion that is denied by Mrs Tyshchenko; I discuss below her position regarding Motrona, in particular. I cannot possibly determine this in WWRT's favour in this application without specific evidence from the relevant individuals and further cross-examination of witnesses.

49. Mr Ayres complained that Mrs Tyshchenko has not disclosed any partnership minutes or resolutions regarding the transfer of the interests in the partnership. Mrs Tyshchenko's position, as I understand it, is that there are no such documents. In any event, there is no mention of this on WWRT's schedule of default.

50. There is, moreover, no evidence before me suggesting that any dealings with the interests in the Gymnastics LLP are likely to have any conceivable effect on WWRT's ability to enforce a judgment post-trial, for the simple reason that there is no evidence of any value in the partnership. Mrs Tyshchenko's submission (not contradicted by any evidence from WWRT) was that, if anything, the LLP is loss-making, and the 60% share was transferred to Motrona in order for Motrona to be able to help to finance the business.

51. As regards Mrs Tyshchenko's income from the Gymnastics LLP, WWRT objects that Mrs Tyshchenko has not provided supporting documentation showing her income, such as tax returns, complete bank statements for the LLP, management accounts, and other books and records of the payments to the LLP partners.

52. This clearly does not justify the sanctions sought by WWRT. Mrs Tyshchenko said in her June 2022 witness statement that parents of students at the Gymnastics LLP pay her

in cash or to the LLP's bank account; that there is no pattern or established frequency of payments from them; that the income drawn by her directly from the LLP is reflected on the bank statements; and that she does not have any further documentation regarding her income from the LLP. Those explanations are entirely plausible. There is, moreover, no evidence that Mrs Tyshchenko earns any significant income from this business. I do not, therefore, consider that any lack of further documentation could in any way jeopardise WWRT's ability to enforce a judgment post-trial.

Golden Arrow and Navigator Plus

53. Golden Arrow was one of the companies listed in Schedule B to the freezing order. The defendants were, accordingly, prohibited by the order from dealing with or disposing of their interests in the company. The schedule to the cross-examination order also required information to be provided regarding the defendants' interests in this company, and the related company Navigator Plus UK Limited (**Navigator Plus**).

54. The shareholder interests in Golden Arrow have changed over time. It is not disputed that for at least some time periods, the defendants held interests in the company. By the time of the freezing order, the Companies House information recorded the shareholders as being Fergi Limited (50%) and Navigator Plus (50%). Mr Tyshchenko has given various different answers as to the beneficial owners of Fergi; but the director and person with significant control of Navigator Plus since around 20 May 2020 appears to have been Mrs Tyshchenko's brother, Sergiy Baranov. On 4 March 2022 Navigator Plus transferred its shareholding in Golden Arrow to Fergi. Golden Arrow was then dissolved on 20 December 2022.

55. Mr Ayres contended that since Mrs Tyshchenko has confirmed that she was the person who, historically, dealt with Companies House filings for Golden Arrow and Navigator, she must have been instrumental in the transfer of the shares in Golden Arrow from Navigator Plus to Fergi, in breach of the freezing order. He also contended that Mr Baranov was holding his interest in Navigator Plus as nominee for the defendants. What therefore happened, Mr Ayres said, is that the defendants divested themselves of their interest in Golden Arrow to Fergi, on terms that are unknown, with the whereabouts of the proceeds of sale also unknown.

56. Mrs Tyshchenko's response (set out partly in her June 2022 witness statement, and explained further in her written and oral submissions, as well as addressed in her cross-examination on assets) was that she was a shareholder of Golden Arrow for only six months during 2017, and was even then only a nominal shareholder, holding her interest on trust for Motrona. She had never been the beneficial owner of shares in the company, but rather acted as the agent and nominee of Motrona. Mr Baranov was also, she said, playing a temporary role in Navigator Plus as the agent of Motrona. Mrs Tyshchenko said that by the time of the freezing order neither of the defendants were shareholders in Golden Arrow, and any subsequent transfers of the shareholdings were therefore not dealing with or disposal of the defendants' interests in the company. She also said that she had not in any event had any dealings with the company after the freezing order was granted, and had not procured the transfer of shares from Navigator Plus to Fergi.

57. Starting with the question of the beneficial ownership of Navigator Plus (and therefore, through Navigator Plus, a shareholding in Golden Arrow), I cannot assume that Mr

Baranov was the nominee for either of the defendants simply on the basis of the claimant's assertion. Mrs Tyshchenko denies that this is the case; and denied it to be the case in her cross-examination on assets. I do not consider that the evidence before me establishes the contrary. I do not, therefore, accept WWRT's submission that the transfer of shares from Navigator Plus to Fergi is to be regarded as a disposal of the defendants' assets.

