Neutral Citation Number: **[2020] EWHC 1244 (Comm)**

CL-2019-000291

Case No: CL-2019-000289
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IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
COMMERCIAL COURT (QBD)

Date: 19 May 2020

Before :

MR JUSTICE FOXTON

- -

Between :

NITRON GROUP BV
(in liquidation) **Claimant**

- and –

BARINGTON ALLIANCE LLP

Defendant

And between:

NITRON GROUP BV
(in liquidation) **Claimant**

- and –

(1) VLAIDIMIR SOFRONOVICH VASILYEV **Defendants**
(2) SARSSO LTD

- -
- -

Luke Pearce (instructed by **Floyd Zadkovich LLP**) for the Claimant
The Defendants did not appear and were not represented.

Hearing date: 11th May 2020
Draft Judgment Circulated: 13th May 2020

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.

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to BAILII. The date and time for hand-down is deemed to be 19 May 2020 at 10.30am.

The Honourable Mr Justice Foxton:

1. This is the trial of the Claimant's ("Nitron's") claim for damages for deceit and negligent misstatement against Mr Vladimir Vasilyev ("Mr Vasilyev") and Sarsso Ltd ("Sarsso"), and for permission to vary the terms of a worldwide freezing injunction granted by Mr Justice Phillips against Mr Vasilyev, Sarsso and Barington Alliance LLP ("Barington").

2. Nitron was represented by Mr Luke Pearce. None of the Defendants/Respondents were represented before me, and they have not participated in the proceedings at any stage.

3. The trial was conducted remotely via Skype for Business. While there were some technical difficulties in the course of the oral evidence, of a kind which are often encountered when taking video evidence in a more conventional hearing, they were overcome by the co-operation and patience of the court staff and the legal representatives.

Jurisdiction and service of the proceedings

4. Given that none of the Defendants/Respondents have participated in the proceedings, I should first address the issue of service of the proceedings.

5. In Habib Bank Ltd v Central Bank of Sudan [2006] EWHC 1767 (Comm), [10], Field J noted that the absence of the defendant "meant that the court has had to be particularly alert not only to any matters potentially in the [defendant's] favour on the merits, but also to matters going to the court's jurisdiction and to whether [the defendant] has been given due and proper notice of all relevant matters".

6. In this case, the Court gave Nitron permission to serve the proceedings out of the jurisdiction under CPR Practice Direction 6B para. 3.1(6)(c) on the basis that the claim "is made in respect of a contract" which is "governed by English law". In Habib Bank Ltd, Field J considered the issue of whether the order for service out had been properly made, and concluded that it had. In this case, there has been no application to set the order granting permission to serve proceedings out of the jurisdiction aside, and the time for making such an application has long since expired. In these circumstances, I have concluded that I am entitled to proceed on the basis of the presumptive validity of that order, and that it is not necessary or appropriate for me to consider whether a ground for ordering service of the jurisdiction has been made out. However, I do have to be satisfied on the evidence that service has been effected in accordance with the Court's order.

7. In this case, the Court made an order for alternative service on four email addresses. I am satisfied on the evidence that service of the Claim Form and Particulars of Claim was effected in accordance with that alternative method. I am also satisfied that service was effected by that method of (a) notice of the Case Management Conference; (b) the order made at the Case Management Conference; (c) Nitron's disclosure; (d) Nitron's witness evidence; (e) notice of the listing appointment; (f) notice of the trial date and (g) notice of the application to vary the freezing order. I am also satisfied that the Defendants are aware of these proceedings, because they are referred to in Russian injunction proceedings in which the Defendants did participate.

8. It follows that I am satisfied that the Defendants are properly before the court.

Preliminary comments

9. Although the Defendants/Respondents have chosen not to participate in the proceedings, it is still necessary for Nitron to satisfy me on the balance of probabilities that its claim is made out. Further, the claims which Nitron has brought are in deceit, and therefore involve allegations of dishonesty against Mr Vasilyev. In those circumstances, I am obliged to have in mind, when deciding whether the burden of proof has been discharged, that "the more serious an allegation is, the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability" (Lord Hoffmann in Re B (Children) [2009] 1 AC 11, [14]-[15]).

10. In this case, much of Nitron's case depends on the drawing of inferences. An inference of dishonesty should only be drawn where it is the only reasonable inference to be drawn; see JSC BTA Bank v Mukhtar Ablyazov [2012] EWHC 237 (Comm), [8] (Teare J).

