Neutral Citation Number: [2023] EWHC 165 (Ch)

Case No: BL-2017-000665

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

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

Date: 31/01/2023

Before :

THE HONOURABLE MR JUSTICE TROWER

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Between :

JSC COMMERCIAL BANK PRIVATBANK	**Claimant**
- and –	
(1) IGOR VALERYEVICH KOLOMOISKY **(2) GENNADIY BORISOVICH BOGOLYUBOV** **(3) TEAMTREND LIMITED** **(4) TRADE POINT AGRO LIMITED** **(5) COLLYER LIMITED** **(6) ROSSYN INVESTING CORP** **(7) MILBERT VENTURES INC** **(8) ZAO UKRTRANSITSERVICE LTD**	**Defendant**

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Tim Akkouh KC and **Christopher Lloyd** (instructed by **Hogan Lovells International LLP**) for the **Claimant**
Michael Bools KC and **Geoffrey Kuehne** (instructed by **Fieldfisher LLP**) for the **First Defendant**
Clare Montgomery KC and **Alyssa Stansbury** (instructed by **Enyo Law LLP**) for the **Second Defendant**

Hearing date: 25 January 2023

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Approved Judgment

Remote hand-down: This judgment will be handed down remotely by circulation to the parties or their representatives by email and release to The National Archives. A copy of the judgment in final form as handed down should be available on The National Archives website shortly thereafter but can otherwise be obtained on request by email to the Judicial Office (press.enquiries@judiciary.uk). The deemed time and date of hand down is 10.30am on Tuesday 31 Jan 2023.

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MR JUSTICE TROWER

Mr Justice Trower :

1. The application with which this judgment is concerned started life as an application by the claimant to enforce the existing worldwide freezing order, made in its current form by the Court of Appeal on 15 October 2019 (the "WFO") and/or to seek an order of similar nature in six overseas jurisdictions: Cyprus, the BVI, Jersey, Switzerland, the Cayman Islands and Georgia. This part of the application was therefore based on the jurisdiction considered by the Court of Appeal in *Dadourian Group International Inc v Simms* [2006] EWCA Civ 399.

2. By the same application notice, the claimant also made an application for further disclosure, in the form of an order requiring the first and second defendants to file and serve witness statements disclosing details of income received from a list of specified assets since the WFO was made at first instance by Nugee J on 19 December 2017 (the "Nugee order"), together with details of bank accounts with credit balances in excess of £1 million as at 9 September 2022.

3. The form of the order based on the *Dadourian* application is now agreed. The substance of the disclosure order itself was in large part agreed as well, but three issues on the form of the order sought remained outstanding. At the conclusion of the argument I gave my ruling on the form of the order to be made. This judgment contains my reasons for that decision.

4. The argument revolved around paragraph 5 of the draft order the relevant parts of which are as follows:

> "5. By 4.30pm on 28 February 2022, the First Defendant and Second Defendant shall each file and serve a witness statement which shall set out [(insofar as they are able after having made all reasonable enquiries)]:
>
> > 5.1. Details of any dividends, distributions or other income paid [to the First or Second Defendant (or paid to a third party on their behalf)] in respect of their interests in the companies and assets listed at Annex B of this Order since 21 December 2017 (including (i) the amount of any payment, (ii) the nature of the payment; and (iii) the date on which the payment was made);
> >
> > …
> >
> > Provided that the First and Second Defendants shall not be obliged to disclose under this sub-paragraph any dividends, distributions or other income received in relation to any company or asset where the cumulative amount of such payments since 21 December 2017 has been less than £1 million (or its local equivalent).
> >
> > 5.2. Details of any bank account [the credit balance of which is an asset (as defined by paragraph 4 of the WFO)] of the First and/or Second Defendant and which has a credit balance exceeding £1 million (or its local equivalent) as at 9 September 2022. The details shall include (i) the credit balance as at

> 9 September 2022, (ii) the name(s) in which the account is held, (iii) the account number, and (iv) the name and address of the bank. …"

5. The issues related to the proposals by one or more of the parties to include the words in square brackets.

6. The first issue was that the first defendant, but not the second defendant, does not agree on the scope of the disclosure order insofar as it extends to the income, dividends and distributions paid by the assets and companies listed under his name in Annex B to the draft order unless the payments were made to him or a third party on his behalf. He therefore sought the inclusion of the words in square brackets at the beginning of paragraph 5.1.