58. As to Mrs Tyshchenko's involvement in the transfer, Mr Ayres said that since Golden Arrow was specifically named in the freezing order, any dealings with the shareholdings in the company were a breach of the freezing order even if Mrs Tyshchenko was merely carrying out the administration of the Companies House filings in an agency capacity. I accept that it is arguable that the prohibition in the freezing order on dealings with shareholdings extends to shareholdings and similar interests in the companies listed in Schedule B, even if those interests appear to vest in third parties.

59. It is not, however, necessary for me to reach a definitive conclusion on the matter, because even if that construction of the order is correct, it would not justify the relief sought by WWRT, in light of Mrs Tyshchenko's submissions that she did not deal with the share transfer or indeed any aspect of the company administration following the freezing order. It is fair to say that Mrs Tyshchenko's explanations in this regard were not always entirely clear or consistent. In particular, in her cross-examination on assets she accepted that she had, historically, dealt with the Companies House filings for Golden Arrow and Navigator Plus. But the transfer of shares from Navigator Plus to Fergi took place after her cross-examination, and it is in my judgment plausible that her involvement ceased after the freezing order. Accordingly I do not consider that it is open to me to reject Mrs Tyshchenko's submissions without further cross-examination of Mrs Tyshchenko on this point. WWRT has not, therefore, established that there was any breach of the freezing order in this regard.

60. Finally, as to Mrs Tyshchenko's failure to provide company documentation regarding Golden Arrow and Navigator Plus, her position is that she has none, given her limited dealings with both companies. She also said that these are or were (as far as she was aware) dormant companies that have never traded and never had any bank accounts. Again, I cannot reject this submission summarily for the purposes of this hearing. WWRT has therefore not established a breach of the disclosure orders in this regard.

Factor Capital

61. Factor Capital is also a company listed in Schedule B to the freezing order. There is in this case no dispute that it was a company owned by Mrs Tyshchenko. WWRT complains that in March 2022 Mrs Tyshchenko applied for the company to be struck off the Companies House register. Following objections from Rosling King, Mrs Tyshchenko withdrew that application. Subsequently, however, WWRT says that she "allowed" the company to be dissolved by compulsory strike-off on 18 October 2022. It also objects to the lack of company documentation provided by Mrs Tyshchenko.

62. Mrs Tyshchenko's explanation (again set out in her cross examination, June 2022 witness statement, and submissions for the hearing) was that this is and has always been a dormant company with no bank account and no assets. The listed share capital was £100, which was never paid. She said that she had applied to remove the company from

the register to reduce the burden of dealing with its administration, and because she could not afford the fees to maintain the company on the Companies House register. She later realised her "honest mistake" (presumably after Rosling King's objection) and reinstated the company. She had, however subsequently allowed the company to become dissolved, because her trustees in bankruptcy were not interested in the company and it was pointless to maintain it on the register.

63. Given Mrs Tyshchenko's explanations, which are at least plausible, I cannot find that the lack of company documentation is a breach of her disclosure obligations. In so far as allowing this company to become dissolved (without, apparently, taking any active steps to do so) is a breach of the freezing order, it is in my judgment a purely technical breach. WWRT has, moreover, not identified any way in which the dissolution of a dormant company with no assets and no bank account might have any effect on its ability to enforce a judgment post trial.

Factor Petroleum

64. Prior to the commencement of these proceedings, it appears that Mrs Tyshchenko had an interest in Factor Petroleum, since she was the registered owner of 100 shares in the company from February 2017. Her shareholding was transferred to Mariia in August 2020. No documents have been provided in relation to that share transfer, and WWRT says that there must be documentation available to Mrs Tyshchenko (including potentially messages such as WhatsApp messages) which has not been disclosed.

65. Mrs Tyshchenko's response (again set out in her cross examination, June 2022 witness statement, and submissions for the hearing) was that she was the nominal shareholder of the company, which was supposed to be assigned to Mariia when she turned 18 years old. According to Mrs Tyshchenko, the company has never traded and has no bank accounts. She said that all administration for the company is now done in Ukraine, and that she does not have in her possession any documents relating to the company. Again, given that these explanations are at least plausible, I cannot find that the lack of company documentation is a breach of Mrs Tyshchenko's disclosure obligations.

