Neutral Citation Number: [2020] EWHC 3083 (Ch)

Claim No: [BL-2020-001465]

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

The Rolls Building
7 Rolls Buildings
Fetter lane
London EC4A 1NL

Date: 11/09/2020

Before:

MR. JUSTICE MEADE

- -

Between:

ANASTASIA VLADIMIROVNA KOLDYREVA	**Intended Claimant**
- and -	
(1) ANATOLY LEONIDOVICH MOTYLEV	**Intended Defendant**
(2) COUTTS & CO **(3) ALTUS INVESTMENT MANAGEMENT LTD** **(4) CENTTR1P LIMITED** **(5) STUART PIERSON**	**(Norwich Pharmacal) Defendants**

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MR. PAUL MCGRATH QC and MR. ANDREW SHAW (instructed by **CMS Cameron McKenna Nabarro Olswang LLP**) for the **Intended Claimant.**
The Intended Defendants were not present and were not represented.

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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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MR JUSTICE MEADE

(For Revision)

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THE JUDGE :

1. I have before me a number of applications in an intended action. They all concern, as the intended defendant, Mr. Motylev, who was the moving spirit behind, and it is said, at least, the beneficial owner of a number of Russian banks. In July 2015, Mr. Motylev left Russia for the UK, and shortly after that the Russian Credit Bank ("RCB"), which was majority owned and controlled by him, had its banking licence in Russia revoked and subsequently collapsed.

2. Later, in circumstances which I will describe, Mr. Motylev was declared bankrupt in Russia. I will come back to the way in which his bankruptcy proceedings went forward, but for the moment I will just say this: in May 2019 the Creditors' Committee of his bankruptcy appointed a new and different financial manager (the third), that is the intended claimant, Anastasia Koldyreva, for Mr. Motylev. The evidence before me, which I will mention again in a moment, is that that is equivalent to an English trustee in bankruptcy.

3. The amounts involved are very large. The claims in Mr. Motylev's bankruptcy exceeded £600 million, and in particular there is a very large claim by the RCB for £335 million. I should say I have expressed these numbers in sterling. The claims are, of course, in roubles, and the exchange rate has fluctuated, but I am going to use sterling amounts, as this is the way that the skeleton arguments and evidence have been prepared.

4. The applications before me include an application for a worldwide freezing order against Mr. Motylev; a search order against his house; an order recognising the Russian bankruptcy, a passport surrender order and various Norwich Pharmacal orders. This is my judgment on the application for a worldwide freezing order, which, as it will appear, I am going to grant, although I have not been through the form of the order yet with counsel for the intended claimant. Having given judgment on that, a number of underlying matters will have been resolved, at least for today, so as to form the substrate for the argument on the remaining orders. I should say at the outset that the search order has been put back to be dealt with, probably on Monday next week, and hopefully by me, in the light of my observations about the relief sought and the developing factual situation on the ground.

5. This hearing has been conducted in private. It has been conducted without notice, and I have directed that the claim form will be anonymised and the CE file will be kept confidential, to the extent necessary, as identified in the intended claimant's skeleton argument.

6. The intended claimant's applications were supported by a long and very detailed skeleton argument by Mr. McGrath QC and Mr. Shaw. I am very grateful for that, and I have found particularly useful the detailed chronology and dramatis personae. There was a great deal of material in support of the application, and I think it is worth identifying that my reading focused, although not exclusively, on the skeleton (and a short supplementary one), affidavits of Mr. O'Sullivan of the intended claimant's solicitors in support, the draft claim form, the draft Part 8 claim form for recognition of the judgment, and the draft orders, a decision of the Russian Credit Bank Court of

Appeal, to which I will refer to in a moment, a memo produced by the Russian sister office of the intended claimant's solicitors, and the financial manager's latest report of July 2020. I have been directed to various other materials.

