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NEUTRAL CITATION NUMBER: [2026] CIGC (FSD) 24

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 13 OF 2024 (DDJ)

IN THE MATTER OF THE COMPANIES ACT (2025 REVISION)
AND IN THE MATTER OF FANG HOLDINGS LIMITED

(1) KOA CAPITAL L.P.

First Petitioner

(2) 507 SUMMIT LLC

Second Petitioner

-and-

(1) TIANQUAN MO

First Respondent

(2) FANG HOLDINGS LIMITED

Second Respondent

Before: The Hon. Justice David Doyle

Appearances: Andrew Scott KC instructed by Liam Faulkner and Lisa Yun of Campbells LLP for the Petitioners

Richard Morgan KC instructed by Neil McLarnon of Travers Thorp Alberga for the Second Respondent

No appearance for or on behalf of the First Respondent

Heard: 5 March 2026

Additional written Submissions filed: 6, 10 and 11 March 2026

Draft Judgment circulated: 10 April 2026

Judgment delivered: 16 April 2026

Determination of an application for an injunction and disclosure order pending the determination of a winding up petition – applicability or otherwise of the American Cyanamid principles

JUDGMENT

The Injunction Summons

1. By Summons dated 31 December 2025 (the "Injunction Summons") Koa Capital LP and 507 Summit LLC (the "Petitioners") sought various orders including an order that unless the Company (which is not defined in the Injunction Summons but presumably is intended to refer to Fang Holdings Limited) obtains a prospective validation order from the court pursuant to section 99 of the Companies Act (as revised) (the "Companies Act") the Company be restrained from taking any act which results in:

   "(a) A disposition of the Company's property as part of any transaction with or for the benefit of Mr Tianquan Mo and any person or entity acting on his behalf including without limitation Mr Jiangong Dai and any person or entity acting on his behalf (each a "Related Party", and together the "Related Parties");

   (b) A disposition of the Company's property as part of any transaction that is outside of the Company's ordinary course of business;

   (c) A distribution by way of dividend or otherwise of the Company's assets to any Related Party;

(d) Any transfer of the legal or beneficial interest in shares in the Company to or from any Related Party;

(e) Any alteration in the status of the Company's members, including (without limitation) any sale of shares held by any Related Party; and

(f) Any settlement, compromise, release or waiver of any claims which the Company has or may have against: (i) the Related Parties; (ii) any current or former director, officer, agent or member of the Company; and (iii) any person or entity in relation to any claim concerning a transfer or disposition of the Company's assets, a transfer of shares in the Company or any alteration in the status of the Company's members."

(Paragraph 1 of the Injunction Summons)

2. Paragraph 2 of the Injunction Summons sought wide ranging disclosure orders as follows:

"Within thirty (30) days of the date of the Order, and on a quarterly basis thereafter for the duration of these proceedings, the Company shall provide disclosure to the Petitioners, verified by an affidavit sworn by an independent director of the Company, of any disposition of the Company's property and any transfer of shares or alteration in the status of the Company's members made on or after 19 January 2024, including without limitation any transaction or transfer falling within paragraph 1(a) to (f) above, identifying for each such transaction or transfer:

(a) the date of the transaction or transfer;

(b) the parties to the transaction or transfer, and whether it involves a Related Party;

(c) the consideration or amount of the transaction or transfer;

(d) a description of the nature of the transaction or transfer in sufficient detail so as to enable the Petitioners to understand the basis upon which the transaction was made and/or approved by the Company;

(e) whether the transaction or transfer was approved by the Company's Board of Directors and, if so, the date and form of approval; and

(f) the supporting documents for the transaction or transfer which are in the possession, custody or power of the Company, with any such documents to be exhibited to the affidavit."

3. Paragraphs 3 and 4 of the Injunction Summons provide as follows:

"3 For the purposes of paragraphs 1 and 2 above, "property" includes money, goods, things in action (including claims), land and every description of property, whether real or personal; also obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property as above defined.

4 Any application by the Company for a validation order pursuant to section 99 of the Companies Act shall be made *inter partes*, on notice to the Petitioners."

4. The Injunction Summons was listed for hearing at 2pm Monday 19 January 2026 (with 3 hours allocated). That hearing had, at some inconvenience to the court, been fitted into a busy court schedule. Campbells LLP ("Campbells") (attorneys for the Petitioners) had stressed the apparent urgency of the matter and persisted in their request that the Injunction Summons be heard in the week commencing 19 January 2026.

5. By email dated 7 January 2026 court administration informed Campbells "if there is genuine urgency in respect of this matter Justice Doyle could, at some inconvenience, fit in a 3-hour hearing commencing at 2pm on 19 January 2026 but the rest of that week is already heavily packed with other hearings. The material would need to be filed in hard copy and electronic format before 2pm on 16 January 2026."

6. On 8 January 2026 Campbells maintained their case on urgency and court administration confirmed the hearing date and time with a maximum of three hours allocated and with leading counsel being permitted to attend remotely.

7. By email dated 19 January 2026 8:34am Liam Faulkner of Campbells communicated to court administration indicating that notice had been received from Travers Thorp Alberga ("TTA") confirming that they had been instructed to replace Conyers as the attorneys on record for Fang Holdings Limited (the "Company") in relation to the Injunction Summons. It was further indicated that following discussions between the parties over the weekend agreement had been reached on a consent order which provided for the hearing to be vacated and adjourned to a date to be fixed with a time estimate of one day and with the Company providing interim undertakings to preserve the status quo in relation to related party transactions pending the determination of the Injunction Summons.

8. In the morning of 19 January 2026 I made an order vacating the hearing due to start at 2pm that day and ordering that the Company file and serve its evidence in opposition to the Injunction Summons, if any, by 4pm on 9 February 2026 and gave the Petitioners 14 days thereafter to serve any evidence in reply.

9. I ordered that dates to avoid be provided within 7 days and that a 1-day hearing be listed during the Spring Term (the "Consent Order"). Annexure A to the Consent Order set out the undertakings provided by the Company as follows:

> "Until the determination of the Injunction Summons or such further order of the Court, the Company undertakes to the Petitioners and to the Court as follows:
>
> 1. Unless the Company obtains a prospective validation order from the Court pursuant to section 99 of the Companies Act (as revised) ("Companies Act"), the Company shall not take any act which results in:
>
>   (a) A disposition of the Company's property as part of any transaction with or for the benefit of Mr Tianquan Mo and any person or entity acting on his behalf including without limitation Mr Jiangong Dai and any person or entity acting on his behalf (each a "Related Party", and together the "Related Parties");
>
>   (b) A disposition of the Company's property as part of any transaction that is outside of the Company's ordinary course of business;

(c) A distribution by way of dividend or otherwise of the Company's assets to any Related Party;

(d) Any transfer of the legal or beneficial interest in shares in the Company to or from any Related Party;

(e) Any alteration in the status as a member of the Company, of any of the Company's members who is a Related Party; and

(f) Any settlement, compromise, release or waiver of any claims which the Company has or may have against: (i) the Related Parties; (ii) any current or former director, officer, agent or member of the Company; and (iii) any person or entity in relation to any claim, involving a transfer or disposition of the Company's assets, a transfer of shares in the Company or any alteration in the status of the Company's members.

2 For the purposes of paragraph 1 above, "property" includes money, goods, things in action (including claims), land and every description of property, whether real or personal; also obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incidental to property as above defined.

3 Any application by the Company for a validation order pursuant to section 99 of the Companies Act shall be made on notice to the Petitioners."

10. The Injunction Summons was heard on 5 March 2026 and I reserved judgment.

The winding up petition

11. I have considered the winding up petition presented on 19 January 2024 (the "Petition") in its totality and refer below to some of the particularly relevant paragraphs and those which were addressed in the submissions put before the court.

The evidence

12. I have considered the evidence put before the court.

13. Mr Liu Hong ("Mr Hong"), the General Counsel of the Company, in his second affirmation made on 9 February 2026 ("Hong 2") confirmed that:

> "6. Firstly, the Company accepts and does not dispute the following facts and matters:
>
> a) by section 99 of the Companies Act, any disposition of the Company's property and any transfer of shares or alteration in the status of the Company's members made after the commencement of a winding up is, unless the Court otherwise orders, void;
>
> b) where the Company has a claim for money or money's worth against another, the settlement of that claim at an undervalue would be a disposition of the Company's property caught by section 99;
>
> c) the declaration and payment of dividends to the Company's shareholders would also be a disposition of the Company's property caught by section 99; and
>
> d) in relation to transfers of shares and alterations in the status of the Company's members, the actual registration of share transfers will be caught by section 99).
>
> 7. In relation to transfers of shares and alterations in the status of the Company's members, the Company avers that it is only the actual registration of share transfers (which transfers the legal title in the shares) that is caught by section 99; and in any event, this only has significance for shares that are not fully paid up, which is not the case here.
>
> 8. Secondly, and in the context of paragraphs 6. d) and 7. above, the Company confirms that on 12 January 2026, it registered in its Register of Members the

transfers by Ace Smart Investments Limited of an aggregate of 6,470,026 Class A Ordinary Shares. I am advised and believe that by reason of section 44 of the Companies Act, the Company's register of members is confidential and the Company is therefore prohibited from disclosing the identities of the members who were the transferees without their consent or a court order.

9. Thirdly, in circumstances where section 99 already provides a statutory regime for protection against transactions within its scope, and even if the Company's acts and/or omissions to date may afford grounds for seeking injunctive relief on top of the statutory protection, there may nevertheless remain an issue whether the Petitioners are entitled to or deserve an injunction in the terms they seek or at all…

c) on the Petitioner's own case … their purchase and conversions of ADS back in 2021-2023 were transfers of the legal <u>and beneficial</u> [internal underlining] interests in the Company's shares which would have required validation orders. Yet at no time back then did they demand that the Company seek and obtain validation orders for those transfers and conversions and the Company did not do so either (because it was not advised that they were needed). Nor had validation been otherwise ordered or dispensed with. The Petitioners therefore appear to be blowing hot and cold over validation orders – ignoring compliance when it suited them yet demanding compliance now, for motives which I infer and describe later below …

d) unlike the previous petitioners Evenstar … who were long-term investors in the Company, the current Petitioners deliberately and knowingly purchased their stakes in the Company at a time when there was an active winding-up petition on foot against the Company. I infer from this that they are sophisticated corporate raiders who only took positions in the Company for the purposes of exploiting and profiting from Evenstar's ongoing petition, but who were then taken by surprise and wrong-footed by the Evenstar Settlement. Therefore, they are far from being innocent victims seeking fair redress available under the court's equity jurisdiction; rather, they are cynical profiteers seeking to game the legal system and exploit for commercial gain a judicial discretion that is founded on the diametrically opposed values of justice and equity …

> 10. … in relation to the New York proceedings and the Stipulated Settlement, the Petitioners have acknowledged that its validity and effect are subject to the approval of the New York court and that its detractors were entitled to file objections and appear to be heard at the approval hearing.
>
> … [footnote 3] … The Petitioners and others did in fact file objections and appear at the approval hearing on 5 February …"

14. Mr Kyle Cleeton ("Mr Cleeton"), says he is authorised to swear his affidavit evidence on behalf of the Petitioners and in his third affidavit sworn on 31 December 2025 ("Cleeton 3") provides evidence in support of the Injunction Summons which he defines as a "Related Party Transaction Injunction Application". Mr Cleeton gives his version of the background to the Injunction Summons. Under the heading "there is a serious issue to be tried on the Petition in the present proceedings" Mr Cleeton at paragraph 22 concedes that "there is material and substantive overlap between the issues ventilated in the discontinued 2020 Petition and those advanced in the current Petition ….".