7. The second issue was that, although the first and second defendants both agreed to disclose details of any of their bank accounts with a credit balance of over £1 million as at 9 September 2022, neither of them agreed that this should extend to other accounts which may constitute an asset as defined by paragraph 4 of the WFO. They therefore resisted the claimant's proposal to include the words in square brackets at the beginning of paragraph 5.2.

8. The third issue was that the first and second defendants sought to qualify the absolute obligation to give the information sought by paragraph 5 by including the words in square brackets in the opening three lines of paragraph 5. They contended that their obligation should be only to make all reasonable enquiries.

9. The legal principles to be applied were not in dispute to any material extent. As Waller LJ explained in *Motorola Credit Corpn v Uzan* [2002] EWCA 989 at [29], a freezing order cannot normally be effective without disclosure, or as Lord Woolf LCJ said (at [37]) a disclosure order gives the WFO the teeth which enable it to be properly policed. Mr Akkouh said that I should approach the application on that basis. In principle I agree. Policing a freezing order enables a claimant to decide what further steps it should take to protect its position, and includes policing in the form of requiring updates in relation to assets subsequently received (*Kazakhstan Kagazy Plc v Zhunus* [2018] EWHC 369 (Comm)).

10. The claimant submitted, and I agree, that disclosure is capable of being an effective form of policing because it makes it less likely that the defendant will act in breach of the freezing order. In a case such as the present, it will also enable or at least assist the defendant himself to comply with it. Disclosure also enhances the ability of a claimant to ensure that the order is properly enforced, because it enables the claimant to serve third parties with an enforceable court order. In the present case Mr Akkouh said that the claimant intends to use this ability in order to facilitate the process of enforcing both the WFO itself and any orders it obtains in consequence of the permission granted in exercise of the *Dadourian* jurisdiction to notify banks and other third parties in the relevant jurisdictions of the existence of the freezing relief.

11. I also had in mind the possibility that this is a case in which the risk of dissipation may increase the closer the case gets to trial, a factor which increases the justification for ensuing that the policing mechanisms that are in place, whether through enhanced disclosure or otherwise, are both flexible and robust. In my view, the court should give weight to the need for agility in the game of cat and mouse between claimants and

defendants (as colourfully described in *JSC BTA Bank v Ablyazov (No 10)* [2015] 1 WLR 4754 (per Lord Clarke at [18])) and is entitled to have real regard to the concerns articulated by Males J in *Arcadia Petroleum Ltd v Bosworth* [2015] EWHC 3700 (Comm) as follows:

> "the fact that the defendants are complying at present does not mean that they will necessarily continue to do so in future, in particular as any judgment approaches, at all events if they perceive the case to be going against them. At present it may be that any such judgment is certainly many months and perhaps even years away, but the defendants may see the benefits of compliance with the order very differently as time goes by from the way that they now do."

12. As to the first issue, the first defendant agreed as a matter of principle that the claimant should have further information as to dividends, distributions and other income paid in respect of his interests in the relevant companies and assets. But he contended that it should be limited to payments of such dividends, distributions and other income as have been made to him or to a third party on his behalf. He said that the order should not extend to disclosure of payments to some other person or entity, even if they were paid in respect of his interest.

13. The first defendant made that submission in light of what he said is a disclosure order that is in any event more detailed than that which is normally made and extends over a significant time, viz. a period of more than five years from the date the claim form was issued. It was said that it is quite inappropriate to make an order without the qualification he seeks, because of its breadth.

14. The claimant submitted that the wider disclosure wording is required in order to cover two categories of payments which are caught by the freezing order provisions in the WFO. If the assets are frozen because they have been caught by the order from a date subsequent to the date at which is was made, there is good reason to give careful consideration to whether the disclosure order originally made to police the freezing order is sufficient for that purpose. Although the disclosure originally ordered may have achieved its purpose, the position may change over time, more particularly where a case takes as long as this one has to come to trial. As a matter of general principle, there is substance in that submission.

