Neutral Citation Number: [2019] EWHC 2414 (Comm) Case No: CL-2018-000477 & CL-2018-000544

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, Fetter Lane, London EC4A 1NL

Date: 16 September 2019

Before :

MR JUSTICE ANDREW BAKER

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Between :

ELENA NIKOLAEVNA TSAREVA **Claimants**
and 8 others in Claim 477

VLADIMIR IVANOVICH GALAGAEV
and 6 others in Claim 544

- and -

Defendants

(1) DMITRI ANANYEV
(2) ALEXEI ANANYEV
(3) ANTRACITE INVESTMENT LIMITED
(4) URGULA PLATINUM LIMITED
(5) MENRELA LIMITED (6) PROMSVYAZ CAPITAL B.V.
(7) PETERS INTERNATIONAL (CAYMAN) LIMITED
(8) PETERS INTERNATIONAL INVESTMENT NV
(9) POSTSCRIPTUM CAPITAL LIMITED (Claim 544 only)
(10) FINTAILOR INVESTMENTS LIMITED

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Charles Samek QC and Adam Cloherty (instructed by **Lipman Karas LLP**) for the **Claimants in Claim 477 ('the Tsareva claimants')**

David Lord QC and Sebastian Kokelaar (instructed by **Withers LLP**) for the **Claimants in Claim 544 ('the Galagaev claimants')**

Alain Choo Choy QC, Marcos Dracos and Saul Lemer (instructed by **Skadden Arps Slate Meagher & Flom (UK) LLP**) for the **First Defendant**
Neil Kitchener QC and Henry Hoskins (instructed by **Clifford Chance LLP**) for the **Second Defendant**
Thomas Sprange QC and Ruth Byrne (instructed by **King & Spalding International LLP**) for the **Third to Fifth Defendants**
David Foxton QC and Sam O'Leary (instructed by **Osborne Clarke LLP**) for the **Sixth to Ninth Defendants**
Alexander Brown (instructed by **Reed Smith LLP**) for the **Tenth Defendant**

Hearing dates: 25, 26, 27, 28 February, 1 March 2019

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Approved Judgment

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

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MR JUSTICE ANDREW BAKER

Mr Justice Andrew Baker :

Introduction

1. The claimants are Russian nationals, domiciled and resident in Russia. They were all customers in 2017 of Promsvyaz Bank ('PSB') with substantial funds there on interest-bearing deposits. All invested in Notes issued in 2017 by the seventh defendant ('Peters Cayman' or 'the Issuer'), guaranteed by the sixth and eighth defendants ('Promsvyaz' and 'Peters International', together 'the Guarantors'). What is meant exactly by the statement that the claimants 'invested in' the Notes is not necessarily straightforward; the Notes were not issued to them and each claimant's investment will have been constituted by entries in a securities account in his or her name at PSB.

2. There were four Note issues, two in April 2017 and two in July 2017. The April issues were 2-year Notes with semi-annual coupons payable in arrears, one denominated in US$ and one in €; the July issues were 3-year Notes, also with semi-annual coupons payable in arrears, again one denominated in US$ and one in €. The Notes were materially similar to five previous series of Notes that had been marketed by PSB. At the time the Notes were issued, the prior series had all performed satisfactorily (and three of them had therefore matured and been fully repaid). The total face value of the Notes was US$170 million and €60 million. To put those figures into their immediate context, PSB had assets as at September 2017 of RUB 1.2 trillion, then equivalent to c.US$21 billion, and in July 2017 the Central Bank of Russia ('the CBR') had authorised PSB to issue bonds for US$500 million.

3. After PSB was put into administration by the CBR at the end of 2017, as I mention further below, the Issuer and the Guarantors defaulted on their obligations under or in respect of the Notes. (The first semi-annual coupon under the April Notes was duly paid in October 2017, but nothing further was paid.) The claimants, according to the evidence put before the court at this stage, were all individuals of at least comfortable means and some were, by ordinary standards, quite wealthy. All invested in the Notes and as a result lost, they say, at least a significant proportion of their life savings.

4. Nothing in this judgment should be taken as underestimating the significance to the claimants of the failure of the Notes to perform. A desire on the part of the claimants to obtain compensation, if they can, in respect of their decision to invest is understandable. But the question for this judgment is not the legitimacy or reasonableness of that desire. It is whether the jurisdiction of this court is available to the claimants for the pursuit of that desire and, if so, whether there should be interim relief by way of freezing orders in support.

5. From the evidence at this stage, I infer that the choice of this jurisdiction as a venue for the claimants' claims has been led by the lawyers (Russian and English) who have engaged themselves in assisting the claimants as disappointed investors. Indeed, I think it unlikely it would have occurred to the claimants, unless so led, to try to sue here. The most natural targets for any claim are PSB and (possibly) the first defendant, so the most natural venues for any litigation (all things being equal) are Russia and (perhaps) Cyprus. But none of that means that this court does not have jurisdiction.

6. There are two action groups of claimants, each separately represented in this jurisdiction. In Claim CL-2018-000477 ('the Tsareva Claim'), Ms Tsareva is the firstnamed of 9 claimants and there is an application to join a further 24 claimants. In Claim CL-2018-000544 ('the Galagaev Claim'), Mr Galagaev is the first-named of 7 claimants and there is an application for 72 more to join. The joinder applications do not give rise to any separate controversy. If and to the extent that the Claims survive the primary applications dealt with by this judgment, it will be appropriate for the additional claimants to be joined. If the Claims do not survive those primary applications there will be nothing for the additional claimants to join, and their proposed claims have no independent basis for proceeding, so the joinder applications will fall away.

7. In 2017, Promsvyaz owned a majority stake in PSB. In turn, Promsvyaz was owned as to 49.9975% each by the third and fourth defendants ('the English companies') and as to the remaining 0.005% by the fifth defendant ('Menrela'). The third defendant was wholly owned by the second defendant, Alexei Ananyev, the fourth defendant was wholly owned by the first defendant, Dmitri Ananyev, and Menrela was owned 50:50 between them. Dmitri and Alexei Ananyev are brothers. I shall refer to them by their first names when distinguishing between them and as 'the Ananyevs' when not doing so. The English companies and Menrela were intermediate asset-holding companies with no trading activities of any kind.

8. The Ananyevs are Russian nationals who were domiciled and resident in Russia in 2017. Alexei is still domiciled and resident in Russia. Dmitri is now, and was when the Claims were commenced in 2018, domiciled and resident in Cyprus, where he has had a dual citizenship since June 2017. They are, or at all events they were in 2017, well-known in Russia as successful and very wealthy businessmen. They were the ultimate beneficial owners together of a number of businesses and assets, including (as above) PSB.

9. The core allegation underlying the claimants' claims is that they were induced to invest in the Notes by mis-selling on the part of PSB employees to the effect that the Notes were personally guaranteed by the Ananyevs and/or that they were safe investments. It is alleged that PSB was in a parlous financial condition rendering it highly likely the Notes would default, as in due course they did; and that the misselling was directed by the Ananyevs in a conspiracy to enrich themselves and/or their businesses at the expense of the claimants.

10. Since January 2018, the Ananyevs have separated their business interests. In an interview with *Vedomosti* reported on 26 February 2018 Alexei described the separation in this way: "*We exchanged stakes in the [business] assets. It was a nonmonetary transaction. The assets were apportioned based on who had been managing them historically. I have sole ownership and control of the Technoserv group of companies and everything relating to information technology. I quit as a shareholder of [Promsvyaz], transferring my stake to my brother, and my brother quit as a shareholder of Technoserv. Now 100% of Technoserv is mine, and 100% of [Promsvyaz] is my brother's.*" There is no basis in any evidence I have been shown for supposing that this description is wrong to state that the division of interests was based on who had been managing what, with Promsvyaz (and therefore PSB) going to

Dmitri because it was his domain, not Alexei's. Technoserv was and still is a major Russian IT business. Strictly, but presumably not relevant to *Vedomosti*, Alexei was

not personally a shareholder in Promsvyaz, rather his ownership was indirect via his English company and his half of Menrela, and what was transferred to Dmitri, so far as Promsvyaz is concerned, was those shareholdings, so that now both English companies and Menrela are wholly owned by Dmitri.