15. On page 9 of Cleeton 3 Mr Cleeton attempts to summarise the Petition and the core complaints at paragraph 30 onwards. At paragraph 68 it is stated that:

> "The Petitioners' position is that there is a serious issue to be tried on the Petition and that the grounds relied upon in the Petition, if established at trial, will result in a finding by the Court that it is just and equitable to wind up the Company."

16. Mr Cleeton refers to the Petition and the core complaints, the use of Company assets and business to benefit Mr Mo, and various transactions of which complaint is made including transactions that date back very many years. Mr Cleeton also refers to what he describes as the "US derivative proceedings" and the Stipulation of Settlement dated 28 October 2025 and spends many pages in respect of those New York proceedings. It appears that this more recent development caused the Petitioners to file the Injunction Summons. Mr Cleeton includes sections headed "Need for urgent injunctive relief", "Adequacy of damages" and "Cross-undertaking in damages."

17. In his fourth affidavit sworn on 23 February 2026 ("Cleeton 4") Mr Cleeton responds to evidence given by Mr Hong in his first affirmation affirmed on 9 February 2026 ("Hong 1") and Hong 2.

18. Mr Cleeton refers to correspondence with the Company. Mr Cleeton also gives an update on the New York Proceedings. At paragraph 10 Mr Cleeton says that the Petitioners accept that if a winding up order had been made on the 2020 Petition then the share transfers to them would have required validation. At paragraph 11 Mr Cleeton in effect says that it is inaccurate to describe the Petitioners as "corporate raiders who only took positions in the Company for the purposes of exploiting and profiting from Evenstar's ongoing petition". Mr Cleeton says that "the Petitioners have been investors of the Company for a number of years" and adds that "It is a matter of legal submission as to whether the rights of minority shareholders are to be determined by reference to such matters." As it transpired no submissions were made to the court on behalf of the Petitioners in respect of the Company's "corporate raiders" point.

19. In *Jardine Strategic Limited v Oasis Investments II Master Fund Ltd* [2025] UKPC 33 Lord Richards, dealing with an appeal from the Court of Appeal of Bermuda, at [57] stated:

> "The wording and context of section 106 makes clear that the court is charged with appraising the fair value of dissenting shareholders' shares on an objective basis, unconnected with the circumstances in which particular shareholders acquired their shares or their motives in doing so."

20. In the context of applications for injunctive discretionary relief the same as or similar to that claimed in the Injunction Summons it may be that the circumstances in which shares were acquired and motives of shareholders will be relevant factors to consider in concluding whether it is just and convenient to grant equitable relief. I leave that point open as I heard no argument upon it.

21. Where necessary I refer below to some further particular aspects of the evidence.

<u>The arguments</u>

22. I now turn to the main arguments presented on behalf of the Petitioners and the Company. The First Respondent ("Mr Mo") did not file a skeleton argument or put forward any oral submissions.

The Petitioners' arguments

23. In their initial 27 page skeleton argument dated 16 January 2026 the Petitioners described the Injunction Summons as a summons for interim relief to restrain the Company from entering into related party transactions with or for the benefit of Mr Mo including the compromise waiver or release of its claims against him, unless first validated by this court pursuant to section 99 of the Companies Act. In their 40 page skeleton argument dated 27 February 2026 they include the same description. I have considered both skeleton arguments.

24. The Petitioners are minority shareholders in the Company. Mr Cleeton in Cleeton 3 says that the First Petitioner holds 641,810 Class A Ordinary Shares having first purchased American Depository Shares ("ADS") on 30 July 2021 and the Second Petitioner holds 2,364,549 Class A Ordinary Shares having first acquired ADS on 8 August 2022. Mr Cleeton adds that collectively the Petitioners hold approximately 4.6% of the Company's issued Class A Ordinary Shares and approximately 3.3% of the Company's share capital (paragraph 12 of Cleeton 3). Mr Cleeton says that Mr Mo, through his direct and indirect shareholdings, holds approximately 85% of the voting rights attaching to the Company's issued shares (paragraph 13 of Cleeton 3).

25. The Petitioners presented the Petition on the just and equitable ground.

26. At paragraph 13 of the 101 page Petition it is stated:

> "The Company is solvent and the Petitioners expect that its shareholders, including the Petitioners, would be entitled to a surplus on winding up."

27. At paragraph 30 of the Petition it is pleaded that:

(1) there has been a lack of probity in the conduct of the Company's business by its directors and the Petitioners have lost trust and confidence in the management of the Company;

(2) the affairs of the Company have been conducted for the benefit of Mr Mo as the owner of the majority shareholders, rather than for the benefit of the shareholders as a whole, and in a manner oppressive to the Petitioners as minority shareholders; and

(3) the Company's business and affairs have been and continue to be wrongfully mismanaged to such an extent as to require an urgent and independent investigation.

28. At the hearing reference was also made to paragraph 295 of the Petition which provides:

> "295. The Petitioners rely upon the following matters as rehearsed above, namely:
>
> a. The IDG Alternative Transaction, as pleaded in paragraphs 45-57 above;
>
> b. The Safari Transaction as pleaded in paragraphs 58 to 63 above;
>
> c. The CIH Transactions as pleaded in paragraphs 64-101 above;
>
> d. The pursuit of the business of the Company and use and transfer of its assets for the benefit of Vincent Mo and/or his personal and/or business interests as pleaded in paragraphs 102-213 above;
>
> e. The Wanli Transaction as pleaded in paragraphs 214-224 above;
>
> f. The adoption of oppressive Sixth Amended and Restated Memorandum of Association as pleaded in paragraphs 224-235 above; and
>
> g. Persistent non-compliance with statutory and regulatory disclosure requirements and the consequent provision of misleading information to shareholders, investors and the market as pleaded in paragraphs 236-292 above."

29. In respect of paragraph 295 c the CIH Transactions featured heavily in the New York proceedings, paragraph 295 c, f and g did not appear in the winding up petition lodged by Evenstar Master Fund SPC on 13 November 2020 (the "2020 Petition") but the rest of the matters relied on did.

30. Paragraph 296 of the Petition reads:

> "296. In the premises:
>
> g. There has been a lack of probity in the conduct of the Company's business by the Company's directors and the Petitioners have justifiably lost trust and confidence in the management of the Company.
>
> h. The affairs of the Company have been conducted for the benefit of the first Respondent as the owner of the majority shareholders, rather than for the

benefit of shareholders as a whole, and in a manner oppressive to the Petitioners as minority shareholders.

i. Further, by reason of the above, the Company's business and affairs have been and continue to be wrongfully mismanaged to such an extent as to require an urgent and independent investigation."

31. At paragraph 297 of the Petition it is stated that it is just and equitable for the Company to be wound up and the Petitioners request a winding up order.

32. At paragraph 34 of their skeleton argument dated 27 February 2026 the Petitioners add that the Petition contains detailed allegations concerning the alleged mismanagement of the Company over a long period at the direction and/or control of Mr Mo, including the entering into of various improper related parties transactions by the Company for his benefit. The Petitioners say that those allegations are pleaded in detail and summarised in paragraphs 21 to 68 of Cleeton 3.

33. The Petitioners say that the Injunction Summons seeks interim injunctive relief to justly and conveniently hold the ring pending the determination of the Petition at a 4 week trial which the Petitioners say is expected to come on in early next year. The Petitioners say that Mr Mo is at the heart of this dispute. The court made a characterisation order at the last hearing on 25 November 2025 (the "November 2025 Order") that the proceedings be treated as an *inter partes* proceeding between the Petitioners and Mr Mo in his capacity as member of the Company.

34. The Petitioners say that the Company has filed an application for leave to appeal in relation to the November 2025 Order and has sought a stay of the proceedings pending the determination of that appeal.

35. The Petitioners say that Mr Mo has repeatedly caused the Company to enter into improper related party transactions for his benefit and to the detriment of the Company and its minority shareholders.

36. The Petitioners are concerned over a Stipulation of Settlement entered into by Mr Mo in October 2025 (the "Stipulation") which in the skeleton argument they say they became aware of "in December 2025" (no precise date is given in the skeleton argument).

37. I have considered the entirety of the Stipulation which runs to some 32 pages (and is to be found at paginated pages 1041-1073). It is stated to have been executed on "October 23, 2025" but in

manuscript the words “Date: October 28, 2025” also appear. The Plaintiff is stated to be Oasis Investments II Master Fund Ltd derivatively on behalf of nominal defendant Fang Holdings Limited. Mr Mo is one of the 6 defendants alongside Richard Jiangong Dai. An attorney from Balance Law Firm has signed the documents on behalf of the Defendants “and Nominal Defendant Fang Holdings Limited.”

38. At I L there is reference to Fang failing to file its Form 20-F for the year ended December 31, 2020 and as a result the NYSE suspended trading of Fang’s ADS on the NYSE. There are references to Fang not making any of its required public financial disclosures between certain dates in 2021 and 2022.

39. At TT it is stated that the Plaintiff’s counsel have concluded that the Stipulation and proposed Settlement “are fair, reasonable, and adequate to, and in the best interests of, Fang and Fang’s shareholders”. The Defendants denied any fault or liability.

40. I note also in particular Section B Settlement Consideration and Scope of Settlement and do not set out paragraphs 2-16 in this judgment but have full regard to them.

41. I note in particular paragraph 2 which provides:

> “2. Within sixty (60) days of the Stipulation Date, or by December 24, 2025, Defendants will pay $20,000,000 USD (twenty million U.S. dollars), and within ninety days of the Stipulation Date, or by January 26, 2026, Defendants will pay another $10,000,000 USD (ten million U.S. dollars) (collectively, the “Monetary Consideration”) into the Settlement Account held in trust under the control of the Administrator, subject to the terms of his Stipulation, to create the common settlement fund (the “Settlement Account”) from which disbursements shall be made, subject to Court approval, under the direction of the Administrator. To the extent that either Monetary Consideration payment is not made in full by the applicable respective deadline, a 1% per month penalty will apply to the unpaid portion. The Parties shall cooperate in good faith with respect to the establishment of the Settlement Account. Plaintiff’s Counsel shall retain the Administrator to, subject to the jurisdiction, supervision, direction, and approval of the Court, oversee the administration and distribution of the Net Monetary Distribution from the Settlement Account and shall have all necessary authority, without any further action of any Party, to direct disbursements out of the Settlement Account solely in accordance with this

Stipulation and/or Final Order and Judgment. Defendants and Defendants' counsel shall have the right to inspect the books and records of the Settlement Account. For the avoidance of doubt, Fang shall not directly contribute to the Monetary Consideration or directly make any payment of funds into the Settlement Account. The Parties understand and agree, however, that Defendants, in order to help fund the payment of the Monetary Consideration, may: (a) dispose of certain of their interests in Fang shares and/or ADS and/or (b) participate in a dividend payout from Fang, following an asset disposition, solely to the extent that Fang makes the dividend payout to all shareholders and ADS holders on a pro rata basis."