7. In support of his obligation to make full and frank disclosure on behalf of his client, Mr. McGrath has pointed out certain matters in writing in his skeleton argument. Mr. O'Sullivan does the same in his affidavits. Where important, Mr. McGrath has drawn my attention to certain specific matters in his oral submissions. It is not necessary to go into these specifically, other than as they matter in the course of my judgment. Of course, the intended defendant, Mr. Motylev, can raise those matters on the return date, and they are recorded in writing or in the transcript of this hearing.

8. I should say, also, that this hearing proceeded on a Microsoft Teams invite, sent out by the intended claimant's solicitors, because, for reasons that are unclear, and for which I do not think anybody bears the blame, there was a problem with the HMCTS Skype arrangement. I directed that we should use the intended claimant's solicitor's Teams setup. I am grateful for them arranging it. I gave permission for them to record it so that it can be sent to the Court, and there has also been a recording made by Marten Walsh Cherer, and there is a stenographer's note.

9. I return to the background facts. I have already mentioned that Mr. Motylev left Russia in 2015. He became resident in the United Kingdom shortly after that, and has remained resident here. Perhaps unusually for this type of case, he had a relatively modest lifestyle when he was running the Russian banks. He now lives in quite an expensive property in London. His lifestyle is not alleged to be particularly flashy in general however, although there are statements in evidence about various dealings he has had with certain yachts. It does appear, however, on the evidence that I have seen, that the way he conducts himself is not consistent with somebody who is bankrupt.

10. As I have said, the Russian bankruptcy proceedings carried on for some time. The way that Russian bankruptcy proceedings happen is that there is first an attempt at debt restructuring, which failed, and the initial debt restructuring in Russia was carried out under the control of a Mr. Grudcin, who was the intended defendant's first financial manager. Those did not succeed, as I have said and as a result Mr. Motylev was declared bankrupt in February 2018, whereupon a gentleman called Oleg Pristupa was appointed to replace Mr. Grudcin. Further progress was slow, for reasons which are unknown, and as I have said already, the intended claimant was then put in place as his third financial manager in May 2019.

11. Since then, matters have accelerated, and these proceedings have been in preparation for some time. As Mr. McGrath submits, and I accept, putting together an application like this, and preparing proceedings like this, is complex, and it does appear to me that since the appointment of the intended claimant in 2019, the preparations to bring litigation against Mr. Motylev have been done in a timely and business-like way.

12. I need next to say a little about the status of the intended claimant. This has been put before the court as a matter of Russian law through a memo from the intended claimant's solicitors' Russian sister firm, and I gave permission, for reasons that are on the transcript, that this could be done without complying with the specific

provisions of Part 35, and I will not repeat that, but I was satisfied that it was a proportionate way to go about things.

13. So I have said already that in Russian bankruptcy proceedings the manager plays the role equivalent to an English trustee in bankruptcy, and under Russian bankruptcy law all assets of the bankrupt, both within and without Russia, vest in the manager from the date of bankruptcy. That means that, as Mr. Motylev's manager, the intended claimant can pursue litigation outside Russia to identify and recover assets.

14. Matters are a little bit more complicated than that, because in order to have standing to bring the application for intended concurrent bankruptcy proceedings in England, which I will come to in a moment, the intended claimant has been authorised by the Russian court to act on behalf of, or as agent for, all the creditors in the Russian bankruptcy, and that happened, I am told, by an order of the Russian court of 2nd September 2020. A formal copy has not been provided yet, and Mr. McGrath has given an undertaking on behalf of his client to provide it with an affidavit of Mr. O'Sullivan when it becomes available. It was considered necessary for this authorisation to be obtained to overcome any difficulties that could face the intended claimant as a foreign officeholder seeking concurrent bankruptcy proceedings in this jurisdiction.

15. There was a hearing that led to the 2nd September order on 26th August. It is certainly possible that Mr. Motylev is aware of that hearing having happened, and that means it is possible that he is aware, or suspects, that further proceedings are going to be brought against him, but I accept Mr. McGrath's submission that that does not mean that he knows specifically what may be likely to happen, or that there are to be specific proceedings in the UK.