11. PSB is not now indirectly owned by the Ananyevs or either of them, however. It has effectively been nationalised following a short period in administration into which it was placed by the CBR in December 2017 amid allegations of mismanagement unconnected to the Notes.

12. The Issuer was in 2017 and is still a wholly-owned subsidiary of Peters International. In 2017, Peters International was in turn owned 50:50 by the Ananyevs. As a result of the separation of the Ananyevs' interests to which I have just referred, Peters International is now wholly owned by Dmitri.

13. The English companies are English companies, although 'tax-resident' in Ireland in 2017, in Cyprus from some time later (and still now). Promsvyaz is a Dutch company, the Issuer is a Cayman Islands company, and Peters International is a Dutch Antilles company.

14. Finally, the ninth and tenth defendants ('Postscriptum' and 'Fintailor') are both Cypriot companies. Fintailor and Postscriptum play only a very minor role and do not need to be introduced further at this stage, save to note that Postscriptum is party only to the Galagaev claim, having been removed as a co-defendant in the Tsareva claim by consent, and is sued only as a so-called 'non cause of action defendant' under the *Chabra* jurisdiction. Its position therefore gives rise to different considerations, although it is domiciled in an EU state. To complicate matters, the Galagaev claimants assert a claim for *Chabra* relief against Fintailor as well as asserting a substantive cause of action against it.

15. I shall therefore refer to Dmitri, Menrela, Promsvyaz and Fintailor (as defendant to an alleged substantive cause of action) as 'the EU defendants'; I shall refer to Alexei, Peters Cayman and Peters International as 'the non-EU defendants'; and I shall refer to Postscriptum and Fintailor (as non cause of action defendants sued only by the Galagaev claimants, under the *Chabra* jurisdiction) as 'the *Chabra* defendants'.

16. The primary applications dealt with by this judgment are:

    i) Applications by most of the defendants challenging the jurisdiction of the court over them in respect of the claimants' proposed claims herein. At the time of the hearing, Alexei had not yet been served with the proceedings and so he had not made any such application; and the English companies cannot and do not challenge jurisdiction, although they do say under CPR Part 11 that the court should stay proceedings against them if they are not struck out, contending that they have only been sued as a device to enable the claimants to seek to found jurisdiction here over other defendants.

ii) Applications by the English companies and by Menrela to strike out the Claims against them under CPR 3.4(2)(a). In Menrela's case, that is an application strictly in the alternative to its challenge to jurisdiction. The claimants say that making the strike-out application nonetheless involves a submission to the jurisdiction defeating that challenge.

iii) Applications by the additional Tsareva claimants and by all the Galagaev claimants for interim relief by way of freezing orders against all the defendants, and a cross-application by Dmitri for the release of funds he paid into court under a freezing order obtained *ex parte* by the existing Tsareva claimants, contending that that order should not have been granted. The existing Galagaev claimants also obtained a freezing order *ex parte*, but that was discharged on the return date, with no fresh injunction being granted, because of material non-disclosure on the *ex parte* application.

17. Alexei participated in the interlocutory battle leading to this judgment, and appeared by counsel and solicitors at the hearing (for the whole of the hearing), but did so only to resist the freezing order applications made against him and without prejudice to his right in due course to challenge jurisdiction. In the particular circumstances of these applications, and the way they were argued together at a single hearing with all parties represented, that was to my mind somewhat artificial. In the freezing order applications against Alexei, the claimants must persuade me that there is at least a seriously arguable case that the court has jurisdiction over the claims against him, else there will be no foundation for the interim injunctive relief sought. But I shall inevitably decide that issue as to jurisdiction in the light of the evidence and argument on the co-defendants' challenges to jurisdiction.

18. If the claimants do not persuade me, then, that there is even a seriously arguable case for the court having jurisdiction over the claims against Alexei, it would be fair to no one merely to dismiss the freezing order application and not also to set aside the proceedings against him. On the other hand, if upon the co-defendants' challenges I found jurisdiction to be established on grounds that would apply equally to Alexei, it would be at any rate unattractive (even if it might be strictly permissible) for Alexei to argue those grounds afresh. That is not to say I have any particular reason to suppose Alexei would adopt that approach. It might be that he would choose to follow the result of his co-defendants' challenges, or restrict any challenge to jurisdiction of his own to points (if any) not dealt with in either the co-defendants' challenges or the freezing order applications.

19. I shall consider the question of jurisdiction first, that is to say the jurisdiction challenges brought by the defendants other than Alexei and the English companies, plus the question as to jurisdiction over Alexei raised by the freezing order applications against him. In doing that, in effect I shall also deal with the strike-out application by the English companies and Menrela since the question of jurisdiction involves the question whether the claims against the English companies or Menrela raise any real issue to be tried.

The Claim

20. At its heart, the claimants' case is that each of them was induced to invest in the Notes by misrepresentations made to them by PSB relationship managers about the nature or riskiness of an investment (although in some instances there may also have been direct contact between the investor and Dmitri). For example, most of the claimants say that a marketing presentation they were shown led them to misunderstand that payments under the Notes were guaranteed by the Ananyevs personally. Or, again by way of example only, there are allegations that the Notes were described as having risk similar to that of a deposit of funds with PSB (but with a better return). The claimants say they were induced thereby to invest in the Notes, which involved them transferring their funds on deposit with PSB to cover the purchase of the investment. Factually speaking, the claimants' basic complaint, therefore, is that as clients with funds on deposit, they were mis-sold the Notes by PSB.

21. The claimants say, however, that this was not just mis-selling by PSB, giving rise to whatever remedies, if any, might be available to them as clients of PSB under Russian law, and PSB has not been sued. Rather, the claimants say, this was mis-selling as a means contrived by the Ananyevs for getting hold of PSB deposit-holders' funds because (so the claimants allege) their businesses were, or at least PSB was, in a parlous financial state. The Ananyevs are alleged, therefore, to have directed the misselling, or to have conspired with each other and/or with the corporate vehicles involved in the Notes to injure the claimants by it.

Jurisdiction – Gateways

22. Both sets of claimants say there is jurisdiction here under the co-defendant gateways in the Brussels Regulation (Recast) or CPR PD 6B, as the case may be, that is to say:

    i) Both sets of claimants say the claims against the English companies result in jurisdiction over the EU defendants under Article 8(1) of Brussels (Recast). (A possible argument by the Galagaev claimants that Article 8(1) could also be invoked against the *Chabra* defendants was not pursued.)

    ii) Both sets of claimants say the claims against the English companies (and the claim against Menrela, if it has submitted to the jurisdiction) bring the claims against the non-EU defendants within CPR PD 6B para.3.1(3) (the 'necessary or proper party' gateway).

23. The Galagaev claimants, but not the Tsareva claimants, say there is jurisdiction here under the tort gateways, i.e. Article 7(2) of Brussels (Recast) for the EU defendants and CPR PD 6B para.3.1(9) for the non-EU defendants. In both respects, the issue is whether on the tort claims, as alleged, the damage to the claimants was suffered in London (because if the Notes had performed, payments thereunder would have been made to Citibank, London, under the terms of the Notes and the Trust Deed entered into with Citibank in relation to the Notes) or in Russia (because the claimants were induced to part with their savings held on deposit at PSB in Russia so as to invest in the Notes).

