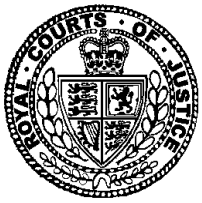

Neutral Citation Number: [2019] EWHC 173 (Comm)

Case No: CL-2016-000775
Case No: CL-2017-000515
Case No: CL-2017-000638
Case No: CL-2018-000121

Case No: CL-2017-000117

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

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

Date: 07/02/2019

Before:

MR. JUSTICE TEARE

- -

BETWEEN:

(1) FILATONA TRADING LIMITED
(2) OLEG VLADIMIROVICH DERIPASKA

Claimants

- and -

(1) NAVIGATOR EQUITIES LIMITED
(2) VLADIMIR ANATOLEVICH CHERNUKHIN
(3) NAVIO HOLDINGS LIMITED

Defendants

AND
BETWEEN:

(1) LOLITA VLADIMIROVNA DANILINA

Claimant

- and -

(1) VLADIMIR ANATOLEVICH CHERNUKHIN
(2) NAVIGATOR EQUITIES LIMITED

(3) VADIM KARGIN

Defendants

- - - - - - - - - - - - - - - - - - - -
- - - - - - - - - - - - - - - - - - - -

Justin Fenwick QC, Andrew Clutterbuck QC, Lucy Colter and Michael Bolding (instructed by **Reynolds Porter Chamberlain LLP**) for the **Claimants in the first action**
Graham Chapman QC, Tom Ford and Felix Wardle (instructed by **Byrne and Partners LLP**) for the **Claimant in the second action**
Jonathan Crow QC, John Machell QC, James Weale and Fraser Campbell (instructed by **Clifford Chance LLP**) for the **First and Second Defendants in both actions**
Iain Pester (instructed by **PCB Litigation LLP**) for the **Third Defendant in the second action**

Hearing dates:
26, 27, 28, 29 November 2018
3, 4, 5, 6, 10, 11, 12, 13, 17, 18, 19, 20 December 2018
16, 17, 18 January 2019

- - - - - - - - - - - - - - - - - - - -

Approved Judgment

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

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MR JUSTICE TEARE

CONTENTS

Mr. Justice Teare:

INTRODUCTION

1. This litigation concerns a valuable site in Central Moscow which is, indirectly, the subject of a Shareholder Agreement dated 31 May 2005 (the "SHA"). The issue is whether Vladimir Chernukhin, who is *not* named as a party to the SHA is in fact party to the SHA as a disclosed principal of Lolita Danilina, who *is* named as a party to the SHA. Mr. Chernukhin and Mrs. Danilina had been in a relationship; it is Mr. Chernukhin's case that she was a named party because she was acting as his nominee or agent. She disputes that she was his nominee or agent and has commenced an action before this court seeking a declaration that she was party to the SHA and that he was not. This is the "TGM claim", TGM being an abbreviation of the name of the textile company OJSC Trekhgornaya Manufaktura ("TGM"), which occupied the valuable site in Central Moscow to which the SHA related. In addition, she has a further claim arising out of what she claims to have been an agreement between her and Mr. Chernukhin in 2007 for the division of their assets after their relationship had come to an end. Mr. Chernukhin denies that there was any such agreement. I refer to that as the "Family Assets claim".

2. Also interested in the TGM claim is Oleg Deripaska, who was, undoubtedly, party to the SHA. Indeed, he and Mr. Chernukhin have already arbitrated the dispute between them as to whether Mr. Chernukhin was party to the SHA. The arbitration tribunal held that Mr. Chernukhin was party and has ordered that Mr. Deripaska pay Mr. Chernukhin some $95 million in respect of the latter's shareholding. Mr. Deripaska has challenged the jurisdiction of the arbitration tribunal, saying, as he said before the tribunal, that Mr. Chernukhin was not party to the SHA.

3. Thus, because the TGM claim is central to both Mrs. Danilina's claim and to Mr. Deripaska's arbitration challenge, they have been tried together. Mrs. Danilina was not party to the arbitration and so is not bound by the arbitration award. Mr. Deripaska is bound by it, but may challenge the jurisdiction of the arbitration tribunal pursuant to section 67 of the Arbitration Act 1996. The challenge is not an appeal from the decision of the arbitration tribunal. It is a re-hearing.

4. Vadim Kargin is a further defendant to the TGM claim. Mrs. Danilina seeks damages against him arising out of *(i)* an alleged agency agreement pursuant to which Mr. Kargin was to procure the incorporation of an off-shore company to hold her interest in TGM and *(ii)* an alleged conspiracy with Mr. Chernukhin to injure Mrs. Danilina by unlawful means.

5. On the central issue in the TGM claim, namely, who was party to the SHA, the court has heard conflicting evidence from, on the one hand, Mrs. Danilina and Mr. Deripaska, and from, on the other hand, Mr. Chernukhin. It is difficult to avoid the conclusion that one side has given evidence which it must know to be untrue. The arbitration tribunal, who did not hear evidence from Mrs. Danilina, rejected the evidence of Mr. Deripaska and accepted the evidence of Mr. Chernukhin. The arbitration tribunal also did not have the benefit of certain documents which have been disclosed in this case but were not disclosed in the arbitration.

6. Shortly after the arbitration tribunal had decided that Mr. Chernukhin was party to the SHA and that the tribunal therefore had jurisdiction to consider his claim, Mrs. Danilina and Mr. Deripaska entered into an Interest Purchase Option Agreement pursuant to which Mrs. Danilina's beneficial interest was to be purchased by Mr. Deripaska for the sums of $2 million (payable in four instalments) and $10 million in the event that Mrs. Danilina secured "confirmation of title" to her beneficial interest by 31 December 2020. Mrs. Danilina was to commence "ownership proceedings" by 31 December 2017. The proceedings commenced by her in this court are those "ownership proceedings". By a Loan Agreement Mr. Deripaska also agreed to lend her $3 million in respect of the costs of such proceedings. In addition, and pursuant to the Interest Purchase Option Agreement, Mrs. Danilina undertook to assist Mr. Deripaska in his arbitration with Mr. Chernukhin and not to communicate with or provide any information to Mr. Chernukhin.

7. The agreement between Mr. Deripaska and Mrs. Danilina is said by Mr. Chernukhin to be dishonest and corrupt, being, it is said, a perversion of the course of justice by making a payment in exchange for evidence. Mrs. Danilina denies dishonesty and corruption and has said that Mr. Chernukhin's failure to give proper disclosure in relation to the Family Assets claim until he was ordered to do so was itself a dishonest attempt to prevent the disclosure of relevant documents. Mr. Deripaska has also said that Mr. Chernukhin obtained the arbitration award in his favour by the giving of dishonest evidence.

8. Thus, this litigation has been, it need hardly be said, aggressively fought on all sides. It falls to the court to determine where the truth lies.

9. In addition to the issues of fact there is an issue of law, namely, whether the terms of the SHA preclude Mr. Chernukhin from enforcing the SHA as a disclosed principal. Finally, there are, in the event that the s.67 jurisdictional challenge fails, challenges to the award on the grounds of alleged serious irregularities pursuant to s.68 of the Arbitration Act 1996.

Approach to the evidence

10. In resolving the stark conflicts of evidence in this case I have sought to adopt the approach described by Robert Goff LJ (as he then was) in *The Ocean Frost* [1985] 1 Lloyd's Reports 1 at p.57:

> Speaking from my own experience, I have found it essential in cases of fraud, when considering the credibility of witnesses, always to test their veracity by reference to the objective facts proved independently of their testimony, in particular by reference to the documents in the case, and also to pay particular regard to their motives and to the overall probabilities. It is frequently very difficult to tell whether a witness is telling the truth or not; and where there is a conflict of evidence such as there was in the present case, reference to the objective facts and documents, to the witnesses' motives, and to the overall probabilities, can be of very great assistance to a Judge in ascertaining the truth.

11. The material events span the period between 2001 and 2016, during which Mr. Chernukhin left Russia in 2004, the relationship between Mr. Chernukhin and Mrs. Danilina came to an end in or before 2007, Mr. Deripaska took control of TGM (by force or the threat of force) in 2010 and the value of its site has greatly increased (though there is, inevitably, a dispute as to by how much). A court is usually assisted in resolving disputed evidence by reference to contemporaneous documents. In this case there are remarkably few such documents which came into existence before the SHA was signed in 2005 (or which have survived the passage of time and events) which might throw light upon the true parties to the SHA. However, there were several later events which are said to throw light upon that issue, and those events have generated documents. In addition to having regard to such contemporaneous documents as there are and to the inferences which can be drawn from the later actions of the principal actors the court will also have regard to the inherent probabilities. In doing so I have borne in mind the note of caution sounded in *The Business of Judging* by Tom Bingham (as the author chose to be called) at p.14:

> An English judge may have, or thinks that he has, a shrewd idea how a Lloyd's broker, or a Bristol wholesaler, or a Norfolk farmer, might react in some situation which is canvassed in the course of a case but he may, and I think should, feel very much more uncertain about the reactions of a Nigerian merchant, or an Indian ship's engineer, or a Jugoslav banker. Or even, to take a more homely example, a Sikh shopkeeper trading in Bradford. No judge worth his salt could possibly assume that men of different nationalities, educations, trades, experience, creeds and temperaments would act as he might think he would have done or even - which might be quite different - in accordance with his concept of what a reasonable man would have done.

12. In this case the probabilities must be assessed, as best this court can, in the light of the collapse of the USSR, the emergence of private enterprise in Russia, the accumulation of huge wealth by a few individuals, the manner in which "oligarchs" do business with each other, the importance of support from those in power, the loyalties which huge wealth can generate and the use of offshore companies and trusts to hold (and hide) such wealth.

13. The principal actors in this drama have given evidence. Of course, where the events about which the witnesses speak have taken place many years ago their evidence cannot, on many matters of detail, be expected to be reliable. In *Gestmin v Credit Suisse* [2013] EWHC 3560 (Comm) Leggatt J., at paragraphs 15-21, commented upon the unreliability of human memory in the light of psychological research, as did Tom Bingham in *The Business of Judging* at pp.16-18. Their comments must be particularly appropriate in a case where evidence is given in 2018 of what happened in 2001-2005 and 2007. However, I find it difficult to rule out the possibility that, in contrast with recollection of events such as an accident, there may still be some major matters (as for example the person with whom a witness struck a deal, or the person for whom the witness acted over a period of time) in respect of which the witness may have some real and reliable recollection. I have nevertheless borne in mind Leggatt J.'s advice at paragraph 22 as to the best approach for a judge to adopt which, unsurprisingly, mirrors that of Robert Goff LJ.

> In the light of these considerations, the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts. This does not mean that oral testimony serves no useful purpose - though its utility is often disproportionate to its length. But its value lies largely, as I see it, in the opportunity which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth.

14. In this case most of the evidence was given by witnesses not speaking their first language and some through an interpreter. In such cases demeanour can rarely assist in deciding where the truth lies. In *Kairos Shipping v Enka, The Atlantik Confidence* [2016] 2 Lloyd's Reports 525 at paragraph 11, I said:

> First, a fact-finding judge can gain little from the demeanour of a witness when the witness is foreign, comes from a different culture and does not give evidence in his first language or does so through an interpreter; see *The Business of Judging* by Tom Bingham at p.11. In *The Ikarian Reefer* at p.484 lhc para. (4) Stuart-Smith LJ said that "most experienced judges recognise that it is not easy to tell whether a witness is telling the truth, particularly if the evidence is given through an interpreter." Second, in all cases, but especially in those cases where scuttling is alleged, the assessment of the reliability of a witness depends, not only upon a consideration of the extent to which his evidence is consistent with what is not in dispute, is internally consistent and is consistent with what the witness has said on other occasions but also upon a consideration of the extent to which his evidence is consistent with the probabilities. That involves placing the evidence in the context of the case as a whole. As was said in *The Ikarian Reefer* at p.484 lhc para. (4) the evidence of those impugned "has to be tested in the light of the probabilities and the evidence as a whole".

15. Moreover, in this case all sides say that the evidence which their opponents give on the major matters in dispute consists of lies. As will become apparent from my comments upon the witnesses there are real grounds to doubt the honesty of each of the principal actors and of many of the other witnesses. Nevertheless, there can be no doubt that one side is in fact telling the truth with regard to the principal issue of fact in the TGM claim. The court's determination of who is telling the truth on that issue, and on the central issue in the Family Assets claim, must depend upon matters other than their evidence. The court's findings in this case, where the material events took place many

years ago and where there are grounds to doubt the honesty of those most intimately involved in those events, can only be reached by testing the rival versions of the truth by reference to the known events, matters which are common ground, such contemporaneous documents as there are, the probabilities and such other evidence as is reliable and casts light on the events in question.

16. It is not possible to mention each and every strand of evidence relied upon by Counsel in their full and helpful closing submissions. I have, however, sought to consider and take into account all of the matters which they have raised.[1] Not all issues which arise upon the evidence need to be resolved. I am principally concerned with those which enable the court to be able to determine on the balance of probabilities the two principal issues - namely, whether Mr. Chernukhin or Mrs. Danilina was the true party to the SHA and what, if anything, was agreed between them before his marriage to Mrs. Chernukhin in 2007. Although some issues in the narrative of events can be resolved by reference to the evidence which is most relevant to those issues, the court must, before reaching a conclusion on the two principal issues, take into account the whole of the relevant evidence, described by Lord Devlin in *The Judge* at p.63 as "the tableau… the text with illustrations". Finally, having examined the relevant evidence the court must stand back from the detail of the evidence and view the matter in the round, in order to ensure that the wood is not obscured by the trees.

The witnesses

17. As I have already noted all sides say that the evidence which their opponents give on the major matters in dispute consists of lies. It is therefore appropriate that I should comment on those aspects of the witnesses' evidence which tended to cast doubt upon the honesty of the witnesses. I shall deal, first, with the principal actors, second, with those witnesses who had a significant role in some of the events and, third, with those witnesses who were on the periphery of the drama.

Mrs. Danilina

18. Mrs. Danilina was the first witness, and was cross-examined for a day and half. Notwithstanding the broad range of topics and events (spanning several years) which were covered in her cross-examination she was rarely, if ever, lost for an answer and she rarely hesitated in giving an answer. Her command of the documentation in the case and the issues was impressive. Moreover, she was rarely argumentative and hardly ever, if at all, refused to answer a question. If she did it was, perhaps, when she was tired after a long day of cross-examination. However, the question whether she was telling the truth must depend upon the probabilities, her motives and upon the cogency or otherwise of the answers she gave, especially those which concerned the (relatively

[1] I was therefore surprised to receive from counsel for Mrs. Danilina, after sending out the judgment in draft, a "List of Omissions from the Draft Judgment". Some 12 matters of evidence or submission (with reference to counsel's opening and closing submissions) were provided "in order to assist the court". The purpose of providing the parties with the judgment in draft is not to invite them to provide such a list. It is also difficult to understand in what way such a document "assists" the court when the court has provided its judgment in draft and is (the next day) formally to hand down judgment. The provision of a "list of omissions" is an inappropriate use of the procedure whereby judgments are sent out in draft. The court is not obliged to address in writing every piece of evidence relied upon or submission made. The court is obliged to consider all of the evidence and submissions and set out its reasons for reaching the conclusion it did.

few) contemporaneous documents which, it was said, were inconsistent with her evidence. There was one part of her evidence in cross-examination, that relating to statements made by her for use in the arbitration, which caused me real concern as to her honesty.

19. In her statement dated March 2017 she said, at paragraph 6:

> Without waiver of privilege, I discussed the position with my lawyers and they contacted Mr Deripaska's lawyers some time in spring 2016. I am informed that those communications are all privileged and I do not intend to waive privilege over them nor my communications with my legal advisors. I can say, however, that no agreement was reached, no payments were made to me (or proposed), and those discussions went no further.

20. Yet in June 2016 a draft agreement had been prepared which referred to a proposed payment to her of $5 million. Mrs. Danilina gave evidence that she had no idea about such a figure being proposed to her. I found that statement difficult to accept. Mrs. Danilina was in discussions, through her lawyers and Mr. Karabut, concerning a proposed agreement with Mr. Deripaska. She was aware of the arbitration between Mr. Deripaska and Mr. Chernukhin and why her assistance was being sought. The subject of a payment was being discussed. It would be astonishing if the subject of a payment had not been discussed with her. Her willingness to say that no payments had been proposed to her caused me to doubt her honesty. Further, the statement that the discussions had been in the Spring of 2016 and "went no further" was also misleading. They had begun earlier than Spring and went on until September 2016. She also gave the impression in her second witness statement in these proceedings that little had happened with regard to the negotiations between the end of 2015 and the end of 2016 when in fact there had been considerable negotiation between lawyers on behalf of her and Mr. Deripaska. I concluded that I should exercise great caution before accepting her evidence.

Mr. Deripaska

21. Mr. Deripaska was also cross-examined for a day and a half. He gave his evidence in a measured and deliberate manner. Indeed, he often appeared reluctant to answer a question until he had thoroughly studied the document on which the question was based. This is understandable, up to a point, but his consideration of the document often caused his answer to merge into argument and, on occasion, into questioning of the cross-examiner. Indeed, there were times when his consideration of the document and, it would appear, its significance, caused him not to engage with the question at all. I was thus left with the impression that, whilst he was a willing advocate, he was an unwilling witness. He did not appear to me to be a witness who wished to assist the court in ascertaining the truth.

22. Moreover, some of his answers strained the court's credulity to breaking point. For example, a private detective agency was instructed to obtain information about Mr. Chernukhin in 2011 shortly after Mr. Deripaska had taken over TGM in December 2010 and after Mr. Karabut, acting upon Mr. Deripaska's instructions, had suggested to Mr.

Chernukhin that he might sell his interest in TGM to Mr. Deripaska. The purpose of this information, as an email dated 16 February 2011 from the agency said, was:

> For use in negotiations with CH. Negative information about him is required, including the information concealed by him from the public which, should it be published, would create a real threat to his reputation in the UK or would make him criminally liable if he were to return to Russia.

23. The detective agency was instructed by Mr. Elinson, Deputy CEO of Basel. Mr. Deripaska told the court that he had not authorised the agency to obtain such information. I consider it most improbable that the instructions given by Mr. Elinson were not authorised by Mr. Deripaska having regard to the recent takeover of TGM and the offer to buy out Mr. Chernukhin. It is unlikely that Mr. Elinson acted on his own initiative in such a delicate matter.

24. The negotiations with Mr. Chernukhin eventually led to an agreement in principle that Mr. Deripaska would buy his share in TGM for $100 million. Yet in his evidence before the arbitration tribunal Mr. Deripaska denied that any such agreement had been reached. It seems likely that he denied that because he feared that an admission of such a deal would damage his case that Mr. Chernukhin was not the real party to the SHA.

25. He also told the court that he had not been informed by his lawyers of their negotiations with Mrs. Danilina in 2016 before the jurisdictional hearing in the arbitration. In circumstances where he was a named respondent to the arbitration commenced by Mr. Chernukhin and in which he was to give oral evidence that Mrs. Danilina, rather than Mr. Chernukhin, was the true party to the SHA, it is, I think, inherently improbable that he was unaware of what his lawyers and Mr. Karabut (who worked for him) were seeking to agree with Mrs. Danilina.

26. For these reasons I formed the view that it would be wholly unsafe to rely upon his evidence save where it was not disputed, was in accordance with the probabilities or was supported by the contemporaneous documents. As with Mrs. Danilina it seemed to me that I should exercise great caution before accepting his evidence.

Mr. Chernukhin

27. Mr. Chernukhin gave evidence for over three to four days. His principal witness statement served in these proceedings contained much unnecessary and inappropriate argument based upon the documents in the case. If argument had not been included in his witness statement it would have been much shorter than its 78 pages. The inclusion of much argument tended to suggest that he had little actual evidence to give. That is not surprising in circumstances where some of the crucial events regarding the TGM claim took place between 14 and 17 years ago. When cross-examined he continued to argue the case by reference to the documents, almost always with vigour and at length. That confirmed my impression that he had little actual evidence to give based upon his recollection.

28. In the arbitration he had said that the Sanderson Trust had nothing to do with a financial settlement with Mrs. Danilina at the time of his marriage to Mrs. Chernukhin. Yet he

accepted that Mrs. Danilina was a beneficiary of the trust and that the trust was created shortly before his marriage to Mrs. Chernukhin. His evidence was difficult to reconcile both with the context in which the trust was created and with the contemporaneous documents of those advising him in connection with the Sanderson Trust. There was thus reason for treating his evidence with great caution.

29. Mr. Chernukhin's late disclosure in the case (during the hearing and, indeed, during his own cross-examination) demonstrated that he was prepared to allow untrue statements to be made on his behalf in the arbitration. Thus, there was deployed in the arbitration and accepted by the tribunal a Declaration of Trust dated 7 September 2004 which stated that the bearer shares in Compass View Limited were held by CAS on trust for Mr. Chernukhin. In fact, as appeared from the late disclosure in the present case, the original declaration of trust was in blank and Mr. Chernukhin's name was only added in manuscript in late 2015, after the arbitration had been commenced. In his evidence to this court he accepted that, probably, he knew that his name had only recently been added to the Declaration of Trust. I agree that that seems probable. It therefore appears that he allowed his counsel to put before the tribunal a document which was dated 7 September 2004 and bore his name without informing the court that in September 2004 and for some 11 years thereafter the document did not bear his name. He sought to excuse or explain his conduct by pointing out that the Declaration of Trust, albeit in blank, was always held on his behalf. In that he may be correct. (It is an issue to be resolved in this judgment). But his conduct before the tribunal demonstrates a willingness to mislead a tribunal of fact.

30. The fact that late disclosure was given by Mr. Chernukhin (pursuant to court orders) of documents relating to the events of February – November 2007 when Mr. Chernukhin made arrangements for the Sanderson Trust to be set up shows Mr. Chernukhin to be, at best, secretive and, at worst, willing to have the claims of Mr. Deripaska and Mrs. Danilina against him tried without the benefit of all relevant documents.

31. There was another aspect of his evidence which was disturbing. He explained at length that a loan apparently made by Madsan Holdings Limited to Navigator Finance Limited was a sham. Yet, he wished to use that loan as a means of saying, should it become necessary, that Navigator Finance owed $125 million to Madsan Holdings. Thus the "reality" or "truth" of the loan depended upon the circumstances in which the question was asked. It was suggested to him that this was dishonest. He did not accept that it was dishonest, but it appears to me that he was prepared in certain circumstances to say that the loan, which he told the court was a sham, was in reality a genuine loan.

32. For all of these reasons I reached the conclusion that I should only accept Mr. Chernukhin's evidence where it was consistent with the probabilities, was supported by the contemporaneous documents or was not in dispute. As with Mrs. Danilina and Mr. Deripaska I determined that I should exercise great caution before accepting his evidence.

33. Thus, the depressing fact is that there was good reason to doubt the honesty of each of the principal actors in this case.

34. I turn to consider those witnesses who had a significant role to play in one or more of the events with which the court is concerned.

Witnesses called by Mr. Deripaska

35. Mr. Karabut: He was employed by Rainco (a company which dealt with Mr. Deripaska's "non-core" assets) from 2005. In 2006 he became the General Director of Rainco and was involved with TGM until 2012. For several reasons I considered him to be a most unsatisfactory witness. First, he tended, when answering questions, to give long answers justifying a particular proposition. It was apparent, because he said so, that he had prepared to give evidence by reading many documents. I formed the clear impression that his evidence was not really based upon his recollection but on his reconstruction of events based upon his reading of the documents in the case. Second, when confronted with questions based upon documents which presented him, and thereby Mr. Deripaska's case, with a difficulty he sometimes ignored the difficulty and thereby failed to answer the question. He was, it seemed to me, far more concerned with ensuring that he made no damaging admissions than with giving honest evidence to the court. Third, he was unable to accept that his evidence to the arbitration tribunal concerning the negotiations with Mrs. Danilina in which he had a leading role (because he was concerned with the question of payments to Mrs. Danilina) was misleading. His evidence was misleading because he failed to make any reference to the fact that the negotiations had continued until August 2016, shortly before the jurisdictional hearing. The impression he gave to the tribunal was that there had been discussions in April 2016 which only recommenced after the tribunal issued its jurisdictional award in late 2016. Fourth, when referring to the takeover of TGM on 14 December 2010 and the video clip which had been shown in court when he was present, he was unable to accept that Mr. Kurygin, the then head of security at TGM, had been pushed to the floor by the security men who were assisting Mr. Karabut and Mr. Novikov to take over TGM. Instead, he described Mr. Kurygin as "suddenly sitting down to the ground". That he was prepared to say this suggested that he was prepared to say whatever assisted Mr. Deripaska's case. This contrasts with the evidence of Mr. Novikov, who, when shown the clip, accepted that there had been a fight.

36. Although Mr. Karabut said that he understood the concept of giving true evidence on oath, it is apparent that he did not. I formed the view that in truth he saw his role as being to support Mr. Deripaska's case at all costs. I therefore concluded that I could not accept his evidence save where it was consistent with the probabilities, was not in dispute or was supported by the contemporaneous documents. His evidence could only be accepted with the greatest possible caution.

37. Mr. Novikov: He was Mr. Deripaska's PA from 2002 until 2008. He then moved to Rainco and was appointed to the Supervisory Board of TGM. From December 2010, after the takeover, he exercised the powers of General Director of TGM. He gave clear answers to the questions put to him. However, there were two matters upon which he gave evidence in the arbitration which proved not to be true. One concerned the presence of Mr. Sarkisyan at TGM on the night of 14 December 2010 when Mr. Deripaska took control of TGM. Mr. Sarkisyan is a man who had assisted Mr. Deripaska on "security" matters. Mr. Novikov said in his fourth witness statement in the arbitration that Mr. Sarkisyan was not present. He said he was familiar with Mr. Sarkisyan and that he could not recall anyone who resembled him. After making that statement on 13 March 2017 he was shown a still from CCTV footage of the night in question. In a further statement dated 23 March 2017 he accepted that Mr. Sarkisyan was present.

38. The other matter concerned a notice banning certain people associated with Mr. Chernukhin from entering TGM after 15 December 2010. In his first witness statement he said in terms that there was no such notice. When such a notice, issued by him, was put to him in these proceedings Mr. Novikov said that he had not authorised such an order. However, he could not explain why there was such an order which purported to have been issued by him. It seems to me more likely than not that Mr. Novikov made these untrue statements, not because he believed them to be true, but because he believed they would assist Mr. Deripaska. Given his role in the takeover, that he was familiar with Mr. Sarkisyan and that he knew of his connection with Mr. Deripaska it is unlikely that the statement in his fourth witness statement was merely the result of a poor memory or a mistaken recollection. The presence of Mr. Sarkisyan during the takeover of TGM is a matter which it is to be expected that he would recall, having regard to Mr. Sarkisyan's connection with Mr. Deripaska's "security", notwithstanding the passage of 7 years. Similarly, the banning of people associated with Mr. Chernukhin from TGM on the first day on which he was acting General Director is a matter which it is to be expected he would recall, notwithstanding the passage of 7 years.

39. To have made, not one, but two incorrect statements on important matters with both of which he was intimately connected and which he would be expected to recall is a cause for concern. I therefore considered that I should only accept his evidence where it was in accordance with the probabilities, not in dispute or supported by contemporaneous documents.

40. Mr. Tonkacheev: He worked for Basel (Mr. Deripaska's core business) from 2001-6 and was in charge of issues concerning TGM. He gave evidence that the deal between Mr. Deripaska and Mrs. Danilina was that Mr. Deripaska would provide the finance for the purchase of TGM and that Mrs. Danilina would provide her expertise in managing the textile business. He said he was in charge of the team negotiating the terms with her. However, the draft agreement dating from 2002, the terms sheets produced in 2004 and the SHA itself provided for financial contributions from both parties. When asked to explain the difference between his evidence and those documents he was, it appeared to me, unable to accept that there was any difference and unable to explain the difference, which was obvious. This suggested to me that he was not seeking to assist the court in ascertaining the truth and that his evidence was not reliable.

41. Mr. Makarov: He is an in-house lawyer who has worked for Mr. Deripaska from 2011. Before that he was a partner in the law firm of Jones Day from 2008-2011. After Mr. Deripaska had agreed in principle in 2013 to buy Mr. Chernukhin's share in TGM Mr. Makarov was instructed to draft the appropriate agreement. He gave evidence of the reasons why the purchase was never completed. Mr. Makarov is plainly an intelligent and articulate lawyer. The principal matter upon which he was cross-examined was the nature of the risk which he foresaw in the proposed transaction and which he sought to guard against. The issue was whether the risk was, as Mr. Makarov said, that Mr. Deripaska was in genuine doubt as to who was his joint venture partner, or whether, as it was put to him in cross-examination, although Mr. Deripaska knew that Mr. Chernukhin was his true joint venture partner, there was a risk that Mrs. Danilina might use the fact that she had been named as party to the SHA to sue Mr. Deripaska. The latter suggestion was supported by some of the language in the contemporaneous documents. Mr. Makarov disagreed with that interpretation of the documents. I accept that that was his honest opinion. But the nature of the risk feared at the time must, I

think, depend upon an objective understanding of the documents in their context and not upon Mr. Makarov's opinion expressed in evidence some 4 years after the events in question.

Witnesses called by Mr. Chernukhin.

42. Mr. Kargin: He is a Defendant to these proceedings and so, technically, was not called by Mr. Chernukhin. He gave evidence in support of his own defence to the claim brought against him. He was involved in the negotiations leading up to the signing of the SHA (2004-2005), in the incorporation of Navigator (2004) and in the Compass Trust events (2004). He said that he at all times acted on behalf of Mr. Chernukhin. That was not accepted. It was suggested that he acted on behalf of Mrs. Danilina. Although he claimed to have a recollection of events surrounding the incorporation of Navigator and of matters concerning the Compass Trust it was apparent from his evidence that he was in fact, perhaps understandably, seeking to reconstruct what had happened from the recently disclosed documents. He maintained his evidence, given in the arbitration and in this court, that in 2004 he had "held in his hand" a declaration of trust in respect of the shares in Navigator in favour of Mr. Chernukhin. By the time he came to give evidence it was apparent, from the late disclosure and the evidence of Mr. Kiener, that the name of Mr. Chernukhin had been added to the declaration of trust in 2015 by Mr. Kiener. Yet Mr. Kargin could not bring himself to accept that.

