Neutral Citation Number: [2019] EWHC 2656 (Ch)

Case No: BL-2017-000158

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)

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

Date: 15 October 2019

Before :

HHJ PAUL MATTHEWS
(sitting as a Judge of the High Court)

- -

Between :

Paralel Routs Ltd	**Claimant**
- and -	
Sergey Fedotov	**Defendant**

- -
- -

James Shirley (instructed by **James Kitcatt of Burchills Advocates Bureau**) for the **Claimant**
Richard Hanke and Emma Walker (instructed by **DWF Law LLP**) for the **Defendant**

Hearing dates: 9-16 July 2019

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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HHJ Paul Matthews :

Introduction

1. This is my judgment on a claim brought by the claimant, a company incorporated in the British Virgin Islands, but administered in Cyprus, by claim form issued on 23 October 2017 (with attached particulars of claim) against the defendant, a Russian citizen. The claim is for debts alleged to be due under some 17 contracts of loan, alternatively for damages for breach of those contracts. In the claim form the total sum claimed is £26,354,176.72, but this includes accrued interest calculated at £3,309,612.36 and "late payment fees" of £14,614,816.85. It appears from paragraph 39 of the claimant's skeleton argument that the claim for "late payment fees" is no longer maintained, though that for interest still is. So the effective claim, including interest, is still a sum approaching £12 million.

2. Details of various contracts of loan alleged to have been entered into between the parties are given in schedule A to the particulars of claim (of which an amended version was handed up on day 1 of the trial). Actual copies of those agreements are attached to the particulars of claim as schedule B. The claimant also alleges that these contracts were amended by a deed of variation dated 28 May 2015, a copy of which is attached as schedule C to the particulars of claim. The very brief table below (a considerably reduced version of the table given in schedule A of the particulars of claim) shows in respect of each loan agreement the alleged (i) date it was made, (ii) currency and amount advanced, (iii) date of advance, and (iv) due date of repayment (as amended, if applicable). I add only that none of the alleged loans was secured, despite the amounts involved.

3. TABLE

No.	Date made	Amount	Date of advance	Due repayment date
1.	10/04/13	US$300,000	25/04/13	20/06/16
2.	19/04/13	US$400,000	29/04/13	19/04/16
3.	23/04/13	US$64,000	26/04/13	23/04/16
4.	14/05/13	US$170,000	24/05/13	14/05/16
5.	12/06/13	US$800,000	18/06/13	20/06/16
6.	17/06/13	US$1,344,300	03/07/13	20/06/16
7.	17/06/13	US$780,000	05/07/13	20/06/16
8.	02/07/13	€691,000	12/07/13	20/06/16
9.	09/07/13	€761,000	17/07/13	09/07/16
10.	09/08/13	€2,400,000	28/08/13	09/08/16
11.	09/09/13	GB£270,000	23/09/13	09/09/16

12. 16/09/13	€1,110,000	30/09/13	16/09/16
13. 12/05/14	GB£80,000	14/05/14	12/05/16
14. 27/05/14	€200,000	28/05/14	30/05/16
15. 11/08/14	€1,253,000	21/08/14	20/08/16
16. 19/08/14	€122,000	21/08/14	20/08/16
17. 19/09/14	€20,000	03/10/14	19/09/16
TOTAL	US$3,858,300		
	€6,557,000		
	GB£350,000		
GB£ TOTAL	£9,079,455 (Converted from US$ and € on 20/10/17.)		

4. The defence advanced by the defendant is that, in fact, there never were any genuine loan agreements entered into between the parties, nor any genuine deed of variation, whether as alleged or at all. The defendant says that these proceedings have been brought as part of a process of so-called "corporate raiding" ("*reiderstvo*" in Russian) against him, by the claimant, at the instigation and direction of his former business associate, Andrey Krichevskiy. He further says that Mr Krichevskiy is the true ultimate beneficial owner of the claimant, rather than the man who in these proceedings claims to be the beneficial owner, Mr Sergey Pavlov. The defendant says that each of the loan agreements and the deed of variation has been fraudulently and dishonestly created by the claimant or those acting on its behalf. As an alternative, he says that, if the court finds that he signed any of these documents, then his signature was obtained fraudulently and dishonestly by the claimant or on its behalf.

Procedure

Pre-trial

5. The original directions order of 26 July 2018 required standard disclosure to be given by the parties by list by 12 October 2018. It also required the claimant to "provide specific disclosure of the Original Loan Agreements and Deed of Variation … by 12 October 2018 or upon receipt of those documents from the Deposit Insurance Agency, whichever is the later." This wording reflects the fact that the claimant claimed no longer to have the original documents in its possession, saying that they had been seized by the (Russian) Deposit Insurance Agency in about November 2015. (I will return to this aspect later.) The directions order also gave permission for expert evidence of handwriting to be adduced.

6. On 26 March 2019 Master Clark made an order by consent that the claimant provide security for the defendant's costs. However, her order also (i) required the claimant to provide responses to the defendant's CPR Part 18 request of 11 January 2019, and (ii) amended the earlier directions order of July 2018 so as (a) to provide for specific disclosure of the documents referred to in the defendant's solicitors' letter dated 15

January 2019, and also (b) to push back the dates for service of witness statements and the exchange of expert reports.

7. On 18 April 2019 the defendant applied for an "unless" order in respect of the claimant's alleged failures to respond to the defendant's request for further information, and to provide the specific disclosure, as required by the consent order of 26 March 2019. Some disclosure was provided by the claimant on 26 April 2019, but – so far as concerns the claimant's bank statements, at least – in a heavily redacted form. On 20 May 2019, Master Clark made a further order for specific disclosure against the claimant, requiring compliance as to part by 27 May 2019 and as to part by 3 June 2019.

8. On 11 June 2019, the defendant applied by notice (1) for permission to adduce forensic IT expert evidence concerning the issue of the authenticity of certain emails that had been provided by the claimant on 26 April 2019, in response to the defendant's request for specific disclosure, and (2) to challenge the claimant's redaction of bank statements provided by the claimant also on 26 April 2019, as part of the disclosure exercise.

9. As to the first of these, on 17 June 2019, Master Clark gave permission for each party

> "to adduce expert evidence (including oral evidence) in the field of computer forensics, to address the issue of whether the 13 emails disclosed by the claimant on 26 April 2019 … are genuine … "

By this stage the defendant already had a forensic IT report prepared by Mr Patrick Madden, dated 6 June 2019. The claimant was given permission to file and serve any report in response by 24 June 2019. This date was subsequently extended to 1 July 2019. In the event, and as will be seen, the claimant did not serve an expert report by either date. Nor did it apply for any extension of time or other permission in relation to such report until the penultimate day of the trial. I deal with this further below.

10. As to the disclosure of bank statements, Mr Pavlov had in his seventh witness statement (dated 17 June 2019) attempted to avoid producing unredacted bank statements by preparing a list of all payments over €100,000, with annotations explaining them. Notwithstanding this, at the hearing Master Clark ordered that the claimant should by 19 June 2019 disclose *unredacted* versions of the bank statements to be held by the defendant's lawyers subject to confidentiality undertakings. Directions were given for a procedure by which the defendant's lawyers could apply to disclose the information contained in those bank statements to the defendant himself, and for any objection by the claimant to be resolved.