24. Finally, as regards substantive claims, the Galagaev claimants say their claims against the non-EU defendants fall within CPR PD 6B para.3.1(6) (the main English contract gateway), alleging a contract with the Issuer governed by English law, and that all of their claims (including their claims in tort against non-parties to that alleged contract) relate to that contract. They did not pursue a further argument that para.3.1(8) of CPR 6B might apply.

25. As regards the *Chabra* defendants, the Galagaev claimants say their claims against the English companies (and their claims against any of the other defendants that are wellfounded as to jurisdiction) bring the *Chabra* defendants within CPR PD 6B para.3.1(3), which, those claimants say, applies to claims for *Chabra* relief irrespective of the domicile of the *Chabra* defendant.

26. Where reliance is placed on CPR PD 6B as the basis for jurisdiction, there is of course the normal requirement of showing that it is a proper case for service out, principally that there is a serious issue to be tried on the merits against the defendant in question and that the English court is distinctly the appropriate forum in which to bring the claim. It will not be necessary to consider those elements given the conclusions I have reached on the threshold question whether the claims brought fall within the gateways relied on.

27. That threshold question does involve some limited consideration of the merits, however, because the question whether the claimants' claims pass through the codefendant gateways (EU and non-EU) requires provisional consideration of the merits of the claim against the English companies.

Co-Defendant Gateways – Part 1

General

28. For both the EU and non-EU defendants, the co-defendant gateway involves a merits test in relation to the claim asserted against the anchor defendant(s). For the non-EU defendants, that merits test is expressly stated in CPR PD 6B para.3.1(3): there must be between claimants and anchor defendant(s) "*a real issue which it is reasonable for the court to try*"; and it is the necessity or appropriateness of having the co-defendant before the court as an additional party to that claim that creates a sufficient connecting factor to this jurisdiction to justify granting permission for service on the co-defendant abroad (subject to the other usual considerations).

29. For the EU defendants, there is no express reference to the merits of the claim against the anchor defendant(s) in the language of Article 8(1) of Brussels (Recast). It requires claims against the anchor defendant(s) and the co-defendant that are "*so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings*". Although that does not state in terms a merits test in relation to the anchor claim(s):

    i) The CJEU has made clear that a claimant cannot rely on Article 8(1) where the sole purpose of suing the anchor defendant(s) was to remove the co-defendant against whom Article 8(1) is invoked from the courts of his domicile: see *Reisch Montage v Kiesel Baumaschinen Handels GmbH* (Case C-103/05)

[2006] ECR I-6827 at [32]; *Cartel Damages Claims SA v Akzo Nobel BV* (Case C-352/13) [2015] QB 906 at [27].

ii) Applying or extending that doctrine, the majority view of the Court of Appeal in *Sabbagh v Khoury* [2017] EWCA Civ 1120, *obiter* at [66]-[69], was that a hopeless claim against an anchor defendant, or one that does not raise a serious issue to be tried, does not found jurisdiction under Article 8(1). The claimants accepted that view before me, reserving the right to argue against it if this matter goes further.

30. In *Privatbank v Kolomoisky* [2018] EWHC Ch 3308, Fancourt J took the logic of the CJEU doctrine further, holding that Article 8(1) was being abused for the sole purpose of removing a co-defendant from the courts of his domicile even though the claim against the anchor defendants was a properly arguable claim on the merits. It will not be necessary to consider whether to follow that approach in the present case, although there are certainly similarities on the facts. Thus, I have no doubt that the only reason the English companies have been sued is so that the claimants can say they have anchor defendants for the purpose of the co-defendant gateways; and there was some element of exaggeration or artificiality in descriptions on the claimants' behalf of the English companies being at the heart of the Ananyevs' banking business when in reality they are just off-shore holding vehicles for Promsvyaz and therefore, indirectly, for PSB.

31. The practical upshot for the purposes of this judgment is that as against both EU and non-EU defendants, if the claims against the English companies are hopeless, then the applicable co-defendant gateway does not apply by reference to those claims, i.e. the English companies cannot then be used as jurisdictional anchors. It is convenient then to mention briefly Menrela. There is no possible basis for a claim against Menrela if there is none against the English companies. Even if, therefore, Menrela somehow submitted to the jurisdiction by seeking to strike the claim out in the alternative to its challenge to jurisdiction, that will not affect the outcome overall. Menrela cannot give the claimants a jurisdictional anchor if the English companies do not do so.

32. There is this point of difference between the co-defendant gateways. For the EU defendants, only the English companies can be anchor defendants, since Article 8(1) requires the proceedings to be in the Member State where the anchor defendant is domiciled. For the non-EU defendants, however, any defendant properly here (as a matter of jurisdiction) can be an anchor defendant. Bearing that in mind, on the facts of this case:

i) There is only an issue about the co-defendant gateway for the non-EU defendants if the EU defendants are not properly here. The EU defendants include Dmitri and Promsvyaz. The claims against them raise a serious issue to be tried on the merits, whatever the position as regards the English companies (and Menrela); the non-EU defendants are appropriate parties to be joined to the claims against Dmitri and Promsvyaz, if they are being pursued here; and those claims cannot be stayed on an argument of *forum non conveniens*, so they could and would be pursued here if properly brought here at all under Brussels (Recast). It follows that if the claims against the English companies

are not hopeless and the EU defendants are therefore properly sued here under Article 8(1), then the non-EU defendants are properly sued here under CPR PD 6B.

ii) If the claim against the English companies is hopeless, then the EU defendants are not properly sued here under the co-defendant gateway. That conclusion as to the claim against the English companies prevents Article 8(1) from being capable of applying. However, it does not on its own dispose of the codefendant gateway under CPR PD 6B. For example, if the EU defendants are properly sued here under the tort gateway (Article 7(2) of Brussels (Recast)), that will suffice for them to be anchor defendants under CPR PD 6B para.3.1(3).

33. As is well established, to make good an argument that this court has jurisdiction over a particular claim against a particular defendant, the claimant must persuade the court that there is a 'good arguable case' that the claim passes through an applicable jurisdictional gateway. In this context, what is meant by a 'good arguable case' is one in which, on disputed points of fact or law, the claimant appears to have the better of the argument, on the material available to the court at the necessarily preliminary stage at which jurisdiction is considered.

34. At the risk of over-complicating the initial analysis, I note this means that the question on the jurisdiction challenges, as regards the merit or lack of merit of the claims against the English companies, is whether there is a good arguable case, in that 'better of the argument' sense, that there is a real issue against the English companies. By contrast, in the claim against Alexei the issue at this stage is strictly whether there is a strong arguable case (in the sense used for freezing orders) that there is jurisdiction, thus a strong arguable case that there is a good arguable case that there is a real issue to be tried against the English companies. However, the conclusions I have reached mean that such subtleties do not affect the outcome.

The claim against the English companies

35. I have identified already where the English companies fit into the ownership structure sitting on top of PSB at the material time. Speaking in broad terms, a majority stake in PSB was one of the Ananyevs' joint investment assets. That investment asset was not owned by them directly, however. It was owned by Promsvyaz, which was owned by the English companies and Menrela, and in turn the Ananyevs owned one of the English companies each and Menrela jointly. There is neither allegation nor reason to suspect, let alone evidence, that this ownership structure was put in place for anything other than proper purposes. In fact, there is good evidence of the lawful tax-planning motivation, under advice from PwC, that led to its introduction. In particular, the English companies and Menrela were not put in as intermediate holding companies for the purposes of, or in any way in connection with, the Notes. This judgment is not concerned with the possible liabilities, if any, of corporate vehicles created by (alleged) tortfeasors, or introduced into asset-holding structures, for the purpose of carrying out the (alleged) torts.