43. It seemed to me at the time he gave evidence that his insistence that there had been in 2004 a declaration of trust in favour of Mr. Chernukhin betrayed a willingness to assist Mr. Chernukhin even where his evidence had been shown by other evidence, to which he had listened, to be, at the very least, mistaken. Even Mr. Chernukhin accepted that his name had been added to the declaration of trust in 2015. By contrast Mr. Kargin failed to grapple with the problems with his evidence which had been caused by the late disclosure. Counsel for Mr. Kargin stressed that he had nothing to gain from this litigation and that his evidence manifested an honest, albeit mistaken, belief on his part. It is not, I think, possible to be sure either way, although the fact that, as recorded by Mr. Kiener in his file notes, Mr. Kargin informed Mr. Kiener that the latter could "complete" the declaration of trust both on 5 September 2011 and on 3 December 2015, suggests that Mr. Kargin was well aware that the declarations of trust were in draft. But whether or not his evidence was dishonest, his evidence was mistaken, and given the passage of time involved it would not be safe to rely upon his evidence save where it was consistent with the probabilities, supported by the contemporaneous documents or not in dispute.

44. Mr. Kiener: He is a Swiss lawyer in the "fiduciary" business who has assisted Mr. Chernukhin on corporate restructuring matters and, to a lesser extent, on matters relating to trusts. He was first involved with Mr. Chernukhin in 2005, effectively taking over from Mr. Kargin. He gave evidence that Mr. Chernukhin was at all times the beneficial owner of Navigator's shares in Navio Holdings Limited ("Navio"), the joint venture vehicle owned in equal parts by Filatona and Navigator, and that he was not aware of any financial settlement between Mr. Chernukhin and Mrs. Danilina in 2007. His evidence on both topics was the subject of attack largely because of the late disclosure of documents concerning the Compass Trust dating from 2004, the late disclosure of documents showing that a declaration of trust dating from 2004 was

originally in blank and only had Mr. Chernukhin's name added as the beneficiary in 2015 and the late disclosure of documents showing that certain records had been altered.

45. Mr. Kiener had a substantial role in all these matters. He had withheld documents from disclosure because of certain Swiss law obligations, he had inserted the name of Mr. Chernukhin in the declaration of trust in 2015 and he had procured the changes to certain records. I do not consider that he can be criticised for having regard to his obligations under Swiss law. Ultimately, but belatedly, it was decided that those obligations did not prevent disclosure. He said that his addition of Mr. Chernukhin's name as beneficiary in 2015, having satisfied himself that Mr. Chernukhin was the beneficial owner of Navigator's shares in Navio, was perhaps usual according to those who work in the "fiduciary" business. In relation to that it was submitted on behalf of Mrs. Danilina that Mr. Kiener was "party to a deliberate and dishonest misleading of the tribunal". I have to accept, as is apparent from his frank answers when cross-examined, that he was party to misleading the tribunal into thinking that the declaration of trust bore Mr. Chernukhin's name in 2004.

46. It may be that it is the practice in the "fiduciary" business to add the name of a beneficial owner to a blank declaration of trust because that does no more than state what is true. (The fact that Mr. Kiener made a file note recording that he had added Mr. Chernukhin's name to the declaration of trust suggests that he did not think that he was doing anything improper). But it is not right, as I think Mr. Kiener would accept, to allow a tribunal of fact to believe that the name had been there all along. In being party to the misleading of the tribunal in this way Mr. Kiener, I have to say, allowed his loyalty to his client to dictate his actions. With regard to the attempt to replace contemporary documents with amended versions he said he acted on the instructions of an English solicitor (not at Clifford Chance) who advised Mr. Chernukhin. The timing and content of these changes was remarkable. They were made when Mr. Chernukhin was shortly to give disclosure in Mrs. Danilina's action and concerned issues at the heart of that action. The changes ought never to have been made. Although Mr. Kiener said he acted on instructions I consider that he ought to have exercised much more care and circumspection. Again, he allowed his loyalty to his client to dictate his actions. He himself accepted that he ought not to have asked for the documents on the trustees' files to be "replaced" and that the changes ought to have been dated so that it was clear what had happened.

47. He was also criticised for not supplying to Clifford Chance documents which he had discovered on his files and which he accepted were relevant. It appears that he did not supply them to Clifford Chance because he felt he required express instructions from Mr. Chernukhin to do so. It also appeared that his understanding, as a Swiss lawyer, of disclosure obligations in English law was not complete. I do not know what instructions he was given by Clifford Chance, the solicitors for Mr. Chernukhin but, since he appears to have been charged with the task of searching for relevant documents in his firm's possession or control, he ought to have been given a full and complete understanding of Mr. Chernukhin's disclosure obligations. One would expect Clifford Chance to have done so. If they did then his failure to provide the documents to Clifford Chance was another instance of Mr. Kiener allowing his loyalty to his client to dictate his actions.

48. There was another aspect of his evidence which was criticised. Indeed, it was suggested it was untrue. His account of the discussions in 2007 concerning the Sanderson Trust was concise and limited to a denial of there having been a financial settlement between Mr. Chernukhin and Mrs. Danilina. In the light of Mr. Kiener's understanding of the word "settlement" I am not persuaded that he gave evidence which he knew to be untrue. However, as he himself accepted, he deliberately confined his evidence to that denial, citing his duty to his client. Thus, although his own contemporaneous email exchanges would have enabled him to have given a fuller account of the discussions which in fact took place, he chose not to do so. For this reason, and in any event, the contemporaneous documents must be regarded as a more reliable source of evidence than Mr. Kiener's own evidence.

49. Mrs. Chernukhin: She gave evidence for over a day. Although she had little, if any, relevant evidence to give with regard to the TGM claim, she had some evidence to give with regard to the Family Assets claim. She demonstrated a keen understanding of what documents said or did not say and from time to time argued with counsel what they suggested. I gained the impression that she had prepared well for the trial. She was able to say almost immediately upon being shown a document whether she had seen it before. Her answers were clear, but they sometimes contradicted the contemporaneous documents. The manner in which she gave her evidence did not suggest to me that it was safe to rely upon what she said was her recollection. Her evidence appeared to depend much more on reconstruction from the documents.

50. One particular matter caused me concern. She said in her witness statement dated 15 August 2018 that she was surprised by Mrs. Danilina's allegation that Mr. Chernukhin and Mrs. Danilina had agreed in 2007 to split their assets and that the Sanderson Trust was settled in implementation of that agreement. She further said that she had never seen any documentation tending to suggest the same and that neither Mr. Chernukhin nor any advisors of his had ever made statements in her presence suggesting that the agreement existed. However, it is now clear from her attendance at meetings, from her receipt of emails and from her role as a member of the Family Council concerning the Sanderson Trust that she must have seen documents and heard statements which revealed an intention on Mr. Chernukhin's part in 2007 to benefit Mrs. Danilina by means of the Sanderson Trust.

51. Her evidence about these matters suggests that in her evidence she was not being frank with the court. Thus, as with so many witnesses in this case I am unable to accept her evidence save where it is not disputed, where it is in accordance with the probabilities or is supported by contemporaneous documentation. Great caution is required before accepting her evidence.

52. Ms. Shishkina: She was one of Mr. Chernukhin's personal assistants having earlier been a secretary for him when he was at VEB. Her evidence was important, not so much because she played an important role in the material events, but because she was able to give evidence of a contemporaneous record kept by Mr. Chernukhin's secretaries (and on occasion by her) of telephone calls between Mr. Chernukhin and Mr. Deripaska. Whilst she demonstrated her loyalty to Mr. Chernukhin by leaving VEB with him in 2004 and by not returning to TGM after the takeover by Mr. Deripaska in 2010 there appeared to be no reason to doubt her honesty or the reliability of what she said about the contemporaneous records.

Peripheral witnesses

53. The third group of witnesses were those on the periphery of the disputes. In the main they gave evidence of who they thought at the time was the co-owner of TGM with Mr. Deripaska. I was not persuaded that evidence of this character was of much assistance. None of the witnesses had been party to what passed between the principal actors.

54. Ms. Belskaya: She was an in-house lawyer who worked at Rainco from 2005 until 2010 and thereafter at Basel until 2016. She gave evidence of her understanding that Mrs. Danilina was Mr. Deripaska's joint venture partner. Notwithstanding the odd aspect of her evidence that she did not know that Mrs. Danilina lived in Moscow there was no reason to believe that she was not giving evidence that she believed to be true. But I did not consider that her evidence materially advanced the debate on the essential issues.

55. Mrs. Kosovan: She worked with Mr. Chernukhin at VEB and, when he was dismissed in 2004, left with him expecting that he would find her a job somewhere else. He also agreed to pay her existing salary. He, perhaps with the assistance of Mrs. Danilina, found her a job at TGM. She earned a salary there but it was less than what Mr. Chernukhin continued to pay her. In the event Mr. Chernukhin continued to pay her until about 2011. She now works elsewhere. She gave evidence that her understanding throughout her time at TGM was that Mr. Chernukhin and Mr. Deripaska were co-owners of TGM. Her financial connection with Mr. Chernukhin was relied upon by counsel for Mr. Deripaska to damage her credibility. Obviously, it is a matter to be borne in mind when evaluating her evidence. But, although one must be cautious about such impressions, I have to say that the manner in which she gave evidence suggested that she was seeking to give her evidence honestly. She was clear in her evidence and, despite the combined efforts of counsel for Mrs. Danilina and Mr. Deripaska, was unshaken in her evidence. When she could not remember a matter she said so. When she could remember a matter she was able to assist with coherent and clear evidence. When a question was asked which she could not answer she said so. She never sought to argue any particular point.

56. Counsel for Mr. Deripaska picked up on a reference that Mrs. Kosovan made to nominees which she explained was something she had read about. I found nothing troubling about that. She was not seeking to argue a point. On the contrary she mentioned the matter in the context of saying that she did not understand such concepts as beneficial title. Towards the end of her cross-examination she said that she had asked Mrs. Danilina about the fact that she was named in the SHA as the beneficial owner of Navigator and had been told that "that is the way it has to be". This conversation had not been mentioned in any of her previous statements and so it may be that her evidence in this regard was not reliable. However, she did not seek to make anything of it; she herself said that it did not shed any light on her understanding of the matter. I remained of the view that her evidence of her understanding that Mr. Chernukhin was a co-owner of TGM was given honestly and probably represented her view at the time. However, to what extent her understanding assists the court is a different matter. She had no knowledge of what happened in late 2001 and, as she accepted, was not involved in the discussions which led to the SHA.

57. Miss Yakubovskaya: She was a deputy director general and director of finance at TGM from 2002 until 2010 and viewed Mr. Chernukhin as the true joint venture partner. The

manner in which she gave her evidence did not cause me to doubt her honesty but her evidence was challenged by an accountant whose evidence was not cross-examined. As with all peripheral witnesses who gave their opinion as to who was the true joint venture partner I did not consider that her evidence gave the court any real assistance.

58. Mr. Karetnikov: He was a driver for Mrs. Danilina and later became her personal assistant. He made two statements which supported aspects of her case. He stated in terms that they were true and that they were expressed in his own terms. But there were difficulties and inconsistencies with his statements which were identified with ease in cross-examination. In the result I formed the view that his evidence could not assist me in resolving the issues in this case. He accepted that he is a loyal employee of Mrs. Danilina and I do not doubt that he is. Unfortunately, that loyalty extended to making statements which could not be supported and, when inconsistencies were pointed out to him, refusing to acknowledge the inconsistencies. In my judgment it would be quite unsafe to rely upon his evidence.

59. Mr. Galenkin: He initially worked as a driver for Mr. Chernukhin and then provided "security" services for him. He was present at the takeover on 14 December 2010. He was very careful to downplay the relationship between Mr. Chernukhin and Mrs. Danilina. He described Mr. Chernukhin as having an "indirect interest" in TGM. That did not appear to me a phrase he would use. He passed on the opportunity to explain what it meant. He gave me every impression of being a loyal servant of Mr. Chernukhin. I was not persuaded that I could rely upon his evidence.

60. In addition to the witnesses who gave oral evidence several further written statements were adduced in evidence. Mr. Deripaska put in evidence statements from Gulzhan Moldazhanova and Paul Hauser dealing with events in Davos in early 2013 at the World Economic Forum and the subsequent attempts to complete the deal agreed in principle in Davos. There was no material dispute as to the former and as to the latter Mr. Makarov was cross-examined in detail. Neither witness was required to be cross-examined by counsel for Mr. Chernukhin. Statements were also adduced from Oxana Senko, who understood that Mrs. Danilina was the co-owner of TGM and had a meeting with Mrs. Danilina in Café Pushkin in late December 2010, and from Alexander Ageev who worked on the initial share purchases by Basel in late 2001/early 2002 and who later perceived Mrs. Danilina to be the "key figure" in Basel's "partners". Again, counsel did not require them to be cross-examined.

61. Mrs. Danilina put in evidence statements from 9 further witnesses who were not cross-examined. They were people involved in Mrs. Danilina's business life, her social life, her charitable work, in the villa in Cap d'Antibes where Mrs. Danilina stayed in August and included a doctor and an accountant. It is unnecessary to summarise their evidence.

62. Shortly before the trial began evidence was taken in the Channel Islands from two persons who assisted Mr. Chernukhin in relation to the Sanderson Trust (and other trusts) in 2007. Ms. Sharon Parr featured in many of the contemporaneous documents. Unsurprisingly, she did not appear to have any recollection of the events in question beyond what was contained in the contemporaneous documents. She had the merit of being independent but in reality her evidence began and ended with the contemporaneous documents. Mr. Christopher Bowden, unsurprisingly, had very little recollection at all of the material events.

THE TGM CLAIM

The nature of the issue on the TGM claim

63. Before narrating the many events covered in evidence and which are relied upon by the parties to this litigation it is necessary to comment briefly upon the nature of the issue before the court. Mr. Chernukhin seeks to enforce the SHA as the disclosed principal of Mrs. Danilina. *Bowstead and Reynolds on Agency* (20th ed., 2014) defines a disclosed principal at Article 2(1) as "a principal, whether identified or unidentified, whose interest in the transaction as principal is known to the third party at the time of the transaction in question." The commentary at paragraph 1-037 states that the third party must not "at the time of the transaction in question think that he is dealing with the agent alone". A person claiming to be a disclosed principal has the burden (legal, if he is the claimant, evidential, if he is the defendant as in the present case) of showing that, notwithstanding that he is not named as a party, he was in fact the principal of one of the named parties and that the other party knew that. Thus, in *Hamid v Francis Bradshaw Partnership* [2013] EWCA Civ 470 Jackson LJ stated the relevant principle in these terms at paragraph 57(4):

> The person who signed is the contracting party unless … (b) extrinsic evidence established that both parties knew he was signing as agent or company officer.

64. If a person establishes that he was the disclosed principal of a named party and that the other party knew that he will, nevertheless, not be entitled to enforce the contract if the terms of the contract expressly or impliedly confine the parties to the named parties; see *Aspen Underwriting v Credit Europe* [2018] EWCA 2590 Civ at paragraph 47. In a yet more recent case, *Kaefer Aislamienos SA de CV v AMS Drilling Mexico SA de CV and others* [2019] EWCA 10 Civ Green LJ, at paragraph 55, stated that there must be "nothing in the contract or surrounding circumstances showing that the agent is the true principal and which excludes the making of a contract with an undisclosed principal". These principles were developed in cases concerning undisclosed principals but there is no reason to suggest that substantially the same principles should not apply to cases involving disclosed principals.

65. Mrs. Danilina and Mr. Deripaska say that the terms of the SHA do in fact preclude Mr. Chernukhin from being able to enforce the SHA even if he establishes that he was the disclosed principal of Mrs. Danilina. That is an important legal issue in this case which, although covered by the parties' written submissions, was barely touched upon during oral submissions. I shall address this question fully below, after first considering the issues of fact in the TGM claim.

The circumstances of Mr. Chernukhin and Mrs. Danilina by 2001

66. Mrs. Danilina is a Russian national who lives in Russia. Whilst an economics student at the Moscow State Institute she married Dmitry Danilin in 1983. She graduated in 1984 and began work at the USSR Ministry of Foreign Trade. In 1985 she had a son and returned to work in 1987. She was involved with equipment procurement and with claims. That work enabled her to travel abroad. She separated from her husband in 1989.

67. In 1989, when she was 27 years old, she met Mr. Chernukhin, who was 21 years old. She gave evidence that they moved into a rented flat together in 1991. By 1996 she and Mr. Danilin were divorced.

68. After the collapse of the USSR, and between 1991 and 1993, Mrs. Danilina worked for Peja, an agent for foreign manufacturers of equipment and chemicals for textile production. In 1993 she set up her own company Lolatex (registered in Germany) whose business was to represent foreign suppliers in Russia. Equipment was supplied, in particular, to TGM. Lolatex employed about 15 people. One of Mrs. Danilina's witnesses, Mr. Kasper, said that Lolatex enjoyed considerable commercial success, but there does not appear to be any dispute that, after losses in 1997 and 1998, it went into liquidation. She was also involved with a textile company based in St. Petersburg. Although she did not accept that that company was of modest size she accepted that it also went into liquidation but there was disagreement as to why.

69. She gave evidence that she was the "main source of income" for her and Mr. Chernukhin. But she accepted that Mr. Chernukhin was financially adept and contributed to their success by managing the "family money", by providing financial and commercial ideas for her business and by introducing contacts that he met through work.

70. There was also unchallenged evidence from Mr. Kasper, a German businessman who was a partner with Mrs. Danilina in Lolatex, who estimated that from 1993-1996 Mrs. Danilina earned some $2 million from Lolatex. However, the only accounts he could produce were from 1997 and 1998 when he said the business was "slowing down."

71. Mr. Chernukhin was born in 1968. He worked at the Ministry of Trade from 1986 until 1996 (save for two years when he served in the Soviet Army). He obtained undergraduate degrees in Diplomacy and Economics from the Moscow Institute of International Economic Relations. In 1996 he joined a Russian financial institution, Vneshekonombank ("VEB"). By 1998 he was appointed a member of the board of directors and in 1999 was appointed Vice-Chairman. In 2000 (when he was aged 32) he was appointed a Deputy Minister of Finance in the Russian Federation. He appears to have been friendly with Mr. Kasyanov, the Prime Minister. In 2002 (aged 34) he was appointed Chairman of VEB. In that position he had "regular meetings" with the President of the Russian Federation.

72. At the same time, he was a member of the board of many other institutions and companies. He gave evidence that he invested in projects, often as a 50% shareholder, with other prominent members of the Russian economic establishment. Mrs. Danilina said that as a state official he was not permitted to use his position for his own benefit. Mr. Chernukhin did not think that was true but he accepted that discretion was required. (There was agreement between the Russian law experts that an employee of VEB was not prohibited from engaging in entrepreneurial activities. There was also agreement that a civil servant was prohibited from engaging in such activities but that they were permitted to purchase their own shares in legal entities so long as they were transferred to fiduciary management for the period of their public service. It would therefore appear that Mr. Chernukhin was right to say that discretion was required.)

73. Mr. Chernukhin appears to have been successful in acquiring wealth but to what extent is not apparent from the evidence. He referred in his evidence to a 2004 report on his income prepared by his bank. He said it showed an income of RUB 1.5 billion (of the order of $55 million) which he said he derived from equity trading. However, that figure appears to have been his gross income. His expenses were stated to be considerable (of the order of RUB 1.49 billion) which would suggest that his net income was very much less than he suggested. It is odd that he made such a mistake but there did not appear to be any dispute that Mr. Chernukhin had prospered in Russia after the collapse of the USSR. Counsel for Mr. Deripaska described him as appearing to be or to have been "very wealthy".

74. In a list of Russia's "most influential businessmen" published in 2003 Mr. Chernukhin is listed amongst those with "strong influence". In that category he is a number 23 (whilst Mr. Deripaska is at number 11 in the same category). The list is headed with a note describing Mr. Chernukhin as an "Up and Coming Leader". When cross-examined Mr. Deripaska accepted that Mr. Chernukhin was an extremely useful person to know and do business with.

75. On 15 April 2004 Mr. Chernukhin was awarded the Order of Honour for his achievements in finance and economics. But on 27 May 2004 he was summarily dismissed by President Putin. He believes that his close friendship with Mr. Kasyanov, who had in February 2004 been dismissed as Prime Minister, was the cause. Shortly afterwards he left Russia (and has never returned) and has settled in the UK. In 2011 he became a UK citizen.

76. With regard to Mrs. Danilina he said that she was his "girlfriend" but he does not accept that they lived together on a permanent basis or as a family. He accepts that he spent time at her residence in the course of their relationship but the amount of time spent there varied, "as the strength of our personal relationship fluctuated over time". He said that he had his own flat at all times from the early 1990s. In giving this evidence Mr. Chernukhin was not, I think, being frank with the court. His insistence that they were never married (true) and his understanding of the issues in the case led him to downplay the extent of his relationship with Mrs. Danilina. This was apparent when, in cross-examination, he accepted that they presented themselves as a couple. It is unnecessary to make any more detailed finding than that from some time in the 1990s up until 2004 Mr. Chernukhin and Mrs. Danilina had a close personal relationship which involved them spending much time together and appearing to be a couple, though never married. It appears not to have been an exclusive relationship on his part.

77. Mr. Chernukhin said that he did not observe Mrs. Danilina to have any significant income of her own and that he supported her and found positions for her with his friends. When cross-examined he accepted, as stated in a document referring to Mrs. Danilina's affairs in 2001 (though in fact dated 24 January 2018), that she had substantial amounts in her account. Counsel said they equated to some $13 million. However, Mr. Chernukhin said that was his money.

78. I have concluded that Mr. Chernukhin's evidence on this particular matter is likely to be true, for three reasons.

79. First, his evidence is supported by the probabilities. It is difficult to see how Mrs. Danilina could have accumulated such wealth herself having regard to the modest size and ultimate failure of Lolatex and the St. Petersburg textile company. Although it would be difficult for an officer of a bank or a junior minister in the West to accumulate wealth otherwise than through his salary and other benefits available to him pursuant to his contract of employment or his office, it is possible to see how Mr. Chernukhin, operating in Russia after the collapse of the USSR and at a time of huge political, economic and social change, might have accumulated wealth by reason of his position at VEB and his involvement in private enterprise.

80. Second, Mr. Deripaska accepted that Mrs. Danilina "did not have sufficient money to make an investment in TGM".

81. Third, Mrs. Danilina said, when cross-examined:

> Because '90s were years, '90s, beginning of 2000s, especially '90s, end of '90s, there was a quite tough situation about politicians or State officials in Russia. That is why my husband -- sorry my -- Vladimir, he preferred not to get registered, and to have all the assets with me up to a certain moment.

82. This acceptance that his assets were "with me" because of the "tough situation" for state officials in Russia is striking support for Mr. Chernukhin's evidence that the sums held by Mrs. Danilina were in fact his.

Mr. Deripaska

83. Mr. Deripaska was born in the city of Dzerzhinsk, Nizhny Novgorod, in 1968. Thus, he is the same age as Mr. Chernukhin. In 1993 he graduated from the Physics Department of Moscow State University. After the collapse of the USSR he, like Mr. Chernukhin, made use of the opportunities which that event created. He is now the owner and Chairman of the Supervisory Board of Basic Element ("Basel"), one of the largest diversified industrial groups in Russia. The Basel group was established in 1997 and in 2001 moved into offices across the road from TGM in Central Moscow. Like Mr. Chernukhin he was listed in 2003 as being a businessman with strong influence (though he was higher up the league table than Mr. Chernukhin). He is, it appears, very wealthy indeed. Unlike Mr. Chernukhin he has not left Russia.

The purchase of shares in TGM in 2002

<u>The investment opportunity and the initial approach to Mr. Deripaska</u>

84. Mrs. Danilina gave evidence that she learnt about a possibility to acquire a controlling interest in TGM, a venerable Russian textile company, in 2001 and that she and Mr. Chernukhin "took a family decision to acquire an interest in TGM for me". She said that she required a partner and suggested Mr. Deripaska. She asked Mr. Chernukhin to give Mr. Deripaska a call, and he did. Mr. Deripaska confirmed his interest several days later. She learnt that the price would be in the region of $10 million and, she said, she arranged for Mr. Chernukhin to pay half of that, $5 million, "using my money held in bank accounts at Interprom Bank and MDM Bank".

85. Mr. Chernukhin had no recollection of Mrs. Danilina raising the issue of investing in TGM with him. On the contrary, his recollection was that he raised the issue with her. He said: "I no longer recall the specific conversation but I am certain that I mentioned my intended investment in TGM to Mrs. Danilina." He said the opportunity to invest in TGM was brought to him by Mr. Kireyev (whilst Mrs. Danilina said that it was she who was told by Mr. Kireyev about the opportunity).

86. Mr. Kireyev provided a witness statement. He did not give evidence but it was adduced in evidence by Mr. Chernukhin pursuant to the Civil Evidence Act. He said that he informed Mr. Chernukhin of the opportunity to invest in TGM. He is obviously close to Mr. Chernukhin and, as stressed by counsel on behalf of Mr. Deripaska, had close business and financial connections with him. Mr. Kireyev referred to Mrs. Danilina being introduced to him as Mr. Chernukhin's "girlfriend" which description suggested to me that he was very much in Mr. Chernukhin's camp and happy to say what was suggested to him. His close business relationship with Mr. Chernukhin is suggested by the 35 entries in the telephone notebooks of Mr. Chernukhin's secretaries which refer to him. Although those entries do not relate to 2001 they make it more likely than not that it was Mr. Chernukhin to whom the opportunity was introduced rather than Mrs. Danilina. There was no evidence of a close business relationship between Mr. Kireyev and Mrs. Danilina though she did have an account at the bank of which he was apparently co-owner and chairman**.**

87. Mr. Chernukhin said that his need for a partner was not financial but because he wanted a prominent private businessman to be the public face of the project. That is consistent with what he himself described as a need for someone in his position with VEB and the government to be discreet (and with the agreed evidence of Russian law to which I have referred.) He therefore approached Mr. Deripaska who was agreeable. He said that Mr. Deripaska became the majority shareholder in TGM in 2002. He said that he recalls that he paid $5 million in respect of his investment. He said the money had no connection with Mrs. Danilina and that its source was his income from his "professional activities and his private investments". He was however quite unable to adduce contemporaneous documentary evidence of such payment.

88. Thus, although they disagree on many matters, Mrs. Danilina and Mr. Chernukhin agree that it was he who first approached Mr. Deripaska on the subject of TGM.

89. By contrast, Mr. Deripaska said in his evidence that it was Mrs. Danilina who approached him. He said he had met her socially in the house of the Prime Minister and his wife. He said that she had influence too.

90. If Mrs. Danilina had approached Mr. Deripaska on the subject of TGM it is likely that she would have recalled doing so. Yet her recollection was that she asked Mr. Chernukhin to make the call. The evidence that it was Mr. Chernukhin who contacted Mr. Deripaska, being in a sense against Mrs. Danilina's interest, is likely to be true. Moreover, given Mr. Chernukhin's position and influence (which must have been superior to that of Mrs. Danilina notwithstanding her friendship with the Prime Minister and his wife) the probabilities are that it was he, rather than Mrs. Danilina, who raised the subject of TGM with Mr. Deripaska. I prefer her evidence and that of Mr. Chernukhin on this matter to that of Mr. Deripaska.

The reason for investing in TGM

91. Mr. Deripaska accepted when cross-examined that the plan was to move TGM's textile business out of Moscow. However, he would not accept that the reason why he was interested in purchasing TGM was because of the development potential of the site in Moscow. He said that the reason was to enter and consolidate the textile industry. In this regard it is to be noted that there are internal Basel documents and a joint strategy document which was prepared in September or October 2002 and which was signed by him and Mrs. Danilina which support an intention to purchase and consolidate several textile companies at considerable expense. However, Mrs. Danilina gave evidence that property development was Mr. Deripaska's primary interest when he bought TGM and Mr. Golovin, who was instructed to research TGM in 2001 on behalf of Mr. Chernukhin, said in a witness statement obtained by Mr. Deripaska for the purposes of the arbitration that "based on our analysis, it was clear to us that the main value of TGM lay in the development potential of its territory in the centre of Moscow". Further, in the arbitration Mr. Deripaska's case, as presented by his counsel, was that TGM's textile business was consistently loss making, blocked the development of the site and was an "expensive white elephant".

92. Although there was, it seems, an intention that the textile business of TGM would continue (though out of Moscow) and that Mrs. Danilina, with her experience of textiles, would be involved in its management and although the purchase of other textile companies was under consideration by Mr. Deripaska and Mrs. Danilina later in 2002, I find it very difficult to accept Mr. Deripaska's evidence that he agreed to invest in TGM because of its textile business rather than because of the development value of the site in Central Moscow. I prefer Mrs. Danilina's evidence, supported by the statement of Mr. Golovin, that what motivated Mr. Deripaska's interest in TGM was its development potential. The strategy document dated 15 October 2002, although it is mentioned in an unsigned draft shareholders' agreement bearing the date 2002, makes no further appearance in the narrative. As TGM continued to be loss making it would appear that any intention to consolidate the Russian textile business fell by the wayside.

The purchase of shares in TGM

93. There is evidence that shares in TGM were purchased over a period of time by companies owned by Mr. Deripaska. The chronology provided to the court refers to the shares being purchased on various dates between 14 January 2002 and 18 November 2002. There was other evidence (from Mr. Tonkacheev) that shares continued to be purchased until July 2004, when over 75% of the shares of TGM had been acquired.

94. Legal title to the shares appears to have rested with Mr. Deripaska's companies. In addition to certain sums being paid for the shares as stated in the share purchase agreements Mr. Tonkacheev said that "an additional substantial payment was made to purchase" the stake in TGM. There was also evidence from Mr. Ageev, a senior lawyer in Basel, that a payment was also made offshore. Mr. Chernukhin gave evidence that such payments were made using offshore special purpose vehicles. Precisely who paid what and when is not apparent from any contemporaneous documents. However, the parties to the SHA agreed by a Settlement Reconciliation Act signed in March 2006 (discussed below) that Party 1 (named as Filatona and Mr. Deripaska) had contributed $5,613,058 to the costs of purchasing 75.4% of TGM and a further $1,563,089 in other

costs and that Party 2 (named as Navigator and Mrs. Danilina) had contributed a total of $5 million to the costs of purchasing 75.4% of TGM and a further $2,069,720 in other costs. Thus Party 1 had contributed $7,176,147 in total and Party 2 had contributed $7,069,720, a roughly 50/50 split. That appears to be good evidence (or least an agreed position) of what was paid by both parties, notwithstanding that neither Mr. Chernukhin nor Mrs. Danilina was able to adduce any evidence of when Party 2 paid its share. It seems more likely than not that Mr. Chernukhin paid Party 2's share by way of an offshore payment.

95. It was submitted on behalf of Mr. Deripaska that the court should accept that the Settlement Reconciliation Act was only signed to enable the project to proceed, that no evidence of payment by Party 2 had in fact been provided and that the court should not accept that the initial contribution of $5 million was ever made. In my judgment this was an unrealistic submission bearing in mind that the Settlement Reconciliation Act dated back to 2006 and was not challenged at the time or for a very long time thereafter. It is also improbable that Mr. Deripaska would have agreed to the Settlement Reconciliation Act, not because it was accepted that Party 2 had paid its share, but because he wished to proceed with the venture in circumstances where his joint venture partner had not paid his financial contribution to it.

