Neutral Citation Number: [2021] EWHC 2281 (Ch)

Royal Courts of Justice
Rolls Building, Fetter Lane
London, EC4A 1NL
Date: Friday 13 August 2021

Before :
MR JUSTICE SNOWDEN

Case No: BR-2021-000044

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

IN THE MATTER OF GEORGY IVANOVICH BEDZHAMOV

Between :

LYUBOV ANDREEVNA KIREEVA **Applicant**
(Trustee and Bankruptcy Manager in Russia of Georgy Ivanovich Bedzhamov)

- and –

GEORGY IVANOVICH BEDZHAMOV **Respondent**

BL-2018-002691

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

Between :

VNESHPROMBANK LLC

Claimant

and

GEORGY IVANOVICH BEDZHAMOV

First Defendant

and others

- -

Stephen Davies QC and William Willson (instructed by **DCQ Legal**) for **Ms. Kireeva**
Justin Fenwick QC and Stephen Robins (instructed by **Mishcon de Reya LLP**) for Mr. **Bedzhamov**
Vneshprombank LLC was not represented
Hearing dates: 14, 16 and 19 April 2021

- -

Approved Judgment

COVID-19: This judgment was handed down remotely by circulation to the parties' representatives by email. It will also be released for publication on BAILII and other websites. The date and time for hand-down is deemed to be 10 a.m. on Friday 13 August 2021.

MR JUSTICE SNOWDEN

MR JUSTICE SNOWDEN :

1. There are two applications before the Court, each of which has been issued by Ms Lyubov Andreevna Kireeva, who is the trustee in bankruptcy appointed in Russia (the "Trustee") of the Respondent, Mr Georgy Bedzhamov ("Mr Bedzhamov").

2. The primary application is dated 19 February 2021 and seeks recognition at common law in this jurisdiction of the Trustee's appointment in Russia on 2 July 2018 (the "Recognition Application"). The Recognition Application states that the Trustee wishes to take control of Mr Bedzhamov's property and assets in the UK for the benefit of all of his creditors. To that end the application seeks ancillary "orders for the entrustment" of Mr Bedzhamov's property and assets in this jurisdiction. I shall return to consider what precisely that might mean or involve later in the judgment, but for present purposes it can be taken to include orders giving the Trustee the right to take possession and sell such assets, and to remit the proceeds to be dealt with in the bankruptcy in Russia. The only assets identified by name in the application notice are two properties in London collectively referred to as the "Belgrave Square Property".

3. The second application is dated 16 March 2021 and is made in existing proceedings between Vneshprombank LLC (the "Bank") and Mr Bedzhamov (the "UK Proceedings"). The Trustee seeks an order as a non-party under CPR rule 40.9 setting aside paragraph 1 of an order made by Falk J dated 5 March 2021 (the "March Order") (the "Set Aside Application"). The March Order, relevantly, varied the terms of a worldwide freezing order originally made by Arnold J on 27 March 2019 in the sum of £1.34 billion in the UK Proceedings and which was continued by Fancourt J on 10 April 2019 (the "WFO"). The variation to the WFO ordered by Falk J had the effect of permitting Mr Bedzhamov to sell the Belgrave Square Property and to use the proceeds of sale to pay his accrued and anticipated living expenses, his legal fees in connection with the defence of the UK Proceedings, and other disbursements. The UK Proceedings have been listed for trial over 40 days commencing in January 2022.

4. Although the March Order was made in the UK Proceedings to which the Bank is a party, the Bank did not make submissions in respect of the applications and was not represented by counsel at the hearing before me. I will return below to the relevance of the Bank's non-participation for the disposal of these applications.

<u>The parties</u>

5. The Trustee is a Russian insolvency practitioner and arbitrazh manager based in Moscow, Russia. The title of arbitrazh manager is a professional qualification required to act as a trustee in bankruptcy in Russia.

6. Mr Bedzhamov is a Russian citizen domiciled in England and Wales, where he has been living since 2017. He is the subject of ongoing criminal and civil proceedings in Russia in connection with his alleged involvement in a fraud perpetrated against the Bank. He is also the first defendant in the UK Proceedings, in which the Bank seeks damages arising from the same alleged fraud. Mr Bedzhamov denies all of the allegations made against him.

7. The Bank was incorporated on 17 July 1995 in Russia. On 18 December 2015, the Central Bank of Russia appointed provisional administrators over the Bank. On 14

March 2016, the Bank was declared bankrupt by the Moscow Arbitrazh Court, and the Deposit Insurance Agency (the "DIA") was appointed to act as its receiver and liquidator. The DIA is a state corporation which, among other things, acts as a corporate receiver and liquidator of banks under Russian law.

Claims against Mr Bedzhamov in Russia

8. Mr Bedzhamov was the subject of two bankruptcy petitions (applications) in Russia arising from two separate debts. The first bankruptcy petition was presented by the Bank. The second bankruptcy petition was presented by another Russian Bank, VTB 24 Bank ("VTB 24"). Before describing the proceedings in those bankruptcy petitions, it is necessary to summarise the underlying debts upon which the petitions were founded.

The Bank's claim in Russia

9. On 20 June 2016, the Bank commenced a claim against Mr Bedzhamov in the Khamovniki District Court of Moscow for unjust enrichment, seeking the Russian rouble equivalent of approximately £40 million said to be owed to the Bank pursuant to 42 credit agreements entered into between Mr Bedzhamov and the Bank prior to its insolvency.

10. On 16 August 2016, the Khamovniki District Court entered judgment against Mr Bedzhamov in the amount of RUB 3,368,065,366 (the "Unjust Enrichment Judgment"). On 27 December 2016, Mr Bedzhamov lodged an appeal against the Unjust Enrichment Judgment on the grounds, among others, that the proceedings were contrary to the applicable Russian procedural rules. On 30 June 2017, the Moscow City Court dismissed Mr Bedzhamov's appeal and upheld the Unjust Enrichment Judgment. It is Mr Bedzhamov's position that the appeal was itself procedurally irregular and contrary to natural justice, essentially because it was decided on what he says was inadmissible evidence.

11. Some two years later, on 28 June 2019, Mr Bedzhamov lodged an application to both the Khamovniki District Court and the Moscow City Court to set aside the Unjust Enrichment Judgment. The basis of that application was said to be the discovery by Mr Bedzhamov of new evidence in the form of a report prepared by the DIA dated 22 December 2016 (the "DIA Report"). According to the evidence of Mr Sergey Belchich, Mr Bedzhamov's legal adviser in Russia, the DIA Report concluded that about 2 billion roubles of the 3 billion roubles upon which the Unjust Enrichment Judgment was founded had not actually been received by Mr Bedzhamov, and moreover that those sums were the subject of fictitious loan documents created to balance the Bank's books in relation to monies missing from cash deposits of certain other customers of the Bank.

12. There followed a dispute between Mr Bedzhamov and the Bank (and the DIA) as to the ability of Mr Bedzhamov to rely upon the DIA Report for the purposes of his application to show that he had not in fact received a significant proportion of the monies upon which the Unjust Enrichment Judgment was founded. Mr Bedzhamov's application to rely upon the DIA Report and to set aside the Unjust Enrichment Judgment was opposed by the DIA, and, on 18 November 2019, it was rejected.

13. On 3 December 2019, Mr Bedzhamov filed an appeal against the decision to reject his application. That appeal was also dismissed on 18 February 2020. Mr Bedzhamov again appealed, in April 2020, to the Second Court of Cassation. On 20 July 2020, Mr Bedzhamov was notified by the Second Court of Cassation that his appeal had not been successful.

14. Accordingly, as matters stand, the position is that the Unjust Enrichment Judgment remains outstanding and unsatisfied in Russia, and Mr Bedzhamov's numerous attempts to overturn the judgment have been unsuccessful, with no apparent prospect of any further appeals. Nonetheless, Mr Bedzhamov's position before me, as articulated in the evidence of Mr Belchich, remains that the Unjust Enrichment Judgment was obtained improperly and is being maintained by fraud, namely the wrongful suppression by the Bank, at the instigation of the DIA, of the matters contained in the DIA Report.

15. Although the Bank petitioned for Mr Bedzhamov's bankruptcy based upon the unsatisfied Unjust Enrichment Judgment debt, this was not in fact the basis upon which Mr Bedzhamov was ultimately declared bankrupt in Russia.

VTB 24's claim in Russia

16. On 23 October 2015, VTB 24 made a loan to Mr Bedzhamov's sister, Larissa Ivanovna Markus, for a principal amount of RUB 320,441,000. Ms Markus failed to meet her obligations under the loan and VTB 24 subsequently sought to enforce the debt against her in the Meshanskiy District Court. Ms Markus is herself subject to bankruptcy proceedings in Russia and is presently serving a prison sentence in connection with the same fraud against the Bank in which Mr Bedzhamov is alleged to have participated.

17. The role of Mr Bedzhamov in relation to the loan was (and continues to be) a matter of dispute between the parties. Mr Belchich's evidence was that Mr Bedzhamov offered security to VTB 24 in respect of the loan in the form of a pledge over certain assets in Russia (namely, three plots of land in Moscow). The Trustee's evidence was that, in addition to the security granted over the three plots of land, Mr Bedzhamov also provided a limited personal guarantee. Mr Belchich's evidence made clear that Mr Bedzhamov does not accept the validity of the personal guarantee and maintains that it is a forgery.