15. The first category of payments comprises dividends, distributions or other income which derive from the first defendant's interest in an Annex B asset, but which are paid to and held in a Non Trading Company ("NTC"). An NTC is defined by the WFO to include a body corporate which is directly or indirectly owned and/or controlled by the first defendant and has no trading activities. It also includes any body corporate which is directly or indirectly owned and/or controlled by any such body corporate which has no trading activities.

16. It was said by the claimant that, by reason of the WFO (both in the form of the Nugee order and as remade by the Court of Appeal), receipts by NTCs (like any chose in action which might have been available to cause them to be made) will be assets frozen by the WFO. This is both because of the width of the definition of the first defendant's assets in paragraph 4 of the WFO (as to which see below) and because the first defendant is prohibited by paragraph 3(d) of the WFO from procuring or permitting any of his NTCs

from disposing of, dealing with or diminishing the value of any of their assets. As Fancourt J said in his 24 July 2018 judgment (see [2018] EWHC 1910 (Ch) at [7]):

> "In summary, so far as non-trading companies owned or controlled by the respondent are concerned, the respondent is prohibited from procuring or permitting them to dispose of or deal with their assets up to the specified maximum sum; their assets are treated as his assets, but subject to prior notification they may be disposed of or dealt with "in the ordinary and proper course of business."

17. The claimant also submitted that there is a second category of payments which the disclosure wording (unqualified by the words in square brackets) is designed to capture. It pointed to evidence that there are a variety of corporate structures in which the first defendant has an interest but which are not NTCs. The unqualified language proposed by the claimant was designed to require disclosure of payments to and money held in any other corporate entity, where the money so paid derives from the first defendant's interest in the Annex B assets.

18. Payments received by and/or held by these entities are not expressly caught by the freezing order provisions of the WFO. However, they will be frozen by the WFO if they are assets in which the first defendant "is interested legally, beneficially or otherwise". When assessing whether an asset is caught by the WFO, the following wording which appears in both paragraph 6 of the Nugee order and in paragraph 4 of the WFO when remade by the Court of Appeal is important:

> "For the purpose of this order the [first defendant's] assets include any asset which he has the power, directly or indirectly, to dispose of or deal with as if it were his own. The [first defendant] is to be regarded as having such power if a third party (which shall include a [NTC] and a trustee, but not a trading company) holds or controls the asset in accordance with his direct or indirect instructions."

19. In my view, paragraph 6 of the Nugee order (as remade in paragraph 4 of the order made by the Court of Appeal) operates to include as the first defendant's assets, the assets of an NTC and the assets of any other entity other than a trading company, where those assets are held or controlled in accordance with his direct or indirect instructions. The effect of this definition of assets is to freeze the assets of an NTC both by treating them as an asset of the first defendant (paragraph 6 of the Nugee order as remade in paragraph 4 of the order made by the Court of Appeal) and by prohibiting the first defendant from procuring or permitting the NTCs to dispose of, deal with or diminish the value of those assets (paragraph 5(d) of the Nugee order as remade in paragraph 3(d) of the order made by the Court of Appeal).

20. The claimant submitted that, because the first defendant's proposed qualification to paragraph 5.1 of the draft order will operate to carve out payments to anyone other than himself or a nominee, it may not therefore capture payments to NTCs (for so long as the payment remains with that NTC), even though money received by them is explicitly frozen by the WFO. It may also not cover money that is received by any other entities within a chain of corporate structures, where the payment emanates from the first defendant's interest in one of the Annex B companies. While payments to such entities are not necessarily caught by the WFO because, unlike NTCs, the WFO does not expressly treat those companies' assets as if they were the first defendant's assets, the WFO will bite on the payment if that entity holds or controls the receipt in accordance

with the first defendant's direct or indirect instructions or if the first defendant has the power, directly or indirectly, to dispose of or deal with it as if it were his own.

21. One situation in which this may occur is when dividends or other distributions are received by a defendant, or on their behalf, without it being necessary for them to take any active steps to receive them. I accept the claimant's submission that there is a strong likelihood that companies in which the first defendant has an interest will have generated substantial income since the WFO was first granted. I was also satisfied, based on the evidence of the way in which the first defendant's disclosed wealth is held, that there will be some instances in which income will have been received by or on behalf of the first defendant and by or on behalf of companies in respect of which he has an interest, where receipt may not have required active intervention by the first defendant and may not have engaged the need for the claimant's consent in accordance with the WFO.