Absence of a formal joint venture agreement

96. It is, to Western eyes, remarkable that a joint venture for the purchase of a controlling interest in a company owning land in Central Moscow for a sum of about $10 million in 2001-2 was not recorded in a formal document at the time. Indeed, there was evidence from Mr. Tonkacheev that it was Mr. Deripaska's general practice to insist upon a shareholders' agreement for any new joint venture. But it seems clear that in this case, although there was an agreement to purchase a controlling interest in TGM and that such an interest was purchased in early 2002, the parties to the joint venture did not record their agreement in a binding document at that time or at any time thereafter until the SHA was signed in May 2005.

97. There were several draft "partnership agreements". The first (I was told) was dated 5 February 2002. The parties were described as Party 1 and Party 2 but were not named. Another, entitled "shareholder agreement on conduct of joint business" was said to have been sent to Mr. Tonkacheev on 27 December 2002. It also referred to the parties as Party 1 and Party 2 but did not name them. A second version of this draft referred in the recitals to the parties having signed the Textile Business Strategy document on 15 October 2002. That is a pointer to Mrs. Danilina being one of the parties because she signed the strategy document as "shareholder 2". However, this reference appears to have been deleted in the next draft "partnership agreement" which, according to the index of documents, was dated 5 February 2003. Nothing of reliable significance can be deduced from these drafts. They were, after all, but drafts.

98. Mr. Chernukhin has explained his unwillingness to enter into any formal arrangements by reference to the fact that he was then Deputy Minister of Finance and later Chairman of VEB. I infer from this and from his acceptance of the need to be discreet that it was not appropriate or advisable for a minister or a chairman of a bank to be seen to be involved in private enterprise of this character. He said that he relied upon Mr. Deripaska's word of honour but that, in any event, the risk was worth taking because

$5 million was "not hugely significant to me at the time". Later in his statement he explained the need to be discreet by reference, not only to the risk that pressure might be put on him in his capacity as deputy finance minister or as chairman of VEB or that allegations might be made of a conflict of interest, but also to the need to protect his investments from corporate raids.

99. Mrs. Danilina's explanation for not entering into a formal written agreement in 2002 was that she "felt it was too early in the process". She wished to "better understand the issues facing TGM" and "the potential development of the site" before "we committed to a way forward." This appears to confuse, as was suggested to her in cross-examination, an agreement setting out the relationship between the two joint venturers with a business plan for the joint venture. Her explanation does not therefore make sense to me.

100. Mr. Deripaska said in his witness statement that "I was prepared to let matters ride initially for a couple of years and see whether Mrs. Danilina was able to turn around the business and begin to generate some positive cash flow." That suggests that he would be prepared to make a formal written agreement once she had proved herself. But it does not appear that she succeeded in making TGM into a profit-making concern and yet a formal SHA was eventually agreed in 2005. It is therefore unlikely that Mr. Deripaska did not record the joint venture in a binding document for the reason he gave. When cross-examined he gave another reason, that he was "quite busy those days, I manage Rusal energy company, investment and many other industries." He was unable, it seems to me, to give a convincing reason as to why he did not follow what Mr. Tonkacheev said was his usual practice of insisting upon a shareholders' agreement for any new joint venture.

101. It was submitted on behalf of Mr. Deripaska that the relationship was only begun to be formalised in 2004 because a blocking stake of 75.4% of the shares had been acquired in June 2004. This was based upon an answer given by Mr. Tonkacheev when this matter was explored with him. The difficulty with his answer is that it sits unhappily with his first witness statement dated June 2016 when he stated that the TGM project was no exception to Mr. Deripaska's practice of insisting upon signing a shareholders' agreement for a new venture. He referred to the acquisition of 75.5% of shares in TGM by July 2004 but did not suggest that that was why Mr. Deripaska had not signed a shareholders' agreement in 2002 or 2003.

102. In May 2004 Mr. Chernukhin was dismissed as chairman of VEB. The very next month draft term sheets were produced concerning the relationship between the parties to the joint venture regarding TGM. The fact that they were produced shortly after Mr. Chernukhin ceased to be chairman of VEB is consistent with his explanation of the reason why there was no formal agreement in place before then. I consider it more likely than not that his explanation was correct and that Mr. Deripaska understood why there could be no formal agreement whilst Mr. Chernukhin was a deputy minister and chairman of VEB.

103. The absence of a formal agreement created risks for both Mr. Chernukhin and Mr. Deripaska. But at the time they were each aged 32 or 33, they had both succeeded in the turbulent world of Russia after the collapse of the USSR and it appears that they were young men prepared to take risks.

Subsequent contact between the parties

104. Although legal title to the shares in TGM rested with Mr. Deripaska's companies it appears that "Party 2" provided the new management for TGM. Thus, in January 2002 Mr. Danilin was the first General Director and Mrs. Danilina was deputy General Director and chair of the supervisory board. Some who had been with Mr. Chernukhin at VEB moved to TGM.

105. There is a dispute as to whether, after the purchase, discussions with Mr. Deripaska concerning TGM took place with Mrs. Danilina or with Mr. Chernukhin. Mrs. Danilina and Mr. Deripaska say they discussed TGM together. Mrs. Danilina said that she was "the one who met with Mr. Deripaska" and that she did so "at least once every quarter". Mr. Deripaska said that he met her "numerous times". Mr. Chernukhin said that Mr. Deripaska's discussions were with him. He said that he "spoke to Mr. Deripaska … from time to time".

106. Mr. Chernukhin's evidence in this regard is supported by contemporaneous notes kept by his secretaries of some 25 contacts between him and Mr. Deripaska in 2002-2004. The notebooks were explained by Ms. Shishkina. They recorded both people who called and people whom Mr. Chernukhin contacted. A plus sign by a name indicated that there had been an incoming call and that, later, contact had been established. She accepted that she could not say what had been discussed. The recorded contacts with Mr. Deripaska dated from December 2002 until September 2004. (It appears that the surviving notebooks cover the periods from 11 October 2002 until 3 June 2003 and from 23 December 2003 until 8 September 2004.) Mr. Deripaska's initial evidence was that he and Mr. Chernukhin never did any business together. Yet they had many contacts in 2002-2004 as the notebooks establish. There was one recorded in December 2002, five in 2003 and twelve in 2004 before the end of April 2004.

107. The entries do not state to what business they related. But in circumstances where Mr. Chernukhin had approached Mr. Deripaska to suggest an investment in TGM, to which Mr. Deripaska agreed, and where thereafter a controlling interest in TGM was indeed purchased, it is more likely than not that the contacts between Mr. Chernukhin and Mr. Deripaska recorded in the notebooks concerned TGM. It is of course possible that some did not. When Mr. Deripaska was shown these entries in the arbitration he made a further statement in which he said that he did not discuss "the management of TGM with Mr. Chernukhin at the time". However, he did not say to what the entries related beyond pointing out that they do not indicate that they may have related to TGM. He suggested that they may have related to Mr. Chernukhin's activities as chairman of VEB.

108. When cross-examined in this trial Mr. Deripaska said that Rusal (Mr. Deripaska's company) dealt with VEB from 2000 concerning a particular company and that these contacts may have concerned that matter. This suggestion sits uncomfortably with his evidence before the arbitrators that he and Mr. Chernukhin never did business together. I did not find his suggestion to this court persuasive. Counsel on behalf of Mr. Deripaska suggested that some the entries may have related to a gas project but it is to be noted that that suggestion was not made by Mr. Deripaska and that in his further witness statement in the arbitration he said he did not know to what those entries which mentioned a map of gas deposits referred.

109. Mr. Novikov was Mr. Deripaska's PA at the time. He has recovered his notebooks from his home. He said that he had forgotten about them and so they were not disclosed in the arbitration. But a request made in the context of the s.68 challenge by Mr. Deripaska's solicitors for notebooks caused him to recall that he had taken notebooks from his office to his home. From those notebooks he has extracted one note which he says evidences a meeting between Mr. Deripaska and Mrs. Danilina on 14 December 2002. The entry does not purport to record a meeting involving Mr. Deripaska but it was Mr. Novikov's evidence that it did. It is significant that there are no entries of calls between Mr. Deripaska and Mr. Chernukhin and yet it is reasonably clear from the records of Mr. Chernukhin's secretaries that there were such calls. Mr. Novikov said that records of Mr. Deripaska's diary were in fact kept by Mr. Deripaska's secretaries but none have been disclosed.

110. I regard the documentary record from Mr. Chernukhin's secretaries as cogent and persuasive evidence that discussions took place between Mr. Deripaska and Mr. Chernukhin between 2002 and 2004. It is more likely than not that such discussions, or at any rate some of them, concerned TGM. This documentary record thus supports Mr. Chernukhin's case. There may have been one meeting between Mr. Deripaska and Mrs. Danilina on December 2002. That a meeting took (or may have taken) place in December 2002 cannot be a matter of surprise given Mrs. Danilina's role in TGM's textile business and the discussions at that time concerning textile industry strategy. But neither Mr. Deripaska nor Mrs. Danilina can refer to contemporaneous notes of any more meetings or calls between them in the period 2002-2004. If she were the true party to the SHA one would have expected there to be quite a few. They have said there were such contacts but, in the absence of contemporaneous support, I am unable to accept that evidence.

The negotiations in 2004

111. The first draft term sheet was dated 17 June 2004. Further drafts were dated 25 June, 30 June, 9 July, 9 September, 27 September, 30 September and 12 October 2004. Mr. Chernukhin's secretaries' notes suggest that there were contacts (or attempted contacts) between Mr. Chernukhin and Mr. Deripaska on 22, 23, 24, 25, 29 and 30 June 2004, 27 July 2004, 3 August 2004 and 6 and 8 September 2004. The juxtaposition of the draft terms sheets and the contacts between Mr. Chernukhin and Mr. Deripaska strongly suggests that the meetings concerned the term sheets. There is therefore contemporaneous evidence that Mr. Chernukhin and Mr. Deripaska were discussing the terms of the joint venture together. There is no contemporaneous evidence that Mr. Deripaska and Mrs. Danilina had such discussions.

112. Mr. Deripaska "presumed" in his further witness statement in the arbitration that these calls or meetings "might have related to Mr. Chernukhin's requests for my assistance after he had been dismissed from VEB". Whilst this is possible (the dismissal was on 27 May 2004) I am unable to give significant weight to this suggestion. The juxtaposition of the contacts (from 22 June until 8 September 2004) and the iterations of the term sheets (from 17 June until 12 October 2004) is more persuasive than Mr. Deripaska's suggestion.

113. The early term sheets noted Basel as Party 1, but no name was noted for the Partner.

114. The first term sheet dated 17 June 2004 contemplated (see the box entitled shareholders) that the shareholders would be a non-resident company of Basel and a non-resident company of the Partner. It also contemplated (see the box entitled Terms of Financing) that each shareholder would provide a long-term loan in an equal amount to finance the purchase of the asset.

115. The second term sheet dated 25 June 2004 was in similar terms but, by deletions and terms added in italics, manifested evidence of further negotiations. One such clause was the non-competition clause which sought to prevent independent development activities in an area in Moscow. Another term, entitled Individual Development Projects, also concerned particular development projects. It is improbable that the terms concerned with property development were introduced by or on behalf of Mrs. Danilina. There was no suggestion that she was concerned with property development. It is probable that they related to the activities of Mr. Chernukhin.

116. The third term sheet dated 30 June 2004 was in similar terms but evidenced further negotiations. A new clause entitled Procedure for the Cooperation of the Parties in case of Issuer's Restructuring (the Issuer being TGM) provided that in the event that the business of TGM was divided into textile and development the management of the textile business was to be carried out by "representatives of the Partner" and the management of the development business would be carried out by the "Parties jointly, on a parity basis".

117. The fourth and fifth term sheets dated 9 July and 9 September 2004 were in similar form, as were the sixth and seventh term sheets dated 27 and 30 September 2008.

118. The eighth term sheet was signed by Mrs. Danilina on 12 October 2014 and by Mr. Deripaska on 11 November 2004. It names Mrs. Danilina as the Partner. Like its predecessors it contemplated that finance would be provided by both Basic Element and Mrs. Danilina. Mr. Deripaska was asked why he had agreed to that in circumstances where he knew, as he had accepted, that she did not have the requisite funds. Apart from saying that that was her problem he did not give an answer. It seems to me unlikely that Mr. Deripaska would enter into a transaction with a person whom he knew did not have the requisite funds. One reason for doing so was that he knew that she had been named as party as a front for Mr. Chernukhin.

119. It was submitted on behalf of Mr. Deripaska that the fact that the term sheets contemplated Party 2 as having exclusive management of the textile business was "strong evidence" that Mrs. Danilina was the joint venture partner. I do not view it in that light. It is consistent with Mrs. Danilina having knowledge and experience of the textile business and with there being a need for such knowledge and experience when the business of TGM had to be carried on for "social" reasons (albeit that it might be moved out of the centre of Moscow). TGM could not simply be closed down overnight and the site redeveloped. But the requirement for Party 2 to share the finance of the project is not consistent with Mrs. Danilina being the joint venture party.

120. The signed term sheet includes on each page certain other signatures, one of which was Mr. Kargin's. It is common ground that he was involved in the negotiations. There was a dispute as to whether Mr. Kargin was negotiating on behalf of Mr. Chernukhin or on behalf of Mrs. Danilina. However, in circumstances where there is cogent

contemporary evidence that Mr. Chernukhin was discussing the term sheets with Mr. Deripaska and none that Mrs. Danilina was discussing the terms sheet with Mr. Deripaska it is more probable than not that Mr. Kargin was instructed on behalf Mr. Chernukhin. The telephone records and the provisions in the term sheets relating to non-competition in relation to property development in Central Moscow support Mr. Kargin's own evidence that he was instructed by Mr. Chernukhin.

121. Mr. Chernukhin said that the reason for naming Mrs. Danilina as party was to hide his involvement and so to protect his investment from those who might wish to attack him. Whilst the efficacy of such a ploy is to be doubted, given that his relationship with Mrs. Danilina must have been well known, there is support for his evidence from Mrs. Danilina in a passage I have already quoted. When cross-examined she said:

> Because '90s were years, '90s, beginning of 2000s, especially '90s, end of '90s, there was a quite tough situation about politicians or State officials in Russia. That is why my husband -- sorry my -- Vladimir, he preferred not to get registered, and to have all the assets with me up to a certain moment.

122. The reference to "registered" refers to registering a marriage. But the comment confirms the risks in Russia at the time and Mr. Chernukhin's wish to have his assets held by her as, I infer, a means of protection from those risks. She denied that this comment of hers applied to TGM and insisted that TGM was "purely my project". I nevertheless consider that her comment was revealing.

123. Counsel for Mr. Deripaska submitted that Mr. Chernukhin gave inconsistent evidence as to when he decided to use Mrs. Danilina's name as his nominee, on one occasion linking it to his departure from Russia (which was after Mrs. Danilina signed the term sheet) and on another occasion linking it to the signing of the SHA (which occurred in May 2005). I am not surprised at such inconsistencies given the interval of time between 2004 and his evidence to the arbitration tribunal and the court. But his evidence as to the reason for using her name as his nominee is supported by the probabilities and the evidence of Mrs. Danilina herself.

Navigator Equities Limited and The Compass Trust

124. At the same time that negotiations were underway over the term sheets, Mr. Chernukhin made arrangements for the shareholding in TGM to be held by an offshore corporate and trust structure. He said he instructed Mr. Kargin in this regard. Mrs. Danilina gave evidence that such instructions were given by her.

125. On 10 August 2004 Navigator Equities Limited and Navigator Finance Limited were incorporated. On 7 September 2004 the name of a BVI company, Haloran Finance Incorporated, which had been incorporated on 10 March 2004 and of which Mr. Kargin was the sole director, was changed to Compass View Limited. Mr. Kargin caused Navigator to issue 100 shares in favour of Compass View which Continental Administration Services ("CAS"), a Swiss corporate services provider, was to hold on trust.

126. Late disclosure during the trial revealed that the declaration of trust signed by CAS was in blank. The name of Mr. Chernukhin was not in fact inserted until 2015 when it was added by Mr. Kiener after he had sought confirmation from Mr. Kargin that that was in order. It appears that two copies of the declaration in blank had been provided, on Mr. Kargin's instructions, to Mr. Kiener in 2011. They were obtained from a safe in Geneva. Three further copies were kept by Mr. Chernukhin in a "family" safe.

127. But it also appeared from late disclosure that by a declaration of trust dated 2 August 2004 a trust known as the Compass Trust was created. The trustee of the Compass Trust was stated to be Compass View Limited and the beneficiaries were stated to be "charities" and "such other person or persons as are added to the class of Beneficiaries in exercise of the power conferred upon the Protector by clause 10 (below)." Also on 2 August 2004, Mrs. Danilina was appointed Protector by the trustee. There is a document bearing the date 2 August 2004 which states that on that date she appointed Mr. Chernukhin as an additional Protector.

128. On 16 September 2004 Mrs. Danilina as Protector declared Mr. Kargin to be an additional beneficiary of the trust. The reference to Mrs. Danilina as Protector raises a doubt as to whether Mr. Chernukhin had in fact been made an additional Protector on 2 August 2004.

129. The disclosed documents contain two letters of wishes by Mr. Kargin, each dated 2 August 2004 in relation to the Compass Trust. The first, which has a line through it, refers to Mrs. Danilina as the First Protector and informs the trustees that they should consult closely with her. The second refers to the protectors of the trust being Mrs. Danilina and Mr. Chernukhin and informs the trustees that in the event of any disagreement between them the recommendations of Mr. Chernukhin should take precedence over the recommendations of Mrs. Danilina.

130. There are problems with these documents. There was no company named Compass View Limited until 7 September. Yet the Declaration of Trust dated 2 August 2004 names it as trustee. (The explanation may be that a resolution in connection with the change of name was passed on 2 August 2004.) The letters of wishes signed by Mr. Kargin were dated 2 August 2004. Yet he was not appointed a beneficiary until 16 September 2004. There is also, as I have noted, a question as to whether Mr. Chernukhin was made an additional Protector on 2 August 2004.

131. By a "Form A" dated 31 August 2004 (a document required by the Swiss authorities to identify beneficial owners of companies holding Swiss bank accounts) Compass Trust was declared, apparently by Mr. Kargin, who signed the Form A, to be the beneficial owner of assets held by Navigator Equities Limited. That Form A bore a manuscript note to the effect that it had been annulled and replaced as from 4 November 2005.

132. There was therefore an issue, unheralded by anything in the Opening Skeleton Arguments, as to whether the beneficial owner of Navigator was the person on whose behalf CAS held the shares in Navigator or whether it was the beneficiary of the Compass Trust.

133. The rival arguments, as set out in the Closing Submissions, were as follows. On behalf of Mr. Deripaska it was submitted (see paragraph 29(j)) that "the shares were held on

trust with Mrs. Danilina as either the actual or at least contemplated beneficial owner" of the Compass Trust and that (see paragraph 30) the apparent beneficiary, Mr. Kargin, held as nominee for Mrs. Danilina. This was based upon the Compass Trust documents. A similar submission was made on behalf of Mrs. Danilina (see paragraph 43) that she was intended to be the beneficiary of the Compass Trust but if not then Mr. Kargin held the interest on trust for Mrs. Danilina. On behalf of Mr. Chernukhin it was submitted that CAS held the bearer shares in Compass View on behalf of Mr. Chernukhin (see paragraph 59) and that the Compass Trust was merely contemplated as part of Mr. Chernukhin's protective structure but was never used (see paragraph 60). On behalf of Mr. Kargin it was also submitted that the Compass Trust structure was never used (see paragraph 47).

134. The period from June to October 2004 was an active period for Mr. Kargin. Not only were he and Mr. Chernukhin engaged in the negotiations over the term sheets and SHA with Mr. Deripaska and Mr. Tonkacheev, but Mr. Kargin had also been instructed to set up an offshore corporate and trust structure to hold the interests of "party 2" in TGM. The documents suggest that at least two structures were considered. One was that in which CAS held the bearer shares in Compass View (and hence the shares in Navigator) on trust for someone whose name was not at the time to be found on the declaration of trust. The other was that in which the shares in Navigator were held on trust for the Compass Trust. Although the relevant documents were disclosed at a very late stage there was some cross-examination about them. Mr. Chernukhin could not assist save to say that at the time several possibilities as to how to hold the shares in Navigator were under consideration. Mr. Kargin said that the declaration that the beneficiary was the Compass Trust was a mistake and that the Compass Trust structure was not in any event used. However, I formed the view that he was seeking to do no more than reconstruct what had happened by considering the documents. That is the court's task. Although he claimed a recollection of a meeting on 2 August 2004, that seems most improbable. The documents came too late for Mrs. Danilina to be cross-examined about them. She had given evidence that she had understood that Mr. Kargin would hold shares in Navigator on her behalf but made no reference to Compass Trust or to having been the Protector of a trust.

135. The muddle of documents relating to this matter is, perhaps, consistent with Mr. Chernukhin's evidence that a number of corporate and trust structures were under consideration. But, for the reasons I have given when commenting upon his evidence and having regard to his failure to disclose the documents in question until they were extracted from him before and during the trial, I find it difficult to place any weight on his evidence. I have to have regard to the probabilities with particular regard to the factual context in which the documents were created. I shall consider the probabilities later in this judgment, after recounting a change to the corporate and trust structure in 2005.

Mr. Chernukhin's departure from Russia

136. In November 2004 Mr. Chernukhin left Russia, never to return, and settled in London. The catalyst for his sudden departure was the arrest of Mr. Mikhailov, who worked for Mr. Chernukhin, on suspicion of corruption. When cross-examined Mr. Chernukhin accepted that it was "more or less correct" to say that he left Russia because he was concerned that he might be arrested also. It is also likely that, in circumstances where

his mentor, the former Prime Minister, had been dismissed from office, Mr. Chernukhin feared further action against him.

The SHA

137. In due course (following the production of draft SHAs in December 2004 and 9 February 2005) the SHA was agreed on 31 May 2005 naming Mrs. Danilina as the beneficial owner of Navigator Equities Limited.

138. There is an undated document produced by Mr. Kargin and his assistant Mr. Solovyev, the metadata of which shows that it was drafted on 16 March 2005. It states, in relation to the preamble to the SHA: "Discuss: who will be named beneficial owner". Counsel for Mr. Kargin submitted that this was consistent with Mr. Kargin's evidence that Mr. Chernukhin continued to hesitate about who should sign the SHA on his behalf. Counsel for Mr. Deripaska suggested that it could equally apply to uncertainty as to who was to be named as the beneficial owner of Filatona. Although it is an intriguing comment, more likely referable to Navigator (given that it came from Mr. Kargin and his assistant) I was not in the end persuaded that this comment materially assisted in the resolution of the TGM issue. Although, superficially, it is consistent with Mr. Chernukhin's case too much has to be read into it. Counsel for Mr. Chernukhin did not, I think, place reliance upon it.

139. Mrs. Danilina signed the SHA as did Mr. Deripaska. The SHA was also signed by Mr. Kargin on behalf of Navigator and by a director on behalf of Filatona. Mr. Chernukhin was in London at the time. Mr. Novikov's note book refers to meetings between Mrs. Danilina and Mr. Tonkacheev on 27 and 31 May 2005. It is likely that these were the occasions on which Mrs. Danilina initialled and signed the SHA. There is no reliable evidence that Mr. Deripaska and Mrs. Danilina signed at the same time. The notebook does not refer to Mrs. Danilina and Mr. Deripaska being present together.

140. It is necessary to set out the description of the parties in the SHA:

> **THIS AGREEMENT** was concluded on 31 May 2005.
>
> BETWEEN:
>
> **FILATONA TRADING LIMITED,** a company registered in accordance with the laws of the Republic of Cyprus (registration number No. 160653), hereinafter referred to as "**Shareholder 1,**" and also the Beneficial Owner of Shareholder 1, Oleg Vladimirovich Deripaska (passport No. 95 03 468768 issued by the Department of Internal Affairs of the town of Sayanogorsk, Republic of Khakasiya on 11 September 2003, hereinafter referred to as "**Beneficial Owner 1,**" Shareholder 1 and Beneficial Owner 1 hereinafter jointly referred to as **"Party 1";**
>
> **NAVIGATOR EQUITIES LIMITED,** a company registered and operating in accordance with the laws of the British Virgin Islands (registration number No. 609747), hereinafter referred to as "**Shareholder 2,**" and also the Beneficial Owner of

> Shareholder 2, Lolita Vladimirovna Danilina (passport No. 45 06 419120 issued by the Department of Internal Affairs of the district of Dorogomilovo on 30 April 2004), hereinafter referred to as "**Beneficial Owner 2,**" Shareholder 2 and Beneficial owner 2 hereinafter jointly referred to as "**Party 2**"; and
>
> **NAVIO HOLDINGS LIMITED,** a company registered and operating in accordance with the laws of the Republic of Cyprus (registration number No. 151271), hereinafter referred to as the "**Holding Company**";
>
> Shareholder 1 and Shareholder 2 hereinafter individually referred to as a "**Shareholder,**" and jointly referred to as the "**Shareholders**,"
>
> Beneficial Owner 1 and Beneficial Owner 2 hereinafter individually referred to as a "**Beneficial Owner**," and jointly referred to as the "**Beneficial Owners**," Party 1, Party 2 and the Holding Company hereinafter being jointly referred to as the "**Parties.**"

141. It is also necessary to set out certain terms of the SHA:

> II GENERAL PROVISIONS
>
> ……
>
> 2.2 Each Beneficial Owner undertakes to ensure due fulfilment of the conditions of this Agreement by the Shareholder of which he is the Beneficial Owner.
>
> III. ACQUISITION OF SHARES OF THE ISSUER
>
> 3.1 The Parties agree to ensure transfer to the Holding Company, within 60 (sixty) calendar days of the date of this Agreement coming into force, the ownership rights to the Assets held by Party 1 (its Affiliates) and/or Party 2 (its Affiliates) as of the date of this Agreement coming into force.
>
> Acquisition of the Assets by the Holding Company is effected at a price equal to 12,500,000 (twelve million five hundred thousand) US dollars.
>
> Purchase of the Assets by the Holding Company is financed in its entirety by the Shareholders by granting of loans to the Holding Company. The sums granted to the Holding Company as a loan by each of the Shareholders shall be equal.
>
> V. PRINCIPLES OF MANAGEMENT OF THE JOINT BUSINESS

……..

5.11 The Parties agree that the appointment and termination of powers of persons who hold key management posts of the Issuer (excluding Representatives on the Supervisory Board) are effected independently by the Shareholder whose representative is the current General Director, excluding the case indicated below.

The post of Deputy General Director for textile production is formed at the Issuer. Here, regardless of the fact, which Shareholder's representative is the current general Director, the post of Deputy General Director for textile production will be held by a representative of Shareholder 2. In this case, his area of competence will cover all matters connected with the production, technology and sale of textile products.

The powers of the Deputy General Director for textile production and the rights which he is granted and which are necessary and sufficient for the solution of problems he faces, shall be agreed upon by the supervisory board of the Issuer.

VI WITHDRAWAL FROM JOINT BUSINESS

……

6.2 The Parties agree that neither of the Shareholders may alienate its shares in the Holding Company in a manner other than by sale. Each of the Shareholders has a preferential right to acquire the Holding Company's shares to be sold by the other Shareholder, at the price offered to a third party.

VII. PROHIBITION OF COMPETITION

Party 1 and Party 2, each individually, is prohibited from carrying on Developer Activity on "Krasnaya Presnya" council territory in the City of Moscow, independently, or through representatives or Affiliates, unless additionally otherwise agreed by the Parties.

VIII. REORGANISATION (RESTRUCTURING) OF THE ISSUER

8.1 The Parties undertake to ensure due adoption and fulfilment by the competent management bodies of the Issuer of a resolution to reorganise (restructure) the Issuer by dividing the Issuer's business into a Textile Business and a Developer Business.

8.2 After the division of the Issuer's business into the Textile Business and the Developer Business, the said businesses shall be managed on the basis of the following principles:

(a) the Textile Business shall be managed by representatives of Shareholder 2;

(b) the Developer Business, unless additionally otherwise agreed by the Shareholders, shall be jointly managed by the Shareholders on a parity basis, namely: on the basis of equal participation by the Shareholders in the management and in the adoption of resolutions – including equal representation on management bodies – by the legal entities, to which shall be transferred the Issuer's Developer Business and/or real estate held by the Issuer as a result of the reorganization (restructuring) of the Issuer; an equal number of votes during the adoption of resolutions by the management bodies of such legal entities; and equal participation in the income and profits from the Developer Business conducted by such legal entities.

The cooperation of the Shareholders in the course of dividing the Issuer's business (as indicated above) shall be additionally defined by the Shareholders.

X. CHANGE OF CONTROL

10.1 A change of control ("Change of Control") in respect of either of the Shareholders signifies a change directly or indirectly, including indirectly through third parties or in any other manner whatsoever, of the rights of the Beneficial Owner of such a Shareholder in relation to: (i) exercise or control of the right to vote associated with shares making up no less than one-half of all shares in the authorised capital of either of the Shareholders; (ii) transfer or control of transfer of no less than one-half of the shares in the authorised capital of either of the Shareholders; (iii) appointment or control of appointment of no less than half the directors of either of the Shareholders.

The transfer by Beneficial Owner 1 of the rights indicated in this Clause to a person who is lawfully married to him on the date of this Agreement coming into force, shall not be considered Change of Control.

XIV FINAL PROVISIONS

…….

14.5 This Agreement together with the preamble, appendices and other documents necessary in accordance with this Agreement is the complete and exhaustive agreement between the Parties in

> respect of the subject matter thereof, and replaces all previous verbal or written agreements, obligations and arrangements of the Parties in relation to its subject matter that do not comply with the provisions of this Agreement.
>
> …….
>
> 14.8 This Agreement creates legal rights and obligations for its parties, and also for their legal successors. The rights and obligations under this Agreement may not be transferred and/or ceded by one Party without prior consent of the other Parties in writing.

The events of 2005-06

Changes to the corporate structure in October 2005

142. In 2005 Mr. Chernukhin received advice that he should change the structure of his offshore companies. He did so with the assistance of a Swiss lawyer, Mr. Kiener.

143. Mr. Kiener received a briefing, and recorded what he was told in a file note dated 16 August 2005. At one point I was told the briefing was from Mr. Kargin, but counsel for Mrs. Danilina referred to it in their closing submissions as having been from Mr. Chernukhin. On either basis it is likely that the conversation was in Russian because Mr. Kiener spoke Russian. His note of what he was told was written in German and translated into English for the purposes of this case. It refers to "the client" who is identified as Mr. Chernukhin by reference to his name at the top of the page. The note refers to the "AER transaction" which appeared to relate to a 45% share in 5 oil fields. Mr. Kiener noted that the only share in the company in question was held by Navigator Equities "of which the client is a beneficial owner in large part (trust structure)." The client was also said to "own, via his life partner (more specifically, jointly with her)" the 45% interest in the 5 oil fields.

