Neutral Citation Number: [2024] EWHC 552 (Ch)

Case No: BR-2022-000465

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

Rolls Building
Royal Courts of Justice
7 Rolls Buildings
London EC4A 1NL

Date: 13 March 2024

Before:

INSOLVENCY AND COMPANIES COURT JUDGE GREENWOOD

- -

Between:

LYUBOV ANDREEVNA KIREEVA (As Trustee and Bankruptcy Manager of Georgy Ivanovich Bedzhamov)	**Claimant/ Applicant**
- and -	
1. ALINA ZOLOTOVA	**First Defendant/ Respondent**
2. BASEL PROPERTIES LIMITED	**Second Defendant**

- -

William Willson and Roseanna Darcy (instructed by **DCQ Legal**) for the **Claimant/Applicant**
Thomas Munby KC and James Mitchell (instructed by **Gresham Legal**) for the **First Defendant/Respondent**

Hearing date: 24 January 2024

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JUDGMENT

This judgment was handed down remotely at 10.00am on 13 March 2024 by circulation to the parties or their representatives by e-mail.

ICC JUDGE GREENWOOD:

Introduction

1. This is an application made by the Claimant, Ms Lyubov Kireeva, by Application Notice issued on 3 October 2023, to strike out certain paragraphs of the Defence of the First Defendant, Ms Alina Zolotova, to a claim commenced by Part 7 Claim Form issued on 11 November 2022 ("**the Share Proceedings**") and/or for summary judgment in respect of the same paragraphs ("**the Application**").

2. Ms Kireeva ("**the Trustee**") acts in her capacity as the Russian Trustee and Bankruptcy Manager of Mr Georgy Bedzhamov, her appointment having been recognised at common law by order of Falk J (as she then was) made on 9 November 2022 ("**the Recognition Order**") for the reasons set out in her judgment at [2022] EWHC 2676. Before me, the Trustee was represented by Mr William Willson and Ms Roseanna Darcy of Counsel; Ms Zolotova was represented by Mr Thomas Munby KC and Mr James Mitchell of Counsel.

3. The Second Defendant to the Share Proceedings is an English company called Basel Properties Ltd ("**Basel**"). It did not appear and was not represented before me; neither has it served a Defence in the Share Proceedings. Basel is the owner of a valuable Italian property called "**Villa Nicolini**" (at via Cappuccini 4, 6 and 10, San' Agnello) and its single issued share ("**the Share**") is registered in the name of Ms Zolotova, who is Mr Bedzhamov's long term partner; the Share was transferred to her, or in any event into her name, on 1 April 2016.

4. In the Share Proceedings, the Trustee claims that at all material times before Mr Bedzhamov's movable property (situated in England) vested in her automatically by virtue of the Recognition Order, Mr Bedzhamov was the ultimate beneficial owner of the Share, which was held for him by a series of nominees culminating in Ms Zolotova, who thus held the Share on bare trust for Mr Bedzhamov as at the moment of the bankruptcy order. Alternatively, but to the same end, Ms Kireeva claims that the transfer of the Share to Ms Zolotova in 2016 was a "*sham and of no legal effect*", and again alternatively, that it was a transaction at an undervalue for the purposes of s. 423 of the Insolvency Act 1986 ("**the IA 1986**") in respect of which the court should give appropriate relief.

5. The Trustee thus seeks, in summary: (1) a declaration that the Share is held on bare trust for her by Ms Zolotova; (2) an order that the Share be transferred to her by Ms Zolotova; and (3) albeit only "*in so far as necessary*", a declaration that the transfer of the Share to Ms Zolotova in April 2016 was of no effect or should be set aside and/or that relief should be granted under s. 423 of the IA 1986 and/or rectification of Basel's register of members.

6. The Share Proceedings are defended by Ms Zolotova; her Defence is dated 3 March 2023. Centrally, Ms Zolotova denies that she holds or has ever held the Share on trust for Mr Bedzhamov; her case is that, albeit through the medium of Basel, Villa Nicolini belongs to her, and has at all times belonged to her; her case in that regard and the issues that it raises, are not the subject of the Application.

7. However, in addition, in short summary, Ms Zolotova pleads the following points of defence, said to deprive the Trustee of standing and/or to be relevant to the court's power to grant declaratory and other discretionary relief.

8. First, albeit without particulars, she denies (at paragraphs 2.1, 4.3, 4.5, 4.6 and 19.1) that Mr Bedzhamov's movable property vested automatically in the Trustee, without further order, as a result of the Recognition Order ("**the Movables Defence**"); she therefore asserts that Ms Kireeva has "*no interest*" in Mr Bedzhamov's assets.

9. Second, notwithstanding the Recognition Order, she avers (at paragraphs 2.2, 4.4 and 19.2) that the Trustee "*should not continue to be recognised*" as Mr Bedzhamov's appointed trustee (and/or that she ought not to be afforded assistance by the English courts) because the petition debt (in other words, the debt by reference to which the Russian bankruptcy order was made) "*has been or is being discharged*", and was "*expected to be fully discharged by 9 February 2023 and may now have been discharged*" ("**the Recognition Defence**").

10. Third, she avers (at paragraphs 2.3 and 19.3-19.5) ("**the Discretionary Bars**") that the "*discretionary remedy of declaratory relief should not be granted*" in this case both by reason of the Movables Defence and the Recognition Defence, but also because, in addition:

10.1. the claim is being funded by and under arrangements with A1 LLC ("**A1**") which are contrary to English public policy because they are champertous and/or comprise unlawful maintenance ("**the Maintenance and Champerty Plea**");

10.2. A1 is (or "*appears to be*" or there is "*reasonable cause to suspect*" that it is) controlled by individuals designated (or "*sanctioned*") under the Russia (Sanctions) (EU Exit) Regulations 2019 ("**the Sanctions Plea**"); and,

10.3. the Share Proceedings are abusive, because their true objective is to deny Mr Bedzhamov "*access to assets*" (the Villa Nicolini) which he could otherwise have used to meet legal expenses in other related matters in which A1 is also involved as funder ("**the Collateral Purpose Plea**"). In his submissions, Mr Munby associated this part of the Defence with the Maintenance and Champerty Plea.

11. Those additional pleas and defences were the subject of the Application.

12. As a preliminary point, there was some dispute between the parties regarding the meaning and effect of the pleaded Defence and therefore as to the issues between the parties. At least potentially, the dispute was of some importance, because in her Reply dated 24 March 2023, amongst other things, Ms Kireeva pleaded at paragraph 11 that although declaratory relief would be "*desirable*", it was "*not necessary*", and that the "*operative relief*" was that sought at paragraphs 2 and 3 of the Prayer; in other words, it was pleaded that the Discretionary Bars were *not* relevant to the claims (the "*operative*" claims) for an order that the Share be transferred to her by Ms Zolotova, or for relief under s. 423 of the IA 1986, or for the rectification of Basel's register of members, and that in consequence, I assume, there should be no (or perhaps less) objection to striking them out.

13. As to this, Mr Munby argued that contrary to the Reply, even as presently constituted, the Defence not only pleads the five matters as relevant to the court's discretionary power to award declaratory relief, but also as matters relevant to its powers to award the other relief sought, all of which was also said to be discretionary. Insofar as necessary, by an Application issued on 22 January 2024, Ms Zolotova seeks permission to amend her Defence to add words at paragraphs 2.3 and 20 to "*make clear*" that she relies on each

matter in respect of the whole of the claim (such that paragraph 2.3 would read "*The discretionary remedy of declaratory relief and the other discretionary consequential relief should not be granted* ….", and paragraph 20 would read: "*In the circumstances it is likewise denied that the Claimant is entitled to the consequential discretionary orders sought, or any relief*").

14. I do not agree that these amendments would not effect any alteration in the substance of Ms Zolotova's case, for two reasons:

    14.1. first, it is not possible, without unduly straining the language of the unamended Defence, to read paragraphs 2.3 and 19 as meaning anything other than that the court should refuse to award the declarations sought for the reasons stated; had it been intended to state that each variety of relief sought was discretionary, and that in respect of each, all of the matters raised in respect of declaratory relief would be relevant to the exercise of the court's discretion, then it could and ought to have been stated explicitly;

    14.2. second, the point is not insignificant, both for the reason given at paragraph 11 of the Reply, and also for the reason that even if the various claims all require the exercise of a discretion, it is not necessarily the case that each discretion would be of the same nature or breadth or would necessarily entail a consideration of the same matters or to the same extent; it would or could therefore be important to spell out which matters were said to be relevant to which discretions, and how.

15. Furthermore, in his submissions, Mr Willson treated separately each of: (i) the Movables Defence, (ii) the Recognition Defence, (iii) the Sanctions Defence, (iv) the Maintenance and Champerty Defence, and (v) the Collateral Purpose Defence. Mr Munby treated the first two as both self-standing defences and as matters relevant to the exercise of the court's discretion, and the other three as relevant only to the exercise of the court's discretionary power to award declaratory (and other discretionary) relief. As a matter of pleading, as to this point, I agree with Mr Munby - the Defence explicitly raises both the Movables and the Recognition Defences as self-standing defences (by paragraphs 2.1, 2.2, 4.3, 4.4 and 4.6) but also (by paragraphs 2.3.1, 4.6.2 and 19) as matters relevant to the exercise of the court's discretionary power to award declaratory relief; the other three

matters are (by paragraphs 2.3 and 19) pleaded as relevant only to the exercise of the court's discretion.

16. Accordingly, as presently pleaded, the Defence raises the Discretionary Bars in connection with the claim to declaratory relief, but not, subject to the amendment application, specifically in connection with the exercise of the court's discretion in respect of the other claims. The (potential) consequence of these conclusions concerns the power and willingness of the court to strike out or give summary judgment before trial (and in this case, before disclosure and witness statements) in respect of matters said to affect an exercise of its discretion. One element of Mr Munby's argument was that all of the matters raised are obviously relevant – or more importantly, could not at this stage safely be said *not* to be relevant – to the exercise of the court's various discretionary powers, and that the whole claim was to discretionary relief.

The Background

17. Mr Bedzhamov was declared bankrupt, and Ms Kireeva was appointed as his trustee in bankruptcy, by the Arbitrazh Court in Moscow on 2 July 2018 on the petition of an unpaid creditor, VTB 24 Bank ("**VTB**") based on his liability to VTB pursuant to a personal guarantee dated 23 October 2015 ("**the Guarantee**") given in connection with a loan made by VTB to his sister, Ms Larisa Markus. Ms Markus is now serving a prison sentence in Russia in connection with a fraud on Vneshprombank LLP ("**the Bank**") of which previously she was President. Although in the course of 2016, Mr Bedzhamov was charged in Russia in respect of the same fraud, he has, since 18 December 2015, when the Bank entered insolvency proceedings, lived outside Russia with Ms Zolotova, his long-term partner, and with their three children, first in Monaco, and subsequently, since 2017, in London; in consequence, the Russian criminal charges against him remain untried and unresolved. A Russian state corporation, the Deposit Insurance Agency ("**the DIA**"), acts as the Bank's receiver and liquidator.

18. On 16 August 2016, in civil proceedings brought in Russia by the Bank against Mr Bedzhamov, judgment was entered in favour of the Bank by the Khamovniki District Court in the sum of Rubles 3,368,065,366 ("**the Unjust Enrichment Judgment**"). Notwithstanding various appeals and applications made by Mr Bedzhamov (contending

that the Unjust Enrichment Judgment was obtained irregularly and in breach of natural justice, and was being maintained by fraud) that judgment remains outstanding.