36. There are no doubt many ways in which the Ananyevs might have chosen to hold their interest in PSB. By the standards of many cases the court sees, the Ananyevs' chosen structure was not complex or opaque, even if it was less simple than just having direct personal shareholdings in PSB. What matters for this judgment is that:

    i) it is at least well arguable (a) that the wrongdoing alleged required investors to know (being told, if they did not know it already) that the Ananyevs were the ultimate majority owners of PSB and/or (b) that an important element of how the wrongdoing was in fact achieved, as alleged, was that investors knew as much (being told if necessary); and

    ii) the Ananyevs' ultimate majority ownership of PSB was in fact held, as described above, via the English companies (and Menrela); but

    iii) at the same time, the English companies (and Menrela) were present at the material time in the ownership structure 'above' PSB only because an ownership structure involving such companies happened at that time to be, on tax advice, the Ananyevs' preferred ownership structure. The Ananyevs did not require them in order to be the ultimate beneficial owners of 'their' majority stake in PSB, that ownership having long pre-existed; and if at any time it had suited them, on advice, to structure their ownership differently they could no doubt have done so. Thus, the Ananyevs only needed to own the English companies (and Menrela) in order to be ultimate indirect majority owners of PSB so long as they chose to hold their majority interest in PSB, as an investment asset, in a holding structure that included those companies.

37. In the development of the claimants' arguments at the hearing, Mr Samek QC for the Tsareva claimants, who took the lead on this part of the argument with Mr Lord QC for the Galagaev claimants adopting his submissions, contended if necessary that what I have just stated is sufficient for liability to attach to the English companies (and Menrela). I do not accept that contention. Their existence as intermediate holding companies in the structure of the Ananyevs' majority ownership of PSB does not render them liable for the Ananyevs' wrongdoing (if any), even if (as is arguable) there is a sense in which the wrongdoing took advantage of the fact of that ownership. On the evidence, that is also the position under Russian law: to quote from Prof Asoskov's report, in this respect undisputed, "*the legal status of the parent (holding) company per se does not provide any basis for holding such company liable in tort as a party that caused harm together with others, unless such company has itself committed an unlawful act or omission*". Russian law may or may not be precisely similar to English law as regards when, if used by its owner in order to implement a conspiracy, a parent company will be liable; but on any view it must have been used, i.e. it must have done something, before any question of possible liability might arise. For the avoidance of doubt, agreeing is doing something and so where I refer to a need, in any conspiracy claim, for the English companies (or Menrela) to have done something, or to there being (or not) a real issue whether the English companies (or Menrela) did anything, that is said with that understanding.

38. Thus, for there to be even a question of possible liability on the part of the English companies, they must have done something more than merely exist as corporate

shareholders in Promsvyaz and thereby indirect majority owners of PSB. The claimants presented no evidence that the English companies did anything, however. The pleaded case is that the Ananyevs conceived and implemented a plan to raise funds to 'prop up' their businesses by getting PSB clients such as the claimants to give up funds deposited with PSB in return for the Notes, allegedly known to the Ananyevs to be worthless or at least highly likely to default. It is said that this necessarily involved the Ananyevs acting in combination with *inter alia* the English companies and Menrela. If this allegation of necessity were arguable, for present purposes that might overcome the claimants' inability to point by way of evidence to anything done by the English companies or Menrela. The arguable necessity would mean it was arguable that they must have done something even if at this stage the claimants could not put a finger on what exactly. As Mr Choo Choy QC put it in argument for Dmitri, "*[the claimants] … are … saying: the facts of this case were such that necessarily D3 and D4 had to be used. That's how they put it because they don't have any facts to rely on …*". But the necessity alleged is not arguable. There is in truth no reason at all why the English companies or Menrela had to have any involvement of any kind in order for the Notes to be put together, marketed and sold as they were.

39. Dmitri was PSB's CEO at all material times; Alexei was Chairman of its (nonexecutive) Supervisory Board. Their foundation and ownership of PSB pre-dated the existence of the English companies and Menrela, who came along later as part of a preferred ownership structure. If, as alleged, Dmitri adopted a plan to trick PSB depositors out of their money, directing a mis-selling operation by PSB relationship managers to that end, and whether or not, as further alleged, Alexei was in any way privy to any of that, neither of the English companies, nor Menrela, needed to be involved at all. It is at least well arguable that Dmitri was CEO (and, if relevant, Alexei was on the Supervisory Board) only because he was an ultimate beneficial owner of the business; and at the time in question the English companies (and Menrela) were links in the corporate chain through which that ultimate beneficial ownership was held. But that just takes one back to the prior question whether their presence in the ownership structure 'above' PSB is sufficient in law to fix the English companies and Menrela with liability; and it is not (whether under English law or, if relevant, under Russian law).

40. The Notes were guaranteed by Promsvyaz. One can see the potential for that guarantee to be important to investors like the claimants: the Notes were not obligations of PSB, with whom they had trusted their deposited funds; but they were guaranteed by PSB's (majority) parent company, Promsvyaz. In the abstract, an enquiring mind might perhaps have wondered whether Promsvyaz in turn required shareholder approval before issuing such a guarantee, i.e. approval by the English companies and Menrela; although in the absence of some positive evidence suggesting such approval was required, that would be an exercise in speculation. However, even if shareholder approval had been required, that would not make it arguably necessary for the English companies (or Menrela) to be privy to any misselling of the Notes or agreement to mis-sell the Notes. In any event, and although there was thus no case calling for an answer on the point, the evidence served by the defendants, including relevant contemporaneous documentary evidence, shows clearly that shareholder approval was not required or sought.

41. Indeed, and overall, on the evidence it is quite plain that the English companies had no involvement at all in the issuance, sale or marketing of the Notes or the receipt or use of their proceeds. There is no basis for a contention that the English companies were privy to any mis-selling of the Notes at PSB or any wrongdoing in relation to that mis-selling on the part of PSB employees or the Ananyevs.

42. The claimants relied on the Court of Appeal decision in *VTB v Nutritek* [2012] EWCA Civ 808, esp. at [122]-[127], as an example of a case in which it was considered that a holding company might be found to be liable as a conspirator through the actions of its ultimate beneficial owner. But that was a case where there was evidence to support a future finding that the beneficial owner, Mr Malofeev, was acting for the holding company, Marcap BVI, in respect of various relevant conduct, including the making of alleged misrepresentations upon which claims were founded. There is nothing similar here.

43. Consistent with all of that, the pleaded case does not in fact allege any particular act on the part of the English companies (or Menrela). Taking the Tsareva claimants' Particulars of Claim to illustrate (the Galagaev claimants' draft Particulars of Claim do not take the matter any further):

    i) It is alleged at para.44 that the mis-selling of the Notes "*involved, and necessarily involved, concerted action between the Ananyev Brothers and the Notes Defendants*" (i.e. the Issuer, the Guarantors, the English companies and Menrela).

    ii) That allegation is purportedly explained and justified at para.45. As thus particularised, in fact the only allegation is that the Ananyevs needed to be the ultimate beneficial owners of PSB, the Issuer and the Guarantors, in order to carry out their wrongful scheme (as alleged); and that they were in fact such owners via the English companies (and Menrela).

    iii) The pleaded suggestion that the English companies (and Menrela) owned Peters International, one of the Guarantors, and thereby owned indirectly the Issuer, Peters Cayman, is plainly wrong on the facts. The fact that they owned Promsvyaz (and thereby, indirectly, a majority share in PSB) does not arguably mean they must have had any involvement in or knowledge of the wrongdoing alleged.