16. The nature of the claim that is going to be issued in a claim form, and is relied on today, is recognition at common law of the judgment of the Russian court, declaring Mr. Motylev bankrupt, and appointing the intended claimant as his manager. The underlying cause of action is not, in itself, the alleged frauds that Mr. Motylev is said to have perpetrated against the banks that he owned; those banks are not the claimants.

17. I have mentioned already some concurrent English bankruptcy proceedings that are intended to be brought. Mr. McGrath has explained to me that concurrent English bankruptcy proceedings are not thought to be appropriate to begin this litigation, because they would require notice to Mr. Motylev, which would enable him, potentially, to dissipate his assets. Nonetheless, they form part of the background in an important way, and they are part of the basis for the worldwide freezing order that is sought, in circumstances which I will explain in a moment.

18. I should also say that it is also intended by the intended claimant to bring a Norwich Pharmacal action in Cyprus, and to make a complaint which may lead to criminal proceedings in Monaco. Mr. McGrath identified the intention to bring these proceedings to me as part of his obligation to give full and frank disclosure, and also because he wished to make clear his position on whether permission was needed to do either of those things. I can deal with that quite briefly and get it out of the way. I was satisfied that those proceedings are separate, and will take place anyway, and

that they do not amount to enforcement abroad of any worldwide freezing order that I might grant, and therefore do not require me to consider the *Dadourian* principles.

19. I come on to the juridical basis for the making of this application. It is Mr. McGrath's submission that the intended claimant has to rely on common law recognition of Mr. Motylev's Russian bankruptcy for the following reasons: first of all, the EU Regulation on insolvency does not apply; and, secondly, the CBIR and Model Law have no application on the facts. I did not spend a very long time in the hearing going through this, but I am satisfied that that is a very reasonable approach to take, and in any event the intended claimant has chosen to make his claim fundamentally under an application for common law recognition of Mr. Motylev's bankruptcy.

20. My attention was drawn to rule 214(2) of the current edition of Dicey, which provides:

"Subject to the effect of the Insolvency Regulation, English courts will recognise that the courts of any other foreign country have jurisdiction over a debtor if –

(a) he was domiciled in that country at the time of the presentation of the petition; or

(b) he submitted to the jurisdiction of its courts, whether by himself presenting the petition or by appearing in the proceedings."

21. Mr McGrath further identified to me *Fletcher on The Law of Insolvency*, Fifth Edition, at 29-053 as establishing that the appointment of a foreign trustee in bankruptcy is, provided the aforesaid requirements are satisfied, capable of and entitled to recognition at common law.

22. These establish that it must be shown either that Mr. Motylev was domiciled in Russia at the time of the presentation of the petition, or that he submitted to the jurisdiction of its courts, whether by himself presenting the petition, or by appearing in the proceedings.

23. It is accepted that Mr. Motylev was not domiciled in Russia at the time, having left for the UK in 2015, but it is argued that he submitted to the jurisdiction of its courts. I accept this argument, since Mr. Motylev, by his representatives, was present at the hearing at which the bankruptcy order was made in February 2018, and, thereafter, initiated an unsuccessful appeal. He did not, in fact, attend in person, and was not represented at the appeal hearing itself, but nonetheless this clearly gives rise to an eminently arguable case that he did submit to the jurisdiction.

24. It is also pointed out that Russian law does not limit the exercise of the manager's powers to Russia.

25. Furthermore, it is submitted that no bars to recognition at common law appear to apply: it is said that the bankruptcy order was not obtained by fraud (there is no sign at the moment that it was) that the bankruptcy order was not obtained in breach of natural justice, and that recognition is not sought to enforce Russian penal laws.

26. It is not impossible that Mr. Motylev will challenge some of these points in due course, and the fact that none are apparent at this hearing is, of course, a function of

the fact that it is an ex parte hearing and he is not represented. So although it cannot be excluded, and may be well be argued in due course that there is, some reason that recognition ought not to be accorded to the bankruptcy judgment, for the moment I am satisfied that there is a suitably arguable case.