18. On 22 December 2016 the Meshanskiy District Court gave judgment against Mr Bedzhamov on the personal guarantee (the "VTB 24 Judgment"). The court rejected Mr Bedzhamov's argument that he was not a signatory to the guarantee. Accordingly, as matters stand, the VTB 24 Judgment remains valid in Russia and the debt owed pursuant to the judgment remains unsatisfied. However, as is the case in respect of the Unjust Enrichment Judgment, Mr Bedzhamov's position remains that the VTB 24 Judgment was also obtained by fraud, namely, the forgery of his signature on the personal guarantees upon which the VTB 24 Judgment was founded. Further, Mr Bedzhamov says that the outstanding sums owed under the VTB 24 Judgment (excluding what he says are the invalid parts of the debt obtained by fraud) can be satisfied by the security granted over the three plots of land in Moscow.

The Russian bankruptcy proceedings against Mr Bedzhamov

19. It was not disputed that the procedure for personal bankruptcy in Russia takes the form of a two-stage process. So far as relevant to the instant case, the first stage of the process is initiated by a petition (application) to a commercial (Arbitrazh) court filed by a creditor against the debtor. The petition must be based upon a debt of at least five hundred thousand roubles.

20. The Arbitrazh court will consider the validity of the claim, and if it accepts the application it will issue a ruling accepting the application and making an order for the appointment of a financial administrator and the commencement of an individual debt restructuring procedure. This is a rehabilitative procedure intended to restore an individual to solvency and to satisfy debts to creditors in accordance with a debt restructuring plan approved by those creditors. According to the unchallenged evidence on behalf of the Trustee, this order for a debt restructuring procedure represents the commencement of the bankruptcy proceedings.

21. If the debt restructuring plan is not approved, or if it is apparent that there are insufficient assets to restructure the debts, the bankruptcy process moves to the second stage whereby the debtor is declared bankrupt, and a financial administrator is appointed by the Arbitrazh court to realise and liquidate the debtor's assets in order to satisfy the claims of creditors to the extent possible.

22. At any stage during the bankruptcy procedure, putative creditors are entitled to submit claims to the Arbitrazh court. If the claim is accepted as valid by the court, it will be included in the register of the bankrupt's creditor claims. It is unclear on the evidence before me whether there is any obligation upon the manager or trustee to verify or decide whether to contest the admission of a claim on behalf of the estate: I was told that the financial manager or trustee will not ordinarily have any role in the adjudication of creditor claims unless he or she elects to intervene. It appears that the debtor is able to contest the admission of a claim, but I do not know whether, or in what circumstances funds might be made available from the estate to enable him to do so.

The bankruptcy petitions and orders against Mr Bedzhamov

23. Each of the Bank and VTB 24 filed separate bankruptcy petitions against Mr Bedzhamov in Russia based upon the respective unsatisfied debts.

24. First, on 17 January 2017, the Bank filed a petition to declare Mr Bedzhamov bankrupt in reliance upon the unsatisfied debt resulting from the Unjust Enrichment Judgment. On 24 January 2017, the Moscow City Arbitrazh court acknowledged that bankruptcy proceedings had been initiated. On 22 March 2017, the same court held an initial hearing to consider the petition, at which Mr Belchich represented Mr Bedzhamov. The hearing was adjourned to 7 June 2017.

25. Separately, on 13 April 2017, VTB 24 filed its own petition to declare Mr Bedzhamov bankrupt in reliance on the unsatisfied debt resulting from the VTB 24 Judgment. On 17 April 2017, the Moscow City Arbitrazh Court acknowledged that those bankruptcy proceedings had been initiated.

26. On 7 June 2017, the Arbitrazh Court again considered the Bank's petition. Mr Bedzhamov was again represented by Mr Belchich at the hearing. The court found the Bank's petition to be "unreasonable" on the basis that the Unjust Enrichment Judgment was under appeal and did not therefore have the necessary legal effect to found a bankruptcy order.

27. On 17 July 2017, the Arbitrazh Court considered a joint application brought by the Bank and VTB 24 to appeal the decision of 7 June 2017. That appeal was adjourned to 20 September 2017, at which time the court considered both: (i) the appeal of the Bank in respect of its petition; and (ii) the reasonableness of VTB 24's petition.

28. Mr Belchich represented Mr Bedzhamov at the 20 September 2017 hearing and submitted, first, that the Moscow City court had no jurisdiction to hear the bankruptcy petitions and, moreover, that the VTB 24 Judgment debt which formed the basis of the bankruptcy petition was unsound because (he said) Mr Bedzhamov did not provide the personal guarantee underpinning the judgment. The basis for the jurisdictional argument made by Mr Belchich on behalf of Mr Bedzhamov appears to have been that the wrong address was said to have been used for service of process on Mr Bedzhamov and that it was the Moscow Regional court rather than the Moscow City court that had bankruptcy jurisdiction over him.

29. The Moscow City Arbitrazh Court accepted VTB 24's petition in the amount of RUB 319,625,384.62, as a result of which the court ordered a debt restructuring procedure be introduced in respect of Mr Bedzhamov's debts (the "Debt Restructuring Order"). A financial administrator, Mr Markin, was appointed to supervise the debt restructuring plan between Mr Bedzhamov and his creditors. Mr Markin was replaced by a Mr Gnidenko on 29 November 2017.

30. On 8 December 2017, an appeal by Mr Bedzhamov against the Debt Restructuring Order was dismissed by the Ninth Commercial Appeal Court. The basis for the appeal was, again, that the Moscow City court which had made the Debt Restructuring Order did not have jurisdiction (as a result of process having been served at the wrong address) and that the VTB 24 Judgment debt upon which the order was made was based upon fraud. The Ninth Commercial Appeal Court rejected Mr Bedzhamov's appeal on both grounds.

31. On 10 January 2018, the Arbitrazh Court accepted the validity of a claim by the Federal Tax Service and included it in the register of claims in the bankruptcy.

32. On 31 January 2018, the Arbitrazh Court held a hearing to determine whether to accept the Bank's claim based upon the unsatisfied Unjust Enrichment Judgment debt as a claim in Mr Bedzhamov's bankruptcy. Mr Belchich appeared at the hearing before the Arbitrazh Court on that date to raise the same argument that the Moscow City Court lacked jurisdiction to determine the matter and, moreover, that the underlying claim by the Bank had been incorrectly decided because Mr Bedzhamov had not in fact received a significant proportion of the sums he was alleged to have received. Mr Belchich's evidence is that one of the reasons that he challenged the Bank's claim was to defend Mr Bedzhamov's remaining assets in Russia from seizure by the Trustee. However, his arguments were rejected and the Bank's claim was accepted as a claim in the bankruptcy.

33. It is Mr Belchich's evidence that, since the 31 January 2018 hearing (and subject to one exception outlined below), he has not appeared in any further hearings in relation to Mr Bedzhamov's bankruptcy. Mr Belchich contends that this is because he did not wish to do anything that might amount to a submission to the jurisdiction of the Arbitrazh Court.

34. The exception referred to above concerned an application brought in March 2020 by the Trustee in Russia to avoid a transaction which had been undertaken in March 2016 (the "Beitla Application"). In that transaction, a Cypriot company called Salamania Holding Limited, which had been owned by Mr Bedzhamov, transferred ownership of a company called Beitla Management Limited, which owned a valuable real property in Moscow, to a business associate of Mr Bedzhamov. The Trustee contended that in reality the underlying Moscow property was owned by Mr Bedzhamov and that the transfer was to put the property beyond the reach of Mr Bedzhamov's creditors. The Trustee sought to set aside the transfer of the shares in Beitla.

35. One of the main pieces of evidence relied upon by the Trustee in the Beitla Application was an asset disclosure letter dated 9 April 2019 provided on behalf of Mr Bedzhamov in the UK Proceedings (the "Asset Disclosure Letter") which indicated that he had owned Salamania Holding Limited until that company was transferred to a trust based in Cyprus "in or around 2016/2017".

36. Mr Belchich says that he appeared in the Beitla Application because the allegations made by the Trustee as regards ownership of the Moscow property (and Salamania) implied that Mr Bedzhamov had failed to comply with his disclosure obligations under the WFO. On 18 January 2021, the Arbitrazh Court dismissed the Trustee's claim. The Trustee is appealing that decision.

37. Returning to the progress of the bankruptcy proceedings, the debt restructuring phase in respect of Mr Bedzhamov was unsuccessful. On 17 June 2018, a meeting of Mr Bedzhamov's creditors resolved to petition for the transition to the second stage of the personal bankruptcy procedure referred to above, namely, the realisation and liquidation of Mr Bedzhamov's assets.

38. On 2 July 2018, the creditors' petition was heard by the Arbitrazh Court, which declared Mr Bedzhamov bankrupt and appointed the Trustee as the new financial manager for the purposes of realising and liquidating Mr Bedzhamov's assets (the "Bankruptcy Order"). Although the appointment of the Trustee was initially for a term of six months, it has been extended numerous times by order of the court and continues in effect to this day.

39. It is the Bankruptcy Order that this Court is asked to recognise as part of the Recognition Application although (as I have indicated) the Trustee's contention is that Mr Bedzhamov's bankruptcy commenced at an earlier stage with the making of the Debt Restructuring Order.

40. The Trustee contends, on the basis of advice from her Russian lawyer, that the effect of the Bankruptcy Order under Russian law is that all of Mr Bedzhamov's assets worldwide automatically vested in her. That latter proposition of Russian law was not challenged by Mr Bedzhamov.

The claims in the bankruptcy

41. There are currently three bankruptcy creditors, each of which has been admitted to the register of creditors by the Arbitrazh Court. The three creditors are as follows:

    i) the Bank in respect of the unsatisfied Unjust Enrichment Judgment debt for the sum of RUB 3,106,832,768.29 plus interest and surcharges;

    ii) VTB 24 in respect of the unsatisfied VTB 24 Judgment debt for the sum of RUB 225,260,028.42 plus interest and surcharges; and

    iii) the Federal Tax Service of Russia for the sum of RUB 174,750 plus interest and surcharges.

