Ref. CL-2023-000787

Neutral Citation Number: [2024] EWHC 1827 (Comm)

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURT OF ENGLAND AND WALES
COMMERCIAL LIST

7 Rolls Buildings
Fetter Lane
London

Before THE HONOURABLE MR JUSTICE HENSHAW

IN THE MATTER OF

RENAISSANCE SECURITIES (CYPRUS) LIMITED (Claimant)

- v -

ILLC CHLODWIG ENTERPRISES & OTHERS (Defendants)

MR P LOWENSTEIN KC and MR A DINSMORE, instructed by CANDEY LLP, appeared on behalf of the Claimant
THE DEFENDANTS did not attend and were not represented

JUDGMENT
30th APRIL 2024
(AS APPROVED)

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MR JUSTICE HENSHAW:

Introduction and background

1. I heard submissions on 23 April 2024 on applications by the Claimant, Renaissance Securities (Cyprus) Limited, for continuation of anti-suit and anti-anti-suit injunctions previously made by Dias J and Butcher J and for interim mandatory anti-suit relief requiring the Defendants to withdraw claims being pursued in the Russian Federation. I have carefully considered the evidence from the Claimants and letters written on behalf of the Defendants by Russian lawyers, Trubor Law Firm, a note dated 22 April 2024 from counsel for Mr and Mrs Guryev, correspondence from PCB Byrne on behalf of Mr and Mrs Guryev including most recently an email handed up during the hearing on 23 April, and correspondence from Pallas Partners LLP on behalf of Mr and Mrs Guryev's daughter, Ms Guryeva-Motlokhov. At the end of the hearing on 23 April I granted the relief sought. There was a degree of urgency, so I gave only headline reasons at that stage for the decisions reached with fuller reasons to follow. This judgment provides those fuller reasons.

2. The essential nature of the dispute is a financial claim advanced by the Defendants for investments frozen pursuant to Western sanctions held by the Claimant pursuant to an Investment Services Agreement governed by English law and requiring any disputes to be resolved by LCIA arbitration in London. Despite that provision the Defendants have each commenced legal proceedings against the Claimant in Russia. Dias J granted anti-suit injunction ("ASI") and anti-anti-suit injunction ("AASI") relief on 3 November 2023.

3. The Defendants are six companies ultimately owned as to approximately 85 per cent by two discretionary trusts called the Colorado Trust and the Thames Trust and as to approximately 15 per cent by a company called Udivia Limited of which Mr Guryev is the beneficial owner. The discretionary beneficiaries of the Colorado Trust are Mr and Mrs Guryev and Ms Guryeva-Motlokhov. The discretionary beneficiary of the Thames Trust is Ms Guryeva-Motlokhov. The documents show that that there has been a high degree of coordination in the Defendants' claims in Russia and their correspondence in the present proceedings, including between groups of Defendant majority owned by the Colorado Trust and those majority owned by the Thames Trust.

4. Mr Guryev was on 6 April 2022 designated as a sanctioned person by the Office of Financial Sanctions Implementation ("OFSI") in the UK. In August 2022 he became a US sanctioned individual.

5. The background to this matter is further outlined in paragraphs 2 to 20 of the judgment of Dias J at 2023 EWHC 2816 (Comm) though I would accept Mr and Mrs Guryev's point that any findings set out in those paragraphs are necessarily provisional in nature. Dias J found to a high degree of probability that the Defendants have issued the six sets of Russian proceedings in breach of the arbitration agreements providing for LCIA arbitration seated in England. Dias J restrained the Defendants from taking further steps in the Russian proceedings by way of ASI and AASI injunctions, thereby "holding the ring" until the first return hearing listed for 23 November 2023.

6. At that hearing, which was before Butcher J, Mr and Mrs Guryev – neither of whom are Defendants but both of whom were named in the penal notice in Dias J's orders – made several applications in relation to those orders concerning (i) their inclusion in the penal notice, (ii) the dispensation of personal service in relation to them, and (iii) the inclusion of

the proviso from freezing injunctions arising from *Babanaft International Company v Bassatne* [1990] Ch 13. There is no application before the court on this occasion in relation to those issues which were finally determined in the judgment of Butcher J dated 23 November 2023 ([2023] EWHC 3160 (Comm)) and the Butcher J order.

7. In addition, Ms Guryeva-Motlokhov who also was not a defendant but was named in the penal notice made an application to Butcher J disputing her inclusion in the penal notice. The Claimant did not oppose that application in the light of her signed witness statement containing extensive clarifications and undertakings.

8. On 20 November 2023 the Defendants, represented in the Russian proceedings by Trubor Law Firm, stated in correspondence that they intended to apply to discharge the Dias J order, but they did not oppose an order continuing "in its current terms" until a further hearing. Trubor told the Claimant that they were actively seeking to arrange for English solicitors to represent the Defendants and that they would inform the Claimant as soon as this had been achieved. They said that there were issues over sanctions and that the Defendants were therefore unable to take part in the hearing before Butcher J. That was perhaps surprising given that (i) Mr Guryev and Mrs Guryeva were able to obtain English qualified legal representation in short order for the hearing and their solicitors made several applications on their behalf, and (ii) the only reason the Defendants are sanctioned is because of their links to Mr Guryev. Nevertheless the Defendants did not participate in the hearing and the Dias J order was continued in the form of the Butcher J order.