19. In December 2018, the Bank commenced (initially anonymised) fresh proceedings against Mr Bedzhamov in England ("**the Bank Proceedings**"); on 27 March 2019, in connection with those proceedings a worldwide freezing order was made against Mr Bedzhamov by Arnold J (as he then was) on the Bank's *ex parte* application in the sum of £1.34 billion ("**the WFO**"); that Order was subsequently continued on 10 April 2019, by Order of Fancourt J. In its pursuit of those proceedings, the Bank is funded by A1, as described in a judgment given by Falk J on 5 August 2020 (at [2020] EWHC 2114, [22]-[24]). It is accepted by the Trustee that in the Share Proceedings she too is funded by A1.

20. By an application dated 19 February 2021 ("**the Recognition Application**") the Trustee sought recognition in England, at common law, both of the Russian bankruptcy order and of her appointment as trustee, and also ancillary orders "*for the entrustment*" of Mr Bedzhamov's property and assets in the UK; the assets specifically identified in the Recognition Application were two properties in London together referred to as the "**Belgrave Square Property**".

21. In the first instance, the Recognition Application was heard (on 14, 16 and 19 April 2021) and decided by Snowden J (as he then was); his judgment is at [2021] EWHC 2281; at [5] – [67] he set out the background in detail that I need not repeat, but some of which is briefly summarised above.

22. Also before Snowden J was the Trustee's application (made on 16 March 2021) in substance to set aside an Order made by Falk J on 5 March 2021, on an application made by Mr Bedzhamov on 22 February 2021 (but previously notified to the Bank's legal advisors on 6 January 2021) by which the WFO was varied to allow, in effect, the sale of the Belgrave Square Properties and the use of the sale proceeds to pay both Mr Bedzhamov's living and other expenses, and also his legal fees incurred in defence of the Bank Proceedings.

23. Mr Bedzhamov contended, and the Trustee denied, that the Recognition Application was a "*pincer movement*" between the Bank and the Trustee, designed to deprive him of an asset otherwise available for use in funding his defence of the Bank's claims (see [2021]

EWHC 2281 at [74]). Moreover, as a result of a concession made by the Bank by letter sent by its English solicitors to Snowden J in the course of the hearing (that any sums received by the Bank from Mr Bedzhamov would, as a matter of Russian Law, be remitted to the Trustee for distribution in the bankruptcy) Snowden J said, at [101], that "*What, therefore, now appears, is that the* [Bank Proceedings] *are being pursued, and the WFO is being maintained for the ultimate benefit of the Trustee over assets to which the Trustee claims to be entitled under Russian law. The* [Bank Proceedings] *do not appear to be being pursued for the benefit of the Bank to recover its claims in its own right*." He noted that although it "*seems obvious*" that this position must have been accepted by A1, there was no "*indication as to the arrangements that (on this footing) must also have been entered into between A1 and the Trustee to regulate the provision of funding and the division of the proceeds of the* [Bank Proceedings] *between the Bank, A1 as funder, and the Trustee as intended recipient of the proceeds of the litigation*."

24. In summary, in connection with recognition, Snowden J held:

    24.1. that Mr Bedzhamov had submitted to the jurisdiction of the Arbitrazh court having control of the bankruptcy proceedings in Russia, and that the English court therefore had a jurisdictional basis for recognition at common law: [130];

    24.2. that none of the three bars to recognition relied on by Mr Bedzhamov (based on fraud, natural justice and public policy) were such as to avoid or prevent recognition in this case; in particular, he concluded: (a) that the VTB judgment debt (the petition debt) was not obtained by fraud or in circumstances contrary to natural justice: [158]-176]; and (b) that in those circumstances, it was not necessary to consider whether or not the Unjust Enrichment Judgment had been improperly procured: [181]-[184];

    24.3. that therefore the Russian bankruptcy order should be recognised, "*at least to the extent that the English court should acknowledge the existence and the status of the Trustee*": [185].

25. As to the consequences of recognition, as Snowden J said at [185], they were "*very much the matter of dispute between the parties*". In that regard:

25.1. he set out at [186]-[194] the effects of recognition in relation to movable property; at [192] he explained that "*the general rule is that the effect of recognition of a foreign bankruptcy is automatically to treat the bankrupt's movable property as having vested in the foreign trustee from the date of the bankruptcy order*", and that since it was common ground between the Trustee and Mr Bedzhamov (or at any rate, was not challenged by Mr Bedzhamov: see [40]) that as a matter of Russian Law, "*all of Mr Bedzhamov's assets worldwide automatically vested*" in Ms Kireeva, he concluded that "*the consequences of recognition for movable property therefore appears to be common ground: if and to the extent Mr Bedzhamov has any movable property situated in England, the consequence of granting recognition to the Trustee will be automatically to recognise that she is the owner of, and entitled to, Mr Bedzhamov's moveable property in England*"; having said that, he acknowledged that the "*dispute between the parties did not, however, concern moveable property*";

25.2. he concluded that although the English court has a common law power (once it has recognised a foreign insolvency proceeding) to grant assistance to that proceeding and those conducting it, there was no general common law power to "*entrust*" immovable property (in particular therefore the Belgrave Square Property) or to vest or order it to be transferred to the Trustee or sold by her or for her benefit: [241-271];

25.3. in the circumstances, he dismissed the Trustee's application of 16 March 2021 to set aside the Order of Falk J made on 5 March 2021 in respect of the WFO made in the Bank Proceedings.

26. By Order of 25 August 2021, Snowden J therefore granted recognition, dismissed the application for assistance in relation to Mr Bedzhamov's immovable assets, and provided, by paragraph 2, that "*Insofar as any application is to be made by* [the Trustee] *in relation to the movable assets of Mr Bedzhamov located in England ("the Movables Application"), such application shall be made to Mrs Justice Falk*".

27. Both Mr Bedzhamov, in respect of the decision to recognise the Russian bankruptcy, and the Trustee, in respect of the decision declining assistance in respect of Mr Bedzhamov's

immovable property, appealed against the decision of Snowden J. The Court of Appeal's decision is at [2022] EWCA Civ 35. Again in brief summary, it was held:

27.1. (unanimously) that Snowden J was wrong to hold that the VTB judgment was well-founded; it was not possible to arrive at that conclusion without the cross-examination of Mr Bedzhamov, or to dismiss the possibility of VTB bearing responsibility for any fraud; in the event, the Recognition Application was, to that extent, remitted to the High Court for a hearing at which to test Mr Bedzhamov's evidence: [41], [108] and [131];

27.2. (by a majority decision) that in respect of Mr Bedzhamov's immovable property in England, the decision of Snowden J was correct: see the conclusions set out at [94]-[104], [132]; accordingly, in addition, the judge was correct to dismiss the application to set aside the Order made by Falk J on 5 March 2021 (including for the further reason that he was mistaken in having recognised her appointment): [106] and [137].

28. Accordingly, by the Court of Appeal's Order of 21 January 2022, the Recognition Application was remitted to the High Court, where it was heard by Falk J. In short, following a trial which took place on 5-6 October 2022, the judge concluded that the Guarantee was not a forgery, or vitiated by fraud, and by Order of 9 November 2022, restored the recognition order; her judgment is at [2022] EWHC 2676. That order was not appealed, and the time in which to appeal or seek permission to appeal against it expired in December 2022.

29. The Trustee's subsequent appeal against the Court of Appeal's dismissal of her claim in respect of Mr Bedzhamov's immovable property was heard by the Supreme Court on 21 and 22 November 2023, and judgment is awaited.

30. In the meantime, on 3 September 2021, as foreshadowed at paragraph 2 of the Order of 25 August 2021, the Trustee made an application against Mr Bedzhamov ("**the Movables Application**") seeking, amongst other things, "*a declaration confirming the automatic vesting of all of the Respondent's movable property including all after acquired property … owned by the Respondent in this jurisdiction in order to take control of this for the benefit of all of the creditors of the Respondent*". Relief was specifically sought in respect

of both "*the Respondent's contemporaneous movable property*" and his "*after-acquired movable property*".

31. By paragraph 10 of her Order of 9 November 2022, Falk J continued a stay of the Movables Application (ordered previously on 2 November 2021 and continued on 10 March 2022) pending the Trustee's application for permission to appeal to the Supreme Court in respect of Mr Bedzhamov's immovable property. The Movables Application continues to be stayed.

Strike Out and Summary Judgment: Legal Principles

Strike Out

32. CPR r.3.4(2) provides:

"*The court may strike out a statement of case if it appears to the court –*

(a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;

(b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings; or

(c) *that there has been a failure to comply with a rule, practice direction or court order*."

33. There was no dispute about the relevant principles.

34. Paragraph 1.4 of Practice Direction 3A explains that a defence may fall within r.3.4(2)(a) where: (i) it consists of a bare denial or otherwise sets out no coherent statement of facts, or (ii) the facts it sets out, while coherent, would not amount in law to a defence to the claim even if true. The White Book provides further guidance, explaining at paragraph 3.4.1 that grounds (a) and (b) of r.3.4(2) "*cover statements of case which are unreasonably vague, incoherent, vexatious, scurrilous or obviously ill-founded and other cases which do not amount to a legally recognisable claim or defence*."

35. Mr Munby referred to the summary of principles in Benyatov v Credit Suisse Securities (Europe) Ltd [2020] EWHC 85 (QB) at [57]-[60], amongst which he emphasised that:

35.1. an unwinnable claim may be struck out for disclosing no reasonable grounds;

35.2. where the legal viability of a cause of action is unclear or sensitive to the facts, then an order for strike out should not be made;

35.3. it is not appropriate to strike out a claim in an area of developing jurisprudence, as decisions on novel points should be based on actual findings of fact; and

35.4. a statement of case should not be struck out where it raises serious issues of fact which can only be determined properly on the hearing of oral evidence.

Summary Judgment

36. CPR r.24.2 provides:

"*The court may give summary judgment against a claimant or defendant on the whole of a claim or on a particular issue if –*

(a) It considers that –

(i) that claimant has no real prospect of succeeding on the claim or issue; or

(ii) that defendant has no real prospect of successfully defending the claim or issue; and

(b) there is no other compelling reason why the case or issue should be disposed of at trial."

37. Again, there was no dispute regarding the principles, which although different are not wholly dissimilar to those that apply to a strike out application.

38. I was referred to the principles set out by Lewison J (as he then was) in Easyair Ltd v Opal Telecom Ltd [2009] EWHC 339 (Ch) at [15]:

38.1. the court should consider whether there is a "*realistic*" as opposed to "*fanciful*" prospect of success;

38.2. a "*realistic*" claim is one that carries some degree of conviction and is more than merely arguable;

38.3. the court must not conduct a "*mini-trial*";

38.4. the court should not take everything said in a statement of case at face value and without analysis; it may be clear in some cases that there is no real substance to the factual assertions made, particularly if contradicted by contemporaneous documents;

38.5. in reaching its conclusion the court must take into account both the evidence placed before it on the application for summary judgment, and also on the evidence that can reasonably be expected to be available at trial;

38.6. although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment; the court should hesitate about making a final decision without trial where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence at trial and affect the outcome of the case;

38.7. where an application for summary judgment gives rise to a short point of law or construction, and if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and the parties have had an adequate opportunity to address it in argument, the court should grasp the nettle and decide it; if a respondent's case is bad in law he will have no real prospect of successfully defending the claim, and if the applicant's case is bad in law, the sooner it is determined the better.