42. Taken together, Mr Bedzhamov's bankruptcy debts (including interest and surcharges) amount, in aggregate, to more than £44 million at today's exchange rates. It is clear from the above that the largest creditor of Mr Bedzhamov is the Bank, whose principal claim amounts to approximately £30 million together with interest of approximately £2.5 million and surcharges of approximately £7.8 million. The Bank's claim thus accounts for about 90% of the bankruptcy debts.

43. For completeness, I note that the Trustee is investigating further potential creditors with possible claims arising from a judgment of the Ninth Commercial Appeals Court in Russia dated 29 March 2021.

Ongoing progress of the bankruptcy

44. The Trustee describes the attitude of Mr Bedzhamov to the Russian bankruptcy as essentially one of non-cooperation. She contends that, among other things, Mr Bedzhamov has declined to transfer to her (or to her predecessors) documents relating to Mr Bedzhamov's assets to enable her to understand his financial position and the nature, extent and location of his assets. In short, Mr Bedzhamov is described by the Trustee as a "*delinquent bankrupt*".

45. There are several ongoing actions before the Arbitrazh Court in which the Trustee is seeking to avoid and/or set aside various property transactions involving Mr Bedzhamov in the period prior to his bankruptcy, which it is not necessary to describe in any detail. Although the Trustee has pursued (and continues to pursue) actions in Russia, she says that, until very recently, she lacked the funds to pursue any actions abroad, including in connection with the UK Proceedings. I will return to this topic below.

<u>The UK Proceedings</u>

Outline of the UK Proceedings

46. The UK Proceedings were issued by the Bank in December 2018, although the claim form was anonymised and the court file sealed pending the application which resulted in the grant of the WFO. The proceedings were summarised by the Court of Appeal in a subsequent decision relating to the amount Mr Bedzhamov should be entitled to spend on living and other expenses: see [2019] EWCA Civ 1992 at [9] – [15]:

"9. [The Bank] is a Russian bank now in liquidation. Its President and the head of its Management Board was Larisa Markus, [Mr Bedzhamov]'s sister. [The Bank] claims that although [Mr Bedzhamov] was not a director of [the Bank] and held no formal position with it, together with his sister he exercised de facto control until December 2015.

10. On 18th December 2015 the Bank of Russia appointed provisional administrators over [the Bank] and on 14th March 2016 [the Bank] was declared bankrupt. The [DIA] was appointed to act as its liquidator.

11. It is [the Bank]'s case in this action that it was the victim of a substantial fraud committed by [Mr Bedzhamov] and his sister which came to light after the appointment of the liquidator. In outline, [the Bank] says that there were four categories of wrongdoing, in each of which Mr Bedzhamov was complicit. These were (1) causing [the Bank] to enter into purported loan agreements with actual customers of the bank of which those customers were ignorant, enabling the funds thus advanced to be misappropriated, (2) diverting funds from accounts held by genuine customers of the bank, (3) causing [the Bank] to enter into loan agreements with shell companies which never had any prospect of repaying the funds advanced, and (4) making fictitious credits to accounts of companies controlled by the conspirators which were then used to discharge genuine debts owed by them to [the Bank] or third parties.

12. [The Bank] estimates that as a result of this fraud it has suffered losses in excess of the rouble equivalent of £1.34 billion and that [Mr Bedzhamov] has benefited personally from the fraud in a sum of at least the rouble equivalent of about £35.4 million.

13. Ms Markus was the subject of criminal proceedings in Russia. She pleaded guilty and on 12th May 2017 was sentenced to imprisonment for nine years for fraud and embezzlement although this was subsequently reduced.

14. In this action [the Bank] claims damages in the sum of £1.34 billion or equivalent from [Mr Bedzhamov] under various provisions of Russian law. There is, however, no proprietary claim against him.

15. [Mr Bedzhamov] denies having had any involvement in the management or operation of [the Bank]. He says that if [the Bank] was the victim of a fraud, which he does not know, it was nothing to do with him and to his knowledge neither he nor any company owned or controlled by him received any benefits derived from the fraud. He acknowledges that his sister decided not to contest the charges against her but maintains that she did

> so in order to obtain a reduced sentence in circumstances where she would be unlikely to obtain a fair trial. He says that the allegations against him, which include the commencement of criminal proceedings against him in Russia, are politically motivated and false."

The funder of the UK Proceedings

47. The UK Proceedings are funded by an entity called A1 LLC ("A1"). The role of A1 was described in a judgment of Falk J in the UK Proceedings given on 5 August 2020 ([2020] EWHC 2114 (Ch)):

> "Role of A1
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> 22. A1 is [the Bank's] litigation funder, and it was A1 that funded the original fortification of [the Bank]'s undertakings in the Search Order. An apparently associated entity based in the British Virgin Islands has since met some of the Third Parties' costs and paid further funds into court as part of an ongoing obligation to give security for Mr Bedzhamov's costs.
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> 23. It is fair to say that A1's role is an unusual one that appears to go well beyond that of a conventional litigation funder. It is authorised by the DIA to manage the proceedings on its behalf. Mr Tchernenko, a senior staff member at A1, has what is described as day-to-day conduct of the proceedings, liaising as necessary with the DIA and being "under their supervision". Effectively, therefore, A1 is acting as the agent of the DIA (and thus [the Bank]) for the purposes of this litigation. In particular, [the Bank]'s legal advisers take instructions from Mr Tchernenko and (at least when PCB was involved) he was said to be their primary point of client contact. I infer that, at least on a day-to-day basis, A1 are running the litigation.
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> 24. Mr Tchernenko is an English qualified solicitor who is said not to be resident in the UK. He has been described as Head of International Dispute Resolution at A1."

The WFO

48. As indicated above, the WFO was made *ex parte* by Arnold J on 27 March 2019 in the sum of £1.34 billion. It was continued by Fancourt J on the return date of 10 April 2019.

49. The WFO was sought and obtained by the Bank on the basis that it was necessary to prevent Mr Bedzhamov from dissipating his assets so as to frustrate the enforcement of any judgment obtained by the Bank against Mr Bedzhamov's assets. That was consistent with the first of the well-established principles which apply to freezing orders and which were summarised by Males LJ at [68] of the Court of Appeal judgment to which I have referred above:

> "the purpose of the freezing order jurisdiction is not to provide a claimant with security but to prevent a defendant from taking steps outside the ordinary course which will have the effect of rendering any judgment unenforceable…"

50. The WFO provides, in summary, that Mr Bedzhamov is prohibited from removing from this jurisdiction any of his assets located here, and that he is prohibited from in any way disposing of, dealing with, or diminishing the value of any of his assets, whether in this jurisdiction or elsewhere, in each case up to the value of £1.34 billion. The prohibition is stated to apply generally but a number of assets are specifically identified as being subject to the prohibition, the first of which is the Belgrave Square Property.

51. As is typical in freezing orders of this nature, the terms of the WFO permit Mr Bedzhamov to spend reasonable sums on living expenses and the costs of legal advice and representation. Since the return date, a series of further orders have been made in respect of the WFO, including an order of HHJ Jarman QC on 15 July 2019, as to the sums Mr Bedzhamov is permitted to spend under its terms. That order gave rise to the appeal to the Court of Appeal to which I have referred, the outcome of which was, in summary, to increase the sums Mr Bedzhamov was entitled to spend under the WFO.

52. Since it is relevant to one point made in argument on behalf of Mr Bedzhamov, to which I shall return below, I should set out four paragraphs from the judgment of Males LJ in the Court of Appeal which illustrate the amount of monies that have been available to Mr Bedzhamov over the last several years.

53. Paragraph 2 of Males LJ's judgment is as follows,

> "[Mr Bedzhamov] … is currently permitted to spend £80,000 per month on his living expenses, but contends on this appeal that this figure should be increased to £310,000 per month and that he should in addition be permitted to pay a substantial advance on the rent of a luxury flat in Mayfair. Mr Bedzhamov … maintains that the money which he wishes to spend is his money as there is no proprietary claim against him and he should therefore be free to spend it as he wishes; that expenditure on this lavish scale is necessary to enable him to maintain the standard of living which he enjoyed before the imposition of the freezing order; and that to compel him to reduce that standard of living would be contrary to the principles which govern the making of such orders. He accepts that as his available liquid assets are reduced by such expenditure, and if he is unable to obtain new sources of income, a time may come when he will be forced to reduce his level of spending, but says that this should be his decision and is not something which should be forced upon him by the court now."

54. In paragraphs 33-34 of his judgment, Males LJ described in greater detail Mr Bedzhamov's permitted outgoings under the order of HHJ Jarman QC,

> "33. The hearing before HHJ Jarman QC which has given rise to this appeal took place on 9th July 2019. VPB sought the

> removal of the exception allowing Mr Bedzhamov to pay rent on the Park Lane apartment. Mr Bedzhamov sought an increase in his spending limit on ordinary living expenses from £10,000 a week to over £165,000 plus €165,000 a month. These figures were said to include rent of about £60,000 on the Park Lane apartment, private security at a cost of £24,000 in London and €29,000 in Monaco, £20,000 for business entertainment, £5,500 for clothes for Mr Bedzhamov and €10,000 for clothes for Ms Zolotova, £2,500 for concierge services, £2,000 for barbers and toiletries, £2,500 on golf club fees and similar expenses, and pocket money of £4,000 for his stepdaughter and £2,000 for his daughter, as well as the wages of chauffeurs, cooks, nannies and housemaids in London and Monaco and frequent travel costs for his family to visit him in London. In addition he sought permission to pay various debts, some of which had been incurred before the date of the freezing order and some afterwards.
>
> 34. The judge varied the freezing order to permit Mr Bedzhamov to spend a total of £80,000 a month on ordinary living expenses including rent, plus (by agreement) a reasonable sum on uninsured medical treatment for which bills were provided. He permitted also the payment of some debts incurred up to the date of the freezing order, but in the case of other such debts was not satisfied by Mr Bedzhamov's evidence about them. He said that debts incurred after the date of the freezing order should be met out of the allowance for living expenses."