11. So, to be clear, the claimant did not disclose its bank statements pursuant to the original disclosure order of July 2018, but only pursuant to the order by consent of 26 March 2019, and then only after the defendant had applied for an "unless order" in respect of the claimant's alleged failures to comply with that order. Further, the bank statements were disclosed initially in a heavily redacted form, and were disclosed in an unredacted form only after a further order was made to that effect on 17 June 2019 for disclosure two days later. This order was repeated in a further order of 26 June 2019, extending time for compliance to 1 July 2019.

12. Despite that, I am satisfied that at least some of the "unredacted" copy statements disclosed have been altered (for example the Volksbank statements in the comparison bundles F and G at 80 and 81.) The claimant's justification for redaction, for rigorously opposing orders to produce unredacted copies of documents, and for seeking special confidentiality measures was stated to be both reputational and more serious damage that might be caused by details of the claimant's clients being made public. I accept that many Russian businessmen would prefer to keep secret their dealings with offshore companies. However, in my judgment it is clear from the course of the trial that the chief reason that the claimant did not wish to provide unredacted copies was that they contained information inconsistent with the claimant's case. The relevance and indeed importance of these unredacted bank statements will be seen later.

At trial

13. The course of the trial has been somewhat unusual. In the first place, the defendant, although represented by solicitors and counsel, was not present, and neither did he give live evidence. This is because he is currently in prison in Moscow, awaiting trial in 2020. He says he is there on trumped-up charges. His solicitors have however filed and served a witness statement by him, supported by a hearsay notice. No other witnesses of fact were called on behalf of the defendant, and accordingly Mr Shirley, for the claimant, was not called upon to cross examine anyone except the defendant's IT expert Mr Madden. On the other side, Mr Pavlov, who as I say claims to be the beneficial owner of the claimant, was not present on the first day of the trial either. This is because (for reasons I was told, which relate to the health of his wife) he was still in the process of obtaining a visa to enter the United Kingdom and come to London.

14. On the first day of the trial (9 July), Mr Shirley for the claimant for the first time applied for three other witnesses for the claimant to give their evidence by video link from Moscow. These were Mr Andrey Mironov, Mr Pavlov's lawyer, Ms Olga Vlasva, described as the principal secretary to the general director of the RUR (*ie* the defendant), and Mr Valeriy Osipov, to whom (as I say later) power of attorney had apparently been given on behalf of the claimant to sign the loan agreements. They had all made short witness statements, dated either 14 or 15 June 2019. The earliest intimation to the defendant's side of the intention to make this application was given on about 26 June 2019, but no application was thereafter launched before counsel's skeleton argument for the trial (dated 4 July) obliquely confirmed the claimant's intention so to apply. I heard counsel on both sides and dismissed the application, for reasons then given. This meant that there were no witnesses at all to give evidence on what had been intended to be the second day of the trial. (Hearsay notices were subsequently served in respect of the three witness statements.)

15. Also on the first day, Mr Shirley applied for a protective order for what he called "confidential information" referred to in the bank statements disclosed by the claimant as part of the disclosure process, but which had been ordered by Master Clark on 17 June 2019 to be disclosed in unredacted form, subject to certain protective provisions, including the institution of a "confidentiality club". Again I heard both counsel, and again I dismissed the application for reasons then given. I was subsequently invited to, and did, decide that counsel in cross-examination could refer

in open court to the information contained in the bank statements without being in breach of confidentiality undertakings contained in the order of Master Clark.

16. On the next two days of the trial, Mr Pavlov was cross examined on behalf of the defendant, and then re-examined on behalf of the claimant. There was a mix-up over the arrangements for the interpreter for the first of those two days, and about an hour was lost at the beginning of the day because the originally engaged interpreter could not be found. But another interpreter was found, and most of this lost time was made up at the end of the day. It is right also to mention that the claimant's counsel told me in closing that a different interpreter had been engaged for the second day because the claimant's team had not been completely satisfied with the translations provided by the interpreter on the first day.

17. On the next court day, the penultimate day of the trial, I was told by the claimant's counsel that a copy of an expert forensic IT report had been served on behalf of the claimant on the defendant's solicitors that morning at 10 am. It was explained to me that the claimant's expert did not really take issue with the conclusions of the defendant's expert, if it was accepted that the defendant's expert had examined the real "native" emails. But the purpose of the claimant's expert's report was to assert that the emails disclosed by the claimant in the course of the disclosure exercise were unfortunately *not* the "native" emails, and that therefore the defendant's expert was proceeding on a fundamentally false basis. The claimant's expert had now been provided with what was said to be the genuine "native" emails, and was giving his opinion that they had *not* been fabricated or tampered with.

18. It was further explained to me that it was intended that an application would be made to me at some point (though not yet) for permission to put that report in evidence. Even so, there was in any event no intention to call the maker of the report, Ivan Brusov (who was based in Kaliningrad), to be tendered for cross-examination. However, what the claimant's counsel sought immediately was an adjournment of approximately half a day in order to give the defendant's IT expert an opportunity to study the new report. This adjournment was resisted on behalf of the defendant. Ultimately I ruled, for reasons then given, that there should be no adjournment, and that the defendant could call his IT expert Mr Madden.

19. At that point the claimant's counsel applied for permission to put in his expert's report. However, during the course of his application to me it became apparent that there were some deficiencies in the formal part of the application (not least in the lack of evidence required for an application for relief from sanctions). Counsel therefore sought an adjournment of his own application to enable him to deal with those formalities. After hearing argument, I refused the application for an adjournment of the application, for reasons then given. The claimant's counsel then continued with his application, and after hearing counsel for the defendant I refused that application too, again for reasons given.

20. The defendant's IT expert, Mr Madden, was then tendered for cross examination, and the claimant's counsel asked him a number of questions. However, since the claimant's IT expert did not challenge the opinions or reasoning of the defendant's IT expert, but instead had sought to make the point that the emails which Mr Madden had examined were not genuine "native" emails, this did not take long. The next day, which was the final day of the trial, was entirely taken up with the parties' closing

speeches. I then reserved my judgment. I am sorry that it has taken longer than I anticipated to prepare this judgment.

Evidence

21. The evidence in this case is partly factual and partly expert evidence. The factual evidence consists of witness statement evidence by Mr Pavlov and three other persons, Olga Vlasova, Valeriy Osipov, and Andrey Mironov, for the claimant, and the witness statement evidence of the defendant on his own behalf. Of these persons, only Mr Pavlov was tendered for cross-examination. The expert evidence covered two distinct disciplines, namely handwriting and forensic IT. In relation to the former, Ms Ellen Radley produced a written report for the claimant and Ms Elizabeth Briggs produced one for the defendant. By agreement of the parties, neither of them was tendered for cross-examination. In relation to the latter, as I have said, Patrick Madden produced a written report and was tendered for cross-examination on behalf of the defendant. And, as I made clear above, I refused permission during the trial for the claimant to call Ms Vlasova, and Messrs Osipov and Mironov to give evidence by video link from Moscow, and (separately) for the adduction in evidence of expert forensic IT evidence from Mr Brusov.

Mr Pavlov

22. I should say something about the impressions made upon me by Mr Pavlov and Mr Madden. I preface what I say about Mr Pavlov by saying that he is a Russian, and that I am not as familiar with assessing Russian witnesses as I am British witnesses. So I must take account of that. I also add that Mr Pavlov gave his evidence in Russian, through an interpreter, although in his written evidence he says that he considers himself to be fluent in the English language, which he uses regularly in his business dealings. This was indeed apparent, because on a number of occasions he answered a question (usually with a Yes or a No, in Russian) before the interpreter had even begun to translate the question to him.