42. The Petitioners say that the Stipulation provides for the compromise, release and waivers of certain of the Company's claims against Mr Mo and his co-defendants (such claims stated by the Petitioners to be a valuable asset of the Company) and the parties defined to include the Company expressly understand and agree to "help fund" the Monetary Consideration (US$30 million) payable by Mr Mo and his co-defendants to settle the claims brought against them personally, Mr Mo and his co-defendants may dispose of their shares in the Company and/or participate in a dividend declared by the Company following a disposal of its assets.

43. The Petitioners accept that the Stipulation provides that the Company shall not "directly" contribute to the Monetary Consideration or make any payment of funds into the Settlement Account but were concerned that it contains no express provision prohibiting or restricting the indirect means by which the Company may "help fund" the Monetary Consideration. In particular it does not prohibit related party transactions to that end.

44. The Petitioners said that the Stipulation was due for a final settlement court hearing in New York on 5 February 2026. The Petitioners say that the Stipulation provided for US$20 million to have been paid into the Settlement Account by 24 December 2025, with the final US$10 million to be paid by 26 January 2026, hence the urgency of the hearing sought before that date. The Petitioners referred to seeking undertakings from the Company. Undertakings were given pending the determination of the Injunction Summons.

45. The Petitioners acknowledge that the Company has a legitimate interest in conducting its business in the ordinary course and they say that they do not seek to prevent that. They say they just seek a "modest measure of protection against related party transactions" (paragraph 23 of skeleton argument dated 27 February 2026).

46. The Petitioners consider that it is just and convenient for the court to grant the ancillary disclosure relief sought at paragraph 2 of the Injunction Summons to ensure the effectiveness of the injunction, the objective of which is to ensure that the court has adequate oversight of the Company's dispositions which have occurred or will occur during the proceedings.

47. By letter dated 8 January 2026 from Conyers (who then acted for the Company) to Campbells (who act for the Petitioners) the Company confirmed that:

> "1. Since the presentation of the Petition, the Company has not declared any dividend.
>
> 2. The Company currently has no plan to declare any dividend. If such plan comes into existence, the Petitioners being members of the Company will receive advance notice …
>
> 4. The Company discloses related party transactions in its annual 20-F reports pursuant to US regulatory requirement …
>
> The Company hereby undertakes to give the Petitioners at least 14 days' notice of any declaration of dividends …
>
> the Company remains required to apply for a validation order under section 99 of the Companies Act in respect of any relevant transaction, and the Company undertakes to provide notice to the Petitioners of any such application (or will seek a waiver from the shareholders participating in the Petition proceedings) …"

48. The Petitioners say that by way of a letter dated 9 January 2026 Campbells (the Petitioners' attorneys) explained why the Company's response was inadequate and why the application needed to be heard on an urgent basis. The Company was requested to provide undertakings to the Petitioner and the court by way of a consent order in the terms of the orders sought by the Injunction Summons but failed to do so and the Petitioners add that there was no immediate response to the letter.

49. In the letter dated 9 January 2026 Campbells noted the confirmations and undertakings contained in the Conyers letter dated 8 January 2026 but stated that the Company had failed to confirm that

it has not and will not dispose of its property as part of any transaction with or for the benefit of any Related Party (as defined in the Injunction Summons) pending the determination of the Petition. They also note the failure to confirm that the Company has not and will not dispose of its property before 26 January 2026 to "help fund" the Monetary Consideration to be paid to the Related Parties. They also add that the Conyers' letter does not agree to provide disclosure of transactions which have occurred since the Petition was filed and to seek validation of those transactions and to seek prospective sanction for any such transactions going forward. Campbells asked for a response by no later than 4pm on 12 January 2026.

50. I should refer to an important update in respect of the proceedings in New York. In final judgment and order dated 6 February 2026 Justice Andrew Borrok found that the "Defendants have satisfied their Monetary Consideration payment obligations under the Stipulation paying or causing to be paid $30,000,000 USD (thirty million US dollars) to the Settlement Account" (paragraph 7). Mr Morgan referred to the recital and submitted that the Company did not appear within the definition of "Defendants" but Mr Mo and certain others did. There is reference in the judgment in another recital to the court conducting hearings on 5 and 6 February 2026 to consider whether the Plaintiff and its counsel had adequately represented the interests of the Company and its minority shareholders and whether the proposed settlement on terms provided for in the Stipulation were fair, reasonable and adequate to the Company and its minority shareholders. The court "fully and finally" (paragraph 8) approved the settlement. The Released Claims referred to at paragraphs 14-15 of the Stipulation were duly released (paragraph 11). At paragraph 15 of the judgment the court denied the "Requested Minority Shareholder Release, and Fang Minority Shareholders who receive their pro rata share of the distribution of the Net Monetary Distributions are _ (sic) not deemed to have released the Fang Minority Shareholder Claims against the Defendant Releases."

51. The Petitioners say that the Stipulation was approved by the New York Court in February 2026 despite objection of the Company's shareholders who are unaffiliated with Mr Mo. The Petitioners say that the Stipulation provided a very broad release and waiver of claims which the Company had or may have against Mr Mo and other related parties. They add that the Stipulation contemplated that the Monetary Consideration payable for the release of those claims may be funded through transactions by the Company which would be caught by section 99 of the Companies Act in the event that a winding up order is made on the Petition given that the Company is in the "twilight period" between the filing and determination of the Petition. It is the Petitioners'

view that the Company's claims against Mr Mo and his co-defendants are a valuable asset of the Company and that the settlement provided for in the Stipulation is at a significant undervalue.

52. The Petitioners refer to Hong 2 filed by the Company in response to the Injunction Summons. Mr Hong is the Company's General Counsel. The Petitioners say that Hong 2 says very little about the Injunction Summons. At paragraph 8 Mr Hong confirms that on 12 January 2026 the Company registered in its Register of Members the transfer by Ace Smart Investments Limited ("Ace Smart") of an aggregate of 6,470,026 Class A Ordinary Shares. The Petitioners say that Mr Hong failed to confirm that the Company would seek a validation order for the Ace Smart share transfer, and failed to provide the confirmations sought by them including as to (i) whether the transferees are Related Parties; and (ii) whether the purchase price for the share transfers was funded, directly or indirectly, by the Company or its subsidiaries.

53. The Petitioners submit that:

(1) the Petition raises serious questions for trial;

(2) damages are not an adequate remedy.

54. The Petitioners submit that damages are inadequate because if the Company disposes of its property to related parties pending the determination of the Petition then there is a real risk that (i) liquidators will be unable to claw back that property and (ii) any claim which the liquidators may be able to bring on behalf of the Company for damages against the recipients of the Company's property or any wrongdoers will be unsuccessful in terms of recoveries. The Petitioners in their skeleton argument say that it may be impossible or difficult to locate and trace the Company's property or at least inconvenient and costly to do so. They add that the recipients and wrongdoers involved may be unable to restore the Company's property or unable to pay any financial award made in respect of it. They may be located abroad in jurisdictions which would not give effect to the avoidance.

55. Mr Cleeton in Cleeton 3 at paragraph 116 under the sub-heading "*Damages would not be adequate*" focuses on the Stipulation and states:

> "If the Company's assets are, directly or indirectly, used to fund the settlement proceeds as part of the release of claims against Mr Mo and his co-defendants then it will not be

possible to recover those amounts. Similarly, if the Company's assets are realised at an undervalue and on an expedited basis to fund the settlement amount then it will likely be impossible to restore the Company to the position which existed prior to the realisations."

56. In relation to the compromise, release and waiver of claims belonging to the Company under the Stipulation against Mr Mo his co-defendants and other related parties, the Petitioners say in their skeleton argument that there is a real uncertainty as to whether those releases could effectively be unwound.

57. The Petitioners say that if the injunction is granted it will not prevent the Company from pursuing its business in the ordinary course. The Company will be able to apply for prospective validation of the related party transactions. The Petitioners add that it is difficult to see what loss the Company may suffer. The Petitioners say that they offer the usual cross-undertakings in damages to compensate the Company for any loss caused to it by the injunction. They add that the Petitioners' shares in the Company constitute assets within the jurisdiction against which any order for damages could be enforced.

58. The Petitioners say that the balance of convenience weighs heavily in favour of granting the injunction. The Petitioners add:

(1) the Petitioners are presently exposed to the risk of irremediable prejudice and the injunction sought would protect against this without exposing the Company to any prejudice, let alone any which would be irremediable;

(2) the status quo and the Company's assets should be preserved pending the determination of the Petition. The injunction would not interfere with the legitimate business of the Company. It will not prohibit even related party transactions, but will merely require that court approval for them be obtained before they are undertaken and if they are proper then approval would be granted;

(3) absent the injunction the court can have no confidence that the Company and those under the influence of Mr Mo will act with responsibility and cause the Company to seek prospective orders under section 99 of the Companies Act. The Petitioners say that this is particularly so where (i) they have not done so to date (ii) the Petition alleges serious

mismanagement and impropriety in relation to the affairs of the Company while on Mr Mo's watch; (iii) Mr Mo has yet to engage with the Petition and has not filed a pleading in response to it; (iv) Mr Mo has been found by the New York Court to have engaged in misconduct of a kind that falls far short of what this court would expect of any honest director acting in good faith and in the best interests of the Company; and (v) Mr Mo and others presently in control of the Company have caused it to participate in the Stipulation and release claims against them despite being in a situation of conflict and without any oversight from this Court. The Petitioners add that there is a real risk that what they describe as "the history of improper related party transactions";

(4) granting the injunction would best improve the chances that the court is able to do full justice after a determination of the merits at the trial and it is the course that is least likely to cause irremediable prejudice.