27. If the Russian court's order is recognised, the following consequences would flow. First of all, on the authority of *Fletcher*, again 29-057, the English court would recognise the manager's right to sue in her own name for the debts of the bankrupt under Russian bankruptcy law. That appears in paragraph 50.1 of Mr. McGrath's skeleton. Secondly, assignment of movable but not immovable property situated in England to the manager would take place.

28. It is submitted by Mr. McGrath, and I accepted as arguable, although I do not need to decide it today, that in relation to immovable property in the United Kingdom the English court would have power to appoint the manager, that is to say the intended claimant, as a receiver. Again, I recognise that this is arguable for present purposes. It is not actually essential to my decision today, because it is unknown whether there is any immovable property anyway.

29. Common law recognition, however, has its limits. In particular it does not entitle the manager, i.e. the intended claimant, to make use of the statutory provisions and powers which arise under the Insolvency Act 1986. This is the reason why, in due course, it is intended that concurrent bankruptcy proceedings will be begun in England, as I have mentioned already.

30. Thus recognition of the Russian bankruptcy is the first basis of the claim, and I accept that it raises a good arguable case, certainly sufficient for the making of a worldwide freezing order (if the other requirements are met).

31. The second basis for making a worldwide freezing is in anticipation and advance support of the intended concurrent bankruptcy proceedings. Mr. McGrath took me to authority to establish that that was an appropriate way to proceed, and I am satisfied that it might be. I need not say more about it, however, because I am sufficiently satisfied that there is a good arguable case on the basis of recognition of the Russian court's judgment.

32. The third limb, very much bringing up the rear in Mr. McGrath's submissions, is section 25 of the Civil Jurisdiction and Judgments Act 1982. This was only weakly relied on. There are clear issues in its path, but I need say no more about it in the light of my conclusions on recognition of the judgment.

33. So far as jurisdiction is concerned, Mr. Motylev is resident and domiciled in London, and has been for some years. That satisfies the first limb under paragraph 9 of Schedule 1 to the Civil Judgments and Jurisdiction Order of 2001. The second limb is that he has a substantial connection with the United Kingdom. I am satisfied as to that as well. He is not merely resident here, but he has rented property and lives his life here in a substantial way, as is identified in the affidavit of Mr. O'Sullivan.

34. That covers the nature of the claim intended to be brought, at least in outline, and in doing so I have dealt with good arguable case and jurisdiction over Mr Motylev.

35. I will return now to deal with the facts in a bit more detail so as to be able to make a decision about risk of dissipation. It is right to say at the beginning, and Mr. McGrath was at pains to point this out, that Mr. Motylev left Russia in haste, but that although he is the subject of criminal proceedings, which have proceeded as far as charges being brought, he has not been found guilty of anything, and those proceedings cannot proceed anyway while he is not in Russia. Of course I also have to bear in mind that he has not appeared at this hearing so as to defend himself. So what I now record is all by way of allegation, and where I say something as a fact, it should be borne in mind that that may yet prove not to be the case, but merely an allegation by claimant. I should also say this in relation to Mr. Motylev. It is recognised by Mr. McGrath, as part of his obligation of full and frank disclosure, that it is certainly possible that Mr. Motylev in due course will say that the Russian state has taken against him and that he left Russia in fear of what might be visited on him by the Russian state. It certainly appears that the Russian state, which may well ultimately end up footing the bill for Mr. Motylev's activities, has recently taken a more active interest in pursuing those perceived to have been involved in the collapse of numerous Russian banks. To what extent this is specific to Mr. Motylev is unknown. I bear those things in mind as possibilities for the future. It is very difficult to form any clear or firm view about them today.

36. It is also right to say that in the course of the proceedings against him in Russia not everything has gone against him. In particular, Mr. McGrath drew my attention to the fact that at one point during the proceedings there was a refusal by the Russian court to order seizure of Mr. Motylev's assets. I know rather little about this. I recognise that it happened, but it is some time ago, and events have no doubt moved on. The procedural setting was very different. The evidence before the Russian court and the standard that they were applying may have been very different. I also recognise, and this was drawn to my attention, that recently, in the summer of 2020, it does appear that Mr. Motylev made an approach to representatives of the intended claimant to seek to discuss settlement of his bankruptcy proceedings. I was not told about the substance of these discussions, quite rightly. They, again, form part of the picture, but they do not certainly transform my view of matters. Those are some important caveats.