39. In addition, of some significance in the present case, it is not normally appropriate by a summary procedure to decide a controversial question of law in a developing area, or to decide an action where the law is in a state of development; it is normally inappropriate to decide novel questions on hypothetical facts: see Benyatov at [52]. Similarly, that a case has ramifications beyond its own particular facts might provide a compelling reason for a trial: Benyatov at [56].

40. Against that background, I turn to the specific parts of the Defence in respect of which the Application is made.

The Movables Defence

41. In her Defence, at paragraphs 2.1, 4.3, 4.5, 4.6 and 19.1, Ms Zolotova:

    41.1. denied that Mr Bedzhamov's movable property (including but not limited to the Share) vested in the Trustee as an automatic consequence of the Recognition Order, without further court order;

    41.2. asserted that the Trustee's case to the contrary is contradicted by her own Movables Application, which has been stayed; and accordingly,

    41.3. denied the Trustee's standing to claim, averred that no further steps should be taken in the present proceedings until the resolution of the Movables Application, and in any event, stated that this matter comprises a ground upon which to refuse to grant declaratory relief.

42. Mr Willson submitted that these parts of the Defence should be struck out or summary judgment given, because:

    42.1. as a matter of law, the correct position regarding "*the general rule*" was outlined by Snowden J in Kireeva v Bedzhamov [2021] EWHC 2281 at [186]-[194], as set out above at paragraph 25: essentially, upon recognition of a foreign bankruptcy, the bankrupt's movable property situated in England vests automatically in the foreign trustee from the date of the bankruptcy order; and,

    42.2. in fact, the Movables Application does not contradict the Trustee's case in respect of automatic vesting, because it is directed at Mr Bedzhamov's after-acquired movable property, not that which he owned at the time of the bankruptcy order, which on the Trustee's case includes the Share.

43. For the following reasons, on balance, I reject this part of the Trustee's application.

44. First, as was common ground, the question of the Trustee's rights, if any, to any of Mr Bedzhamov's movable property in England, was not before Snowden J. As he observed at [2021] EWHC 2281, [194], "… *the dispute did not, however, concern movable property*". He therefore did not determine the effect of recognition on Mr Bedzhamov's movable property.

45. Second, the Movables Application, subsequently issued on 3 September 2021 (pursuant to paragraph 2 of Snowden J's Order of 25 August 2021) sought "*a declaration confirming the automatic vesting of all of the Respondent's movable property including all after-acquired property … owned by the Respondent in this jurisdiction in order to take control of this for the benefit of all of the creditors of the Respondent*". Although the Movables Application may have been issued with after-acquired property in mind, relief was nonetheless specifically sought in respect of both "*the Respondent's contemporaneous movable property*" and separately, his "*after-acquired movable property*". By paragraph 10 of her Order of 9 November 2022, Falk J continued the previous stay of the Movables Application, which continues to be stayed.

46. Third, the general rule, whilst indisputable (and not disputed by Mr Munby) is subject to various exceptions, including that it applies only if the foreign law of the bankruptcy provides for the bankruptcy to have extra-territorial effect. However, in the present case, in this respect, the Trustee has advanced no evidence of Russian law; I therefore cannot find that Russian law has the necessary effect; that is for the Trustee to establish at trial.

47. It follows that regardless of the undisputed content of the general rule (and indeed, regardless of the scope of the Movables Application) the effect of recognition on Mr Bedzhamov's English movable property has not been determined by the English court (whether as against Mr Bedzhamov or otherwise) and there is no evidence on the basis of which I can now determine it; regardless of whether it comprised the real purpose of the (unresolved) Movables Application, it was certainly raised by it as an issue for determination.

48. In the circumstances, on balance, whilst I acknowledge that there was at the time of the hearing before Snowden J, no obvious dispute between Mr Bedzhamov and the Trustee regarding the effect of recognition on movable property, and also that Ms Zolotova's pleading in this respect is no more than a simple denial, in my judgment Ms Zolotova is entitled to deny that the general rule has the effect contended for by the Trustee, and to make her prove her case.

The Recognition Defence

49. As explained above, Ms Zolotova also denies the Trustee's claims on grounds that she "*should not continue to be recognised*" and/or "*should not be provided assistance*" by

the English court because the bankruptcy debt (in other words, the debt owed to VTB, on the basis of which Mr Bedzhamov was declared bankrupt in Russia) has been or is being discharged, and that therefore, the Trustee has no "*proper standing*".

50. I agree that this part of the Defence should be struck out.

51. First, as I have explained, by virtue of the Recognition Order, the Russian bankruptcy has been recognised by the English court, as has the Trustee's appointment. The time for any appeal of that Order has expired (although I note that Mr Kakkad (Ms Zolotova's solicitor) said, at paragraph 28 of his 2nd witness statement, that his "*understanding*" was that Mr Bedzhamov's arguments based on the discharge of the VTB debt had not been "*abandoned*" but simply not pursued pending the outcome of the Trustee's appeal to the Supreme Court). That Order is effective, extant and unchallenged. Until such time as it is set aside or varied, I do not accept that the Trustee's standing or recognition is capable of being challenged, certainly not by means of a collateral attack, mounted by his partner, Ms Zolotova, in the present proceedings. A challenge would have to be made directly, against and in respect of the Recognition Order itself.

52. Second, Ms Zolotova's pleaded case is advanced narrowly on the basis that the bankruptcy petition debt has been discharged; no reference is made to any other debts or creditors, or any bankruptcy expenses and costs. However, even if true that the VTB debt has been discharged (a point which I deal with below, at paragraphs 56-58) that fact alone does not obviously require the conclusion that the Russian bankruptcy would be terminated, or that the Trustee ought no longer to be recognised as such in England.

53. In that regard, it was not disputed that the Russian proceedings are (in common with English bankruptcy proceedings) a form of collective insolvency proceedings. As a matter of principle (and certainly this would be the position in England) one would not expect satisfaction of a single debt owed to one member of a bankrupt's creditor class (after the commencement of the bankruptcy) to provide, of itself, any reason or grounds upon which to end the bankruptcy. That the position in Russia is the same was not positively disputed.

54. In addition, exhibited to Mr Elliott's 4th witness statement was a letter of advice dated 16 December 2023 (headed "Expert Report") from Ms Varvara Knutova, a Russian attorney,

which stated that as a matter of Russian law, the discharge of the founding bankruptcy debt does not undermine the bankruptcy order or terminate the bankruptcy (although I note that her advice, and therefore its context, was that the debt had not been extinguished as such, but in effect assigned). As to that however, I agree with Mr Munby that little weight should be attached, given that it does not comply with Part 35 of the CPR, and that no permission for it was sought or given.

55. Third, furthermore, the Trustee's evidence was that there are other bankruptcy debts, in addition to that originally owed to VTB, in particular (as set out in an "*Information Letter*" from the Trustee exhibited to Mr Elliott's 4th statement) owed: (i) to the Bank, (ii) to Steklostandart Trade House LLC in the amount of 2,532,236,885.06 Rubles, and (iii) to United Production Company LLC, in the amount of 70,179,811.59 Rubles. Plainly, the Bank's claim is keenly disputed, but the Trustee's position is that she is not aware of any disputes in connection with the two other claims. Moreover, paragraph 17 of the Statement of Agreed Facts and Issues produced for the Supreme Court in respect of the appeal in the Recognition Application records that a debt to TD Steklostandart LLC in the sum of 3,871,173,100.23 Rubles was accepted into the register of creditors by the Arbitrazh Court (although it does not record any agreement – or for that matter, active disagreement - as to the appropriateness or otherwise of that acceptance). It is correct, as Mr Munby pointed out, that no details of these additional debts have been provided.

56. Fourth, the Trustee's evidence was that in any event, the VTB debt has not as such been discharged. The true position, as explained in Mr Elliott's evidence, was said to be that:

    56.1. in support of his guarantee, Mr Bedzhamov provided security comprising three plots of land; following the failure to sell those plots at successive auctions, VTB acquired the right to become the registered owner in return for a reduction in the value of its debt as recorded on Mr Bedzhamov's register of creditors in the sum of Rubles 43,581,078; the remaining and outstanding amount owed to VTB was subsequently settled by Mr Bedzhamov's co-guarantor, Mr Lazar Markus, pursuant to a settlement agreement made between Mr Markus' own bankruptcy trustee and various other parties, and approved by the Moscow Arbitrazh Court in a decision dated 1 February 2023; under Russian law, upon payment by a co-obligor (such as Mr Markus) the debt subsists, to enable the

co-obligor to assume the rights of the creditor (in this case VTB) for the purpose of recouping sums from any other co-obligors (in this case, Mr Bedzhamov); subsequently, having thus continued in existence, the debt (and any rights against Mr Bedzhamov) were assigned to the Bank;

56.2. in support of this explanation, Mr Elliott exhibited: (i) a copy of the settlement in the original Russian (plus a translation) as approved by the Moscow Court on 1 February 2023, and (ii) a copy of the decision of the Arbitrazh Court in Moscow dated 15 May 2023 which confirmed the assumption of VTB's debt by the Bank (again, in Russian and English);

56.3. according to the translation, the decision of 15 May 2023 was made in the bankruptcy of Mr Bedzhamov; it records the fact of the court's approval on 1 February 2023 of the settlement and that the settlement transferred Mr Markus' rights against Mr Bedzhamov to the Bank; it recorded the replacement of VTB by the Bank in the register of creditors' claims against Mr Bedzhamov.

57. Mr Munby submitted:

57.1. that the documents relating to the settlement and transfer of rights to the Bank have not been tested by means of the usual litigation processes;

57.2. that the translation of the 1 February 2023 decision was on its face unsatisfactory, containing occasional plainly unrelated interjections such as "I'VE GOT IT" and "I'M SORRY";

57.3. that the assignment by Mr Markus to the Bank of his rights was referred to as having been gratuitous;

57.4. that there was an inconsistency between the translation of the 15 May 2023 decision (which records that the assignment took place under clause 6 of the settlement agreement) and clause 6 itself as translated in the 1 February 2023 decision (which refers to other, unrelated matters);

57.5. that the settlement agreement as set out in the 1 February 2023 decision was incomplete, because although there is reference to Annex 1, there is no copy of Annex 1.

58. Notwithstanding these submissions, and notwithstanding some infelicities in the first translations (improved and certified versions of which were in any event exhibited to Mr Elliott's 7th witness statement dated 23 January 2024) it is in my view sufficiently evidenced that in Russia, Mr Bedzhamov's register of creditors has been amended to record the replacement of VTB by the Bank, and to include the debt owed to TD Steklostandart; in both cases, the change has been accepted by a Russian court. There is no evidential basis upon which to conclude that those changes were improper or inappropriate; Mr Bedzhamov himself has not raised any complaint in respect of the TD Steklostandart claim.