9. The Dias J order and the Butcher J order have been served on all the Defendants and all individuals named in paragraph 6 of the Dias J order and paragraph 4 of the Butcher J order. The Butcher J order has been served on a range of trust-related entities and trust-related individuals.

10. The application notice for the hearing on 23 April 2024 together with the draft order and evidence were served on all the Defendants. In addition, to ensure that the Defendants had full notice of the issues to be considered, the Claimant provided a copy of its skeleton argument to Trubor in advance of the hearing.

11. Reverting to December 2023, on 5 December in the run-up to the original return date on 7 February 2024 the Defendants said they were having trouble obtaining legal representation owing to sanctions. On 8 December 2023 the Claimant's solicitors, CANDEY, sought clarification as to (i) the position of the Defendants in respect of UK sanctions, and (ii) why any firm of solicitors acting for the Defendants in England would require a US Office of Foreign Assets Control (OFAC) licence, in order to provide legal services in England. CANDEY reminded Trubor of the availability of the general licence issued by HM Treasury in the UK under which lawyers may charge fees up to £500,000 over the duration of the licence, in practice typically six months. CANDEY queried why, therefore, a specific licence was needed whilst also noting that their experience suggested that Trubor's estimate of the time to obtain an OFSI licence appeared to be inaccurate.

12. Following further correspondence on 1 February 2024 Trubor stated that (i) they had instructed Steptoe International UK LLP ("Steptoe") who had confirmed that they were conflict free, and (ii) Steptoe needed to obtain certain licences due to sanctions regulations and would not be ready to represent the Defendants at the return date. Trubor requested that the Claimant agree to vacate the return date. Trubor attached a letter from Steptoe dated the previous day in which Steptoe said they had "a significant US nexus" so that they had to seek guidance on the sanctions position from OFAC in the United States.

13. In response to Trubor's letter of 1 February 2024, CANDEY on the same day (i) identified the difficulties of instructing a US law firm over an English law firm (the latter being what Mr Guryev had done for the last hearing), (ii) reiterated that an English firm could proceed under the general licence, (iii) noted that no meaningful progress had been made in the appointment of English solicitors, and (iv) asked for information on the steps taken to instruct English solicitors and confirmation of the time required for the Defendants to attend a return date, offering alternative dates in March and April.

14. It became clear that the Defendants were not going to be able to instruct legal representation before the original return date. As a result on 2 February 2024 CANDEY wrote to the court to (i) request the adjournment of the return date hearing, and (ii) request the relisting of the return date on a date convenient for the court before the end of April 2024, because of the upcoming Russian hearings in early May 2024. On that same day the court ordered that the return date hearing fixed for 7 February be adjourned. On 8 February 2024 the court fixed a new date for 23/24 April 2024 for the return date hearing. Thereafter Steptoe did not engage with the Claimant or the court about this matter.

15. In the meantime the Russian claims brought by the 1st, 2nd, 4th and 6th Defendants are in the course of being served by sending judicial documents to the competent authorities of the Republic of Cyprus pursuant to the 1965 Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters. The claim of the 5th Defendant is being served through diplomatic channels as provided for in the 1984 Treaty between the Union of Soviet Socialist Republics and the Republic of Cyprus on Legal Assistance in Civil and Commercial Matters or by sending judicial documents to the competent authority of the Republic of Cyprus pursuant to the Hague Convention. It appears that both of these types of service method are available to the Russian courts. The claim of the 3rd Defendant is being served through the channels provided for in the USSR-Cyprus Treaty.

Adjournment

16. I deal next with the question of adjournment, in the light of the fact that the Defendants did not send any legal or other representative to appear at the hearing on 23 April. The Claimant submitted that the hearing should proceed for these reasons:

i. The next Russian hearing is on 13 May 2024, such that any order from this court needed to be sealed and served before then in order to ensure that the proceedings were withdrawn. If not there would be, the Claimant said, a real risk that the Russian court could proceed with the claims against the Claimant in breach of the arbitration agreements even if an application were made to adjourn the Russian claims.

ii. The Defendants had had over six months to secure legal representation. By way of comparison Mr and Mrs Guryev and Ms Guryeva-Motlokhov had all been able to secure legal representation at short notice before the hearing on 23 November 2023. The Defendants' failure to obtain legal representation was hard to explain given that (i) the Defendants are sanctioned only because of their links to Mr Guryev, and (ii) there is no obvious conflict of interest between the Defendants and Mr and Mrs Guryev.

iii. The Claimant had behaved reasonably in agreeing to adjourn the previous hearing to give the Defendants two and a half months to obtain representation and file evidence in response.

17. In letters of 17, 18 and 19 April 2024 Trubor put forward four main points in support of the proposition that the present hearing should be adjourned.