Wind Solar

66. No documents have been disclosed in relation to this company. Mrs Tyshchenko said (in her cross examination, June 2022 witness statement, and submissions for the hearing) that this company was owned by Mariia and Motrona, and was a dormant company which never traded and did not have any bank accounts. The company was incorporated in July 2020 and was dissolved in December 2021. Mrs Tyshchenko said that she had no documents relating to the company. Again, given that these explanations are at least plausible, I cannot find that the lack of company documentation is a breach of Mrs Tyshchenko's disclosure obligations.

The Mougins property and Sci du Grand Chene

67. It appears that Mrs Tyshchenko was in the past a shareholder of Sci du Grand Chene, although her accounts of the precise extent of her shareholding have been inconsistent. She obtained (and provided to WWRT) a letter dated 19 July 2021 from the French lawyers who acted for Sci du Grand Chene, which stated that the company was struck off the records of the French Companies House on 22 June 2017. The letter also stated

that the Mougins property owned by the company was repossessed by the lender on 24 March 2016, with a "bidding price" of €3,100,000.

68. No further information was provided regarding the extent to which any proceeds from the sale of the property were paid to the defendants. During Mrs Tyshchenko's cross-examination on assets she was asked about this, and she agreed to allow WWRT to ask the French lawyers for further documents on her behalf. After the hearing, however, in a written response sent in October 2021 to questions put by WWRT, Mrs Tyshchenko said that Mr Tyshchenko and Motrona had forbidden her from providing a letter consenting to the French lawyers providing documents held by them relating to Sci du Grand Chene and the Mougins property. Her June 2022 witness statement similarly commented that she was not in a position to authorise the provision of further information without Motrona's consent. At the hearing she said that this was because the purchase of the property had been arranged by Mr Tyshchenko and his mother, and that she was not the client of the French lawyers. She said, however, that she was not blocking any further avenues of enquiry that WWRT wished to pursue to obtain further information in this regard.

69. WWRT has not, in my judgment, established a breach by Mrs Tyshchenko of the cross-examination order. She has obtained information regarding the company and the property, which she has provided to WWRT, and she has explained why she is not able to provide further information. If WWRT really wished to obtain further information as to the ownership of Sci du Grand Chene and the proceeds of sale of the Mougins property, Rosling King could have asked Mr Tyshchenko to provide that information, or at least to give his consent to the French lawyers providing such information as they hold. Mr Ayres confirmed on instructions that no such request had been made of Mr Tyshchenko.

70. It is in these circumstances wholly inappropriate that this issue should have formed part of WWRT's application for a debarring order. As the case-law establishes, debarring is a sanction of last resort. In relation to this issue, however, WWRT have not even attempted to pursue an obvious alternative source of inquiry.

(2) Temporary removal of assets from the jurisdiction

71. Mrs Tyshchenko admits that during the summer of 2021 her Range Rover was taken to France in breach of the freezing order. She says that Mr Tyshchenko drove the car to France without informing her of his intention to do so; that she was not able to return the car immediately to England; and that she was unclear of her obligations at the time given that by then the Range Rover vested in her trustees in bankruptcy. The Range Rover was, in any event, returned to England at some point before June 2022, and is now in the hands of Mrs Tyshchenko's trustees in bankruptcy.

72. There is no doubt that the removal of the car from England was a breach of the freezing order. It is, however, a historic breach, which has now been rectified. This cannot, therefore, jeopardise WWRT's ability to enforce a judgment post-trial and does not justify the sanction of debarring.

73. WWRT also objects to the fact that Mrs Tyshchenko's Audi car (said to be worth around £17,000) and her Rolex watch (valued at around £2000) were also temporarily taken abroad. Mrs Tyshchenko pointed out that the value of both of these was far below

the threshold of £30,000 required for declaration of assets under the freezing order. She did not, therefore, consider these to be breaches of the order. As she pointed out, if the freezing order prevented her from travelling abroad with her watch, it is difficult to see where the line should be drawn as regards personal effects (such as clothes).

74. I consider that there is some force in Mrs Tyshchenko's submissions. I do not, however, have to reach a definitive conclusion on whether the freezing order should be interpreted as preventing the removal of these items, because in any event these cannot conceivably (contrary to WWRT's submissions) be regarded as serious breaches of the freezing order. Moreover, given the value of these items, and the fact that they are now both back in the jurisdiction (and the Rolex watch is in the hands of the trustees in bankruptcy), there cannot be any risk to WWRT's ability to enforce its judgment post-trial.