11. Where the trial is not attended by one of the parties, there is still an obligation of fair presentation on the claimant (albeit one which is less extensive than the duty of full and frank disclosure on a without notice application). Mr Justice Cresswell in Brasperto Oil Services v FPSO Construction Inc [2007] EWHC 1359 (Comm), [33] held that the claimant was required to draw to the attention of the court "points, factual or legal, that might be to the benefit of [the defendant]".

12. In this case, Mr Winiarski, Regional Director and Head of European Operations of Nitron, gave oral evidence. In addition, hearsay evidence in the form of an affidavit was adduced from a Ms Nataliia Bidolenko who was Mr Winiarksi's subordinate at the relevant time. As will be apparent, the issue of liability in this case turned

essentially on the issue of whether certain oral representations had been made by Mr Vasilyev to Mr Winiarski and Ms Bidolenko; if so, whether Mr Vasilyev knew or was reckless as to the fact that those statements were untrue; and whether Mr Winiarski, on behalf of Nitron, relied on those statements in entering into various contracts with Barington.

13. With issues of this kind, if the Defendants choose not to participate in the trial, the Court is not in a position to conduct a cross-examination of the witnesses by reference to the contemporaneous documents, and its ability to test the evidence is heavily constrained. Unless the witness statement is internally inconsistent or manifestly incredible on its face, the Court can only consider whether the evidence adduced is sufficient to make out the claimant's case, on the basis of that evidence and the inferences which can properly be drawn from it. That is the approach I have adopted in this case.

The facts

14. I can deal with the basic facts relatively briefly.

15. Nitron is a Netherlands company, and part of a group which specialises in trading wheat, grain and similar commodities. In 2017 a new employee, Ms Bidolenko, introduced Nitron to Mr Vasilyev as a potential counterparty. Twelve relatively small value contracts were successfully completed between Nitron and Mr Vasilyev's vehicle Barington (an English limited liability partnership controlled by Mr Vasilyev). Under these contracts, Nitron did not make any payments until after it had picked up the goods.

16. In July 2017, Mr Vasilyev proposed a larger value contract to Ms Bidolenko, for 506 mt of black mustard seeds with a value of Euros 273,240. Ms Bidolenko held discussions with Mr Vasilyev about the contract in the course of which, she says, he made various representations which she reported back to Mr Winiarski, as result of which it was agreed that Nitron would pre-pay under the contract. I will consider those alleged representations below. On 25 July 2017, Nitron concluded this contract with Barington on an FCA (Free Carrier) basis, on terms which did not provide for a delivery date ("Contract 1"). On the same date, Nitron entered into a contract to sell goods of the same type and quality to a company called Granosa AG ("Granosa"), on a DDP (Delivery Duty Paid) Mannheim basis, with delivery to take place in August/September 2017. Nitron made the required pre-payment to Barington on 27 July 2017 in the sum of Euros 273,240.

17. Mr Winiarski and Ms Bidolenko then met Mr Vasilyev in Poland in August 2017, in the course of which three further contracts were concluded between Barington as seller and Nitron as buyer, all on

FCA terms, and under all of which some level of pre-payment (either 100% or in the case of Contract 3, 50%) was required by Nitron:

i) A contract dated 7 August 2017 for the sale of 506mt of white mustard seeds with a value of Euros 280,230 (Contract 2). On the same date, Nitron entered into a contract to sell the same quantity of white mustard seeds to Granosa.

ii) A contract dated 9 August 2017 for the sale 1,540 mt of black mustard seeds with a value of Eur 954,800 (Contract 3).

iii) A contract dated 10 August 2017 for the sale of 1000 mt of safflower seeds with a value of Eur 250,000 (Contract 4).

18. Nitron says that these contracts were concluded in reliance on similar representations made by Mr Vasilyev, and on the basis of further representations by Mr Vasilyev as to his wealth and assets. Once again, none of the contracts contained a delivery date (and on this occasion, nor did the contract between Nitron and Granosa). Nitron made the pre-payments required by Contracts 2, 3 and 4 by a single payment of Euros 1,008,230 on 10 August 2017.

19. Finally another contract, for 110mt of white mustard seeds with a value of Euros 69,300, was concluded on 15 September 2007(Contract 5). No prepayments were made under Contract 5.

20. On the evidence the following shipments were made under Contracts 1 to 5:

i) 88mt of 560mt under Contract 1.

ii) 130mt of 506mt under Contract 2.

iii) 44mt of 770mt under Contract 3.

iv) 110mt of 1000mt under Contract 4.

v) The full 110mt under Contract 5.