44. The submissions proposing that there is or might be a claim in tort against the English companies nonetheless were something of a jumble and underwent a transformation over the adjournment that fell part way through Mr Samek QC's submissions. The critical elements of the argument were these:

    i) A submission that since the English companies existed as intermediate holding companies between the Ananyevs personally and PSB, they were part of the means by which the Ananyevs (if they did) "*were able to 'access' customers of PSB Bank and instruct bank staff to market the Notes to the Investors on the basis of the Representations* [and] *were able to procure that Promsvyaz acted as guarantor of the Notes*".

ii) A submission that the commission of the torts, as alleged against the Ananyevs, must have involved the taking of particular steps by the English companies, so that the case against them was not merely that by existing as intermediate holding companies they were somehow exposed to liability for the Ananyevs' alleged wrongdoing. This was the submission that underwent overnight transformation. Mr Samek QC was clear on Day 3, consistent with his pleading, that the claimants did not allege that the English companies did anything at all, rather the claimants' case was that they could (at least arguably) be regarded as parties to the conspiracy because through the Ananyevs (said to be their directing minds and wills) they knew of it and did nothing. By contrast, on Day 4, the argument presented was very different, namely that it was arguable that Promsvyaz must have received some kind of instruction or request to issue its guarantee of the Notes, or some other sort of communication to give it comfort to do so, from a person or persons purporting to act on behalf of its shareholders; and that it was arguable, if so, that any such communication would have come from the Ananyevs, or at the very least Dmitri, via Alexei's son, Nikolai, who was a director of Antracite Investment Limited (Alexei's English company), and/or a Ms Ioshpa or her alternate, a Mr Zhukov, as director of Urgula Platinum Limited (Dmitri's English company), without the knowledge of their respective (Irish) codirectors. This late development of the claimants' case was one reason (though not the only one) why the argument could not be concluded in the time available. The claimants therefore provided their final reply submissions in writing on 8 March 2019, to which (with my permission) there was a brief written rejoinder from the English companies and Menrela on 28 March 2019. Both final reply submissions and rejoinder submissions relied in part on additional evidence for which again I gave permission.

iii) A submission that the Ananyevs were the directing minds and wills of the English companies. In conjunction with the transformation of the claimants' case in respect of the second submission, in the claimants' reply submissions this became an argument that the Ananyevs 'controlled' the English companies via Nikolai and/or Ms Ioshpa/Mr Zhukhov in respect of matters pertinent to the case. That argument accepts that the directors of the English companies, not the Ananyevs, were the directing minds and wills of the English companies; the focus would therefore be on their (the directors') conduct and state of mind.

45. All of these submissions were overlain by a general observation that the issue arises at an early stage, prior to disclosure, when, so it was said, the claimants have "*limited visibility on what happened and what has happened to their monies*" and so "*can only point to those facts which are presently available and the inferences that can be drawn*". This is a familiar refrain in cases said to involve dishonest wrongdoing. But it cannot be taken too far. In particular, it does not entitle the claimants to pursue allegations that have no evidential foundation in the hope that one will emerge. The claimants properly accepted as much, for example submitting in reply (but with my emphasis added) that "*it is important to keep in mind that, <u>unless the initial evidence does not even raise a prima facie case</u>, [claims of conspiracy or joint tortfeasance] can typically only be established at trial*".

46. The first submission – that the English companies were part of the means by which any wrongdoing was made possible – adds nothing of factual substance to the summary I stated in paragraph 36 above. If there was wrongdoing as alleged by the claimants at all, then (at least arguably) it was important that the Ananyevs could be and were portrayed as the ultimate owners of PSB; and the English companies were in fact part of the ownership structure by which that was so. But that does not render the English companies liable for the actions of others; nor does it mean the English companies did anything themselves or entered into any combination with anyone for anything to be done.

47. The second submission I have mostly addressed in paragraphs 38-43 above. The unpleaded and speculative development of it on Day 4 has no basis in evidence and would require, if it were a serious case for liability on the part of the English companies, an arguable case of guilty knowledge on the part of Nikolai Ananyev, Ms Ioshpa or Mr Zhukov, which does not exist.

48. The third submission flies in the face of the comprehensive evidence provided by the English companies as to their corporate governance. In short, there is no basis – and, so far as I can see, there has never been any basis – for the pleaded assertion that the Ananyevs directed or controlled the conduct of the English companies or were their directing minds or wills. The claimants have been unable to point to a single instance of any decision or action required of the English companies being made or taken purportedly on their behalf by the Ananyevs or either of them. The evidence demonstrates in my view beyond sensible argument that the English companies (and Menrela) were passive asset-holding companies whose limited necessary functions were carried out by their directors.

49. In any event, even were the Ananyevs capable of being regarded as directing minds or wills of their respective English companies, that does not arguably fix those companies with liability as a co-conspirator (if there was some conspiracy). Mr Samek QC relied on *The Dolphina* [2012] 1 Lloyds Rep 304 (a decision of the High Court of Singapore), but that does not assist the claimants. There, the decision by a company not to enforce rights in relation to what was supposed to be a spent bill of lading and take it back out of circulation, was conduct capable of amounting to action in combination, or joining in, so as to give rise to liability as co-conspirator if done with guilty knowledge. The question therefore was whose knowledge was the company's knowledge in respect of that conduct. Here, the claimants' insuperable difficulty is that there is no arguable case of conduct of any kind on the part of (or purportedly on the part of or on behalf of) the English companies (or Menrela).

50. My conclusion is that there is no basis at all for the suggestion that the English companies might be liable to the claimants. The claim against them is without foundation and should be struck out. The same would be true of the claim against Menrela, if there were jurisdiction over it. As a result, neither the English companies nor Menrela can be used as anchor defendants to found jurisdiction under the codefendant gateways. That disposes of Article 8(1) – there is no co-defendant jurisdiction over the EU defendants – since that requires a viable claim against the English companies. It does not dispose of CPR PD 6B para.3.1(3), as noted above, because that does not require the anchor defendant to be domiciled here.

Tort Gateways

51. As I indicated in my initial summary (paragraph 23 above), the submission by Mr Lord QC for the Galagaev claimants was that they suffered damage within the jurisdiction because the payment obligations under the Notes on which the Issuer defaulted were obligations to make payments to Citibank in London. I do not accept that submission. The claimants' claims are in tort for having been wrongfully induced to invest in Notes that were not as had been described to them and ultimately defaulted; they suffered loss by parting with their funds deposited with PSB in Russia (or, perhaps, by contracting with PSB in Russia to do so), as in *Lober v Barclays Bank*, Case C-304/17 (CJEU), *Domicrest Ltd v Swiss Bank Corp* [1999] QB 548 (Rix J, as he was then) and *Maple Leaf Macro Volatility Master Fund v Rouvroy* [2009] EWHC 257 (Comm) (Andrew Smith J). In any event, the claimants were never due to receive any payment in London. If the Notes had performed, the claimants would have received gain in Russia by credits to their accounts at PSB. If they are to be regarded as having suffered loss by not receiving gain when the Notes defaulted, still their loss was suffered in Russia.

English Contract Gateway

52. I found it entirely elusive to identify any basis for the suggestion that the claimants' investment in the Notes involved them in entering into any contract with the Issuer (or either of the Guarantors). So far as I can see, the only Noteholder having contractual privity with the Issuer (or the Guarantors) was Citibank NA, which held the Notes pursuant to the terms of a deed of trust (the 'Trust Deed'), of which possibly (though this itself was obscure) PSB may have been the beneficiary. The claimants as individual investors only ever acquired (if that is the right word to use) credit entries on security accounts at PSB by which PSB credited them with an entitlement to the benefit of the Notes. Thus, though the Notes (and the Guarantors' guarantees) were by nature contracts governed by English law, the claimants' claims do not fall within CPR PD 6B para.3.1(6) by reference to those contracts. The claimants' only arguable claims (if any) are non-contractual claims against defendants with whom they have no contract. Such claims do not fall within the English contract gateway.