144. There was a further conversation between Mr. Kargin and Mr. Kiener on 25 October 2005. Mr. Kiener made a note of it on 27 October 2005. In that note Mr. Kargin is described as "the manager of the client's Russian investments" and the client again appears to be Mr. Chernukhin. Mr. Kargin is noted to have "established a trust in 2004" (Compass Trust) together with his own company as trustee and daughter companies for the various investments. Navigator Equities Limited was described as a daughter company. A chart prepared by Mr. Kiener on the basis of what he had been told placed Compass Trust at the head of the structure. Below Navigator was Navio which was described as "intended to buy real estate in Russia (factory), 50% stake (remaining 50% stake in a structure owned by Oleg Deripaska)". Submissions were made as to what the court could safely infer from these file notes. I shall return to them later in this judgment.

145. On 26 October 2005 Compass View transferred its shares in Navigator to Sunny Gulch Inc., a BVI company. That company was in turn owned by Sonnenschlucht Holding AG of Liechtenstein of which Mr. Chernukhin was the beneficial owner.

The meeting in London in December 2005

146. In December 2005, a year after Mr. Chernukhin's flight from Russia, there was a meeting in London between Mr. Chernukhin, Mrs. Danilina, Mr. Zagorsky (on behalf of Mr. Deripaska) and Mr. Kokorev, the General Director of TGM. This is the first of the events post the SHA from which it is said that inferences can be drawn as to who, in reality, was party to the SHA. It was submitted on behalf of Mr. Chernukhin that the meeting took place in London because he was Mr. Deripaska's joint venture partner and so a meeting in Moscow between Mrs. Danilina and Mr. Zagorsky would not have sufficed.

147. Mr. Deripaska's explanation for the meeting being in London (put forward as a "guess") was that Mrs. Danilina was unable to explain why the required payments for the investment had not been made and had referred Mr. Zagorsky to her "husband" and so Mr. Zagorsky decided to see Mr. Chernukhin in London. Mrs. Danilina gave the same explanation. The difficulty with this explanation is that Mr. Zagorsky's handwritten note of the meeting refers both to "the partner" and to Mrs. Danilina thereby suggesting the latter was not the former. The note also shows that matters other than payments for the investment were discussed.

148. Mrs. Danilina said, when cross-examined, that she wished to involve Mr. Chernukhin because she did not want him to have "idle time". She accepted that there was no business reason for bringing Mr. Zagorsky to London. She denied that she brought him to London to discuss matters with Mr. Deripaska's joint venture partner. However, Mr. Zagorsky's note of the meeting suggests, as I have noted above, that he appreciated there was a difference between the partner and Mrs. Danilina. A reasonable inference from his note is that he regarded Mr. Chernukhin as the partner.

149. Mr. Zagorsky's note of the meeting deals with "corporate" matters, "economics and finance" and "development". All topics concern TGM. Under "corporate matters" there was discussion of the "partners' requirement" for the prompt and unconditional transfer of shares in TGM to Navio. Under "economics and finance" there was discussion of the need for the "reconciliation of TGM's partners' settlements" to be completed by 30 December. Reference was made not only to "the Partners" but also to "Danilina" suggesting that "Danilina" was not a "Partner". Under "development" there was discussion of properties to be developed in phase one. Again, reference is made to "Danilina" and to "the partner's attitude" being "sceptical" concerning the buying of certain land, again suggesting that "Danilina" is not the "partner". Reference is also made, in the context of "the partner", to "his opinion". This suggests that the partner is male but I was told that the gender may follow the noun, not the person. The note ends by recording a particular request of "the partner" and by noting that there was to be a meeting with "Danilina". This is a yet further indication that "the partner" and "Danilina" are separate.

150. In the context of this meeting with Mr. Chernukhin it is to be inferred that Mr. Zagorsky is recording the intention, opinion and request of Mr. Chernukhin as "the partner". It is further to be inferred that Mr. Zagorsky was referring to Mrs. Danilina as someone other than "the partner". In my judgment it is clear from this document that the purpose of the meeting was to consider matters relating to TGM with Mr. Chernukhin as "the partner". A meeting with Mrs. Danilina in Moscow would not have sufficed because

the views of Mr. Chernukhin as the joint venture partner were required. I therefore reject Mrs. Danilina's suggestion that the meeting took place in London to fill Mr. Chernukhin's "idle time". I also reject her suggestion in her witness statement that Mr. Chernukhin was involved in the meeting in London because she wanted to involve him in the discussions to give him "something positive to contribute" because "it would do him good to keep himself occupied". On the contrary Mr. Zagorsky's contemporaneous note clearly indicates that the meeting with Mr. Chernukhin was for the purposes of discussing important urgent matters with him as "the Partner".

151. Counsel for Mr. Deripaska submitted that the December 2005 meeting did not support Mr. Chernukhin's case because "the parties to the SHA do tend to distinguish between the shareholders to the SHA on the one hand and management of TGM on the other". I do not consider that this serves to deprive Mr. Zagorsky's note of significance. He drew a clear distinction between the Partner and Mrs. Danilina. Counsel further submitted that this meeting was an isolated event. It may be that it was in the sense that no similar event occurred until 2009. But it occurred within a few months after the SHA had been signed and was clearly aimed at progressing the agreement. In my judgment this is a most significant meeting. Lastly, counsel said that in the course of Mr. Chernukhin's evidence about the meeting he had invented a short conversation with Mr. Deripaska. But if he did so that takes nothing away from the cogency of Mr. Zagorsky's detailed, handwritten, unchallenged and contemporaneous note of the meeting.

The Settlement Reconciliation Act

152. On 14 March 2006 an Addendum was agreed to the SHA. Consistently with the SHA it referred to Mrs. Danilina as the beneficial owner of Navigator. The addendum provided for the purchase of OJSC Gavrilov-Yamsky Lnokombinat ("GYL"), another textile company but some distance out of Moscow, for the sum of $3.5 million. The intention was that the business of TGM would be moved to these premises. There was added the "Settlement Reconciliation Act" which recorded that Party 2 (Navigator and Mrs. Danilina) had contributed a total of $5 million to the costs of purchasing 75.4% of TGM and a further $2,069,720 in other costs. Party 1 (Filatona and Mr. Deripaska) had contributed $5,613,058 of these costs of purchase and a further $1,563,089 in other costs. Thus Party 1 had contributed $7,176, 147 in total and Party 2 had contributed $7,069,720, a roughly 50/50 split.

The purchase of shares by Navio Holdings Limited

153. On 24 May 2006 $6.25 million was paid by Navigator to Navio and on 26 May 2006 Filatona paid the same amount to Navio. On the same day Navio purchased the shares in TGM from Mr. Deripaska's companies for $12.5 million. On 1 June 2006 Filatona repaid a little over $7 million to Navigator Finance.

Provisional assessment of joint venture partners as at mid-2006

154. Thus, by mid-2006 the joint venture, which had initially been agreed in late 2001, was in place. Relations between the two parties were now governed by the SHA and the joint venture vehicle, Navio, owned over 75% of the shares in TGM. Both parties, according to their signed Settlement Reconciliation Act, had contributed over $5 million each. In broad terms the financial burden had been split between them 50/50.

Although both parties rely on events subsequent to 2006 to support their respective cases as to whether Mr. Chernukhin or Mrs. Danilina was the beneficial owner of Navigator and Mr. Deripaska's joint venture partner it is helpful to consider, on a provisional basis, what the probabilities and such documentation as there is suggest was the position as at mid-2006. Any opinions expressed at this stage are provisional only and must be reviewed in the light of the subsequent events on which the parties rely.

155. There is no dispute that a joint venture agreement was made in late 2001. There is however no contemporaneous record as to whether the agreement for a joint investment in TGM reached in late 2001 was between Mr. Chernukhin and Mr. Deripaska or between Mrs. Danilina and Mr. Deripaska.

156. The starting point in answering that question must be the SHA itself. Although it was signed in May 2005 it related to the joint venture agreement made in late 2001. The terms of the SHA state clearly that Mrs. Danilina was the beneficial owner of Navigator, "shareholder 2", and that she, together with Navigator, was "Party 2". This was consistent with the term sheet signed in October 2004 which named Mrs. Danilina as "partner". In addition to the SHA the supplemental agreement and the addendum to the SHA also named Mrs. Danilina as the beneficial owner of Navigator. Thus, the contractual documents consistently describe Mrs. Danilina as a party and, equally consistently, do not describe Mr. Chernukhin as a party. There is therefore a heavy burden on Mr. Chernukhin to establish that in fact, contrary to what the SHA stated, he was the beneficial owner of Navigator, that Mrs. Danilina only signed the SHA as his nominee or agent and that Mr. Deripaska knew that. He seeks to discharge that burden by adducing evidence of the events leading up to the signing of the SHA in 2005, beginning with the events in 2001, when, all are agreed, a deal was done for a joint investment in TGM.

157. The probabilities: There was considerable debate between counsel as to whether the probabilities supported the case of Mr. Deripaska and Mrs. Danilina or whether they supported the case of Mr. Chernukhin. In particular rival submissions were made as to who was more likely to have been the joint venture partner of Mr. Deripaska. I have concluded that Mr. Chernukhin was the more likely joint venture partner. It was Mr. Chernukhin who was the strongly influential businessman, deputy minister of finance and then chairman of VEB who was, as Mr. Deripaska accepted, an extremely useful person to know and do business with. By contrast, Mrs. Danilina was involved in the management of modest companies in the textile business. She herself recognised that it was better for Mr. Chernukhin, rather than herself, to approach Mr. Deripaska, whom she had only met socially. Moreover, the joint investment required funds from Mr. Deripaska's partner and Mr. Deripaska knew that Mrs. Danilina was not able to make the required investment.

158. Reliance was placed by counsel for Mr. Deripaska and Mrs. Danilina upon the fact that Mrs. Danilina managed the textile business from early 2002. That is true. But whilst that shows she had a role in the project it does not show that she was, or was recognised to be, Mr. Deripaska's joint venture partner. A manager of the textile business was needed because it could not be closed down overnight and the site redeveloped. The textile business had to be run until such time as it could be moved out of central Moscow. She was the manager of the textile business (though not the general director of TGM). Reliance was also placed on the strategy document which she and Mr.

Deripaska signed as "shareholders" in October 2002. I accept that their signatures as shareholders support the case advanced by Mr. Deripaska and Mrs. Danilina. However, I find it difficult to regard the support as weighty in circumstances where the strategy contemplated an investment of $55 million, the burden of which Mr. Deripaska cannot have contemplated that Mrs. Danilina could share. The strategy did not last long. Although it was mentioned in a draft agreement it was omitted from the next draft and does not appear again in the narrative.

159. The false evidence of Mr. Deripaska and Mr. Tonkacheev: Before the arbitrators Mr. Deripaska's evidence was that the purchase price of the investment was $5 million which he paid and that Mrs. Danilina made no financial contribution but contributed her services in managing the textile business. He maintains that evidence but accepts that he may be mistaken. He says that he does not have a clear recollection of the details of the arrangements relating to the TGM venture, that he relied heavily on others to take care of such matters for him and that TGM was, for him, a minor investment. It seems to me more likely that this was a dishonest attempt to explain how it was that he agreed to a joint venture with Mrs. Danilina in circumstances where she was unable to make the required financial contribution. It is clear that the evidence was incorrect. The 2002 draft agreement contemplated a purchase price of $10.5 million, the SHA referred to a price of $12.5 million and the Settlement Reconciliation Act showed that the purchase of over 75% of the shares in TGM cost over $10 million and that the joint venture partners made a broadly equal financial contribution.

160. It is, I think, deeply improbable that Mr. Deripaska was merely mistaken in his recollection of the nature of the joint venture to purchase a valuable site in Central Moscow (one in which he said he made the *only* financial contribution as opposed to one in which both partners made broadly *equal* financial contributions). Mr. Tonkacheev, like Mr. Deripaska, said that Mrs. Danilina was never intended to make a monetary contribution but, also like Mr. Deripaska, accepts that he may be mistaken, "given the passage of time" and having seen a note which recorded that it was not disputed that Mr. Deripaska's "partner" had contributed $5 million (though that contribution was not "documented"). Mr. Tonkacheev was much involved in the TGM acquisition. As with Mr. Deripaska I think it unlikely that he was merely mistaken. It is more likely that he was prevailed upon to say what Mr. Deripaska wanted him to say. Thus, the false evidence of Mr. Deripaska and Mr. Tonkacheev is a further pointer to Mr. Chernukhin being the real joint venture partner. The only realistic explanation for the giving of this false evidence is that they were both trying to hide Mr. Chernukhin's role as the true joint venture partner.

161. The delay in recording the terms of the joint venture: It is likely, for the reasons I have already given, that this delay was caused by Mr. Chernukhin's unwillingness to record the joint venture in writing whilst he was a deputy finance minister and chairman of VEB. That suggests that he was the joint venture partner.

162. The telephone notes: These were kept by Mr. Chernukhin's secretaries and, on occasion, by his PA. They show that there were some 25 contacts (or attempted contacts) between Mr. Chernukhin and Mr. Deripaska between 2002 and 2004. For the reasons already given, the likelihood is that those contacts concerned TGM. Between June and October 2004, the draft term sheets formalising the relationship of the joint partners were discussed. The notes record contacts between him and Mr. Deripaska

through to September 2004. These notes are a further indication that Mr. Chernukhin and Mr. Deripaska were the joint venture partners. Conversely, there is no contemporaneous evidence of any meetings between Mr. Deripaska and Mrs. Danilina until May 2005 when she signed the SHA.

163. The involvement of Mr. Kargin: It is more probable than not, for the reasons I have already given, that Mr. Kargin was instructed by Mr. Chernukhin rather than by Mrs. Danilina to negotiate the SHA with Mr. Tonkacheev.

164. For the same reasons it is more probable than not that Mr. Kargin set up Navigator and the related corporate and trust structure on behalf of Mr. Chernukhin rather than on behalf of Mrs. Danilina as she has alleged. There is no contemporaneous document supporting her instruction of Mr. Kargin. She gave evidence that "sometime in 2004 I gave Mr. Kargin responsibility for setting up an offshore company to hold my stake in Navio." There is no document supporting any such instruction on behalf of Mrs. Danilina. Such documents as there are go the other way. Thus, the information given by Mr. Kargin to Mr. Kiener in August and October 2005 identified Mr. Chernukhin as the client and made no mention of Mrs. Danilina as the client.

165. Counsel on behalf of Mr. Kargin made several points which supported Mr. Kargin's evidence that he took his instructions from Mr. Chernukhin. Counsel pointed out that Mrs. Danilina accepted when cross-examined that it was Mr. Chernukhin who introduced Mr. Kargin to her, that it was Mr. Chernukhin who paid for Mr. Kargin's services and that Mrs. Danilina was not aware what Mr. Kargin charged for his services. Further, he observed that Mrs. Danilina does not allege that she ever asked for copies of the documentation by which (on her case) Mr. Kargin was to hold her valuable interest in Navigator. Nor did she allege that she ever checked with Mr. Kargin that he had properly carried out her alleged instructions. She appears to explain this conduct by saying that she relied upon Mr. Chernukhin who was "communicating and liaising with Mr. Kargin on my behalf." This explanation might work until 2007 when, on her case, he let her down badly by refusing to marry her. Though even then it is odd that she did not communicate with Mr. Kargin who was in Moscow whilst Mr. Chernukhin was in London. It may be said that in circumstances where Mr. Chernukhin continued to provide financial support for Mrs. Danilina until 2012 her failure to check with Mr. Kargin can be explained. But she made no attempt to check with him from 2012 until 2017 when (I am told without a letter before action) she commenced proceedings against him. These matters support Mr. Kargin's evidence and suggest that his evidence that he was instructed on behalf of Mr. Chernukhin was truthful.

166. The beneficial owner of Navigator Equities Limited: Navigator was the corporate vehicle which was to hold Party 2's shares in TGM. The question is who was the beneficial owner of Navigator on 31 May 2005 when the SHA was signed. Having regard to the issues in this case the question can be further refined. Was Mr. Chernukhin the beneficial owner or was Mrs. Danilina the beneficial owner? "Beneficial owner" is not defined in the SHA. Counsel for Mr. Deripaska submitted that it meant "the individual owning the ultimate economic interest regardless of intervening corporate or trust structures." I do not think that another meaning was suggested by any other party.

167. The documents dating from August to September 2004 suggest that the shares in Navigator were held in one of two trust structures; either the Compass View structure or the Compass Trust structure.

168. If the Compass Trust was in fact created (as Mr. Kargin appears to have told Mr. Kiener it was in October 2005) and Compass View held the shares in Navigator on trust for the Compass Trust as stated in the "Form A" to which I have referred there does not appear to be any way in which Mrs. Danilina was the beneficial owner. She was not a beneficiary; she was one of two protectors, the other being (from an uncertain date) Mr. Chernukhin. The beneficiaries were stated to be "charities" and Mr. Kargin (who was added by Mrs. Danilina in her capacity as First Protector of the trust). Nobody has suggested that as yet unnamed or unidentified charities were in reality the beneficiaries. That leaves Mr. Kargin. (There is an undated and unsigned document to the effect that Mr. Chernukhin and Mrs. Danilina were to be the beneficiaries in place of Mr. Kargin, but there is no evidence that this was effected.)

169. Although Mrs. Danilina has said that she understood that Mr. Kargin would hold the shares in Navigator on her behalf there is no documentary evidence to that effect save, perhaps, for her appointment of him as beneficiary (though counsel for Mr. Deripaska and Mrs. Danilina did not appear to rely upon this). But just as it is more likely that Mr. Kargin took his instructions from Mr. Chernukhin than from Mrs. Danilina so it is more likely that as a beneficiary of the Compass Trust he was a nominee for Mr. Chernukhin. Nobody suggests that he was a true beneficiary in his own right. It was submitted on behalf of Mr. Deripaska that the apparent beneficiary was Mr. Kargin and that it can be inferred that he was nominee for Mrs. Danilina. I am not persuaded that that such an inference can fairly or reasonably be made. It appears to me to be unlikely. The thrust of the two files notes made by Mr. Kiener in August and October 2005 is that Mr. Kargin was acting on behalf of "the client" who was clearly Mr. Chernukhin. The "trust structure" referred to in the first note is likely to be the Compass Trust, because that is the trust referred to in the second note. Mr. Kiener recorded being told the following: Mr. Chernukhin "owns via his life partner (respectively, jointly with her; … it is a trust structure)" and Mr. Chernukhin "is a beneficial owner in large part (trust structure)". It is very difficult to work out what exactly these phrases mean. Mr. Kiener was a lawyer but the information came from a non-lawyer. But there seems to be force in the submission made by counsel for Mr. Chernukhin that such phrases are inconsistent with a case that the shares in Navigator were held by Mr. Kargin as nominee for Mrs. Danilina. That is no doubt why counsel for Mrs. Danilina had to submit that the reference to Navigator being owned "jointly" was wrong.

170. If CAS held the shares as trustee, it also difficult to see how Mrs. Danilina could have been the beneficiary. CAS took its instructions from Mr. Kargin and so it is unlikely that they held them on trust for Mrs. Danilina.

171. So, although it is difficult to answer all the questions posed by the Compass View and Compass Trust documents, I consider it unlikely that Mrs. Danilina was intended to be the true beneficiary of the Compass Trust. It is more probable than not that Mr. Chernukhin was intended to be the true beneficiary.

172. That he was intended to be the true beneficiary is indicated by the changes to the corporate structure in 2005. The shares in Navigator were transferred from Compass

View to Sunny Gulch Inc., which was in turn owned by a Lichtenstein entity of which Mr. Chernukhin was the beneficial owner. It is unlikely that that corporate change was intended to bring about a change in beneficial ownership.

173. The reason for naming Mrs. Danilina as beneficial owner: Shortly before Mr. Chernukhin left Russia Mrs. Danilina was identified as the beneficial owner of Navigator and, therefore, Mr. Deripaska's joint venture partner. It is, I think, more probable than not that Mr. Chernukhin, having recently been dismissed as chairman of VEB, did not wish to advertise his interest in TGM and put forward Mrs. Danilina's name, with her consent, as his agent, for that purpose. Of course, it would not take a member of the Russian "establishment" (Mr. Chernukhin's phrase) long to connect Mrs. Danilina with him, especially where he was expressly named in the Supplemental Agreement. But I do not consider that that renders his suggested motive in nominating Mrs. Danilina as the beneficial owner improbable. (Experience suggests that those who use nominees to hide their beneficial interest cannot avoid using persons who for one reason or another, can be connected to the true beneficial owner; cf *JSC BTA Bank v Ablyazov* [2012] EWHC 237 (Comm), at [16] – [18].)

174. The use of Mrs. Danilina to disguise Mr. Chernukhin's own beneficial interest appears to be more probable than the suggestion that Mr. Chernukhin, (i) having introduced Mr. Deripaska to TGM, (ii) having had contact with him and in particular having been involved in the discussions concerning the term sheets, (iii) having paid over $5 million towards the joint venture and (iv) having procured the incorporation of Navigator to hold the shares, then decided that Mrs. Danilina would be the real and true beneficial owner of Navigator in October 2004. It is also difficult to see why Mr. Deripaska would have accepted Mrs. Danilina as his true joint venture partner knowing that she did not have the financial means to invest in TGM and having negotiated with Mr. Chernukhin about the term sheets since June 2004. It is more likely than not Mr. Deripaska appreciated why Mr. Chernukhin did not wish the latter's beneficial interest to be stated in the SHA.

175. The London meeting of December 2005: For the reasons I have already given this meeting with Mr. Chernukhin, as noted by Mr. Zagorsky, Mr. Deripaska's representative at that meeting, is particularly cogent evidence that Mr. Chernukhin was Mr. Deripaska's joint venture partner.

176. In my judgment, having reviewed all of these matters and the detailed submissions made in writing, the extrinsic evidence clearly points to Mr. Chernukhin having been in late 2001 the true joint venture partner of Mr. Deripaska and in May 2005 the true beneficial owner of Navigator Equities. That extrinsic evidence, in my judgment, outweighs the otherwise cogent evidence provided by the SHA (and its related contractual documents) that Mrs. Danilina was the true joint venture partner and beneficial owner of Navigator Equities.

177. Two other important matters are suggested by the extrinsic evidence. First, it seems more probable than not Mr. Deripaska knew that Mr. Chernukhin was his true joint venture partner. That seems to me to be an inference readily and reasonably to be drawn from, in particular, the probabilities, the reason for the delay in agreeing the SHA, the contacts between Mr. Chernukhin and Mr. Deripaska in the period between June and October 2004 when the term sheets were being negotiated and the London meeting of

December 2005. I accept that Mr. Chernukhin accepted when cross-examined that he could not remember telling that to Mr. Deripaska. All that he could remember was that there were "discussions". I am not surprised that he could not remember any particular discussion. But I do consider that I can properly infer that Mr. Deripaska knew that Mr. Chernukhin was his true joint venture partner. Second, it seems more probable than not that Mrs. Danilina agreed to being used as Mr. Chernukhin's nominee or agent. That seems to me to be an inference readily and reasonably to be drawn from, in particular, the probabilities, her admission that Mr. Chernukhin kept his assets with her because of the "tough situation" affecting state officials in the 1990s and 2000s and her willingness to allow her name to be used as the beneficial owner of Navigator Equities and as the protector of Compass Trust in circumstances where she had given no instructions to Mr. Kargin to establish an off-shore company or trust and had not sought documents or information relating to such structures from Mr. Kargin. Mr. Chernukhin accepted when cross-examined that he could not remember when he suggested to her that she act as his front for the purposes of the SHA. That is not surprising for, as he said, "it happened 15 years ago". But I do consider that I can properly infer that the suggestion was made to her and that she accepted it.

178. Reliance was placed by counsel for Mr. Deripaska and Mrs. Danilina on an email from Mr. Kiener dated 6 November 2009 to Vistra in which he stated as follows:

> V is the sole BO of NEL, that is why the 50% share in Navio is only his. However, V confirmed that it was intended that LD should be the BO at the beginning. Before V's marriage LD and V agreed that the 50% share should be transferred to Foxglove, which is owned by a trust where both V and LD are beneficiaries…

179. Unsurprisingly Mr. Kiener, when asked in cross-examination, found it "extremely difficult to remember" what he thought in 2009. Counsel relied heavily on the phrase "V confirmed that it was intended that LD should be the BO at the beginning". However, the email must be considered as a whole. It commences with a statement that "V is the sole BO of NEL, that is why the 50% share in Navio is only his." The two sentences must be considered together. When they are considered together I think that Mr. Kiener was telling Vistra that the beneficial owner of Navigator was Mr. Chernukhin but that Mrs. Danilina had been described as the beneficial owner from the beginning. When cross-examined he described that as her "role". I do not consider that he was saying that Mrs. Danilina was or had been the true beneficial owner. Reliance was placed on Mr. Kiener's acceptance that he had made no note that Mrs. Danilina was to act as Mr. Chernukhin's front and that he should have made a note but that he had found none. I have taken these matters into account but they do not dissuade me from drawing the inference from the facts and matters to which I have referred that Mrs. Danilina did in fact sign the SHA as agent or nominee for Mr. Chernukhin.

180. However, the assessment I have made at this point in the judgment is only provisional because account must also be taken of the later events which are said to cast light on the issue.

Reporting to Mr. Chernukhin

181. Mrs. Danilina accepted that from time to time from 2007 onwards she sent Mr. Chernukhin certain reports concerning TGM. It was suggested that this showed that she regarded him as the true joint venture partner. She did not accept that. She said that her purpose was to keep him occupied with matters upon which he could be useful. I am sceptical of that explanation but without examining the content of each report which she sent on to Mr. Chernukhin it is very difficult to form a view as to the significance of her contacts with him.

The end of Mr. Chernukhin and Mrs. Danilina's relationship and the establishment of the Sanderson Trust

182. The events concerning the Sanderson Trust are of clear relevance to the Family Assets Claim. They are also said to be relevant to the TGM Claim.

183. There is no dispute that by February 2007 the personal relationship between Mr. Chernukhin and Mrs. Danilina was at an end. There is a dispute as to the circumstances in which it ended. Mrs. Danilina told the court that she and Mr. Chernukhin had planned to marry in Frankfurt (to where she was travelling for a textile exhibition) but when she arrived there he told her (in a café) that they were not to marry. Mr. Chernukhin denied that there had been any plan to marry. On the contrary he was engaged to the future Mrs. Chernukhin and they planned to marry. Mrs. Danilina's evidence of a plan to marry is not supported by any contemporaneous document. It is unnecessary to resolve the dispute as to the circumstances in which the personal relationship between Mr. Chernukhin and Mrs. Danilina came to an end. What matters is that there is no dispute that by February 2007 it was at an end. (There is evidence from Mrs. Danilina's WhatsApp message sent to Mr. Karabut in September 2016 that the relationship may have ended earlier in 2005. She said: "I got so used in these 11 years since the divorce that everything is falling apart, that now is the first time I cry tears of happiness". This suggests that the "divorce" might have occurred in 2005.)

184. It is the case of Mrs. Danilina that in Zurich in February 2007 or thereafter Mr. Chernukhin agreed with her that, in circumstances where their relationship was now at an end, they would divide their assets up in this way:

(a) TGM would remain (as it always was) as an asset belonging to Mrs. Danilina and her alone;

(b) the assets accumulated between them jointly and which they regarded as family assets would be distributed between them on an effectively equal basis with:

(i) Mrs. Danilina retaining and/or taking those residential real property located within Russia,

(ii) Mr. Chernukhin having the residential real property located outside of Russia, and

(iii) save for certain chattels such as cars and the weapon collection (which were to be owned by Mr. Chernukhin) and jewellery and artwork in Russia (which were to be owned by

> Mrs. Danilina), the balance of their assets would be split equally and Mrs. Danilina's 50% share held in a trust for her benefit;
>
> (c) a new structure would be required to reflect these agreements;
>
> (d) Mr. Chernukhin would be responsible for taking the necessary steps to give effect to the agreement.

185. This alleged oral agreement, which is denied by Mr. Chernukhin, is at the heart of the Family Assets claim. Essentially, the issue for the court to resolve is whether a binding oral agreement as alleged by Mrs. Danilina was reached. If it was, there is no dispute that it was not honoured by Mr. Chernukhin. The quantum of any loss, if the issue arises, is for another day.

186. The evidence given by Mrs. Danilina as to the alleged agreement is in paragraphs 190-218 of her witness statement. It is unclear from that long account precisely when it is said the agreement was reached. Reference is made to meetings in Zurich in February 2007 but also to subsequent meetings in July 2007. Her counsel submitted in closing that the agreement was reached at the meeting in February 2007 (see paragraph 82) but later referred to "discussions thereafter" (see paragraph 84).

187. It is not suggested that the agreement was committed to writing. Apart from Mrs. Danilina's oral evidence the only support for the alleged agreement is (a) a diary note of Mrs. Danilina on which some entries were made by Mr. Chernukhin and (b) the alleged partial performance of the agreement by, in particular, the setting up of the Sanderson Trust. However, neither matter evidences, supports or matches all of the details of the alleged agreement. I shall summarise the evidence upon which counsel for Mrs. Danilina principally relies.

188. The diary note, which is made on the page in the diary for 6 February 2007, lists some 16 matters. This was either a list of matters to be discussed at a meeting with Mr. Chernukhin or a list of matters which had been discussed with Mr. Chernukhin. The date on which the meeting in fact took place was between 26 and 28 February 2007. None of the items amounts to proof of the alleged agreement, though some of the items relate to matters of interest to both Mrs. Danilina and Mr. Chernukhin. The note bears some entries, in particular figures, which are accepted by Mr. Chernukhin as being in his handwriting. That fact makes it more likely than not that a meeting did take place between them when Mr. Chernukhin's entries were made.

189. The first entry which Mr. Chernukhin accepts he made is as follows: "250/2 = 125/2 = 60". The second entry is "125", followed by two figures of "50". Some of these figures later featured in documents emanating from trust companies in the Channel Islands who were instructed by Mr. Chernukhin to set up a trust structure. They are therefore some evidence that what was discussed by Mrs. Danilina and Mr. Chernukhin related to the trust structures later set up. The note in the diary also referred to "tr – tr" which was suggested to be a reference to a trust or to two trusts. That is possible.

190. The meeting between Mrs. Danilina and Mr. Chernukhin took place in Zurich. On 27 February 2007 Mr. Kiener, a Swiss lawyer who advised Mr. Chernukhin, emailed Mr. Lavin of Vistra, a trust company in the Channel Islands, in the following terms:

> VC's first partner, Lolita D., has been here, too, and both have decided to set up a new trust in their both favour. We have discussed and pored over this for quite some time, and finally we have come to the conclusion to set up a trust with the specifications as described in the attached memo.