21. There was correspondence between Nitron and Mr Vasilyev over the period October 2017 to January 2018, which is referred to below, and in which complaints were made by Nitron about the time Barington was taking to effect delivery. Similar complaints were made by Granosa to Nitron.

22. Nitron commenced arbitration proceedings against Barington, Mr Vasilyev and Sarsso on 2 July 2018. None of the respondents played any part in the arbitration, beyond an email from Barington to the arbitrator of 20 August 2018 in which it stated that it had never refused to supply goods to Nitron, and that the contracts did not provide a date for delivery of the goods. An award was made on 27

November 2018 ("the Award"), which rejected the claims against Mr Vasilyev and Sarsso on the basis that they were not parties to the Contracts. The arbitrator awarded Nitron the amount of prepayments under the Contracts, less credit for goods actually received, together with certain amounts by way of liquidated damages. The total award was Euro 1,298,928 plus interest and costs. The arbitrator's fees were £11,728.80 and Nitron incurred fees in the arbitration of £13,000.

23. On 16 January 2019, Nitron and Granosa entered into a settlement agreement in respect of Granosa's claims for non-delivery, under which Nitron agreed to pay Granosa Euros 120,000. That amount was paid on 31 January 2019.

The representations allegedly made

24. Nitron contends that the following representations were made before Contracts 1 to 4 were entered into:

    i) That Mr Vasilyev and/or Barington had already paid for and acquired the goods that would be used to fulfil the Contracts ("Representation 1").

    ii) That the goods in question were sitting in the warehouse of Mr Vasilyev's supplier and were ready to be shipped as soon as the Contracts were signed ("Representation 2").

    iii) That, accordingly, Mr Vasilyev believed that there was no risk of Barington failing to deliver the proposed cargos to Nitron ("Representation 3").

    iv) That Mr Vasilyev intended Barington to perform its obligations under the Contracts ("Representation 5").

25. In addition, Nitron contends that before entering into Contracts 2 to 4, Mr Vasilyev represented that he was a man of considerable wealth who owned a penthouse apartment in Cheboksary, a country house outside Moscow, a restaurant and various warehouses ("Representation 4").

26. So far as Representations 1 and 2 are concerned, the evidence is as follows:

    i) In relation to Contract 1, Ms Bidolenko said that she proposed proceeding on a cash against delivery basis, but that "Mr Vasilyev assured me that there was nothing to worry about because he had already acquired the goods that would be used to fulfil the contract, that he had paid for them, and that they were waiting in the warehouse of Mr Vasilyev's supplier, and were ready to be shipped as soon as the contract was agreed". She stated that she had reported these statements

to Mr Winiarski. Mr Winiarski confirmed that Ms Bidolenko's reports to him about the negotiations relating to Contract 1 were to the effect set out in her statement, although he stated that Ms Bidolenko had reported to him that Mr Vasilyev already had the goods in "his" warehouse and had paid for them.

ii) In relation to Contracts 2, 3 and 4, Mr Winiarski said that Mr Vasilyev told him that he had already acquired the goods which were being held in his supplier's warehouse, that the goods were ready to be shipped as soon as the Contracts were agreed, and that Barington would have no problems performing the Contracts because the goods were already obtained. Ms Bidolenko confirmed Mr Winiarski's account of the meetings but did not otherwise expand upon them.

iii) In re-examination, Mr Winiarski said that he had understood Mr Vasilyev to tell him that he had already bought the proposed cargoes, which were in the warehouses of the farmers or of Sarsso's suppliers (rather than the warehouse of Sarsso, which was Nitron's case in opening).

27. It is right to record that I was surprised that, even though (as Mr Winiarski accepted), it must have been obvious that any representation by Mr Vasilyev that he or Barington had already acquired the proposed cargoes was untrue by September 2017, there was never any complaint by Nitron that Mr Vasilyev had lied to them on this issue before the Contracts were signed, nor any suggestion prior to the commencement of these proceedings (for example in the arbitration claims submissions) that Mr Vasilyev had made the representations now relied upon. Had the Defendants chosen to participate in the trial, there may well have been ample scope for cross-examination on the issue of what representations were made by reference to the parties' communications after the Contracts were signed, or indeed as to the position taken by Nitron in the arbitration.

28. However, Nitron is able to point to the fact that some assurance is likely to have been necessary before Nitron would agree to make the large pre-payments made on Contracts 1 to 4, when no pre-payments had been made on the earlier contracts. They can also point to the absence of any delivery date in the Contracts as a fact consistent with a mutual expectation of immediate delivery, and the fact that Nitron is unlikely to have committed itself in its first contract with Granosa to delivery at Mannheim in August or September 2017 without assurance that the goods were already available for collection in Russia.