59. In his oral submissions Mr Scott KC for the Petitioners emphasised, amongst others, the following points:

(1) the relief is modest interim relief that is necessary to hold the ring in a manner that is just and convenient pending the determination of the petition to wind up the Company on just and equitable grounds;

(2) the interim relief was sought after the Stipulation emerged and should be granted on familiar *American Cyanamid* principles just as it was granted in *Torchlight*;

(3) the Petitioners seek restraint only in respect of related party transactions and it is difficult to see how related party transactions with Mr Mo could be in the interests of the Company as a whole;

(4) Mr Mo has caused the Company to oppose the Injunction Summons and he stands to benefit from the opposition if the opposition is successful;

(5) The Petition raises serious issues to be tried;

(6) the Petitioners do not accept that there is no real prospect of a winding up order being made;

(7) damages would not be an adequate remedy as related party transactions risk assets of the Company being dissipated in ways that cannot easily be undone and the court should take the same approach as was taken in *Torchlight*;

(8) the balance of convenience lies decisively in favour of the relief the Petitioners seek;

(9) the court should also grant the ancillary orders that are sought for information and documents;

(10) the parties agree that the issue as to whether any related party transactions in the twilight period pending the determination of the Petition should be subject to prior validation by the court "turns on the application of *American Cyanamid* principles";

(11) ultimately the question at trial would be, if the pleaded allegations set out in the Petition are met, is it just and equitable to make a winding up order?;

(12) the fact that Mr Cleeton does not exhibit documentary evidence to support the allegations is neither here nor there;

(13) the Petitioners do not accept that the court can conclude that there is no real prospect that a winding up order would be made at trial on the particular facts of the case;

(14) damages are not an adequate remedy as if the Company disposes of its property to related parties there is a real risk that the liquidators will, in practice, be unable to claw back their property or otherwise obtain redress from those who have participated. At the very least there is a risk that recovery will be inconvenient, costly and uncertain especially where the related parties are outside the jurisdiction where the effect of section 99 may not be recognised;

(15) in respect of the disclosure request if the court takes the view that the information the Petitioners are seeking has been cast too broadly, for example, too broad because it seeks information about transactions other than related party transactions or seeks information about transactions before the injunction is made, the appropriate thing to do would be to cut back the order for the provision of information. The principle is that when policing an

injunction it is important to have proper information about the transactions that are caught by it;

(16) the Stipulation was the catalyst of the Injunction Summons because that was the indication that related party transactions were not simply a thing of the past.

The Company's arguments

60. By notice of acting dated 16 January 2026 TTA gave notice that they had been appointed to act as attorneys on behalf of the Company "in relation to interim applications brought by the Petitioners against the Second Respondent [the Company], in respect of which Campbells represent the Petitioners".

61. By email from court administration dated 7 January 2026 11:47 to the attorneys including Campbells, Conyers and Carey Olsen it was indicated that the material for the hearing on 19 January 2026 "would need to be filed in hard copy and electronic format before 2pm on 16 January 2026." Nothing was received from the Company before that deadline.

62. I have considered the undated 10 page "Second Respondent's skeleton argument in opposition to the injunction application for hearing 5 March 2026" provided late on Friday 27 February 2026. I have also considered the oral submissions of Richard Morgan KC who appeared for the Second Respondent, the Company. There was no appearance by or on behalf of the First Respondent Mr Mo and no skeleton argument was filed on his behalf, although I note at the foot of the Injunction Summons it was directed to the Company and Mr Mo.

63. The Company says that the Petitioners seek:

(1) to restrain it from acting in a wide variety of ways, save under the direct supervision of the court. The Company adds that the scope of the relief is uncertain and seems to encompass transactions that are not caught by section 99 of the Companies Act, namely transfers of the beneficial interest in shares in the Company (citing amongst other authorities *Inland Revenue v Laird Gp plc* [2003] UKHL 54); and

(2) to impose obligations on the Company to provide information to only two shareholders (the Petitioners) in relation to every disposition of the Company's property (apparently down to the level of every piece of paper or paperclip) with discovery by list of every supporting document along with production of every such document listed.

64. The Company refers to the fact that the Injunction Summons has been made on notice to it and it adds without any apparent need for urgency and says it has not been pursued with urgency.

65. The Company submits that the Injunction Summons is misconceived and appears to have been crafted to leverage a more advantageous buyout of the Petitioners' shares in the context of their stale claim for a winding up order.

66. The Company submits that the primary thrust of the Injunction Summons, namely an injunction, does not provide relief more robust than that provided by section 99 of the Companies Act, even were it likely that the court would make an order on the Petition winding up the Company. The Company says that the purpose of the injunction itself would seem to be to hold the threat of committal or disbarment over the heads of the Company and its directors (despite the fact that the Company's participation in the proceedings is limited to giving discovery).

67. The Company submits that the relief sought in the Injunction Summons is internally inconsistent with section 99 of the Companies Act and seeks to achieve more extensive discovery than that provided for in the November 2025 Order without any apparent justification.

68. The Company submits that section 99 of the Companies Act itself does not require a validation order to be sought before there is a disposition of company property, only that such a disposition is void when a winding up order has been made, unless the Court otherwise orders (and the legislature did not specify a point in time at which the Court had to so order). The Company says that the Petitioners seek to acquire a more prescriptive position than that required by the legislation.

69. The Company in effect says that even if the bare allegations made against it in the Petition and supporting evidence were to be made out against it, there is nothing to suggest that an order winding up the Company would achieve a better outcome for the Petitioners than orders requiring a buyout of their minority interest or authorising civil proceedings to be brought in the name of the Company. The Company submits that it is reasonably to be inferred that the Petitioners do want to be bought out and they wish to use the leverage of an injunction to improve their bargaining positions. The

Company refers to the fact that the Petitioners acquired their shares in the Company in July 2021 and August 2022 during the currency the 2020 Petition which was withdrawn on 17 October 2023 and submits that the Petitioners did not apply to be substituted as petitioners in the 2020 Petition proceedings and are now seeking to wind up the Company on the basis of allegations that were being made at the time that they bought their shares. The Company stresses that it is reasonable to infer that, far from seeking a class remedy, the Petitioners are seeking an uplift in the price paid for their shares by re-activating the same allegations and ultimately hoping to get a buyout. The Company adds that far from seeking to achieve a liquidation within a reasonable time of the commencement of the Petition, the Petitioners have instead proceeded at a leisurely pace in relation to service and having the first directions hearing in November 2025.

70. The Company submits that the Petitioners need to establish both (1) the evidential basis for a serious issue to be tried that grounds exist that would make it just and equitable for the court to wind up the Company and (2) also establish that there is a serious issue to be tried that the court would be likely to make a winding up order on the Petition.

71. The Company says that when the Petitioners' evidence is examined with forensic precision it is clear that all that Kyle Cleeton in his third affidavit is doing is no more than identifying the allegations made in the Petition and is not providing evidence that the allegations are true. There is no primary documentary evidence exhibited in support of the allegations.

72. The Company also submits that there are a number of factors which militate against a winding up order being made on the Petition:

(1) the Petitioners acquired their shares at a time when the allegations relied on were already articulated in the 2020 Petition, from which the Company says it may be inferred that they bought into the general body of shareholders knowing of the existence of and the allegations in the 2020 Petition;

(2) the Petitioners did not seek to be substituted into the 2020 Petition when it was compromised and withdrawn, and the legal title to shares in the Company were able to be transferred freely, allowing a change in the composition of the body of shareholders;

(3) the Petitioners maintain that the Petition is against Mr Mo and not the Company (or its other shareholders) from which it is to be deduced that the Petitioners do not intend to

interfere with the interests of the general body of shareholders unrelated to Mr Mo. The Company cites C6.3 of the FSD Guide; and

(4) the allegations are made against Mr Mo, as the majority shareholder, and can be addressed either by an order for a buyout of the Petitioners by Mr Mo, or by giving permission to bring civil proceedings against Mr Mo in the name and on behalf of the Company (and there is no reason for the Petitioners not to pursue these remedies).

73. The Company submits that the Petitioners fail to articulate any convincing reason for seeking a winding up order as opposed to a buyout or permission to bring a derivative claim. The Company submits that in the circumstances, there is no serious issue articulated that the court would be likely to order the winding up of the Company, particularly in the absence of representations from other unrelated shareholders.

74. The Company refers to section 99 of the Companies Act which is silent on the timing of the making of an application for a validation order. The Company argues that the Injunction Summons seeks to require the Company to do that which is not required under the Companies Act and which may not ever be required, namely to obtain a validation order for every transaction within the categories identified. The Company submits that there is no justification for departing from the statutory regime.

75. The Company says that paragraph 2 of the Injunction Summons in effect seeks an order that the Company answer interrogatories and give disclosure of historic and future documents independent of any issue identified in the proceedings and independent of the order for disclosure in paragraph 7 of the November 2025 Order. The disclosure is to the Petitioners and not to the general body of shareholders unrelated to Mr Mo. The Company adds that it is unclear as to what justification there could be for this relief. It puts the Company to trouble and expense that may be entirely unnecessary and is unjustified and it puts the Petitioners in possession of information not available to other shareholders. The Company submits that paragraph 2 of the Injunction Summons is oppressively wide, is unjustified and is unnecessary.

76. The Company submits that damages are an adequate remedy for the Petitioners. The Company says that the Petitioners hold shares in the Company that are capable of being valued, either on the basis of what they were worth at the date of the Petition on a buyout or (were the court ultimately to be minded to make orders for the recovery of property by further proceedings or a winding up

order) on the basis of the realisation of those claims or the distribution that will be made when any liquidators have realised all of the Company's assets (including any choses in action). The Company adds that the Petitioners do not have a direct entitlement to any of the Company's assets, only for the value attributable to their shareholding. The Company says that plainly that is a monetary amount and is capable of calculation. The Company adds that the statement at paragraph 118 of Cleeton 3 that "Monetary relief at the end of the proceedings would be an inadequate substitute for maintaining the statutory status quo" is "plainly false".

77. On the balance of convenience the Company submits that the legislature put in place a statutory regime in section 99 of the Companies Act to regulate the position between the date of the Petition and any winding up order. The Company says that the statutory regime provides all creditors and members of a company with the fullest protection to which they are entitled and by which they may be expected to be protected.

78. The Company submits that the balance of convenience favours maintaining the statutory protection rather than imposing a further level of oversight and court supervision that will, almost inevitably, lead to cost and satellite applications to the court by the Petitioners or the Company relating to the details of compliance with any order.

79. In his oral submissions Mr Morgan KC on behalf of the Company emphasised, amongst others, the following points:

(1) the serious issue to be tried test has been framed by reference to the wrong issue by the Petitioners;

(2) there is in any event a lack of evidence to support the suggestion that there is a serious issue to be tried on the Petition itself;

(3) damages are an adequate remedy for the Petitioners;

(4) the Petitioners could have sought relief against Mr Mo such as a freezing injunction or an injunction to restrain Mr Mo from acting in a particular way whilst he is a director of the Company;

(5) the allegations upon which the Petition are based are stale;

(6) the Defendants (not including the Company) have pursuant to the Stipulation paid the sum of US$30 million into the settlement account and there has been no release of the minority shareholders' claims. This has not prejudiced the position of the Petitioners. It has enhanced it.

Determination

80. I now turn to my determination of the Injunction Summons.

81. There is before the court what appears to be an extremely rare application by the Petitioners for an interim injunction restraining the Company from taking certain acts unless the Company first obtains a prospective validation order from the court pursuant to section 99 of the Companies Act. The Petitioners also sought a wide ranging disclosure order requiring the Company within 30 days of any Order granted on the Injunction Summons and quarterly thereafter for the duration of the proceedings to provide information verified by affidavit from an independent director of any disposition of the Company's property and any transfer of shares or alteration in the status of the Company's members made on or after 19 January 2024.

82. The relief is sought in the context of a very slow moving winding up petition filed by the Petitioners as long ago as 19 January 2024.