53. The Galagaev claimants also pleaded a purported claim to 'rescind' the Notes. A claim by a contracting party to rescind a contract governed by English law, and for financial remedies consequent upon rescission, would by nature fall within the English contract gateway. However, the 'good arguable case' test applies and the claimant must have the better of the argument, on the materials available when jurisdiction is being considered, as to the existence of the contract. Here, as I have said, I can in fact see no basis at all for the argument that the claimants were privy to any contract with the Issuer.

54. There might be an argument that a different contract came into existence for each claimant, namely a contract with PSB when the claimant placed an order to invest, but that contract could not found jurisdiction here for claims against parties other than PSB; and in any event it would not arguably be governed by English law, being a contract between a Russian bank customer and his or her Russian bank, made in Russia and performed on the customer's side in Russia, for the bank to acquire Notes

to be issued by the Issuer, crediting them to a security account as held by the bank for the customer. In the absence of any express choice, any such contract would plainly be governed by Russian law.

Co-Defendant Gateways – Part 2

55. The conclusion follows that there is no jurisdiction against any of the EU or non-EU defendants under the tort gateways or the English contract gateway, as relied on by the Galagaev claimants. In turn, therefore, none of the EU or non-EU defendants can be used as anchor defendants for the purpose of founding jurisdiction against any of the (other) non-EU defendants under CPR PD 6B para.3.1(3).

Menrela – Submission?

56. If Menrela did not submit to the jurisdiction, then it is in the same position as the other EU defendants. That is to say, there is no jurisdiction over it because: (a) there is no proper claim against the English companies and so Article 8(1) of Brussels (Recast) does not apply; and (b) Article 7(2) does not apply (relevant only in the Galagaev Claim). The proceedings against Menrela would therefore fall to be set aside.

57. If Menrela did submit to the jurisdiction, nonetheless there is no proper claim against it (as with the English companies, but *a fortiori* given Menrela's *de minimis* shareholding in Promsvyaz). Proceedings against Menrela would therefore fall to be struck out and the purported claim against it could not be used to found jurisdiction against any of the non-EU defendants under CPR PD 6B para.3.1(3).

58. It makes no practical difference, therefore, whether Menrela somehow lost the right to object to jurisdiction by applying, strictly in the alternative to its application objecting to jurisdiction, for the claim against it to be struck out. For completeness, however, it seems to me that Menrela did not do so. It filed a timely acknowledgment of service indicating an intention to challenge jurisdiction. It issued its application under CPR Part 11 in proper time. At no stage did it communicate unequivocally that, contrary to that statement of intention and proper application, it accepted that this court had jurisdiction in respect of the claim against it.

59. Furthermore, on the facts it would be highly artificial and inconvenient if it were impossible – as the claimants had to contend – for Menrela to join in, but strictly in the alternative, the English companies' application to have the claim against them struck out. The principal argument as to jurisdiction concerned the viability, if any, of the claim against the English companies, and it was obviously helpful and convenient to consider the position of Menrela in connection with that argument. Conversely, it would have been highly inconvenient and wasteful to require Menrela to await the outcome of the jurisdiction arguments and only then to apply to strike out the claim against it, if it won under Article 8(1) of Brussels (Recast) but lost under Article 7. Indeed, I strongly suspect the claimants would have objected, if Menrela had done so, that the proper stage at which to seek the striking out of the claim against it, were that the outcome, was this present interlocutory stage, by making precisely the application in the alternative it actually made.

60. Mr Samek QC in his Skeleton Argument cited *Briggs*, "*Civil Jurisdiction and Judgments*" (6th Ed.) at para.5.30, for the proposition that applying to strike out a claim or for its summary dismissal as hopeless, in the alternative to a challenge to jurisdiction, "*is fatal to [a defendant's] ability to pursue jurisdictional challenges*". I agree with Prof. Briggs that a defendant should always consider carefully what it does and says in response to proceedings if it wishes or may wish to challenge jurisdiction and so needs to avoid doing or saying anything that might be taken as a submission. However, with respect to Mr Samek's argument, it simply does not follow that a defendant submits who (a) objects to jurisdiction, but also (b) indicates that if there were jurisdiction over it the claim should properly be struck out as hopeless anyway. Such a defendant does not submit to the jurisdiction, so as to defeat its primary application challenging jurisdiction, by making the alternative application (strike-out). There may be a more subtle point, namely whether making the alternative application is a conditional submission, exercising in advance (if that be possible) the right of election that would otherwise not fall to be exercised until after the disposal of the jurisdiction application, namely to participate or not on the merits if the court should find that it has jurisdiction (*cf* CPR Part 11(7)). But any such point does not affect the outcome here.

61. There will also be interlocutory case management considerations to consider, depending on the nature of the issues involved in the jurisdiction challenge and the strike-out application. There may be cases in which it is convenient to consider those

issues separately, and sequentially, taking the jurisdiction challenge first and staying the strike-out application pending the outcome. This was plainly not such a case and quite rightly (as it seems to me) no party suggested that Menrela's strike-out application should be stayed.

62. Likewise, there was no suggestion that a contingent application by the Issuer and Guarantors for a stay in favour of arbitration, if jurisdiction were established, should itself be stayed in the present case on some argument that to pursue it, strictly in the alternative, would somehow defeat the primary application challenging jurisdiction. The claimants, rightly in my view, did not suggest that the Issuer and Guarantors had somehow submitted to the jurisdiction, so as to defeat their primary application, by invoking arbitration in the alternative. In the event, in the course of Mr Foxton QC's submissions a question did arise whether I was in a position on the evidence to determine the arbitration application if the challenge to jurisdiction failed or whether it would need to be adjourned for further consideration after all, but that is a different point. As it is, the arbitration application is simply not reached as the proceedings against the Issuer and Guarantors will be set aside for want of jurisdiction.

The *Chabra* Defendants

63. The Galagaev claimants, but not the Tsareva claimants, seek to pursue freezing order and proprietary relief against Fintailor and Postscriptum as non-cause of action defendants under the *Chabra* jurisdiction although neither is domiciled here and there is no suggestion that any assets that might be frozen or the subject of proprietary relief are located here. The premise upon which it was proposed that the court can and

should assume jurisdiction over them as *Chabra* defendants is that the court has jurisdiction over the substantive claims sought to be pursued.

64. On that basis, it was contended by Mr Lord QC that:

i) Article 35 of Brussels (Recast) did not apply, so that the Galagaev claimants did not have to satisfy its additional requirement that there be a real connecting link between the subject matter of the interim measures sought and the territorial jurisdiction of the court.

ii) There was nothing in Brussels (Recast) to prevent the court from making any ancillary orders in support of the substantive claims that were otherwise available under national law.

iii) CPR PD 6B para.3.1(3) could therefore be invoked to found jurisdiction over the *Chabra* defendants as necessary or proper parties; and with substantive proceedings on foot here, this court would be the most appropriate forum for *Chabra*-type relief to be considered against Fintailor and/or Postscriptum.

65. It is not necessary to consider the correctness of any of those steps in Mr Lord QC's argument, or its overall conclusion that if substantive claims are to proceed here then the court has and should exercise jurisdiction over Fintailor and Postscriptum as *Chabra* defendants. There are not to be substantive claims here. The premise for joining *Chabra* defendants has not been established.

Conclusions – Jurisdiction / Strike-Out

66. For the reasons given above, I find that there is no proper basis for any claim against the English companies. The proceedings against them will be struck out.