29. Taking all of these matters into consideration, I do not feel able to reject the evidence of Mr Winiarski and Ms Bidolenko that these representations were made, save that I find that:

    i) The effect of Representation 1 was that *Barington* had already paid for the goods (given that the purpose of Representation 1 was to justify a pre-payment to Barington and to provide reassurance as to Barington's ability immediately to ship the goods as soon as Nitron and Barington signed the Contracts); and

    ii) Representation 2 did not identify where the proposed cargoes were warehoused, merely that the cargoes were in a warehouse from which they were immediately available for delivery by Barington to Nitron.

30. In so far as Representation 3 is intended to add anything to Representations 1 and 2, I am not persuaded that any representation in these terms was made. Ms Bidolenko's evidence, so far as Contract 1 is concerned, is that there was no express representation to this effect, but that this was the effect of what Mr Vasilyev had communicated through Representations 1 and 2 (hence her words "in other words" before referring to the suggestion there was no risk). Mr Winiarski's evidence did not support any wider representation: a statement by Mr Vasilyev that he "guaranteed 'on his life' and on others that Barington would perform these contracts if they were agreed", does not support such a representation.

31. So far as Representations 4 and 5 are concerned, for reasons which I explain below, even if these Representations were made, I am not satisfied on the evidence that they would have been untrue. Accordingly, I make no findings upon them.

Were the representations made untrue?

32. It is clear that at the dates of Contracts 1 to 4, Barington had not acquired the proposed cargos and that the proposed cargoes were not sitting in a warehouse where they were immediately ready to be shipped. Not only were cargoes in the promised quantities not available for collection when trucks arrived to collect them in September 2017, but the position taken by Mr Vasilyev in his communications with Nitron over the period from September 2017 to January 2018 were all inconsistent with the representations made. The thrust of Mr Vasilyev's position was that Barington had been unable to acquire the cargoes in the required quantities, with references to attempts in December 2017 to source cargo in Kazakhstan and to difficulties in harvesting the cargoes (e.g. in Barington's email of 9 January 2018). Accordingly, Representations

1 and 2, in the terms in which I have found they were made, were untrue at the date they were made.

33. So far as Representation 5 is concerned, the evidence does not establish that Mr Vasilyev did not intend Barington to perform Contracts 1 to 4 at the date they were entered into, and it would not be appropriate to draw the inference that this was the position because that is not the only inference which can reasonably be drawn. As I have noted, efforts were made by Barington to perform parts of Contracts 1 to 4. Further, Contract 5 was performed by Barington in its entirety, even though Nitron did not provide any counter-performance. These facts are not, in my view, consistent with Mr Vasilyev never intending that Barington would perform the Contracts. It is, if anything, more likely that although Mr Vasilyev over-stated the readiness of Barington when the Contracts were being negotiated, he intended that Barington would perform the Contracts.

34. Finally, the only material said to support the assertion that Mr Vasilyev had lied about his assets was unsourced statements of hearsay made by Mr Winiarski (and in much vaguer terms, Ms Bidolenko), which were not supported by any documents. The material, such as it was, cannot sustain a case of deceit against Mr Vasilyev in this respect.

Did Mr Vasilyev know that Representations 1 and 2 were untrue?

35. I am satisfied that Mr Vasilyev must have known that Barington had not acquired the proposed cargoes which were the subject of Contracts 1 to 4, and that those cargoes were not available to Barington in a warehouse and capable of being immediately shipped. This is not something which could conceivably have been the subject of a mistake. Mr Vasilyev must have realised he was over-stating Barington's readiness immediately to ship the cargoes for which it sought and obtained payment in advance.

Did Nitron rely on Representations 1 and 2 in entering into Contracts 1 to 4?

36. I accept Mr Winiarski's evidence that Nitron would not have entered into the Contracts requiring it to make pre-payments, and would not have made the pre-payments, but for Representations 1 and 2. On the evidence, Nitron had been unwilling to make pre-payments in respect of the earlier transactions. The value of Contracts 1 to 4 was very much higher than those of the earlier contracts, and the clear purpose of Representations 1 and 2 was to reassure Nitron that it would rapidly receive the goods for which it had paid.

Is Mr Vasilyev liable in deceit?

