Neutral Citation Number: [2026] EWHC 2240 (Comm)

Case No: CL-2025-000188

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 28/08/2026

Before :

Mr Nigel Cooper KC sitting as a Deputy High Court Judge

- -

Between :

APOLLO XI LIMITED	**Claimant/ Respondent**
- and –	
NEXEDGE MARKETS LIMITED	**Defendant/ Applicant**

- -

WILLIAM DAY and **MAUD MULLAN** (instructed by **Bryan Cave Leighton Paisner LLP**) for the **Applicant**
JASON ROBINSON KC and **JOSHUA S.K. FUNG** (instructed by **Quinn Emmanuel Urquhart & Sullivan UK LLP**) for the **Respondent**

Hearing date: 01 July 2026

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JUDGMENT

Nigel Cooper KC :

Introduction

1. By an application notice dated 08 December 2025, the Applicant ("**Nexedge**") applied:

    i) To enforce the cross-undertaking in damages given by the Respondent ("**Apollo**") to this Court in paragraph 1 of Schedule B ("**the cross-undertaking**") to a freezing injunction granted by Cheema-Grubb J. dated 16 April 2025 ("**the Freezing Injunction**"), which was discharged on 17 June 2025; and

    ii) For an order for an inquiry into whether, and, if so, in what amount, the Freezing Injunction had caused loss to Nexedge for which it ought to be compensated.

2. The relevant cross-undertaking as to damages provides as follows:

    > *"If the court later finds that this order has caused loss to the Respondent and decides that the Respondent should be compensated for that loss, the Applicant will comply with any order the court may make."*

3. Saini J. discharged the Freezing Injunction on 17 June 2025 on the basis that it had been wrongly obtained. In his judgment ([2025] EWHC 1488 (KB)), the judge held, inter alia:

    i) There was an overwhelming case for the discharge of the Freezing Injunction due to serious failures by Apollo to provide full and frank disclosure at the without notice hearing, both in its presentation of the merits of the claim and also as to the evidence presented on risk of dissipation ([63] – [96]).

ii) The Freezing Injunction would not be continued in any event because (a) Apollo had no good arguable case ([97] – [108]), (b) there was no risk of dissipation ([109] – [112]) and (c) the Freezing Injunction would not be just or fair in all the circumstances ([113] – [119]).

4. It is right to record that leading and junior counsel and their instructing solicitors who appeared before me for Apollo were not instructed for Apollo at the time of the application for the freezing injunction or at the time of the hearing before Saini J. They only came on the record after the Freezing Injunction had been discharged.

5. Nexedge says that it has suffered very significant losses because of the Freezing Injunction and has therefore made this application for permission to enforce the cross-undertaking and to seek compensation from Apollo in respect of four heads of loss:

i) Disruption and delay to Nexedge's variation of permission ("**VoP**") application to the Financial Conduct Authority ("**FCA**")("**the VoP Application**");

ii) Reputational damage, and associated financial impact on Nexedge's business;

iii) Business disruption, including a drain on managerial time and resources; and

iv) The ultimate failure of the VoP Application.

Background

6. Nexedge is an introducing broker operating in "contracts for difference" ("**CFD**") trading in equities, forex, commodity and other markets. It is authorised and regulated by the FCA and its sole shareholder and director is Mr. Tarik Sami. Apollo is a BVI special purpose vehicle, whose ultimate beneficial owner and controller (or so Nexedge says) is Mr. Chun Pui Ting (also known as Duncan Ting).

7. On 15 August 2024, Mr. Sami entered heads of terms with Apollo and another company associated with Mr. Ting, called DNA Capital LP. The heads of terms outlined a proposed business relationship, of which the first part was a loan. On 21 August 2024, Apollo and Nexedge entered into a loan agreement ("**the Loan Agreement**") by which Apollo advanced Nexedge US$10 million as a 10-year unsecured loan ("**the Loan**").

8. The loan was to be used, inter alia, in connection with the VoP Application, which was by then in contemplation. Saini J. described the VoP Application as part and parcel of the overall arrangements identified in the heads of terms ([26]).