(3) The financial support provided by Motrona

75. It is common ground that the living expenses of Mrs Tyshchenko and her children are paid for by funds emanating from Ukraine, which Mrs Tyshchenko says are beneficially owned by Motrona, but controlled by Mr Tyshchenko on his mother's behalf. That extends to payment of the school fees of the defendants' children, as well as paying for the holidays of the Tyshchenko family, alongside other everyday living expenses. Mrs Tyshchenko has consistently said that funds are transferred to her in a variety of ways which are not always straightforward (given the difficulties in transferring money out of Ukraine in the current circumstances). These include bringing cash out of Ukraine, and transferring funds into Ukrainian accounts which are then withdrawn as cash in England, to be deposited into UK bank accounts.

76. WWRT makes essentially two complaints about this state of affairs. Its first complaint is that Mrs Tyshchenko is spending money without disclosing its source. WWRT refers, for example, to payments for holidays and medical fees which were made without disclosing the source of those funds.

77. I do not accept that criticism. Mrs Tyshchenko has informed WWRT that her main source of funds is money taken from funds in Ukraine which are beneficially owned by Motrona. She also derives some income from the Gymnastics LLP, although (as noted above) she says that this business is in fact loss-making overall. WWRT has been provided with WhatsApp messages which confirm that funds are routinely requested by Mrs Tyshchenko and then transferred to her from Ukraine. In Mrs Tyshchenko's June 2022 witness statement, she provided further details of the way in which this typically works, explaining that she has a WhatsApp chat with Mr Tyshchenko, Motrona's personal assistant and an accountant, in which she asks for funds which are then either sent to one of her accounts (or accounts held by others from which she can draw funds), or are paid directly to third parties. The bank statements which have been provided in relation to the Gymnastics LLP show, in addition, drawings by Mrs Tyshchenko from that business. It appears that funds have also sometimes been transferred to Mrs Tyshchenko via the accounts of the Gymnastics LLP.

78. The requirement in the freezing order to disclose the source of funds before making payments cannot sensibly require Mrs Tyshchenko to communicate with WWRT each and every time a payment is made, in circumstances where her position as to her sources of funds remains unchanged. That is particularly the case given the generous

spending limits permitted by the freezing order. At both the initial without notice hearing on 4 September 2020, and the March 2021 hearing, WWRT's position was that it was content to permit the defendants (between them) a spending allowance of £10,000 per week, which is a very large amount by any standards. The order therefore explicitly envisages that the defendants will be spending substantial amounts of money on a weekly basis, whether for school fees or other living expenses. WWRT cannot have expected that all such payments should be preceded by notifications to WWRT; nor would that be a reasonable requirement to impose in any event.

79. The only workable interpretation of the order, as it is currently drafted, is that the defendants are required to inform WWRT of the source of their funds for their living expenses; and that if that source of funds changes at any point, disclosure of that is required. On the basis of the materials before me, it appears that Mrs Tyshchenko has complied with that requirement.

80. WWRT's second objection is that the funds in Ukraine from which Mrs Tyshchenko and her children are being supported, and which are said to be in the beneficial ownership of Motrona, are in reality funds that are controlled by and beneficially owned by the defendants, so should fall within the scope of the freezing order (including, for example, the requirement to provide bank statements for the relevant accounts in the name of Motrona).

81. As I have already noted, Mrs Tyshchenko does not deny that Mr Tyshchenko effectively controls the Ukrainian assets. She is adamant, however, that she has no control over those funds, and certainly does not have any beneficial interest in them. She set out that position in both her June 2022 witness statement and her submissions at the hearing.

82. Some of the evidence on this is inconsistent. An example is Mrs Tyshchenko's assertion in her June 2022 witness statement that Motrona supports her grandchildren but not Mrs Tyshchenko herself. That is clearly not the case; indeed in Mr Tyshchenko's cross-examination on assets he said that he uses money from Motrona's accounts, or cash from the family businesses owned by Motrona, to provide Mrs Tyshchenko with around £20,000 every month. Mrs Tyshchenko's overarching contention that she does not control the Ukrainian funds is, however, plausible (and consistent with Mr Tyshchenko's evidence in his cross-examination as to his financial support of Mrs Tyshchenko), and I cannot reject it for the purposes of this hearing. I do not, therefore, accept that Mrs Tyshchenko has breached the freezing order by failing to provide further information regarding the funds held by Motrona.

(4) WhatsApp messages

83. The schedule to the cross-examination order required the defendants to provide supporting documents showing how they supported themselves financially during the six months preceding the grant of the freezing order, and documents showing the sources of funds from which Motrona is said to have supported the defendants since the grant of that order.

84. To comply with this Mrs Tyshchenko disclosed messages from various WhatsApp groups in which (as discussed above) she requested and discussed being sent money from Ukraine to various bank accounts or cards. WWRT complains that the WhatsApp

messages are incomplete, and that no documents have been provided from Viber messaging, another messaging platform referred to by Mrs Tyshchenko in her cross-examination on assets.