23. For various reasons I found Mr Pavlov to be an unsatisfactory witness. The first reason relates to his body language whilst he was giving evidence. There was an almost total lack of eye contact, either with counsel asking questions or indeed with anyone else in the courtroom. On rare occasions he glanced at me. Usually, he looked steadily into the middle distance, while he thought or spoke. In addition, for most of the time that he gave evidence his arms were folded over his chest. He seemed to be completely closed in. But, since I have less experience of Russians giving evidence compared to British, I cannot place much reliance on this.

24. More importantly, he employed several techniques to avoid, or at least slow down, answering difficult questions. He frequently asked for questions which had been interpreted to him to be rephrased or repeated. He asked questions of counsel, instead of answering them. Also, on several occasions he declined to answer a purely factual question by saying that he was not a lawyer, so that it was difficult to answer. (In that context I note that on one occasion he answered a question – in his own favour – by inferring the existence of a trust document for which there was no evidence, saying that he did so *despite* the fact that he was not a lawyer.) A number of questions expecting a yes/no answer, but which might lead to further or deeper questions, not so easy to answer, were met with long pauses, while he appeared to be concentrating

deeply on how to respond. To other questions (as I have already said) the answers to which were helpful to him he would give an immediate yes/no answer in Russian without waiting for the interpreter to translate the question. Where he was constrained to give an answer which went against him, he invariably qualified it, such as "Not exactly," or "Not really".

25. Mr Pavlov claims to be the beneficial owner of the claimant and the only person with the authority to sign on its bank accounts and access its bank information. It was therefore striking how, having been taken in detail to the unredacted bank statements, he had difficulty in explaining the structures and entities involved in the business and who had dealings with it. In short, Mr Pavlov did not know what I would have expected the beneficial owner of the claimant to know. He also had difficulty in explaining the process by which he, as the only person with access to the bank statements, redacted them, in ways which were not consistent with any principle which the claimant had put forward in arguing for redaction. For example, entries that were redacted included payments made to the defendant, his solicitors, and his builder. Mr Pavlov said that he himself carried out the redaction process. I find it impossible to accept that he did so.

26. Mr Pavlov was taken to examples of cases where *Mr Krichevskiy* appeared to have given instructions for payments to be made out of the claimant's bank account, but was unable to explain how Mr Krichevskiy came to be doing that, given that he denied the defendant's allegation that Mr Krichevskiy was the beneficial owner of the claimant (and indeed asserted that Mr Krichevskiy had no connection with the claimant). He further claimed that his own lawyer Mr Andrey Mironov had drafted the first of the 17 loan agreements (which was then used as model for the remainder), and yet was unable to explain satisfactorily why a written loan agreement entered into earlier between the defendant and the brother-in-law of Mr Krichevskiy was in strikingly similar terms (as he agreed) to the first of the 17 loan agreements.

27. At the beginning of his cross-examination Mr Pavlov refused to accept that emails sent from the email address AK@ TITUL.COM and AK@VMC.COM had anything to do with Mr Krichevskiy, but by the end appeared to have accepted that these were indeed Mr Krichevskiy's email addresses. Pulling together these different strands, some of which are impressionistic, and making allowance for the cultural differences, overall I found Mr Pavlov to be an unconvincing and unreliable witness, who shifted his position as the ground was cut away from beneath his feet. Frankly, I am unable to accept what he said in his witness statements and in cross-examination except where it is adequately corroborated by independent sources.

Mr Madden

28. I can deal with Mr Madden more shortly. He struck me as fluent, professional, very much in command of his subject, straightforward and transparent, and obviously telling the truth. Cross-examination made no impression upon him. I accept his evidence without reservation.

The written evidence

29. As to the written evidence for which the makers were not tendered for cross-examination, I comment as follows. In general, subject to certain formalities, such

written evidence is admissible in civil proceedings despite the fact that it is not confirmed by the maker in court and is therefore hearsay. But its *weight* is affected by a number of circumstances, including that (i) it is not on oath, (ii) it is not subject to cross-examination, and (iii) the demeanour of the witness cannot be observed by the tribunal. The Civil Evidence Act 1995, s 4, sets out considerations relevant to the weighing of hearsay evidence. These include whether it would have been reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness, whether any person involved had any motive to conceal or misrepresent matters, and whether the circumstances in which the evidence is adduced as hearsay are such as to suggest an attempt to prevent proper evaluation of its weight. I take all of these into account.

30. In the present case there is written evidence from the three further witnesses for the claimant and from the defendant himself. The claimant seeks to distinguish between the two sides, arguing that more weight should be given to the evidence of its witnesses than that of the defendant. This was based on the fact that the claimant was prepared to tender its three witnesses for cross-examination by videolink, whereas the defendant did not offer even that.

31. I reject that argument. The claimant did not explain why the three witnesses were not able to attend court physically to be cross-examined. Nor did the claimant make any attempt to apply for permission to tender them for cross-examination by videolink until the first day of the trial. This suggests a desire to protect their evidence from being fully tested.

32. The defendant on the other hand is physically prevented from attending the trial to be cross-examined, because he has for some time been and continues to be in prison in Moscow. As explained by his Russian lawyers Magnetar, in a letter exhibited to the fifth witness statement of his English solicitor Darren Kenny dated 13 June 2019, cross-examination by videolink from that prison is impossible. I note that the claimant produced no evidence to rebut this. In the defendant's case a hearsay notice was served on 14 June 2019. This notice also explicitly states that the defendant is not allowed to travel to give evidence, or to give evidence by videolink. I do not think it likely that a person facing a claim for £26 million would get himself imprisoned simply in order to avoid being able to give evidence in it. I am sure that the defendant would have made himself available for cross-examination if he had been able to.

33. The only other significant difference between the written evidence of the two sides is that the claimant's other witnesses have no apparent financial or other interest in the result, whereas the defendant does have a real interest, being a party, and faces a potential liability running into millions of pounds. However, I bear in mind that the claimant's other witnesses are Russians, with lives and careers in Russia, and they may wish not to upset rich and powerful men in that country. Overall, however, given the disadvantages to which I have referred, and also the diametrically opposed positions of the parties on the documents involved, I do not think I should treat the untested and unobserved written evidence of either side as of any great weight, although where it is corroborated by other evidence from an independent source then I can be less cautious about relying on it.

34. Lastly, I mention the written opinion evidence of the handwriting experts on each side, whom the parties agreed not to call. They are experienced professional experts,

and they know that they owe duties to the court, set out in CPR Part 35. They are not parties or, apart from their short-term professional retainer, associated with parties. Moreover, they belong to this country rather than to Russia. Their continued professional careers will be here rather than anywhere else. I see no reason not to accept what they say at face value, at any rate where their evidence is not inconsistent one with the other.

Fact-finding

35. I should say something about how English judges in civil cases decide cases of this kind. This is particularly important in a case such as this, where the parties are Russian. They may not understand how our system works. First of all, judges are not superhuman, and do not possess supernatural powers that enable them to divine when someone is not telling the truth. Instead they look carefully at all the oral and written material presented, with the benefit of forensic analysis (including cross-examination of oral witnesses), and the arguments made, to them, and then make up their minds. But there are certain important procedural rules which govern their decision-making, some of which I shall briefly mention here.