9. On 24 December 2024, Nexedge submitted the VoP Application – and its associated business plan – to the FCA. The purpose of the VoP Application was to enable Nexedge to hold client money and enable Nexedge to offer professional clients direct trading and CFD liquidity rather than simply acting as an introducing broker. It envisaged a significant increase in Nexedge's revenue and balance sheet. The business plan projected a rapid rise in after tax

profits as a result of the VoP; from £74,800 in the 2024/2025 tax year (prior to the VoP) and to £2.63 million in the 2027/2028 tax year (after the VoP).

10. Nexedge says that by early April 2025 it was very close to securing the VoP and that this was acknowledged by the FCA on a call on 10 November 2025. However, by April 2025, the business relationship between Mr. Sami and Mr. Ting had broken down completely. As Saini J. held at [33], it was clear from WhatsApp messages exchanged on 8 – 9 April 2025 that Mr. Ting:

> *"… wanted the loaned money back and to effectively terminate Nexedge. Of course, he had no right to do at least the latter. Nexedge was bound by the Loan Agreement, but it is an independent company in which Mr. Ting (or his associated corporate entities) had no form of equity interest."*

11. On 10 April 2025, Mr. Ting's access to Nexedge's office (and that of his associates) was suspended.

12. On 11 April 2025, a recording was made of various calls made by Mr. Marcelo Spina (then CEO-designate of Nexedge) in Nexedge's office without Mr. Spina or Nexedge being aware at the time that he was being recorded ("**the Recording**"). Saini J. concluded that:

    i) Nexedge has a strong inferential case that the Recording was orchestrated by Mr. Ting as a form of bugging [76]; and

    ii) In any event, it should have been obvious that from the very start of the Recording that it was private and confidential [115].

13. I heard submissions from Mr. Day regarding the significance of the Recording during a brief period when the Court sat in private so as not to prejudice Nexedge's counterclaim for breach of confidence.

14. On 15 April 2025 and in reliance on the Recording, Apollo applied without notice for the Freezing Injunction. Cheema-Grubb J., misled as Saini J. subsequently found, granted the application, accepting the cross-undertaking, and fixed a return date for 24 April 2025.

15. The return date was subsequently re-listed for 09 June 2025 and, once that date was confirmed, Nexedge wrote to the FCA on 12 May 2025 notifying it of the Freezing Injunction. The FCA responded saying that it could not progress the VoP Application until it had considered the impact of the Freezing Injunction and associated litigation.

16. On 27 May 2025, Apollo served its Particulars of Claim with a claim for acceleration of the Loan also relying on the Recording ("**the Original Claim**").

17. On 03 June 2025, an e-mail was sent from "legal@xsyphon.com" with the heading "Invitation to Freezing Order Return Date Hearing: Apollo v Nexedge", which is signed "Warm regards, Apollo XI Limited". It is Nexedge's case that this e-mail was sent by or on behalf of Apollo. Apollo denies that the e-mail was sent by it or on its behalf. It is an e-mail which can only be described as extraordinary in its terms, containing as it does an invitation to "staff, clients and partners" to attend the return date. The e-mail gives notice of the fact that Apollo had obtained the Freezing Injunction, the return date and explains why Apollo considered Nexedge to be in default under the Loan Agreement. It continued:

> "…
>
> *You are invited to the Return Date Hearing, when NML who wants to discharge the Freezing Order can put in its defence.*

> *We are pleased to welcome both staff, clients and partners to attend the hearing in person, simply because transparency and a chance for you to see the truth.*
>
> *To support your attendance, Apollo will fully cover all reasonable transportation and accommodation costs associated with your visit to the hearing.*
>
> *If you plan to attend, kindly RSVP by replying to this e-mail … no later than 5 June 2025 (Friday). Our team will follow up with logistical and booking arrangements.*
>
> *…".*

18. It is not possible to see from the e-mail to whom it was sent but Mr. Sami says in his witness statement that Nexedge learned of this e-mail when it was told about it by clients and employees.

19. On 09 June 2025, the return date took place before Saini J., who discharged the Freezing Injunction on the basis that it had been wrongly obtained.