191. The attached memo referred to an offshore, irrevocable and discretionary trust, the assets of which were described as shares in underlying companies. Those companies were described as "one company holding 50% of a Cypriot company holding shares in a Russian textile company; and a second company owning a claim or claims towards offshore companies in the ultimate beneficial ownership of VC" (Mr. Chernukhin). The first company is obviously a reference to Navio holding shares in TGM. The beneficiaries were described as Mrs. Danilina and Mr. Chernukhin "personally and equally".

192. Discussions as to the proposed trusts continued. On 19 March 2007 Mr. Kiener advised Mr. Chernukhin by email that the best solution was to have two trusts. This had been a suggestion of Vistra who advised that this would "ensure that both beneficiaries have an entitlement to their 50% share". An accompanying chart showed one trust, "the LD Trust", owning 100% of a holding company which held 50% of a Cypriot company with shares in a Russian textile company. The other trust, the VC Trust, was shown as holding 100% of a company which had claims connected with Mr. Chernukhin.

193. Discussions continued and on 10 July 2007 a meeting took place in Zurich at the offices of Mr. Kiener attended by Mr. Chernukhin, Mrs. Danilina and a representative of Vistra. By this time the proposal was for two trusts each owning 50% of a holding company which in turn owned 50% of Navio, and thereby a 75-76% interest in TGM. Mrs. Danilina was to be the sole beneficiary of the Madison trust and Mr. Chernukhin was to be the sole beneficiary of the Galaxy Trust.

194. At some stage another trust company, Barclays Wealth, became involved and on 3 August 2007 Mr. Kiener advised Sharon Parr of Barclays Wealth as follows:

> The initial settlement will be some cash amount.
>
> The subsequent settlement will be a common holding company (offshore) of the client and his former wife. This company will own a promissory note issued by one of the client's financing companies (like Navigator Finance Limited). The purpose of this is to let his former wife participate in the assets.
>
> Furthermore, the former wife is the main manager of a Russian textile plant, whose shares are held by a Cypriot company. 50% of this Cypriot company are to be settled into the trust (i.e. will be assigned or sold to the mutual holding company). The other 50% are held by a third party.

> It is also planned to hold the shares of the companies owning the personal real estate of the client and his former wife in Russia through the mutual holding company (you already know about this, it concerns the memo on Russian real estate which you have translated) …

195. On or about 26 September 2007 a meeting took place between Mr. Chernukhin, the future Mrs. Chernukhin and someone from the trust company, probably Ms. Parr. An agenda or memorandum of the meeting refers to, in particular, two trusts holding a 50% interest in a new company which would hold "cash, plus group loans, plus trading equities shares with a market value of $250,000,000 in addition to shares in RRE Holdings Limited which is worth approximately US$300,000,000 (split between 3 projects)" and "50% of Navio Holdings". Reference was also made to a third trust, Galaxy, which was to hold "private assets" including those from several trusts. The note stated that Mr. Chernukhin wished to be "the ultimate beneficial owner of the structure, but also the creditor of the structure". The structure was to be established before Mr. Chernukhin's impeding marriage; a note of the meeting stated: "Fully protected Lolita".

196. A further meeting took place on 10 October 2007 and on 12 October 2007 Ms. Parr emailed Mr. Chernukhin and the soon to be Mrs. Chernukhin with the proposed names of the trusts in these terms:

> My suggested names are:
> V pre assets Madison trust
> Lo pre assets Sanderson trust
> Your joint new one Galaxy Trust

197. My understanding of this email is that certain assets were to be placed in the Madison Trust for the benefit of Mr. Chernukhin, certain assets were to be placed in the Sanderson Trust for the benefit of Mrs. Danilina and that the Galaxy Trust was for the benefit of Mr. and Mrs. Chernukhin.

198. Also, on 12 October 2007 Mr. Kiener emailed Ms. Parr referring to the need for legal advice confirming that "LD's trust and the underlying companies (which will be held also by the client's trust to 50%) will be protected from potential claims from Luba in case of divorce."

199. There were further meetings in London on 22 October 2007. One meeting took place between Gordon Dadds (a firm of solicitors retained to advise Mr. Chernukhin), Mr. Chernukhin and Ms. Parr. A letter dated 24 October 2007 from Gordan Dadds recorded the following "background".

> Mr Chernukhin plans to marry Lubov Golubeva in London on 17 November 2007 and it is their present intention to continue to reside in London after their marriage, at least for the time being. Lubov is a British Citizen and Mr Chernukhin is resident but non-domiciled in the United Kingdom.
>
> Previously, Mr Chernukhin was in a very long term relationship with Lolita Danilina, who is domiciled and resident in Russia.

> Although that relationship has ended, Mr Chernukhin feels strong moral obligations to Lolita to ensure her long term financial security, even if those obligations could not be enforced against him in law (here or in Russia) as he and Lolita were never married. ·
>
> I understand that Lubov is aware of Mr Chernukhin's strong feelings on this point and that she is happy to enter her marriage with him on the clear understanding that financial arrangements are being put in place by Mr Chernukhin to ensure, so far as he is able, that Lolita is properly financially provided for now, during his lifetime, and in the event of his death.

200. Gordon Dadds then set out their understanding of the proposal:

> You explained that Ogiers in Jersey are working at setting up two Trusts, one for Mr Chernukhin and one for Lolita. Mr Chernukhin will transfer by gift various assets into those Trusts. A holding company will be formed ·and the Trustees of each Trust will subscribe for shares in the holding company, which will be paid for with the assets gifted into the Trusts. The Trusts will then consist of shares in the holding company only and dividends will be paid to the Trusts, and in this way income from Sanderson Trust will eventually be paid to Lolita. There seems to be no evidence of any commercial arrangement with Lolita that would underpin this proposal. If I have misunderstood this planned structure, please do let me know.
>
> Pre Nuptial Agreements in England and Wales
>
> Mr Chernukhin is concerned to take what steps he can to try to protect Lolita's Trust against any claim by Lubov, in the event of the breakdown of their marriage in the future. To try to achieve this, he is contemplating entering into an English Pre Nuptial Agreement with Lubov.

201. On 31 October 2007 Ms. Parr advised that the new company, to be held 50% by the Sanderson Trust and 50% by the Madison Trust, was to be Madsan Holdings Limited.

202. On 14 November 2007 there was a meeting in Zurich between Mr. Chernukhin, Mrs. Chernukhin, Mr. Kiener, Ms. Parr and other representatives of Barclays Wealth. According to one minute:

> Vladimir confirmed that the intention was to create separate trusts to benefit Lolita and himself which would in turn each own 50% of a company which would hold a promissory note for approximately US$125m - this is based on their agreed valuation of their combined assets.

203. By a further minute it was recorded that Navigator's shares in Navio were to be transferred to a new company, Foxglove Holdings Ltd. and that Mr. Chernukhin be made an additional beneficiary of Sanderson Trust. Sharon Parr recalled that Mr. Chernukhin was added to deal with the event of Mrs. Danilina's death. That was her recollection in late 2018 when questioned by counsel in the Channel Islands. However, the further minute related it to the fact that "the Madison Trust contained other beneficiaries". I prefer the contemporary note.

204. The minute further provided:

> The Sanderson Trust would also hold a 50% shareholding in Madsan Holdings Limited (managed and controlled by Guernsey), who would be issued a promissory note from Navigator Finance Limited (NFL) in the sum of US$125,000,000. Once Madsan has opened new bank accounts with Credit Suisse (see note below), the note would be called and funds paid to Madsan's bank account. Madsan would then loan the funds back to NFL the same day (the asset), at an interest rate of LIBOR + 2%. The promissory note would also bear interest at 7% and from the date the note is issued to date called, would approximately generate a further US$719,000 interest for the period.

205. The minute then noted these matters:

> LD's requirements to discuss
> • LD to discuss with VC the allowance to be available for her son (Gregori Danilin) - possibly US$100,000 per annum
> • whilst alive the trustees should look to LD as principal beneficiary
> • there will be no automatic request for funds
> • all correspondence via VC
> Special Notes
> • All correspondence relating to LD's structure must be passed via VC (or PA)
> • No statements or reporting to be provided
> • Accounts to be prepared but not sent to client
> • Contact sheet to be prepared and send to VC for forward to LD
> • Bible of documents to be produced for LD and sent to VC

206. On the same day Mr. Chernukhin provided the trustees with a letter of wishes in these terms:

> As trustee of this Trust I would like to make my wishes known to you. I understand that this is an expression of my wishes only and cannot in any way fetter your discretion.
>
> As you are aware this Trust has been settled predominantly to benefit my ex-partner Lolita Danilina and her issue. This is due

> to the regard I have for her and her family and to our historic relationship in developing the assets.
>
> Therefore going forward I would be grateful if you would look solely to Ms Danilina for guidance. She is also intending to provide you with a letter of wishes to give guidance as to her wishes in relation to the assets.

207. Mrs. Danilina's letter of wishes was in these terms:

> During my lifetime, as recommended in the letter dated 14 November 2007 written by the settlor of the trust Mr Vladimir Chernukhin, you look to me for guidance.
>
> In the event of my death please give consideration to benefiting my son, Gregori Danilin, who was born on 12 July 1985, access to an annual "allowance" of $l00,000 (one hundred thousand US dollars only).
>
> I would be grateful if all correspondence in relation to my interest in the trust could be sent to Mr Chernukhin who will in due cause be appointed as Protector and Family Council to the Trust. I also would like to make clear that I have no expectation or need to receive statements of assets in relation to the Trust.

208. On 15 November 2007 the Sanderson Trust was established. On 16 November 2007 Madsan and Navigator Finance entered into a Deed of Gift which transferred a promissory note for $125 million plus interest at 7% to Madsan. On the same day Foxglove and Navigator concluded a share agreement and instrument of transfer of shares in Navio.

209. A risk assessment was undertaken with regard to Foxglove on 15 November 2007. The assessment is confusing. On the one hand it refers to Mrs. Danilina being the "principal beneficiary of the overlying trust". On the other hand, it refers to Mr. Chernukhin being the UBO or Ultimate Beneficial Owner. It also refers to the value of the underlying asset, the real estate owned by TGM, being $125 million. This is contrary to Mrs. Danilina's explanation that the sum of $125 million reflected the value of "liquid assets".

210. On 18 November 2007 Mr. and Mrs. Chernukhin married in London.

211. On 21 November 2007 a chart was prepared (it is not clear by whom) which referred to the beneficiaries of "Trust 1" being "former wife" and "BO (limited)". The latter is, it appears, a reference to Mr. Chernukhin and BO no doubt means beneficial owner. BO is also placed at the head of the corporate structure which holds Sunny Gulch, Navigator Finance, Navigator Equities and Navio. Trust 1 is shown as owning Foxglove, and there is a line between Foxglove and Navigator Equities indicating that the latter will sell its 50% interest in Navio to Foxglove.

212. On 26 March 2008 Navigator Finance transferred $125 million and interest to Madsan Holdings Limited in redemption of the promissory note. On the same day $125 million was loaned by Madsan to Navigator Finance.

213. It was intended that the parties to the SHA would sign an agreement replacing Navigator with Foxglove as a shareholder in Navio. However, it is common ground that Mr. Deripaska refused to do so. When Mr. Karabut requested Mr. Deripaska to sign the agreement by letter dated 6 August 2008 he said that the change was required "for personal reasons" and that the beneficial owners of Foxglove would be Mr. Chernukhin and Mrs. Danilina.

214. There was a dispute as to whether the shares in Navio were in fact transferred to Foxglove. Submissions were made on this topic in closing both in writing and orally. Counsel for Mr. Chernukhin and Mrs. Danilina relied upon certain documents to resolve this issue. In my draft judgment I dealt with this issue and preferred the evidence relied upon by Mrs. Danilina. This caused counsel for Mr. Chernukhin to make further submissions on the issue. That is not the purpose of sending the judgment in draft to the parties. The trial was, adopting the word used by counsel at the end of the trial, "closed". In ordinary circumstances I ignore submissions made in response to the provision of a judgment in draft. In this case I mentioned in my draft judgment the absence of certain evidence which might have resolved the issue. I have now been told that there was in fact, within the many thousands of pages of electronic documents before the court, evidence of that nature. (I have also been told of other evidence which was not before the court which also deals with the issue.) This evidence was not, I think, relied upon by counsel for Mr. Chernukhin in their written or closing submissions. In these unusual circumstances I have decided that the better course is for me not to determine the issue in circumstances where (i) there is within the trial bundle evidence which might determine the issue but as to which no submissions were made during the trial and (ii) the determination of the issue is not necessary in order for me to decide the principal issue of fact on either the TGM claim or the Family Assets claim.

215. On 27 May 2008, a Barclays Wealth file note referred to a number of trusts. Reference was made to Mr. Chernukhin's personal assets being settled into trust structures, including Madison and Galaxy. Reference was also made to Sanderson Trust being "for the benefit" of Mrs. Danilina. Reference was also made to Mr. Chernukhin and Mrs. Danilina having real estate in Russia which was to be transferred into Cypriot companies to be held "under the ownership of Madsan Holdings Limited and therefore for the ultimate benefit of Mr. Chernukhin and Mrs. Danilina".

216. On 3 June 2008 a meeting took place between representatives of Barclays Wealth, Mr. Chernukhin and Mrs. Danilina. A note of the meeting (subject Sanderson Trust) records:

> 1. There is to be NO CONTACT with Lolita in Russia. A call to her mobile is okay… All correspondence is by email to Vladimir.
>
> 2. Any income in the trust is to be accumulated as there is no need for any distributions in the foreseeable future.

> 3. Please see the attached papers confirming Vladimir is the first protector and Lolita's signature just in case the KYC does not include it…
>
> 4. The trust deed needs to be amended to show Lolita as Vladimir's successor protector…
>
> 5. …
>
> 6. The trust also owns Foxglove Ventures Limited but that is not reflected in the ledgers
>
> 7. …
>
> 8. I understand that Foxglove owns the shares in a textile factory in Russia. If so de we actually have the shares yet and how is this asset reflected in the books?

217. I shall consider, at a later stage of this judgment, the question whether these events support the case of Mrs. Danilina and Mr. Deripaska as to the TGM claim or the case of Mrs. Danilina as to the Family Assets claim.

The dispute over the management of TGM

Attempts to replace Mr. Kokorev as General Director of TGM

218. During 2009 disputes developed between Mr. Deripaska (or those acting for him, in particular Mr. Karabut) and Mrs. Danilina as to the operation of the textile business at TGM. Mr. Deripaska's interest in TGM had been rekindled by the effects of the 2008 financial crisis. Until then he had not paid much attention to TGM (as his counsel accepted in their Opening Skeleton Argument at paragraph 335). These disputes led to a demand that Mr. Kokorev be replaced as General Director of TGM and, ultimately, to his removal and the takeover of TGM by Mr. Deripaska in December 2010.

219. In July 2009 there was a meeting in Milan between Mr. Chernukhin, Mr. Kokorev and Mrs. Danilina. Mr. Kokorev's note of the meeting shows that it concerned TGM, in particular, losses of the textile business at the expense of the development business. The meeting between Mr. Kokorev and Mr. Chernukhin in Milan suggests that Mr. Kokorev regarded Mr. Chernukhin as the person from whom, ultimately, he took instructions. Mrs. Danilina suggested, when cross-examined, that she did not want Mr. Chernukhin to "lose his interest in helping me with TGM in the matters where I could not manage myself". This suggestion is no more persuasive than her explanation for the London meeting in 2005 which was to similar effect. She gave a further explanation, namely, that she wanted him to manage her money after the Sanderson Trust declaration in 2007. In her oral evidence she suggested that Mr. Chernukhin's role was as a mediator between her and Mr. Karabut. I did not find these suggestions persuasive.

220. At around this time Mr. Kokorev's various emails to Mr. Chernukhin were addressed to "Akts" which is a Russian abbreviation for shareholder. Mrs. Danilina had difficulty in explaining this. She said she called him shareholder but "it had nothing to do with

his real position in my life". It is more likely that Mr. Kokorev used the abbreviation because he regarded Mr. Chernukhin as the shareholder. Counsel for Mr. Deripaska suggested that this was an attempt by Mr. Chernukhin to "present himself and to be presented as a shareholder/co-owner" but there was no evidence that Mr. Chernukhin lay behind Mr. Kokorev's use of the abbreviation "Akts". Mr. Deripaska adduced in evidence in the arbitration a statement from Mr. Kokorev but the statement does not deal with this matter.

221. The dispute developed into a demand by Mr. Deripaska that Mr. Kokorev be removed as General Director and a refusal by Mr. Chernukhin to agree to the proposal unless the main tasks for the new General Director had been agreed. On 20 November 2009 Mr. Karabut wrote to Mrs. Danilina as the "beneficial owner" and requested a change in the General Director. He requested her as "chairman of the supervisory board" to convene a meeting. Mr. Kokorev forwarded the letter to Mr. Chernukhin. Three days later a telephone call was arranged in which Mr. Chernukhin and Mr. Deripaska participated. It was a conference call and others were on the call.

222. Mrs. Danilina asked Mr. Karabut to arrange the conference call between Mr. Chernukhin and Mr. Deripaska when she and Mr. Chernukhin would be in Geneva. Also on the call were Mr. Karabut and Ms. Kaldina of Basel's legal department. Mr. Deripaska said he had had no recollection of this call but, after spending "three days" reading the documents before he gave evidence in this action, it was "now in my memory".

223. Mr. Deripaska gave evidence that the call lasted for 15 seconds. Whilst there is evidence that he left the call before it had ended it is unlikely that his participation in the call lasted only 15 seconds. Having noted the slow, measured and careful way in which he speaks I would not have expected him to have said what he wanted to say in only 15 seconds.

224. Mrs. Danilina said nothing on the call but claimed in her evidence to have prompted Mr. Chernukhin as to what to say. Having observed Mr. Chernukhin give evidence over four days of cross-examination, I consider that he is the most unlikely of persons to allow himself to be used in this way, almost as a ventriloquist's puppet.

225. The fact that a matter as important as the replacement of the General Director led to an arranged conference call involving both Mr. Chernukhin and Mr. Deripaska is a cogent indication that this was a discussion between the two joint venture partners.

226. However, the call did not lead to a resolution of the issue. After the call Mr. Karabut emailed Mr. Chernukhin. With regard to the forthcoming meeting of the Supervisory Board he said:

> Please make sure (as far as voting by your representatives is concerned) that the appropriate resolution is passed to terminate the authority of the current general director and appoint Shareholder 1's representative to this position.

227. That request suggests that Mr. Karabut regarded Mr. Chernukhin as the other shareholder. On 25 November 2009 Mr. Karabut sent a further email to Mr. Chernukhin in these terms:

> Last night I discussed our situation with OVD by phone.
>
> He asked me to talk with you about the fact that we really want to exercise our right to replace the GD [General Director].
>
> Certainly this should be in the legal realm. Yesterday, after bringing in OVD's personal lawyers, we studied the situation. On the whole, we feel that we are completely in compliance with the SA. Hence we ask that everything be done to exercise our right as soon as possible.
>
> We hope for your understanding and cooperation.

228. Again, the terms of this email suggest that Mr. Deripaska regarded Mr. Chernukhin as his joint venture partner. He asked Mr. Karabut to discuss the issue with Mr. Chernukhin, not with Mrs. Danilina. That discussion took place and on 26 November 2009 Mr. Karabut emailed Mr. Chernukhin in these terms:

> I hope after yesterday's conversation you no longer have any doubts as to our Shareholder's position on the matter of replacing the General Director.
>
> I also hope that the Supervisory Board meeting scheduled for tomorrow will be constructive and productive. At the same time, allow me to point out the following: If any of the Supervisory Board members from your side are unable to attend the meeting for any super-compelling reason, you can arrange for them to cast a vote by absentee (written) ballot. This possibility is provided for by Section 16.4.5 of the Company's Charter and Section 8.2 of the Statute on the Supervisory Board of Trekhgornaya Manufaktura OJSC.
>
> Thanks in advance for your understanding.

229. This correspondence with Mr. Chernukhin only makes sense on the basis that it is Mr. Deripaska, through his representative Mr. Karabut, speaking with his joint venture partner. Mr. Karabut sought to explain this correspondence by saying that he could not persuade or influence Mrs. Danilina and therefore sought to utilise Mr. Chernukhin's influence over her. He referred to a tactic of "divide and rule". He said: "I wanted to bring pressure to bear either on himself or on herself in order to achieve my objective". It was submitted on behalf of Mr. Deripaska that, when account was taken of the context in which this correspondence is found, Mr. Karabut's priority, as "Basel strategist and problem-solver", was to obtain "Party 2's agreement to the change in General Director … not what the private arrangements were between Mrs. Danilina and Mr. Chernukhin." But this explanation does not sit happily with the terms of his emails. His

evidence in this regard was, I consider, an attempt to explain this correspondence (long after the event) in a manner which is consistent with Mr. Deripaska's case.

The 3 February 2010 Supervisory Board Meeting

230. The issue of the General Director was discussed but not resolved at meetings of the Supervisory Board between 27 November 2009 and 3 February 2010. The meeting on 3 February 2010 is recorded not only in minutes but also by an audio record which has been transcribed. It appears from the minutes that Mr. Deripaska's supporters were in the majority. However, they failed in their endeavour to have Mr. Kokorev replaced because a bare majority was ruled insufficient. The audio transcript records Mrs. Danilina as saying:

> Our voting position is not determined here, not at the Supervisory Board meeting. It is determined by the shareholders. The shareholders have stated their position, as far as I know. I cannot judge, as I was not present at these negotiations, but our shareholder stated his position on this matter to shareholder number one.

231. Later, she said:

> Here, I am authorised to represent the position of one of the shareholders. So right now I will be voting according to the instruction given to me.

232. Although it is apparent from the record that technical points were being taken as to what matters were appropriate to be discussed between the shareholders and what matters were within the jurisdiction of the supervisory board it is difficult to regard these comments of Mrs. Danilina as anything other than an admission that she was taking instructions from the shareholder. The obvious inference is that she was not one of the two shareholders. When cross-examined about these matters Mrs. Danilina had no coherent explanation for what she said. Counsel for Mr. Deripaska submitted that she explained that she wanted to draw a distinction between her position as a member of the Supervisory Board and her position as an indirect shareholder of TGM. Counsel for Mrs. Danilina similarly submitted that she was trying to avoid being trapped into a position by Mr. Karabut and was attempting to draw a distinction between her activities at that meeting and the position of shareholder 2 (that is, Navigator) under the SHA. But on her case she was the true joint venture partner, and all knew that. It made no sense for her to pretend that she was not the true joint venture partner in order not to answer the questions put to her by Mr. Karabut.

233. Counsel for both Mr. Deripaska and Mrs. Danilina also relied upon Mr. Karabut's acceptance that "possibly" he was trying to trick her into saying that she was the shareholder and on his evidence in re-examination that if she had said she was the shareholder he would have conveyed her response to Mr. Deripaska as a breach of the SHA. I find both of these points puzzling. On her case no "trick" was required and I would have expected Mr. Karabut to report to Mr. Deripaska what Mrs. Danilina said, regardless of the capacity in which she purported to speak. In any event I am, for the reasons I have given, unable to place any weight on Mr. Karabut's evidence.

234. Mr. Karabut was clearly frustrated by Mrs. Danilina's refusal to discuss the merits of the proposal by standing behind the instructions of her shareholder and wrote to her the very next day by a letter dated 4 February 2010 addressed to Mrs. Danilina as beneficial owner of Navigator. He asked her whether she was indeed the beneficial owner of "shareholder 2".

235. However, it appears clear that he knew the true position. For on 10 February 2010 Mr. Karabut again wrote to Mr. Chernukhin.

> I am forced to contact you again, since the situation regarding our partnership at Trekhgornaya cannot be called anything but a stalemate. Of course, a 50-50 partnership, in general, does not preclude such problems, but everything should at least have some framework. Even if one assumes for a second that, as you claim, the condition for exercising our legal right to replace the general director is that there be agreed-on tasks for the new general director, we have fulfilled it by sending you the Business Plan for Trekhgornaya Manufaktura as agreed by us, Lolita, and all members of the Supervisory Council. The tasks for the new general director are clear, yet things are right where they were. We cannot understand, why do you deal with the partners that way? And we are even beginning to get used to the fact that the team in Moscow practically ignores any elementary shareholder rights. Won't it turn out that we are approaching a line beyond which you will be ashamed to look us in the eyes as partners? This is a complicated subject, but there is another one: Are your rights reliably protected against inappropriate actions by Lolita's management?

236. This, like much of this correspondence, is revealing. It refers to "our partnership" and suggests that Mr. Chernukhin's rights as partner are not being protected by "Lolita's management".

<u>The Stewarts Law letter dated 1 March 2010</u>

237. Throughout this period there was a related exchange of views between solicitors as to whether Mrs. Danilina was the representative of Navigator. On 1 March 2010 Stewarts Law advised that on 26 October 2005 a transfer of ownership had taken place, and that accordingly Mrs. Danilina attended the supervisory board meeting in her capacity as chairman of that board. However, Steptoe and Johnson confirmed on 22 April 2010 that in the absence of proof of such a change their clients continued to regard Mrs. Danilina as the beneficial owner of Navigator.

238. Mr. Karabut gave evidence that he was "made aware" of what Stewarts Law were saying. However, assuming that he was made aware, that cannot explain the terms in which he wrote to Mr. Chernukhin prior to 1 March 2010. Further, if he was "made aware" of what Stewarts Law it is likely that he was also made aware of what Steptoe and Johnson said in reply, which showed that no reliance was placed on Stewarts Law's statement on 1 March 2010.

239. Reliance was placed by counsel for both Mr. Deripaska and Mrs. Danilina on an internal Basel document which I am told was dated 11 March 2010. It was said that the reference to Partner in this document was a reference to Mrs. Danilina. Particular reliance was placed on the suggestion that "assisting the Partner in creation of comprehensive Textile business outside the current area may lead to a resolution of the conflict." I do not follow why the reference to Partner must be understood as a reference to Mrs. Danilina. But even if it must be, I consider the terms in which Mr. Karabut addressed the problem with Mr. Chernukhin a more reliable pointer to Mr. Deripaska's view as to who his joint venture partner was.

240. Later in 2010 Mr. Karabut tried other means to remove Mr. Kokorev. On 9 November 2010 Mr. Karabut threatened him with criminal proceedings and dismissal.

241. On 13 December 2010 Mr. Kokorev, in a letter addressed to Mr. Deripaska and Mr. Chernukhin tendered his letter of resignation. Mr. Kokorev obviously considered that he was writing to the two shareholders. In his statement given to Mr. Deripaska's lawyers for the purposes of the arbitration Mr. Kokorev made no reference to the threats made to him. Indeed he said there were no threats. On the following day, Mr. Kokorev obtained a contract of employment with Basel at a salary of about $60,000 per month for 3 years. The probabilities are that this contract was at least instrumental in persuading him to resign. Given the context in which the contract came about it is more likely than not that it was given to him with the aim of persuading him to resign.

The takeover of TGM

242. On the evening of 14 December 2010, Mr. Karabut and Mr. Novikov took over the site of TGM in Central Moscow with the assistance of security personnel. Much has been said about this event but the details, whilst of interest to observers of modern day Russia, do not appear to assist in determining the issues in this case. There is evidence that the security personnel were armed (though no evidence that arms were used). TGM's head of security, Mr. Kurygin, who was shown by the CCTV footage to have been bundled to the floor by force, had to attend hospital on the evening of the takeover. Mrs. Danilina has referred to the event as a "forcible takeover", after which she, and others associated with Mr. Chernukhin, were dismissed.

243. An account of the position the next day is to be found in a letter written on 19 December 2010 by Ms. Kosovan but said to have been drafted by Mrs. Danilina and which she accepted was "generally" true:

> On the morning of December 15th, 2010, upon arrival to the office, we saw a lot of armed and unarmed security guards who, behaving aggressively enough, blocked the entrances to administrative and production premises, some office rooms located on the territory and in the buildings of our enterprise. Our executives informed us that the management of the factory was replaced and from now on another private security company would protect our territory.

244. Whilst the details of the takeover may not assist in determining the issues in this case the events which followed it do. On 16 December 2010 Mr. Karabut emailed Mr.

Chernukhin and told him that Mr. Deripaska had asked him to discuss the possibility of "buying out your portion in the TGM project". This enquiry is a further and clear indication that Mr. Deripaska regarded Mr. Chernukhin as his joint venture partner.

245. Mr. Karabut initially gave evidence that he asked Ms. Senko to speak to Mrs. Danilina who told Ms. Senko that Mr. Chernukhin would be dealing with the matter. In his latest statement he said that he "reached out" to Mrs. Danilina via Ms. Senko but that nothing came of the discussion. Ms. Senko provided a witness statement in which she said that she and Mrs. Danilina talked mostly about her, Ms. Senko's, pregnancy, but that at the end of the conversation she passed on three options from Mr. Karabut, one of which was a proposal to buy out her interest. Ms. Senko said that Mrs. Danilina told her that she would think about it but she never got back to Ms. Senko. Ms. Senko was not cross-examined. It may be that she did discuss her pregnancy with Mrs. Danilina in a café but her evidence that three options were put to Mrs. Danilina is surprising in circumstances where they are not mentioned in any of Mr. Karabut's three witness statements. In any event, as will become apparent, the buy-out proposal was only pursued with Mr. Chernukhin.

246. The events which followed the takeover are summarised in an internal Basel document describing "Project F", which was obviously an internal code for the operation to take over TGM. One of the steps was "dispute resolution between the partners". In that context reference is made to obtaining "information regarding Ch's assets" and to developing proposals "regarding negotiations with the Partner". Mr. Chernukhin is clearly "Ch" and the Partner. There would, it seems to me, be no purpose in obtaining information regarding Mr. Chernukhin's assets unless he was regarded as the Partner who was to be bought out. It may be noted that an earlier step mentioned was the dismissal of "Dep. CEO LD", clearly a reference to Mrs. Danilina and not the Partner.

247. On 24 January 2011 Mrs. Danilina sent an email to Mr. Chernukhin with her comments on the situation. She referred to the forcible takeover and the history of the conflict. She then referred Mr. Deripaska's interest in "maximum 'saving face' in partnership with CH.V.A" which is of course a reference to Mr. Chernukhin as she accepted when cross-examined. She had great difficulty in explaining what the partnership with Mr. Chernukhin was, if it was not the joint venture partnership in connection with TGM. In my judgment she was referring to the partnership agreement between Mr. Deripaska and Mr. Chernukhin with regard to TGM.

248. On 27 January 2011 a private investigative agency, PKF, was instructed by Mr. Elinson of Basel to research "personal, financial and political details" of Mr. Chernukhin. PKF reported in February 2011. Their conduct led to convictions at Southwark Crown Court for offences contrary to the Data Protection Act 1998. This information gathering exercise was, it would appear, to assist Mr. Deripaska in his planned negotiations with Mr. Chernukhin to buy out his share of the joint venture. I was unable to accept Mr. Deripaska's evidence that he had not authorised the instruction of PKF.