59. In addition, Mr Munby submitted:

59.1. that whether or not the VTB debt or Mr Markus' rights against Mr Bedzhamov have been assigned to the Bank, there is now an "*open question*" as to whether the Russian bankruptcy remains capable of being recognised because the basis upon which it was recognised by Falk J (and in effect, by Snowden J) without reference to the Bank's disputed claims, has changed;

59.2. specifically, the only creditor referred to at the time of the Recognition Order and in whose favour the bankruptcy was being pursued, was the Bank, and so recognition can no longer be supported without the Bank's original claim being addressed; whether other creditors' claims can be relied upon is a matter which should be properly litigated and determined as a matter of fact and law before any further assistance is given to the Trustee. Reference was made to the comments of Falk LJ in a judgment from February 2023 at [2023] EWHC 348 (Ch) (in relation to costs issues):

> "*43. Mr Fenwick* [i.e. Leading Counsel for Mr Bedzhamov] *submits that the fact that the VTB debt has been discharged is clearly relevant to whether the Trustee should continue to be recognised, or at least to the question of whether assistance should be provided, bearing in mind that the unjust enrichment debt relied on by VPB is accepted as unsafe (or at least in part unsafe) and issues have also been raised about another*

> *creditor claim in the bankruptcy. Mr Fenwick notes that evidence from the Trustee's solicitor, Mr Elliot, accepts that whether other bankruptcy creditors can be imported into the bankruptcy from a UK perspective is a matter for the assistance application. That point was also accepted by Mr Willson. …*
>
> *45. I accept that the issues covered by the remittal were narrow, but even if I assume in the Trustee's favour, without needing to decide it, that that meant that knowledge of the proposed settlement was not relevant to the order that the court made granting recognition, it does not necessarily follow that I would have exercised my discretion in respect of costs in the same way. Further, as already mentioned the point is clearly relevant to the question of assistance. The fact that the court was not informed of the actual position is of some concern*."

59.3. in the circumstances, before giving the Trustee any assistance, the court should first consider whether to continue to recognise the bankruptcy in light of the material change of circumstance in respect of the original petition debt.

60. I do not accept those submissions for three reasons.

61. First, the correct question is not whether the Recognition Order can be supported (or would now be remade) on precisely the grounds on which it was originally made, but whether there now exist grounds upon which to discharge it. I do not therefore accept that if the court were to reconsider recognition it would necessarily, as is suggested, have to consider the validity of the Bank's claim. It would be necessary to consider any other claims and liabilities, including costs and expenses.

62. Second, Falk LJ's comments were made at a time when only 2 debts/claims had been referred to, of which one was disputed, and the one which was undisputed (as a result of her judgment, and upon which she had recently made the Recognition Order) had apparently been discharged in circumstances not brought to her attention; it is not difficult to understand the court's concern in those circumstances. However, Falk LJ was considering matters arising in the Recognition Application itself (which I am not, and as I have said, the Share Proceedings do not provide the appropriate forum in which to decide matters of recognition) and in any event, I am satisfied that the petition debt and/or rights arising out of it, have been assigned to the Bank which is now in that regard entered onto the register of Mr Bedzhamov's creditors by virtue of the Moscow Arbitrazh Court's decision on 15 May 2023.

63. Third, in any event, although there is no need to base my conclusion on this point (and the point was not greatly developed) I do not accept that in the Share Proceedings, certainly to the extent of the claim to a declaration and consequent share transfer, the court is concerned with the question whether to provide "assistance" to a recognised foreign trustee. If the Trustee is correct in respect of the applicability in this case of the general rule about movable property (and assuming she is also correct that the Share belonged beneficially to Mr Bedzhamov) then the relief which she seeks is to vindicate her subsisting, vested right to certain property rather than the assistance of the court in respect of her duties or powers as Mr Bedzhamov's trustee (as for example, an application to examine a person with relevant information, or to seek documents relevant to the insolvency).

64. Accordingly:

64.1. the Recognition Order is effective, extant and unchallenged, and it cannot be challenged by Ms Zolotova by collateral attack in these proceedings; it follows that the Trustee has standing;

64.2. in any event, contrary to Ms Zolotova's presently (and only) pleaded case, there is no reason to think that the discharge of a single debt owed to a single creditor subsequent to the commencement of a bankruptcy would, in and of itself, without proof of other circumstances, be a basis upon which to terminate recognition (or if different, to deny the court's assistance to the Trustee);

64.3. furthermore, the Trustee's evidence, which I accept, is that in any event the VTB debt has not been discharged (or discharged in full) but has been assigned to the Bank (and/or that Mr Markus' rights arising in consequence of the settlement with VTB have been assigned to the Bank) and that in this respect - as confirmed by the decision of 15 May 2023 - the Bank has replaced VTB on the register of creditors, as approved by the Russian court;

64.4. in addition, the Trustee's evidence is that there are other creditors in the Russian bankruptcy, in respect of whom no challenge has been mounted; at least one of them, TD Steklostandart, has been included on Mr Bedzhamov's register of

creditors, again with the approval of the Russian court, a fact undisputed by Mr Bedzhamov himself;

64.5. in the circumstances, the Application succeeds in respect of the Recognition Defence, which (certainly in the context of the present proceedings) is hopeless and misconceived.

65. That conclusion means that it is not strictly necessary to consider one further argument raised on the Trustee's behalf, that even if the Recognition Order were to be set aside, she would nonetheless have standing to apply under s. 423 of the IA 1986, as a "*victim*" of the relevant transaction. Nonetheless, I would reject that argument. The Trustee is only a "*victim*" if and to the extent that she acts as Mr Bedzhamov's trustee. Absent recognition, in this country, she would not be clothed with that authority or act in that character; she could not claim to represent Mr Bedzhamov or his creditors; she would be a person unconnected with his affairs in the eyes of the English court.

The Discretionary Bars to Relief

Declaratory Relief: the Principles

66. The court's power to grant declaratory relief is discretionary: Rolls- Royce plc v Unite the Union [2010] 1 WLR 318 at [119]-[218] *per* Aikens LJ.

67. Whilst not a form of equitable relief (see Chapman v Michaelson [1909] 1 Ch 238 at 242, *per* Sir Herbert Cozens-Hardy) and whilst the jurisdiction is now derived from statute (s. 19 of the Senior Courts Act 1981) declarations "*have throughout their history had a close affinity with equitable remedies which has left its mark upon them. This is especially evident in the discretionary nature of the declaration. This discretion is employed, as it was originally employed with regard to all equitable remedies, primarily to do justice in the particular case before the court. It is wide enough to allow the court to take into account most objections and defences available in equitable proceedings*" (Zamir and Woolf, The Declaratory Judgment, paragraph 4-32).

68. To similar effect, Snell's Equity 34th Edition at 14-008, explains, "*The remedy has always been discretionary (Russian Commercial and Industrial Bank v British Bank for Foreign Trade Ltd [1921] 2 AC 438) and it is perhaps this, coupled with the fact that statute*

originally gave the extended jurisdiction to the Court of Chancery, which has led some to assert that declarations are a form of equitable relief (Barnard v National Dock Labour Board [1953] 2 QB 18 CA at 31). However, the Court of Appeal has held that they are not (Chapman, above); they are "neither law nor equity" (Gray v Spyer [1921] 2 Ch 5549 at 557) but primarily statutory …."

69. As such, in exercising its discretion, the court may consider a wide range of factors: "*When considering the exercise of the discretion, in broad terms, the court should take into account justice to the claimant, justice to the defendant, whether the declaration would serve a useful purpose and whether there are other special reasons why or why not the court should grant the declaration*": *per* Marcus Smith J at [21], Bank of New York Mellon v Essar Steel India Ltd [2018] EWHC 3177.

70. In particular, Mr Munby submitted that the legality of a claimant's purpose in seeking declaratory relief is or may be a relevant consideration, as more broadly are matters of "public policy". As examples, amongst others, he referred to the following cases (in addition to Zamir and Woolf (above) at 4-110 to 4-120).

71. In Mellstrom v Garner [1970] 1 WLR 603, the court refused to grant a declaration that the claimant was entitled, according to the terms of a written agreement, to act in a manner (canvassing certain former clients) contrary to rules of the Institute of Chartered Accountants, essentially because of its inutility: "*The plaintiff says — and, of course, we accept — that he has no intention at all of canvassing anyone. If he has no intention of canvassing anyone, what can be the purpose of this originating summons? If he does not canvass, it does not matter very much whether or not the clause prohibits him from doing so. He says, however, that if he did canvass (which he does not intend to do), or if the defendants falsely accused him of canvassing (which they say they do not intend to do), he would be protected by the declaration which he seeks. A more academic question I find it difficult to imagine. It is certainly not the sort of question about which the court ought, in its discretion, to make any declaration*" per Salmon LJ at 606C-D. But in addition to its inutility, Harman LJ, at 605E-F also referred to the claimant's purpose, and to the court's proper function: "*The plaintiff wanted a declaration that he was entitled to canvass customers of the firm, with certain exceptions. That would have been a gross breach of professional etiquette on his part and I do not think in any event the court would give him a declaration that he was entitled to do something which is*

notoriously against the rules of the Institute of Chartered Accountants. That is not the sort of thing that the court will do. The result would only be either that he would be committing that breach and would be struck off, or he would not be committing it, in which case there would be no need for the declaration." (emphasis added). In other words, the court would not or would be reluctant to declare that a person was at least contractually entitled to do an act which he knew to be against the rules of his professional body; that would not be a proper use of the court's powers. Although not expressly framed in these terms by Harman LJ, an application made for that purpose might be characterised as an abuse of process.

72. To somewhat similar effect, in Marshall v Electric Co Ltd [1945] 1 All ER 653, a case concerning the alleged right of the respondents to suspend the appellant from work for acts of indiscipline or carelessness, du Parcq LJ said at 659 (albeit in a dissenting judgment): "*Such acts* [of indiscipline or carelessness] *are clearly breaches of contract and as such are wrongful and illegal acts, the gravity of which is increased by the fact that the country is at war. In effect, therefore, the applicant is asking the court to inform him how he would stand if he should do an unlawful act. If he intends to act lawfully, the question is merely academic. If he had it in mind to act illegally and wrongfully, it is no doubt convenient for him to know how severe the penalty is likely to be, or how easily he is likely to escape, but it seems strange that a court of law should be asked to expend time and trouble on providing him with this information. I think it right to express the doubt which I feel whether it would have been desirable or proper to grant a declaratory judgment in the present case.*" Again, in addition to simple utility (whether or not the question was purely academic) and perhaps to be understood as an aspect of it, the principal source of disquiet expressed in this passage appears to have been the propriety of the use to which the court was being put by the claimant, asking the court to tell him whether certain consequences would follow were he to act in an admittedly unlawful fashion (rather than, for example, asking whether a certain course would or would not be unlawful, or even criminal). Again, the objection might be characterised in terms of an abuse or misuse of the court's process. Essentially, the application must be made for a good purpose, but also for a proper purpose.

73. Unsurprisingly, the circumstances and features of cases in which declaratory relief has been refused on grounds of public policy vary widely, but might allow for the court to

consider (as a matter of overall "justice") the wider consequences of granting relief, as well as the circumstances of the particular litigants. For example:

73.1. in R v IRC Ex parte Bishopp [1999] STC 531, Dyson J refused to make declarations about the tax consequences of setting up a Jersey limited partnership. One reason for his refusal was a concern that were the courts willing to grant relief, the Revenue might stop giving rulings because of the implications for their resources of being involved in litigation as a result of doing so.