20. Nexedge submits that notwithstanding the discharge of the Freezing Injunction, the FCA remained concerned both by the Freezing Injunction and the prospect of on-going litigation. Nexedge relied by way of example on:

    i) An e-mail from Mr. Ward of the FCA on 26 June 2025 in which he wrote that there remained *"a reliance on the Apollo loan agreement and in light of the action taken by Mr. Ting's company we would like to understand the firm's current plans on its funding going forward"*.

    ii) An e-mail dated from Mr. Ward dated 14 October 2025 in which he wrote that *"we haven't been able to mitigate that the firm's capital position could be undermined by a negative judgment in the outstanding legal case … it is unusual for firms to apply for transformation variations whilst unresolved legal proceedings are ongoing …".*

21. Following further correspondence with the FCA, Nexedge had a call with the FCA on 10 November 2025, in which, Nexedge says, the FCA confirmed that the VoP would not be granted at that time. Nexedge relies on a letter it sent to the FCA on 12 November as a record of what was said in the call:

> *"As discussed on the call, we have determined with your guidance to withdraw our VoP application with immediate effect. We thank you for your understanding on the call and note the consensus that this is the best course of action open to us given your indication that our application will not be successful in the current circumstances, following the injunction and following on litigation by Apollo XI Limited. ... we appreciate the offer to resubmit the VoP as soon as we have resolved the drain on our resources caused by the Apollo injunction and all that followed from it. We will keep you updated on this."*

22. On 24 November 2025, Apollo gave notice of their intention to amend their Particulars of Claim to abandon the Original Claim and to introduce a new claim for acceleration of the loan ("**the New Claim**"). Amended Particulars of Claim were served on 24 December 2025. The New Claim is the claim going to trial and relies only on matters occurring after the discharge of the Freezing Injunction.

23. As set out above, Nexedge issued the application on 08 December 2025. Following directions given on 19 December 2025, this hearing was listed to determine the application before the first case management conference, which is listed for 09 September 2026.

The Test for Permission – The Law

24. There are two stages to an application for an inquiry under a cross-undertaking in damages, see Balkanbank v Taher [1995] 2 All ER 904 (CA) at 909 per Staughton LJ:

i) As a matter of discretion, should the Court order that the undertaking be enforced?

ii) If yes, what loss has the defendant suffered in terms of money, was it caused by the order which the claimant obtained from the Court and was it not too remote?

25. This hearing is concerned only with the first (permission) stage of the test. However, it is pertinent to keep in mind that there is no conceptual limit to the heads of loss recoverable in an inquiry under the cross-undertaking. Such heads of loss can include:

i) a loss of chance case (unless the chance lost is so speculative that it must be disregarded), SCF Tankers Ltd v Privalov [2017] EWCA Civ 1877, [2018] 1 WLR 5623 at [55] and [57];

ii) Damages at large, including upset, stress, loss of reputation, general loss of business opportunities and general business and other disruption, Hone v Abbey Forwarding Ltd [2014] EWCA Civ 711, [2015] Ch 309 at [150]; and

iii) Lost management time, Al-Rawas v Pegasus Energy Ltd [2008] EWHC 617 (QB), [2009] 1 All ER 346 at [22] – [23].

26. In this case, none of the heads of loss sought by Nexedge are of a type which could be considered unexpected.

27. So far as permission is concerned, there is a strong rebuttable presumption in favour of enforcement. Neuberger L.J. put it in the following terms in Lunn Poly Ltd v Liverpool & Lancashire Properties Ltd [2006] EWCA Civ 30 at [42]

> *"... the defendant can normally expect, virtually as of right, to have an enquiry as to the damages to which he is entitled pursuant to the cross-undertaking which the claimant will have been required to give as a condition of obtaining the interlocutory injunction."*

28. It follows that the Court will ordinarily give permission for an inquiry unless there are special circumstances; see Lunn Poly at [43]. Special circumstances will include, but are not limited to, (i) circumstances where the defendant has behaved inequitably, (ii) a material change in circumstances since the without notice hearing, and (iii) where the Court is satisfied that no damages have been suffered (Lunn Poly at [43] – [44]).