249. On 25 February 2011 Mr. Novikov dismissed Mrs. Danilina as deputy general director. On 4 April 2011 she issued an employment law claim against TGM in respect of her dismissal. Her claim was dismissed on 20 October 2011. It does not appear that Mrs. Danilina made reference in such claim to her being party to the SHA. The Russian law experts are agreed that reliance on rights as a shareholder would have no effect on

employment law proceedings but it is, nevertheless, surprising (assuming her claim in these proceedings to be true) that she did not mention that she was party to the SHA and that the SHA expressly referred to the position of the deputy general director.

250. Counsel for both Mr. Deripaska and Mrs. Danilina relied upon a draft letter from Mrs. Danilina to Mr. Deripaska which bears the date of 18 March 2011 and which refers to them being "co-owners". However, I am unable to place significant weight on this in circumstances where it is a draft and where her email to Mr. Chernukhin of 24 January 2011 was to the opposite effect.

251. Mr. Chernukhin continued to make payments to Mrs. Danilina until September 2012, when they ceased.

252. In 2013 there was a dispute between Mrs. Danilina and Mr. Chernukhin concerning a Russian property, the Upper House. That led to a claim by her for ownership of the property. The claim failed. It is to be noted that in such proceedings no reference was made to the alleged 2007 agreement.

Buy-out negotiations between Mr. Deripaska and Mr. Chernukhin

253. The negotiations with Mr. Chernukhin were conducted, it appears sporadically, by Mr. Karabut in 2011 and 2012. On 10 December 2012 Mr. Chernukhin hand-delivered a letter to Mr. Deripaska setting out his account of what had transpired in the past. Reference was there made to suggestions that he buy out Mr. Deripaska or that he sell his "stake" to Mr. Deripaska. The discussions reached fruition in Davos in January 2013 when Mr. Deripaska and Mr. Chernukhin met. An agreement in principle was reached for Mr. Deripaska to buy out Mr. Chernukhin's share of TGM for US$100 million.

254. That is Mr. Chernukhin's evidence but it is also the evidence of Ms. Moldazhanova who was the General Director of Basel. She said in her witness statement:

> After the concert, there was a cocktail party. Mr Deripaska was standing with Mr Chernukhin and beckoned me over. He told me that he would buy the Navigator interest for US$100 million. Mr Chernukhin asked whether it would be possible to close the deal [within] two months and Mr Deripaska agreed.

255. Indeed, it is apparent from the skeleton argument of counsel for Mr. Deripaska that:

> It is common ground that a deal in principle at a price of $100 million for Navigator's interest in Navio was reached between Mr Deripaska and Mr Chernukhin in Davos on 23 January 2013.

256. It is therefore puzzling that Mr. Deripaska had such difficulty in accepting that he had reached such an agreement in principle with Mr. Chernukhin. In the arbitration he said that he told Mr. Chernukhin to discuss the matter with the CEO of Basel. He said that there was no handshake deal and in any event the price would have been in roubles because it was a Russian asset. He did not accept in this trial that his evidence was untrue. But it seems to me that his evidence was untrue. He did not wish to accept that he had agreed to buy Mr. Chernukhin's interest in TGM because, it seems to me, he

recognised that that would sit uncomfortably with his case that Mrs. Danilina had always been the owner of that interest. When cross-examined in this trial he said that to make a deal you had to finish due diligence. He also said there was an agreement to agree because to do a deal all the terms must be discussed. It is possible that by these answers he was seeking to say that no legally binding agreement had been reached. That would have been true. But he was still unable to bring himself to accept that an agreement in principle had been reached to buy out Mr. Chernukhin's interest for $100 million.

257. On 14 February 2013 Mr. Chernukhin sent an email referring to a term sheet and, although the email does not appear to attach the term sheet, Mr. Deripaska's PA replied that it had been received and relayed to Mr. Deripaska. On 20 February Mr. Chernukhin asked when the term sheet could be discussed. The term sheet referred to the proposed sale for $100 million.

258. However, the deal agreed in principle did not progress. There is a dispute as to why not. Mr. Deripaska has given evidence that it was because Mr. Chernukhin was asked to give an assurance that he was the owner of that which he was proposing to sell and refused. Mr. Chernukhin's case is that Mr. Deripaska had been intending to borrow the money but the loan facility was in roubles and that that currency had fallen in value with the result that the loan facility was inadequate.

259. The request for evidence of Mr. Chernukhin's beneficial ownership or an appropriate guarantee or indemnity continued from late 2013 to August 2014.

260. On 11 June 2014 Basel's internal lawyers sent a letter to Mr. Deripaska setting out certain questions which remained "open" or not agreed in the proposed transaction. The second was described as:

> Confirmation of the beneficial ownership by of VA. Chernukhin in relation to Navigator (Chernukhin's company is the current shareholder in Navio, seller of the shares) and provision of a personal guarantee by VA. Chernukhin.

261. This question was discussed in the following terms:

> Beneficial owner of Navigator and Chernukhin's guarantee
>
> The shareholder agreement in respect of Navio (the "SHA") was signed by L. Danilina as beneficial owner of Navigator. For the purposes of the SHA, Navigator and Danilina are jointly designated as Party 2. Chernukhin contends (verbally) that it is him who is the beneficial owner of Navigator and that Danilina signed the SHA mistakenly without being a beneficial owner.
>
> Risks:
>
> 1) Challenge of the transaction (transfer of the rights to the shares and termination of the SHA) by Danilina, with our position being weakened by the following factors:

(i) the buyer, acting in good faith, must rely on the document available to him (the SHA), where Danilina is named as the beneficial owner;

(ii) technically Danilina is a party to the SHA, and SHA's termination without her signature may be recognized as invalid, i.e. there is a risk of Danilina making claims arising out the SHA after the closing of our deal with Chernukhin.

2) the financial status/assets of Navigator are unknown, and there is no one who would compensate our losses in case there is a breach of the agreement for the sale and purchase of Navio shares.

Chernukhin refuses to personally guarantee the absence of risks of any third parties making claims in respect of Navio shares being sold by him. In response to our request for confirmation of Chernukhin's status as the beneficial owner, we have been provided with a Memorandum by his Cypriot lawyers (Appendix No. 2), which is not adequate for the claimed purpose and cannot be used to reduce the risks for the following reasons:

1) The Memorandum contains general provisions of the Cypriot legislation regarding the registration of rights to shares and confirmation of rights of their legal owners;

2) The Memorandum does not confirm that Chernukhin is the ultimate beneficial owner of Navigator, that Danilina is not an ultimate beneficial owner of Navigator and that the fact of existence of an ultimate beneficial owner other than Chernukhin (either now or in the past) will not prejudice or limit the rights of the buyer of 50% of Navio shares.

Possible solutions (in descending order of preference to us):

1) obtaining an express consent from Danilina to our deal and termination of the SHA and release of claims;

2) a properly executed document confirming the waiver by her of her rights to Navio shares (however, there is the risk of forgery);

3) indemnity (or warranty) personally from Chernukhin (being a person who is in better financial circumstances than Navigator) providing for full compensation by Chernukhin of our losses in case Danilina files a lawsuit and wins;

4) checking documents to be submitted by Chernukhin to ascertain the holding structure of his shares in Navio (there is

> also a risk of forgery or concealment of a document/ agreement which would be essential for our purpose).

262. There is no doubt that this document evinces a concern that Mrs. Danilina might challenge the sale and that Filatona and/or Mr. Deripaska may be left without remedy. However, the question debated before me was whether the basis of that concern was an understanding that Mrs. Danilina was in reality the true party to the SHA and so could be expected to sue when she learned of the sale, or whether, although it was understood that she was not in reality the true party to the SHA, there was a risk that, because she was named as the true party, she might sue on that basis. I consider that, in resolving this issue, the reference to "our position being weakened by" the fact that "technically Danilina is a party to the SHA" is important. The word "technically" suggests an appreciation that Mrs. Danila was not in reality a party to the SHA. There therefore appears to me to be force in the suggestion put to Mr. Deripaska in cross-examination that:

> All that your lawyer was pointing out is that technically she is a party to the contract, so if you do the deal with Mr Chernukhin there was a risk she might bring a claim pretending that she was the true joint venture partner. That is the risk he was pointing out to you, isn't it?

263. In the event, the requested undertaking from Mr. Chernukhin that he would provide an indemnity to Mr. Deripaska "in case Danilina files a lawsuit and wins" was not obtained. By an email dated 21 August 2014 his internal lawyer wrote to Mr. Deripaska's external lawyers as follows:

> I am sure you remember the discussion around Mr Chernukhin's beneficial ownership and the risk of third parties having interest in the shares he is now selling. OVD wants to try to persuade Mr Ch. personally to sign a very simple letter to confirm his beneficial ownership. It shall not be very legalistic, but in the worst-case scenario should give us some legal standing to go after Mr Ch.

264. It was suggested that that attitude was not consistent with a belief that Mrs. Danilina was in reality the counterparty to Mr. Deripaska. If that had been the belief of Mr. Deripaska it was suggested that he would have required more solid protection than a "very simple letter" intended to give some "legal standing" against Mr. Chernukhin "in the worst case scenario". There is force in that observation, but much depends upon what Mr. Deripaska told his lawyers which is not known.

265. Mr. Deripaska's lawyers did not get the protection they sought from Mr. Chernukhin. There is an indication from a report of Mr. Novikov dated March 2015 that in the event a fall in the value of the rouble meant that there was an additional need for further financing. However, nothing more seems to be known about this matter and there is no evidence that such further financing was not available to TGM or Basel had it in fact been required.

266. My conclusion is that the likely reason why the sale did not go though was that Mr. Chernukhin did not give Mr. Deripaska the protection he sought. However, it is likely that protection was sought, not because it was appreciated that Mrs. Danilina was the real party to the SHA, but because it was recognised that she was party in name only but might nevertheless choose to sue. It seems to me most unlikely that Mr. Deripaska would have authorised negotiations with Mr. Chernukhin over a two-year period and would have agreed in principle to buy out Mr. Chernukhin had he not known that Mr. Chernukhin was his true joint venture partner.

Inferences from later events

267. Counsel for Mr. Deripaska relied upon several matters after signing the SHA in May 2005, beginning with the Sanderson Trust documents in 2007-08, as supporting Mr. Deripaska's case that Mrs. Danilina was his joint venture partner. They are to be viewed in the context of the evidence leading up to the signing of the SHA in May 2005 and the London meeting of November 2005 which evidence, for the reasons I have already given, supports Mr. Chernukhin's case that he was Mr. Deripaska's joint venture partner.

The Sanderson Trust and Foxglove Holdings Limited

268. The assistance, if any, which the events concerning the Sanderson Trust give to the resolution of the TGM claim was, throughout the trial, elusive. There appears to be no doubt that Navigator's shares in Navio were to be an asset within the Sanderson Trust. In order to achieve that it was necessary for Navigator's shares in Navio to be transferred to a special purpose vehicle, Foxglove. It was suggested, I think, that the fact that Navigator's shares in Navio were to be placed in the Sanderson Trust in circumstances where Mrs. Danilina was the primary beneficiary was consistent with Mrs. Danilina being the true beneficial owner of Navigator and so Mr. Deripaska's true joint venture partner. However, if she were the true beneficial owner of Navigator's shares in Navio it is difficult to see (a) why any transfer of Navigator's shares in Navio to Foxglove was required to ensure that TGM remained an asset belonging to Mrs. Danilina alone and (b) why she would have been content with being only a discretionary beneficiary of the Sanderson Trust. In my judgment the Sanderson Trust, including Foxglove, is inconsistent with her being, and having always been, the true beneficial owner of Navigator's shares in Navio.

269. Counsel for Mr. Deripaska submitted in their closing submissions that the arrangements for Foxglove "are completely inconsistent" with Mrs. Danilina being a front or nominee for Mr. Chernukhin in the SHA. I do not understand why that is so. The arrangements for Foxglove were made in November 2007 as part of Mr. Chernukhin's arrangements to make financial provision for Mrs. Danilina prior to his marriage to Mrs. Chernukhin. They are not, in my judgment, inconsistent with Mrs. Danilina having signed the SHA as nominee for Mr. Chernukhin.

270. The Gordon Dadds letter of October 2007 refers to Mr. Chernukhin making a gift of assets to the trust from which payments were to be made to Mrs. Danilina. Also, Mrs. Danilina's own letter of wishes refers to Mr. Chernukhin as the "settlor". Both of these contemporaneous documents are consistent with an intention that Navigator's shares in Navio were to be gifted by Mr. Chernukhin to the Sanderson Trust. They suggest that

he was the beneficial owner of those shares. The gift is consistent with an intention that Mrs. Danilina should, at the discretion of the trustees, benefit from those shares. The gift is inconsistent with Mrs. Danilina having always been the beneficial owner of Navigator.

271. It thus seems to me that the events concerning the Sanderson Trust are supportive of Mr. Chernukhin's case that he was the beneficial owner of Navigator and Mr. Deripaska's true joint venture partner.

The formal demands to replace Mr. Kokorev as General Director of TGM

272. The point made by the Claimants is that these demands to replace Mr. Kokorev, made by Mr. Karabut and by solicitors on behalf of Mr. Deripaska and Filatona, were addressed to Mrs. Danilina as "beneficial owner" of Navigator and made no reference to Mr. Chernukhin. Since these were formal demands to change the General Director pursuant to clause 5.5 of the SHA it is to be expected that they would conform with the language of the SHA. I therefore did not consider that this point carried much weight, though it carried some. By contrast, for all the reasons set out above, I consider that Mr. Karabut's correspondence with Mr. Chernukhin is very revealing, and indicates that Mr. Chernukhin was the true joint venture partner.

The Stewarts Law letter dated 1 March 2010

273. The point made by the Claimants is that Stewarts Law, who acted for Mr. Chernukhin, said in their letter of 1 March 2010 that a transfer of beneficial ownership of Navigator from Mrs. Danilina to Mr. Chernukhin took place on 26 October 2005, which statement is inconsistent with Mr. Chernukhin's case that he had all along been the beneficial owner of Navigator. Moreover, this statement was never corrected. There is force in this point, but it is diminished by the circumstance that on 26 October 2005 the shares in Navigator were transferred to Sunny Gulch Inc. Before that transfer Mr. Chernukhin was, for the reasons I have given, the beneficial owner of the shares through Compass View Limited. After that transfer he remained the beneficial owner through Sunny Gulch Inc. Thus Stewarts Law were correct to identify 26 October 2005 as the date when a significant change took place in the corporate structure, but they appear to have been mistaken in saying there was a change of beneficial ownership. I accept that they never said that they were mistaken and that there is no explanation as to why Stewarts Law, no doubt acting upon instructions, said what they said. Nevertheless I consider that the explanation is likely to have been a mistaken appreciation by someone of the effect of the change in the corporate structure which occurred on 26 October 2005. In any event, Steptoe and Johnson informed Stewarts Law in April 2010 that their clients did not accept what Stewarts Law had said.

Mr. Chernukhin's refusal to provide proof of his ownership of Navigator during the buy-out negotiations

274. It is correct that Mr. Chernukhin did not provide the requested proof or personal guarantee. The submission made on behalf of Mr. Deripaska was that "the reason for this is quite simply that Mr. Chernukhin was not the true beneficial owner." Thus the force of the point depends upon whether it is reasonable to infer from Mr. Chernukhin's failure that he was unable to provide the requested proof or personal guarantee because

he was not the beneficial owner of Navigator. I do not consider that it would be reasonable to draw such an inference. Mr. Chernukhin was the beneficial owner of Navigator through Sunny Gulch Inc., but I do not doubt that he wished to keep the corporate and trust structure confidential. His desire not to disclose such matters is likely to have been heightened by the information given to him by the Metropolitan Police on 23 July 2013 that PKF had accessed personal data of his and that criminal charges had been brought. As to the requested guarantee, he may simply have thought that such a guarantee was unnecessary or that he did not wish to give the requested guarantee. I do not consider that one can infer from this refusal or failure that Mr. Chernukhin was not in fact the beneficial owner of Navigator.

Matters which support Mr. Chernukhin's case

275. I do not consider that the events post the SHA are sufficiently cogent to outweigh the evidence from the period up to 2006 which, for the reasons I have given, suggests that Mr. Chernukhin was the true joint venture partner of Mr. Deripaska. Indeed, certain of the later events provide cogent support for Mr. Chernukhin's case.

276. First, Mr. Karabut's correspondence with Mr. Chernukhin in 2009 and 2010 is only explicable on the basis that he understood that Mr. Chernukhin was Mr. Deripaska's partner in the TGM project. His understanding is significant because he was acting on behalf of Mr. Deripaska and carrying out his wishes.

277. Second, "Project F" was directed at the removal of Mr. Chernukhin from TGM. Enquiries were initiated to find information about him which could be used to Mr. Deripaska's advantage in the planned negotiations to buy him out. That is a cogent indication that Mr. Deripaska viewed him as his joint venture partner in TGM. Ultimately, Project F almost achieved its aim when in Davos in January 2013 Mr. Deripaska agreed in principle to buy out Mr. Chernukhin's interest in TGM. If Mr. Deripaska believed that Mrs. Danilina was his joint venture partner it seems to me most unlikely that Project F would have been directed against Mr. Chernukhin or that Mr. Deripaska would have agreed in principle to pay $100 million to Mr. Chernukhin for something which he knew was not Mr. Chernukhin's to sell. The fact that he was prepared in principle to buy out Mr. Chernukhin's shares suggests that Mr. Deripaska thought that Mr. Chernukhin was his joint venture partner.

278. Third, Mrs. Danilina's statements and actions also support Mr. Chernukhin's case. In her letter to Mr. Chernukhin in early 2011 she referred in terms to a partnership between Mr. Deripaska and Mr. Chernukhin. That can only, I think, be regarded as a reference to their partnership in the TGM project. Further, although Mrs. Danilina was dismissed from her position as Deputy General Director of TGM in February 2011 and issued a claim for wrongful dismissal in April 2011 (which claim was dismissed in October 2011) she did not, it seems, mention being a party to the SHA or seek to commence an arbitration claim against Mr. Deripaska pursuant to the terms of the SHA. Unlike Mr. Chernukhin, she was not involved in negotiations with Mr. Deripaska to sell "Party Two's" interest in TGM. If she had been Mr. Deripaska's true joint venture party one would have expected, at the very least, a complaint that his actions were a breach of the SHA and damaged her interests as Mr. Deripaska's joint venture partner. Yet there does not appear to have been any such complaint from her. Financial considerations may have prevented her from making a claim in arbitration in London but a formal complaint

that Mr. Deripaska had harmed her interest as a joint venture partner would have cost little. If she had been the astute businesswoman that both she and Mr. Deripaska suggest she was one would have expected some sort of protest in her capacity as joint venture partner, not merely a claim for damages for wrongful dismissal as deputy general director of TGM.

Lies and late disclosure

279. There is of course a further matter which I have considered, namely, Mr. Chernukhin's willingness for lies to be told to the arbitration tribunal about the 2004 declaration of trust. I have asked myself whether it is more likely than not that the reason for his willingness was that he appreciated that the truth about the declaration of trust would show that, as alleged by Mr. Deripaska and Mrs. Danilina, he was not the beneficial owner of Navigator and so not Mr. Deripaska's joint venture partner. I have considered this matter as carefully as I can. Mr. Chernukhin's behaviour in allowing an untrue case to be advanced was dishonest. However, I have concluded that it is more likely than not that he allowed that untrue case to be advanced because he thought that the fact that the declaration of trust was in blank until 2015 would damage his case and he wished to bolster his (true) case that he was the beneficial owner of Navigator by allowing it to be said that as from 2004 the declaration of trust bore his name as beneficiary. His case that he was the beneficial owner of the shares in Navigator was in fact true because, on the balance of probabilities, the only beneficiary of the Compass Trust was Mr. Kargin who acted, not on his own behalf, but on behalf of Mr. Chernukhin. He is not the first litigant to lie when it is unnecessary to do so.

280. The Compass Trust documents were only disclosed during the hearing (and whilst Mr. Chernukhin was giving evidence). They were disclosed by Mr. Kiener. He had obtained them in June or July 2018. He informed Mr. Chernukhin about them but did not receive what Mr. Kiener described as "express instructions" to disclose them to Clifford Chance. It seems likely that Mr. Chernukhin knew about them and chose not to tell Clifford Chance about them. Whether he thought that they might damage his case is not clear. They showed that Mr. Kargin was the beneficiary of the trust which he may well have thought did not damage his case. However, they should still have been disclosed.

281. Both of these matters give cause to question Mr. Chernukhin's case that he was the beneficial owner of Navigator. But when these matters are considered together with the other matters set out above, I remain of the view that those other matters show that he was the beneficial owner of Navigator.

282. It was submitted on behalf of Mrs. Danilina that if her claim is not proven as a result of the absence of documents under the control of Mr. Chernukhin then the court should conclude that there has been an abuse of process such that Mr. Chernukhin's defence should be struck out. I have given careful consideration to this submission, and to paragraph 16(d) of Mrs. Danilina's closing submissions. I have read the correspondence cited there, and Byrne and Partners' further emails of 31 January and 1 February 2019. As I understand the position, the full original CAS file has now – albeit only very recently – been disclosed. Many of the documents sought by Mrs. Danilina (such as minutes of relevant meetings) are likely to have been located in that file if they exist, and so will now have been disclosed. Insofar as Byrne and Partners seek further disclosure from CAS (such as email correspondence), there is, it seems to me, force in

Clifford Chance's response that, because CAS is not a named custodian in these proceedings, no further disclosure is required. In any event, I have reached my conclusions on the TGM claim based upon the several matters to which I have referred, not based upon a failure by Mrs. Danilina to prove her case by reason of documents withheld by Mr. Chernukhin. In those circumstances, it is improbable that, to the extent that any further documents exist, they would be such as to call into question my conclusions. I therefore decline to strike out Mr. Chernukhin's defence on this ground.

Factual conclusions in the TGM Claim

283. Having considered (i) the probabilities and the evidence dating from the period 2001-2006 and (ii) the events which occurred thereafter from 2007-2016 it is necessary to stand back from the detail and view the matter in the round. Having done so I have reached, with little hesitation, the clear conclusion that on the facts, notwithstanding the terms of the SHA and related contractual documents, the true joint venture partner of Mr. Deripaska and true beneficial owner of Navigator was Mr. Chernukhin, not Mrs. Danilina. In summary that conclusion is compelled by (i) the probabilities, (ii) the records of telephone contacts between Mr. Chernukhin and Mr. Deripaska between June and September 2004 when the term sheets were being negotiated, (iii) the probability that, notwithstanding the late and muddled disclosure relating to the Compass Trust, Mr. Chernukhin was the beneficial owner of Navigator at all material times, (iv) the fact that Mr. Deripaska's representative in discussions with Mr. Chernukhin, first, Mr. Zagorsky at the London meeting in December 2005 and second Mr. Karabut in his correspondence with Mr. Chernukhin in 2009, viewed Mr. Chernukhin as Mr. Deripaska's partner, (v) the fact Mrs. Danilina herself referred in early 2011 to the partnership being between Mr. Deripaska and Mr. Chernukhin, and (vi) the fact that Project F was aimed at the removal of Mr. Chernukhin from TGM by buying out his interest.

284. Mrs. Danilina was trusted by Mr. Chernukhin in 2004 and 2005 (as she had been before). That is why he was content for Mrs. Danilina to be named as the partner in the October 2004 term sheet and as the beneficial owner of Navigator in the 2005 SHA. It is to be inferred that he asked her to use her name in this way as his nominee and that she agreed to do so. I do not doubt that Mr. Deripaska appreciated at all times that his true joint venture partner was Mr. Chernukhin. That he appreciated that Mr. Chernukhin was his partner is to be inferred from the probabilities, the dealings of Mr. Zagorsky and Mr. Karabut, on behalf of Mr. Deripaska, with Mr. Chernukhin, the object of Project F and Mr. Deripaska's agreement in principle to buy out Mr. Chernukhin.

285. In denying that that was so Mr. Deripaska has given dishonest evidence to the court as he did to the arbitrators. What his motive was for doing so is known only to himself. Mrs. Danilina also gave dishonest evidence to the court that she was in reality Mr. Deripaska's joint venture partner. She was persuaded to give such evidence by the large sum of money which Mr. Deripaska agreed to pay her if she won her claim in this court.

The legal issue in the TGM Claim: the interpretation of the SHA

286. The court's decision on the facts is not however determinative of Mrs. Danilina's claim or of Mr. Deripaska's challenge to the jurisdiction of the arbitrators. Both rely upon the terms of the SHA to exclude the ability of Mr. Chernukhin to sue upon the SHA as the

disclosed principal of Mrs. Danilina. Counsel for Mr. Chernukhin submitted that he was entitled to sue upon the SHA pursuant to well-established principles of English law. Counsel for Mrs. Danilina and Mr. Deripaska disputed the application of those principles in the present case and submitted that the terms of the SHA precluded the intervention of a disclosed principal, and that Mr. Chernukhin was prevented from suing upon by the SHA by reason of a contractual estoppel.

287. It is convenient to start with the principles of English law which allow a principal not named as party to a contract to sue upon it where it was entered into by his agent.

288. In *Teheran-Europe Co. Ltd v ST Belton (Tractors) Ltd.* [1968] 2 QB 545 Lord Denning MR described the principles in these terms at p. 552G:

> It is a well-established rule of English law that an undisclosed principal can sue and be sued upon a contract, even though his name and even his existence is undisclosed, save in those cases when the terms of the contract expressly or impliedly confine it to the parties to it. This rule is an anomaly, but is justified by business convenience. It has been held so for many years.

289. Diplock LJ described the principles in these terms at p. 555D:

> In determining who is entitled to sue or liable to be sued on a contract, a useful starting point, where the contract is in writing, is to look at the contract. In doing so a number of elementary principles should be borne in mind. The first is that a person may enter into a contract through an agent whom he has actually authorised to enter into the contract on his behalf or whom he has led the other party to believe he has so authorised. But we are concerned here only with actual authority. Where an agent has such actual authority and enters into a contract with another party intending to do so on behalf of his principal, it matters not whether he discloses to the other party the identity of his principal, or even that he is contracting on behalf of a principal at all, if the other party is willing or leads the agent to believe that he is willing to treat as a party to the contract anyone on whose behalf the agent may have been authorised to contract. In the case of an ordinary commercial contract such willingness of the other party may be assumed by the agent unless either the other party manifests his unwillingness or there are other circumstances which should lead the agent to realise that the other party was not so willing.

290. Sachs LJ was to the same effect at p. 561C:

> Were the terms of the contractual documents passing between Richards and the defendants such as to exclude the plaintiffs from being able to sue the defendants or to be sued by them on the contract that was made? Otherwise the plaintiffs are entitled to sue the D defendants by virtue of the general rule, stated by

> the Master of the Rolls, that normally a principal can always step in and enforce the contract if his name was unmentioned or even if his existence was undisclosed at the time the contract was made.

291. More recently, the relevant principles were stated by the Court of Appeal in *Aspen Underwriting Limited and others v Credit Europe Bank NV* [2018] EWCA Civ 2590 in these terms, per Gross LJ at paragraph 47:

> It is not in dispute that English Law permits an undisclosed principal to sue or be sued on a contract, subject (for present purposes): (1) to the terms of the written contract expressly or impliedly confining it to the named parties; (2) to the willingness of the "other" contracting party to contract with the undisclosed principal; (3) to the agent having actual authority to contract on behalf of the undisclosed principal and exercising such authority.

292. Even more recently the Court of Appeal in *Kaefer Aislamientos de CV v AMS Drilling Mexico SA de CV* [2019] EWCA Civ 10 summarised the principles in these terms, per Green LJ at paragraph 55:

> There is no material dispute between the parties as to the governing principles. For a party to be an undisclosed principal it must hence be established that: (1) the agent contracted with and within the scope of the actual authority of the undisclosed principal; (2) at the time of the relevant contract, the agent intended to contract on the principal's behalf; and (3), there is nothing in the contract or surrounding circumstances showing that the agent is the true principal and which excludes the making of a contract with an undisclosed principal.

293. On my findings of fact Mr. Chernukhin authorised Mrs. Danilina to sign the SHA as his nominee as beneficial owner of Navigator and, together with Navigator, as Party 2. Further, Mrs. Danilina agreed to do so and Mr. Deripaska knew that she did so. The remaining question is whether the terms of the SHA confined those entitled to sue and be sued upon the SHA to those named in it as party.

294. Given the long-established right of a principal, whether disclosed or undisclosed, to enforce a contract made by his agent, very clear words are, in my judgment, required to show that only the named party rather than his principal was intended to have the right to perform the contract. This approach is supported by the guidance given by the Privy Council in *Siu Yin Kwan v Eastern Insurance Company* [1994] 2 AC 199. In that case Lord Lloyd stated:

> The terms of the contract may, expressly or by implication, exclude the principal's right to sue, and his liability to be sued. The contract itself, or the circumstances surrounding the contract, may show that the agent is the true and only principal.

295. Lord Lloyd approved the statement of the governing principle by Diplock LJ in *Teheran-Europe Co. Ltd v ST Belton (Tractors) Ltd.* (which I have quoted above) and said this:

> If courts are too ready to construe written contracts as contradicting the right of an undisclosed principal to intervene, it would go far to destroy the beneficial assumption in commercial cases, to which Diplock J. referred in *Teheran-Europe Co. Ltd. v. S. T. Belton (Tractors) Ltd.* [1968] 2 Q.B. 545, 555.

296. Thus, as it seems to me, the mere fact that a person is described or identified in a contract as the party to the contract cannot generally be sufficient to exclude the right of the party's principal to enforce the contract. Otherwise, that right would generally be excluded and principals would rarely have the right to enforce a contract made by their agent. Sometimes, as in *Aspen*, the description of the parties may be regarded as stating clearly and unequivocally that only the named parties may sue or be sued on the contract but, as stated in *Kaefer* at paragraph 114:

> … it might be putting the proposition too highly to say that the mere specification of parties in a contract serves to oust the doctrine of undisclosed principal since, if it were true, then every contract with named parties would serve to prevent a finding that there were undisclosed principals which would defeat the principle itself.

297. This approach explains why Diplock LJ said that

> In the case of an ordinary commercial contract such willingness of the other party [to treat as a party to the contract anyone on whose behalf the agent may have been authorised to contract] may be assumed by the agent unless either the other party manifests his unwillingness or there are other circumstances which should lead the agent to realise that the other party was not so willing.