73.2. in Puttick v AG [1980] Fam. 1 (and R v Secretary of State for the Home Department Ex p. Puttick [1981] QB 767) attempts made by Astrid Poll to avoid extradition to Germany on the basis of her marriage to a British subject, were refused because she had entered the UK under a false name and made various false statements to conceal her identity, and was therefore seeking to benefit from her own wrongs – her "*fraud, perjury, false pretences and forgery*". Accordingly, and although her marriage was found to be valid, declaratory relief was refused. Sir George Baker P. said, at [1980] Fam. 1, 22: "*I do not think it would be just – indeed, in my opinion, it would be utterly unjust - to grant a declaration, even if she had proved English domicile, which she has not. Perhaps I am back where I began, with the maxim which I can now express as "No woman can take advantage of her own wrong." This court should not and cannot further the criminal acts of this applicant and permit her to achieve an end by the course of conduct which she has pursued.*"

74. The Trustee's case was that, as a matter of law and principle, the points raised by Ms Zolotova are irrelevant to the exercise of the court's discretion to grant the declaratory relief sought, and indeed, that they are a "*brazen attempt to broaden the court's discretionary exercise beyond the remit of the Rolls-Royce Principles in circumstances where it is otherwise impossible to establish that the declaratory relief sought by the Trustee would not satisfy the relevant criteria*." I will therefore return to the scope of the court's discretion below, in the context of the specific matters relied upon by Ms Zolotova, but in summary:

74.1. I agree that the essential principles were set out in Rolls-Royce plc, in particular at [120];

74.2. declaratory relief is not an equitable remedy, but it is discretionary; accordingly, the traditional equitable bars to relief do not as such apply to it, although circumstances that might have engaged those bars might in any event be relevant to the exercise of the court's discretion, depending on the circumstances;

74.3. although it would be unwise to attempt to define the scope of the court's discretion, it will or may be relevant to consider whether relief is sought for a useful, proper and lawful purpose, and what might be the wider consequences of granting relief; if necessary, I would resist the Trustee's characterisation of the summary at [120] of Rolls-Royce plc as a rigidly comprehensive statement of "the Principles" (as they were described by Mr Willson) but in any event, note again that the first of them was that the power is discretionary.

Discretion: the Trustee's Further Claims to Relief

75. I accept that each of the other claims made by the Trustee – to relief under s.423 of the IA 1986, to a transfer of title to the Share if held on trust, and to rectification of the Basel's register of members under s. 125 of the Companies Act 2006 - is at least to some extent discretionary. However, the extent of the discretion in each case is clearly not the same and is very unlikely to be the same as that which arises in the context of declarations; the source and purpose of each power is different. Very little was said in argument to describe those differences, which I will therefore not attempt to explain. Moreover, little was said to justify in each case the possible relevance of the Discretionary Bars. My conclusions have therefore been reached without reliance on the existence of a discretion in connection with the relief sought other than the declarations.

The Sanctions Plea

76. Ms Zolotova pleads that the discretionary remedy of a declaration should not be granted because "*the Trustee's funder is or appears to be controlled by sanctioned individuals*" (paragraph 2.3.3); that it "*is to be inferred that A1 seeks a share of the proceeds of the present claims*"; and that if "*the relief sought is granted, it would inevitably lead to a claim by A1 which could not lawfully be satisfied. In the circumstances, the relief serves no useful purpose and/or should be refused as a matter of public policy*".

77. In respect of the question whether A1 (as the funder of both the Trustee and the Bank) is subject to sanctions under the Regulations, and if so (which is denied by A1) what are the consequences of that conclusion, on 27 October 2023, Mr Bedzhamov issued an application in both the Recognition and the Bank Proceedings, which was recently heard in the Business List ("**the Sanctions Application**") over the course of 3 days (although at the time of hearing this Application, the Sanctions Application had not yet been heard).

78. Nonetheless, in the present proceedings, the Trustee seeks to strike out this part of Ms Zolotova's Defence on the basis that it is legally misconceived (and unaffected by the Sanctions Application) because, by reference to the decision of the Court of Appeal in Mints v PJSC National Bank Trust [2023] EWCA 1132, even if A1 is controlled by sanctioned persons, the court would not be prevented from entering judgment in favour of the Trustee, or from giving the relief sought, and that the matter is not, even potentially, a discretionary bar.

79. For present purposes, and whilst acknowledging that the Trustee and A1 both deny that A1 is under the control of designated persons (a matter before the High Court on the Sanctions Application), I shall proceed on the basis that it is and/or that there is reasonable cause to suspect that it is (and it was not suggested by Mr Willson that I should or could realistically do otherwise on a summary basis).

80. In any event, I was referred to Mr Bedzhamov's evidence in support of the Sanctions Application (contained in the 46th witness statement of his solicitor, Mr Martin Shobbrook of Greenberg Traurig LLP made on 27 October 2023) that the original owners/controllers of A1 (Messrs Mikhail Fridman, German Khan, Alexey Kuzmichev and Peter Aven – "**the Sanctioned Individuals**") are all designated persons, and that a management buy-out by a Mr Fayn (for a nominal consideration, of about £714) said to have taken place in March 2022, a week after they were sanctioned, was a sham, and that the sanctioned individuals in fact continue to own/control A1. For present purposes, that evidence, and Mr Bedzhamov's case in that regard, is at least credible.

81. In addition, I was referred to the judgment of Falk LJ in Kireeva v Bedzhamov [2023] EWHC 348 at [35]-[36], in which she said:

> "*35. Based on the evidence I have seen it is impossible at this stage to dispel the concern that the March 2022 transaction was not genuine, but instead arranged*

to give the appearance that A1 is no longer under the control of sanctioned individuals. It is important to note that [the Sanctions Regulations] *make provision for action to be unlawful, at least without a licence, where a person either knows or has reasonable cause to suspect that the person or individual concerned is sanctioned.*

36. In this case, the buy-out was for 100,000 roubles, equivalent at the time to £714. The purchaser, a Mr Fayn, has given evidence maintaining that this was a market price, relying on a negative balance sheet as at 31 December 2021, the deficit amounting to around £4.3 million as at the date of purchase. However, Mr Bedzhamov's advisers point out that the balance sheet relied on appears to omit substantial amounts including, but certainly not limited to, a large amount held in court as security in the VPB proceedings and $20 million which the US Attorney's Office has been told is owed by VPB to A1. It also appears to be at odds with financial statements filed with the Russian Federal Tax Service, valuing A1's assets at the end of 2021 at approximately £5.9 million. There is also a question as to how A1's ongoing activities are being funded."

82. Moreover, on 14 September 2023, A1 was sanctioned in the US. The related press release issued by the US Treasury stated that: "*A1 and Investment Company A1 are investment businesses of Alfa Group, a Russia based entity connected to U.S.-designated individuals Petr Olegovich Aven, Mikhail Maratovich Fridman, German Borosovich Khan, and Alexey Viktorovich Kuzmichev. A1 and Investment Company A1 were designated pursuant to E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy*." Having said that, I acknowledge that the Trustee's evidence is that this was as a result of "*the area of business it operates in; not because of any alleged connections to sanctioned individuals*".

83. In the circumstances, it is alleged by Mr Bedzhamov in the Sanction Application (and by Ms Zolotova in the present proceedings) that A1 is a person "*owned or controlled directly or indirectly*" (within the meaning of Regulation 7 of the Sanctions Regulations) by designated persons (in other words, the Sanctioned Individuals) and is therefore subject to Regulations 11, 12 and 14 (by virtue of the provisions at 11(7), 12(4) and 14(4)).

84. Those Regulations provide, in relevant part:

    84.1. that a "*person ("P") must not deal with funds or economic resources owned, held or controlled by a designated person if P knows, or has reasonable cause to suspect, that P is dealing with such funds or economic resources*" (Regulation 11(1) – the "*asset-freeze*");

84.2. that a "*person ("P") must not make funds available directly or indirectly to a designated person if P knows, or has reasonable cause to suspect, that P is making the funds so available*" (Regulation 12 – "*making funds available to a designated person*");

84.3. that a "*person ("P") must not make economic resources available directly or indirectly to a designated person if P knows, or has reasonable cause to suspect – (a) that P is making the economic resources so available, and (b) that the designated person would be likely to exchange the economic resources for, or use them in exchange for, funds, goods or services*" (Regulation 14 – "*making economic resources available to designated persons*").

85. In each case, a person who contravenes the prohibition commits an offence.

86. Furthermore, by virtue of s. 60(1)(c) of the Sanctions and Anti-Money Laundering Act 2018 ("**SAMLA**"), "*funds*" (defined to mean financial assets and benefits of every kind) includes "*publicly and privately traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivative products*". The Share falls within this broad definition and is therefore potentially subject to the effects of Regulations 11, 12 and 14.

87. In the present case, for Ms Zolotova, it was submitted:

87.1. that if the claim against her succeeds, A1, as the Trustee's funder, will plainly have recourse to the Share or to its proceeds (or it is natural to assume that it will) and that therefore the transfer of the Share to the Trustee would itself breach Regulation 12, because it would comprise making the Share (being "*funds*") "*available*" indirectly to a designated person (by making it available to A1, a person owned or controlled directly or indirectly by a designated person), or that there would be reasonable cause to suspect that to be so;

87.2. in addition, that the transfer of the Share to the Trustee is likely to "*open the door*" to a series of further dealings, by which A1 realises its entitlements to the proceeds of the litigation, in each case involving a further likely breach

(presumably, by the Trustee, rather than Ms Zolotova herself) of Regulations 11, 12, and 14;

87.3. and finally, that the transfer of the Share would be likely to further breaches of Regulation 19, which provides that a person "*must not intentionally participate in activities knowing that the object or effect of them is (whether directly or indirectly) – (a) to circumvent any of the prohibitions in regulations 11 to 18c, or (b) to enable or facilitate the contravention of any such prohibition*."

88. It was said that in the circumstances, if the court came to exercise its discretion in respect of relief, it would be highly relevant to consider the effect of the Sanctions Regulation, and of the allegation that A1 is (or there is reasonable cause to suspect that it is) owned or controlled directly or indirectly by designated persons.

89. Mr Willson submitted that this argument was misconceived. As stated, he relied on the decision of the Court of Appeal in Mints. That case concerned Commercial Court litigation in which the claimant banks claimed damages of some $850m, on the basis that the defendants had conspired with representatives of the claimant banks to enter into uncommercial transactions with companies connected with the defendants by which loans were replaced with worthless or near worthless bonds. The claimants were both subject to the Sanctions Regulations, and one of the issues before the court was whether or not a judgment could be lawfully entered for a designated person by the English court following a trial at which it had been established that the designated person has a valid cause of action. In respect of that issue, the court held in favour of the claimants.

90. In summary, the court's reasoning was as follows.

90.1. First, that the claimants' claim or cause of action (in tort) was not a "*fund*" within the meaning of s. 60 of SAMLA, although it was an "*economic resource*" (being within the definition of "*assets of every kind, whether tangible or intangible, movable or immovable, which are not funds can be used to obtain funds, goods or services*"): see [197]-[199].

90.2. Second, that the entry of judgment by the court does not fall within Regulation 12, because, as a matter of construction:

90.2.1. it is not the act of making a pre-existing fund available; it is the creation of a fund: "… *entering the judgment and simultaneously creating the judgment debt which constitutes a fund cannot be aptly described as making the fund available to a designated person. The words "making funds available" might well be apt to describe an order enforcing a judgment, but not entering the judgment*" [201]; and,

90.2.2. the "*words "make funds available" are simply not apt to describe the exercise by the court of one of its prime judicial functions in administering justice, of entering judgment on a valid cause of action*" [202].

90.3. Third, that the "*principle of legality*" (that certain fundamental common law rights, specifically in this case the right of access to the courts, will not be treated as curtailed by statute unless that is clearly authorised by primary legislation) was applicable and that given that the words "*making funds available*" are capable of more than one meaning, the words of section 3(1)(d) of SAMLA are not a clear and unambiguous prohibition on the court entering a money judgment on a valid cause of action. In that context, it was important that the right of access to the court is a fundamental common law right. It comprises not only the right to open the court door by commencing proceedings, but also to have the claim adjudicated upon by the court, in other words where a cause of action is a valid one to obtain a judgment: [178], [203].