37. I have concluded that the representations made by Mr Vasilyev were made on behalf of Barington. However, that is no answer to a claim in deceit against Mr Vasilyev: Standard Chartered Bank v Pakistan National Shipping Corpn (Nos 2 and 4) [2002] UKHL 43, [20]-[28].

38. However, I am not persuaded that, in what was a perfectly conventional pre-contractual negotiation between the representatives of two parties, and against a background of 12 previous contracts between Nitron and Barington, Mr Vasilyev voluntarily assumed a personal duty of care to Nitron when negotiating the terms of Contracts 1 to 4 on Barington's behalf (see William v Natural Life Health Food Stores Ltd [1998] 1 WLR 830). Accordingly, the claim in negligence fails.

Is Sarsso liable in deceit?

39. Just as Nitron contended in the arbitration that it had a claim against Sarsso under the Contracts (as well as a claim against Mr Vasilyev) in addition to its claim against Barington, so it contended that Representations 1 and 2 were made by Mr Vasilyev on behalf of Sarsso as well as on behalf of Barington and by Mr Vasilyev personally.

40. I am not persuaded by Nitron's contention that Mr Vasilyev was acting for Sarsso as well as for Barington in making Representations 1 and 2. The context in which the discussions between Mr Vasilyev and both Ms Bidolenko and Mr Winiarski took place were discussions of a proposed transaction between Nitron and Barington. Those discussions took place against the background of 12 previous contracts between Nitron and Barington. There is no evidence that there were ever any direct dealings between Nitron and Sarsso.

41. While I accept that Mr Vasilyev may have mentioned that he owned Sarsso and that it was his Russian company, I conclude that this is likely to have been by way of background information only, and not because Mr Vasilyev was acting for Sarsso in those negotiations. I am not persuaded that Nitron was ever led to believe (or did believe) that it was having dealings of any kind with Sarsso (whether in respect of statements made by Mr Vasilyev or otherwise). Nitron's position in the Arbitration was that it did not know the precise relationship between Barington and Sarsso, but that Sarsso was named in the Contracts as Barington's supplier. In this regard, evidence given by Mr Winiarski in response to questions from the Court is significant. He confirmed that while Nitron had checked out Barington's website, it never carried out any checks on Sarsso because Sarsso was not the "direct partner" of Nitron, but Barington's supplier, and that it was unnecessary for Nitron to check out Sarsso because Nitron's contract was with Barington.

42. I am satisfied on the evidence that in making Representations 1 and 2, Nitron knew and understood that Mr Vasilyev was purporting to speak for Nitron's "direct partner", for the purpose of persuading Nitron to make pre-payments to its "direct partner" and that it never understood Mr Vasilyev also to be speaking on behalf of Barington's supplier. This is not changed by the fact that statements by Mr Vasilyev as to Barington's ownership of the goods, and the fact that they were available in a warehouse for immediate delivery by Barington, may have involved implicit assertions as to the contractual position as between Barington and Sarsso or Sarsso and its customers. It was perfectly open to Mr Vasilyev as Barington's representative to make statements of fact as to the position of Sarsso or Sarsso's suppliers without those statements being made by him as a representative of Sarsso.

43. Nor is the position changed by the very general evidence of Ms Bidolenko, echoed in oral evidence but not in his affidavit by Mr Winiarski, that Mr Vasilyev used Barington and Sarsso interchangeably. Nitron did not attempt to renew before me the argument which was advanced, but failed, before the arbitrator that Mr Vasilyev was acting for Sarsso when negotiating the Contracts with Nitron, and to that extent, at least, it cannot be said that Barington and Sarsso were seen as interchangeable in the negotiations. It is clear from Mr Winiarski's answer which I have set out above, that he fully understood the contractual chain, that Mr Vasilyev's dealings with him were with a view to concluding contracts on behalf of Barington, and that in making statements with a view to inducing Nitron to agree to make pre-payments under contracts with Barington, Mr Vasilyev was speaking on behalf of Barington, and not on behalf of Barington and Sarsso.

44. For the same reason, the claim in negligence against Sarsso also fails.

Quantum

45. I find that Nitron has established the following losses as the direct result of steps taken in reliance on Representations 1 and 2:

    i) It made pre-payments of Euros 1,284,470. In return, it received goods worth only Euros 174,450 (valuing the goods received at the prices under the Contracts) causing a net loss of Euros 1,107,020.

    ii) It incurred a liability to Granosa which it settled for Euros 120,000.

    iii) It incurred legal costs in the Granosa claim of Euros 9,483.18.

    iv) It incurred legal costs in the arbitration against Barington of £13,004.76 and arbitrator's fees in that arbitration of £9,928.