83. Mr Scott, who appeared for the Petitioners, could only point to one authority (*Torchlight Fund LP*; FSD unreported judgment of Clifford J 9 February 2016) where such an injunction had been granted. No disclosure order was sought or granted in that case. I asked Mr Scott if there was any English judgment where such an injunction had been granted and he responded in the negative. He was also unable to point to any other judgments in any Commonwealth jurisdiction where such an injunction had been granted, let alone a wide disclosure order in support. Mr Scott in effect sought to explain the lack of authority on the basis that in other cases reasonable parties would have disposed of the concerns by agreeing to undertakings.

84. Mr Morgan, who appeared for the Company, in effect submitted that *Torchlight* was an outlier and was decided on the basis that a serious issue to be tried was wrongly conceded.

85. Let me at the outset state that this court plainly has a very wide jurisdiction to grant interim injunctive relief where it is just and equitable to do so (see amongst other authorities *Lakeshore*

Biopharma Co Ltd [2025] CIGC (FSD) 24 Ramsay-Hale CJ particularly at [20]). Moreover the court also has jurisdiction to make ancillary orders that are considered to be just and convenient to ensure the effectiveness of the injunction.

86. Parker J in *Raiffeisen Bank International AG v Scully Royalty Ltd and others* [2025] CIGC (FSD) 109 at [4] to [7] confirmed that the court's well-established jurisdiction includes the power to make ancillary orders that are considered to be just and convenient to ensure the effectiveness of the injunction. Disclosure orders must have practical utility and be proportionate to the objective sought and the fact that the information sought is confidential will not by itself entitle the respondents to resist disclosure. However the court should be astute that confidential material and non-public information is safeguarded by appropriate restrictions.

87. The learned Chief Justice in *Lakeshore* helpfully and concisely set out the relevant principles applicable in that case as follows at [21]:

> "An interim prohibitory injunction may be sought where the applicant believes that the other party, if unrestrained, might cause irreparable or immeasurable damage by continuing the conduct which has led to the dispute. The principles to be applied by the Court on an application for an interim injunction are those that derive from *American Cyanamid v Ethicon* [1975] AC 396. In deciding whether to grant such an injunction, the Court must consider:
>
> (i) whether there is a serious issue to be tried;
>
> (ii) whether damages would be an adequate remedy for the plaintiff if the injunction were not granted;
>
> (iii) if damages would not provide an adequate remedy for the plaintiff, whether the defendant would be adequately compensated under the plaintiff's cross-undertakings in damages;
>
> (iv) if there is doubt as to the adequacy of the respective remedies in damages available to either party or to both, where does the balance of convenience lie;

(v) where other factors are evenly balanced, the course which is calculated to preserve the *status quo* and the course which seems likely to cause the least irremediable prejudice to one party or to the other: see Mangatal J in *Re Xie Zhikun & Others v XiO GP Limited* [2019 (1) CILR N.6] at 35."

88. At [22] the Chief Justice added:

> "In considering the question of whether there is a serious issue to be tried, the Court in *American Cyanamid* made it plain that it is no part of the court's function to try to resolve conflicts of evidence: ibid at 407."

89. In *Lakeshore* the Grand Court was dealing with what was described as "an interim notification injunction". In that case the plaintiff sought (1) an order preventing the company from issuing share capital or causing the plaintiff's shareholding to be diluted until after he had been given 7 days' notice and (2) an order preventing the company or any of its subsidiaries from entering into transactions or dealing with a value in excess of US$50,000 until after the plaintiff had been given 7 days' notice unless the transaction was in the ordinary course of business. The plaintiff said that this latter relief was required because if it were not granted and his claim succeeded and he was once again the majority shareholder, the company's business would have been changed by the defendants beyond all recognition, rendering his success nugatory.

90. It appears from the judgment at [7] that the plaintiff in proceedings was also seeking final relief namely declarations that his removal from the management of the company and its subsidiaries was *ultra vires* and for an improper purpose as was the decision to enter into an agreement and as was an issue and allotment of certain shares. The relief sought by the plaintiff included the setting aside of the issue of the shares, rectification of the rights of members and an order restraining the company from allotting any shares which might result in further dilution of his shareholding or negatively affect the asset value and/or the share price of the company.

91. At [34] onwards the Chief Justice refers to the need for an applicant to satisfy the court that there is a risk of dissipation such as would justify a freezing injunction before the court can grant a notification injunction. At [37] there is reference to asset freezing injunctions and notification injunctions involving "a draconian interference with the right of businessmen or corporate entities to deal with their personal or business assets. Both also carry reputational damage."

92. In *Lakeshore* there also appears to have been a request during oral submissions ([9]) for a property preservation order pursuant to GCR Order 29, rule 2(1) which the Chief Justice refused as the assets of the company were not the subject matter of the dispute ([69]).

93. In respect of the request for a modified freezing injunction put forward by the plaintiff on the basis that, absent the intervention of the Court there was a real risk that steps may be taken to substantially change the nature of the company as to render any ultimate judgment in his favour nugatory, the Chief Justice was equally unimpressed:

> "no case has been cited to support the argument that a risk of substantially changing the nature of the Company is a basis on which to obtain what is a modified freezing injunction, which is only available to protect a party from the risk of dissipation."

94. I should stress that no disclosure order appears to have been sought in *Lakeshore* and no disclosure order was made.

95. Lord Leggatt in *Broad Idea International Limited v Convoy Collateral Ltd* [2021] UKPC 24; [2022] 2 WLR 703 again confirmed that the court's jurisdiction to grant an injunction, where it has personal jurisdiction over the respondent and the grant of relief that is just and equitable, is unlimited. That case considered the restraints imposed by *Siskina* [1979] AC 210, which many jurisdictions had legislated to overcome.

96. Lord Reed, writing extra-judicially in an informative and entertaining lecture *What do Supreme Court Judges do all day?* (The Woolfson 2026 London Lecture) referred to *Wolverhampton City Council v London Gypsies and Travellers and Others* [2023] UKSC 47 and at pages 8-9 stated:

> "… the courts have a general equitable power to grant injunctions, which has been confirmed and restated by Parliament [Senior Courts Act 1981, s37(1)]. This power is not limited to pre-existing, established categories. It follows that the courts can grant injunctions in new circumstances as and when required by the principles of equity which underpin them, including the principle that where there is a right there should be a remedy. We found confirmation of that flexibility in the courts' development of a number of new kinds of injunction over the past 50 years in the light of developments in technology and commerce. Having considered the relevant principles we were able to conclude that

injunctions of this kind could and should be granted, subject to safeguards which we have shown."

97. Judges at first instance must however take care to ensure that this wide jurisdiction to grant injunctions when it is just and convenient to do so is only exercised in accordance with relevant legal principles and established practice. It is mainly for appellate judges to develop the law and add to established categories where necessary and appropriate.

98. The Petitioners in dealing with the relevant law in their skeleton argument dated 27 February 2026 at paragraph 56 referred to "an equitable remedy the grant of which is in the Court's discretion to be exercised in accordance with familiar *American Cyanamid* principles …" (paragraph 56).

99. At paragraph 58 the Petitioners say that pursuant to those principles "the Court will grant interim injunctive relief where: (i) there is a serious question to be tried; (ii) damages would not be an adequate remedy for the applicant; and (iii) where the balance of convenience favours granting the relief that is sought. Each of these is considered in turn below."

100. The Petitioners plainly presented their case on the basis of the application of the *American Cyanamid* principles. At paragraph 66 of their skeleton arguments the Petitioners say "Before turning to apply the *American Cyanamid* principles to the present application, the fact that the application is brought within pending winding up proceedings requires consideration of s.99 of the Companies Act …".

Torchlight

101. As the Petitioners place so much emphasis on it I should refer to *Torchlight* in more detail.

102. In *Torchlight* there were two applications before the court on 21 and 22 January 2016. Firstly an application by the Partnership for a validation order pursuant to section 99 of the then Companies Law (2013 Revision) (the "Partnership Application") and secondly an application by three petitioners for an injunction in respect of the disposition of proceeds from the sale of the Partnership's interest in what was defined as the Local World Transaction and of any other dispositions of the Partnership's assets (the "Petitioners' Application"). The Partnership Application was dismissed with costs. On the Petitioners' Application an injunction was granted restraining any disposition of the assets of the Partnership by the General Partner to persons related

to the General Partner without the consent of the Petitioners or an order of the court made on an application for prospective validation with costs to be the Petitioners' costs in the petition.

103. Reasons for those orders were given on 9 February 2016 in what Clifford J described as a "Ruling".

104. The judgment at [8] states that the Petitioners and what are described as Supporting Limited Partners "represent between 36.9% and 44.2% of the total committed capital of the Partnership".

105. Under a heading "Issues to be tried" Clifford J referred to the petitioners seeking a winding up order ([10]). At [13] Clifford J stated "Extensive evidence has been exchanged". At [39] it appeared that the issue of solvency of the Partnership was not agreed: "The Partnership places particular reliance on its alleged solvency". It is also clear that an application for a disclosure order was not made in *Torchlight*. Clifford J stated (footnotes omitted):

> "55. This court has the same jurisdiction as the English High Court to grant an injunction. The principles for the grant of an interlocutory injunction set out in *American Cyanamid Co v Ethicon Ltd* are followed in this Court. They were conveniently summarised by the Chief Justice in *Kelly and Four Others v Fujigmo Limited, Port Authority and Attorney General*.
>
> 56. On these authorities it is well established that the Court needs to decide:
>
> (a) Whether there is a serious issue to be tried. The Court's task on this point is to decide whether the Petitioners' case "*shows any real prospect of succeeding*";
>
> (b) Whether damages are an adequate remedy;
>
> (c) Whether any loss to the defendant needs to be and if so can be met by an award of damages, in respect of which the applicant may be required to give an undertaking to indemnify the defendant for any such damages found wrongfully to have been caused by an injunction; and

(d) Taking into account all the circumstances of the case, and if there is any doubt about the adequacy of the respective remedies in damages, where the balance of convenience lies."

106. Clifford J continued:

"57. There is no doubt that there are serious issues to be tried. This was very fairly and properly accepted by Mr Hollington. The issues include those referred to in respect of related party transactions.

58. As to adequacy of damages, I acceded to the submissions of Mr Moss. Dispositions of assets of the Partnership, particularly payments to parties related to the General Partner, may become void but would not necessarily be recoverable. This is because of the risk of either the parties not being capable of repaying them or of being abroad in jurisdictions which would not give effect to the avoidance. The potential difficulties are such that it could well prove not to be economical to seek recovery. Damages are not, therefore, an adequate remedy.

59. The Partnership for its part can be protected by an undertaking to comply with any order the Court may make to compensate it for any loss caused to it by the injunction. Such an undertaking is being provided by Crown Asset Management Ltd, a New Zealand Crown Company wholly owned by the New Zealand Government. So there is no doubt as to the protection afforded.

60. Nor was there any doubt about the balance of convenience. The limited injunction sought should not interfere with the legitimate business of the Partnership or the meeting of liabilities to innocent third parties. Even in respect of related party transactions, it will be open to the General Partner to make an application to the Court, properly supported by evidence, to validate any dispositions which can be shown to be in the ordinary course of business for the benefit of the Partnership. The corollary of this is that if any disposition is not in this category, then it should not be made anyway.