37. The broader picture, however, is that Mr. Motylev was in charge of a number of banks which collapsed with very large shortfalls in their balance sheets, having made loans to companies which, it is alleged, were shell companies, or using the Russian expression "technical companies", under the control of Mr. Motylev. The abstraction of these sums was achieved by complex and sophisticated means, and in particular, and I will come back to this, were facilitated by Mr. Motylev, contrary to the requirement of Russian banking regulatory law, holding both the offices of chairman of the bank management and chairman of the board of directors. This allowed the loans, it is alleged, to be made without any check by anyone else or any regulatory authorities in particular.

38. I will not go through all of these events in detail. They paint a picture, as I say, of complicated, sophisticated, obscure transactions, taken, in many instances, at speed, leading to a lot of money leaving the banks. I accept Mr. McGrath's submission that that money must have gone somewhere but has not yet been found. Strictly speaking, none of these facts are relevant to the strength of the cause of action, which, as I have

said, is for recognition of the bankruptcy proceedings, but I accept Mr. McGrath's submission that they show a strongly arguable case of sophistication, of bad faith, and of unreasonable conduct.

39. In relation specifically to the risk of dissipation, I was taken to well-known authorities, stressing that mere showing of dishonesty is not enough to establish a risk of dissipation. It may be that there is an allegation that the defendant has been dishonest, but in a way which does not demonstrate an ability or a willingness to dissipate assets so as to frustrate the court's procedure. However, the overall pattern of the intended defendant's actions in the nature of dishonesty may be relevant and may, in the right case, in themselves demonstrate a current risk of dissipation of the assets. I would have been willing to find that this overall pattern of events was enough, but there are three particular events which go further and to my mind clearly demonstrate the risk of an ability and willingness on the part of Mr. Motylev to dissipate assets. The first one I have referred to already, which is his holding, contrary to provisions of Russian regulation of banks, both offices. The second is his leaving Russia just before the collapse of RCB, and the third, as referred to in the judgment of the Russian Court of Appeal that I have mentioned already, is that a number of transactions, of the nature complained of in the course of Mr. Motylev's dealings with RCB, were put into effect with speed just before the banking licence for RCB was withdrawn. These are exactly the sort of things that one would be concerned might be done by an intended defendant in dissipation of disputed assets if given notice of a worldwide freezing order. I therefore hold that there is a real risk of dissipation.

Balance of convenience

40. It seemed extremely unlikely that Mr. Motylev has, in fact, complied with his Russian bankruptcy obligations. There is strong evidence that he has not participated at all in that process. However, even if he had, and it turned out that for that reason the worldwide freezing order has been wrongly granted, I doubt that it would cause material prejudice to Motylev or his reputation. In any event, I am satisfied that, even if that was a possibility, the concerns of the intended claimant as to dissipation of assets and denial to the creditors of return of the assets is a much more significant problem. So, in my view, the balance of convenience firmly favours granting the relief.

41. I must next deal with the passage of time. There are a number of lines of authority dealing with the relevant legal principles that apply to this. However, in general, it may be said that, in the right circumstances, the mere fact of delay does not, without more, mean that there is no risk of dissipation, and it depends on the facts. That is the basis on which I propose to proceed. I have already found that there is a risk of dissipation. The circumstances that might be categorised as delay in this situation are rather unusual, because they mostly focus on the period during which the first two managers took little or slow action. The reasons for that are, Mr. McGrath candidly accepts, unknown, but, to my mind, in the circumstances facing me today, what is much more pertinent to enquire about is the time since the current intended claimant was appointed, which is much shorter, and during which there has been timely and professional action and preparation. It may be, possibly, that Mr. Motylev viewed with satisfaction the time where not much was happening in his bankruptcy in Russia. If so, so be it. That does not mean that he would not now, if given notice, be willing

and able to dissipate his assets. In my view, there is a well-founded concern that he would. Therefore, I will not hold against the intended claimant, for these purposes, any relevant period of delay.