The burden of proof

36. The first is the question of the burden of proof. Where there is an issue in dispute between the parties in a civil case, one party or the other will bear the burden of proving it. On most of the issues in this case, that is the claimant. The claimant says that, since the defendant pleads that the loan documents were fraudulently and dishonestly created, the burden lies on the defendant to show that this is the "inescapable conclusion" on the evidence, and relies on *Silvera v Urquhart* [2003] EWHC 809 (Ch), [302]. I reject that submission. It is the claimant that alleges that the defendant signed written contracts of loan. It is for the claimant to prove this. Even if the defendant's assertion of fraudulent and dishonest creation of documents were wrong, it would still be for the claimant to overcome the denial inherent in his plea, and prove its positive case.

37. The significance of who bears the burden of proof in civil litigation is this. If the person who bears the burden of proof of a particular matter satisfies the court, after considering the material that has been placed before the court, that something happened, then, for the purposes of deciding the case, it *did* happen. But if that person does not so satisfy the court, then for present purposes it did *not* happen.

The standard of proof

38. Secondly, the standard of proof in a civil case is very different from that in a criminal case. In a civil case it is merely *the balance of probabilities*. This means that, if the judge considers that a thing is more likely to have happened than not, then for the purposes of the decision it did happen. If on the other hand the judge considers that the likelihood of a thing's having happened does not exceed 50%, then for the purposes of the decision it did not happen. It is not necessary for the court to go further than this.

Failure to call evidence

39. Thirdly, where a party could give or call relevant evidence on an important point without apparent difficulty, a failure to do so may in some circumstances entitle the Court to draw an inference adverse to that party, sufficient to strengthen evidence adduced by the other party or weaken evidence given by the party so failing.

Reasons for judgment

40. Fourthly, a court must give reasons for its decisions. But judges are not obliged to deal in their judgments with every single point that is argued, or every piece of evidence tendered. Moreover, it must be borne in mind that specific findings of fact by a judge are inherently an incomplete statement of the impression which was made upon that judge by the primary evidence. Expressed findings are always surrounded by a penumbra of imprecision which may still play an important part in the judge's overall evaluation.

Overall

41. So decisions made by English civil judges are not necessarily the objective truth of the matter. Instead, they are *the judge's own assessment* of the *most likely facts* based on the *materials which the parties have chosen* to place before the court, taking into account to some extent also what the court considers that they should have been able to put before the court *but chose not to*. And, whilst judges give their reasons for their decisions, they cannot and do not explain every little detail or respond to every point made.

42. In cases where witnesses give evidence as to what happened based on their memories, which may be faulty, English judges nowadays often prefer to rely on the documents in the case, as being more objective. The problem in the present case, however, is that the main issue between the parties is as to whether the loan documents are in fact genuine. There is no suggestion of faulty memory here. Instead there is a direct challenge to the authenticity of the relevant documents. A series of notices to prove documents have been served by the defendant on the claimant, including one dated 4 January 2019 to prove the loan agreements and the deed of variation. There can be no reliance on objective documents unless and until the court is satisfied that they are genuine. However, an unfortunate feature of this case is that the original documents on which the claimant relies have not been produced for inspection and analysis. Everyone, including the handwriting experts, has had to work from copies.

Cultural differences

43. It is self-evident that Russian culture and lifestyle, including business life, is not the same at all points as British culture and lifestyle. And, at all events, even if it were not self-evident, it would have been clear to me from the evidence in this case that that is the position. I must therefore guard myself against reading too much significance into some of the ways in which, according to the evidence, business between the parties was conducted. At the same time, I am judging this case according to English legal standards, both procedural and substantive: I would not be competent to judge them according to any other legal standards.

The parties' pleaded cases

44. The trial of this claim has been complicated by successive shifts in the claimant's case as it progressed. The claimant's particulars of claim are very simple. They allege that the parties entered into written agreements of loan on the dates, and for the amounts, and with dates for repayment with interest as set out in Schedule A to those particulars, a truncated version of which is set out above at [3]. The claimant pleads that these written agreements were varied by a "Deed of Variation" dated 28 May 2015 (attached to the particulars as Schedule C). There are further provisions about interest and late payment fees, but I need not deal with those for the moment. The claimant then pleads that it advanced the various loan amounts to the defendant by the dates set out in the schedule, but that the defendant has failed to repay, and remains in default, despite the claimant's demands. The response to the defendant's request for further information makes clear that its case is put on the signed loan agreements, and not upon the basis of any parallel oral agreements.

45. The defendant in his defence makes a general plea that this claim has been brought against him at the instigation and under the control of Andrey Krichevskiy, who (he alleges) is the ultimate beneficial owner of the claimant, rather than Mr Pavlov. More specifically, the defendant denies that there were ever any genuine loan agreements entered into between the parties, whether as alleged or at all, and similarly with the alleged Deed of Variation. He says that the loan agreement documents now relied upon by the claimant were fraudulently and dishonestly created by the claimant with a view to gain.

46. By way of alternative, he claims that any signature of his on such loan agreements was fraudulently and dishonestly obtained by the claimant. He complains that the claimant, despite request, has failed to produce the original versions of the loan agreements for inspection and expert analysis. Moreover, on 4 January 2019, he served a notice on the claimant to prove these documents. His further alternative case is that, if the parties did enter or purport to enter into any such loan agreements or Deed of Variation, then they are void and unenforceable. The defendant admits and avers that he has not paid to the claimant any of the sums claimed in these proceedings by reference to the terms of the written agreements and the deed of variation. He says nothing is due. But in any event he says that, if anything were owing, the claim for interest would amount to a claim for unenforceable contractual penalties.

47. The particulars of claim do not however make clear the claimant's case in relation to the circumstances of signing of the agreements. A request for further information was made. The claimant's response to the defendant's request for further information was that *in all instances* the signing by the defendant took place at the offices of RAS in Moscow, and *in most cases* Mr Pavlov was also there. But in other instances Mr Pavlov was at his office at Regional Development Bank, and his driver, Mikhail, delivered the documents to the defendant at RAS to sign, before they were returned to the driver.

48. By the time of the trial, however, the claimant had finally disclosed the unredacted bank statements, its own handwriting expert had concluded that the defendant's signature had been forged or transposed on the loan agreements, and the defendant had served his IT expert's report, indicating that the emails relied on by the claimant in support of the loan agreements had been tampered with. In addition, the defendant's evidence (supported by independent materials) was that he was not in

Russia on the dates on nine of the 17 agreements. Whether as a consequence or not, without formally amending his statements of case, the claimant departed significantly from this case, alleging now that the defendant had arranged for the loan agreements to be signed by others on his behalf, and/or that they were signed at later dates than they bore.

Background facts

49. I begin with some background information about the main players in this case. The claimant is a company incorporated in the British Virgin Islands on 21 September 2011. There is a question as to who is its beneficial owner. The response of the claimant to the defendant's request for further information pleads that Mr Pavlov is, and has been, the ultimate beneficial owner of the claimant at all times since incorporation. In support of this plea, the claimant has disclosed a copy of a document dated 7 March 2013 appearing on its face to be a declaration of trust by a company called Delfi Corporate Services Ltd, stating that it holds 50,000 shares in the claimant as the nominee for Mr Pavlov. The governing law is stated to be that of the British Virgin Islands.

50. It has also disclosed another document dated 21 November 2018, headed "Trust Deed". This states on its face that it was executed by Mr Pavlov on the one hand, and by Limesi Holdings Ltd on the other. It recites that Limesi Holdings Ltd is registered as owner of the shares in the claimant, and that Mr Pavlov is the beneficial owner of them. It does not state how Limesi Holdings Ltd became owner, or what happened to Delfi. (From other materials, it appears, in fact, that Limesi had become the shareholder in the claimant over a year earlier.) The "trust deed" provides and directs that Limesi Holdings Ltd should hold the shares on trust (in substance) for Mr Pavlov. No governing law is stated.