61. Mr Hollington suggested that the burden of making application to the Court should not be put on the General Partner. He proposed that the General Partner should only be required to give notice of any proposed disposition, leaving it then for the Petitioners to apply for any injunction if they thought necessary. This, however, would carry the risk of disposition before the matter came before the Court, as has happened with the Proceeds of the Local World transaction. In any event I am satisfied that it is incumbent upon the General Partner to make a proper application for prospective validation if so required. The injunction granted is to ensure that this happens."

107. *Torchlight* made an appearance in the Court of Appeal and is reported at 2018 (1) CILR 290 (27 April 2018) although the attorneys only included the unreported version of the judgment in the authorities bundle. Where a reported version is available it is that version that should be provided in the authorities bundle.

108. *Torchlight* in the Court of Appeal was not an appeal against Clifford J's judgment delivered on 9 February 2016 but such judgment is referred to. Morrison JA gave the lead judgment and focused on McMillan J's decision to make a validation order. At [29] Morrison JA referred to Clifford J's dismissal of the application for a validation order and his grant of "the modified application for an injunction." Morrison JA did not comment upon whether Clifford J was right to grant an injunction and such was not in issue before the Court of Appeal. At [104] Morrison JA concluded that the petitioner's appeal against the order of McMillan J failed because they were unable to satisfy the relevant test and "no basis was therefore shown for this court's interference."

109. In the appeal it simply was not in issue as to whether Clifford J had adopted the correct jurisdictional basis to grant the injunction on *American Cyanamid* principles or whether he was otherwise right to grant the injunction.

Serious issue to be tried?

110. In their skeleton argument at section 6 running from paragraphs 79-90 the Petitioners deal with the *American Cyanamid* factors namely (1) serious question to be tried (simply stating at paragraph 79 that "The Petition raises serious questions for trial, including as regards the propriety of the related

party transactions in which Mr Mo has caused the Company to engage.") (2) damages are not an adequate remedy and (3) balance of convenience.

111. In its skeleton argument the Company at paragraph 16 states that the Petitioners "seek an interim injunction (not a freezing order)." The Company sets out the *American Cyanamid* test as follows:

> "(1) Is there a serious question to be tried? If the answer to that question is "yes", then two further related questions arise; they are:
>
> (2) Would damages be an adequate remedy for a party injured by the court's grant of, or its failure to grant, an injunction?
>
> (3) If not, where does the "balance of convenience" lie?"

112. I have to say that the Company's case on the serious issue to be tried point did not develop in an entirely satisfactory way.

113. At paragraph 17 of its skeleton argument under the heading "Serious Issue to be tried" the Company stated:

> "The Petitioners need to establish both (1) the evidential basis for a serious issue to be tried that would make it just and equitable for the court to wind up Fang [the Company] and (ii) (sic) also establish that there is a serious issue to be tried that the Court would be likely to make a winding up order on the Petition."

114. At paragraph 18 the Company makes the point that Cleeton 3 between paragraph 21 and paragraph 61 is said to provide material that supports the assertion that there is a serious issue to be tried that grounds exist that would make it just and equitable for the court to wind up the Company.

115. At paragraph 19 the Company states that when those paragraphs are examined with forensic precision, it is clear that the deponent is doing no more than identifying the allegations made in the Petition and is not providing evidence that the allegations are true. The Company adds that there is no primary documentary evidence exhibited in support of the allegations. In his oral submissions, on behalf of the Company, Mr Morgan referred the court to Mr Cleeton's comments in Cleeton 3 such as "the Petitioners reasonably believe" (paragraph 14), "the Petition pleads" (paragraph 66),

"the Petitioners allege" (paragraph 67), "The Petitioners' view" (paragraph 92), "I reasonably believe that interim relief is necessary" (paragraph 105). Mr Morgan also refers to an internal inconsistency in Cleeton 3. At paragraph 88 Mr Cleeton in respect of the Stipulation says that "the Petitioners have no visibility on whether that consideration constitutes a fair compromise of any claims which the Company has against Mr Mo, his co-defendants and CIH" and yet at paragraph 92 he also says:

> "The Petitioner's view is that the Company's claims against Mr Mo and his co-defendants are a valuable asset of the Company and that the settlement provided for in the Stipulation is at a vast undervalue. The Petitioners intend to object to the Stipulation in the New York Proceedings …"

116. Mr Morgan suggests the case of the Petitioners is long on assertion and short on substantial evidence in support.

117. Under the heading "Serious Issue – Winding Up" from paragraphs 20 to 23 of the Company's skeleton argument it is put forward that there are a number of factors which militate against a winding up order being made and argued that the Petitioners fail to articulate any convincing reason for seeking a winding up order as opposed to a buy out or permission to bring a derivative claim . At paragraph 23 it is submitted that there is no serious issue articulated that the court would be likely to order the winding up of the Company, particularly in the absence of representations from other unrelated shareholders.

118. During his oral submissions Mr Morgan deviated significantly from the Company's position on the serious issue to be tried point as outlined in its skeleton argument and appeared to make submissions that initially flew in the face of paragraph 17 of his skeleton argument. To be frank, during the hearing, I found them difficult to understand. Mr Morgan appeared to be raising important points in respect of the serious issue to be tried point which were fundamentally different from the way in which the Company's case had been put in its skeleton argument. I needed these submissions to be properly articulated and I needed to understand them. It was in those circumstances, albeit with some considerable reluctance, that I gave the Company a short period of time (before 3pm the next day) to file and serve concise written submissions on the point. I asked Mr Scott how long he required to respond and by 3pm on Tuesday the following week was agreed.

119. In the Company's "Written Submissions on the Proper Identification of the serious issue to be tried required under the *American Cyanamid* test" (again undated but filed at 3.05pm on 6 March 2026) the Company says that the parties agree that the test for an interim injunction in this case is that articulated by Lord Diplock in *American Cyanamid*. In support of that statement in footnote 1 the Company cites "Ps' skeleton at [51] on p.21, Fang's skeleton at [16] on p.5." Paragraph 51 of the Petitioners' skeleton argument dated 27 February 2026 refers to evidential matters in this case and appears on page 20 of the copy in my possession. It may be that the Company intended to refer to paragraph 56 on page 21.

120. The Company at footnote 2 states:

> "Ps do not allege that they are seeking a freezing injunction or some other new form of order unlinked from the relief sought in the Petition. Had they done so, then the court would have had to consider a different test not articulated in argument. However, as stated, Ps accept that they have to satisfy the *American Cyanamid* test."

121. The Company says that the "serious question to be tried" referred to by Lord Diplock at 408 A-B of *American Cyanamid* is the question that will be decided at trial about whether a plaintiff is entitled to the permanent injunction it has claimed in the proceedings.

122. In support of that statement the Company directs the court to the English 2025 White Book sub-paragraphs (10) and (1) in 15-8 and 15-21 which it says is mirrored in the RSC White Book 1999 at 29/L/3.

123. In the English 2025 White Book the sub-paragraphs relied upon at 15-8 read as follows:

> "(10) However, the court must be satisfied that the claim is not frivolous or vexatious; in other words, that there is a serious question to be tried.
>
> (11) So, unless the material available to the court at the hearing of the application for an interlocutory injunction fails to disclose that the claimant has any real prospect of succeeding in their claim for a permanent injunction at the trial, the court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought."

124. 15-21 also refers to (10) and (11) and the risk of "terminological confusion".

125. The English White Book 1999 29/L/3 (10) and (11) are substantially the same as above, save and except a capital C for court and instead of claimant a reference to plaintiff and "his" instead of "their".

126. Smellie CJ (as he then was) in *Kelly v Fujigmo Limited* 2012 (2) CILR 222 at [10] stated:

> "As later explained in the cases subsequent to Lord Diplock's pronouncement of the principles [in *American Cyanamid*], the test of real prospect of success is preferred and the use of the expression "frivolous or vexatious" has been discountenanced in this context: see *Mothercare Ltd v Robson Books Ltd* (5) ([1979] F.S.R. at 474, per Megarry, V-C)."

127. The remainder of the Company's additional written submissions on this point needs to be set out in full as with their intensity they are not easily summarised:

> "7. On Ps' Petition, the question to be determined at trial is whether it is just and equitable that Fang should be wound up, and if so, what relief should the Court grant under section 95 of the Companies Act.
>
> 8. The question whether Fang can or should be restrained from entering into transactions post-petition will not be decided at trial, there is no claim to that relief in the petition, Ps advance no argument that they have any right to such relief, and Fang has been excluded from participation in the trial.
>
> 9. In their Petition, Ps have claimed no injunctive relief at all and the Court is not asked to rule on whether any injunctive relief can be justified on a final basis. On Ps' petition, there is no issue that will be decided at trial that would vindicate Ps' claim to an interim injunction in the terms currently sought. Nor have Ps asserted any legal or equitable right at all to the interim relief claimed, or indeed any similar final relief.
>
> 10. By way of emphasis, an injunction that Fang should not be allowed to enter any of a class of transactions other than with the prior sanction of the Court is not claimed

by way of final relief and rewrites (and waters-down) the terms of s.99 of the Companies Act, which permits the Court to make a validation order at any time, including after the making of a winding up order.

11. Even were a claim for a permanent injunction articulated, there is no serious issue to be tried that Ps are entitled to vary the statutory regime and require Fang or contractual counterparties to seek and obtain a validation order before entering into a transaction if they accept a risk that the transaction may be void.

12. Indeed, there is good authority in *Tianrui v China Shanshui* [2020 (1) CILR 417]4 at [16] (in the citation from Palmer) that a company need not cease trading simply because a petition has been presented, even without a validation order.

13. Ps do not identify a serious issue that they have a right to require dispositions to be pre validated by the Court which they seek to protect until a trial has occurred and the right is vindicated, they have not even argued that such a right exists (it is clear that such a right does not exist), nor do they identify a serious issue to be tried in the Petition in relation to a final order in respect of which any interim relief of the sort claimed can be said to be in support.

Conclusion

14. There is no serious issue to be tried that the relief claimed on an interim basis (namely a requirement that Fang obtains a validation order for dispositions before they occur) supports any claim for final relief that Ps seek to vindicate at trial.

15. Further, there is no arguable case that could be made at trial that P has a right to such relief, even were it articulated.

16. Ps therefore do not satisfy the "serious question to be tried" limb of the *American Cyanamid* test because they have not claimed and there will never be a trial of any claim to any such relief."

128. In his oral submissions on the serious issue to be tried point Mr Scott on behalf of the Petitioners made, amongst others, the following points:

(1) the starting point is the judgment of Clifford J in *Torchlight*. The Grand Court has the same powers as the English courts to grant interim injunctions when it is just and convenient to do so;

(2) it is wrong to law, and Mr Morgan produces no authority in support, to suggest that an interim injunction can only be granted if it can be shown that there is a serious chance that at the conclusion of the trial a permanent injunction will be granted in the form of interim relief;

(3) *American Cyanamid* is one case, it is not exhaustive of all categories in which an interim injunction can be granted. *Torchlight* is an illustration of another category of cases where an interim injunction can be granted;

(4) the Petition does raise serious issues to be tried.