18. First, Trubor said:

> "The Respondents have approached Steptoe International (UK) LLP ('Steptoe') in order to arrange for legal representation in this case. Steptoe will shortly be applying to OFSI to request on urgent basis that a licence is granted to enable them to receive funds to represent six defendants' entities in the afore captioned proceedings before the High Court in London. Steptoe has already sought from OFAC interpretative guidance in light of sanctions concerns. So far Steptoe has received no reply from OFAC. Until a positive reply is received from OFAC, Steptoe is unable to be engaged by the Defendants due to the effect of US sanctions against Defendants 1 and 2.
>
> Trubor on behalf of the Respondents tried to approach other English law firm (Withers LLP), but they declined to take instructions.
>
> The Respondents strongly oppose the Claimant's application for an interim mandatory anti suit injunction dated 24 January 2024 ('Application') or, in fact, any other application, to be considered by the English court without the Respondents being duly represented. Otherwise, the Respondents would in fact be deprived of their fundamental right of access to justice."

19. I do not accept that those are good reasons for an adjournment.

20. Trubor said as long ago as 1 February 2024 that they had instructed Steptoe, who had said they needed certain licences due to sanctions and regulations. Yet now, two and a half months later, the Defendants are saying merely that Steptoe will "shortly" or "within the next week" be applying to OFSI for a licence and are still awaiting a positive response from OFAC. No explanation has been provided for this delay. Moreover, given that Trubor now say an OFSI licence application is to be made in the near future, the reason for the delay in seeking that licence cannot be that the Defendants for some reason needed to have a response from OFAC first.

21. So far as OFAC is concerned, it has been the Defendants' choice to instruct a US firm. No evidence or proper explanation has been provided as to why they could not instruct an English firm. The Defendants have said that one firm, Withers, declined to act but (a) there was no evidence of that, or of the reasons given for the apparent refusal, and (b) there was neither evidence nor explanation of any steps to appoint any of the many other English firms who could represent the Defendants. Moreover, as I have noted, Mr Guryev – the sanctioned person from whom any sanctions problems appear to derive – has himself been able to obtain English representation from PCB Byrne both in relation to these proceedings and in the case *Gorbachev v Guriev*. The Defendants have not explained why any misalignment of interests would have presented PCB Byrne acting for the Defendants as well.

22. The Defendants have not shown themselves to be unable to obtain English representation based on the general licence OFSI issued on 25 October 2023. The email handed up from PCB Byrne during the hearing on 23 April 2024 made the points that (i) given the Claimant's allegation that Mr Guryev controls the Defendants and the strict liability which applies under sanctions laws any law firm would have to make the cautious assumption that that may be the case; (ii) it is arguable that the £500,000 limit under the licence applies per sanctioned person not per entity, so that there could be only one limit for

Mr Guryev and any companies he controls; and (iii) the fees which Mr Guryev is incurring in these present proceedings, albeit he is not a party to them, are being paid pursuant to the general licence. However, no evidence was adduced on any of these points, particularly the third one: for example, about how much of the £500,000 permitted under the licence, as most recently extended for the six month period from October 2023, had been used up.

23. In any event, the hearing had already been adjourned once from early February to 23 April in order for the Defendants to obtain legal representation. I am satisfied that the Defendants have had ample time to obtain representation from English solicitors and counsel and to obtain any necessary specific licence from OFSI. There was no explanation of why an application was not made to OFSI then, approaching three months ago. The Defendants say they have a right to use their preferred legal representatives, but that does not mean that they can delay a hearing to the prejudice of the Claimants by choosing to instruct a firm with an overseas presence, making a US licence necessary, in circumstances when they could simply have instructed one of a very large number of English firms who would be able to deal with a case of this kind.

24. Nor, in any event, was any explanation provided as to why the Defendants could not appear by directors, if necessary by video link.

25. Secondly, Trubor suggested that the Defendants have complied with the Dias J order and taken no procedural step in the Russian courts that could be viewed as a violation of it. They say the Russian proceedings have not progressed since November 2023. However, evidence which the Claimant has obtained from the Russian court files and attendance at hearings indicates that the following things have occurred since the Dias J orders were made on 3 November 2023 and served on or about 7 November 2023.

i. The 3rd Defendant, Gekolina Investments, on 30 November filed an application for its case to be heard in private. Trubor have said that the court database is wrong due to a technical error and that the application was actually filed on 30 October. However, no evidence has been provided of this, despite a request from the Claimants.

ii. There was then discussion of the position at a public hearing on 6 December 2023 in Gekolina's case. The English ASI was explained to the judge, who took the position that they were not bound by it. Gekolina asked for the privacy application to be dealt with at an adjourned hearing which was ultimately fixed for 19 November 2024 although Gekolina had asked for the hearing to be about six months sooner. The judge appears to have observed that he understood why Gekolina might wish the hearing to be in private.

iii. The Claimants believe that on 4 March 2024 Gekolina filed an addendum whose contents and nature remain unknown. Trubor have said in correspondence that that is incorrect and that the court entry must relate to confirmation of service of the Russian proceedings on the Claimants. In their letter of 18 April 2024 they say this:

> "Claimant's allegation that Owl has filed 'an addendum with further submissions' on 21 March 2024 (para 21.1 of Claimant's Skeleton) and Gekolina and Dubhe on 4 March 2024 'filed further submissions in relation to their applications' are wrong. We have explained in our letter to CANDEY dated 17 April 2024 that our clients (Own, Gekolina and Dubhe) have not filed any submission with the Russian

courts in March 2024. This morning we have contacted the office of the judge, who has conduct of proceedings on Owl claim (case No. A40-231655/2023) and have been informed that the record in electronic database for 21 March 2024 refers to the documents received by the Russian court from the Ministry of Justice and Public Order of Cyprus. We were not able to reach today in the morning the offices of judges who have conduct of Gekolina and Dubhe cases, but it is almost certain that the relevant entries in the electronic database refer to similar documents, because the relevant records do not name the party filing the application (which is almost always the case when a party to the proceedings files submission with the court). We have not yet been able to inspect the court file, but this is most likely, a confirmation that the Claimant has been served with a Russian court ruling (service of Russian Proceedings). Receipt of these documents by Russian court has nothing to do with actions of the Respondents."

Again, however, no evidence has been provided in this regard.

iv. The 4th Defendant, Dubhe Holdings, also filed on 30 November an application for its case to be heard in private. Trubor have said that – in an apparently remarkable coincidence – the court database must again be wrong due to a technical error and that the application was actually filed on 30 October. However, once again, no evidence has been provided despite being requested.

v. There was then a hearing on 11 December 2023 in Dubhe's case, at which the case was adjourned to 29 July 2024. As with Gekolina, the Claimant's information suggests that on 4 March 2024 an addendum was filed. Trubor say that that is incorrect for the same reasons as apply to Gekolina, but no evidence has been provided.

vi. The 5th Defendant, Owl Nebula Enterprises, filed two applications on 7 November 2023, the exact nature of which is unknown, and one on 8 November 2023 which was to add co-defendants. A hearing took place on 13 November 2023. Owl's representatives informed the court that there would be negative consequences for failure to comply with the interim ASI and AASI issued by this court. On 22 November 2023 the Claimant's Russian lawyers discovered that a judicial act had been issued in a closed court session. It is reasonable to infer that Owl had applied for the proceedings to continue in private and that the court had granted that application. The next hearing is scheduled for 13 May 2024.

vii. Also in Owl's case, the Claimant's information suggests that on 21 March 2024 an addendum was filed. Trubor say that is incorrect for the same reasons as apply to Gekolina and Dubhe, but no evidence has been provided.

viii. In the case of the 6th Defendant, Perpecia, the first hearing in Russia took place on 14 November 2023 in public. Lawyers acting on behalf of Perpecia and of Eurobank SA/NV appeared. The judge was primarily concerned with whether Renaissance had been notified of the proceedings and was not willing to hear any of Perpecia's applications. As there was no evidence that Renaissance had been properly and formally notified of the proceedings, the judge postponed the matter again until 16 July 2024. A court ruling dated 14 November 2023 indicates that Perpecia had filed a motion to involve three Russian affiliates of Renaissance as co-defendants in the proceedings. The ruling also indicates that Perpecia had made applications (i) to consider the case in a closed hearing, (ii) to adduce additional

evidence, and (iii) to clarify the claims. The ruling indicates that all four applications are to be considered at the next hearing.

26. These matters provide good reason to believe that at least some of the Defendants have indeed acted in breach of the Dias J order by continuing to pursue the Russian cases. Moreover they have sought to do so in private and the 5th Defendant has already been granted a privacy order. Further, even if not all Defendants have acted in breach, there remains a significant risk that all of them would do so, given the close links between the Defendants, their common links with the Guryev family, common legal representation and coordinated strategy in relation to these cases.

27. Thirdly, Trubor assert that the Russian proceedings are effectively adjourned so that an adjournment of the present applications before this court would not prejudice the Claimant in any way. In their letter of 18 April they say:

> "Trubor in its letter to CANDEY dated 5 December 2023 [HB/84] has already undertook to adjourn the Russian court hearings listed for December 2023, applied for adjournment at the relevant hearings and the Russian judges have adjourned the hearings. There is no procedural difficulty in adjourning the Russian court hearings listed for 13, 14 and 15 of May 2024. We are instructed to apply for adjournment of the aforesaid hearings in Russian courts in full compliance with the ASI (the Dias Order) already issued in these proceedings, which remains in force and is fully complied with by our clients. As a highly experienced Russian lawyer, I can assure this honourable court that such adjournment will be granted. The Claimants contention in para 14.1 of the Skeleton that "there is a real risk that the Russian court could proceed with the claim against the Claimant… even if an application to adjourn is made (Collins-4, [81.6] [HB/49])" is totally misconceived and could only be made by someone, who has no practical knowledge of Russian court procedure. The content of para 81.6 of Collins-4 does not support that proposition from the Claimant's Skeleton at all."