29. Apollo bears the burden of persuasion to rebut the presumption in favour of an inquiry, *Gee on Commercial Injunctions*, 7th ed (2020) at §11.043. It puts its case in this regard on the third category of special circumstances, namely that Nexedge has suffered no recoverable loss. The rationale for this category of special circumstances is that the Court will not allow an obviously pointless inquiry in respect of what is patently only trivial loss (to avoid a waste of Court and party time): *Gee* at §11.041.

30. However, Nexedge submits and I accept that the Court must guard against a respondent seeking to use the 'no loss' category of special circumstances to turn the permission stage into a mini trial. It is a difficult task for a respondent to land a knockout initial blow by which even an inquiry is dispensed with, Mex Group Worldwide Ltd v Ford [2026] EWHC 629 (KB) at [44]:

> *"The Respondent says that the Applicant's evidence is sparse, self-serving and speculative. However, in my judgment it is sufficient. Brevity is not a fault, even in a commercial case. The evidence does put forward a claim that substantial losses have been suffered as a result, specifically, of the worldwide freezing order and that is a claim which is sufficiently made out on the evidence to go forward for testing at an inquiry. The Respondent has not achieved the difficult task of showing it should be disregarded by way of a knockout initial blow by which even at inquiry is dispensed with."*

31. Further, the Court does not ordinarily hear protracted argument on whether the claimed losses are recoverable, Yukong Line Ltd v Rendsburg Investment Corp [2001] 2 Lloyd's Rep. 113 (CA) per Potter L.J. at [35]:

> *"…If the applicant shows that he has suffered loss which was prima facie or arguably caused by the order, then the evidential burden of any contention that the relevant loss would have been suffered regardless of the making of the order in practice passes to the claimant and an inquiry will be ordered."*

32. Mr. Day suggested in his oral submissions that the threshold Nexedge had to cross for the purposes of my decision as to whether to give permission for an inquiry was analogous to that for summary judgment, namely does Nexedge have a realistic prospect of establishing that the Freezing Injunction has caused it loss in the sense of that prospect being more than merely arguable; see Easyair Ltd (trading as OPENAIR) v Opal Telecom Ltd [2009] EWHC 339 (Ch) at [15]. That analogy is one which I accept.

33. Where (as here) a defendant seeks permission to enforce before trial, further questions arise as to when to determine permission and what directions to give if an inquiry is ordered. The various options were outlined in Cheltenham & Gloucester Building Society v Ricketts [1993] 4 All ER 276 (CA) (per Neill L.J. at 281 – 282 and per Peter Gibson L.J. at 288 – 289):

    i) The Court may give permission to enforce the cross-undertaking and:

a) in rare cases, summarily determine the inquiry as well; or

b) give directions to a hearing of the inquiry, which may include directions for pleadings and discovery.

In the latter case, it is likely to be just and convenient that the inquiry takes place at the same time as the trial of the claim.

ii) The Court may adjourn the permission stage to trial or further order if appropriate.

iii) The Court may refuse permission (for example, if special circumstances apply).

The Presumption in favour of Enforcement

34. Saini J. discharged the Freezing Injunction in circumstances where he found that Apollo had failed to give full and frank disclosure, that (i) there was no good arguable case for the Original Claim (which has now been abandoned), (ii) there was no risk of dissipation and (iii) it was not just and fair in all the circumstances to continue the Freezing Injunction. His judgment is robust in its criticism of Apollo's behaviour:

i) In relation to the failure to give full and frank disclosure, he described omissions in the presentation of Apollo's case to Cheema-Grubb J. as *"a concerning breach of full and frank disclosure and a failure in the duty of fair presentation"* [93].

ii) In relation to good arguable case, he held that Apollo's case on breach of express and implied terms of the Loan Agreement failed to satisfy even the modest threshold required for a freezing injunction. He acknowledged that Apollo might later find better and different evidence in support of its case. However, that possibility ended with Apollo's abandonment of the Original Claim.

iii) In relation to risk of dissipation, the judge concluded that there was no evidence, let alone solid evidence, supporting the risk of dissipation case. The case was, he held, *"... based on a conspiracist's theory of what Mr. Spina said in one side of discussions in the Recording which concerned a wide variety of other matters"* [112].

iv) In relation to justice and fairness and the circumstances in which the recording was obtained, *"the court's conscience is shocked by Apollo's admitted behaviour"* [115].