22. The claimant submitted that it is not good enough simply to add NTCs as a category of payee in respect of which disclosure is to be given, because there is insufficient clarity as to whether particular entities are indeed NTCs as defined in the WFO. This income may therefore end up in the hands of entities that are not clearly NTCs, either because their designation in the earlier asset disclosure did not fully describe those in which the first defendant in fact has an interest or because the first defendant's interest in them is not in fact a controlling interest.

23. The claimant submitted that this additional disclosure can now be seen to be necessary in the light of what has occurred since the WFO was first made. There is evidence that the first defendant has in the past left his ultimate entitlement to dividends part way up the corporate chain of companies in which he has an interest, which in some instances may be a controlling interest. One such example is what occurred in relation to what was called the KZhRK receivable on which I gave a judgment the neutral citation for which was [2022] EWHC 1445 (Ch).

24. As to this, Mr Bools KC did not seek to refute the possibility that there may be valuable assets caught within the corporate chain, but he said that there was no need for the additional disclosure. He said there is no suggestion that such value as may have been captured in this way has or will leak out of the corporate structure, nor is there any indication that the first defendant has taken any steps to alter the corporate structures in order to defeat the claimant's claim. That may prove to be the case, but I think that Mr Akkouh was entitled to say that the claimant does not know whether or not that is correct. Indeed, I think that there was force in his submission that this consideration simply gave substance to the claimant's case which is (anyway in part) that they need relief in the form they seek in order to substantiate whether that is indeed the case.

25. The first defendant's primary challenge to the claimant's case is that there is nothing in the WFO as it presently stands, which requires disclosure of the type now sought by the claimant, because the scheme of the WFO deliberately distinguished between the scope of the assets frozen by the WFO and the assets which had to be disclosed. This set the scene for a submission that what was now sought by the claimant was wider and more intrusive and onerous than had previously been thought necessary, a submission that was made in relation to both the first issue relating to dividends, distribution or other income and the second issue in relation to bank accounts.

26. There is of course no reason why the assets in respect of which a disclosure obligation arises should necessarily track the assets which are caught by the freezing order itself. Indeed, an obvious context in which this might arise is where only disclosure of assets worth more than a fixed figure is required even though the freezing order itself catches all assets within a defined class.

27. Furthermore, I think that Mr Bools was correct in his submission to the extent that he was referring to the WFO in the form in which it was made by the Court of Appeal. The order of the Court of Appeal continued the WFO made by the original Nugee order (as varied), but this form did not include any disclosure order at all. However, I do not think that this advances matters very much, because by that stage the defendants were being treated as if they had complied with their disclosure obligations, and therefore the disclosure relief originally granted by Nugee J was (or was treated as if it was) spent.

28. However, in so far as Mr Bools was referring to the Nugee order, I do not agree that it did not require disclosure of the assets which were frozen by the WFO. In my judgment it did. I have already identified the description of the assets which were frozen by the WFO. I think that paragraphs 6 and 8 of the Nugee order make plain that the qualitative description of the assets frozen by the WFO also applies as a qualitative description of the assets in respect of which disclosure was then required. There were some value and other qualifications introduced both by the Nugee order itself and by later orders made by Snowden J and Roth J, but none of them affected the definition of assets in paragraph 6 which is explicit in its application of what is to count as an asset "for the purpose of this order". That includes the disclosure order made by paragraph 8.

29. Mr Bools did not suggest any other form of words might apply as a qualitative description of the disclosable assets, but it seems as if the first defendant himself appreciated that the freezing order definition of assets applied to what was disclosable at the time the WFO was first made. As Mr Akkouh demonstrated, a number of valuable assets held by NTCs were included in his asset disclosure lists. If Mr Bools' submission were to be correct, disclosure to that effect would not have been required.