28. In response, CANDEY pointed out that (a) Trubor's instructions could change, (b) the fact that the Defendants have applied for privacy orders indicates a wish for the Russian proceedings to continue without the Claimant being able to see what is happening, and (c) the court could proceed to address the merits of its own motion, as recently occurred in a case involving PJSC Transneft a Russian pipeline transportation company. In that case the English High Court in case CL-2023-000401 granted an ASI in favour of the Claimant, Mr Magomedov, to restrain Transneft from pursuing proceedings commenced in Moscow. Transneft applied for a stay and an adjournment of the case, but the Arbitrazh Court of Moscow instead proceeded with Transneft's claims and made an order to restrain Mr Magomedov from continuing legal proceedings against Transneft in England, and a mandatory injunction against Mr Magomedov compelling him to discontinue the English proceedings.

29. Trubor responded to CANDEY in a letter of 19 April 2024 as follows:

> "The Russian court ruling in Transneft [HB/3409] does not support the statement that legal representatives of the Applicant (Claimant) in those proceedings pursued at an oral hearing an application to adjourn and this application was rejected by the Russian court. The wording of the Russian court ruling says that the Applicant (Claimant) asked the court to stay ('suspend') the proceedings (not to adjourn the proceedings) and the court rejected application to stay ('suspend') the proceedings. Russian

> procedural law provides for the closed list of situations in which Russian court shall stay ('suspend') the proceedings (article 143 of the Arbitrazh (commercial) procedure code) and for the closed list of situations in which Russian court may stay the proceedings (article 144 of the Arbitrazh (commercial) procedure code). The court is not allowed to stay ('suspend') the proceedings just because the Claimant asks for it".

30. However, that information turns out to be incorrect. On 17 April 2024 the court published the full text of its ruling. It makes clear that the applicant, Transneft, not only asked for a stay of the proceedings pursuant to Article 144 of the Code of Arbitrazh Procedure: it also applied to postpone the hearing pursuant to Article 158 of the Code which deals with adjournment. In other words, the court proceeded to address the merits and make mandatory orders despite the applicant's own requests both to stay and to adjourn the case. The decision indicates both the risks to the present Claimant of the cases in Russia proceeding and at least arguably the unreliability of the unevidenced assertions made by Trubor in its correspondence.

31. I would add that if Trubor are correct that what appeared to be addenda filed in the Russian cases brought by the 3rd to 5th Defendants are in fact documents relating to service of the Russian proceedings, then that only increases the urgency of the matter. The expert evidence, filed with prior permission, of the Claimant's Russian lawyer, Mr Simonov, is that Hague Convention service of Russian proceedings can be achieved in 6 to 12 months, and the 6-month point has already been reached. He also says that the Russian court can allow alternative service, that deemed service can sometimes be ordered and that the Russian Arbitrazh court generally aims to dispose of matters within 6 months, although it can be quicker if the respondent does not appear.

32. As matters stand the next hearings in Russia are due on 14 May in the 1st Defendant's case, 15 May in the 2nd Defendant's case, 19 November in the 3rd Defendant's case, 29 July in the 4th Defendant's case, 13 May in the 5th Defendant's case and 16 July in the 6th Defendant's case.

33. Fourthly, Trubor contend that the Defendants did not receive fair notice of the 23 April hearing. In their letter of 18 April they say:

> "Further, in our letter to CANDEY dated 17 April 2024 we have flagged up our concern that CANDEY informed the Respondents only on 16 April 2024 about the listing of the Claimants application for the hearing on 22-24 April 2024, ie, few days before the hearing. The Claimant now says in para 79 of Collins-5 that the listing of the hearing was communicated to the email address info@trubor.ru on 8 February 2024. We have always communicated with CANDEY from only one email address, which is trukhanov@trubor.ru (email address of Mr Kirill Trukhanov, managing partner at Trubor, who represents the Respondents in Russian courts). CANDEY have always sent their communications to us by email to trukhanov@trubor.ru (see HB/2401; HB/3238; HB/3244; HB/3356; HB/3368, etc.). CANDEY specifically asked us in their first letter to us dated 17.11.2023 if they can serve "all documents relating to the Proceedings by email (at the email address trukhanov@trubor.ru) until the Defendants' English solicitors have come on the record in the Proceedings" [HB/2429]. Since then, all communications to us from CANDEY were sent to trukhanov@trubor.ru. The email info@trubor.ru is used by the reception at Trubor. Only after reading Collins-5, this morning we were able to find that email in the junk mail folder."