55. At the conclusion of his judgment, Males LJ set out in paragraph 94 the order to be made on appeal setting out the regime that would in future apply

> " …I would allow the appeal from the order of HHJ Jarman QC so far as it relates to living expenses. I would set aside paragraph 1 of the latter order and, in its place, would order that Mr Bedzhamov is permitted to use the funds held by his solicitors Mishcon de Reya LLP:
>
> (1) to make payments of rent due pursuant to the lease on the Monaco apartment dated 11th March 2016;
>
> (2) to make payments of rent under a new lease of a residential property in London at a rate equivalent to not more than £18,000 per week, such payments to be made:
>
> a) as to the first six months' rent, in advance, if so provided in the lease;
>
> b) thereafter, as provided in the lease;
>
> (3) to make a rent deposit of up to £144,000 pursuant to a new lease of a residential property in London;

(4) to pay the school fees of his three children for so long as they attend their current schools;

(5) to pay for private security for himself and his family at a cost per month of up to £24,000 in London and €29,000 in Monaco;

(6) to pay his uninsured medical expenses; and

(7) to spend up to £40,000 per month on other ordinary living expenses."

The Belgrave Square Property

56. As explained above, the Belgrave Square Property is one of the specifically identified assets which is subject to the WFO. It is comprised of two properties in London: 17 Belgrave Square and 17 Belgrave Square Mews West which are registered under the same title at the land registry.

57. Mr Bedzhamov's interest in the Belgrave Square Property comprises a short lease (with 14 years remaining) and an agreement with the freeholder of the property, the Grosvenor Estate, for a 129-year lease conditional upon the development of the property. Mr Bedzhamov purchased the short lease in 2014 for approximately £15 million and, at the same time, purchased the contractual right to the 129-year lease for approximately £21 million. This is said to have been an investment opportunity undertaken with a view to redeveloping the property, presumably in the hope and expectation of selling it for a substantial profit.

58. A draft valuation report obtained from Savills in June 2018 stated as follows:

i) the market value of the initial lease was £6 million;

ii) the market value of the initial lease with planning permission and the right to a 129-year lease condition upon completion of the development was £28.5 million; and

iii) the market value of the 129-year leasehold interest was more than £60 million.

59. Mr Bedzhamov has obtained planning permission from Westminster council to develop the Belgrave Square Property. However, undertaking the development has not been possible for Mr Bedzhamov because of a lack of available funds, adverse publicity surrounding the UK Proceedings and the terms of the WFO.

60. There is a charge registered against the Belgrave Square Property in favour of a BVI-registered company called Clement Glory Limited ("Clement Glory"). That charge is said by Mr Bedzhamov to derive from a settlement agreement and a loan facility agreement between the parties, each dated 31 August 2017. It is Mr Bedzhamov's position that he owes more than US$35 million to Clement Glory pursuant to those agreements. The validity of the charge in favour of Clement Glory is not accepted by either the Trustee or the Bank. I shall return to the potential relevance of the Clement Glory charge later in this judgment.

61. Mr Bedzhamov's evidence is that he is seeking to sell the Belgrave Square Property to fund his defence of the UK Proceedings and to meet other accrued and anticipated expenses. No marketing exercise has been conducted in respect of the Belgrave Square Property. Instead, Mr Bedzhamov identified a prospective purchaser and agreed (in principle, and subject to successful exchange and completion) to sell the Belgrave Square Property for a sum of £35 million. Mr Bedzhamov's solicitors first notified the Bank's solicitors of his intention to sell the Belgrave Square Property by letter dated 6 January 2021.

62. On 21 January 2021, the Tverskoy District Court of Moscow made an order (the "Arrest Order") purporting to "seize" or "arrest" the Belgrave Square Property in connection with ongoing criminal proceedings against Mr Bedzhamov in Russia. The trigger for the Arrest Order is unclear: the Trustee's evidence is that she first became aware of the Arrest Order from news reports shortly after it was made. The evidence on behalf of Mr Bedzhamov is that his solicitors were first notified of it by the Bank several days after it was made.

The March Order

63. The application which led to the March Order in the UK Proceedings was issued on behalf of Mr Bedzhamov on 22 February 2021. Mr Bedzhamov sought, in summary, an order to vary the terms of the WFO to enable him to sell his interest in the Belgrave Square Property, with the proceeds of sale to be held in the client account of his solicitors, Mishcon de Reya, to be utilised subject to the terms of the WFO. As indicated above, the purpose of the sale was to obtain funds to enable Mr Bedzhamov to pay certain accrued and anticipated living expenses, legal fees, and other disbursements.

64. Clement Glory agreed to subordinate its interest to a charge in favour of Mishcon de Reya over the first £5 million of the sale proceeds. Those proceeds would be utilised towards the payment of the accrued and anticipated expenses referred to above, with the balance (of £30 million) retained in Mishcon de Reya's client account subject to the terms of the WFO.

65. The hearing before Falk J took place on 5 March 2021. Although the Trustee was not formally a party to the application, Mr Davies QC was permitted to make submissions on behalf of the Trustee, albeit without the benefit of having read the evidence and materials in support of the application. Mr Davies QC sought a direction that the Trustee be provided with copies of those materials and requested that the application be postponed and heard together with the Recognition Application on an expedited basis.

66. Having considered the submissions of the Bank, Mr Bedzhamov and the Trustee, and having regard to the urgency of the matter in circumstances where the evidence in support of the application was that Mr Bedzhamov had limited (if any) funds to continue his defence of the UK Proceedings, Falk J made the March Order in, relevantly, the following terms:

> "IT IS ORDERED THAT:
>
> 1. Paragraph 6 (a) (i) of the WFO is set aside and the WFO is varied so as to include a new paragraph 10(3A) and 10(3B) as follows:
>
> "10. (3A) This order does not prohibit the First Defendant from:
>
> (a) Subject to Paragraphs 4-8 of the order of Falk J of 5 March 2021, selling his interest in the property known as 17 Belgrave Square and 17 Belgrave Square Mews West, London, SWIX 8PG registered under title NGL 948737 ("the Property"): (i) for an amount which will generate net sale proceeds of not less than £35,000,000 (less any reasonable transaction costs), with the sale proceeds to be transferred to the client account of his solicitors, Mishcon de Reya LLP, to be held and utilised subject to the terms of the WFO; (ii) with such sale to be completed by 5 September 2021. If a sale price generating net sale proceeds of less than £35,000,000 (less any reasonable transaction costs) is agreed or if the sale does not complete by 5 September 2021, then the Claimant shall be notified and the Property will not be sold without the Claimant's consent or further order of the Court;
>
> (b) Entering into a legal charge with his solicitors, Mishcon de Reya LLP, in respect of his legal costs (both owing and anticipated), in the form set out in Schedule 1 to the order of Falk J of 5 March 2021, such charge to extend until further order of the Court only to a reasonable sum or sums for legal advice and representation in accordance with the terms of the WFO, to be secured against the Property and registered against the Property;
>
> (c) entering into a deed of priority in the form set out in Schedule II to the order of Falk J of 5 March 2021 for the charge over the Property granted to Mishcon de Reya LLP to take priority over any charge that Clement Glory Limited has over the Property.
>
> 10. (3B) In the event that the First Defendant sells his interest in the Property pursuant to paragraph 10 (3A)(a) above, the terms of the WFO shall continue to apply in respect of any expenditure out of the proceeds of sale including any proposal to pay monies to Clement Glory Limited's solicitors, no permission for any such payments being granted by Falk J on 5 March 2021."

67. By paragraph 10 of the March Order, the Trustee was given until 4pm on 16 March 2021 to apply to set aside the order under CPR 40.9. The Trustee duly issued the Set Aside Application on 16 March 2021.

The Recognition Application

The relief sought in the Recognition Application

68. The Recognition Application seeks the following relief:

> "(a) The recognition at common law of a bankruptcy order made against the Respondent by the Moscow Arbitrazh Court on 2 July 2018 [i.e. the Bankruptcy Order];
>
> (b) The recognition at common law of the Applicant as the Respondent's bankruptcy trustee and financial manager; and
>
> (c) Such further relief as the Court sees fit, including orders for the entrustment of the Belgrave Square Property (and any other property of the Respondent in England) and that the Applicant will be able to question the Respondent in relation to the Belgrave Square Property".

69. Although the Recognition Application is made under the common law rather than under the Cross-Border Insolvency Regulations 2006 ("the CBIR"), the wording of the relief sought in (c), "orders for the entrustment of the Belgrave Square Property (and any other property of the Respondent in England)" appears to be borrowed from Article 21 of the CBIR. That states,

> "Upon recognition of a foreign proceeding, whether main or non-main, where necessary to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including,
>
> …
>
> (e) entrusting the administration or realisation of all or part of the debtor's assets located in Great Britain to the foreign representative or another person designated by the court."

70. I shall explain why recognition and assistance under the CBIR are not available to the Trustee in the instant case and shall consider the implications of that for the relief sought at common law later in this judgment.

The context in which the application has been brought

71. I turn now to the background to the Recognition Application. It may fairly be asked as a preliminary matter (and indeed is asked on behalf of Mr Bedzhamov) why the Recognition Application is being brought now, more than two years after the Trustee was appointed in Russia, and at the same time as Mr Bedzhamov is seeking to sell the Belgrave Square Property to fund his defence of the Bank's claim in the UK Proceedings.