35. The judge went on to conclude that, while he did not have to decide the matter, there was substantial force to Mr. Day's submission that the Freezing Injunction would, if continued, cripple Nexedge at time when it was at a critical moment in its growth phase [118]. In other words, Saini J. anticipated that it was likely, at the least, that the Freezing Injunction would cause Nexedge loss and damage.

36. Against this background, I find that (i) it is appropriate to decide the question of permission now and (ii) that the strong presumption in favour of enforcement is engaged such that the burden is on Apollo to show that there are special circumstances which should lead the Court to refuse permission.

37. The difficulty for Apollo is that the level of evidential analysis which it asks this Court to undertake at this stage in order to make good its position that

Nexedge have suffered no loss because of the Freezing Injunction is contrary to the authorities, discussed in paragraphs 27 to 33 above which establish that:

i) Where a freezing injunction is discharged, an inquiry should follow almost as of right.

ii) There should be no protracted investigation at the permission stage to determine whether a defendant has suffered loss. The question is only whether the defendant has a credible case that the freezing injunction has caused it loss.

38. Further:

i) Given the evidence that is already before the Court that Apollo intended the freezing injunction and subsequent publicity to cause Nexedge loss and damage, Apollo's present case that the freezing injunction cannot have caused Nexedge loss and damage is undermined by its earlier actions.

ii) To the extent that Apollo points to the existence of this action as the true cause of Nexedge's losses, it faces the difficulty that the basis on which it went before Cheema-Grubb J. to obtain the Freezing Injunction and on which it sought to maintain the Freezing Injunction at the return date was the Original Claim. Yet, following the judgment of Saini J., Apollo eventually abandoned that claim on 24 December 2025 when it amended the Particulars of Claim to bring an entirely new and different claim based on events after the discharge of the Freezing Injunction.

39. It was, of course, the Original Claim which was being pursued by Apollo at the time when Nexedge was in discussion with the FCA about the VoP Application until its withdrawal in November 2025. It is in these circumstances difficult, to say the least, to identify any separate causative potency as between the Freezing Injunction and the Original Claim.

40. Despite the difficulties associated with its burden of persuasion, Apollo submits that there are special circumstances present which justify this Court refusing Nexedge permission to enforce the Cross-Undertaking. So far as those special circumstances are concerned, Apollo limits itself to one issue, namely does Nexedge have credible evidence of loss suffered because of the Freezing Injunction (Apollo's skeleton argument at §4). In his oral submissions, Mr. Robinson KC helpfully confirmed that Apollo was no longer running any case that the Application was an abuse of process and that its arguments were limited to causation.

Causation – the Law

41. Nexedge advanced three propositions in relation to causation. The first two are not controversial:

    i) For Nexedge to recover their losses under the Cross-Undertaking, the Freezing Injunction must be an effective cause of the loss but does not need to be the sole or exclusive cause of the loss, SCF Tankers Ltd & Ors v Privalov [2018] 1 WLR 5623 at [48].

    ii) It follows that loss is recoverable under the Cross- Undertaking when there are concurrent causes, one being the Freezing Injunction and one being the substantive litigation (the Original Claim), Alta Trading UK Ltd v Bosworth [2021] EWHC 1126 (Comm), [2021] 4 WLR 72 at [42(5)].

42. The third proposition is that a party in default cannot rely on its own wrong to break the chain of causation put forward in support of losses claimed by an innocent party. In Alta Trading UK Ltd & Ors v Bosworth & Ors [2025] EWHC 2724 (Comm), Henshaw J. considered the application of this principle in the context of an inquiry into the damages recoverable under a cross-undertaking given in support of freezing injunction which had been wrongly granted. Having analysed the authorities, the judge held at [54] and [55] that:

i) It is well arguable that the "own wrong" principle is a policy of general application: and

ii) It was well arguable that causation issues were often an evaluative judgment concerned to establish the extent to which a defendant should justly be held responsible for what had befallen a claimant and that an evaluative judgment of this type would often result in a party who has made dishonest allegations, in proceedings in which it obtained a freezing injunction, being held liable for damage caused by the freezing injunction even if some or all of that damage would also have resulted from the making of the dishonest allegations in the underlying proceedings.