298. I considered this area of the law in *Ferryways NV v Associated British Ports* [2008] EWHC 225 (Comm) at paragraphs 48-55. I described the nature of the enquiry upon which the court is engaged in these terms at paragraph 49:

> The question to be answered therefore is whether the terms of the contract of employment are inconsistent with the intervention of the Claimant as principal. This type of question has been approached in the past by enquiring whether there are words in the contract which designate the agent as "the real and only principal" and as "the only person" who is to have the rights and obligations arising under the contract; see *Fred. Drughorn Limited v Rederiaktiebolaget Trans−Atlantic* [1919] AC 203 at p.209 per Lord Sumner. Thus the mere description of the agent as "charterer" in a charterparty did not prevent the undisclosed

> principal from intervening because "it does not say that he is not chartering for others, and if that is what he has done in fact the law allows them to prove it." (per Lord Sumner at p.209)

299. In *Aspen* I accepted a submission that the question was whether the contract "unequivocally and exhaustively" defined the parties to it; see [2017] EWHC 1904 (Comm) at paragraph 42:

> Mr. Berry submitted that where the terms of an agreement unequivocally and exhaustively identify the parties to it, it is impermissible to seek to contradict it. I accept that submission. Thus in in *Foster v Action Aviation Limited* [2013] EWHC 2439 (Comm) at paragraphs 131-135 Hamblen J. (as he then was) said that where a contract identifies the principal upon whose behalf an agent enters a contract, it is not open to a party to suggest that the agent entered the contract on behalf of someone other than the identified principal. If the principal is not identified then, as Lord Hobhouse observed in *Shogun Finance v Hudson* [2004] 1 AC919 at paragraph 49 "where the person signing is also acting as the agent of another, evidence can be adduced of that fact".

300. The present case concerns a commercial contract. It is perhaps "an ordinary commercial contract" (the phrase used by Diplock LJ) for two oligarchs to make but it is not an "ordinary commercial contract" like a contract of insurance, sale or carriage (which may well have been the type of contract Diplock LJ had in mind). So its features must be borne in mind when considering whether its terms exclude the right of Mr. Chernukhin, as Mrs. Danilina's principal, to enforce the SHA.

301. The parties to the SHA are described on page 1 of the SHA as follows:

> FILATONA TRADING LIMITED, a company registered and operating in accordance with the laws of the Republic of Cyprus (registration number No. 160653), hereinafter referred to as "Shareholder 1," and also the Beneficial Owner of Shareholder 1, Oleg Vladimirovich Deripaska (passport No. 95 03 468768 issued by the Department of Internal Affairs of the town of Sayanogorsk, Republic of Khakasiya on 11 September 2003, hereinafter referred to as "Beneficial Owner 1," Shareholder 1 and Beneficial Owner 1 hereinafter jointly referred to as "Party 1";
>
> NAVIGATOR EQUITIES LIMITED, a company registered and operating in accordance with the laws of the British Virgin Islands (registration number No. 609747), hereinafter referred to as "Shareholder 2," and also the Beneficial Owner of Shareholder 2, Lolita Vladimirovna Danilina (passport No. 45 06 419120 issued by the Department of Internal Affairs of the district of Dorogomilovo on 30 April 2004), hereinafter referred to as "Beneficial Owner 2," Shareholder 2 and Beneficial Owner 2 hereinafter jointly referred to as "Party 2"

302. The terms of the contract thereafter refer to Party 1 and Party 2 but the two beneficial owners are obliged by clause 2.2:

> … to ensure due fulfilment of the conditions of this Agreement by the Shareholder of which he is the Beneficial Owner.

303. It was submitted on behalf of Mr. Deripaska that the objective behind the inclusion in the contract, not only of the corporate bodies Filatona and Navigator, but also of their respective beneficial owners, was to bind the beneficial owners, not just the corporate vehicles, to the contract. I agree that that was the objective. It is made manifest by clause 2.2.

304. That being so one would expect Mr. Deripaska (adopting the language of Diplock LJ) to be "willing to treat as a party to the contract" Mr. Chernukhin on whose behalf, and to his knowledge, Mrs. Danilina signed the SHA as beneficial owner. One would expect him to be so willing because he would wish to be able to bind the true beneficial owner of Navigator and his true joint venture partner to the SHA. I accept that he would have the difficulty, as submitted by counsel on his behalf, of a "wholly undocumented nominee relationship which would have to be proved in a foreign language arbitration were Mr Deripaska ever to want to enforce against Mr Chernukhin." But, as it seems to me, the objective of being able to bind Mr. Chernukhin to the SHA would be worth that difficulty. If it were not, then, knowing that his true joint venture partner was Mr. Chernukhin, he could have insisted on Mr. Chernukhin being named in the SHA as beneficial owner rather than Mrs. Danilina.

305. It was also submitted on behalf of Mr. Deripaska that the SHA was an example of a "relational" contract described by Leggatt J. in *Yam Seng Pte Ltd v International Trade Corp Ltd.* (2013) EWHC 111 QB as one which:

> … may require a high degree of communication, cooperation and predictable performance based on mutual trust and confidence and involve expectations of loyalty which are not legislated for in the express terms of the contract but are implicit in the parties' understanding and necessary to give business efficacy to the arrangements. Examples of such relational contracts might include some joint venture agreements…

306. It was submitted that such a contract was "the last type of contract where one would expect to find any uncertainty regarding who the parties are who are entering into such a relationship". But there is no such uncertainty in the present case. Mr. Deripaska knew who was his joint venture partner. And his ability to sue Mr. Chernukhin as a disclosed principal would have been of such importance to Mr. Deripaska that it is unrealistic to suggest that he was not willing to treat him as a party to the SHA.

307. Reliance was placed on the "entire agreement clause" which provided as follows:

> 14.5 This Agreement together with the preamble, appendices and other documents necessary in accordance with this Agreement is the complete and exhaustive agreement between the Parties in respect of the subject matter thereof, and replaces all previous

> verbal or written agreements, obligations and arrangements of the Parties in relation to its subject matter that do not comply with the provisions of this Agreement.

308. The relevance of an entire agreement clause was considered very recently by the Court of Appeal in *Kaefer Aislamientos de CV v AMS Drilling Mexico SA de CV* [2019] EWCA 10 Civ. At paragraph 113 Green LJ said:

> Where there is an entire agreement clause this is evidence which tends to negative any suggestion that a party intended to sue or be sued by a person other than the counterparty in respect of disputes under the agreement.

309. In the next paragraph, he continued:

> For my part I do not think that the entire agreement clause in the terms and conditions necessarily serves to exclude *altogether* the possibility that there might be undisclosed principals. The language used is not wholly unequivocal and the parties could, had they wished, have expressly stated that the parties thereto were the *only* parties that could sue and/or be sued. But they did not. On the other hand, I do consider that it is a cogent indication that the alleged agents (the First and Second Defendants) did not intend to act on behalf of an undisclosed third-party principal and that this was also the view of the Claimant. It is evidence that can go into the mix.

310. Thus the approach of the Court of Appeal in *Kaefer* was that an entire agreement is part of the evidence. It can tend to negative a suggestion that a party was willing to contract with a person not named as a party. But it may not do so unequivocally where it does not state that *only* the named parties may sue or be sued on a contract. It is "evidence that can go into the mix", that is, the whole of the extrinsic evidence which must be considered on the question whether a party was willing to contract with a person not named in the contract.

311. The entire agreement clause in this case can be said to be an indication that the parties to it intended only to contract with each other. The phrase "the complete and exhaustive agreement" suggests that. But that phrase is qualified by "in respect of the subject matter" of the contract and the clause does not say, as it might have done, that the *only* persons who may sue upon it are the named parties. Thus the clause does not unequivocally exclude the ability of a disclosed principal to sue upon it.

312. The contractual purpose of the parties in naming the beneficial owner of the two corporate vehicles named in the SHA was to bind the beneficial owner to the contract; see clause 2.2 of the SHA. Having regard to that purpose and having regard to Mr. Deripaska's knowledge that his true joint venture partner was in fact Mr. Chernukhin, it is to be expected, on an objective analysis, that Mr. Deripaska would be, in the words of Diplock LJ, "willing to treat as party" to the SHA the person for whom, as he appreciated, Mrs. Danilina was acting as nominee or agent. Otherwise he would not have the benefit of being able to bind the true beneficial owner of Navigator to the SHA.

313. This would be an important consideration for Mr. Deripaska not only in relation to the financial obligations of the corporate vehicles to ensure that Navio purchased the shares in TGM (clause 3) but also in the relation to the clause (clause 7) which prohibited the parties from competing developments in the relevant area of Central Moscow.

314. Reliance was also placed on clause 14.8 which provides:

> 14.8 This Agreement creates legal rights and obligations for its parties, and also for their legal successors. The rights and obligations under this Agreement may not be transferred and/or ceded by one Party without prior consent of the other Parties in writing.

315. It was suggested that this clause "makes the identities of the parties of the essence". But the clause has to be construed in the context of the SHA as a whole and, for the reasons I have given, I have concluded that its terms do not preclude the ability of Mr. Chernukhin to enforce it as a disclosed principal.

316. Reliance was also placed on the Supplemental Agreement, which was signed on the same day as the SHA and was expressed to be an integral part of it. The Supplemental Agreement expressly referred to Mr. Chernukhin by providing that any transfer by Mrs. Danilina to him would not be a "change of control" for the purposes of clause 10 of the SHA. It is arguable that this is inconsistent with Mr. Chernukhin being the true beneficial owner because, if he was, Mrs. Danilina would have nothing to transfer to him. However, it is also arguable, as it seems to me, that Mr. Chernukhin wished to ensure that if his position as beneficial owner were formally recognised that would not amount to a change of control. In the factual context in which the SHA is to be found I consider that to be the more likely explanation. (I accept that the naming of him in the Supplemental Agreement somewhat frustrates Mr. Chernukhin's attempt to disguise his interest by not naming him in the SHA. But nevertheless, having regard to the factual context in which the SHA and the Supplemental Agreement are to be found, I am not persuaded that this materially weakens the force of those many matters which suggest that the real beneficial owner of Navigator and joint venture partner of Mr. Deripaska was Mr. Chernukhin.)

317. Having regard to these considerations I do not consider that there is anything in the SHA which makes clear that Mr. Deripaska was *only* prepared to accept Mrs. Danilina as beneficial owner of Navigator and not Mr. Chernukhin. Nor do I consider that the terms of the contract *unequivocally and exhaustively* define the parties to it. On the contrary there is every reason why Mr. Deripaska would have been prepared to accept Mr. Chernukhin as the beneficial owner of Navigator.

318. Counsel for Mr. Deripaska and Mrs. Danilina also relied upon a contractual estoppel. Such an estoppel can only arise from terms of the SHA. Counsel for Mr. Deripaska referred to a leading textbook (Spencer Bower, *Reliance-Based Estoppel*) for the following proposition: "An estoppel by contract is simply a term of a contract which precludes a party from making an assertion: it does so by force of contract and does not therefore require detrimental reliance".

319. If the terms of the SHA, for the reasons I have given, do not preclude Mr. Chernukhin from enforcing the SHA as a disclosed principal then they cannot found a contractual estoppel. It is therefore unnecessary to say anything more about the principles of contractual estoppel.[2]

Disposal of the TGM claim

320. The consequence of my decision on the principal issue of fact and the related issue of law is that the section 67 challenge by Mr. Deripaska must fail.

321. Nothing further need to be said about the section 67 challenge. I agree with the arbitrators' conclusion that Mr. Chernukhin was a disclosed principal of Mrs. Danilina and entitled to sue upon the SHA.

322. It follows that I do not need to consider a further submission made on behalf of Mr. Deripaska that the tribunal was invalidly constituted. The basis of that submission was the arbitration clause requires both the beneficial owner and corporate shareholder of the relevant Party jointly to initiate arbitration proceedings. It was submitted that, if the Claimants were successful in the TGM claim on the facts, the arbitration was invalid since it was initiated by Navigator without its true beneficial owner. Since the Claimants were not successful in the TGM claim, and the arbitration proceedings were initiated jointly by Navigator and its beneficial owner (Mr. Chernukhin, as I have found), this issue of interpretation does not arise. The Deripaska parties submitted, in the alternative, that even if Mr. Chernukhin was the true joint venture party, Mrs. Danilina was somehow *also* a party to the SHA, and so ought also to have been party to the arbitration. I am not sure that this argument was pressed. But if, as I have found, Mr. Chernukhin was Mrs. Danilina's disclosed principal then he, and not she, was party to the SHA, so the arbitration proceedings were validly constituted.

323. The claim by Mrs. Danilina brought against Mr. Chernukhin and Mr. Kargin in respect of TGM must fail. There is no need to consider whether, if my decision had been that Mrs. Danilina had been the true beneficial owner of Navigator and the true joint venture partner of Mr. Deripaska, Mrs. Danilina had an enforceable cause of action against Mr. Chernukhin and Mr. Kargin. Several causes of action were advanced, including (i) breach of the SHA by Navigator in connection with the commencement in 2015 and pursuit thereafter of arbitration proceedings without the consent of Mrs. Danilina (paragraph 54 of Mrs. Danilina's opening submissions), (ii) the tort of inducement of breach of contract by Mr. Chernukhin (paragraph 55), (iii) the tort of conspiracy to cause loss by unlawful means by Mr. Chernukhin and Mr. Kargin (a) by misappropriating Mrs. Danilina's interest in Navigator in September 2004 and (b) by causing arbitration to be commenced in 2015 without involving Mrs. Danilina (paragraphs 56-57), (iv) breach of duty by Mr. Chernukhin and Mr. Kargin as agent or trustee in 2005 (paragraphs 64-66), (v) liability of Mr. Chernukhin as trustee of a constructive or resulting trust (paragraphs 69-72), and (vi) liability of Mr. Chernukhin for knowing receipt (paragraphs 73-74). If Russian law is the governing law of any or all of these various causes of action, then equivalent liability in respect of certain of the causes of actions was alleged as a matter of Russian law (paragraphs 58 and 80). All of

[2] Counsel for Mrs. Danilina has said, in response to the draft judgment, that the court has not dealt with the case on estoppel by representation or by convention. But in the light of my findings of fact no such case can arise.

these alleged causes of action potentially give rise to difficult questions both as to liability and as to the appropriate limitation period. Not only is it unnecessary to deal with these matters, but it would be unwise to do so where I heard no argument about them and any view would be expressed upon a hypothetical basis.

THE FAMILY ASSETS CLAIM

324. The burden lies on Mrs. Danilina to prove, on the balance of probabilities, that Mr. Chernukhin agreed with her in 2007 to share the assets which they had built up during their time together. That is a broad summary of what Mrs. Danilina seeks to prove. She in fact alleges the following, quite detailed, agreement:

a) TGM would remain (as it always was) as an asset belonging to Mrs. Danilina and her alone;

b) the assets accumulated between them jointly and which they regarded as family assets would be distributed between them on an effectively equal basis with:

i) Mrs. Danilina retaining and/or taking those residential real property assets located within Russia,

ii) Mr. Chernukhin having those residential real property assets located outside of Russia and

iii) save for certain chattels such as cars and the weapon collection (which were to be owned by Mr. Chernukhin) and jewellery and artwork in Russia (which were to be owned by Mrs. Danilina), the balance of their assets would be split equally and Mrs. Danilina's 50% share held in a trust for her benefit;

c) a new structure would be required to reflect these agreements; and

d) Mr. Chernukhin would be responsible for taking the necessary steps to give effect to the agreement.

Governing law of the alleged 2007 agreement

325. It is necessary to begin by considering what would be the governing law of the 2007 agreement, if it was made on the terms alleged by Mrs. Danilina. The reason for this is that it is submitted on behalf of Mr. Chernukhin that the agreement, if made, would be governed by Russian law, and that there are provisions of Russian law (which I address below) that affect the admissibility of witness testimony in proving the existence of an oral agreement.

326. It was common ground that, being a contract entered into prior to 16 December 2009, the proper law of the 2007 Agreement would be determined under the Rome Convention on the law applicable to contractual obligations. The relevant provisions of that Convention are articles 3 and 4, which provide (so far as is relevant) as follows:

> **Article 3 Freedom of choice**
>
> 1. A contract shall be governed by the law chosen by the parties. The choice must be expressed or demonstrated with reasonable certainty by the terms of the contract or the circumstances of the case. By their choice the parties can select the law applicable to the whole or a part only of the contract.

2. …

3. The fact that the parties have chosen a foreign law, whether or not accompanied by the choice of a foreign tribunal, shall not, where all the other elements relevant to the situation at the time of the choice are connected with one country only, prejudice the application of rules of the law at the country which cannot be derogated from by contract, hereinafter called 'mandatory rules`.

4. …

Article 4 Applicable law in the absence of choice

1. To the extent that the law applicable to the contract has not been chosen in accordance with Article 3, the contract shall be governed by the law of the country with which it is most closely connected. Nevertheless, a separable part of the contract which has a closer connection with another country may by way of exception be governed by the law of that other country.

2. Subject to the provisions of paragraph 5 of this Article, it shall be presumed that the contract is most closely connected with the country where the party who is to effect the performance which is characteristic of the contract has, at the time of conclusion of the contract, his habitual residence, or, in the case of a body corporate or unincorporate, its central administration. However, if the contract is entered into in the course of that party's trade or profession, that country shall be the country in which the principal place of business is situated or, where under the terms of the contract the performance is to be effected through a place of business other than the principal place of business, the country in which that other place of business is situated.

3. Notwithstanding the provisions of paragraph 2 of this Article, to the extent that the subject matter of the contract is a right in immovable property or a right to use immovable property it shall be presumed that the contract is most closely connected with the country where the immovable property is situated.

4. …

5. Paragraph 2 shall not apply if the characteristic performance cannot be determined, and the presumptions in paragraphs 2, 3 and 4 shall be disregarded if it appears from the circumstances as a whole that the contract is more closely connected with another country.

327. Counsel for Mrs. Danilina submitted that the parties made a choice in favour of English law under article 3(1) of the Rome Convention, and that this choice was "*expressed or demonstrated with reasonable certainty by … the circumstances of the case."* Those circumstances are: (i) the fact that "Mr. Chernukhin had fled Russia in 2004 in an effort to make a clean break from Russian law and jurisdiction"; (ii) that Mrs. Danilina assisted him in moving to England, including by sending legal documents there; (iii) in 2007 Mr. Chernukhin was seeking English matrimonial law advice in relation to his assets, prior to his marriage to Mrs. Chernukhin. I do not accept that any of these matters

is sufficient to amount to a choice for the purposes of article 3 of the Convention. They do not amount to a positive choice of law "expressed or demonstrated with reasonable certainty."

328. The proper law of the 2007 Agreement, if it was made, must therefore be determined in accordance with article 4. It was submitted on behalf of Mrs. Danilina that England is the "most closely connected" country, under the presumption in article 4(2). It is said that the characteristic performance under the agreement was to create the relevant trust structure for dividing, managing and investing the assets. The performer of these obligations was Mr. Chernukhin, who was and is resident in England. Mrs. Danilina then submits that this presumption should not lightly be displaced. As the Court of Appeal said in *Samcrete Egypt Engineers v Land Rover Exports Ltd* [2001] EWCA Civ 2019, at [41], "unless art.4(2) is regarded as a rule of thumb which requires a preponderance of contrary connecting factors to be established before that presumption can be disregarded, the intention of the Convention is likely to be subverted." Nonetheless, "the presumption may most easily be rebutted in those cases where the place of performance differs from the place of business of the party whose performance is characteristic of the contract" (See *Bank of Baroda v Vysya Bank Ltd.* [1994] 2 Lloyd's Rep 87, 93, in the context of a bank's place of central administration).

329. Counsel for Mr. Chernukhin submitted that Russia is "most closely connected" country. This is primarily because "the principal subject-matter was assets based in Russia / assets acquired using money generated in Russia and while the parties were resident in Russia." Further, the Agreement is said to be "akin" to a divorce arrangement pursuant to the Russian Family Code, and of a relationship which occurred primarily or exclusively in Russia. Finally, the Agreement as alleged would have involved performance by both Mrs. Danilina and Mr. Chernukhin, distributing (including, where relevant, by re-registration of shares and real property) their various assets.

330. I accept the submission of Counsel for Mrs. Danilina that the characteristic performance of the agreement, as pleaded, was primarily to be performed by Mr. Chernukhin. On Mrs. Danilina's case, Mr. Chernukhin was entrusted to divide, invest and structure significant liquid and illiquid assets, of which Mrs. Danilina was in large part unaware. I also accept the submission, on the strength of the *Samcrete* case, that this presumption is not lightly to be displaced. Consequently, whilst there are indeed some factors that might otherwise point to Russia being "most closely connected" (and other factors pointing to other jurisdictions, such as the use of Channel Islands trusts and the fact that the agreement was allegedly concluded in Zurich), these factors are not, in my judgment, sufficient to displace the presumption in article.4(2).

331. I therefore consider that the proper law of the agreement, if made, was English law. It may nonetheless become necessary, at a later stage, to consider whether, in respect of real property, the court must also apply relevant provisions of the lex situs of property which is said to be covered by the agreement. If such questions arise, they would be for the court determining the appropriate remedy or relief.

332. It is not, therefore, necessary for me to consider the issues that would have arisen if I had concluded that the 2007 agreement, if made, was governed by Russian law. Nonetheless, in case I am wrong as to the governing law, I shall briefly address the question of the admissibility of evidence.

333. The issue arises in the following way. Counsel for Mr. Chernukhin submitted that Russian law requires certain agreements to be made in writing. He further submitted

that the effect of a failure to comply with this requirement, in Russian law, is that Mrs. Danilina is prohibited from adducing oral evidence to prove it. These provisions, he submitted, are substantive in nature, and so fall to be applied by the English court. Counsel for Mrs. Danilina did not dispute that the 2007 Agreement was of a kind (by virtue of its value) that invokes the requirement of writing, but submitted that the relevant provisions are procedural in nature, and so do not fall to be applied by this court, which (as a matter of English private international law), applies its own procedural law. The question whether a particular rule is substantive or procedural in nature is a question for the governing law (see *Dicey, Morris and Collins on the Conflict of Laws*, 15th Ed, [7-002]).

334. The relevant provision is in article 162(1) RCC, which provides:

> A failure to make a transaction in a simple written form shall deprive either party thereto of a right to refer to witness testimony evidencing the same or applicable terms and conditions, if any dispute arises. However, neither of them shall be deprived of a right to produce written or any other evidence.

335. It was common ground between the experts that the classification of Russian law provisions as substantive or procedural is a matter of "the essence and content of the rule and the relationships it regulates", rather than one of form (see, for example the judgment of the Supreme Court of the Russian Federation in *Bank of Cyprus v Zhedochi-16 LLC* of 23 August 2017 (No.305-ES16-13148(2)). The fact that the provision appears within the (largely substantive) Civil Code is therefore not determinative.

336. The evidence of Mr. Holiner (Mrs. Danilina's expert on Russian law) is that failure to comply with article 162(1) "only deprives a party, in the event of a dispute, of the right to rely upon witness evidence in support of the agreement's terms or existence… It does not set any standards or limitations as to the types or quality of other evidence that may be relied upon to prove the terms or existence of a contract, whether temporally or otherwise." Further, that "Article 162(1) of the RCC does not regulate substantive relationships between contracting parties as such, and in particular it contains no rule that prescribes when or how a contract comes into existence, in what circumstances it is invalid for want of written form or what terms form part of the contract; those matters are determined with reference to provisions of substantive law."

337. The evidence of Mr. Kulkov (Mr. Chernukhin's expert) is that article 162(1) is a substantive rule, or a rule that is both procedural and substantive. His evidence was that "it is overly simplistic to characterise evidential matters as purely procedural. While the procedural law extends to the manner in which evidence is given by the parties and admitted by the Court, Russian substantive law also extends to evidential issues." He concludes that "article 162(1) of the RCC is a substantive rule which prescribes the fundamental elements of a binding contract – in particular, the mandatory requirement on written form of an agreement – [which] cannot properly be considered separately from other fundamental substantive requirements for an agreement."

338. Both experts were able to cite decisions of the Russian court, and academic writings (which, I am told, are not formally a source of law in Russia) in support of their view. There appears to be a tension between remarks in two judgments of the Supreme Court (Russia's highest court in civil matters). The first of these is the Ruling of the Supreme Court dated 22 August 2003 (No.4-V03-24). In that case, after citing article 162, the

court overturned a lower court decision on the basis that the lower court "established the fact of the loan agreement conclusion and the money receipt thereunder on the basis of witness testimony … and thus violated the said rule of substantive law." It thus referred to article 162 as "substantive." By contrast, in the recent *Bank of Cyprus* case (supra), the court said: "Russian law knows examples where procedural rules are located in a substantive law (for example, those in the Civil Code of the Russian Federation concerning the prohibition of relying upon witness testimony where there has been a failure to comply with the written form of a transaction (article 162(1)) …".

339. Each of these references to article 162 is brief. However, I am persuaded by Mr. Holiner's evidence that the later case represents a more authoritative view. First, this is because the distinction between procedural and substantive rules was only at issue in the later case. In the earlier case, the question whether the rule was substantive or procedural was not in issue, because the court was applying Russian law. By contrast, in the later case the Russian court was applying Cypriot law, and had to determine whether the Cypriot rules concerning interest were procedural or substantive in nature (because, under Russian private international law, the Russian court would only apply those rules if they were substantive in nature). Second, the court in the later case considered carefully the question of how to determine whether a provision is substantive or procedural (noting that the question is determined by the "content" of the rule rather than its location within a particular statute) and then deliberately choses to cite article 162(1) as an example of a procedural rule. I accept Mr. Holiner's evidence that "it is a reasonable conclusion that the guidance given in the paragraph [setting out the test] is the rationale" for concluding that article 162 is a procedural rule. Third, the later judgment was included in a review of court practice published by the Presidium of the Supreme Court, and thereby approved by that body.

340. In any event, and with the *content* of article 162(1) in mind, I have reached the conclusion that it should be considered a procedural rule. I can readily understand how some requirements as to the form which an agreement must take may be substantive rules of law. As the experts agreed, a rule such as those set out above rendering particular types of contract void for want of formality is clearly substantive in nature. To that extent, I accept the evidence of Mr. Kulkov that a rule of evidence *may* be substantive in nature. However, I am not persuaded that article 162(1) of the RCC is such a rule. It does not purport to affect the validity or existence of an oral agreement; it merely prevents reliance on one particular type of evidence, whilst explicitly allowing for the agreement to be proven by "any other evidence". In my judgment, there is an important distinction between the facts which must be proven and the evidence by which those facts might be proven. A rule stating that certain evidential consequences flow from a particular failure of formality is materially different from a rule setting out the essential elements of a contract (such as, for example, a requirement that there be agreement on all essential terms).

341. I would therefore have concluded, had it been necessary, that the prohibition on relying upon witness evidence in support of the alleged agreement, found in article 162(1) of the RCC, is procedural in nature. On that basis, it would not fall to be applied by this court even if the alleged agreement were governed by Russian law.

Discussion of the Family Assets claim

342. The evidence relevant to this claim has been summarised above at paragraphs 182 – 217.

343. There are some remarkable aspects of this claim. First, although it must have been an agreement worth a considerable amount of money to Mrs. Danilina, there is no formal written record of it or, indeed, any correspondence between the parties relating to it. Mrs. Danilina may have trusted Mr. Chernukhin in the past but, on her case, he had just ended their relationship in circumstances where, on her case, she had expected to marry him in Frankfurt in January 2007. On her case he had let her down badly. Indeed, Mrs. Danilina's evidence was that in the days after this discussion "I felt like I never wanted to see Vladimir again and thought that I would deal with my finances myself", but that Mr. Chernukhin reassured her that "everything he had now and would have in the future was mine", notwithstanding the separation. In such circumstances one would have expected her to require something in writing from him confirming the very significant agreement she says they had reached.

344. Second, Mrs. Danilina does not appear to have expressed any interest in obtaining from Mr. Chernukhin an account of the assets in which she now had a 50% share. For an accomplished businesswoman, which she claims to be, that is a remarkable omission.

345. Third, no claim for breach of the alleged agreement was made until 2017. It is possible that the absence of claim before 2012 can be explained by the fact that Mr. Chernukhin continued to support Mrs. Danilina financially until then. But that still leaves a delay of 5 years. She did commence proceedings against Mr. Chernukhin in 2013 in connection with ownership of the 'Upper House' in Zhukovka but no mention was made of any assets sharing agreement.

346. Fourth, it is a peculiar aspect of the alleged agreement that, of Mrs. Danilina's and Mr. Chernukhin's many "shared" assets, only the shares in Navio are said to stand outside their wide-ranging asset-sharing agreement. In fact, Mrs. Danilina's second witness statement for trial stated for the first time that another asset, the "Midland Bank property project", also stood outside the asset-sharing agreement (being for Mr. Chernukhin's benefit alone). However, her Particulars of Claim continued to assert a 50% interest in that project.

347. Against that background, the evidence in support of the alleged agreement must be convincing. Otherwise the court would be unable to conclude on the balance of probabilities that the alleged agreement had in fact been made.

348. Having considered the evidence, my conclusions are as follows. In February 2007 Mr. Chernukhin and Mrs. Danilina discussed the financial assistance which Mr. Chernukhin would give Mrs. Danilina in circumstances in which their relationship had come to an end and he was to marry Mrs. Chernukhin. It seems to me clear that Mr. Chernukhin wished to make provision for Mrs. Danilina. Whilst Mrs. Danilina's diary note does not establish such an intention it is reasonably clear from other documents that that was Mr. Chernukhin's intention. I refer to Mr. Kiener's emails to Vistra and Barclay Wealth in 2007, to Gordon Dadds' letter of 24 October 2007 and to Mr. Chernukhin's letter of wishes dated 14 November 2007. It is more likely than not Mr. Chernukhin told Mrs. Danilina of his intention to set up some trust structure to provide for her. The discussion must have been in somewhat vague terms because, as is apparent from the 2007 correspondence with trust companies in the Channel Islands, the eventual trust structure took time to be identified. The discussion probably included reference to a sum of £250 million being notionally or actually divided for the purposes of the proposed trust

structure. It seems likely, judging from one of the minutes of the meeting on 14 November 2007 and from Mr. Chernukhin's letter of wishes dated 14 November 2007, that this was a rough estimate of the value of assets procured during their time together.

349. It was submitted by counsel on behalf of Mrs. Danilina (see paragraph 79 of the closing submissions) that these and other documents showed that Mr. Chernukhin and Mrs. Danilina had joint assets, that is, assets which they held jointly. I was not persuaded that that was so, although some documents came close to establishing that proposition. Certainly assets were acquired during their relationship and certainly Mr. Chernukhin wished to be able to make financial provision for Mrs. Danilina from those assets. But I do not consider it more likely than not that such assets were jointly owned by Mr. Chernukhin and Mrs. Danilina. In any event the basis of the Family Assets claim is an agreement reached in 2007, not joint ownership arising in the period up to 2007.