85. I do not think that WWRT has approached this part of the order in the right way. The cross-examination order, and the schedule to that order, did not order the sort of disclosure that might be ordered for trial. The defendants were not ordered to disclose every possible document in their possession which might shed light on their sources of income. Rather, the purpose of the order was to enable the claimant to understand the defendants' assets and sources of income, with a view to seeking to ensure the effective enforcement of a judgment at trial in due course.

86. Mrs Tyshchenko has provided a consistent account of her source of income: as set out above, save for her limited gymnastics coaching income, she has said that she is supported by funds emanating from Ukraine, which she says are beneficially owned by Motrona but controlled by Mr Tyshchenko on Motrona's behalf. She has described the way in which those funds are transferred to her. What she says she cannot do is to provide details of the underlying Ukrainian funds from which Motrona is supporting her, because she says that she does not control and does not have an interest in those funds.

87. Those explanations are, in my judgment, plausible. They are supported by the WhatsApp messages which have been provided to WWRT. It is not, in my judgment, necessary for Mrs Tyshchenko to go further and provide every possible document in her hands which might have a further bearing on this issue. If further disclosure in this regard is sought from Mrs Tyshchenko by WWRT, the proper course is for a further disclosure application to be made.

(5) Spending limits in the freezing orders

88. WWRT objects that Mrs Tyshchenko has breached the £10,000 per week spending limits in the freezing orders. Initially, two breaches were put forward. At the hearing, however, it was evident from inspection of the relevant bank statements that the first alleged breach arose because of successive withdrawals of cash from Ukrainian accounts. Mrs Tyshchenko explained, however, that this was one of the main ways in which she transferred money from Ukraine to her UK bank accounts (as I have noted above). In light of that explanation, Mr Ayres did not pursue this as a breach of the freezing order.

89. He did, however, maintain that Mrs Tyshchenko breached the freezing order by spending £11,579.22 during the week from 7 September to 13 September 2020. Mrs Tyshchenko did not deny that her spending in that week exceeded the weekly limit set in the freezing order. That period, however, included a payment of £6000 for school fees. I also note that the period in question covered the week immediately following service of the freezing order on the defendants, during which the defendants may not have efficiently organised their finances to avoid breaching the weekly spending limits. In those circumstances the breach is, in my judgment, trivial, and certainly does not come close to warranting the sanctions sought by WWRT.

(6) Bank statements

90. WWRT relies on two categories of breaches in relation to the disclosure of bank statements. The first is the weekly disclosure of bank statements for the First and Second Nationwide account and the First and Second TSB accounts pursuant to the freezing orders; and breaches of the related obligations to provide an explanation of the sources of funds paid into those accounts. The second is the disclosure of statements for all other accounts in which Mrs Tyshchenko had a direct or indirect interest, for the three year period up to 21 July 2021.

Weekly bank statements

91. In relation to the First Nationwide account, bank statements for the period up to 14 July 2021 have been provided by Mrs Tyshchenko, but no subsequent statements have been provided. No statements at all have been provided for the Second Nationwide account. For the First TSB account, statements have been provided for the period from 22 December 2020 to 7 July 2022, but no subsequent statements have been provided. For the Second TSB account, in relation to which the effect of the freezing orders was to require statements covering the period from 16 January to 21 March 2021 only, no statements at all have been provided.

92. In her June 2022 witness statement Mrs Tyshchenko said that the four accounts were no longer being used, with the two TSB accounts and one of the Nationwide accounts having a zero balance, and the remaining Nationwide account having a balance of around £1700. She said that she had suggested to WWRT that she should not send further statements for the accounts, since they did not contain any further information as to her financial affairs. WWRT had not replied, she said, so she assumed that the matter was agreed. She also referred to difficulties in getting access to her accounts following the freezing orders and her bankruptcy. She accepted that she could have applied to the court for a variation of the freezing orders, but said that she had not had the time or financial resources to do so.

93. At the adjournment hearing I emphasised that Mrs Tyshchenko should provide the bank statements required by the orders even if there were zero balances on the relevant accounts. Following that hearing, as I have explained above, WWRT's schedule of default was amended, and a revised schedule of default was served on 5 July 2022. Mrs Tyshchenko said, at the hearing, that she had provided numerous bank statements to Rosling King in attempted compliance with her obligations, and had asked Rosling King whether her disclosure was complete, but said that Rosling King did not respond to identify any statements that were missing.