67. In the Galagaev Claim, I find further that there is no jurisdiction over the EU defendants under Article 7 of Brussels (Recast) and there is no jurisdiction over the non-EU defendants under CPR PD 6B para.3.1(6) or para.3.1(9).

68. My preferred analysis in relation to Menrela is that it never submitted to the jurisdiction and so falls to be treated for these purposes in the same way as the other EU defendants.

69. There is therefore no available anchor defendant for the claims against the EU defendants (for the purpose of Article 8(1) of Brussels (Recast)), for the claims against the non-EU defendants (for the purpose of CPR PD 6B, para.3.1(3)), or for the claims against the *Chabra* defendants (also for the purpose of CPR PD 6B, para.3.1(3)). The claims against the EU defendants, the non-EU defendants and the *Chabra* defendants, therefore, will all be set aside.

70. If, contrary to my preferred analysis, Menrela submitted to the jurisdiction, nonetheless there is no proper basis for any claim against it (as with the English companies). The proceedings against Menrela would on that basis fall to be struck out. The posited submission to the jurisdiction therefore would not affect the conclusions as regards jurisdiction in respect of the claims against the other EU

defendants, the non-EU defendants or the *Chabra* defendants. They would still have no anchor defendant for the purpose of the co-defendant gateways; and paragraph 67 above would still hold for the Galagaev Claim as regards those other defendants.

Freezing Orders

71. Since the court has no jurisdiction over any of the claims sought to be pursued by the claimants, the foundation for seeking or maintaining freezing orders falls away. In those circumstances, I shall deal only briefly with the main points that would have arisen if the possibility of granting or maintaining freezing order relief had been live.

Alexei

72. As regards Alexei, I have to this point largely been guilty of failing to distinguish his position from Dmitri's, something of which Mr Kitchener QC for Alexei was critical in relation to the claimants' pleadings, evidence and submissions. Alexei is one of the non-EU defendants and I have found there to be no jurisdiction in respect of the claims against those defendants for reasons that did not require a distinction to be drawn between him and his brother.

73. In my judgment, Mr Kitchener QC's criticisms of the claimants' case were wellfounded when it came to the merits and issues of risk of dissipation, the matters he was addressing in the context of whether freezing orders should be granted. I mentioned at the outset Dmitri's and Alexei's different interests and areas of responsibility within what had been their jointly-owned business empire (see paragraph 10 above). In particular, on the evidence: Dmitri at all material times had a

    senior executive role and responsibilities at PSB (from February 2016 until the CBR put PSB into administration, Dmitri was Chairman of the Management Board, i.e. CEO); Alexei on the other hand had no executive or managerial role or responsibility at PSB at any time, although he did have a non-executive role on PSB's Supervisory Board; Alexei's full-time occupation was CEO of Technoserv and no allegations of wrongdoing arise out of that business or its management; in short, though ultimately both were jointly owned at the time, PSB was Dmitri's business, Technoserv was Alexei's. Such evidence as there is possibly suggestive of misconduct within PSB, or relating to PSB's financial position, may perhaps implicate Dmitri (if indeed there was untoward behaviour at all) but does not implicate Alexei in any way.

74. There is, on the evidence, no basis for a contention that Alexei had any involvement at all in respect of the Notes, or any relevant knowledge in relation to them, save for a formality in signing shareholders' resolutions authorising the giving of Peters International's guarantees. The claimants' allegations against Alexei amount in my judgment to no more than assertions that if what they say against Dmitri is true, the same might be true in respect of Alexei because he is Dmitri's brother and they were both, through the corporate structures I have described, ultimate beneficial owners of the underlying businesses. That is a *non sequitur* and the reality is the claimants have not shown that they have any properly arguable claim against Alexei at all, but have sued him entirely speculatively.

75. Furthermore, Alexei has remained in Russia, owning and running Technoserv, which continues to be an important and very substantial IT services business. There is no evidence at all suggesting a risk that Alexei might involve himself in any unjustifiable dissipation of assets rendering a future judgment futile or more difficult to enforce. It is true that he and Dmitri have taken steps to change significantly their respective assets, by their separation of interests in early 2018. But that was before any suggestion that the present allegations might be raised, was done perfectly openly and on the face of things for proper reasons, and (if anything) rendered Alexei a better prospect, freeing him from PSB and its difficulties and giving him sole ownership of Technoserv.

76. If there were jurisdiction here in respect of the claims against Alexei, they would not have come close to justifying interim relief by way of freezing order against him.

Fintailor

77. I would also have concluded that there was no basis for the grant of any freezing order against Fintailor. It is a Cypriot brokerage firm owned by Mr Kirill Lyushinsky, licensed by the Cyprus Securities and Exchange Commission and controlled by a Board of Directors. Mr Lyushinsky is one of the Directors and he has two coDirectors who are not said to have any involvement or connection that might be material to the claimants' claims. The substantive claims against Fintailor are speculative. Essentially, all the claimants have is the fact that Fintailor contacted some investors with an offer to buy out their investment in the Notes, and at least some evidence suggesting that Fintailor may have been doing so for the account of the Issuer itself, i.e. Fintailor may have been engaged by the Issuer to offer a buy-back. The claimants built onto that basic fact a convoluted suggestion that the buy-back offers were in some sense not 'genuine' and that Fintailor could therefore be said to have had or acquired guilty knowledge and to have joined in the conspiracy.

78. In my judgment, there is in reality no arguable case that Fintailor was or became a coconspirator. There is, as a first step, no reason for supposing that the buy-back offers might not have been genuine offers. Indeed, in the case of one of the claimants, Ms Milova, who accepted the offer made to her, two buy-back contracts resulted and Fintailor went to significant lengths, including litigation, to seek to procure payment to Ms Milova. There is in any event no basis for any allegation that anyone responsible for Fintailor's conduct had any knowledge of any wrongdoing, if there had been any. Furthermore, Fintailor is only even alleged to have become involved in any sense at all after PSB had fallen into administration and it is not arguable that anything it did resulted in or aggravated any loss.

79. Unsupported assertions are made that Fintailor is in fact a creature of the Ananyevs, but there is no evidence to support them and indeed no basis in any evidence not to accept the documentary and witness evidence Fintailor has provided showing that it was incorporated in 2007 and purchased by Mr Lyushinsky in 2010, that it has had some arms-length dealings as broker with some of the defendants and with PSB, that Dmitri and Mr Lyushinsky are known to each other, although they do not know each other particularly well and could not be described as associates, and that the Ananyevs

do not have any ownership interest in or exercise any form of direction or control over Fintailor or its business.

80. Nor finally, as regards Fintailor, is there any evidence at all that it presents a risk of dissipation of assets such as might justify the imposition of a freezing order against it. If there were substantial evidence suggesting that Fintailor was in receipt of, and still holding, funds that in equity might be said to belong to the claimants, the grant of interim relief in support of that proprietary interest might be justified on a different basis. But there is no such evidence, and I regard as speculation the claimants' suggestion that Fintailor might have received or might now be holding proceeds derived from their investments in the Notes.

Ananyev Companies

81. As regards the Issuer, the Guarantors, the English companies and Menrela, I was not persuaded by the claimants that they present any real or substantial risk of dissipation of assets such as could justify the grant of freezing orders against them:

    i) There is no evidence that the Issuer or the Guarantors has at any time sought to dissipate assets. Nor is there evidence of substantial assets susceptible to dissipation anyway. I agree with the submission of Mr Foxton QC on their behalf that in truth the claimants made no real attempt to demonstrate by evidence that the Issuer or either Guarantor represented a judgment-frustration risk of the sort at which alone relief by way of freezing order might properly be directed.

    ii) In relation to the English companies, the comprehensive evidence (for this stage of proceedings) generated by the jurisdiction challenge and the claimants' response to it justifies Mr Sprange QC's submission that they have provided "*a fulsome account of their purpose, activities and financial position*" and that there is no solid evidence upon which a finding could be made that there is any real risk of assets being dealt with otherwise than properly in the ordinary course of their business (such as it is). Menrela meanwhile plays, in truth, a *de minimis* role in all of this; but again the conclusion is that there is no basis for a fear that Menrela has, but will deal improperly with, any substantial assets.