34. However, the Claimant's solicitor, Mr Collins, explains in his 6th witness statement that, as the correspondence shows, Trubor's letterhead bears the email address info@trubor.ru and no other email address and that that address also appears among others on the firm's website. The Commercial Court Listing Office's original listing email of 8 February 2024 was sent to that email address. The address was not provided to the listing office by the Claimant and so seems likely to have come from Trubor or its correspondence. Later the Clerk to Picken J emailed the parties at 10.19 am on 17 April 2024, among other things to confirm that this matter would be heard on 23 and 24 April. That message too was sent to info@trubor.ru and to no other email address for the Defendants, and at 12.43 pm the same day Mr Trukhanov of Trubor responded to it. Trubor have provided no evidence that the email of 8 February from the Listing Office was found only recently and in their junk mail folder. Nor is there evidence that the email address was used only by Trubor's reception desk, a somewhat surprising suggestion in circumstances where the address appears prominently on the firm's letterhead. In all the circumstances I am satisfied that the Defendants had proper notice of the hearing and I do not accept the suggestion that notice was received only on 17 or 18 April.

35. In any event viewing the matter in the round there was and is considerable urgency about the applications given (a) the imminence of court hearings in Russia, (b) the evidence I have outlined giving good reason to believe at least some of the Defendants have already breached the Dias J orders, (c) the applications by some Defendants for their Russian cases to proceed in private, such application already having been granted in one case, and (d) the evidence I have explained of the risk that the Russian court may proceed to deal with the cases on their merits even if the Defendants were to seek their adjournment.

36. In all these circumstances justice clearly required the hearing to proceed.

37. I am satisfied that the Claimant's counsel presented the arguments fairly and properly both in relation to adjournment and the substance (see *Braspetro Oil Services v FP Esso Construction* [2007] EWHC 1359 (Comm), paragraph 33 and *CMOC Sales v Persons Unknown* [2018] EWHC 2230 (Comm), paragraph 14).

Merits

38. Turning to the merits, the first point of note is that, among all the correspondence put forward on behalf of the Defendants and the Guryev family, no ground or argument has so far as I am aware been put forward in opposition to the Claimant's fundamental case, viz that the Defendants are bound by the arbitration clauses and the Russian proceedings are in clear breach of them.

Prohibitory order

39. As regards continuation of the prohibitory injunction the principles were summarised in Dias J's judgment, paragraph 34, as follows:

> "(i) The court has the power under section 37(1) of the Senior Courts Act to grant an interim injunction whenever it is just and convenient to do so. The touchstone is what the ends of justice require;

(ii) This power includes the grant of an ASI, although the jurisdiction to grant such injunction is to be exercised with due circumspection;

(iii) Where proceedings are brought in breach of an arbitration clause, an ASI will ordinarily be granted unless the respondent shows strong reasons to refuse relief: *The Angelic Grace*, [1995] 1 Lloyd's Rep. 87;

(iv) The applicant must demonstrate to a high degree of probability that there is an arbitration clause which governs the dispute in question, whereupon the burden shifts to the respondent to show strong reasons for nonetheless refusing the injunction;

(v) It is not a pre-condition to the grant of an ASI that arbitral proceedings are actually on foot: *Ust-Kamenogorsk Hydropower Plant JSC v AES Ust Kamenogorsk Hydropower LLP*, [2013] UKSC 35; [2013] 1 WLR at paragraph 48;

(vi) Where foreign judicial proceedings are commenced in breach of an arbitration clause, damages are generally not considered to be an adequate remedy: *The Angelic Grace (supra)*;

(vii) An applicant must act promptly and before the foreign proceedings are too far advanced: *The Angelic Grace (supra)*.

40. On the evidence and submissions I have received, I consider there to be a high degree of probability that the arbitration clause governs the dispute and that the pursuit by the Defendants of the proceedings in Russia is in breach of it. Indeed, I consider that to be virtually certain and no argument to the contrary appears to exist. To the contrary, Mr Collins' evidence is that at a hearing in Russia on 6 December 2023 Gekolina's legal representative said the claim against the present Claimant, Renaissance, was a contractual one for breach of the Investment Services Agreement. That would make it inevitable that the arbitration clause applied. I am satisfied that the Russian proceedings are an obvious attempt to outflank the dispute resolution clauses in the contract as well as the governing law clause. The objective is almost certainly, in my view, an attempt to persuade the Russian court to apply its own provisions, in particular Article 248 of the Commercial Procedural Code of the Russian Federation, under which Western sanctions are to be ignored, and thus to secure a decision that Renaissance has no defence to the claims.

Interim mandatory order

41. Turning to the application for an interim mandatory order, the main principles are these.

i. The court has power to grant an interim mandatory ASI under section 37 of the Senior Courts Act 1981 (rather than section 44 of the Arbitration Act 1996).

ii. An interim mandatory injunction may be granted where the foreign proceedings will continue of their own account such that the prohibitory injunction will not be effective to stop the proceedings brought in breach of the arbitration agreement: *ZHD v SQO* [2021] EWHC 1262 (Comm); *Evergreen Marine (Singapore) v Fast Shipping and Transportation* [2014] EWHC 4893 (QB).

iii. The court should generally be more reluctant to grant an interim mandatory injunction and it is granted exceptionally: *Evergreen Marine (Singapore),* paragraphs 18-19*, Nottingham Building Society v Eurodynamics Systems* [1993] FSR 468, 472-474, noting that the latter was not an ASI case.