94. Mrs Tyshchenko is correct to say that she asked Rosling King to identify missing documents. On 24 July 2022 Mrs Tyshchenko sent Rosling King an email enclosing a large number of pdf documents, saying "I am enclosing bank statements. Please let me know urgently if anything is missing." Rosling King responded on 26 July 2022 with a long list of bank statements which appeared to be missing. Mrs Tyshchenko replied on the same day, saying that she did not have any further TSB or Nationwide accounts apart from those for which statements had been provided. She also gave further explanations in relation to Rosling King's other requests. It is not apparent, from that response, that Mrs Tyshchenko appreciated that there were any statements outstanding for the TSB and Nationwide accounts.

95. Although Rosling King continued to remind Mrs Tyshchenko, in their correspondence thereafter, of her obligations under the various orders including her obligations to provide bank statements, they did not ask Mrs Tyshchenko in that correspondence specifically for any further TSB or Nationwide account statements. While Ms Sharp's witness statements of August 2022 and March 2023 maintained that Mrs Tyshchenko continued to be in breach of her obligations in these and numerous other requests, Mrs Tyshchenko has said that she was overwhelmed by the volume of documentation which WWRT has served on her.

96. I have some sympathy with that contention. Ms Sharp's witness statements (of which four are relevant for this application) are long, very detailed, and accompanied by (in total) over 3000 pages of exhibits. In addition, multiple versions of the schedule of default have been served, and I have already commented that this document was not very easy to follow. Alongside that, the correspondence bundles for the purposes of this hearing run to a total of over 600 pages. It is not surprising that a litigant in person in Mrs Tyshchenko's position has struggled to get a clear picture of what is outstanding by way of disclosure.

97. In those circumstances, while it is apparent that Mrs Tyshchenko's disclosure was in breach of her obligations under the freezing orders, even after the adjournment hearing, I do not accept that her breaches were deliberate. On the contrary, it appears that Mrs Tyshchenko attempted to comply with her obligations by sending numerous bank statements to WWRT in the months following service of the July 2022 version of the revised schedule of default, and providing explanations of the instances in which further statements were not forthcoming. There is, moreover, no evidence of any significant sums of money in any of these accounts. I do not, therefore, consider that these breaches justify the sanctions sought by WWRT.

Other bank accounts

98. WWRT refers to a miscellany of further bank accounts for which incomplete statements have been provided. These comprise: (i) accounts in Motrona's name; (ii) an account or accounts in Mariia's name; (iii) accounts of the Gymnastics LLP; and (iv) other accounts in the UK or Ukraine in which Mrs Tyshchenko is said to have an interest. WWRT contends that the failure to provide disclosure in these respects was a breach of the schedule to the cross-examination order.

99. Motrona's accounts: At her cross-examination on assets hearing, Mrs Tyshchenko had in her possession a card for an Oschadbank account in the name of Motrona. She has also provided online banking screenshots for a further account in the name of Motrona. The schedule of default seeks disclosure of bank statements for "any Oschadbank … account in the name of Motrona Tyshchenko" on the basis that Motrona is said to be a nominee of the defendants. Mrs Tyshchenko's position was – as set out above – that Motrona is not her nominee. She said that she does not have a beneficial interest in Motrona's funds, and cannot access the bank statements for Motrona's accounts. The online banking screenshots which she did provide for an account in the name of Motrona were, she said, sent to her by one of Motrona's assistants in Ukraine.

100. As above, I am not in a position to resolve on the evidence before me, and without further cross-examination, the questions of whether Mrs Tyshchenko has an interest in Motrona's funds, and whether she can access Motrona's bank statements. Nor do I

consider Mrs Tyshchenko's explanation in this regard to be implausible. I do not, therefore, consider that WWRT has established that the failure to provide bank statements for Motrona's accounts is a breach of the freezing order.

101. Mariia's accounts: There is no dispute that Mrs Tyshchenko has used Ukrainian bank cards in the name of Mariia from time to time, in order to receive funds from Ukraine. Her explanation was that these were cards provided to Mariia by Motrona, and were attached to accounts funded by Motrona. In relation to these cards, as with Motrona's accounts, there is therefore a disputed question of fact for which Mrs Tyshchenko's account is not in my view implausible, and which I cannot therefore resolve without further cross-examination. I therefore do not consider it to be established that the failure to provide bank statements for the account or accounts linked to these cards is a breach of the freezing order.

102. Gymnastics LLP accounts: It appears from the material before me that some, albeit incomplete, bank statements have been provided for the accounts held by the Gymnastics LLP. There is, moreover, no dispute that Mrs Tyshchenko has a direct or indirect interest in the funds held in those accounts. The failure to provide complete bank statements is, therefore, a breach of the cross-examination order. I do not, however, consider that this justifies the sanctions sought by WWRT in light of Mrs Tyshchenko's partial compliance, and the fact that (as above) Rosling King do not appear to have told Mrs Tyshchenko, in correspondence, that there was still missing information following the materials which she sent to them in July 2022.