51. No document has been disclosed relating to the beneficial ownership of claimant before 7 March 2013. It is common ground that Mr Pavlov does not hold any official position in the claimant. No other documents, including documents evidencing any payments between the claimant and him (or any company or other entity controlled by him), appear to connect him with the claimant. Apart from his own assertion, there is no evidence at all to show that Mr Pavlov was the beneficial owner between incorporation and 7 March 2013.

52. Both trust documents were the subject of notices to prove at trial: that of 7 March 2013 by notice dated 31 May 2019, and that of 21 November 2018 by notice dated 13 June 2019. The effect of CPR rule 32.19 is that the defendant is thereby not deemed to admit the authenticity of the documents. The burden of proof therefore lies on the claimant to prove that they are authentic. The claimant did not adduce any evidence from any independent person, not even a director of the trust companies concerned, to prove the trust documents. The only such evidence is Mr Pavlov's own witness statement evidence, in which he makes a general assertion that he is the beneficial owner but does not prove the documents, and his own cross examination on those documents, which was (as I have said) unsatisfactory. On this threadbare evidence, which I do not accept, I hold that the claimant has not proved that these documents are authentic.

53. Mr Pavlov says he is a banking entrepreneur with a particular interest in the music and performing arts industries. He says he has held senior positions in a number of Russian banks. He estimates his net worth as currently around $250 million. Having observed him over two days in the witness box, I have to say that, if that is true, I am surprised. He did not behave like a man of great wealth, used to giving instructions and getting his own way. He looked more like a man who received instructions rather than gave them. But I accept that appearances can be deceptive, and I do not place much weight on this. He says the claimant is a vehicle that he used for some years to provide IT services, particularly in the fields of sound recording/editing and online digital music sales, and to supply electronic equipment for concerts and similar events. (The defendant denies this, asserting that the claimant is simply an offshore vehicle used to move money around. In that regard, I note that the claimant has not disclosed any documents to support its claim to being an IT services company. But it is not necessary for me to decide this.) Taking into account the failure to prove the authenticity of the trust documents, the lack of other independent evidence connecting Mr Pavlov to the company and the impact of the cross examination of him on behalf of the defendant, I am not satisfied that he is the beneficial owner of the claimant.

54. The defendant is a businessman with experience in the management of collective rights in Russia. In his witness statement, he describes both the business and the financial cultures in Russia, and his own experience. He has been chairman (from 2004) and general manager (from 2008) of the Russian Authors' Society ("RAS"), and general manager of the Russian Union of Rightholders ("RUR"), The Russian Organisation for Intellectual Property ("VOIS") and UPRAVIS (another intellectual property rights management organisation). However, in his witness statement, the defendant says that his post at the RUR was a "nominal" or "political" role that he was asked to undertake as a figurehead, and that Mr Krichevskiy had day-to-day control of the business of the RUR. He also says that he met Mr Pavlov only once (in 2008), and not on the many occasions which Mr Pavlov himself refers to. Indeed, he refers to his surprise at Mr Pavlov's statement that he was worth as much money as he says, because then he "would have moved in the same circles and I would have known who he was or at least heard about him". He says that in 2011 he decided to buy property in the UK as a potential "safe haven".

55. The defendant was originally charged in 2017 with a property fraud worth about £3.6 million. He pleaded guilty and was sentenced to 18 months in prison. He says that he pleaded guilty on the basis that, although he did not commit the offence, under the relevant Russian law he would obtain a shorter sentence. He served his sentence, was released and then rearrested. This time the charge was of embezzlement of £9 million from the RAO. He is currently awaiting trial on this charge. He denies the offence. However that may be, the fact that the defendant has pleaded guilty to one offence, even of fraud, and is now charged with another, does not mean that he becomes "wolf's bane", fair game for any hunter that goes after him in respect of any other civil claim. The same rules of civil procedure apply to him as to any other litigant. The burden still lies on the claimant to prove its case.

56. Mr Krichevskiy is not a party to these proceedings, and I heard no evidence from him or on his behalf. The defendant says he is a lawyer specialising in the financial sector, whom he met for the first time in 2007. He also says that they acquired interests in a number of businesses together, and that Mr Krichevskiy managed the offshore

vehicles through which they were held. Mr Krichevskiy also managed the defendant's finances through offshore companies, including the claimant. Mr Pavlov, on the other hand, says only that he is acquainted with Mr Krichevskiy, whom he says used to be the head of the Russian Intellectual Property Organisation, and who used to work together with the defendant on projects. But, as I have said, he denies that Mr Krichevskiy is the beneficial owner of the claimant, and says that he (Mr Pavlov) is. Indeed, Mr Pavlov says that Mr Krichevskiy "has no connection with the claimant at all" (see his sixth witness statement, [47]).

The written agreements

57. The first and most critical issue for me to decide is the genuineness of the written agreements on which the claimant relies. The claimant puts this in the context of the defendant's needs to borrow money in 2012-13 because he wanted to buy property in the UK (see Mr Pavlov's sixth witness statement at [17]). Mr Pavlov said that the discussion with the defendant about the loans began in 2012, although the earliest documentary evidence that he was the beneficial owner of the company dates only from March 2013. Mr Pavlov further told me that in Russia money is lent on the basis of trust between businessmen, and that the defendant then enjoyed a good reputation. That may be so, but for a non-bank to lend a total of £9 million to an individual without any security (personal or proprietary) in an unstable economy seems to me improbable, however eminent the borrower.

Origins

58. The first part of the issue of the loan agreements relates to the origins of those agreements (which are all in English, though expressed to be governed by Russian law). Mr Pavlov's witness statement does not deal in any detail with this. But in cross-examination he explained that his own lawyer, Mr Mironov, who he said had been working for him all his life, had drafted a template which was used for all the agreements. He accepted that this template was itself based on earlier agreements he had drafted, although no such agreements were disclosed in the proceedings. In fact, Mr Mironov said in his witness statement that Mr Pavlov provided him with a form of agreement, in English, which he said had in turn been provided to him by the defendant.

59. During the trial, an earlier loan agreement between the defendant and a Mr Golenkov (who appears to be the brother-in-law of Mr Krichevskiy) was put to Mr Pavlov, and he agreed that it was very similar to the agreements which he says were drafted by Mr Mironov for him. However, he said he was not surprised that it should look so similar, as he thought that both had been drafted following a template created by the same lawyers. In addition, Mr Mironov's witness statement says he drafted the deed of variation (also in English) to change the governing law of the agreements to English law, with English jurisdiction, and to extend repayment times.

60. Curiously, however, Mr Mironov's own witness statement also said that he was unable to give written or oral evidence in English. Mr Pavlov explained the fact that the agreements and the deed of variation were nevertheless drafted in English by saying that Mr Mironov was being modest about his language skills. I do not believe this. Not only was the language used in the agreements and the deed of variation fluent and sophisticated, but it was used by someone who knew well what to include,

and what not to include, in a legal agreement in the English-speaking world. I am not satisfied that Mr Mironov drafted these documents.

The deed of variation

61. The deed of variation is expressed to be governed by English law. It is signed on behalf of the claimant, not by Mr Osipov, but by Mr Pavlov himself. As I have already said, Mr Pavlov is not a director of the claimant, and holds no formal position in the company structure. Whereas powers of attorney were apparently granted to Mr Osipov, there is no evidence that any power of attorney has ever been granted by the claimant to Mr Pavlov. It is therefore very difficult to see how Mr Pavlov had any legal authority to enter into this deed on behalf the claimant.