90.4. Fourth, that neither was the entry of judgment in breach of Regulation 11, first because a cause of action is not a fund, and second, because although it is an economic resource, it is not "*exchanged*" for a judgment debt, or "*used*" when judgment is entered, whether by the claimant or the court: [206] – [208]. In any event, again by reference to the principle of legality and the fundamental right of access to the court, the defendant appellants' argument failed: [209]-[210].

91. Finally, Mr Willson drew my attention to paragraph [212] of the judgment, in which it was said:

> "*It is also not necessary to decide whether, even if the appellants were right that entry of a money judgment was prohibited by SAMLA and the Regulations, one or other of the alternatives (described by* [Counsel for the Defendants/Appellants] *as workarounds) such as a declaratory judgment or judgment on liability with quantum deferred until sanctions were lifted, would not be prohibited. However, I am firmly of the view that, if the appellants were correct that entry of a money judgment was prohibited, it would not be appropriate to grant a stay of the proceedings either now or at any stage up to and including the trial. Given that the principle of legality requires, as Lord Reed JSC said in UNISON at [80], that the relevant provision is interpreted as authorising only such intrusion as is reasonably necessary to fulfil the objective of the provision in question, I consider that* [Counsel for the Respondents/Claimants] *is correct that the court could enter either a declaratory judgment or judgment on liability with quantum deferred. Such a judgment would not be either making funds available to the designated person or dealing with either a fund or an economic resource*."

92. Mr Willson argued that these principles apply equally in the present case, and that there is no principled reason to hold that whereas a designated person can proceed to judgment, a person funded by a designated person cannot.

93. Since the hearing of the Application (but before this judgment was handed down) I was told that the Supreme Court has given permission to appeal against the decision of the Court of Appeal in Mints.

94. For the following reasons, I do not accept that it would be appropriate to strike out or give summary judgment in respect of this part of Ms Zolotova's Defence.

    94.1. First, unlike the cause of action in Mints (and indeed, unlike the contemplated future judgment debt in that case) the Share in the present case is a pre-existing "*fund*" for the purposes of the Sanctions Regulations. In principle therefore, it is an asset of a type that cannot be dealt with or made available by Ms Zolotova in breach of Regulations 11 and 12.

    94.2. Second, as matters stand: (i) I cannot (and was not asked to) find that there is no reasonable cause to suspect that A1 is directly or indirectly controlled by designated persons; and (ii) there is at least some reason to think that to order Ms Zolotova to transfer the Share to the Trustee would, in and of itself, be to order her (as a matter of language, and in fact) to "*make funds available*" to A1 in breach of Regulation 12.

94.3. Plainly, at trial, the court would be concerned not to order Ms Zolotova to act in breach of the prohibition. I note that in Mints at [201], the Chancellor said: "*The words "making funds available" might well be apt to describe an order enforcing a judgment, but not entering the judgment*". The circumstances and the question in Mints (which concerned merely the entry of judgment) were therefore different.

94.4. I acknowledge that in Mints, albeit without the point having been decided, it was said that to grant declaratory relief in respect of a cause of action in tort or to enter judgment with quantum deferred would be neither to make funds available to a designated person nor to deal with either a fund or an economic resource. However, that is not to say that the same approach would necessarily be appropriate in respect of a declaration concerning a proprietary interest in an extant fund, such as the Share. But in any event, the Trustee seeks, in addition to a declaration, an order that the Share be transferred to her by Ms Zolotova - regardless of the extent to which that relief is discretionary, it may be precluded by the Sanctions Regulations.

94.5. Further, if Mr Bedzhamov and Ms Zolotova are correct in their allegations about A1, then it very likely follows that there has been to some degree a scheme of concealed sanctions evasion, which to some extent, whether or not knowingly, has involved the Trustee. It is at least arguable, on the principles explained above, that this possible circumstance could affect the willingness of the court to grant declaratory relief. Although this is not a case in which the declaration sought would lack any utility whatsoever (it would not be academic), and it is not a case in which the court is being asked to declare the consequences of admittedly wrongful conduct, it might be a case in which part of the purpose of seeking relief - depending on the Trustee's relationship with A1, and on the ownership of A1 - is to advance criminal conduct. Moreover, it might be a case in which a declaration lacks utility because it is sought in support of an order that the court would or could not make. These are not matters that in my view are sensibly decided in advance of a trial, without access to all the evidence, without final findings of fact and without argument on that basis.

94.6. Third, I accept, of course, that SAMLA and the Sanctions Regulations do not curtail the Trustee's own fundamental right of access to the court, including her right to have a claim adjudicated upon, and if successful, to obtain judgment. Potentially, there are two answers to that point:

94.6.1. first, and importantly, that the relief sought in the present case, or at least some of it (unlike the claim in Mints) is discretionary; Ms Zolotova does not suggest that the court is not entitled to exercise its judicial functions by giving judgment on a valid and established cause of action – on the contrary, her case is that its function should be exercised but including, in the exercise of its discretion, by conscious reference to the Sanctions Regulation and the circumstances of the Trustee's relationship with A1;

94.6.2. second, the Trustee's right of access to the court is not curtailed, because she was and is under no compulsion to accept funding from A1; she chose to do so, but could equally have chosen (and could still choose) to proceed without A1's support.

94.7. Fourth, sanctions law is in a state of continuing development in England. In itself, that is a compelling reason for a trial – it would be undesirable to decide this case on a summary basis, without an understanding of the facts.

95. I have referred in my reasons to Regulation 12 in particular. I am not immediately persuaded that Mr Munby's further submissions (regarding the possibility of future breaches, by the Trustee, of Regulations 11 and 14, or of Regulation 19) are material in the context of the relief sought against Ms Zolotova. It might be argued that:

95.1. a prohibition on certain future conduct of the Trustee arising as a possibility only after the transfer to her of the Share does not obviously affect the question of her right or claim to the Share in the first place; these proceedings do not concern the propriety or lawfulness of the Trustee's possible future conduct; and,

95.2. similarly, to order that the Share be transferred to the Trustee is not to order that Ms Zolotova facilitates a future breach of the Regulation by the Trustee; that breach would occur, if at all, without Ms Zolotova's involvement, not in any real sense facilitated by her.

96. However, having said that, given my decision not to accede to the application in this respect, I need not express a final view on those arguments. Relatedly, I accept that the Defence in respect of the Sanctions Regulation is not precisely framed by reference to specific prohibitions and their application. However, it is I think sufficiently broad to encompass the arguments raised on this application.

97. In all the circumstances, it is simply not appropriate, in my view, to make the order sought on an interim summary basis, shortly before trial, without reference to all the facts, and shortly before, in related proceedings, there is to be a determination of the issue of A1's status as the Trustee's funder in connection with the Sanctions Regulation. I am able to reach that conclusion without having to allow Ms Zolotova to amend her Defence in terms explained above at paragraph 13, and without needing to consider the relevance of the Sanctions Plea to other discretionary remedies.

The Maintenance/Champerty Plea

98. Ms Zolotova's pleaded case (at paragraph 2.3.2 and 19.4) is that declaratory relief should be denied (alternatively the proceedings should be stayed generally) because the claim is being conducted under funding arrangements with A1 which "*savour of maintenance and champerty*" and which are thus contrary to English public policy. More specifically she states that although (pending disclosure) she does not know the specific nature and terms of the funding arrangements between the Trustee and A1:

98.1. A1 is a funder which expects to receive a share of the claim; and,

98.2. A1 "*directs the conduct of*" the Trustee and exerts control over "*the conduct of litigation, including (it is to be inferred) in the present claim*".

The Legal Principles

99. In respect of the relevant principles of law, there was a substantial degree of common ground.

100. Maintenance and champerty are related but separate doctrines; champerty is a variety of maintenance. Essentially, as explained in "*The Modern Doctrines of Champerty & Maintenance*" by Rachael Mulheron (1st Edition, 2023), at pp.3-4:

100.1. "*maintenance is directed against those who, for improper motive, often described as wanton or officious intermeddling, become involved with disputes of others in which the maintainer has no interest whatsoever, and where the assistance he or she renders to the other parties is without justification or excuse. [It involves] improperly stirring up litigation and strife by giving aid to one party to bring or defend a claim without just cause or excuse. The maintainer improperly encourages others either to bring actions, or to make defences which they have no right to make*"; and,

100.2. champerty is "*maintenance to which there must be added the notion of a division of the spoils. It is an egregious or aggravated form of maintenance, in which there is the added element that the maintainer stipulates for a share of the proceeds. [It is] a particularly obnoxious form of maintenance which exists when the maintainer seeks to make a profit out of another person's action*."

101. In In re Trepca Mines Ltd (No.2) [1963] Ch 199, 219-220, Lord Denning MR observed:

> "*The reason why the common law condemns champerty is because of the abuses to which it may give rise. The common law fears that the champertous maintainer might be tempted, for his own personal gain, to inflame the damages, to suppress evidence, or even to suborn witnesses. These fears may be exaggerated; but, be that so or not, the law for centuries has declared champerty to be unlawful, we cannot do otherwise than enforce the law ….*"

102. Whether conduct amounts to maintenance or champerty is a question of public policy: see for example, R (Factortame Ltd) v Transport Secretary (No.8) [2003] QB 381 at [31]-[32], and for that reason, "*the law must be kept under review as public policy changes. As Danckwerts LJ observed in Hill v Archbold [1968] 1 QB 686, 697: "the law of maintenance depends upon the question of public policy, and public policy … is not a fixed and immutable matter. It is a conception which, if it has any sense at all, must be alterable by the passage of time*."

103. Thus, for example, in more recent times, reflecting public policy developments:

103.1. in Excalibur Ventures LLC v Texas Keystone [2017] 1 WLR 2221, the Court of Appeal confirmed at [31], that litigation funding is an accepted and judicially sanctioned activity perceived to be in the public interest; and,

103.2. in Paccar Inc v Road Haulage Ltd [2021] 1 WLR 3648, at [5], Henderson LJ (with whom Singh and Carr LJJ both agreed) said that the litigation funding industry was "*a substantial industry which, although driven by commercial motives, is widely acknowledged to play a valuable role in furthering access to justice*".

104. Two consequences follow from the basic principles. As was explained in R (Factortame Ltd) at [36]: "*Where the law expressly restricts the circumstances in which agreements in support of litigation are lawful, this provides a powerful indication of the limits of public policy in analogous situations. Where this is not the case, then we believe one must today look at the facts of the particular case and consider whether those facts suggest that the agreement in question might tempt the allegedly champertous maintainer for his personal gain to inflame the damages, to suppress evidence, to suborn witnesses or otherwise to undermine the ends of justice*". Thus, in any one case, the agreement must be examined to see whether it tends to conflict with existing public policy insofar as directed at the protection of the administration of justice with particular regard to the interests of the defendant.

105. Although a champertous funding arrangement is unenforceable as between the parties to the agreement, (see for example, McFarlane v EE Caledonia Ltd (No.2) [1995] 1 WLR 366, and Dal-Sterling Group v WSP South & West [2001] 7 WLUK 436 TCC at [20]) the fact of established maintenance or champerty does not in itself provide a freestanding defence to the substantive claim (and that was the case even before the Criminal Law Act 1967, which abolished both the crimes and torts of maintenance and champerty). This was a point of particular importance to the Trustee's Application in this respect.