72. As a preliminary observation, it is not unusual for there to be a period of time between the commencement of an insolvency and an application for recognition being brought in other jurisdictions. Insolvency office-holders do not typically incur the cost and time

of seeking recognition abroad unless and until there is a reason to do so. Of itself, therefore, the fact that the Trustee did not seek recognition for the Russian bankruptcy in England shortly after her appointment cannot be relevant to the question of whether recognition should be granted now.

73. However, on the particular facts of this case, the question of the timing of the Recognition Application assumes greater potential significance. That is because, as I have just indicated, the Bank has, since December 2018, been pursuing the UK Proceedings, in aid of which it obtained the WFO on 27 March 2019, but under which Mr Bedzhamov might expect to be entitled, subject to permission from the court, to use his assets to finance his living expenses and to fund his defence of the Bank's claim. I have also explained that Mr Bedzhamov's legal advisers first notified the Bank's solicitors of the intention to sell the Belgrave Square Property to raise money for those purposes by letter dated 6 January 2021.

74. Against that background, Mr Bedzhamov contends that the Recognition Application is designed, in effect, as a pincer movement between the Bank and the Trustee, orchestrated by A1, with the intent that he should continue to be subject to the prohibitions and restrictions in the WFO, but should also be deprived of one of his main assets with which to raise the finance to defend the Bank's claim.

75. That contention is denied by the Trustee, who has given an account of her motivation for making the Recognition Application and the reasons why it had not been made earlier in the bankruptcy.

76. In her evidence in support of the Recognition Application, the Trustee referred to the UK Proceedings and the grant of the WFO and then stated,

> "On 18 March 2019 I had written a letter to the Bank in which I explained that there were insufficient monies in the bankruptcy estate for me to entertain issuing proceedings abroad (or supporting the Bank in its proceedings against [Mr Bedzhamov])."

77. The Trustee did not explain the purpose for which she wrote the letter or otherwise indicate why she was in communication with the Bank about the possibility of bringing legal proceedings in the UK in March 2019, after the Bank had commenced the UK Proceedings and about 10 days before it obtained the WFO from Arnold J. Nor was I referred to any other correspondence between the Trustee or the Bank from that period which gives any context to that correspondence.

78. It is, however, a reasonable inference from the Trustee's evidence that the Trustee was at least aware of the UK Proceedings which the Bank had instituted against Mr Bedzhamov when she wrote her letter of 18 March 2019. It also seems that the Trustee was in favour of such proceedings (her suggestion being that she would have "supported" the proceedings if funds had been available).

79. The Trustee's position is that her attitude to funding and taking steps to obtain recognition in England changed when she first became aware of the Belgrave Square Property from press reports of the Arrest Order in Russia in late January 2021. In her evidence, after setting out when she learnt of the Belgrave Square Property and

identifying it as one of, if not the largest, asset in the bankruptcy of Mr Bedzhamov, the Trustee continued,

> "I would therefore like to take control over it, as I am entitled and obliged to do under Russian law, to protect the interests of the bankruptcy estate (which includes the collective interest of at least three creditors)."

80. The Trustee further stated that after learning about the Belgrave Square Property,

> "I … approached the Bank and asked whether, as the majority creditor of Mr. Bedzhamov, it is interested in funding these proceedings with a view to me seeking to recover the Belgrave Square Property. They referred me to A1 who are the funders of the High Court Proceedings and they have agreed to fund this application."

81. That evidence raises a number of questions. The first is why the Trustee should have thought that the Bank, even if it was the major creditor of Mr Bedzhamov in the bankruptcy in respect of the Unjust Enrichment Judgment, might have thought that it would be in its interests to permit the Trustee to take control of the Belgrave Square Property. That is one of the main assets which has been frozen by the WFO so as to preserve it for the purposes of enforcement of a judgment that the Bank might obtain in the UK Proceedings. On the face of it, allowing the Trustee to take control of the Belgrave Square Property would mean that the Bank would no longer have access to it to satisfy any judgment in the UK Proceedings, but would have to share the value of the asset with other creditors in the Russian bankruptcy.

82. Still less is it immediately obvious what financial benefit allowing the Trustee to take control of the Belgrave Square Property would bring to A1 in its capacity as the funder of the UK Proceedings. On the face of it, A1's only financial interest as funder of the litigation would be in the recoveries by the Bank through the UK Proceedings.

83. The Trustee's account of when she first learnt of the Belgrave Square Property and the reasons for the Recognition Application is also disputed by Mr Bedzhamov. The evidence filed on his behalf draws attention, among other things, to the fact that the Belgrave Square Property was expressly referred to as the first real property asset owned by him in the Asset Disclosure Letter dated 9 April 2019, which was produced by his English lawyers in response to the WFO. As indicated above, a copy of that letter was relied on and included in papers presented on behalf of the Trustee to the Russian court in the Beitla Application brought by her in March 2020.

84. What does not appear to be disputed is that the Trustee (or at least her Russian lawyers who prepared the Beitla Application) were provided with a copy of Mr Bedzhamov's Asset Disclosure Letter by A1 on 11 March 2020. No explanation is given as to the context in which that occurred, or why A1 should have thought it appropriate or in its interests to pass such information to the Trustee.

85. In her reply evidence the Trustee adhered to her account of events, stating that although she knew Mr Bedzhamov had assets in the UK, she "did not know any specifics about the Belgrave Square Property until January 2021". The Trustee reiterated that she was

not shown and did not see a copy of the asset disclosure letter at the time of the Beitla Application.

86. The relationship between the Bank's pursuit of the UK Proceedings and the Trustee's role in the Russian bankruptcy was also the subject of developments during the hearing before me.

87. I have described above the Trustee's evidence that, upon the commencement of bankruptcy proceedings in Russia, all of a bankrupt's assets worldwide vest automatically in the trustee appointed to administer his estate. As a matter of Russian law this would include both the Belgrave Square Property and all of Mr Bedzhamov's other assets which are subject to the terms of the WFO (being all of his assets worldwide up to the value of some £1.34 billion).

88. However, it also follows from what I have said above about the basis upon which the WFO was sought by the Bank (i.e. to prevent Mr Bedzhamov from dissipating any of his assets so as to prevent enforcement of any judgment that the Bank might obtain in the UK Proceedings) that when seeking the WFO, the Bank appeared to be seeking to preserve what it characterised and referred to in the WFO as Mr Bedzhamov's assets for the purpose of enforcement of any judgment it might obtain in the UK Proceedings against those assets. The Bank thereby appeared to have been acting in its own interests.

89. Further, even though the evidence in support referred to the making of the Bankruptcy Order and the appointment of the Trustee on 2 July 2018, at least from the materials placed before me, it is not apparent that the Bank explicitly drew the attention of Arnold J to the fact that the assets which the Bank sought to preserve by the WFO, and which the Bank might wish to take in enforcement of any judgment which it might obtain in the UK Proceedings, already belonged to the Trustee as a matter of Russian law.

90. The focus of the Bank's evidence in this regard appears to have been not on the question of entitlement to the assets over which it sought the WFO, but on the question of whether Mr Bedzhamov's alleged liability to the Bank would be extinguished by the bankruptcy. The Bank asserted, by reference to an expert report on Russian law, that even if Mr Bedzhamov's bankruptcy was recognised in England,

> "… that would not affect his liability to [the Bank]. On the contrary, upon completion of the Russian bankruptcy proceedings, …Mr Bedzhamov would remain liable to [the Bank] and would not be discharged from that liability.

The evidence asserted that this meant that the Russian bankruptcy would not prevent the Bank from pursuing its claims against Mr Bedzhamov in the UK Proceedings.

91. As regards the prospects for recognition, the Bank's evidence indicated that Mr Bedzhamov's Russian bankruptcy was not automatically recognised by the English courts, and asserted that, through lack of funds, the prospect of the Trustee seeking recognition in England "appears to be very low indeed".

92. The evidence also went on to explain why the Bank took the view that recognition of the Trustee under the CBIR would likely not be available. In short, that was because

Mr Bedzhamov did not have his centre of main interests ("COMI") or an establishment in Russia at the relevant time. However, the Bank then averted to the possibility that the Trustee might apply for recognition at common law on the basis that Mr Bedzhamov had submitted to the Russian bankruptcy proceedings and had appeared (by Mr Belchich) in at least one hearing in those proceedings on 7 June 2017.

93. The situation I have described in which a creditor who has established a claim in a collective insolvency in one jurisdiction, also seeks to pursue proceedings for its own benefit and to attach assets of the debtor in another jurisdiction for its own benefit, brought to mind two long-standing principles of English law that serve to protect the collective nature of an English insolvency proceeding.

94. The first is that the English court can grant an order restraining a creditor which has proved its debt and over which the court has *in personam* jurisdiction from pursuing proceedings abroad in an attempt to attach foreign assets. The point was put in the following way by James LJ as long ago as 1874 in relation to a corporate insolvency in re Oriental Inland Steam Company (1874) LR 9 Ch App. 557 at 559,

> "There were assets fixed by the Act of Parliament with a trust for equal distribution amongst the creditors. One creditor has, by means of an execution abroad, been able to obtain possession of part of those assets. The Vice-Chancellor was of opinion that this was the same as that of one *cestui que trust* getting possession of the trust property after the property had been affected with notice of the trust. If so, that *cestui que trust* must bring it in for distribution among the other *cestuis que trust*. So I, too, am of opinion, that these creditors cannot get any priority over their fellow-creditors by reason of their having got possession of the assets in this way. The assets must be distributed in *England* upon the footing of equality."

95. That principle was applied and affirmed by the Court of Appeal in Mitchell v Carter [1997] BCC 907, in which Millett LJ also referred to the decision of Hoffmann J in Maxwell Communications Corp plc (No.2) [1992] BCC 757 and explained that in the modern era the general approach is for the English courts not to grant what would amount to an anti-suit injunction against the creditor but to authorise the English office-holder to apply to the foreign court to prevent continuation of the foreign proceedings.