62. This apparent lack of authority was relied on by the claimant in closing submissions as indicating the genuineness of the document. The claimant's counsel said that this was "surely an indication that it did not occur to anyone that he his authority might be questioned…" This reasoning reminds me of the response by Kekewich J in *Tarn v Turner* (1888) 39 ChD 456 to the argument from one side that there was no authority for a proposition put forward by the other side. There the judge said (at 461):

> "There are two reasons which are generally given, one on the one side and one on the other, for lack of authority in favour of a particular proposition. One party says, 'Of course there is no authority to be found on it, because nobody ever doubted it: there has never been any dispute about it.' The other side say, 'Of course there is no authority, because nobody has ever been foolish enough to raise this question, and it has always been known that the proposition is bad'."

This means that in such a situation you simply have to look at the proposition on its own merits. Here there is no evidence that persuades me that there was any sufficient connection between Mr Pavlov and the claimant to justify anyone supposing that he had any authority at all in relation to it.

63. Secondly, Mr Pavlov's own signature is witnessed, apparently by his driver, Mikhail, but the signature of the defendant is not. No explanation was given for this discrepancy. Apart from anything else, the absence of a witness means that this document, which is expressed to be a "deed", cannot qualify as such under English law: see the Law of Property (Miscellaneous Provisions) Act 1989, s 1 (although that does not mean that it cannot have any legal effect at all).

The handwriting evidence

64. The next point is the handwriting evidence. The experts were not called to give oral evidence. They made plain in their reports that they had not had access to the original documents, and that this restricted the examination which they could carry out. In particular, it was not possible in such circumstances to make a full assessment of the fluency of the signatures (common signs of forgery being hesitations, unexpected pen lifts and tracing guidelines). In addition, the defendant's signature was regarded by the experts as "basic", which makes it easier to forge.

65. Nevertheless, they agreed that it was not possible to conclude that the defendant had in fact signed *any* of the agreements. The defendant's expert, Elisabeth Briggs,

concluded on the basis of the copied documents available that the evidence was "inconclusive". It appears that the claimant's expert had had access to better copies of the original documents than the defendant's expert, which enabled her to deal with the matter at a deeper level. The *claimant's* expert, Ellen Radley, was accordingly able to conclude that there was "strong evidence" that the defendant's signature had been forged on five out of the 17 agreements, and that there was "very strong evidence" that his signature on other agreements had been transposed by the use of a computer from other documents.

66. In closing, the claimant did not challenge this evidence, but argued that it did not square with the defendant's case that his signatures were forgeries. The defendant did not have a "case theory" which explained why his signature should be forged on some documents using a straightedge, but by transposition in other cases and then yet again by freehand signature in other cases, without making use of a signature stamp which was apparently available to the defendant's associates. But it is not for the defendant to have a case theory, or anything else, for that matter. It is for the *claimant* to prove on the balance of probabilities that the defendant signed, or at least agreed to, these agreements. Its pleaded case is that the defendant signed them. The handwriting evidence, so far as it goes, is significantly against this.

The original documents

67. I have already mentioned the absence of the original documents on which this claim is based. The claimant's explanation is that Mr Pavlov kept the originals of the loan agreements in his office at the Regional Development Bank, rather than at the claimant's office or his own home in Moscow. According to Mr Pavlov, the Deposit Insurance Agency seized all these documents in November 2015 for the purposes of criminal proceedings involving the former owners of Regional Development Bank (with which, on the claimant's case, they have nothing to do), and they remain in its possession, apparently despite meetings with them to persuade them to release those documents to him. There is moreover no suggestion of any attempt by the claimant to seek the opportunity for experts to inspect the original documents for the purpose of prosecuting its multi-million pound claim against the defendant, or, if any such attempt had been made, any statement of any grounds on which such access to those documents was refused.

68. The seizure by the Deposit Insurance Agency is referred to in Mr Pavlov's lawyer's requests to that agency of 19 February 2018, 14 June 2018, and 24 October 2018 to release the loan agreements and deed of variation to Mr Pavlov as his "private belongings". These requests were blocked by the agency by letter dated 6 November 2018, which said

> "We inform you that all documents of the Bank are currently under scientific and technical handling in the archive organisation involved, where your request has been redirected. Once the response from the above-mentioned organisation is received, you will be provided with the response to your request".

No further documents or other information in respect of these requests have been disclosed. In light of the expert evidence of handwriting (to which I referred above), I would have regarded this as remarkably convenient for the claimant.

69. But it is also to be noted that the agency's letter of 6 November 2018 in fact does not list the documents seized, and neither does it even refer to the loan agreements and deed of variation. Instead it refers to "all the documents of the bank" (that is, Regional Development Bank). This means that there is (so far as I am aware) no official confirmation that the agency actually has the original documents and deed of variation. It is simply a question of assertion by Mr Pavlov that the documents were inside the bank at the time of seizure. There is no independent corroboration of Mr Pavlov's assertion, and I decline to accept it.

70. It therefore follows that the claimant has failed to comply with court orders to produce the original documents for inspection without any satisfactory explanation. In other circumstances, I might have found it necessary to consider whether I should draw an inference adverse to the claimant as to why this was so, following *Wisniewski v Central Manchester Health Authority* [1998] PIQR 324, CA, and *Thames Valley Housing Association Ltd v Elegant (Guernsey) Limited* [2011] EWHC 1288 (Ch). But, as will be seen, in the circumstances of this case it is unnecessary for me to do so.

The circumstances of execution by the defendant

71. As I have said, prior to trial the claimant's case was that the original loan agreements were signed by the defendant personally in Moscow on the dates which each agreement bears. By the time of the trial, the matter was evidently more fluid. The defendant's own witness statement, dated 14 June 2019, claims that in relation to six of the agreements he was in either France or Switzerland on the date that the agreement was supposed to have been signed. He supports these claims by reference to various documents exhibited to his witness statement. He also says that he was outside Russia when the Deed of Variation was allegedly signed, and he has no recollection of signing the other loan agreements on the dates that he was in Moscow. But he accepts that he signed many documents placed before him at that time without reading them. He, of course, was not tendered for cross-examination.

72. Ms Olga Vlasova, described as the principal secretary to the general director of the RUR (*ie* the defendant), gives evidence in her witness statement to the effect that she received packages from either Mr Pavlov in person or his driver Mikhail, which she delivered to the defendant, who later returned them to her with a request to return them to Mr Pavlov either in person or via his driver. She does not however say that she saw the defendant sign these agreements, or even that his signature was on them when she took them back. She however was not tendered for cross-examination either. Mr Pavlov himself, who was so tendered, did not say anything in his witness statement about the defendant's signature of the agreements. In cross-examination at trial, he was asked about the allegations made in the replies made by the claimant to the request for further information by the defendant, and also about the witness statement of Ms Vlasova.

73. In summary, his oral evidence was that either he saw the defendant sign them, or Ms Vlasova or his driver gave them to him to sign. When challenged as to why he had not said this in his witness statement, he simply responded that he was saying it now. He added that, if it could be shown that the defendant was in fact in a different country on the date of the agreement, then, in Mr Pavlov's opinion, it must have been signed at a later date. If the defendant's signature had been forged (as suggested by the expert

evidence) then, said Mr Pavlov, it must have been forged on the *defendant's* instructions. Mr Pavlov expressly said that this showed that the defendant was preparing a fraud in advance. Moreover, he said that, if it was not true that the defendant signed the agreements, then that confirmed that he was a fraudster.