106. Thus, for example, in Martell v Consett Iron Co Ltd [1955] Ch 363, Jenkins LJ said, at 421:

> "*It is well settled that the illegal maintenance of the plaintiff in an action is no defence to the action … I find difficulty in reconciling this with the theory that it affords proper ground for a stay of proceedings. It is not, to my mind, a satisfactory answer to this difficulty to say that the stay would be of a temporary character only, operating until such time as the proceedings are purged of the taint of illegality. Once there has been illegal maintenance, the crime by which the proceedings are said to be tainted has been irretrievably committed, and I do not see how the taint could be purged otherwise than by discontinuing these proceedings and starting a fresh action. That would, in effect, make maintenance a defence to the action, which it clearly is not*."

107. Similarly, in Stocznia Gdanska SA v Latreefers Inc (No 2) [2001] 2 BCLC 116, Morritt LJ stated at [59]:

> "*A person who has funded an action champertously may fail to enforce recovery of the agreed proportion of the spoils. A person who has secured a champertous agreement to fund his litigation may be unable to enforce payment of the agreed funds. But the fact that a funding agreement may be against public policy and therefore unenforceable as between the parties to it is by itself no reason for regarding the proceedings to which it relates or their conduct as an abuse*."

108. Nonetheless, and notwithstanding the words of Jenkins LJ referred to above, it is in principle possible, albeit perhaps exceptionally, to justify a stay of the action if, in the circumstances of the case, it amounts to an abuse of court's process. For example, in Grovewood Holdings plc v James Capel & Co [1995] Ch 80, Lightman J stayed an action being champertously funded by a liquidator, on the basis that the court could do so where the arrangement constituted a continuing abuse of process which the court, as well as the defendants, had an interest in bringing to an end.

109. The greater difficultly (than whether a stay is available in principle) is to identify the circumstances and point at which a champertous agreement causes the proceedings to become abusive.

110. In Stocznia Gdanska SA, at [55]-[58], Morritt LJ said (referring to judgments given in the Court of Appeal in Faryab v Smyth [1998] 8 WLUK 226) as follows:

"*55. Chadwick L.J. considered the authorities at some length. He gave extended consideration to Martell v. Consett Iron, which was a decision before criminal and tortious liability for maintenance and champerty were abolished by the Criminal Law Act 1967. This case emphasised the important distinction between the proceedings themselves, which may be genuine and viable, and the means by which and the purpose for which they are maintained. It was well settled that illegal maintenance of the plaintiff in an action is no defence to the action. There was the possibility of staying proceedings as an abuse, but each of the three judgments suggested that it might well not be just to do so in particular cases. Chadwick L.J. referred to Grovewood Holdings v. James Capel, where Lightman J. considered that it would be both logical and right in any ordinary case to stay proceedings which were maintained champertously as constituting an abuse of process. Lightman J. had noted that Martell v. Consett was concerned with maintenance where there is no aggravation. He had no doubt that he was free in the case of a champertous agreement such as that before him to grant a stay to prevent a continuing abuse of process. Chadwick L.J. recorded that Lightman J's approach had been considered by this court in Abraham v. Thompson. He cited a passage from the judgment of Potter L.J. in that case at 374A–D, and also this passage from the judgment of Millett L.J. at page 377G:*

> *"Before 1967 maintenance was not only contrary to public policy but also both tortious and criminal. Even so, it was not an abuse of the process of the court for a plaintiff without the means to pay his own costs let alone to meet those of the defendant to bring proceedings with financial assistance provided by a third party, and the court would not stay such proceedings on this ground (see Martell v. Consett Iron Co Ltd [1955] 1 All E.R. 481, [1955] Ch. 363).*
>
> *In that case Jenkins L.J. gave three reasons for this. First, it was well settled that the fact that an action was being illegally maintained was no defence to the action, and it was impossible to reconcile this with the proposition that it afforded a proper ground for a stay of the proceedings. Secondly, once there had been illegal maintenance the proceedings were irretrievably tainted; the taint could not be purged except by discontinuing the proceedings and bringing a fresh action. But this would effectively make maintenance a defence to the action, which it does not. Thirdly, it was undesirable that the question whether*

the action was being illegally maintained should be adjudicated upon in interlocutory proceedings in the action, for this procedure involved the trial of what was, at least theoretically, still a crime in the absence of the accused."

Chadwick L.J. then said:

"It was accepted by this Court in Abraham v. Thompson that, although the court retains the power to stay proceedings if satisfied that they constitute an abuse of process, the mere fact that the proceedings are being financed by a third party with no interest in the outcome — other than in relation to the prospects of repayment — is not of itself sufficient abuse to invoke the jurisdiction of the court. The court is entitled to protect its own procedures; see Roache v. News Group Newspapers The Times, November 23, 1992; but it should be careful not to use that power so as to deny access to justice to a party who has sought to fund his proceedings in a way which may itself become contrary to public policy, unless that which has been done can be seen to amount to an abuse of the court's own process."

56. Chadwick L.J. considered what element of public policy was affronted by the funding arrangement in the case before the court. He referred to the well known passage from the speech of Lord Mustill in Giles v. Thompson [1994] 1 A.C. 142 at 161B. He said that the description of maintenance referred to in that passage was indistinguishable from that given by Jenkins L.J. in Martell v. Consett Iron. Chadwick L.J. then said:

"That conduct, of itself, has not been regarded as an abuse of process. Does the offensive conduct become an abuse because there is some notion of a division of the spoils? In my view the court is required to consider in the light of the facts in each case whether its process is affected or threatened by the agreement for the division of spoils."

57. Chadwick L.J. considered that there was no abuse of the process of the Court of Appeal if the appellant's ability to comply with an order for security for costs resulted from a funding agreement provided on terms that the funders would obtain a substantial premium on repayment of the loan. He considered that the court did not have any other interest in protecting its process from abuse which required it to prevent the appeal from continuing. He said that, although there might well be cases where the court could see

that there is some feature — "some element of trafficking in litigation" — which must be regarded as abusive, that feature was not present in the case before the court. He also considered that the court should discourage satellite litigation of the kind before the court in that application.

58. Simon Brown L.J. agreed that the application for a stay should be dismissed. He said:

> *"What distinguishes lending from maintenance on the one hand and, in turn, maintenance from champerty on the other, seems to me at the border lines to raise very difficult questions. Similarly, the point at which any particular funding agreement, even assuming it is technically champertous, could be said to constitute an abuse of process is itself very far from clear. Many factors are likely to be in play. Amongst them will be these: (1) the terms of the funding agreement between the litigant and his funder; (2) their relationship quite apart from that agreement; (3) whether or not (and if so how and in what circumstances) the litigant proposes to repay the funder; (4) the relationship between the fund provided, the sum (if any) to be repaid and the sum at issue in the action; (5) the precise purpose within the proceedings for which the fund was provided."*

He considered that the all important feature of the case then before the Court was that the money was provided to meet the order for security for costs and was therefore money available for payment not of the appellant's costs, but rather of the respondent's costs, assuming that she succeeded in defeating the appeal. It was less than clear that the funders had engaged in what Lord Mustill in Giles v. Thompson had described as "wanton and officious intermeddling with the disputes of others in which they have no interest and where that assistance is without justification or excuse".

And then at [60], Morritt LJ continued:

"*60. As Chadwick L.J. said in Faryab v. Smyth, the question whether the courts' process is affected or threatened by an agreement for the division of spoils is one to be considered in the light of the facts in each case. We reject Mr Glennie's submission that the court should formulate a more circumscribed test limited to a consideration of the structure and apparent purpose of the funding agreement and the kind of litigation to which it is*

directed. The considerations to which Simon Brown L.J. referred in Faryab v. Smyth may in a particular case be relevant and important but they are not exclusive nor necessarily determinative in the abstract. Unless the funding agreement is plainly and obviously champertous, it will usually not be necessary to decide that question for the reasons given by Chadwick L.J. and by Millett L.J. in Abraham v. Thompson.

61. Abuse of the court's process can take many forms and may include a combination of two or more strands of abuse which might not individually result in a stay. Trafficking in litigation is, by the very use of the word "trafficking", something which is objectionable and may amount to or contribute to an abuse of the process. We think that it is undesirable to try to define in different words what would constitute trafficking in litigation. It seems to us to connote unjustified buying and selling of rights to litigation where the purchaser has no proper reason to be concerned with the litigation. "Wanton and officious intermeddling with the disputes of others in which they [the funders] have no interest and where that assistance is without justification or excuse" may be a form of trafficking in litigation. Lord Mustill's words, quoted by Simon Brown L.J. in the context of an application to stay, are powerfully descriptive of the kind of plain and obvious champerty of which Chadwick LJ considered Faryab v. Smyth itself not to be an example. A large mathematical disproportion between any pre-existing financial interest and the potential profit of funders may in particular cases contribute to a finding of abuse but is not bound to do so."

111. This passage was relied upon in Meadowside Developments Ltd v 12-18 Hill St Management Company Ltd [2019] EWHC 2651, in which Adam Constable QC, sitting as a Deputy High Court Judge, decided that in the circumstances of that case, there was not sufficient evidence to decide ("*largely if not wholly as a consequence of the refusal to disclose the terms of the funding agreement*" – see [126]) whether an arrangement between the claimant (Meadowside, a company in insolvent liquidation) and a company called Pythagoras Ltd (which had been appointed, apparently, to "*act as* [the Liquidator's] *agents and take all steps to ascertain and recover amounts due to* [Meadowside]") was champertous, and if so, whether it was such as would justify a stay of the proceedings (see [122]-[123]).

112. In the circumstances, he refused (as a matter of the court's discretion – see [42]) to give summary judgment to enforce an adjudicator's decision under a construction contract as

an exception to the ordinary position (as established by the decision of the Court of Appeal in Michael J Lonsdale (Electrical) Ltd v Bresco Electrical Services Ltd [2018] EWHC 2043 ("**Bresco**")) which was that a company in liquidation, facing a cross-claim, cannot pursue an adjudication and enforce the decision.

113. At [53], in relation to Bresco, the Deputy Judge said that its "*fundamental thrust*" was that *"(1) A decision will not be enforced because, where there is a cross-claim, it would deprive the responding party of its security and bring finality by default to a temporary decision. This is fundamentally incompatible with the effect of rule 14.25* [a reference to the Insolvency Rules] *which gives the responding party the right to security for its cross-claim and that right should not be removed. (2) If the decision arising out of the adjudication will not be enforced, the adjudication is an "exercise in futility". It is then the fact of futility upon enforcement that colours the wider considerations.*"

114. However, he proceeded to consider the possibility of an exception to the ordinary position, in terms which he summarised at [87], and which for present purposes, it suffices to say included that "*any agreement to provide funding or security which permits the company in liquidation to avoid the ordinary consequences of Bresco [2019] Bus LR 3051 cannot amount to an abuse of process*."

115. Against that background, the judge decided first, that the agreement was champertous (see [109]-[115], essentially because it was caught by but not compliant with the Damages-Based Agreements Regulations 2013 (SI 2013/609) and thus was necessarily contrary to public policy), and second, that in the circumstances, he was simply unable to decide the question of abuse. At [126]-127], he concluded:

> "*126. …. I consider that (largely if not wholly as a consequence of the refusal to disclose the terms of the funding agreement), on the facts before the court on this application, the matter of abuse of process cannot be satisfactorily disposed of. In circumstances where, by reason of its inferred non-compliance with the DBAR 2013, there is (to use the language of summary judgment) at least a realistic prospect of the defendant establishing that the agreement is not merely champertous but an abuse of process.*
>
> *127. There is insufficient evidence before me and there neither has been, nor can there be, full argument on the point. It would be wrong in these circumstances to grant summary judgment*."