Dmitri

82. I turn, finally, to Dmitri. On balance, I am prepared to proceed on an assumption, without finding, that the claimants have a good arguable case on the merits against Dmitri that the Notes were missold to them at his behest and with his knowledge so that he might have a personal liability. That said, it seems to me there are many difficulties with the claimants' case. It is a long way from a clear (*prima facie*) case of fraud or dishonesty against Dmitri; and it is not a case where the nature of the substantive case against him provides any significant basis for a suggestion that he might now deal with his assets otherwise than in an ordinary and proper fashion such that enforcement of any judgment would be rendered impossible or more difficult.

83. I do not accept two particular submissions of Mr Choo Choy QC's, however, as follows:

    i) Firstly, it was submitted that Dmitri's payments into court of US$15.6 million and €11 million, in response to the freezing order in the Tsareva Claim, told decisively or at least substantially against there being any relevant risk. But in my judgment, they indicate no more than that Dmitri must be very wealthy indeed. If there were otherwise solid evidence of risk of dissipation, as required before a freezing order could properly be granted, the fact that Dmitri is so wealthy as to have been able to make such large sums available at short notice, when doing so was the only way to avoid (a) his assets being frozen and (b) an obligation to give disclosure as to his assets, would not undermine that evidence. If there were not such evidence, then there would not be any basis for any freezing order in the first place. In that case, of course Dmitri's preference to pay into court rather than give disclosure about his assets to the claimants (given his ability to do so) could not be held against him (see, e.g., *Holyoake v Candy* [2018] Ch 297, *per* Gloster LJ at [50]-[53]). The conclusion is that Dmitri's payments into court are a neutral fact.

    ii) Secondly, a particular point was taken against the Tsareva claimants that because (or so it seems) they may have assigned the benefit of their claims to PV Group, a Delaware corporation, either (a) there will be a complete defence to their claims come what may or (b) they are guilty of material non-disclosure in obtaining their freezing order (and no further order should be granted). On investigation, however, it appeared that the possible assignment to the PV Group is just part and parcel of the Tsareva claimants coming together collectively to pursue their claims; they are not, on the evidence, being pursued ultimately for the benefit of other parties. I prefer not to take a final view whether in those circumstances the involvement of PV Group 'behind the scenes' as part of the Tsareva claimants' litigation logistics ought to have been disclosed to the court at all. I would not have set aside the original freezing order, or refused to grant any further order, because of this point.

84. More generally, then, the question would be whether indeed there is solid evidence that Dmitri, unless restrained, will or may dissipate or deal with his assets in such a way as to frustrate any future enforcement. In my judgment, there is not:

    i) The claims against Dmitri extend well beyond the amounts 'caught' by the existing freezing order in the Tsareva Claim, given that (a) there is presently no freezing order in place in the Galagaev Claim and (b) there are 24 proposed additional Tsareva claimants. Yet there is no evidence of any actual dissipation of assets by Dmitri in what is now over a year since these proceedings have been on foot. Before that some 6 months or so passed between the administration of PSB and subsequent Note defaults and the commencement of proceedings; and (subject to one point, dealt with below) there is no evidence of any 'judgment-proofing' activity during that period either.

    ii) I observed earlier in this judgment that the ownership structure under which Dmitri's banking interests were held was neither opaque nor particularly

complex. It involved Promsvyaz, a Dutch company, as the primary group company, held in turn via two English companies and Menrela, a Cypriot company, as a means of structuring 50:50 ultimate ownership between Dmitri and Alexei. Defendants having a mind to dissipate, or hide, assets, do not often do so by having simple holding structures in enforcement-friendly jurisdictions.

iii) As I observed in relation to Alexei, the one significant alteration, namely the separation of the Ananyevs' respective interests, was done and explained entirely openly. As explained, it was done for proper reasons; and the claimants have no basis at all upon which to challenge the explanation given.

iv) There have been allegations in Russia that some transactions of PSB's in December 2017, just before it was put into administration, were improper or not at arms' length. No proceedings have been brought against Dmitri in relation to those allegations, and in any event no findings have been made about them. For this court's purposes on an application against Dmitri for a freezing order they carry no more weight than rumour or speculation.

v) There was some evidence that PSB itself has brought a claim against Dmitri that includes allegations echoing the claimants' substantive allegations in this court. That is not itself any evidence in support even of those substantive allegations, let alone solid evidence in support of the different allegation that there is a real risk of asset dissipation.

vi) There was an allegation that Dmitri owned or controlled other Russian businesses that it was suggested may have been put into a 'controlled bankruptcy' (in effect, a sham bankruptcy that those behind the subject company are able to control in such a way as to siphon off assets to the detriment of creditors). But there was no actual evidence to support such a case.

85. Finally – and this is the point I passed over in paragraph 84(i) above – there was evidence that Dmitri transferred his interest in a business known as PSN Group to his wife, who transferred just over 50% of that interest to a third party. Dmitri acknowledged and gave an explanation for this transfer, which he decided upon in January 2018 and which was completed before any intimation of possible English proceedings or freezing orders. Standing alone as it does as any even arguable evidence for a possible risk of dissipation, I would not have been prepared to find that there was any serious basis for doubting Dmitri's explanation that he wanted to avoid obstacles being placed in PSN Group's way by the Russian authorities, in view of their then recent (as Dmitri contends, unjustified) interference in PSB's affairs; and there does not appear to be any basis to doubt his case that his wife's onward transfer was a sale on arm's length terms. (It may also be observed, as Mr Choo Choy QC indeed did, that if this were an attempt to dissipate assets via his wife, it is odd that she sold only 50% or so of the interest.)

86. A considerable period of time has passed since these proceedings were instituted and freezing orders were first sought. Nonetheless, this hearing represented the first full

inter partes consideration of the position. With the benefit of all that brought with it by way of evidence and argument, I am not satisfied that the claimants have demonstrated any real risk that Dmitri would, if not restrained by a freezing order, deal with his assets in such a way as might render enforcement of any future monetary judgment impossible or more difficult.

Final Conclusions

87. The result is a conclusion that the claims against the English companies have no foundation and a conclusion that the court has no jurisdiction against any of the other defendants. The claims against the English companies will be struck out and the proceedings against the other defendants will be set aside.

88. The funds paid into court by Dmitri so as to avoid (for all defendants) the burden of the freezing order initially granted to the Tsareva claimants must be paid out of court to him or to his order. I shall invite counsel to address me on whether, given the terms on which Dmitri made that payment and the conclusions I have now reached as to jurisdiction, there needs to be or should be any order setting aside that initial freezing order or whether it is sufficient now just to ensure that the funds paid into court are returned to him.

89. The applications for freezing orders are dismissed. No claim against any defendant has survived that is capable of supporting any such application; but I would have refused the applications in any event.

90. The applications for joinder of additional claimants are also dismissed; and it would seem to me to follow from my conclusions in relation to the English contract gateway that the application by the Issuer and Guarantors for a stay in favour of arbitration also stands to be dismissed.

91. I am conscious that the evidence and arguments of the parties covered a range of other matters that it has not been necessary to mention because of conclusions I have reached that are sufficient to determine the matters now before the court. I mean no discourtesy to the efforts of all involved in preparing and presenting those other points that I have decided not to lengthen or delay this judgment further by dealing with them as well.