74. I have already indicated that I am unable to accept the truth of what Mr Pavlov said in evidence unless corroborated from an independent source. In relation to Mr Pavlov's evidence that the defendant signed the documents on the dates they bear, either in his presence or that of his driver or his personal assistant, I do not regard the witness statement of Ms Vlasova, untested by cross-examination, as such corroboration. I therefore reject this evidence. Mr Pavlov's evidence (i) that, if the defendant did not sign the documents on their expressed dates, he must have signed them at later dates, or (ii) that if he did not sign them at all he must be a fraudster, are statements made by him without any disclosed evidential basis, and which are in themselves illogical, and certainly uncorroborated. I cannot accept this evidence either.

The challenged emails

75. In support of the claimant's case that the loan agreements are genuine, the claimant disclosed in the proceedings some 13 emails apparently passing between Mr Mironov, Mr Pavlov and the defendant. The claimant's case is that some of these relate to the drafting of the loan agreements, and others of them relate to attempts to pursue the defendant for payment. So far as I can see, five appear to be between Mr Pavlov and Mr Mironov, two between Mr Pavlov and RUR, two to Mr Osipov regarding the agreements to sign, one from Mr Pavlov to Mr Osipov chasing him, and three from Mr Pavlov to the defendant.

76. I commented during the claimant's closing submissions on what appeared to me to be the banal nature of the points raised in the emails between Mr Pavlov and his lawyer Mr Mironov. The emails asked Mr Mironov to make trivial changes to the agreements which Mr Pavlov could have made for himself (since he had the document in Word format), such as changing the repayment date. I could not then, and still cannot now, understand why Mr Pavlov would pay Mr Mironov to do something which Mr Pavlov could do himself in less time than it took to send the email.

77. The defendant denies that the email address shown on those emails said to have been sent to him (fedotov@rp-union.ru) was his at all. He says (though without any supporting evidence) that this was an email address used or controlled by Mr Krichevskiy, on the basis that Mr Krichevskiy controlled the RUR website and corporate email. He gives details of the two other email addresses which he says he did use, neither of which is used in this email correspondence. He also denies that any of these 13 emails is genuine.

78. On 31 May 2019 he served on the claimant a notice to prove these documents at trial. As I have already said, on 17 June 2019 the court gave permission to each party to adduce expert IT evidence on this issue. The defendant already had the report of Mr Madden, and he was tendered for cross-examination at trial, and cross-examined by Mr Shirley. I have already described the failure of the claimant to file and serve its own expert report in time (as extended) and as I have said I refused a further application on the penultimate day of the trial for the claimant to put in its own expert's report.

79. Mr Madden in his report (which I accept) described his forensic analysis of the messages, and said that he detected

> "several significant anomalies that significantly undermines the authenticity of these messages".

His conclusion was that:

> "I believe that these messages have undergone some level of forgery/manipulation/tampering/significant contamination and are not a true representation of the original documents, if they so exist. As such I do not believe that these messages can be relied upon as genuine without significant further disclosure and detailed forensic analysis of the content of the service/user workstations that have been used to facilitate the transmission and or storage of these messages."

80. The claimant's case in closing was that Mr Madden's report was based on *compromised* versions of the "native" emails, and that the claimant has now disclosed proper "native" copies of those emails. The "compromising" was said to arise from the way in which the emails were transmitted to Mr Madden. Accordingly, said the claimant, the conclusions drawn by Mr Madden were unsafe. So we have a clear case put forward by the defendant, supported by expert evidence, which is challenged at the last minute (without any admissible evidence) by asserting that the "wrong" versions of the emails have been analysed and that therefore the conclusion of forgery or tampering cannot be relied upon. Yet Mr Madden was able to identify issues with the emails in question which (as he told me in evidence) did not depend on the way in which they were provided to him. That is to say, the features which the claimant said "compromised" them, even if true, did not impact on the criticisms of the emails themselves.

81. I accept Mr Madden's evidence about the features he found which indicated the likelihood of forgery or tampering on the emails which he examined, and also that these could not have arisen from the way in which they were sent to him. In light of the fact that it is the claimant's own disclosure that was subject to forensic analysis, that the "native" quality of those emails was not challenged until right at the end of the trial, and that no admissible evidence was put forward to support that challenge, I reject the claimant's assertion that Mr Madden did not have and examine the correct emails.

82. As a result, I ask myself two questions. First of all, why should the claimant fabricate emails to support a *genuine* case of loans made by the claimant to the defendant? Secondly, if this is a genuine case of such loans, why are there not any genuine emails to support them? My conclusion is that these fabricated emails and the absence of genuine ones both point to the loans themselves not being genuine at all.

Mr Pavlov's diary

83. So far as I am aware, there are no other contemporaneous documents at all put before the court referring to Mr Pavlov or indeed the loan agreements said to have been entered into between the claimant and the defendant. The claimant has not even disclosed its own accounts, which presumably would have shown the defendant's loan

debts as an asset, were they genuine. There are however manuscript diary entries apparently made by Mr Pavlov in a 2011 desk diary, but bearing manuscript dates of 29 April 2014 and 4 May 2015. These each mentioned "CC" (Cyrillic letters standing for "SS"), which have been frequently used in the email correspondence to refer to the defendant. The latter entry also refers to properties which the defendant was interested in. But these are bare scraps, which do not mention the loans or the loan agreements. They could refer to anything. And I have only Mr Pavlov's word that they were made on the dates mentioned, rather than more recently. I have already said that I will not accept Mr Pavlov's uncorroborated evidence. There is no corroboration of these assertions, and I therefore reject them.

Mr Osipov's role

84. Mr Pavlov's evidence was that, because he was spending much of his time at the headquarters of Regional Development Bank in Ufa (about 1300 km from Moscow), he was concerned that he might not be in a position to sign loan agreements with the defendant if he needed to borrow money at short notice. He said that the defendant put him in contact with an employee of the Russian Union of Rightholders called Valeriy Osipov. Further (he said), the defendant suggested that the claimant issue a power of attorney to authorise Mr Osipov to sign on the claimant's behalf (though not employed by the claimant) in the absence of Mr Pavlov. Mr Pavlov said he was content to do this, because the disbursement of funds would be authorised only by him, and he would retain physical possession of the powers themselves. This seems to me to be a weak explanation. First, Mr Pavlov could have appointed someone he knew well and trusted in his own entourage, without the defendant's introduction at all. Secondly, the person signing on behalf of the claimant could engage its liabilities in all kinds of ways, depending on the terms of the power. Disbursement of funds is not the only potential problem. But Mr Pavlov apparently did not mind.

85. The defendant's witness statement accepts that Mr Osipov was an employee of the RUR, but asserts also that he was part of Mr Krichevskiy's team, and that he (the defendant) did not introduce him to Mr Pavlov. Mr Osipov's own witness statement says that he is a native Russian speaker and that he does not speak English. Nevertheless, the power of attorney that was conferred upon him by the claimant (in English) was very extensive. It is not limited to agreeing to the loan agreements in question, but extends to "any transactions, contracts and other documents on behalf of the company". In addition, Mr Osipov appears also to have signed the loan agreements (also in English) as a director of the claimant.