30. Nonetheless, in considering the appropriate way forward, I took into account the fact that a great deal of disclosure has already been given by both defendants and that the present dispute is about the breadth of the relief which it is appropriate to grant at this stage in the proceedings. While I did not think that Mr Bools was correct to suggest that the relief now sought is unheralded by what has gone before, I recognised that the most important question is whether the order now sought by the claimant is, in all the circumstances, a proportionate response to the need for a continuing policing of the WFO, which as a matter of principle continues to be required.

31. The first defendant submitted that the form of words sought by the claimant is unacceptably unclear and uncertain in scope. He said that compliance with the relief sought would be unduly onerous and that the claimant has not demonstrated that it is necessary for the purposes of enforcing or policing the WFO.

32. I do not agree with the argument about uncertainty. Of course the wording of the order must be clear and unequivocal (*JSC BTA Bank v Ablyazov (No 10)* [2015] 1 WLR 4754 (per Lord Clarke at [18])), but the concept of a payment made "in respect of [the first defendant's] interest" in an underlying asset is a simple one. It covers payments made by a corporate entity to the first defendant or some other person in circumstances in

which the payment derives from the first defendant's interest in the identified asset. Where that is the case, the payment will have been made in respect of that interest and it will be disclosable. In my judgment that is a readily comprehensible concept which is only rendered superficially more complex by the opacity with which the first defendant holds his own assets and the need to recognise the different ways in which money derived from his interests in corporate assets are characterised in the byzantine group structures he has chosen to devise. In short it is designed to capture income derived from the first defendant's interest in an asset.

33. As to the contention that disclosure would be unduly onerous, I do not agree. The first defendant said that, while the process is straightforward where income is actually received by him or a pure nominee, it is not straightforward where it is not. It will require an investigation of every payment made out of one of the Annex B companies to any company with which the first defendant has a connection, a task which is more particularly onerous because of the 5-years time period which it will span.

34. I think that this is to mischaracterise the nature of the task. First of all, the first defendant's interests in the assets identified in Annex B, whether those interests might be a controlling interest or otherwise, is information which is readily available to him and has already been identified. But the more significant question relates to his need to collect information relating to the relevant payments which was said to be an onerous and time consuming process. Someone will have to identify what they are, and whether they relate to the first defendant's interest in the underlying Annex B assets.

35. However, it seemed to me that this is to have insufficient regard to the true nature of the dividends, distributions and other income to which the terms of the proposed new order will apply. As I have emphasised, the essential nature of these payments is that they are the income which is derived from the interest the first defendant has in the Annex B assets. They are payments which, as a matter of substance, amount to the return on the first defendant's direct or indirect investment. To that extent, I do not agree with Mr Bool's submission that what the claimant is after is evidence of how the first defendant has operated his assets which goes beyond what is needed or what is reasonable proportionate.

36. The relief sought does not relate to payments made during the day to day operations of the Annex B assets. The focus of the language used by the claimant in its proposed order is on payments that constitute a return on the first defendant's interest or investment in the relevant assets. As this is the case, I agree with Mr Akkouh that it is inconceivable that the first defendant does not know how his interests are generating returns for him, what those returns are and how it is that they have been distributed. If he has an interest in an asset, the court can infer, in the absence of evidence to the contrary (and there is none), that the income it generates will come to him, or be held in a corporate structure either for his ultimate benefit or which he controls, and that is something of which a businessman such as the first defendant will keep careful track.

37. I also had regard to the fact that the exercise of keeping track of these payments by way of distribution, dividend and other income is something which will have had to be done by the first defendant or others on his behalf in order to ensure compliance with the terms of the existing WFO. There is good evidence that there are individuals who work for the first defendant (Mr Novikov and Ms Markova), who will be able to assist him

in complying with the terms of the proposed order, and I am not satisfied that such compliance will have the onerous impact that he asserts.

38. In reaching that conclusion I had in mind that the claimant has included in the draft order a £1 million payments floor, in respect of which it does not seek disclosure until that floor has been reached by the aggregate of all payments from a single source. The first defendant submitted that, without the qualifying language for which he contends, the existence of the floor will in fact increase the onerous nature of the task because it will require the assimilation of information for that additional purpose. I did not consider that this will add materially to the task, but rather is a sensible provision to ensure that material or moderately substantial payments have to be taken into account.