iv. The court will generally requite a "high degree of assurance" that at trial it will appear that the injunction was rightly granted: *Nottingham Building Society* (as above); Raphael "*The Anti-suit Injunction*", 2nd edition, paragraph 13.66; Gee on "*Commercial Injunctions*", 7th edition at paragraph 2-041.

v. Even in cases involving injunctions to enforce contractual obligations the applicant's case must be "unusually strong and clear" before a mandatory injunction is granted at the interlocutory stage: see the decision of McGonigal J sitting in the Leeds Mercantile Court in *Comet Group v Unica* [2004] I.L.Pr 1 at paragraphs 39 to 40.

vi. When considering whether to grant a mandatory injunction the court must decide which course of action involves the lesser risk of injustice if the court turns out to be wrong at the final disposal of the claim: see, e.g., *Comet* at paragraph 41.

vii. A mandatory injunction may be appropriate even at the interim stage to remove a benefit obtained by the respondent stealing a march on the applicant by issuing proceedings in the foreign court: *Comet* at paragraph 43, approved in *Catlin v AMEC* [2023] EWHC 2530 (Comm) at para 71.

viii. A final mandatory ASI relief might be granted at the return date hearing when there does not seem to be a real prospect of evidence coming to light that would make a significant difference to the issues to be decided: *RSM v Gaz du Cameroun* [2023] EWHC 2820 (Comm), paragraphs 50 to 52.

ix. The lack of any defence or evidence in response may be indicative of the absence of any arguable defence injunction: *National Highways Limited v Persons Unknown* [2023] EWCA Civ 182, paragraphs 40 to 41.

x. Mandatory relief can require the Defendant to discontinue the overseas proceedings, of which *ADM v Gem Edible Oils* [2019] EWHC 2321 (Comm), paragraph 13 is an illustration, though it is not a precedent as the respondent there did not appear.

42. It is appropriate to grant a mandatory order in this case.

43. First, there is in my view unusually strong and clear evidence that the Russian proceedings are in breach of the arbitration clause, and I have a high degree of assurance that that is so. It is clear on the face of the evidence and no argument to the contrary has been put forward by any of the Defendants.

44. Secondly, as already noted, the evidence indicates that at least some of the Defendants have breached the prohibitory injunction, indicating that it is not currently effective or fully effective and needs to be supplemented by mandatory relief. Unless mandatory interim relief is granted there is a strong prospect of the Defendants benefiting from their breach of contract and stealing a march via the Russian proceedings, some of which have adjourned hearing dates listed only two weeks from the date of the hearing before me. The risk of the Defendants outflanking the arbitration and governing law clauses is acute in view of the introduction of Article 248 and the indication provided by the Transneft case of the approach

the Russian court may take to a mere application by parties to an adjournment or stay. In these circumstances, there is in my view a strong risk that the Russian court will proceed absent actual withdrawal by the Defendants of their cases in Russia.

45. Thirdly, the case for mandatory interim relief is further augmented by the Defendants' applications, already granted in one case, for their cases to proceed in private. Privacy removes Renaissance's ability to monitor what is happening in the ongoing cases in Russia. Thus it is only if the cases are actually withdrawn that Renaissance, or this court, can be satisfied that the court orders have been complied with.

46. It is necessary to grant interim as opposed to final relief because:

i. it will not be possible to reach trial before the next hearings in the Russian proceedings in May 2024: final relief would therefore be too late to ensure the effectiveness of the order;

ii. the Defendants could apply to expedite their applications potentially without the Claimant's knowledge: that would be a breach of the prohibitory order but the Claimants may well be unaware of it until it is too late; and

iii. the Defendants have failed to engage with these proceedings, their reasons for not doing so are very thin, to say the least, and the Claimant has presented evidence that the Dias J and Butcher J orders are being breached. There is in my view nothing to indicate, and no real prospect, that any further evidence will arise at a final trial to make a significant difference to the issues to be decided or to their outcome.

47. One further consideration is that the corporate structures by which the Defendants are held and operated have changed substantially during the course of these proceedings and since the adjourned February hearing. In simple terms, they have been repatriated to Russia in the sense that the individuals with control of the trusts are now there. There may be other reasons for the changes, such as the ongoing *Gorbachev v Guriev* litigation being tried in London now. But the effect of the repatriation may well be to make it harder to enforce this court's orders against the Defendants, for example by means of contempt proceedings. That factor too increases the risk that, absent immediate mandatory relief, the Defendants will be able to breach their contractual duties and the orders this court has already made, causing great prejudice to the legitimate interests of the Claimant.

48. I acknowledge that if the Russian proceedings are withdrawn, the evidence indicates that the Defendants will no longer be able to pursue their claims against Renaissance in Russia. However, the Russian procedural provisions that will prevent that have no application to proceedings elsewhere and, in particular, would not prevent the Defendants pursuing their claims via the contractually agreed forum of LCIA arbitration. They have no legitimate basis on which to sue in Russia and no unfair prejudice arises from their being prevented from doing so. The case is in this respect similar to *UniCredit Bank v RusChemAlliance* [2024] EWCA Civ 64 where at paragraph 87 Males LJ found it "hard to believe" that a defendant who successfully appealed a mandatory injunction would be shut out from reissuing proceedings in Russia; but held that, even if that were so, the balance of prejudice favoured granting the mandatory injunction. So it is in this case: even if the withdrawal of the proceedings were to prevent their recommencement in Russia in my view the lesser injustice is done by granting the mandatory relief currently sought.