350. In February 2007, judging from Mr. Kiener's email of 27 February 2007, the proposal was for a single trust of which both Mr. Chernukhin and Mrs. Danilina were to be beneficiaries. That proposal developed over the course of 2007 and ended up as a structure in which there were two trusts, the proposal being that each would hold 50% of Madsan Holdings Ltd. which would have the benefit of a promissory note for $125 million. In addition, Sanderson Trust would own Foxglove Holdings Ltd. which was to hold the shares in Navio formerly held by Navigator. It would appear that the Sanderson Trust was intended to provide a trust fund out of which sums could be paid, at the discretion of the trustees, to Mr. Danilina. Mr. Chernukhin's explanation for the intended transfer of Navio's shares in TGM to Foxglove – namely, that a "clean" company was required to hold the shares for onwards sale to a third party, and that negotiations had taken place with the Mirax group – was not supported by any contemporaneous documents. No communications between Mr. Chernukhin and the Mirax group have been produced in support of this explanation. Nor does it appear to have been suggested in 2008. By letter of 6 August 2008 from Mr. Karabut to Mr. Deripaska stated that the proposed transfer to Foxglove was "for personal reasons unrelated to the joint business".

351. The timing of these events is instructive. The fact that the trust structure was set up with some urgency immediately prior to Mr. and Mrs. Chernukhin's wedding further suggests that the true motive behind the structure was indeed to protect the assets in the trust (for his and Mrs. Danilina's benefit) from any future claim by Mrs. Chernukhin on the breakdown of their marriage. I note that the Gordon Dadds letter of 24 October 2007 noted that: "Mr Chernukhin is concerned to take what steps he can to try to protect Lolita's Trust against any claim by Lubov, in the event of a breakdown of their marriage in the future." That seems to me more likely than the explanation given by Mr. and Mrs. Chernukhin, that the urgency was caused by the Russian elections of 2008, in which Mr. Kasyanov was a candidate.

352. Thus, it appears that Mr. Chernukhin intended to make generous provision for Mrs. Danilina. However, there is no record of any agreement having been reached that assets accumulated during their life were to be divided between them equally, with separate provision for TGM, Russian and non-Russian real estate and certain other assets. It is significant in this regard that the Gordon Dadds' letter refers to Mr. Chernukhin feeling "strong moral obligations" and states that "there seems to be no evidence of any commercial arrangement with Lolita that would underpin this proposal". It is possible

that, if there was such or any agreement, Mr. Chernukhin, being a secretive man, would not tell Gordon Dadds about it. But since he plainly told Gordon Dadds of his intention to provide for Mrs. Danilina's long term financial security in circumstances where he was shortly to marry Mrs. Chernukhin, I would have expected him, if there had been an agreement, to have told Gordon Dadds that there had been such an agreement.

353. Perhaps more significantly, there is no evidence of Mrs. Danilina telling Mr. Kiener of any such agreement when they met in February 2007, or of Mrs. Danilina telling those who attended the November 2007 meeting in Zurich of any such agreement. The February 2007 meeting took place immediately after the agreement had allegedly been reached, and the November 2007 meeting in Zurich appears to have been the occasion when Mr. Chernukhin gave effect to his intention to make provision for Mrs. Danilina. Both were occasions when one would have expected Mrs. Danilina, if she had reached the alleged agreement with Mr. Chernukhin, to mention its existence. There is no evidence that she did. Moreover, the trust structure in fact set up did not provide Mrs. Danilina with a share of any "family assets". All it did was to provide a structure whereby Mr. Chernukhin could, if he wished, make financial provision for Mrs. Danilina as a discretionary beneficiary of the Sanderson Trust. If Mrs. Danilina had in fact agreed to a split of assets acquired during her relationship with Mr. Chernukhin it is odd that in her letter of wishes she stated that she had no need for a statement of assets. It could be said that she had always trusted Mr. Chernukhin, but on her case he had acted badly towards her by not marrying her and by ending their relationship. If she and he had made the suggested agreement I would have expected her to require a statement of assets.

354. Counsel for Mrs. Danilina also suggested that there was evidence of part-performance of the alleged agreement in Mrs. Danilina's evidence that she recalled signing documents giving up her interest in properties in France and the UK. But there was no documentary support for this evidence. Moreover, her failure to rely on the alleged agreement when suing Mr. Chernukhin in 2013 over a Russian property suggests that there was no agreement as alleged. Further, the Barclays Wealth file note of 27 May 2008, which mentions Russian properties, is inconsistent with such an agreement.

355. Mr. Chernukhin was insistent throughout his cross-examination that the purpose of the trust structures set up in late 2007 was to "protect" his assets from attack. On any view this cannot have been the sole purpose of the structures set up in late 2007 because, as I have found, at least one purpose was to make provision for Mrs. Danilina. And in his letter of wishes he referred to that as being the "predominant" purpose of the trust.

356. There is no mention in any of the correspondence generated in 2007 to "asset protection" being Mr. Chernukhin's aim or purpose. He does not appear to have suggested such a purpose to any of the professional advisors whom he was employing to set up the trust structure. That suggests that there was no aim of asset protection. However, it is, I think, more likely than not that Mr. Chernukhin had such a purpose in mind at the same time as wishing to make provision for Mrs. Danilina. I say that for these reasons. First, asset protection was something he had in mind from the time he first made sizeable sums of money. Money was put in Mrs. Danilina's name as she accepted when cross-examined. Second, the off-shore corporate and trust structure in connection with Navigator set up in August/September 2004 and modified in October 2005 was designed to hide and protect his assets. Third, it is unlikely that in 2007, Mr.

Chernukhin, now effectively exiled from Russia, had any less of a desire for secrecy and protection with regard to his assets. Fourth, the use of trusts to hold his own assets may well have been in part for some form of asset protection. Fifth, one of the devices which he stressed in his evidence was a form of protection was to make himself a creditor of Navigator Finance. That evidence receives support from the note of the meeting of 26 September 2007 which refers to Mr. Chernukhin being "the ultimate beneficial owner of the structure, but also the creditor of the structure".

357. In addition to the promissory note in favour of Madsan Holdings, Ltd. Sanderson Trust was to hold, through Foxglove Holdings Ltd., Navigator's shares in Navio. This was presumably because TGM was one of the assets procured during the relationship of Mr. Chernukhin and Mrs. Danilina to which he referred in his letter of wishes. However, this arrangement does not appear to me to support her allegation that it was part of the alleged February 2007 agreement that she was to retain ownership of the shareholding in TGM. On the contrary, that shareholding, via Foxglove and Navio, was to be in the Sanderson Trust of which Mr. Chernukhin was also a beneficiary. That appears to me to be an arrangement inconsistent with the alleged agreement. The intention was, it seems, that the shareholding in TGM was an asset from which Mrs. Danilina could benefit if the trustees or Mr. Chernukhin, the protector of the trust, so wished. As I have already noted, the structure set up is inconsistent with Mrs. Danilina being the beneficial owner of Navigator save in the sense that she might benefit from the trust as a discretionary beneficiary. Certainly, she was not the beneficial owner in the sense of being "the individual owing the ultimate economic interest regardless of intervening corporate or trust structures." Counsel for Mrs. Danilina relied upon a comment by Mr. Kiener in January 2009 that Foxglove "belongs to" Mrs. Danilina. Counsel seeks to read too much into that comment. In November 2009, Mr. Kiener referred, correctly, to Foxglove being "owned by a trust where both Mr. Chernukhin and Mrs. Danilina were beneficiaries".

358. I note that Counsel for Mrs. Danilina has submitted that if the court rejects Mr. Chernukhin's case as to the 2007 Agreement "it follows that Mrs. Danilina's evidence should be accepted". I do not accept that. It involves a reversal of the burden of proof which lies upon her to prove her case. The conclusions I have reached involve a rejection of Mr. Chernukhin's case that the sole purpose of the Sanderson/Madison trust arrangements was "asset protection". But it does not "follow" that Mrs. Danilina's evidence should be accepted. Her evidence must be weighed with a view to assessing whether it is sufficient to prove her case on the balance of probabilities. For the reasons I have given it is not. It is often the case that the facts found by the trial judge do not match either of the cases presented by the litigants. This case is no exception (though I note that counsel for Mr. Chernukhin recognised that the Sanderson Trust might be regarded as "no more than a vehicle for potentially benefitting Mrs. Danilina at his (Mr. Chernukhin's) sole discretion").

359. Counsel for Mrs. Danilina also submitted that if and insofar as the discretionary nature of the trust was inconsistent with the 2007 Agreement "this was a breach and was concealed from Mrs. Danilina". I am also unable to accept that submission. If, as I consider to be the case, the discretionary nature of the trust is inconsistent with the 2007 Agreement that is a factor to be borne in mind when looking at the evidence as a whole in order to decide whether Mrs. Danilina has made out her case. Because it is inconsistent (and no complaint of that was made by Mrs. Danilina in November 2007

when the trust was set up) it is a cogent indication that the suggested agreement was not in fact made.

360. I have given careful consideration to Mr. Chernukhin's refusal to give disclosure of documents held by his professional advisers in the Channel Islands until ordered by the court to do so. Since it is his case that he "deliberately … chose not to share his full thinking with third party service providers", he must have known that their documents were likely to contain statements which supported a wish by him to provide for Mrs. Danilina and so undermine his case in the Family Assets claim. However, he resisted giving such disclosure until ordered to do so. In addition to this he was aware of a plan to alter certain documents which related to the Sanderson Trust. It is difficult to comprehend how this plan could ever have been formulated. In the event the original documents remained in existence. But this plan, together with Mr. Chernukhin's determination not to give disclosure of the documents held by his professional advisers in the Channel Islands, cause one to consider whether the reason for his conduct was because Mr. Chernukhin had in fact made the alleged agreement with Mrs. Danilina and that he was determined to prevent disclosure to Mrs. Danilina of documents which assisted her case. His conduct certainly suggests that. However, it is but one part of the factual evidence which the court must consider. Ultimately, for the reasons I have given, I remain unpersuaded that Mr. Chernukhin and Mrs. Danilina made the agreement alleged by Mrs. Danilina.

361. Counsel for Mrs. Danilina submitted that if she failed to prove her case by reason of the absence of documents withheld by Mr. Chernukhin then his defence to her claim should be struck out as an abuse of process. I have indeed concluded that Mrs. Danilina has failed to prove her case. The question is whether that is the result of Mr. Chernukhin's late or incomplete disclosure. I note, with that question in mind, that there remains a dispute between the parties as to whether all of the relevant documents have now been disclosed. This matter is the subject of paragraphs 17 – 23 of Counsel for Mrs. Danilina's closing submissions.

362. In particular, various documents originating from Barclays Wealth Jersey and Barclays Wealth Guernsey, and subsequently held by Zedra Trustees (Jersey) Limited and Zedra Trust Company (Guernsey) Limited, respectively, ("the Zedra documents") were only disclosed on 30 January 2019. Byrne and Partners, the solicitors acting for Mrs. Danilina maintain, in their email of 31 January 2019, that disclosure of the Zedra documents remains incomplete. This is because (as it is put in Mrs. Danilina's closing submissions at paragraph 19(b)): "On 7 December 2018 Clifford Chance stated that Mr. Chernukhin had decided to exclude 2007 from the disclosure exercise (restricting it to the years 2008 and 2009) on the basis that it would be disproportionate. This is a breach by Mr. Chernukhin of para 3 of the Teare Disclosure Order." My Order dated 13 September 2018, to which that paragraph refers, required Mr. Chernukhin to "procure that Zedra Jersey and Zedra Guernsey search the electronic documents within their control from the period January 2007 to December 2009." However, I have had regard to the correspondence on this matter between Clifford Chance and Byrne and Partners which is cited in paragraph 19(b) of Mrs. Danilina's closing submissions. I do not read that correspondence as indicating a unilateral decision by Mr. Chernukhin to exclude the 2007 documents from the Zedra disclosure. Instead, Clifford Chance's letter of 7 December 2018 explains that back-up tapes held by Barclays Wealth fall into two categories: those which Barclays Wealth is itself able to restore, and those which

Barclays Wealth is not itself able to restore. As to the tapes in the former category, Clifford Chance said:

> We understand that this data set includes documents from the five original custodians and the two additional custodians. Barclays inform us that this data set contains some 4,500 documents. Once the Barclays review has been completed, we will be able to provide you with an update setting out the date range covered by this set of documents. At this stage, Barclays believe it covers documents in the date range 2008 to 2009.

The former category has now been searched, and the relevant documents disclosed. The tapes in the latter category have not been searched. This is said to be because restoration of the tapes in the latter category would be a complex technical exercise, expected to cost at least £130,000. Clifford Chance indicated their view that this exercise would be "wholly disproportionate and unreasonable".

363. The correspondence therefore suggests that Mr. Chernukhin did *not* "decide to exclude 2007 from the disclosure exercise" in deliberate breach of the 13 September 2018 Order. Nonetheless, I am concerned that Clifford Chance appears to have decided unilaterally that restoration of the unrestored back-up tapes should not go ahead on the grounds of disproportionality. It appears likely that those tapes contain documents covered by the terms of the 13 September 2018 Order. In those circumstances, the proper approach would have been to apply to vary that Order in accordance with paragraph 7 of the Order.

364. I consider the prospect that the unsearched back-up tapes contain documents supportive of there having been a 2007 agreement on the terms alleged by Mrs. Danilina to be very remote. I have noted, in that regard, the points made by Byrne and Partners in their email dated 31 January 2019 concerning the belatedly disclosed Zedra documents from 2008 – 2009:

> First: the documents evidence again that the promissory note was not intended to be a sham and was intended to allow Mrs. Danilina to participate in the assets (see the emails of 20 March 2008 and 17 December 2008); Second: the documents evidence the importance placed on steps in relation to the Promissory Note being taken in advance of meetings with Mrs. Danilina (see the emails of 20 March and 23 – 28 May 2008) … ; Third: the documents reinforce the fact, denied by Mr. Chernukhin, that the Sanderson Trust / Madsan Holding structure paid and held monies for use by Mrs. Danilina (see the email of 17 December 2008 (*"I'm not sure what the long term plans are for these funds ie when Lolita may next need some"*)).

These points are consistent with the conclusions I have reached above – namely, that Mr. Chernukhin did intend to make financial provision for Mrs. Danilina through the Sanderson Trust structure, but not pursuant to a 2007 agreement on the terms alleged. In my judgment, any further documents are likely to do no more than suggest precisely the same conclusions, and would not be such as to call into question the views set out above. In those circumstances, it would indeed be disproportionate to require additional

further expense in searching the unrestored back-up tapesI have reached the conclusion that Mrs. Danilina's case on the Family Assets claim fails, not by reason of documents withheld by Mr. Chernukhin but because the weight of all of the evidence is against the alleged agreement. Whilst I have found that there was an intention on the part of Mr. Chernukhin to make financial provision for Mrs. Danilina, she has failed to demonstrate that the 2007 agreement was made as alleged, given: (i) the remarkable aspects of the claim which I have summarised above, (ii) the absence of support for the alleged agreement in the documents disclosed by Mr. Kiener and Barclays Wealth, (iii) the understanding of Gordon Dadds that Mr. Chernukhin was motivated by moral considerations and that there was no commercial arrangement to underpin the proposals, (iv) the absence of any evidence that Mrs. Danilina referred to the alleged agreement at the meeting on 14 November 2007, and (v) the fact that her interest as a discretionary beneficiary of a trust was inconsistent with the alleged agreement. The application to strike out Mr. Chernukhin's defence as an abuse of process therefore does not arise.

Disposal of the Family Assets Claim

365. The claim based upon the alleged 2007 agreement must therefore fail.

366. Further points were taken in the event that the court found that the 2007 agreement had indeed been made. These were made on the basis that the agreement was governed by Russian law, alternatively English law, and raised matters of limitation. It is unnecessary to deal with these points and difficult to do so or on a hypothetical basis.

367. I have therefore found that there was no agreement of the detailed nature alleged, but that a trust certainly was set up pursuant to Mr. Chernukhin's wish to make financial provision for Mrs. Danilina. It is possible that he agreed to set up a trust from which she could benefit. But that is not the agreement alleged and if there was such an agreement he carried it out by setting up the Sanderson Trust. It appears that Mrs. Danilina has an alternative claim based upon a breach of duty by Mr. Chernukhin in his capacity as protector of the Sanderson Trust. It is said, I think, that he breached that duty by seeking the removal of Mrs. Danilina as a beneficiary and by denuding the Sanderson Trust of assets (and perhaps in other ways too). However, the existence of that alternative case was not apparent to me until closing submissions and it was also not apparent to counsel for Mr. Chernukhin whose written opening and closing submissions made no reference to such a claim. (It had been accepted that if the alleged 2007 agreement had been made Mr. Chernukhin had breached it.) I was told that the duties of a protector of a trust are fact sensitive; see *JSC Mezhdunarodniy Promyshlenniy Bank & Anr v Pugachev & Ors* [2017] EWHC 2426 (Ch), at [203]. In circumstances where I heard no argument on this matter it is not appropriate for me to rule on this alternative claim. Mrs. Danilina may, if she wishes, seek directions for a trial on this matter, assuming, as I have been told is the case, that such an alternative claim has been pleaded.

368. Counsel for Mr. Chernukhin submitted that Mrs. Danilina's alternative claim should be struck out because of her dishonest and corrupt evidence. However, that evidence was given in support of the TGM claim. Whilst I have been unable to accept her evidence in support of the Family Assets claim that evidence was not given pursuant to her agreements with Mr. Deripaska. It appears that she herself chose to bring the Family

Assets claim. Whilst it is possible that she knew that no agreement as alleged by her was reached she may have mistakenly concluded (or perhaps been advised) that Mr. Chernukhin's intention to make financial provision for her amounted to a legally binding contract in the terms alleged. In these circumstances I do not consider that it would be appropriate to strike out her alternative claim as an abuse of process.[3] [4]

SECTION 68 CHALLENGES

369. Mr. Deripaska has also sought to have the arbitrators' award on the merits set aside pursuant to section 68 of the Arbitration Act 1996 on the grounds that there were one or more serious irregularities affecting it.

370. The arbitrators granted Mr Chernukhin relief in the form of an order that Mr Deripaska purchase Party 2's shares in Navio ("the buy-out award"). They did so by reference to section 202 of the Cypriot Companies Law (Navio being a Cypriot entity), which concerns relief in the event of shareholder oppression. The tribunal considered that there had been such oppression by virtue of the forcible takeover of 14 December 2010, and assessed the value of Party 2's shares in Navio, as at that date, at US$95,181,285. The Deripaska parties seek to challenge: (i) the arbitrators' power to make the buy-out award (the "buy-out award challenge"), (ii) the basis on which they found that there had been "oppression" justifying the making of that award (the "oppression challenge") and (iii) their valuation of the Navio shares (the "valuation challenge"). I shall address each of these in turn.

The buy-out award challenge

371. It is submitted that the tribunal had no jurisdiction or power to make the buy-out award. This challenge is brought under both section 67 (no substantive jurisdiction) and section 68 (the tribunal exceeded its powers). I consider that section 68 is the relevant section, though it perhaps does not matter. The submission made on behalf of Mr. Deripaska was that neither section 48 of the Arbitration Act nor clause 12 of the SHA provided the tribunal with power to make the buy-out award in circumstances where it is common ground the English court does not have power to make a buy-out order in respect of a foreign company.

372. Section 48 of the Arbitration Act provides as follows:

48 Remedies

[3] Counsel for Mrs. Danilina has said, in response to the draft judgment, that the court has not dealt with the case on estoppel by representation. But in the light of my finding that the alleged agreement has not been established there is no claim as alleged and the suggested estoppel cannot create a cause of action where none has been established.

[4] Counsel has also said that the court has not dealt with Mrs. Danilina's case on unjust enrichment. But any such claim is part and parcel of the alternative claim for breach of duty which Mrs. Danilina may advance hereafter, assuming that it has been pleaded.

> (1) The parties are free to agree on the powers exercisable by the arbitral tribunal as regards remedies.
>
> (2) Unless otherwise agreed by the parties, the tribunal has the following powers.
>
> (3) The tribunal may make a declaration as to any matter to be determined in the proceedings.
>
> (4) The tribunal may order the payment of a sum of money, in any currency.
>
> (5) The tribunal has the same powers as the court—
>
> (a) to order a party to do or refrain from doing anything;
>
> (b) to order specific performance of a contract (other than a contract relating to land);
>
> (c) to order the rectification, setting aside or cancellation of a deed or other document.

373. Clause 12 of the SHA provides, so far as relevant:

> The Parties undertake to do their utmost to settle all disputes and disagreements arising from this Agreement or in connection therewith, including those concerning its execution, breach, termination or invalidity ("Dispute"), by negotiations.
>
> [….]
>
> In the event that [a dispute is not settled following negotiation and/or mediation], the Dispute is to be settled at the London Court of International Arbitration in accordance with its rules, the provisions of which are deemed to be included in this Clause 12.1.

374. The relevant provision of Cypriot law relied upon by the tribunal, section 202 of the Companies Law, provides as follows (so far as is relevant):

> (1) Any member of a company who complains that the affairs of the company are being conducted in a manner oppressive to some part of the members (including himself) or, in a case falling within subsection (3) of section 163, the Council of Ministers may cause an application to be made to the Court by petition for an order under this section.
>
> (2) If on any such petition the Court is of opinion- (a) that the company's affairs are being conducted as aforesaid; and (b) that to wind up the company would unfairly prejudice that part of the members, but otherwise the facts would justify the making of a winding-up order on

> the ground that it was just and equitable that the company should be wound up, the Court may, with a view to bringing to an end the matters complained of, make such order as it thinks fit, whether for regulating the conduct of the company's affairs in future, or for the purchase of the shares of any members of the company by other members of the company or by the company and, in the case of a purchase by the company, for the reduction accordingly of the company's capital, or otherwise.

375. It is common ground that the tribunal did not have power to make the buy-out award pursuant to section 48(5) of the Arbitration Act because an English court would not have had that power in relation to a foreign company (though the English courts and English arbitral tribunals have that power in respect of an English company: see *Fulham Football Club (1987) Ltd v Richards* [2011] EWCA Civ 855; [2012] Ch 333). However, section 48(1) provides that "the parties are free to agree on the powers exercisable by the arbitral tribunal as regards remedies." Thus, the question is whether clause 12 of the SHA, properly construed, provided the tribunal with the relevant power.

376. The tribunal is empowered by clause 12 to settle "all disputes and disagreements arising from this Agreement or in connection therewith." The SHA was a joint venture agreement relating to Navio Holdings Limited, a Cypriot registered company which held shares in TGM. Its purpose was to regulate the interests of the shareholders in Navio. In my judgment a dispute in which one party is alleged to have oppressed the other by a forcible take-over of TGM falls squarely within its terms being a dispute arising from the SHA or in connection with it. The tribunal was therefore entitled to consider whether there had been such oppression. Clause 12 provided for the tribunal to have power to "settle" the dispute. The question is whether, on the true construction of clause 12, that power extends to making a buy-out order. Would a reasonable person, with the all background knowledge reasonably available to the parties at the time of contracting, understand that it did so? In my judgment, clause 12 does indeed extend to making a buy-out order.

377. A Cypriot court would have power to make a buy-out order in respect of a Cypriot company. But the parties have referred "all disputes and disagreements arising from [the SHA] or in connection therewith" to arbitration. As a result, a dispute concerning shareholder oppression would not come before the Cypriot court but would come before the arbitration tribunal. In those circumstances the reasonable man would understand the parties to have provided the tribunal with power to settle the dispute by the making of a buy-out order. I do not think that a reasonable person would understand the parties to have intended that whilst all other disputes could be resolved by arbitration a dispute concerning shareholder oppression which required a buy-out order would have to be brought before the Cypriot court. The parties would reasonably be considered to have provided for a "one-stop" dispute resolution clause. The remedy of a buy-out is not, as suggested by counsel for Mr. Deripaska "any relief … that occurs to the tribunal" but is the relief which a Cypriot court could have ordered had the dispute, instead of being referred by the parties to arbitration, been referred to the Cypriot court.

378. It was submitted on behalf of Mr. Deripaska that the power to make a buy-out order is in effect excluded by the provisions of clause 11 of the SHA which make provision for the resolution of "deadlock" by a "conciliatory commission". However, the present

case was concerned not with deadlock but with the oppression of one shareholder by another by the forcible take-over of TGM. I do not consider that clause 11 excludes the power of the tribunal to make a buy-out order where that is the appropriate remedy.

379. For these reasons the tribunal had both the substantive jurisdiction to determine the dispute and power to make the buy-out order.

The oppression challenge

380. It was submitted that in its first award dealing with jurisdiction the tribunal had made findings as to the take-over on 14 December 2010 when Mr. Deripaska had not advanced his full case on the issue and then, at the merits hearing, had regarded such findings, which were critical to the question of oppression, as its final and predetermined view (or at least a reasonable observer would so conclude). By so doing the tribunal had not acted fairly. The tribunal had "pre-judged" the issue.

381. The tribunal, in its Second Partial Award, referred to its "findings" in its first award but also said (at paragraph 116): "We heard considerably more evidence during the [merits hearing] of what happened that evening. This greatly strengthens our preliminary view."

382. In my judgment it is plain that the tribunal had regard to the evidence it heard at the merits hearing and did not have a closed mind or regard its "findings" in the first award as final. The reasonable observer would not conclude that the tribunal approached the merits award with a final and predetermined view.

383. I dismiss the suggestion that the tribunal did not act fairly.

The valuation challenge

384. This challenge is described as "the Tribunal's failure properly to consider the evidence relating to quantum". This is an unpromising start for a section 68 challenge since it has long been recognised that the assessment and evaluation of evidence is a matter exclusively for the tribunal and not for the court; see *UMS Holdings Ltd. Great Station Properties* [2017] EWHC 2398 (Comm), [2017] 2 Lloyd's Reports 421 at paragraph 28.

385. Counsel for Mr. Deripaska examined the tribunal's reasons for rejecting one expert's valuation and submitted that the tribunal's reasoning was irrational and perverse. This is not a proper ground for a section 68 challenge. In *UMS Holdings Ltd. V Great Station Properties* at paragraphs 37-38, I said:

> 37. The second additional matter of law is raised by the allegation of the Grigorishin Respondents that certain conclusions were "manifestly illogical and cannot rationally be sustained". These challenges derive from the language used by Sales J. in *Metropolitan Property Realizations Limited v Atmore Investments Limited* [2008] EWHC 2925 (Ch). In that case, which concerned a rent review arbitration, the arbitrator's approach to assessing the revised rent assumed that a notional

> tenant would take a relevant notional lease at a rate which included a profit element for itself but his calculation did not in fact include any element of profit for the notional tenant. Sales J. concluded that the award was obviously flawed as a matter of the commercial logic which the arbitrator had himself decided should be applied. The award could not be regarded as a "rationally sustainable resolution of, or dealing with, the basic issue which he had to determine" (see paragraph 20). This was a serious irregularity within section 68(2)(d) – a failure to deal with an issue.
>
> 38. It seems to me that this decision must be treated with some care. It is clear that the mere fact that the arbitral tribunal has reached the wrong conclusion cannot constitute a serious irregularity within section 68. That was clear when Sales J. made his decision. HHJ Humphrey Lloyd said so in *Weldon Plant c Commission for New Towns* [2001] 1 AER (Comm) 264, which was cited with approval by Colman J. in *World Trade Corporation v Czarnikow Sugar* [2005] 1 Lloyd's Reports 42. It was also made clear by the House of Lords in *Lesotho.* Sales J. referred to *World Trade Corporation* but did not refer to *Lesotho*. I infer that it was not cited to him. It is also clear that so long as an arbitrator deals with an issue it does not matter that he has done so "well, badly, or indifferently" (see *The Secretary of State for the Home Department v Raytheon Systems Limited* [2014] EWHC 4375 (TCC) at paragraph 33(vi) per Akenhead J.). I therefore have difficulty in accepting that the mere fact that the tribunal's reasoning is manifestly illogical or cannot rationally be sustained can amount to a serious irregularity. Indeed Mr. Brisby made clear in his reply that he did not contend that illogicality is a free-standing ground for striking down an award. Rather, it may indicate that there has been a failure to address an issue. It seems to me that that is way in which the decision of Sales J. in *Metropolitan Property Realizations Limited v Atmore Investments Limited* should be understood. That case was based upon section 68(2)(d). The "glaring illogicality" identified by Sales J. indicated that the arbitrator in that case had not dealt with an issue which it was essential for him to determine. To regard illogicality or irrationality by itself as a form of serious irregularity would lead to the courts examining the reasoning of an arbitral tribunal to see whether it was logical and rational. That is not envisaged by section 68.

386. In the present case it is quite clear that the tribunal dealt with the valuation issue carefully and at length, and gave reasons for rejecting the Deripaska parties' expert report: see paragraphs 168 – 249 of the Second Partial Award. Whether the tribunal's reasoning can be criticised in whole or in part as irrational or perverse is not a matter for the court to assess. Indeed, it would be quite inappropriate for the court to review the tribunal's reasoning on a question of fact. The section 68 challenge must therefore be dismissed.

387. Counsel for Mr. Deripaska submitted in their closing submissions that the award had been obtained by fraud because of the manner in which the declaration of trust had been presented to the tribunal. The declaration of trust had been one of the matters relied upon by the tribunal in reaching its conclusion that Mr. Chernukhin was the true beneficial owner of Navigator and entitled to enforce the SHA as the disclosed principal of Mrs. Danilina. However, in order to amount to a serious irregularity within section 68(2)(g) the fraud must have caused substantial injustice to Mr. Deripaska. The question whether Mr. Chernukhin was entitled to enforce the SHA as the disclosed principal of Mrs. Danilina has now been determined by this court in a fresh hearing pursuant to Mr. Deripaska's section 67 challenge. In the light of this court's conclusion on that issue it must follow that, if the award was obtained by fraud within the meaning of section 68(2)(g), it has not caused substantial injustice because, notwithstanding that the declaration of trust did not bear Mr. Chernukhin's name in 2004, he was, on the balance of probabilities the beneficial owner of Navigator and entitled to enforce SHA as the disclosed principal of Mrs. Danilina.

CONCLUSIONS

388. Mr. Deripaska's section 67 challenge to the jurisdiction of the tribunal and Mrs. Danilina's claim against Mr. Chernukhin and Mr. Kargin in respect of TGM are dismissed. Mr. Chernukhin was the true joint venture partner of Mr. Deripaska and the true beneficial owner of Navigator Equities Limited.

389. Mr. Deripaska's section 68 challenge to the award of the tribunal is dismissed. There was no serious irregularity.

390. Mrs. Danilina's claim for breach of the alleged 2007 agreement is dismissed. There was no such agreement.

391. Directions for a trial of Mrs. Danilina's alternative claim for damages against Mr. Chernukhin for breach of his duty as protector of the Sanderson Trust may be given, assuming that the claim has been pleaded.