43. Nexedge advances various counterclaims against Apollo including a claim for breach of confidence arising out of the use made of the Recording and claims for malicious prosecution and unlawful means conspiracy arising out of the

Apollo's conduct in obtaining and seeking to maintain the Freezing Injunction and out of Apollo's pursuit of the Original Claim. Nexedge makes these claims not only against Apollo but also against Mr. Ting and other individuals (see the Defence & Counterclaim at §§44 to 52). In other words, Nexedge's pleaded case, supported by a statement of truth, is that the making of the Original Claim is an actionable wrong.

44. I accept that there has not been any judicial finding that Apollo made the Original Claim dishonestly or maliciously but on the basis of the material I have been shown and given the judgment of Saini J., Nexedge's claims are at least arguable. In these circumstances, like Henshaw J. in the Alta Trading case, I consider that it is well arguable as a matter of legal causation that the Original Claim should be discounted for the purposes of determining what losses, if any, the Freezing Injunction has caused Nexedge.

Does Nexedge have a credible case that the Freezing Injunction has caused it loss?

45. The short answer to this question is "yes".

46. Nexedge relies on the fourth witness statement of Mr. Ravi Nayer, a partner with Bryan Cave Leighton Paisner LLP who has conduct of this case for Nexedge, and the first witness statement of Mr. Sami, to explain the losses Nexedge says it has suffered because of the Freezing Injunction. As set out in paragraph 5 above, those heads of loss comprise disruption and delay to the VoP Application, damage to Nexedge's reputation, disruption to its business, the ultimate failure of the VoP Application. Although the losses are not properly quantified at present, Mr. Nayer gives evidence that Nexedge believes its loss

exceeds £5 million by reference to its projected profits had the VoP been granted. Both the witness statement of Mr. Nayer and that of Mr. Sami are signed with a statement of truth.

47. Mr. Nayer gives evidence as to the impact of the Freezing Injunction on Nexedge at paragraphs 26 to 44 of his witness statement. In particular, he gives evidence that:

i) At the time when the Freezing Injunction was made, Nexedge had made substantial progress regarding the VoP Application and the VoP Application was very close to being authorised. In support of this position, he refers to an e-mail from the FCA dated 10 April 2025 confirming the progress of the application and a meeting between representatives of Nexedge, including Mr. Nayer, and representatives of the FCA on 10 November 2025 at which it was confirmed that approval had been imminent in April 2025. He also refers to correspondence from the FCA after the discharge of the Freezing Injunction which he believes shows that the FCA still had concerns arising from the Freezing Injunction, for example, an e-mail of 26 June 2025 from the FCA and the call on 10 November 2025. Nexedge recorded their understanding of the comments made at that meeting in a letter dated 12 November 2025.

ii) His understanding from Mr. Sami and Mr. Spina was that as a consequence of the delay and disruption to the VoP Application, Nexedge had failed to achieve its business plan and suffered significant financial loss.

48. Mr. Sami explains in his witness statement why the VoP was important to Nexedge's business. He describes it as a *"commercial gateway to improved margins, enhanced liquidity access, and a materially larger institutional client base, all of which were fundamental to the execution of Nexedge's business plan"*. He also gives evidence as to:

i) Why he believes that prior to the grant of the Freezing Injunction, the VoP Application was in its final phase.

ii) The diversion of senior management time and focus due to dealing with the Freezing Injunction, its discharge and its impact on Nexedge's business.

iii) The delay to the VoP Application.

iv) The effect on Nexedge's reputation resulting in increased due diligence and scrutiny from institutional clients, hesitation and delay in on-boarding discussions, disruption to institutional negotiations and pressure on management to reassure stakeholders.

v) The call with the FCA on 10 November 2025 in which he says the FCA representatives expressly stated that the VoP Application had been close to approval until the Freezing Injunction was issued but that the position changed after the injunction was issued.

vi) The drain on Nexedge's resources since the issuing of the Freezing Injunction.

vii) His view that the Freezing Injunction was a cause of Nexedge failing to meet its business plan.