49. In the light of all these circumstances I am satisfied that prohibitory relief is insufficient and that interim mandatory relief is necessary.

Other orders

50. I have made an order prospectively dispensing with personal service for the purposes of CPR 81.4(2)(c) of the orders I made at the 23 April 2024 hearing. The court has a broad discretion to dispense with personal service under CPR 81.4 but should do so exceptionally and relatively sparingly: see *MBR Acres v Maher* [2023] QB 186, para 105 and *Group Seven v Allied Investment Corp* [2014] 1WLR 735, paras 33 to 37.

51. Butcher J dispensed with personal service of the order he made, and the Claimant seeks a similar order from me.

52. Shortly before the Butcher J order was made, Ms Guryeva-Motlokhov gave evidence that the Defendants were controlled by the respective trustees, namely Key Nominees Limited for the Colorado Trust and Intertrea Nominees Limited for the Thames Trust.

53. However, as I have indicated, there have been substantial changes since then. Several of the Defendants' directors have changed and so have the trustees of the Colorado and Thames Trusts. The Claimant has updated its application to cover the new directors and trustees. The application therefore covers them, Mr and Mrs Guryev, Ms Guryeva-Motlokhov and also Ms Georgia Georgiou who is director of Udivia Limited the owner of approximately 15 per cent of the 5th Defendant (Owl) and the 4th Defendant (Dubhe) (and hence also of the other Defendants).

54. I accept the Claimant's submission that it is appropriate to dispense with personal service of the order because the Claimant may well have to bring committal proceedings against one or more of the relevant individuals as well as the Defendants in breach, but the Claimant reasonably anticipates that at least some of them may take deliberate steps to avoid personal service. Dias J has already concluded in paragraph 69 of her judgment that the evidence disclosed a risk that Mr Guryev at least would seek to evade service of any papers and is therefore likely to direct his relatives and other relevant individuals to do so too. That finding followed the conclusion reached in *Gorbachev v Guriev* [2019] EWHC 2684 (Comm) that Mr Guryev's entourage had taken active steps to prevent the personal service of documents on him in that case: see in particular paragraphs 48 to 53 and 61 to 66 of that decision.

55. Further, the evidence before me indicates that a person claiming to represent the Guryev family may well have sought to prevent service of the Dias J order being effected upon them. That evidence indicates that when a representative of the Claimant's Russian lawyers sought to serve them at a residential address in Moscow on 7 November 2023 a man who introduced himself as having a power of attorney for those being served spoke to someone and then refused to sign the cover letter or to take the copies of the accompanying bundle of documents.

56. The level of coordination between the Defendants and the Trusts' actions supports the inference that Mr Guryev and/or other discretionary beneficiaries influenced their actions and, by extension, the actions of the directors, officers and other individuals related to the Defendants and/or the corporate structures of which they form part. Those individuals include, for example, Mr Oleg Tutin who is now both (i) a director of the 1st Defendant and the 5th Defendant and (ii) a trustee of the Colorado Trust: and they include Ms Larissa

Bogonova who is both (i) a director of the 3rd Defendant, and (ii) a trustee of the Thames Trust. I record that the note filed on behalf of Mr and Mrs Guryev submits that it is controversial whether or not Mr and Mrs Guryev do or do not control some or all of the Defendants, and I make no definitive findings on that point. I also acknowledge that, as PCB Byrne point out, they have in fact engaged with these proceedings on the Guryevs' behalf. However, there remains in my view sufficient inferential case to justify the orders sought for dispensing with personal service.

57. Finally, as appears from the note on their behalf Mr and Mrs Guryev do not in fact object to an order dispensing with personal service as against them and none of the other individuals in question have positively objected to personal service being dispensed with against them. I accept the Claimant's evidence that service through the methods listed in my order will come to the attention of the relevant individuals. The addresses provided for service are their work or residential addresses.

58. Finally, where no fresh application was made to me, my order restated the permission for alternative service orally granted by Dias J and Butcher J so far as necessary.

Citation of judgment

59. In my view this judgment reflects an extension of the present law insofar as it addresses (a) the procedural implications of sanctions restrictions, (b) the rules on interim mandatory anti-suit injunctions, which are not the subject of a great deal of authority at present, and/or (c) the interaction between the English court's power to grant ASI and/or AASI relief with the newly introduced Article 248 of the Civil Procedure Code of the Russian Federation. Therefore, although this judgment arises from a hearing attended by one party only, it can be cited in future cases: see paragraphs 6.1 and 6.2 of Practice Direction (Citation of Authorities) [2001] 1WLR 1001.

This transcript has been approved by the Judge