39. I considered whether the relief sought gives rise to confidentiality concerns vis a vis other third parties, who also have an interest in the relevant corporate structure. I do not think that it does, because it is only the first defendant's interest which is caught by the wording of the proposed order.

40. In reaching my conclusion as to the right answer, I have also had regard to the third outstanding issue. Should the paragraph 5 obligation be absolute or should it be limited to making all reasonable enquiries? I decided that the appropriate balance would be to require the first defendant to take all reasonable steps and make all reasonable enquiries. Such enquiries must include contacting the three individuals who should be able to assist (Mr Novikov and Ms Markova), but such steps will not require the first or second defendants to take legal proceedings. In my view, this answer to the third issue gives the first and second defendants sufficient protection against the possibility that compliance cannot be achieved despite taking all reasonable steps to do so. It is an appropriate and proportionate response to the claimant's application for the imposition of an absolute obligation to comply.

41. For these reasons, I was satisfied that an order in the form sought by paragraph 5.1 of the claimant's draft without the qualification suggested by the first defendant is reasonably necessary for the purpose of policing the WFO. I was also satisfied that such burden as may fall on the first defendant does not outweigh the benefits for the just and fair disposal of these proceedings, including the ultimate enforceability of any judgment in due course.

42. The second outstanding issue related to the position of both the first and the second defendants. The form of order sought by the claimant seeks disclosure of any bank account, the credit balance of which is an asset as defined in paragraph 4 of the WFO and which exceeded £1 million as at 9 September 2022. The effect of the words in square brackets in paragraph 5.2 of the proposed draft order is to catch all accounts of NTCs and, so the claimant says, is unremarkable given the fact that these assets are caught by the WFO and always have been.

43. The first defendant repeated the same point about the difference between the assets caught by the freezing provisions of the WFO and those caught by the disclosure provisions of the WFO as he made in relation to the distributions, dividends and other income paid in respect of his Annex B interests. He said that what the claimant was seeking to do was to import into the definition of the first defendant's assets to be disclosed, a definition which was only ever intended to cover the scope of the assets to be frozen. He said that the problem with the order sought in relation to the bank

accounts is that the disclosure obligation will extend to the assets frozen by the WFO, when the original WFO did not do so. While the WFO had an expanded definition of assets for the purpose of the freezing order which included those which the first defendant had power to dispose of or deal with as if they were his own, it was said that the original disclosure order did not go that wide.

44. The first defendant also submitted that the consequence of the claimant's construction is that it would follow that he would have had to provide asset disclosure in relation to all assets held by the NTCs which were valued at more than £1 million. He said that this was not the intention of the WFO. It was one thing to make clear that the first defendant cannot permit or procure an NTC to deal with its underlying assets, but it was quite another to require the first defendant to investigate and disclose details of all of those assets.

45. For similar reasons to those I have already given in relation to the dividends, distributions and other income, I do not think that this is correct. In my view all of the assets of the NTCs as at the date of the WFO were already caught by the WFO disclosure provisions originally contained in paragraph 8 of the Nugee order so long as they were held or controlled in accordance with the first defendant's direct or indirect instructions. Given the definition of NTC, a credit balance on any NTC bank account is likely to constitute an asset which the first defendant "has the power directly or indirectly to dispose of or deal with as if it were his own" which is to be regarded as being the case if "a third party holds or controls the asset in accordance with his direct or indirect instructions". This will have included credit balances on bank accounts in excess of £1 million, because such credit balances fall within the definition of the first defendant's assets within the meaning of paragraph 6 of the Nugee order (as repeated in paragraph 4 of the WFO when remade by the Court of Appeal).

46. In these circumstances the claimant simply said that, in relation to a particular category of asset, namely the bank accounts, they should now be expressly treated as part of the first and second defendants' disclosable assets. The problem arises because the original obligation to disclose is spent and there needs to be a proper policing of the assets in respect of which a disclosure obligation no longer subsists. This is particularly important so far as credit balances on bank accounts are concerned because the asset is easily ascertainable but is also liquid and easily transferable.