49. In opposition to the evidence of Mr. Nayer and Mr. Sami, Apollo relies on the witness evidence of Mr. Pantlin, a partner with Quinn Emanuel Urquhart & Sullivan UK LLP who has conduct of this case for Apollo. His statement is largely an analysis of the contemporaneous correspondence passing between the FCA and Nexedge in the period from December 2024 to November 2025. It is also signed with a statement of truth.

50. Both in their written and oral submissions, Apollo invited me not to accept the evidence of Mr. Nayer and Mr. Sami and to find at this stage that Nexedge had suffered no loss. The foundation for these submissions was a detailed (and skilful) forensic analysis of the contemporaneous correspondence in evidence before me. Apollo structured this analysis so as to challenge what it described as five contentions made by Nexedge:

i) The VoP was very close to approval before the Freezing Injunction.

ii) The VoP was delayed or impeded by the Freezing Injunction.

iii) The Freezing Injunction was a significant drain on Nexedge's resources.

iv) The Freezing Injunction was the reason Nexedge withdrew the VoP.

v) The Freezing Injunction cannot be distinguished from the underlying proceedings.

51. Apollo submitted that, when each of the above contentions is analysed, there is no credible evidence that Nexedge has suffered any loss because of the Freezing

Injunction. Rather, Apollo, submits that this application is little more than an attempt to exert litigation pressure on Apollo in circumstances where Nexedge has no arguable claim for loss caused by the Freezing Injunction. Apollo also invited me to proceed on the basis that Nexedge would have put forward its best evidence in support of this application.

52. There are a number of difficulties with Apollo's submissions as summarised in the previous paragraph.

53. First, there is a credibly arguable case, to say the least, that Apollo commenced the Original Claim and sought the Freezing Injunction with the intention of causing loss and damage to Nexedge. This is borne out by (i) the circumstances in which the Recording was obtained, (ii) the failure of the Original Claim to meet even the good arguable case threshold required for a Freezing Injunction, (iii) the subsequent abandonment of the Original Claim and (iv) the e-mail of 03 June 2025, for which I find that there is a credibly arguable case that Apollo either sent the e-mail or arranged for it to be sent. In these circumstances, a summary dismissal of Nexedge's application to enforce the cross-undertaking is unattractive and would require very strong evidence to displace the presumption in favour of enforcement.

54. In relation to the e-mail of 03 June 2025, I acknowledge that Apollo denies sending this e-mail but Apollo offers no positive case as to who else might have sent the e-mail and it is clear that the e-mail is sent by someone with knowledge of the applications to discharge or continue the Freezing Injunction and the return date. Further, despite Apollo's denial that it sent the e-mail, its solicitors at the time, Cruickshanks, admitted in their e-mail of 04 June 2025 that Apollo

had sent the e-mail. While it might be said that the e-mail does no more than invite addressees to attend a return date where Nexedge will explain its position, it is reasonably arguable that Apollo in fact believed that it would maintain the Freezing Injunction and that by inviting clients, employees and partners of Nexedge to this hearing this would do further damage to Nexedge.

55. Second, I do not accept that I should proceed on the assumption that Nexedge has advanced its best evidence in support of this application for permission. It is not required to do so and, ordinarily, directions for an inquiry would include directions as to pleadings, disclosure and, if necessary, further witness or expert evidence. What is required at this stage is only credible evidence, which may also enable the Court to anticipate what further evidence may become available for the inquiry.

56. Third, in relation to each of the contentions which it challenged, Apollo were in effect inviting me to conduct a mini trial by engaging in a forensic analysis of limited documents and without hearing the evidence of either Mr. Nayer or Mr. Sami. This is the very exercise, which the authorities discussed above at paragraphs 27 to 33 make clear is not appropriate at the permission stage.

57. In any event, even if I were persuaded to engage in a limited degree of forensic analysis of the documents at this stage, the documents do not provide the kind of knock-out blow which Apollo would require to persuade me not to grant permission for an inquiry. I do not propose to lengthen this judgment by reviewing all the documents to which I was referred but two documents sent in November 2025 serve to illustrate this point:

i) The letter from Nexedge dated 12 November 2025 clearly records Nexedge's understanding of the call of 10 November 2025 with the FCA in which Nexedge say the FCA confirmed (i) that the grant of authorisation was imminent at the time the Freezing Injunction was granted and (ii) that the Freezing Injunction had materially delayed the VoP Application.

ii) The SUP15 sent with the letter of 12 November 2025 in which Nexedge notified the FCA that it had finance and capital issues, namely that it had breached its own fund requirements also expressly records at box 9 that its funding issue arises because of the erosion of the firm's capital base due to the *"unmeritorious injunction (and subsequent follow-on claim)"* obtained by Apollo.