42. I should deal with a couple of miscellaneous points. First of all, Mr. McGrath addressed me on the question of whether the fact that the claim form does not include a claim for damages precluded a worldwide freezing order. I am satisfied that it does not, on the authority of *Koza Ltd v Koza Altin Isletmeleri AS* [2020] EWCA Civ 1018, [82] – [92]

43. It is convenient at the same time to deal with the application by the intended claimant for an order recognising the Russian appointment and judgment. I had a discussion with Mr. McGrath, during the course of submissions, about the form of that order because it appeared to me that there should not be a final order recognising her appointment in the bankruptcy, because that may be disputed by Mr. Motylev in due course. However, for reasons I have already given, I am satisfied that there is an arguable case that recognition will be granted in due course. To the extent it is needed (I rather doubt if it is), I give permission on that basis for the draft claim form to be issued.

44. For all those reasons, I am satisfied that a worldwide freezing order is appropriate in the circumstances of this case.

45. I will require the intended claimant to give a cross-undertaking in damages in the usual way; I consider that fortification can be considered on the return date.

46. I should finally say that it is recognised by the intended claimant that some of the evidence that is relied on, in particular a report by the DIA, which is a Russian state agency that looks after deposits (DIA stands for Deposit Insurance Agency) is of uncertain provenance, and there is the possibility that some of the evidence relied upon may have been obtained illegally, although not illegally by the action of the intended claimant.

47. In granting the worldwide freezing order I was not materially influenced by that evidence. I do not think it was necessary to the grant of the worldwide freezing order because there was much other material on which to rely. It may be different when we come to the Norwich Pharmacal order.

[Further Argument]

48. I am now asked to deal with an application for a passport surrender order, sometimes called a *Bayer v Winter* order. The background to this application is that set out in the somewhat longer judgment that I just gave on the worldwide freezing order.

49. Mr. McGrath's skeleton, at paragraph 115 identifies the following principles from *Corbiere Ltd v Xu* [2018] EWHC 112: (1) harm done to the defendant; (2) harm to claimant if no order is made; (3) is the order reasonable and necessary; (4) the order should be for no longer than necessary to enable the claimant to serve the disclosure orders; and, (5), the court has the power and duty where a disclosure order is made to make it effective. I am paraphrasing there.

50. I am going to deal with number (2) first, and I think in the course of dealing with that I will also probably be dealing with number 5.

51. A great deal of effort has gone into what I have found is a well-founded application for a worldwide freezing order and associated provision of information. It depends for its effectiveness on the intended defendant, Mr. Motylev, being amenable to the court's jurisdiction for the next few weeks, at least, while disclosure is obtained from him. If he leaves the jurisdiction, and is no longer under the personal jurisdiction of the court, there is a severe risk that that will be prejudiced, and potentially even the application will be set at nought. So the harm to claimant, if no order is made, and the defendant does leave the jurisdiction, is very substantial.

52. I return to point (1) -- and in doing it in this order I am not suggesting that this is unimportant, but it is just an easier way to set out my reasoning – namely harm to the defendant. The order is for a short time. It is not known if the defendant has any travel plans. There is no reason to suppose that he does. Mr. McGrath points out that he may be applying for asylum, although that is completely unknown, and/or that he may feel that he has made his home more permanently in the United Kingdom and does not want to leave. Those are all possibilities. However, to my mind they all emphasise that only a modest degree of harm to the intended defendant can be anticipated and possibly no harm at all. So I recognise that there is uncertainty about his intentions, and his asylum status or otherwise, but I can have, I think, a satisfactory degree of confidence that the harm to him will be modest, if any.