47. I am satisfied that, so far as the first defendant is concerned, the disclosure sought in relation to bank accounts is both necessary for the proper policing of the WFO and proportionate. This is not an exercise in seeking disclosure of all of the assets of the NTCs at this stage, and I see no reason to think that the claimant will use the order as what Mr Bools called a Trojan horse intended to open the gates to a vastly expanded and unwarranted asset disclosure obligation mere months before the trial. It is much more targeted than that, and in my judgment is a legitimate attempt by the claimant to obtain disclosure of readily identifiable assets that have always been within the contemplation of the WFO, and disclosable as such.

48. Furthermore, I was not and am not satisfied that it will be a particularly onerous exercise. It will simply require the disclosure of information already available to the first defendant or held by entities which he controls. In short, the accounts are readily identifiable and the order will enable the claimant to take steps to ensure that appropriate notifications are given to third party banks to ensure that credit balances are

not dissipated. I reached that conclusion notwithstanding the fact that this further relief is being sought some considerable period of time after disclosure was first ordered and during a period in which the first defendant and his legal team are preparing for trial.

49. The second defendant adopted the point of principle taken by the first defendant but otherwise took an approach with a somewhat different emphasis. Ms Montgomery KC relied on the following passage from the judgment of Hildyard J in *JSC Mezhdunarodniv Promyshlenniy Bank v Pugachev (No 2)* [2016] 1 WLR 781 at [38] – [40], as cited with approval by Jacobs J in *The Public Institution for Social Security v Al Rajaan* [2020] EWHC 1498 (Comm) at [24] as demonstrating the proper approach where a further round of disclosure evidence is sought:

> "[38] I can be brief in this context: the test is in effect whether the court is satisfied that further evidence is necessary in order to make the freezing order more effective.
>
> [39] As it seems to me, the court must be persuaded that there is practical utility in requiring such evidence and that it is necessary to enable the freezing order properly to be policed. It will be vigilant to prevent the abuse of seeking further evidence for some other purpose: such as to expose further inconsistencies, unduly pressurise a defendant who has already been cross-examined, yield ammunition for an application for contempt, or provide further material which might be of assistance, even if not actually deployed, in the main (foreign) proceedings.
>
> [40] I consider also that the court must be satisfied that a yet further round of evidence is proportionate."

50. As a general point, Ms Montgomery stressed that it was important that I appreciated the differences between the position of the two defendants. Even if I were to consider that relief in the form now sought by the claimant is appropriate as against the first defendant, it did not follow that I should grant the same order as against her client. I agree with that submission. The court must balance questions of necessity, practicality, proportionality and the extent of any prejudice to the second defendant on an individual basis. Both defendants are entitled to say of the other that they should not be tarred with the same brush.

51. As to necessity, Ms Montgomery submitted that the claimant had not discharged the burden of showing why further disclosure was necessary. She said that the mechanism that has been successfully in place for five years is that the second defendant notifies or seeks consent from the claimant for certain transactions required by the WFO. That process has been operating satisfactorily. There is no need for anything more. She also said that it was highly unlikely that any of the entities would have bank accounts holding more than £1 million and so in that sense the second defendant would be put to unnecessary work for no discernible benefit to the claimant.

52. Mr Akkouh's response was that there could be no suggestion that there is any abuse of the procedure of the type contemplated by Hildyard J, but that both the claimant and the second defendant need the relief, the former to police the WFO and the latter to ensure that it is not being breached inadvertently. I agree. There is practical utility in the relief being granted because it will enable the claimant to notify the banks disclosed in compliance with the proposed order. It will complete what is otherwise the

incomplete picture given to the claimant by the notification and consent process. In the same way that the bank accounts which the defendants have agreed to disclose are caught by the WFO, so too are the bank accounts which they have not.

53. In short, where the bank accounts with which the relief is concerned are so clearly caught by the terms of the WFO, it is both necessary and provides a practical purpose for the basic details in relation to them to be disclosed. If the accounts are all found to contain less than £1 million, then so be it, but in my judgment there is sufficient doubt that that will prove to be the case for the claimant to be entitled to say that, in the circumstances of the present case, it is necessary for it to be granted relief which confirms in formal terms that that is indeed the case.

54. Ms Montgomery also submitted that the claimant had failed to give any convincing explanation for the delay between the initial asset disclosure given in early 2018 in respect of which no details of the underlying NTC bank accounts were given and this application being brought nearly five years later. If it was not necessary when the disclosure orders were first being complied with, why should it be necessary now? She said that this should be a significant consideration in determining that the order sought is inappropriate.