129. In their additional written submissions dated 10 March 2026 the Petitioners made the following points:

(1) The Company's new argument on serious issue to be tried, that because the Petitioners do not seek an injunction as part of the final relief sought on the Petition, there is no serious issue to be tried for the purpose of the *American Cyanamid* principles, is unsustainable. It misunderstands the nature and breadth of the court's jurisdiction to grant interim injunctive relief and it misunderstands the *American Cyanamid* principle and is contrary to various authority.

(2) *Broad Idea International Ltd v Convoy Collateral Ltd* [2022] WLR 703 (PC) confirms the unlimited jurisdiction to grant an injunction where it has personal jurisdiction over the respondent and the grant of relief is just and equitable.

(3) It is not the law (if it ever was) that an interim injunction can only be granted to protect a legal or equitable right; still less that the applicant must be seeking a final injunction at the trial.

(4) In *Re G (Court of Protection: Injunction)* [2022] 3 WLR 1339 (CA) Baker LJ at [55] discerned from *Broad Idea* "two requirements before an injunction can be granted: (i) an interest of the claimant which merits protection and (ii) a legal or equitable principle which justifies exercising the power to order the defendant to do or not do something."

(5) Those requirements are amply satisfied in this case because the Petition raises serious issues to be tried, it discloses "an interest of [the Petitioners] which merits protection and because the Petitioners are shareholders seeking relief on just and equitable grounds to protect their rights as such, there is a principled basis to restrain the Company from dealing with its assets pending determination of that Petition at the trial.

(6) Reliance is placed on *Koza Ltd v Koza Altin Isletmeleri AS* [2021] 1 WLR 170 (CA) in which the Court of Appeal of England and Wales held that there was jurisdiction to grant a freezing injunction upon a shareholder's counterclaim for declarations against the respondent company that changes made to its constitution and share structure were invalid and unlawful. Popplewell LJ at [87] stated:

> "Protection of those assets was justified by the fact that the petitioners had an interest in the value of the company if it was wound up, or if his shareholding were to be bought out at fair value. What mattered was preserving the value of the company in circumstances in which the petitioner had a legitimate interest in such preservation."

At [89] Popplewell LJ referred to the "principle that where a claimant has a legitimate interest in preserving the assets of, or potentially available to, a company, that is a sufficient interest to support injunctive relief to protect it."

(7) The court should reject the Company's new argument. The correct position is the one upon which the parties previously agreed, whereby the relevant question is whether the Petition raises serious issues to be tried.

130. In *Koza* the asset freezing order requirements were met including the real risk of an unjustified dissipation of assets. The evidence in the case before me does not meet the asset freezing order test and the Petitioners do not apply for an asset freezing order, presumably because they were not

confident that they would clear that hurdle. It is worth noting that at [98] Popplewell LJ stated that "It is trite law that the principles applicable to the grant of freezing orders are those summarised in *Crowther* [2020] EWC Civ 762 and that they differ from a simple *American Cyanamid* approach."

131. The Company, without leave, filed written submissions in reply (undated but filed on 11 March 2026) and I considered them. The Company made, amongst others, the following points:

(1) The court does have a wide power but different types of injunctions have different considerations and require the application of different tests "for their grant".

(2) The test relied on by the Petitioners was the *American Cyanamid* test and not the existence of any other power.

(3) Had the Petitioners led evidence, articulated a case in their skeleton or oral arguments to the effect that they were seeking an injunction of a different sort and on a different basis to that identified in *American Cyanamid* then they could and should have articulated at the outset the test they sought to satisfy. The Petitioners now try to "switch horses" to invoke a power to grant an injunction on a different basis.

(4) At no stage have the Petitioners identified what test applies given that *American Cyanamid* is inapplicable.

(5) The Petitioners' problem is that however they now re-cast the test ("risk of dissipation or secretion" for freezing orders, or whatever other approach is espoused) they not only have to satisfy that test on the basis of the existing evidence (and it is unclear what they rely upon) but they will also have to explain what justification there is to supplement the statutory regime and why they took no steps at all for over 2 years in the context of any alleged justification.

132. The Petitioners in their email of 10 March 2026 also took the liberty, without leave, to attach a redline version of a draft order with some proposed amendments if I was not with them on the draft previously submitted. In the main:

(1) in paragraph 1 (a): delete “or for the benefit of”, delete “and” in the second line and insert “or”, add at the end “, save that nothing in this provision shall prevent the Company from entering into transactions in the ordinary course of its business”;

(2) in paragraph 1 (d) delete “or beneficial”;

(3) in paragraph 2 delete “and on a quarterly basis thereafter for the duration of these proceedings” and after “of any” insert “transaction falling within paragraphs 1 (a) to (f) above occurring on or after 19 January 2024” and delete “disposition of the Company’s property and any transfer of shares or alteration in the status of the Company’s members made on or after the date of this order 19 January 2024, including without limitation any transaction or transfer falling within 1 (a) to (f) above.”

133. I do not like it when attorneys attempt to mislead me or push their use of language beyond honest boundaries. I will call it out even when I see just possible hints of it. Attorneys need to be very careful with their use of language especially in their communications with the court. They need to ensure that they are open and scrupulously accurate and honest in their communications with the court. As officers of the court their primary duty is to assist the court in the administration of justice.

134. The email from Campbells 10 March, 2:50pm stated:

> “During his reply submissions, Mr Scott KC addressed His Lordship on the terms of the draft order which was handed up during the hearing. To the extent it assists, we **attach** a redline version of the draft order which incorporates the amendments proposed.” [internal bold]

135. An objective honest reader of that paragraph, with knowledge of the case and the hearing, would reasonably assume that the “redline version” did not include any fresh amendments to the “revised draft order” attached to the Campbells’ email dated 4 March 2026 2:37pm. It did.

136. One would also reasonably assume that there were no amendments in addition to those covered by Mr Scott in his oral submissions. There were. In particular the redline attached to the email 10

March 2:50pm deleted in paragraph 2 the words "and on a quarterly basis thereafter for the duration of these proceedings" which was not included with the version attached to the email of 4 March 2026 2:37pm and was not covered in Mr Scott's oral submissions. There was no explanation whatsoever put to the court in respect of the proposed additional amendment. It was as if the attorneys were trying to slip it in, almost unnoticed. It was certainly not highlighted in the covering email. The email gave the impression that there was nothing to see here other than amendments that had previously been canvassed before the court, if the court was not willing to grant a disclosure order in the terms originally sought. That was not a correct impression.

137. Moreover I do not recall an additional draft order being handed up to the court during oral submissions and the draft transcript of the hearing does not reflect that one was.

138. Unsurprisingly the Company takes issue with the revised terms of the draft order at paragraph 2. The Company says as now recast the Petitioners seek that it disclose all details and all documents relating to all transactions of any value (other than in the ordinary course of business) where those transactions have already occurred (since 19 January 2024 and where the Company obviously cannot now seek a prospective validation order), a period of over 2 years where the Petitioners knew of the allegations they now make but never once saw fit to apply to the court.

139. The Company says that there is "neither explanation nor justification provided as to why this historical information in all its detail and with all the attached documentation is necessary generally for, or ancillary to, an order that will not be made until after the date of this document and which would, if granted, be prohibitive going forward, not backward, in time" (paragraph 10 of Second Respondent's written reply submissions on serious issue to be tried undated but filed on 11 March 2026).

140. The Petitioners responded as follows by email dated 11 March 2026 10:35am:

> "The Petitioners' position is that the Reply submissions proceed on the fundamental misapprehension that the Petitioners "accept" the Company's new analysis of Lord Diplock's speech in *American Cyanamid* and are now seeking to "switch horses" to invoke a power to grant an injunction on a different basis. As the Petitioners hope will have been clear to the Court from their submissions at the hearing and the Written Submissions filed yesterday, neither is the case. They continue to rely on *American Cyanamid* principles as the basis for the injunction they seek, it having been pursuant to those principles that the

Grand Court granted the same relief in *Torchlight*; and they reject the Company's new interpretation of them for the reasons previously submitted."

Decision on serious issue to be tried

141. As Smellie CJ (as he then was) stated in *Kelly v Fujigmo* at [10] the test in respect of serious issue to be tried is whether there is a real prospect of success. I refer below in further detail as to what "issues" that test covers in the particular circumstances of this case which is now hotly disputed amongst the Petitioners and the Company.

142. The respective arguments put before the court on the serious issue to be tried point, in the context of this case, raise interesting points of law.

143. *Torchlight* does not help me on this point as in that case the serious issue to be tried point was conceded and Clifford J does not appear to have had the benefit of consideration of contested legal argument on the point. At [57] Clifford J simply states:

> "There is no doubt here that there are serious issues to be tried. This was very fairly and properly accepted by Mr Hollington. The issues include those referred to in respect of related party transactions."

144. On the serious issue to be tried point if the question is whether the Petitioners can show that there is a real prospect of obtaining a winding up order on the basis of what is presently before the court in the bundles provided for the hearing on 5 March 2026 I have to say that I am not convinced. It may be arguable that there is a serious issue that the winding up threshold has been crossed but whether the court would make a winding up order is another matter. This, of course, is relevant because the Petitioners' claim for interim relief relies to a large extent on section 99 of the Companies Act which only effectively kicks in once an actual winding up order has been made.

145. I remind myself that the Petition is a petition by shareholders holding less than 5% of the shares in a solvent company, and not supported by other independent shareholders. The Petition appears to be largely based on historical complaints which were in existence when the Petitioners made their investment and on their face appear somewhat stale. I note that certain fresh issues are also raised

as summarised at 295(e), (f) and (g) of the Petition. I also note the concerns raised by the Petitioners in respect of the Stipulation and Ace Smart.

146. In respect of the most recent complaints regarding the Stipulation and Ace Smart there is no evidence presently before the court that the Company has been involved in some improper conduct in respect of payments under the Stipulation or in respect of the Ace Smart transfer. Mr Morgan also makes the point that the shares are fully paid and there could be no prejudice to the Petitioners in that respect and beneficial interests transfers are not caught by section 99 and Mr Scott accepts the law in that respect.

147. I note Mr Morgan's powerful criticism of the lack of factual evidence and supporting documentation in the bundles which were before the court for the hearing. I appreciate that as Mr Scott says that the bar on serious issue to be tried is a low bar but it has not been met in this case. I stress that I keep a mind open to persuasion and if it proceeds I will, of course, decide the Petition on the basis of the evidence and submissions put forward at trial.

148. On the evidence and arguments presently before the court I do not, however, accept that there is a serious issue to be tried in respect of the granting of a winding up order. Even if the allegations in the Petition are proved it seems highly unlikely that the court would grant an order winding up this solvent Company on the petition of shareholders holding less than 5% of the shares and without the support of any other shareholders. As I say, it would be much more likely, if the winding up threshold has been crossed, to order a buyout or give permission for civil proceedings to be brought against Mr Mo in the name and on behalf of the Company. Another possibility is that the court declines to make a winding up order because there is an alternative less draconian remedy available to the Petitioners.