103. Accounts in Mrs Tyshchenko's name: WWRT refers to a variety of further bank accounts in Mrs Tyshchenko's name which are either known to have existed or whose existence is inferred from other documents, and in relation to which WWRT says that incomplete disclosure of bank statements has been provided. These consist of accounts with Privat Bank, OTP Bank, Oschadbank, Barclays Bank and a possible further Nationwide account. In addition, WWRT complains that statements for two Lloyds bank accounts and PayPal statements were provided late.

104. Some bank statements for these accounts were provided by Mrs Tyshchenko on 24 July 2022. But it is apparent that she does not maintain a detailed and comprehensive record of her bank accounts, particularly those in Ukraine. Her submission was that she was "generally confused" about what accounts existed, and that her use of multiple Ukrainian accounts was simply as a means of transferring cash to the UK. Those are plausible explanations, particularly in light of the other evidential material before me.

105. More generally, my comments above regarding the provision of information regarding Mrs Tyshchenko's TSB and Nationwide accounts apply equally to her other UK accounts: it appears from Mrs Tyshchenko's letter of 26 July 2022 that, save for her Lloyds accounts, she thought that she had by then provided everything that was required. As for her Ukrainian accounts, her 26 July letter said that she was still checking these, and she then provided further statements for some of these accounts over the next two months. On 13 September 2022 she emailed Rosling King enclosing "Answers from Pivdennyi and Privat bank", and then said "No more accounts. I believe that makes it full information in relation to my Ukrainian accounts provided". Rosling King did not write back to disagree with that statement. Again, while Ms Sharp's witness statements maintained breaches of disclosure obligations in relation to both UK

and Ukrainian bank accounts, for the reasons set out above it appears that Mrs Tyshchenko struggled to understand what was outstanding.

106. In those circumstances, while it appears that there remain gaps in the information provided by Mrs Tyshchenko, I do not consider that Mrs Tyshchenko was or is deliberately withholding information from WWRT, and her incomplete disclosure is not in my judgment sufficient to warrant the sanctions sought by WWRT.

(7) Interim costs order

107. WWRT objects that Mrs Tyshchenko failed to pay the interim costs order of £150,000 following the April 2021 judgment. It is accepted that Mrs Tyshchenko is now subject to a bankruptcy order and that this costs order is a bankruptcy debt. WWRT accepts, in those circumstances, that an unless order in respect of the payment of that costs order would run counter to the policy of the Insolvency Act 1986. WWRT says, nevertheless, that the court should regard Mrs Tyshchenko's failure to pay the costs order as a further serious breach which justifies a debarring order, on the basis that she chose tactically to enter bankruptcy despite being able to obtain funding to settle the costs order.

108. I reject that submission. Mrs Tyshchenko explained, at the hearing, that she had petitioned for her bankruptcy because she had no funds to pay the costs order, and was not being provided with funds from Ukraine to meet the order. It appears that once she and Mr Tyshchenko realised that Tanglewood Villa would fall into the hands of the trustees in bankruptcy, and would be sold to pay the debt, Motrona and/or Mr Tyshchenko then agreed to provide financial assistance of some sort. That was the basis on which she applied to annul the bankruptcy order – unsuccessfully, as it turned out. But the fact that, belatedly, some financial support appears to have been promised to Mrs Tyshchenko does not mean that her bankruptcy was tactical or that she was able, at an earlier stage, to obtain funds to pay the debt if she wished.

109. Nor do I have any evidence before me suggesting that Mrs Tyshchenko would have been able, on her own, to raise funds to pay the costs order. Save for the very limited income which she receives from the Gymnastics LLP, the evidence before me indicates that she is entirely dependent on funds provided by Motrona/Mr Tyshchenko. She does not appear to have any independent source of finance. If funds were not forthcoming from the Ukrainian assets controlled by Mr Tyshchenko, therefore, she had no means to pay the costs order. I do not, therefore consider that Mrs Tyshchenko should be debarred from defending the proceedings on this basis.

(8) Other miscellaneous breaches

110. WWRT complains that Mrs Tyshchenko has failed to provide documents in respect of her pension, has only partially complied with a requirement to provide evidence of her income (if any) from providing legal services to clients in Ukraine, and has not disclosed a bank account for a limited company associated with her gymnastics business. Suffice it to say that none of these matters comes close to justifying the sanctions sought by WWRT.