55. However, having considered the correspondence and read the evidence adduced by the claimant, I am satisfied that there is good reason why this particular application has not been made any earlier. The application itself was issued at the beginning of September 2022 and much of the material which caused the claimant to make it has been disclosed over the course of a protracted trial disclosure process. I accept that much of that evidence related to the position of the first defendant, not the second defendant, but that is by no means exclusively the case. The extent of what has emerged during the course of preparation for the trial means that the need to protect and police the terms of the WFO continues to be an important aid to the claimant's prospective right to enforce any judgment it may in the future obtain.

56. Ms Montgomery also relied on questions of proportionality and prejudice to the second defendant, submitting that the provision of account details would be particularly onerous because he has disclosed 200 NTCs already and there may be up to 100 more which are undisclosed because, while they originally fell below the £1 million disclosure threshold, that may no longer be the case. She submitted that the second defendant is reliant on third parties for the information.

57. I agree with the claimant's submissions that these arguments are unconvincing, more especially in light of the fact that the answer to issue three (i.e., the inclusion of the language in relation to reasonable steps and reasonable enquiries) will apply to the paragraph 5.2 obligation as much as it will the obligation under paragraph 5.1.

58. In particular, I do not accept that the second defendant cannot obtain this information within a reasonable period of time, despite the number of NTCs there may be, not least because the issue arises in relation to accounts which are controlled by the second defendant or by companies which he controls; otherwise they would not fall within the description of assets as defined by paragraph 4 of the WFO. As the claimant said, if the second defendant had been complying with the terms of the WFO he will have been keeping a check on what has been coming in, because the assets of the NTCs are caught by the freezing order.

59. I also do not think that it is appropriate to give too much latitude to the second defendant simply because his affairs are structured in a way which facilitates a spread of liquid assets across a broad group of NTCs. One of the important aspects of designing an appropriate form of disclosure in this context is to ensure that the proper policing of a freezing order is facilitated, even where there is the considerable complexity in corporate structure which is apparent in the present case.

60. The claimant also submitted that the second defendant's own evidence, designed to stress how serious the impact of the WFO has been on his own ability to obtain and maintain banking facilities, demonstrated that the accounts in respect of which disclosure is sought will not be onerous to identify or disclose. I think that there is some substance in this point. As Mr Akkouh put it, the evidence adduced on behalf of the second defendant to explain the limited banking options available to him as a result of the effect of the WFO suggests that the nature of the exercise which the claimant's proposed form of paragraph 5.2 will require is unlikely to have the onerous impact for which the second defendant contends.

61. But there are other reasons why I did not accept that it will be unduly onerous for the information to be obtained. The claimant satisfied me that the second defendant has good access to individuals and corporate service providers who are likely to know exactly where all these accounts are held, even if the second defendant himself does not have the information at his fingertips. Mr Anishchenko works for the second defendant and Mr Novikov and Ms Markova are employed by companies within the corporate structures owned or controlled by both defendants. It also seems likely that Primecap will be able to assist.

62. This also has an impact on the extent to which it is the second defendant's legal team which will bear the burden of having to work on this exercise at a time they are preparing for trial, a factor which was relied on by Ms Montgomery as demonstrating the onerous nature of the obligation and the potential for prejudice to her client. I did not underestimate the work required from the second defendant's legal team in preparing to defend at trial the very serious allegations made against the second defendant, and I recognised that the intensity of those preparations will now be growing quite acute. However, I did not think that Enyo Law's letter of 17 January 2023 demonstrated that the legal work required to assist the second defendant in complying with the unqualified form of the proposed paragraph 5.2 would have any material adverse impact on the preparations for trial. While I accept that there is some burden on the second defendant, his employees and agents, I think that it is outweighed by the continuing need to police the WFO and the practical benefits to the claimant of being able to do so with the benefit of the relief they seek.

63. In all these circumstances, I considered that, balancing questions of proportionality and potential oppression to the defendants against the need to police the WFO, the relief sought by the claimant against both defendants was justified, subject only to the inclusion of the reasonable steps and reasonable enquiries qualification that I have already described.