46. That leaves two issues.

47. The first is whether Nitron is required to give any credit for the rights it acquired against Barington under the Award. In so far as the Award held that Nitron was entitled to recover the pre-payments it had made, that is the same loss which it is entitled to recover from Mr Vasilyev. Further, it necessarily follows on my findings that Barington is a joint tortfeasor with Mr Vasilyev (who made Representations 1 and 2 as its agent). It follows, in my view, that Nitron's right to recover the pre-payments from Barington does not diminish the loss which Nitron has suffered. Nitron has rights of recovery against both Barington and Mr Vasilyev for that loss. While it cannot recover more than once, it is entitled to judgments for the full amount of the pre-payments less credits against both Barington and Mr Vasilyev.

48. Nitron also obtained an award of liquidated damages against Barington in the amount of Euros 178,269, this amount representing a figure of 20% of the value of undelivered goods and was claimed under the express terms of the Contract. This amount cannot be said to be a loss for which Mr Vasilyev and Barington are both liable. However, on the evidence before me I am not able to accord any significant value to this right. There is no evidence that Barington has any net assets, and it has failed to respond to a statutory demand.

49. The second issue is whether there is any need to take account of Contract 5, under which Nitron received goods for which it has not made any payment. The claims brought by Nitron are for untrue statements which led it to enter into Contracts 1 to 4. It has not alleged that it entered into Contract 5 as a result of those claims, nor advanced any cause of action based on having entered into Contract 5. In these circumstances, it is not obliged to bring the position under Contract 5 into account when assessing the damages it has suffered in respect of those causes of action it has advanced under Contracts 1 to 4 (Brown v KMR Services [1995] CLC 1418, 1456, 1459). In any event, the claim for payment under Contract 5 is Barington's, which amount it is open to it to seek to raise by set-off against the Award. It does not, in my view, reduce the loss which Nitron can claim against Mr Vasilyev.

50. Accordingly Nitron is entitled to damages of Euros 1,236,503.18 and £22,932.76, together with interest to be assessed.

The injunction application

51. Knowles J granted a freezing injunction against Barington, Mr Vasilyev and Sarsso on 3 May 2019. That injunction was continued by Phillips J on the return date on 17 May 2019. The injunction contained an undertaking by Nitron not to seek to enforce the order

or seek similar relief in another country without the Court's permission (Dadourian Group International v Simms [2006] 1 WLR 2499). However paragraph 9 of Phillips J's order gave Nitron permission to seek analogous relief against Mr Vasilyev in the Russian federal courts of general jurisdiction and against Sarsso in the Russian Arbitrazh courts.

52. Nitron commenced proceedings against Mr Vasilyev in the Russian federal courts of general jurisdiction, but on 6 December that court held that the appropriate court in which to commence proceedings was the Supreme Court of the Chuvash Republic. Nitron commenced proceedings in that court on 13 February 2020. That action was outside the letter, albeit not the spirit, of paragraph 9 of Phillips J's order, and Nitron has applied to vary paragraph 9 to permit this action.

53. I am satisfied that Nitron's failure to seek permission was entirely inadvertent, and that, had permission been sought, it would undoubtedly have been granted. Accordingly I will vary paragraph 9 now so as to encompass the Chuvash Republic proceedings against Mr Vasilyev.

Costs and consequential matters

54. Nitron seeks interest on the amounts awarded to it from the date payment was made until judgment at the rate of 1% over the Bank of England base rate in the sum of Euros 51,808,49 and £563.77. I am satisfied that the rate and period of interest claimed are appropriate and I award pre-judgment interest in these amounts.

55. The principal and interest awarded are to be paid within 14 days, failing which post-judgment interest will be accrue on the Euro sum at 1% over the Bank of England base rate per annum and on the sterling sum at 8% per annum.

56. The orders of Mr Justice Knowles of 3 May 2019 and Mr Justice Phillips of 17 May 2019 are to be set aside against Sarsso, but to continue with the variation in paragraph 53 above as against Mr Vasilyev.

57. So far as costs are concerned, some discount is necessary to reflect Nitron's lack of success against Sarsso. However, the greater bulk of the costs were necessary in any event, with only limited additional costs arising from the proceedings and freezing order relief against Sarsso. I propose to award Nitron 80% of its costs of the trial and the application against Mr Vasilyev, which I summarily assess in the amount of £80,000, to be paid within 14 days.