58. Both documents provide contemporaneous support for Nexedge's case as to the effect of the Freezing Injunction and illustrate why Nexedge's case cannot properly be rejected at this stage in circumstances where neither Mr. Nayer nor Mr. Sami have had the opportunity to address them in cross-examination.

59. I accept that Apollo are able to point to documents, which suggest, for example, (i) that approval of the VoP Application was not as imminent as Nexedge seek to assert and (ii) that Nexedge was telling the FCA shortly after the Freezing Injunction had been granted that it had no adverse impact on its business. But, these are matters to be tested in cross-examination rather than proving at this stage that Nexedge has suffered no loss.

60. Fourth, following Henshaw J's judgment in <u>Alta Trading</u>, I accept that Nexedge has at least realistic prospects of establishing on an inquiry that it is entitled to

rely on the "own wrong" principle, such that Apollo is not entitled to rely on the Original Claim as causative of Nexedge's losses.

61. Fifth, even if I were against Nexedge on the possible application of the "own wrong" principle, it is at least realistically arguable that the Freezing Injunction and the Original Claim operated as concurrent proximate causes of any losses suffered by Nexedge and that, in any event, the Original Claim cannot realistically be separated for causation purposes from the Freezing Injunction.

62. Apollo seek to maintain a case that the claim should be treated as a separate causative event breaking the chain of causation on the basis that even though the Original Claim has been abandoned, the New Claim is still a claim to recover the loan, which is a claim that has been on foot since April 2025. The difficulty with this argument is that the New Claim is dependent on facts which have arisen since the discharge of the Freezing Injunction and while the New Claim has been brought within this action, it is, at least arguably, a new cause of action, which is not relevant for the purposes of determining whether the Freezing Injunction has caused Nexedge any loss.

63. Sixth, in relation to the losses Nexedge says it suffered due to the drain on its resources and potential reputational damage, I am not prepared at this stage to discount the evidence of Mr. Nayer and Mr. Sami supporting the losses claimed by Nexedge under these heads. I consider that both witnesses, but particularly Mr. Sami, give credible evidence as to the existence of these losses. Further, the potential for such losses is even more credible given the evidence as to Apollo's motive in seeking the Freezing Injunction as found for example in the e-mail of 03 June 2025.

64. Seventh, Apollo submitted that I should look at each head of loss claimed by Nexedge separately and consider whether there is credible evidence in support of each head. In other words, I could give permission for some heads of loss to proceed but not others. While I am prepared to accept that there may be cases where such a course of action might be appropriate, I do not consider that this is such a case. There is, in my view, credible evidence to support each of the heads of loss identified by Nexedge.

65. Accordingly, I find that there is credible evidence to support all of the heads of loss, which Nexedge says it has suffered due to Apollo wrongfully obtaining the Freezing Injunction.

Permission for an Inquiry

66. For all the above reasons, I grant Nexedge's application for enforcement of the cross-undertaking and for an inquiry as to whether, and if so, in what amount the Freezing Injunction has caused loss to Nexedge for which it is to be compensated.

67. The inquiry should be case managed and heard together with the substantive claims and counterclaims in this action and directions for the inquiry should be given at the CMC in this action fixed for 09 September 2026. The draft order in the core bundle before me provided for directions to be given on the hearing of this application for a timetable for pleadings but, given the proximity of the case management conference, it seems more sensible for that timetable to be fixed at the CMC together with the further directions for the trial and for the inquiry.

68. I would be grateful if the parties could liaise and seek to agree a draft final order reflecting the terms of this judgment for my approval. If the parties are unable to agree the form of order, then I would be grateful if the parties could provide me with their proposed form of order together with brief written submissions in support at the same time as providing their list of corrections. This should, if possible, include any submissions on costs, if any.