149. If I have identified the wrong question and Mr Morgan is correct that the right question on a strict and literal application of the *American Cyanamid* principles is whether the Petitioners would at trial be entitled to a permanent injunction in terms of the interim injunction they seek then I would answer that question in the negative. Such relief is not claimed. I agree with Mr Morgan that there is no issue to be decided at trial that would vindicate the Petitioners' claim to an interim injunction in the terms currently sought. On this basis, and if Mr Morgan was correct as to the right question, I agree that the Petitioners do not satisfy the "serious question to be tried" limb of the *American*

Cyanamid test because they have not claimed and there never will be a trial of any claim to such relief.

150. If I am wrong on this serious issue to be tried point, the question would arise as to whether damages are an appropriate remedy and for the assistance of the parties and others I indicate below my decision on that issue also.

Damages are an adequate remedy

151. I have already outlined above some of the respective arguments presented to the court in respect of whether damages are an adequate remedy.

152. Unsurprisingly the Petitioners place great emphasis on the conclusions of Clifford J in *Torchlight* at [58]. Clifford J accepted that dispositions of assets particularly to related parties "may become void but would not necessarily be recoverable." Clifford J referred to the risk of either the parties not being capable of repaying them or being abroad in jurisdictions which would not give effect to the avoidance. Clifford J's concise conclusion on this point in the context of the case before him, was admirably contained in just two short sentences:

> "The potential difficulties are such that it could well prove not to be economical to seek recovery. Damages are not, therefore, an adequate remedy."

153. This case, as with most cases within the Financial Services Division of the Grand Court, appears to be about money. The main thrust of the Petitioners' case is against Mr Mo. The Petitioners accept that the Company is a solvent company. In *Torchlight* there appears to have been some doubt as to the solvency of the relevant legal entity hence the phrase "alleged solvency" at [39] of Clifford J's judgment.

154. In the case before me, at paragraph 13 of their Petition the Petitioners plead that "The Company is solvent and the Petitioners expect that its shareholders, including the Petitioners, would be entitled to a surplus on winding up". The Petitioners appear to accept that there is considerable value in the Company. Mr Cleeton at paragraph 123.3 of Cleeton 3 states "The Petitioners' shares in the Company constitute assets within the jurisdiction. The value of those shares is adequate to meet any reasonable damages order that could theoretically be made." That was in the context of the

Petitioners' cross-undertaking in damages. In oral submissions the point was made on behalf of the Petitioners that the value of the Company may change over time but at the same time the Petitioners are still content to reassure the court that their cross-undertaking in damages does not need to be fortified.

155. The Petitioners at paragraph 8 of the Petition refer to Mr Mo's "significant shareholdings in the Company". The Petitioners say that Mr Mo "and companies of which [Mr Mo] is 100% owner or which are affiliated with him" hold 59.1% of the shares in issue and have 85.2% of the voting rights in the Company. The Petitioners list the other two entities holding "significant shareholdings" as General Atlantic Singapore Fund Pte Ltd stated to have 12.3% of the shares and 3.6% of the voting rights and Evenstar Capital Management Limited with 14.4% of the shares and 4.2% of the voting rights.

156. Mr Morgan referred the court to the judgment of Smellie CJ (as he then was) in *Kelly v Fujigmo* where at [13] when dealing with whether damages would be an adequate remedy if the plaintiffs succeeded at trial the then Chief Justice relying on *London & Blackwall Ry. Co. v Cross* (1886), 31 Ch. D 354 and Lord Diplock's comments in *American Cyanamid* at 408, referred to the burden on plaintiffs:

> "In this regard, it is for the plaintiffs to satisfy the court that damages awarded at trial would not be an adequate remedy."

157. The *London and Blackwall Railway Company* case involved a successful appeal from an order made by Chitty J at first instance. Lindley LJ at page 369 stated:

> "The very first principle of injunction law is that *prima facie* you do not obtain injunctions to restrain actionable wrongs, for which damages are the proper remedy."

158. As Lord Diplock put in in *American Cyanamid* at page 408 "if damages … would be [an] adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the plaintiff's claims appeared to be at that stage."

159. In my judgment, the Petitioners have failed to satisfy the court that damages would not be an adequate remedy. If they succeed at trial and obtain a winding up order there is no evidence before

the court to suggest that, as they plead at paragraph 13 of their Petition, the Petitioners will not get a surplus on the winding up. Moreover if the court orders a buyout or grants permission for a derivative claim against Mr Mo, or if Mr Mo has engaged in improper conduct and the liquidators obtain judgments against him, there is nothing to suggest that Mr Mo is not "good for the money" in respect of any judgments awarded against him. There is no evidence before the court to the effect that the Petitioners will not ultimately obtain financial compensation if they succeed at trial.

160. I accept, as the Petitioners sought to repeatedly remind me, that criticisms have been made by Justice Andrew Borrok in the Supreme Court of the State of New York New York County in a concise decision delivered on 5 September 2025 against the defendants in that case including Mr Mo but not the Company. Justice Andrew Borrok had this to say:

> "In short, the totality of the defendants' conduct shows that their violation of this Court's orders, their failure to observe a litigation hold, and their obfuscation and delay of discovery was done willfully, contumaciously, and in bad faith …
> the record before the Court unequivocally establishes intentional and willful destruction of documents even after the lawsuit was filed.
> The defendants' conduct also demonstrates flagrant and blatant disregard of numerous court orders with respect to discovery and their intentional and deliberate attempts to frustrate the plaintiff's right to seek relevant discovery and to conceal their conduct ….
> Unquestionably there is clear and convincing evidence of multiple violations of court orders as to how discovery must proceed in this case given the substantial evidence of spoliation …
> the defendants actively manipulated the devices and accounts that they provided to BRG or withheld them entirely …".

161. These criticisms are, of course, serious criticisms and raise serious concerns but in the present context of considering whether the Petitioners have proved that damages would not be an adequate remedy they amount to little more than prejudicial mud-slinging. However they are properly described, they are of limited relevance and weight in the present context. It simply does not follow from those American judicial criticisms that Mr Mo will not be in a financial position to pay any financial compensation orders made against him in favour of the Petitioners.

162. Although Mr Morgan was appearing for the Company and not Mr Mo, he made the point that in the past when allegations had been made against Mr Mo these had been compromised and financial compensation paid (i.e. the withdrawal of the 2020 Petition and the Stipulation). Mr Morgan submitted in effect that there was no evidence of the Company improperly providing money or assistance in that respect.

163. The Petitioners refer to the difficulties any liquidator may have in dealing with any related party transactions but these concerns do not lead me to conclude that damages are not an adequate remedy in the circumstances of this case. The Petitioners say that section 99 is "not sufficient protection in the present case, just as it was not in *Torchlight*, in which the Court recognised that damages are not an adequate remedy in this context".

164. It is trite that each case, of course, must be decided on its own facts and circumstances. In the circumstances of the case presently before the court I am not satisfied that damages would be an inadequate remedy.

165. In the case presently before me, the Petitioners have not proved that damages would be an inadequate remedy.

Balance of convenience

166. In light of my determination on the serious issue to be tried point and damages an adequate remedy it is unnecessary for me to extend this already lengthy judgment by also dealing with balance of convenience issues.

<u>Just and convenient generally</u>

167. In respect of the Injunction Summons, the Petitioners have not persuaded me that it would be just and convenient to grant the wide-ranging intrusive relief they seek.

168. The jurisdiction to grant an injunction whenever it is just and convenient to do so is a wide jurisdiction which should not be placed into a straitjacket. Wide jurisdictions are however open to abuse and must be exercised on a principled basis.

169. Put simply and concisely, I have not been persuaded in the particular circumstances of this case that it is just and equitable to grant the unusual relief the Petitioners are seeking. I do not say whether *Torchlight* at first instance before Clifford J was or was not decided on the correct jurisdictional basis. What I do say is that it was factually a very different case from the one presently before the court and I do not feel bound to follow Clifford J's conclusions on the serious issue to be tried point (which was based on a concession) or on the damages not being an adequate remedy point (which was plainly based on the evidence presented in that case). I decide the application presently before the court on the basis of the relevant evidence and arguments presented. Although the Petitioners, for obvious reasons, placed great, indeed disproportionate reliance on *Torchlight*, it is trite that each case must be decided on its own facts and circumstances.

170. The Petitioner's Injunction Summons appears to have been prompted by the Stipulation and then they seem to have been concerned about Ace Smart. No real risk has been established in respect of the Stipulation. The word "may" does not mean "shall". The Petitioners then sought to raise ill-informed concerns in respect of Ace Smart, but they were false concerns also, as evidenced by their belated removal of the word "beneficial" in the draft order. There is nothing before the court to persuade the court that the Company has been involved in something improper in respect of the Stipulation or Ace Smart. Frankly, although they seem to have greatly excited the suspicions of the Petitioners they have both turned out to be damp squibs, insofar as the Injunction Summons was concerned. Certainly they, and the other evidence put before the court, are insufficient to persuade me that it would be just and convenient to grant the relief sought by the Petitioners pursuant to the Injunction Summons.

171. Furthermore, the Petition appears to be largely based on historical complaints many of which were raised in the discontinued 2020 Petition. Mr Scott did not suggest that the Petitioners were unaware of the 2020 Petition at the time of their investment. The Petitioners plainly invested in the Company with their financial eyes fully open and the Company would in effect add "with their open pockets ready to receive cash", in due course.

172. It is neither just nor convenient to grant the Petitioners the injunction they seek.

The disclosure orders

173. As I am not granting an injunction it follows I will not be granting the disclosure orders which were sought to "police" any injunction.

174. If I had been persuaded to grant an injunction I would still have had concerns over the disclosure orders sought.

175. The disclosure orders as originally sought and as amended from time to time were far too wide and not justified in the circumstances of this case.

176. Recognising the oppressive and disproportionate width of the disclosure orders they were seeking, the Petitioners on no less than 3 occasions (the email on the day before the hearing, during the hearing and after the hearing) sought to cut them down. In my judgment even the much reduced core of what they were seeking remained unjustified.

177. In my judgment, the Petitioners were not seeking a "modest measure of protection" as they tried to suggest at paragraph 27 of their skeleton argument dated 27 February 2026. They were seeking to go further than the applicable section 99 protection and they were seeking a very wide-ranging disclosure order, which it was neither just nor convenient to grant in initial or modified form.

The Order

178. I dismiss the Injunction Summons.

179. The attorneys should email to my PA a draft order (agreed as to form and content) reflecting the determinations contained in this judgment within 7 days of its delivery.

Ancillary issues

180. If any ancillary issues (such as costs) cannot be agreed then any concise submissions (no more than 5 pages) should be emailed to my PA within 14 days of the delivery of this judgment and I would be minded to deal with the same on the papers without the need for a further hearing.

David Doyle

THE HON. JUSTICE DAVID DOYLE
JUDGE OF THE GRAND COURT