116. In reaching that conclusion he referred specifically to the "*sort of features*" set out in the judgment of Simon Brown LJ in Faryab v. Smyth which is set out above at paragraph 110, but which he could not determine without further evidence.

117. In summary of the legal principles:

117.1. whether an arrangement or agreement is champertous or comprises maintenance is a matter of public policy (which may be informed or ascertainable by reference to legislation, as in Meadowside);

117.2. whether or not an arrangement or agreement is champertous or comprises maintenance is fact sensitive;

117.3. the mere fact of maintenance or champerty does not of itself provide a substantive defence to the action, but does (as between the parties to the arrangement) render the arrangement unlawful and unenforceable;

117.4. however, an arrangement comprising maintenance and/or champerty may, in itself or combined with certain other circumstances, depending upon the facts of the particular case, result in the proceedings themselves constituting an abuse of the court's process;

117.5. as a matter of general principle, the circumstances in which an abuse of process can arise are very varied, and there are no fixed categories: see Hunter v Chief Constable of the West Midlands Police [1982] AC 529; although the issue is not one of discretion (in that proceedings are either abusive or they are not) the consequences of an abuse are within the court's discretion; again, as a matter of general principle at any rate, the court has the power to stay or even to strike out abusive proceedings, even if otherwise valid, albeit that ordinarily that would be an option of last resort; it is difficult to see why those broad discretionary powers would not equally be available in a case of abuse founded on (or connected with) maintenance or champerty;

117.6. in the context of maintenance/champerty, the features or circumstances that might justify a finding of abuse are "*very far from clear. Many factors are likely to be in play. Amongst them will be these: (1) the terms of the funding agreement*

between the litigant and his funder; (2) their relationship quite apart from that agreement; (3) whether or not (and if so how and in what circumstances) the litigant proposes to repay the funder; (4) the relationship between the fund provided, the sum (if any) to be repaid and the sum at issue in the action; (5) the precise purpose within the proceedings for which the fund was provided"; without knowledge of those circumstances the court may not be in a position to determine whether an arrangement is or might be champertous, and if so, whether it renders the proceedings abusive, and if so, in the exercise of its discretion, what order, if any, to make in consequence.

The Present Case

118. In the present case, the Trustee's argument was that Ms Zolotova's case in respect of maintenance and champerty should be struck out, or summary judgment given:

118.1. because Ms Zolotova has pleaded no factual bases and provided no supporting factual evidence for the suggested inferences (which are in truth, no more than bare assertions) meaning that the court should be cautious in drawing any conclusions about the nature of the funding arrangements; and,

118.2. because in any event, as a matter of law, even if the Trustee's funding arrangements are champertous, that does not provide an arguable defence to the substantive claim; the only real consequence would be that the funding agreement would be unenforceable as between the Trustee and A1. I took this to be the real basis of the application - that it cannot be said that champerty is not a defence to the action, but at the same time, because the claimant's funding arrangements are champertous, that the court should decline to grant discretionary relief, even if, presumably, all of the other necessary elements of the claim have been established; that would be to treat it as a defence. The argument is that if, following a trial, a court were example to find that the Share was held in trust for Mr Bedzhamov as at the date of his bankruptcy and that Mr Bedzhamov's movable property had vested in the Trustee as at the date of her appointment, it would be contrary to principle to refuse a declaration to that effect simply because of the nature of the Trustee's funding arrangement with A1.

119. Having set out the legal principles above, I can deal shortly with the Trustee's second point. In my judgment, it is misconceived, not in itself, but because it fails to engage with the discrete possibility that in certain circumstances, difficult in principle to define and impossible in fact to identify without examining the agreement itself, a champertous agreement may cause the supported proceedings to become an abuse of process. If proceedings are abusive, then as a matter of ordinary principle, the court has a wide discretion to grant relief, including the power, albeit not usually used, to strike out the proceedings altogether, as well as other less draconian powers, such as to order a stay. If the Share Proceedings were to be rendered abusive, that fact would or may be material to the exercise of the court's discretion to grant declaratory relief. In any event, possibly, it would comprise a means of defence. Certainly, I would be unwilling on a summary application to hold otherwise.

120. Essentially, that short explanation defeats this part of the Application. However, in any event, neither do I accept the Trustee's first point, in respect of the facts.

121. Ms Zolotova's case was:

    121.1. that notwithstanding the absence of the actual funding agreement, the court can infer that A1 in return for funding the litigation to date will receive a substantial benefit;

    121.2. that in light of the extensive sums committed by A1 in costs across the litigation undertaken by the Bank (which it has also funded, in the Bank Proceedings) and the Trustee, there is "*every possibility*" that A1 is "*entitled to retain the vast majority, if not all, of any proceeds*" of this claim;

    121.3. that even if and insofar as the claim is being pursued for the benefit of Mr Bedzhamov's alleged creditors directly, this would mean that it was being pursued for the benefit of the Bank, which: (i) is subject to serious unresolved issues as to the whether its creditor status is tainted by fraud, natural justice and other public policy concerns, and (ii) is itself plainly subject to deep financial exposure to A1;

121.4. that A1's relationship with the Bank is "*an unusual one that appears to go well beyond that of a conventional litigation funder*", and that the same is true of its relationship with the Trustee; in this regard, reference was made to a series of findings and comments made by Falk J to that effect both in relation to the Bank and the Trustee at [2020] EWHC 2114 at [23], [2022] EWHC 1047 at [19], [2022] EWHC 1166 at [68] and [2023] EWHC 348 at [44];

121.5. that it has exercised control over the running of the Bank's claim in a way which is transparently champertous; as Falk J observed at [2020] EWHC 2114, [23]:

> "*It is authorised by the DIA to manage the proceedings on its behalf. Mr Tchernenko, a senior staff member at A1, has what is described as day-to-day conduct of the proceedings, liaising as necessary with the DIA and being "under their supervision". Effectively, therefore, A1 is acting as the agent of the DIA (and thus VPB) for the purposes of this litigation. In particular, VPB's legal advisers take instructions from Mr Tchernenko and (at least when PCB was involved) he was said to be their primary point of client contact. I infer that, at least on a day-to-day basis, A1 are running the litigation*."

121.6. that there is no reason to believe the situation is different in respect of its relationship with the Trustee, who (as Falk J said in [2023] EWHC 348 at [44]) is "*able to do nothing without funding and (no doubt) approval from A1*";

121.7. that this Court has already made a series of findings as to irregular and/or improper litigation conduct of precisely the sort that the prohibition on champerty is intended to avoid; A1's pattern of conduct is abusive. Various examples were provided, including A1 themselves conducting an aggressive advertising campaign against Mr Bedzhamov in London which even A1 described as "*unprecedented*" in their own press-release on the subject. In her judgment at [2020] EWHC 2114 at [72], Falk J explained that this campaign was "*not normal behaviour in litigation, even where a freezing order is concerned. The DIA* [VPB's liquidator] *cannot simply disassociate itself from this, bearing in mind that it appears to have effectively handed control of the litigation to A1*." A1 subsequently refused to submit to the jurisdiction of the

English court for service of resulting harassment proceedings (see [2020] EWHC 2114 (Ch) at [48]). This was said by Mr Munby to be a "*vivid demonstration of the dangers of champerty*".

122. It is not for the court to conduct a mini-trial. As to the factual allegations, by reference to the comments made by the court in other proceedings (and whilst I accept that they were proceedings to which neither the Trustee nor Ms Zolotova was a party) I agree with Mr Munby's submission that there is at least some reason to think that in respect of the Bank Proceedings, A1 appears to exercise a high degree of control over the Bank's conduct, and that the arrangements between the Bank and A1 are champertous; moreover, in the circumstances, it is certainly not impossible, and would not be wholly surprising, were the same to be true in respect of the arrangements between the Trustee and A1 in respect of the Share Proceedings; manifestly, the parties and the proceedings are closely related by arrangements that have not been openly revealed - for example, there is (at least) some suspicion that the conduct of the Bank and the Trustee was co-ordinated in respect of the Recognition Application, and one possible explanation is that both are acting under the control of their common funder, pursuant to the same or similar arrangements.

123. In the circumstances, I cannot conclude that there is nothing in the allegation that the arrangements are champertous, and I cannot conclude that if they are, they are not such as to render the proceedings abusive. The court on this application is in much the same position as was the court in Meadowside: without any evidence of the terms of the arrangements (as a result of a decision taken by the Trustee, the supported party) and given at least some reason to think that they are champertous, it is simply not possible to conclude that there is neither champerty nor - more to the point - abuse.

The Collateral Purpose Plea

124. Finally is the allegation of collateral purpose. That allegation was separately pleaded at paragraph 19.5 of the Defence in the following terms: that A1's "*objective in funding the Claimant and orchestrating the Claimant's claims in this jurisdiction*" is (or should be inferred to be) to deny Mr Bedzhamov "*access to assets which* [he] *could otherwise have used to meet legal expenses*"; that objective was said to be abusive and contrary to public policy.

125. In this respect, particular reliance was placed by Mr Munby on comments made by Falk J in [2022] EWHC 1166 at [70], that the Trustee's belated intervention in this jurisdiction (funded by A1) was "*with a view to denying access to assets that Mr Bedzhamov (and through him his legal advisers) might otherwise reasonably have expected to have available for reasonable legal and living expenses under the WFO. I can see no other rational explanation*." This was said to be a particularly important finding, because it showed a collateral purpose to the recognition proceedings "*which taints those proceedings; and the proceedings against* [Ms Zolotova] *are just its latest manifestation*".

126. I agree with Mr Willson that this part of the Defence should be struck out, for the following reasons.

127. First, I have held above that the Recognition Defence should be struck out: the Trustee's appointment has been recognised by an order that is valid and subsisting, as has the Russian bankruptcy, which cannot be challenged in these proceedings; as a matter of fact, Mr Bedzhamov's register of creditors continues to include unpaid debts. If anything, the comments made by Falk J referred to at paragraph 125 above (in a judgment dated 20 May 2022) were directed at the Recognition Application, which nonetheless ultimately succeeded (the Recognition Order being made on 9 November 2022). The Recognition Order having been made and not subsequently challenged, it is difficult to accept that the Trustee is unable as such to act or exercise her consequent rights in respect of Mr Bedzhamov's property.

128. The Trustee's evidence was that the Share Proceedings are being pursued to collect assets in the continuing bankruptcy; that would, undoubtedly, be a proper purpose. It was common ground that where a claimant has two purposes, the dominant of which is illegitimate, there will be no abuse of process: JSC BTA Bank v Ablyazov [2011] EWHC 1136 at [22] and [54].

129. In any event, Mr Bedzhamov does not claim any interest in the Share of which to be deprived – on the contrary, as matters stand, Ms Zolotova's defence is that it belongs to her. The comments made by Falk J were made in the context of the Trustee's claim to the Belgrave Square Property, undoubtedly owned by Mr Bedzhamov, and in the context of the WFO and of Mr Bedzhamov's wish to liberate his property to some extent from

its effect; the present context is quite different. The Share Proceedings cannot be said by Ms Zolotova to comprise a claim made in order to deprive Mr Bedzhamov of property, which at the same time she asserts to be her own.

130. In the circumstances, this part of the Defence has no real prospect of success.

Summary of Conclusions

131. In summary therefore, for the reasons explained above, the Trustee's Application succeeds in respect of the Recognition Defence and the Collateral Purpose Plea, but fails in respect of the Movables Defence, the Sanctions Plea and the Maintenance and Champerty Plea.

Date: 13 March 2024