96. All of the relevant authorities and the basis for the grant of anti-suit injunctions in such cases were also considered by the Privy Council in Stichting Shell Pensioenfonds v Krys [2015] AC 616 at [19]-[24].

97. The second principle is the so-called "hotchpot" rule of English law, under which a creditor who proves and seeks to take the benefit of an English insolvency process cannot be permitted to do so without bringing into the insolvency estate any dividends received in a foreign insolvency or otherwise derived from assets located abroad which form part of insolvency estate: see e.g. Cleaver v Delta American Reinsurance [2001] 2 AC 328, referring (among others) to the dicta of Lord Cairns in Banco de Portugal v Waddell (1880) 5 App Cas 161 at 168,

> "The appellants are perfectly entitled to prove under the English bankruptcy; but if they elect to do so they must act, as was said in the case of Selkrig v Davis, bring into the common fund what they have received abroad."

98. Likewise Lord Selborne stated, in Banco de Portugal at 169,

> "Every creditor coming in to prove under, and to take the benefit of, the English liquidation, must do so on the terms of the English law of bankruptcy; he cannot be permitted to approbate and reprobate, to claim the benefit of that law, and at the same time insist on retaining, as against it, any preferential right inconsistent with the equality of distribution intended by that law, which he may have obtained either by the use of legal process in a foreign country, or otherwise."

99. At the hearing of the Recognition Application, I raised the question with Mr Davies QC of whether similar principles applied under Russian law. He told me that he did not know and was without instructions on the point. Shortly thereafter, however, prompted by my questions, my clerk received an email attaching a letter from Keystone Law, legal advisers to the Bank (who were observing but not participating in the hearing before me). That letter stated that,

> "Our client's position is that in accordance with Russian law it is obliged to remit any sums recovered following judgment in the above claim to Mr. Bedzhamov's trustee in bankruptcy or to distribute the sums amongst the creditors in accordance with the trustee's instructions, and intends to do so."

100. The letter from the Bank's legal advisers did not indicate when that position had been taken by the Bank, but so far as I can tell, this was the first time the Bank had communicated such position to any English court.

101. What, therefore, now appears, is that the UK Proceedings are being pursued, and the WFO is being maintained for the ultimate benefit of the Trustee over assets to which the Trustee claims to be entitled under Russian law. The UK Proceedings do not appear to be being pursued for the benefit of the Bank to recover its claims in its own right.

102. Irrespective of the question of recognition of the Russian Bankruptcy Order, it would also seem obvious that this position set out by the Bank (which is said to be in accordance with Russian law) must have been accepted at some point by A1 as funder with effective control of the Bank's pursuit of the UK Proceedings. But there is no indication as to when or on what basis that took place.

103. Nor is there any indication as to the arrangements that (on this footing) must also have been entered into between A1 and the Trustee to regulate the provision of funding and the division of the proceeds of the UK Proceedings between the Bank, A1 as funder, and the Trustee as intended recipient of the proceeds of the litigation. The Trustee makes no mention in her evidence of any such arrangement.

104. Nor, so far as I can tell, from the materials placed before me, did the Bank or the Trustee make it clear to Falk J on 5 March 2021 that any recoveries by the Bank in the UK Proceedings were to be remitted to or held by the Bank to the order of the Trustee.

105. I shall return to the potential implications of these matters at the end of this judgment.

106. I next turn, however, to consider the legal principles upon which recognition of the Russian bankruptcy might be granted.

Recognition: the legal principles

107. It was common ground that there is a conceptual distinction between the principles that apply to the decision whether to recognise a foreign bankruptcy, and the principles that apply to the question of what, if any, further assistance ought to be given by the English court to a foreign trustee in bankruptcy following recognition.

108. Before turning to the common law, by way of background I should explain that there is now a comprehensive statutory regime for the recognition of foreign insolvencies and assistance to be given to a foreign representative of the debtor concerned under the CBIR which enacts in the United Kingdom the model law on cross-border insolvency approved by UNCITRAL on 30 May 1997.

109. Recognition and assistance under the CBIR is not limited to foreign representatives from countries who have also adopted the UNCITRAL Model Law. However, and relevantly for present purposes, the CBIR only applies to insolvency proceedings taking place in the country in which the debtor has his or her centre of main interests or an establishment: see Article 17(2) of Schedule 1 to the CBIR.

110. In the present case it is common ground that Mr Bedzhamov has neither his COMI nor any form of "establishment" in Russia (to the extent that latter concept is meaningful as applied to an individual). This is because Mr Bedzhamov left Russia in December 2015 to live in Monaco and then settled in London (where he continues to live today). Recognition and assistance under the CBIR is therefore not available to the Trustee.

111. Assistance can also be given by the English Courts to certain foreign courts conducting insolvency proceedings abroad under the request procedure in section 426 of the Insolvency Act 1986 ("Section 426"). That section provides in relevant part,

> "(4) The courts having jurisdiction in relation to insolvency law in any part of the United Kingdom shall assist the courts having the corresponding jurisdiction in any other part of the United Kingdom or any relevant country or territory.
>
> (5) For the purposes of subsection (4) a request made to a court in any part of the United Kingdom by a court in any other part of the United Kingdom or in a relevant country or territory is authority for the court to which the request is made to apply, in relation to any matters specified in the request, the insolvency law which is applicable by either court in relation to comparable matters falling within its jurisdiction. In exercising its discretion

> under this subsection, a court shall have regard in particular to the rules of private international law.
>
> ….
>
> (10) In this section *"insolvency law"* means—
>
> (a) in relation to England and Wales, provisions extending to England and Wales and made by or under this Act or [certain] sections … of the Company Directors Disqualification Act 1986;
>
> …
>
> (d) in relation to any relevant country or territory, so much of the law of that country or territory as corresponds to provisions falling within any of the foregoing paragraphs;
>
> …
>
> (11) In this section "relevant country or territory" means—
>
> (a) any of the Channel Islands or the Isle of Man, or
>
> (b) any country or territory designated for the purposes of this section by the Secretary of State by order made by statutory instrument."

112. In broad terms, the countries and territories designated under Section 426(11)(b) as relevant countries or territories for the purposes of Section 426 are members of the Commonwealth. They do not include Russia. Accordingly Section 426 is inapplicable in the instant case. I have set it out in detail, however, because it, and its statutory predecessors, are relevant to some of the key authorities to which I was referred.

The bases for recognition at Common Law

113. Most of the common law authorities and commentaries to which I was referred do not deal with recognition in quite the same way as the CBIR, which focusses on recognition of the foreign representative or office-holder. Instead, they treat recognition as a question of recognition by the English court of the foreign court order commencing bankruptcy proceedings.

114. So, for example, *Fletcher, The Law of Insolvency* introduces the issue of recognition in the following way,

> "The basic rule of recognition first developed at English law was, characteristically, that a foreign bankruptcy occurring in the jurisdiction in which the debtor was domiciled (in the English sense of that term) would be recognised here as valid. To this narrow, even parochial, basis of recognition, a limited number of further grounds for recognition have been added in decided

> cases, namely that the jurisdiction of the foreign court of bankruptcy will be acknowledged where the debtor himself has submitted thereto, either by presenting his own petition, or by appearing and participating in the foreign proceedings."

115. As indicated above, Mr Bedzhamov is no longer domiciled in Russia, and hence it was common ground that the only relevant jurisdictional basis for recognition would be if Mr. Bedzhamov has submitted to the jurisdiction of the Russian bankruptcy court. Although the question of whether Mr. Bedzhamov had submitted to the jurisdiction of the Russian courts was disputed on the facts, the principle that recognition could be founded upon that basis was not disputed before me.

Submission to the jurisdiction

116. Apart from presentation of a debtor's own bankruptcy petition, the cases illustrating submission in a bankruptcy context are relatively few and far between. In Re Anderson [1911] 1 KB 896, Phillimore J recognised a foreign bankruptcy insofar as it related to movable property where the debtor had become a party to the foreign bankruptcy by appearing at the adjudication of bankruptcy by his solicitor and thereafter applying for and obtaining his discharge from the bankruptcy.

117. Similarly, in Bergerem v Marsh (1921) 6 B & CR 195, a debtor domiciled in England was held to have submitted to the bankruptcy jurisdiction of the Belgian courts by appearing by counsel to appeal against the decree of bankruptcy. The result was that the bankruptcy was recognised in England as having vested the debtor's movable property in England in his Belgian trustee in bankruptcy.

118. In Rubin v Eurofinance SA [2013] 1 AC 236 ("Rubin"), albeit in the context of the question of enforcement of a foreign monetary judgment rather than recognition of a foreign bankruptcy order, Lord Collins summarised the general approach of the English courts to questions of submission as follows at [161]:

> "The characterisation of whether there has been a submission for the purposes of enforcement of foreign judgments in England depends on English law. The court will not simply consider whether the steps taken abroad would have amounted to a submission in English proceedings. The international context requires a broader approach. Nor does it follow from the fact that the foreign court would have regarded steps taken in the foreign proceedings as a submission that the English court will so regard them, Conversely, it does not necessarily follow that because the foreign court would not regard the steps as a submission that they will not be so regarded by the English court as a submission for the purposes of the enforcement of a judgment of the foreign court. The question whether there has been a submission is to be inferred from all the facts."

119. On the facts of the instant case, it is said by the Trustee that Mr Bedzhamov submitted to the jurisdiction of the Russian court having control of his bankruptcy by appearing by Mr Belchich in various hearings before the Moscow City Arbitrazh Court in relation

to the Bank's petition and the VTB 24 petition, together with subsequent matters in the bankruptcy.