86. The power of attorney in favour of Mr Osipov is dated 18 February 2013, which predates the first declaration of trust in favour of Mr Pavlov (dated 7 March 2013). It was renewed on 19 February 2014 and again on 19 February 2015. I do not accept Mr Pavlov's evidence that *the defendant* suggested Mr Osipov to hold the claimant's power of attorney. Nor do I accept that Mr Osipov was given powers of attorney for the purposes of dealing with these loan agreements. If the powers of attorney are genuine and valid (which I do not need to decide), then in my judgment they were granted for some other, more general, reason, probably not connected with the defendant. I record that the defendants served notice on the claimant dated 31 May 2019 to prove these powers at trial. They were not so proved.

Conclusion on the agreements and deed of variation

87. Taking all of these matters together, I am entirely unpersuaded that the defendant signed the documents as alleged by the claimant's pleaded case. I am equally unpersuaded that he signed them at any other time, or that his signature on them was forged (or transposed from another document) on *his* instructions. As I have said, the claim as pleaded rests on the documents, rather than on any collateral oral agreements. In short, therefore, the claimant has failed to prove that the defendant entered into these contracts of loan at all, and the claim must fail.

Payments between the claimant and the defendant

88. In the circumstances that I am not satisfied that there were any agreements as alleged, a question which does not strictly arise relates to the status of the payments which appear to have taken place between the claimant and the defendant, and also third parties, as shown by the claimant's bank statements disclosed during the course of the proceedings. As I have said, the claimant originally provided disclosure of its bank statements in heavily redacted form. The claimant justified the redaction on the grounds of client confidentiality. It was only in June 2019 that the court ordered the bank statements to be disclosed in unredacted form, with suitable safeguards for client confidentiality.

89. But the unredacted bank statements enabled the defendant's counsel to cross-examine Mr Pavlov so effectively as to demonstrate, first of all, that a large number of payments could be linked both to the defendant and to Mr Krichevskiy. Moreover, these payments were not just in relation to the sums claimed by the claimant to be loan payments or repayments, but other significant sums too. Secondly, they suggested, not only that the defendant was *not* borrowing money from the claimant, but also that the claimant was instead being used as a conduit for the defendant's *own* money. Examples of this are: a commission payment due to an agent for finding a property for the defendant, an insurance premium payment, the payment of hire under a yacht charter in April 2015, payments to the defendant's own solicitors and to his builder. Thirdly, it became clear that the actual transferees in the unredacted statements often did not correspond to the description of entities referred to in Mr Pavlov's schedule of high-value payments (see [9] above). If there is documentation which reconciles these inconsistencies, then it has not been disclosed, much less relied on, by the claimant.

90. All this is consistent with the defendant's witness statement that the claimant transferred money to him or for his benefit derived from the defendant's own business profits and the sale of his assets. The cross examination also established that the redaction on behalf of the claimant had not been carried out for the purpose of protecting its clients' confidentiality, but for some ulterior motive. For example, payments to the *defendant's* solicitors and his own builder were redacted. What does appear is that the sums of money appearing in the redacted bank statements can (at least in some cases) be correlated to the dates and amounts of the alleged loans, although from the *unredacted* bank statements it can be seen that no loans are involved.

91. On the claimant's case, the defendant is said to have repaid certain sums of the debts outstanding. These are US$16,930 of loan 6, US$716,000 of loan 7, and the GB£100,050 of loan 10 (which was originally in euros), totalling US$732,930 and GB£100,050, which converted to pounds makes a total of GB£649,747.50. The

defendant denies this. His case is that he never owed this money in the first place, and has not therefore repaid any of it. He says that it is possible that these payments to the claimant relates to a separate arrangement with the bank organised by Mr Krichevskiy, part of a so-called "credit/deposit" scheme that he was involved with. But in any event, the bank statements show that these payments were quickly passed on to third parties. So they are unlikely to be repayments of loans *by the claimant*, and more likely to be payments to particular third-party beneficiaries. In one case this was the defendant's solicitors, and in another case a company which Mr Pavlov says belonged to the defendant. I am satisfied that the defendant was not repaying loans to the claimant.

Plausibility of loans

92. Another point relates to the plausibility of the loans themselves. The origin of these loans (as I have said) was asserted by the claimant to be the need of the defendant for funds to buy property in the UK. Yet loan number 14, according to the claimant, was made in order to charter a yacht. It is not plausible that the claimant, having been asked to lend money to build a property portfolio in the UK, would lend a large sum interest free and without security to pay for the charter of a yacht. Another loan (number 17) was for only €20,000, although Mr Pavlov says that he himself made gifts to the defendant worth far more than this (e.g. a total of £500,000 paid to BAM GmbH in February 2013). Moreover, the amount shown in the bank statement as having been paid was not €20,000 at all, but €20,300. Mr Pavlov was unable to explain the discrepancy convincingly. There is even an example of a SWIFT payment message (evidencing a payment of £6000 to the defendant) referring to a loan agreement dated 9 February 2015. But no such agreement is alleged in these proceedings. This too was not explained.

Absence of other evidence

93. A further question relates to the absence of any evidence or from any other witnesses, and in particular Irina Barker, whose name appears frequently in the email correspondence as an adviser of the defendant. Much is made of this by the claimant. However, as I have already made clear, I have relied very little on the defendant's own witness statement evidence, and I have concluded that the claimant's claim fails to satisfy me on its own merits. So any failure to adduce other evidence in support of the defendant's case makes no difference. But I will add that *Djibouti v Borah* [2016] EWHC 405 (Comm) (on which the claimant relied) was a case where the *claimant* failed to call the obvious witness, and the burden of proof was on the claimant. It does not assist the claimant in the present case.

Beneficial ownership of the claimant

94. This brings me to the question of the beneficial ownership of the claimant. The cross-examination of Mr Pavlov, especially on the email traffic and the bank statements, amply demonstrated that, despite his claim that Mr Krichevskiy had "no connection with the claimant at all", there are in fact multiple points of contact (direct and indirect) between Mr Krichevskiy and the claimant. However, for the purposes of deciding whether the claimant's claim against the defendant is or is not proved, it is not necessary to know who actually is the beneficial owner of the claimant. As I have said, I am not satisfied on the evidence before me that it is Mr Pavlov. Given my

findings about the genuineness of the loan documents, whether the beneficial owner is Mr Krichevskiy or not at the end of the day does not matter.

Importance of procedure

95. A final comment which I wish to make about this case is that it is sometimes thought that the English procedural rules are too time-consuming and expensive to operate, without any corresponding advantage in terms of justice. But this is a case which amply illustrates the importance of procedural rules in ensuring a fair trial and the best opportunity to deliver a just result between the parties. This case illustrates the importance in particular of advance disclosure and production of documents in *unredacted* form, control by the court of expert evidence, and (at trial) cross-examination of witnesses, all properly pursued by a party's lawyers. The persistence of the defendant's legal team in enforcing these procedures has made all the difference in this case. I draw attention to the crucial role played by the unredacted documents, compared to their redacted versions, in the cross-examination of Mr Pavlov. (And it goes without saying that this is also a tribute to the quality of the cross examination, backed up by a detailed analysis of the documents.)

96. It also illustrates the important point that it is generally speaking for the claimant to prove its case, and not for the defendant to prove anything. I am not required in this case to decide in terms whether the defendant is telling the truth (although that may also be correct). I am required instead to decide whether the claimant has proved its case. In my judgment, in these proceedings it has not.

Conclusion

97. The claim is accordingly dismissed. I should be grateful to receive a draft minute of order to give effect to this judgment, in particular dealing with its effect on the freezing injunction against the defendant.