111. Finally, there is a complaint that Mrs Tyshchenko breached an undertaking not to discuss Mr Tyshchenko's cross-examination on assets with him while he remained in purdah. Specifically, when asked during the morning of the second day of Mr

Tyshchenko's cross-examination whether he had spoken about the case to Mrs Tyshchenko overnight, he candidly disclosed that Mrs Tyshchenko had reminded him to refer to a further property which he had omitted to mention on the first day; and that she had also told him to give clearer answers to his questions.

112. The requirement for a witness not to discuss their evidence with others during the period of cross-examination is an important obligation, of which witnesses are routinely reminded. There is no doubt that this obligation was breached by the defendants. The breach described above does not, however, remotely justify the sanctions sought by WWRT.

General comments

113. In light of my conclusions set out above, WWRT's submissions on discretion go nowhere: there is in my judgment no basis to make either a debarring order, or an unless order with the sanction of debarring for non-compliance. It is, however, appropriate to make some general comments about the thrust of WWRT's submissions in this application, as highlighted in their submissions on discretion.

114. WWRT's overarching submission is that the purpose of all of Mrs Tyshchenko's breaches of the freezing order and disclosure orders was "the retention of full use and control of her assets outside the ambit of the WFO whilst at the same time maintaining a life and lifestyle untrammelled by the possibility of effective enforcement post trial and by the effects of the restrictions on funding for ordinary living expenses".

115. I reject that submission. Notwithstanding the extensive disclosure which has been provided by Mrs Tyshchenko, there is no evidence of substantial assets of any kind that are owned or controlled by her, other than the family house, Tanglewood Villa. As to the complaints about her lifestyle, WWRT permitted very large weekly spending limits from the outset, and has never sought to vary those limits. In those circumstances, WWRT cannot now complain that Mrs Tyshchenko spends sums commensurate with those limits.

116. Most importantly, as I have set out above, nothing in any of the material before me suggests that any of the various breaches identified by WWRT might in any way hinder effective enforcement of a trial judgment in WWRT's favour. That is particularly the case for historic breaches such as the temporary removal of assets from the jurisdiction, the late provision of bank statements and other documents, and disclosure requirements regarding assets such as the Mougins property which was sold long before these proceedings commenced. But it is also the case for all of the other breaches. There is no evidence suggesting that Mrs Tyshchenko is concealing any substantial assets owned or controlled by her, against which judgment could be enforced.

117. Mr Ayres has sought to paint a picture of wholesale disregard for the orders made. I do not accept that. Quite the contrary, I consider that Mrs Tyshchenko has sought to provide considerable disclosure of her assets, and has in general sought to comply with the other orders made. She has been hampered by the volume of information sought and the fact that (for the reasons which she has explained) she has tended to use multiple bank accounts and cards in order to get funds out of Ukraine. She has also, on occasions, been unclear as to the extent of her obligations under the orders. Those difficulties have been exacerbated by the volume of correspondence and witness

evidence served by WWRT, which Mrs Tyshchenko has said she found overwhelming (a submission which she also made at the hearing in June 2022, and which was the main reason for my decision to adjourn the hearing then).

118. That is not to say that Mrs Tyshchenko's status as a litigant in person should justify a lower standard of compliance. As Lord Sumption explained in *Barton v Wright Hassle* [2018] UKSC 12, [2018] 1 WLR 1119, §18, the fact that a party is unrepresented is not in itself a reason not to enforce rules of court against them. But it may well be a relevant factor to take into account in assessing whether a breach of court orders is deliberate or excusable, for the purpose of considering a sanction such as an unless order or debarring order. In the present case, in my judgment it undoubtedly is relevant to take this into account, given the volume and complexity of the material before me.

119. I am afraid to say that I consider that WWRT's approach to Mrs Tyshchenko's disclosure has been unnecessarily heavy-handed. The purpose of a freezing order is to ensure protection of assets; it is not appropriate for it to be used as a means of oppression. In my judgment WWRT's approach to the enforcement of Mrs Tyshchenko's obligations under the freezing order and the cross-examination order has been both oppressive and disproportionate. It is, in my judgment, necessary to consider whether the freezing and cross-examination orders should now be varied, both to ensure clarity as to those aspects of the orders whose interpretation may be ambiguous, and to ensure that any further obligations imposed by those orders are proportionate in the context of what has been provided and what is reasonably necessary to protect the interests of WWRT up to trial and thereafter.

Conclusion

120. WWRT's application for a debarring order or, in the alternative, an unless order is dismissed. I will invite further submissions on the revision of the freezing and cross-examination orders for the purposes set out above.