120. Mr Bedzhamov denies that this is so, contending that his appearances by Mr Belchich were protected from being regarded as a submission to the jurisdiction of the Russian bankruptcy court by section 33(1) of the Civil Jurisdiction and Judgments Act 1982 ("Section 33"). Section 33 provides that,

> "(1) For the purposes of determining whether a judgments given by a court of an overseas country should be recognised or enforced in England and Wales or Northern Ireland, the person against whom the judgment was given shall not be regarded as having submitted to the jurisdiction of the court by reason only of the fact that he appeared (conditionally or otherwise) in the proceedings for all or any one or more of the following purposes, namely—
>
> (a) to contest the jurisdiction of the court;
>
> (b) to ask the court to dismiss or stay the proceedings on the ground that the dispute in question should be submitted to arbitration or to the determination of the courts of another country;
>
> (c) to protect, or obtain the release of, property seized or threatened with seizure in the proceedings."

121. The evidence of Mr Belchich accepts that he appeared on behalf of Mr Bedzhamov at the hearing on 7 June 2017 before the Moscow City Arbitrazh Court hearing the Bank's application for a bankruptcy order against Mr Bedzhamov. Mr Belchich's evidence is that he did so in order to make a jurisdictional challenge based upon the address at which the petition had been served. Mr Belchich states that he contended that,

> "the relevant court that would have the ability to render a bankruptcy verdict against Mr. Bedzhamov would have been the Arbitrazh (Commercial) Court of the Moscow Region,"

122. Mr Belchich was not successful in that argument, but did successfully resist the Bank's application, on the basis that the underlying judgment was under appeal.

123. Mr Belchich also accepts that he appeared on 20 September 2017 before the same court on VTB24's petition against Mr Bedzhamov, and that he "submitted again that the Commercial Court [of the City of Moscow] lacked jurisdiction to hear the claim". Mr Belchich also contended to the court that Mr Bedzhamov did not provide the guarantee upon which the judgment was based and that the document suggesting otherwise was a forgery.

124. Those arguments were rejected, and Mr Bedzhamov's bankruptcy commenced upon the making of the Debt Restructuring Order. Mr Bedzhamov then appealed against the order raising the same grounds. They were, however, rejected on 8 December 2017, and his appeal was dismissed by the Ninth Commercial Appeal Court. It is not clear

whether Mr Belchich appeared on the appeal, but the court plainly received and considered submissions on behalf of Mr Bedzhamov.

125. On 31 January 2018, the Arbitrazh Court held a hearing to determine whether to accept the Bank's claim based upon the unsatisfied Unjust Enrichment Judgment debt as a claim in Mr Bedzhamov's bankruptcy. Mr Belchich appeared at the hearing before the Arbitrazh Court on that date to raise the same argument as before that the Court lacked jurisdiction to determine the matter. He also argued that the underlying claim by the Bank had been incorrectly decided because Mr Bedzhamov had not (in fact) received the sums he was alleged to have received. Mr Belchich's evidence is that one of the reasons that he challenged the Bank's claim was to defend Mr Bedzhamov's remaining assets in Russia from seizure by the Trustee. However, his arguments were rejected and the Bank's claim was accepted as a claim in the Mr Bedzhamov's bankruptcy.

126. The commentary in *Dicey, Morris & Collins on the Conflict of Laws*, 15th ed ("*Dicey*") on Section 33 includes the following,

> "If a defendant makes an appearance in order to argue that the court seised has no international jurisdiction over him according to its law, the section plainly applies to protect him from the contention that he submitted by appearance. But if he appears to argue that the particular court has no local jurisdiction because the claim exceeds its internal competence, or because the court in a different judicial district alone has jurisdiction, it is less clear that an appearance to make this objection this would be protected by s.33(1)(a). Certainly it was not the problem which was presented by *Henry v Geoprosco International*, and which the section was immediately designed to remedy. It is submitted that if the whole of the relief sought by the defendant from the foreign court is a decision by the court that it has no international jurisdiction, the appearance will be protected from being regarded as a submission by s.33(1)(a); but that a contention that a different court (but in the same country) has jurisdiction is not to be seen as contesting the jurisdiction within the meaning of s.33(1)(a), for it is implicit in the contention that the courts of the country do not lack jurisdiction."
>
> (my emphasis)

127. In my judgment, that analysis precisely applies in the instant case. Mr Belchich's contention during the hearings before the Moscow City Arbitrazh Court which resulted in the making of the Debt Restructuring Order was not a challenge to the international jurisdiction of the Russian courts to commence bankruptcy proceedings in relation to Mr Bedzhamov. Mr Belchich's evidence is that he raised a challenge to the internal jurisdiction of the Moscow City Arbitrazh Court based upon an express contention that,

> "the relevant court that would have the ability to render a bankruptcy verdict against Mr Bedzhamov would have been the Arbitrazh (Commercial) Court of the Moscow Region."

That contention obviously implied an acceptance that the Russian courts did have international bankruptcy jurisdiction over Mr Bedzhamov.

128. Mr Belchich appears to have made the same point when appearing before the Moscow City Arbitrazh Court on 31 January 2018 to contest the admission of the Bank's claim in the bankruptcy.

129. For completeness in that latter respect, I should add that I do not accept that Mr Belchich's voluntary appearance on behalf of Mr Bedzhamov to contest the admission of the Bank's claim in the bankruptcy was prevented from being regarded as a submission to the jurisdiction of the Russian courts by Section 33(1)(c). Although Mr Belchich's contends that he was attempting (in part) "to defend Mr Bedzhamov's remaining assets in Russia from seizure by the Trustee", it is clear that the issue for decision on 31 January 2018 did not relate to the legality or otherwise of any "seizure" by the Trustee of any of Mr Bedzhamov's property. In simple terms, the question before the Court related to the admission of liabilities in the bankruptcy, not to the assets available to the Trustee. That point is reinforced by the fact that, as a matter of Russian law, Mr Bedzhamov's property did not vest in the Trustee until the making of the Bankruptcy Order on 2 July 2018. What Mr Belchich did, by appearing on behalf of Mr Bedzhamov on 31 January 2018, was to take an active part in the conduct of the bankruptcy proceedings by the Moscow City Arbitrazh Court.

130. I accordingly conclude that the appearances of Mr Bedzhamov (through his representative, Mr Belchich) amounted to a submission to the jurisdiction of the Arbitrazh court having control of the bankruptcy proceedings in Russia. In my judgment, these appearances provide the jurisdictional basis for recognition by the English court of the Russian bankruptcy proceedings in relation to Mr Bedzhmov.

131. I next turn to consider whether recognition should nevertheless be refused by reason of some bar to recognition at common law.

Bars to recognition: the law

132. The general principle is that unless a foreign judgment which is final and conclusive on the merits can be impeached on one of a number of well-established grounds, it cannot be re-examined on its merits when it is sought to be recognised and enforced in England: see *Dicey* at Rule 48.

133. In the instant case, three such well-recognised grounds are relied upon by Mr Bedzhamov as bars to recognition of the Bankruptcy Order. They are (i) fraud; (ii) natural justice; and (iii) public policy. The grounds correspond to Rules 50 to 52 in *Dicey*. To some extent the grounds may overlap, and I did not detect any additional grounds upon which Mr Fenwick QC contended that public policy should operate as a bar to recognition in addition to fraud or breach of natural justice. I shall therefore focus on the first two grounds.

(i) Fraud

134. Rule 50 of *Dicey* is in the following terms:

> "Rule 50 – A foreign judgment relied upon as such in proceedings in England, is impeachable for fraud.
>
> Such fraud may be either
>
> (1) fraud on the part of the party in whose favour the judgment is given; or
>
> (2) fraud on the part of the court pronouncing the judgment."

This principle must also apply to a foreign insolvency order: see *Sheldon, Cross Border Insolvency* at [11.6].

135. There is a distinction between the court's approach to allegations of fraud in relation to judgments obtained in this jurisdiction, on the one hand, and foreign jurisdictions, on the other. A party against whom an English judgment has been given may bring an action to set aside that judgment on the ground that it was obtained by fraud, but this is subject to very stringent requirements. The most important requirement is that the claimant must produce evidence which could not, with reasonable diligence, have been produced at the trial in which the judgment was obtained: see *Dicey* at [14-138]. The policy reason for this approach is to preserve the solemnity in judgments.

136. In relation to foreign judgments, however, the approach is different. The distinction was described in the House of Lords decision in Owens Bank Ltd v Bracco [1992] 2 AC 443, per Lord Bridge at p.489C - G:

> "An English judgment, subject to any available appellate procedures, is final and conclusive between the parties as to the issues which it decides. It is in order to preserve this finality that any attempt to reopen litigation, once concluded, even on the ground that the judgment was obtained by fraud, has to be confined with such very restrictive limits. In the decisions in Abouloff v Oppenheimer & Co. and Vadala v Lawes, the common law courts declined to accord the same finality to foreign judgments, but preferred to give primacy to the principle that fraud unravels everything…
>
> I recognise that, as a matter of policy, there may be a very strong case to be made … in favour of according to overseas judgments the same finality as the courts accord to English judgments. But enforcement of overseas judgments is now primarily governed by the statutory codes of 1920 and 1933. Since these cannot be altered except by further legislation, it seems to me out of the question to alter the common law rule by overruling Abouloff v Oppenheimer & Co. and Vadala v Lawes. To do so would produce the absurd result that an overseas judgment creditor, denied statutory enforcement on the ground that he had obtained his judgment by fraud, could succeed in a common law action to enforce his judgment because the evidence on which the judgment debtor relied did not satisfy the English rule. Accordingly, the whole field is effectively governed by statute

> and, if the law is now in need of reform, it is for the legislature, not the judiciary, to effect it".