53. I turn to (3): is the order reasonable and necessary ancillary to the due performance of the court's functions? I think I have dealt with that actually already along with (2) and (5). I am satisfied that the worldwide freezing order is necessary and appropriate, and that it will enable tracing to start. There is a very real danger that will not happen if the defendant is able to travel, and I should say, and I am not sure whether it comes under (1) or (3) or (5), but the fact that he previously left Russia just before the collapse of RCB satisfies me that he might well choose to leave England, the UK, so as to avoid these proceedings. I cannot think of any other way to secure that he does not travel, and none has been suggested.

54. As to point (4): the order should be for no longer than is necessary to enable the intended claimant to serve the orders. I am satisfied about that. Mr. McGrath emphasises, and I agree, that this is only for the time, in the first instance, until the return date, to ensure his compliance with the disclosure obligations under the worldwide freezing order, which will be a matter of weeks, and it is not until trial and should not be for a long time.

55. For all those reasons, which regrettably I fear I have tangled up in dealing with the five points, I am satisfied that this is an appropriate case to make a passport surrender order. When we come to deal with it, I will need to check in the phrasing of the order that it is such as to not require Mr. Motylev to surrender his passport if, in fact, it is already in the hands of the UK authorities, for example, to do with some asylum application.

[Further Argument]

56. I now have to deal with several related applications for *Norwich Pharmacal* orders. There are four respondents, each to an individual application. First of all, Coutts, which is believed to operate a bank account for Mr. Motylev in the UK; secondly, Altus Investment Limited, which is said to manage the Coutts account on behalf of Mr. Motylev, and also to provide some property services; third, Centtrip Limited, where it is believed and alleged that Mr. Motylev is using a Centtrip credit card belonging to a company called Megatrend (which I have not mentioned so far, but whose role is explained in detail in the evidence of Mr. O'Sullivan) to manage some of his daily expenditure; and fourth, against a Mr. Stuart Peirson, who is the only individual respondent to any of these applications, who is a director of Megatrend and of a company called Fomonsur.

57. I will say straight away that the fact that I am dealing with these applications at the end of a rather long day when I have dealt with some other matters already does not mean that they are unimportant or do not need to be closely scrutinised. They most certainly do, and the fact that they are less intrusive than either a worldwide freezing order or a search order does not make them unimportant, although nonetheless it is a relevant factor that they present a lower degree of intrusion. So these must be looked at carefully on any view.

58. The *Norwich Pharmacal* jurisdiction is well-known, and the basis for it is set out in Mr. McGrath's skeleton by reference to *Norwich Pharmacal Co & Others v Customs and Excise Commissioners* [1974] AC 133 itself. The requirements for such an order are, first of all, that there is a good arguable case; secondly, that the respondent has become mixed up in some form of wrongdoing, even innocently, and thirdly that it has facilitated the intended defendant’s actions (that it is more than a mere bystander). It is also necessary that they are likely to have documentation or information which may assist the applicant but in the circumstances of each of the intended respondents that is obvious and I need say no more about it.

59. I will deal with some common matters relating to these applications first and then I will deal with them individually. First of all, the evidence supporting these applications comes, in large part, from a report by the DIA, to whom I have referred already in my judgment on the worldwide freezing order. It is accepted, realistically by Mr. McGrath, that it is not and cannot be known whether any of the evidence attached to the DIA report was itself obtained illegally. Some of it, it is accepted again, I think realistically, may have been, for example, and in particular, the Centtrip credit card and copies of underlying transactions.

60. I have received some submissions in writing, and Mr. McGrath has touched on them in the course of his submissions, about the court's attitude to this evidence, and whether it can be adduced in civil proceedings. He refers me to Mr. Gee QC's book on commercial injunctions, sixth edition at 8-010, and *Kuruma v The Queen* [1955] AC 197 at 203, which establish that evidence can be adduced in civil proceedings in the court's discretion. A very relevant consideration in exercising that discretion, in my view, is that the DIA report was produced by a state organisation seeking to protect the banks’ creditors, but, more importantly, was produced not at the instance of the current claimant. It was produced or at least completed probably in about 2016, before the current claimant's appointment. So there is no suggestion that the evidence was procured, or any illegal obtaining of the evidence was procured or directed by the current intended claimant, let alone for the specific purposes of this application.

61. Although some of the DIA evidence is essential, as I see it, to some of the *Norwich Pharmacal* applications, it must be seen against the background of the rest of this case. Against that background, and other matters that are known from more transparent sources, for example the judgment of the Russian Court of Appeal, it appears to me to be sensible and credible. It is detailed and, in my view, cogent, and those matters clearly must also go to my discretion to admit it.

62. So, I will admit that evidence, notwithstanding the uncertainty about the means by which it was obtained and, I may also say, the lack of transparency about the individuals who obtained it.

63. Against that background, I turn to consider the individual applications. I have already dealt with a good arguable case of some form of wrongdoing. Mr. McGrath in his skeleton identifies that the type of wrongdoing involved is broadly conceived of by English law, and in the event I have dealt with that in my main judgment. Secondly, the respondent has or may have become mixed up in some form of wrongdoing even innocently. Thirdly, he must have facilitated, or participated, and been more than a mere bystander. I will take those together for each of the respondents.

64. Coutts & Co is a bank. It is alleged to have been a conduit for accounts through which and out of which disputed funds flow. It is clearly more than a mere bystander. This type of respondent is a common type of respondent, namely a bank, to *Norwich Pharmacal* relief.

65. Altus, similarly, has been involved and is more than a bystander, because it manages the Coutts account on behalf of Mr. Motylev, and there is also reference to its involvement in the management of property that Mr. Motylev has rented in the UK.

66. Centtrip is in a rather similar situation in the sense that Mr. Motylev is alleged to, and there is reason to believe does, make his regular, daily purchases to fund his lifestyle, to some extent, through that credit card. Therefore, there is reason to believe that Centtrip is a conduit by means of expenditure on the credit card for disputed funds to flow away from Mr. Motylev, and, furthermore, by some means or other, Mr. Motylev must periodically, it is said, and I accept is credible, pay his credit card bill. So that is a very similar situation.

67. Mr. Peirson is in a rather different situation. He is a director of Megatrend and another company called Fomonsur. He was also involved, it is alleged, as "the fixer" in relation to two transactions concerning yachts: one called Solemar, in June 2015, and one called Waverunner later. It is alleged, and I think it is a reasonably founded allegation, that there was an aborted attempt to sell Solemar in June 2015, and funds for the sale were transferred. When the sale did not take place, they were not transferred back, and the DIA report suggests that those funds were then used to initiate the start of Mr. Motylev's residence and lifestyle in the UK, in London. Similarly, he is alleged to have acted in the same capacity in relation to the yacht Waverunner, which I think is of less importance, and I do not need to rely on it, but he is alleged to have done that as well.

68. Furthermore, this indicates the closeness of his connection to Mr. Motylev. Megatrend is the premises which Mr. Motylev has been seen to attend recently and may well turn out to be his office, in practical terms. In saying that, I do not draw on

the further factual matters put before me by Mr. McGrath today. I am relying on Mr. O'Sullivan's affidavits that have already been provided.

69. I should say, very properly, Mr. McGrath pointed out to me the contrast between Mr. Peirson's relationship with Megatrend and with Fomonsur. In relation to Megatrend, there is the connection via Centtrip to Mr. Motylev and the alleged use, potential use, of Megatrend's office. That is quite different from Fomonsur, where the allegation does not go any further than common directorships and common acquaintances. It is entirely right that Mr. McGrath pointed this out to me, and I conclude that when we come to the form of the order I will not include documents relating to Fomonsur. The evidence there is too weak.

70. That deals with wrongdoing, participation and whether or not they were bystanders. In conclusion, I conclude that all the respondents have been mixed up so as to facilitate the alleged wrongdoing, in the sense I have mentioned already, and that justice requires them to provide the requested assistance. It is also, as I have said, obvious that they are likely to be in possession of information and/or documents. I will, in principle, make the orders. Obviously it is important now to look through the form in which they are sought.