137. Further, unlike the principle that applies to domestic judgments, the mere fact that the alleged fraud has been raised before the foreign court (and rejected by it) will not necessarily preclude the English court from reconsidering the matter: see Jet Holdings Inc v Patel [1990] 1 QB 335, per Staughton LJ at p.344:

> "Where the objection to enforcement is based on jurisdiction – that is rule 43 [of Dicey] – it is to my mind plain that the foreign court's decision on its own jurisdiction is neither conclusive nor relevant. If the foreign court had no jurisdiction in the eyes of English law, any conclusion it may have reached as to its own jurisdiction is of no value. To put it bluntly, if not vulgarly, the foreign court cannot haul itself up by its own bootstraps. Logically, the same reasoning must apply where enforcement is resisted on the ground of fraud – rule 44. If the rule is that a foreign judgment obtained by fraud is not enforceable, it cannot matter that in the view of the foreign court there was no fraud."

138. Fraud will generally connote some grave wrongdoing by a party in the foreign court, such as concealing relevant evidence or bribing court officials: see *Sheldon, Cross Border Insolvency* at [11.8].

(ii) Natural justice

139. A foreign judgment is impeachable on the grounds that the proceedings in which judgment was obtained were contrary to natural justice: see Rule 52 of Dicey.

140. Two important elements of natural justice are that the defendant has been given notice of the proceedings against him and that he has been given the opportunity to participate: see Jacobson v Frachon (1927) 138 L.T. 386 (CA), per Atkin LJ:

> "Those principles seem to me to involve this, first of all that the court being a court of competent jurisdiction, has given notice to the litigant that they are about to proceed to determine the rights between him and the other litigant; the other is that having given him that notice, it does afford him an opportunity of substantially presenting his case before the court".

141. However, it is not a breach of natural justice if a debtor receives notice but chooses not to participate in the proceedings. Furthermore, there may be circumstances in which a debtor removes himself from the jurisdiction of the foreign court, thereby preventing the foreign court from giving the debtor actual notice of the proceedings: see, e.g. Strike v Gleich (1879) OB & F 50, at 60. In that case the New Zealand Court of Appeal recognised a South African insolvency notwithstanding that the debtor had fled South Africa and thus had not received notice of, nor participated in, the South African proceedings.

142. In Bergerem v Marsh, (to which I have referred), Bailhache J considered whether the principles of natural justice had been followed in connection with an application for

recognition of a foreign insolvency. The defendant had been a partner in a Belgian firm which was declared bankrupt, along with the defendant personally, by the Belgian court acting of its own motion. The defendant received notice of the determination and pursued an unsuccessful appeal before the Belgian courts. The bankruptcy was recognised in England. Bailhache J said that:

> "the decree is more in the nature of ex parte proceedings, and that great care is taken that the person affected shall have full notice of the proceedings. Although this is a different method from ours it does not seem so contrary to natural justice that I ought to refuse to recognise it as a valid method of procedure. Notice was duly served on the defendant and he instructed counsel on his behalf to oppose the decree".

143. The comments of Staughton LJ in Jet Holdings Inc v Patel, quoted above, suggest that (as is the case with an objection on the ground of fraud) the fact that an objection could, or indeed was, taken before the foreign court does not necessarily preclude an English court from considering whether the foreign proceedings were in breach of natural justice.

Public policy

144. A foreign judgment is impeachable on the ground that its recognition or enforcement would be contrary to the public policy of the forum: see Rule 51 of *Dicey*.

145. The threshold to establish that a judgment is contrary to public policy is high. In Re a Debtor, ex p Viscount of Royal Court of Jersey [1980] 3 All EW 665, Goulding J (citing Farwell J in Re Osborn [1931-32] B & CR 189 and Lord Lowry in Re Jackson [1973] NI 67), said that:

> "the court might have to refuse aid if it were proved that the anterior proceedings were hopelessly bad under their own proper law, or that they offended against some over-riding principle of English public policy".

146. Mr Davies QC submitted that this ground of opposition at common law has the following key features which, taken together, mean that it should be interpreted restrictively:

i) The doctrine will only be invoked in the clearest of cases.

ii) The foreign insolvency, or more likely its consequences, must be manifestly offensive to some basic, fundamental principle of morality or justice.

iii) The doctrine is only a last resort, to avoid otherwise unavoidable and gross injustice.

147. I accept that these principles reflect the correct approach, and that the public policy exception should be interpreted restrictively.

Application of these principles in a bankruptcy

148. In seeking to apply these principles to the Russian bankruptcy proceedings, Mr Fenwick QC contended that this court should deny recognition either (i) because the debt upon which the bankruptcy petition which led to the Bankruptcy Order was founded (i.e. the VTB 24 Judgment Debt) was based upon fraud, a breach of natural justice or was contrary to public policy; or (ii) because the great majority by value of debts of the creditors who were claiming in the Russian bankruptcy (i.e. the Bank in respect of its Unjust Enrichment Judgment) could be impugned on such grounds.

149. The basis for Mr Fenwick QC's first submission would appear to treat the bankruptcy proceedings as a continuation of legal process by VTB 24 which would be undermined if the judgment debt upon which the bankruptcy was founded was tainted by fraud, a breach of natural justice or was contrary to public policy. The basis for the second submission was that when questions of fraud, breach of natural justice or public policy are involved, the court should take a broad approach and "look through" the Russian bankruptcy proceedings to see for whose benefit the Trustee is really acting.

150. In the latter regard, Mr Fenwick QC referred to Peter Buchanan Ltd v McVey [1955] AC 516. That was in fact a decision of the Supreme Court of Eire, but it was explained and referred to with approval in Government of India v Taylor [1955] AC 491, both directly by Lord Keith and in passing by Viscount Simonds, with whom the other members of the House of Lords agreed.

151. In Government of India the House of Lords held that the Government of India could not prove in the liquidation of an English company for a debt which it owed in respect of Indian income tax. The reasons for the decision were (i) that, as a matter of public policy, a claim for foreign income tax was not enforceable in England, and (ii) that as a matter of interpretation of the relevant insolvency legislation, this meant that such a claim was not a "liability" which the liquidator was required to admit to proof and pay in the liquidation.

152. However, Lord Keith also referred to the decision in Peter Buchanan as an illustration of a wider proposition that a foreign revenue claim could not be indirectly enforced in England. He summarised the facts and the decision as follows,

> "The plaintiff company was a company registered in Scotland which had been put into liquidation by the revenue authorities in Scotland under a compulsory winding-up order in respect of a very large claim for excess profits tax and income tax. The liquidator was really a nominee of the revenue. The defendant held 99 one pound shares of the capital of the company and the remaining share was held by a confidential cashier and bookkeeper as trustee for him. These two sole shareholders were also sole directors. The defendant having realized the whole assets of the company in his capacity as a director and having satisfied substantially the whole of the company's indebtedness, other than that due to the revenue, by a variety of devices had the balance transferred to himself to his credit with an Irish bank and decamped to Ireland. The action was in form an action to recover this balance from the defendant at the instance of the company

> directed by the liquidator. The first answer of the defendant was that, as he had received the money from the company in his capacity as a shareholder in pursuance of an agreement between all the corporators, the company could not now ask to have it back. The judge held that the transaction was a dishonest transaction designed to defeat the claim of the revenue in Scotland as a creditor and was ultra vires of the company and accordingly rejected the defendant's submission. On the other hand, he held that although the action was in form an action by the company to recover these assets *it was in substance an attempt to enforce indirectly a claim to tax by the revenue authorities of another State*. He accordingly dismissed the action."
>
> (my emphasis)

153. The proposition that where public policy is concerned, the court should look to the substance of the situation and not legal form or technicalities appears most clearly from the first instance judgment of Kingsmill Moore J in Peter Buchanan. The judge first set out the importance of the principle that an Irish court would not enforce a foreign revenue claim and then continued,

> "If I am right in attributing such importance to the principle, then it is clear that its enforcement must not depend merely on the form in which the claim is made. It is not a question whether the plaintiff is a foreign State or the representative of a foreign State or its revenue authority. In every case the substance of the claim must be scrutinized, and if it then appears that it is really a suit brought for the purpose of collecting the debts of a foreign revenue it must be rejected."

154. I accept that where questions of public policy are concerned, the court should look to the substance and not the legal form. However, when seeking to apply that principle to recognition of a foreign bankruptcy in a case in which it is asserted that one or more of the debts established in that bankruptcy have been obtained or are being maintained by fraud, it is important to understand the rather unusual facts upon which the decision in Peter Buchanan was based. They appear from the final paragraph of the judgment of Kingsmill Moore J,

> "I hold as a fact - and, indeed, I understand it to be admitted - that the sole object of the liquidation proceedings in Scotland was to collect a revenue debt. There is no evidence that any ordinary creditor would not have been paid in full out of the assets left in Scotland, and as far as ordinary creditors are concerned the result of the liquidation proceedings in Scotland would be to deprive them of payment by reason of the priority in Scotland of a revenue debt. I hold that the sole object of the present proceedings before me is also to collect a Scottish revenue debt, and that if I were to decide for the plaintiff the only result of those proceedings would be that every penny recovered after paying certain costs and liquidator's remuneration could be

> claimed by the Scottish Revenue. That, in my opinion, is the substance of the suit - to collect the revenue claim of a foreign State. Being of this opinion, I reject the claim."

The liquidation was thus seen to be being conducted for the sole benefit of the Scottish revenue, and it was this fact that led Lord Keith in Government of India to describe the liquidator as "really a nominee of the revenue".

155. I do not consider that Peter Buchanan can be taken as authority for the proposition that it will be a bar to the recognition of a foreign insolvency that one of the debts which has been established in the foreign insolvency would be unenforceable in England because it is a foreign revenue debt. That would have the effect that recognition would be denied to most foreign insolvencies which permitted revenue debts to be claimed in the insolvency under their own law.

156. Nor, by parity of reasoning, can it be a bar to recognition that one of the debts established in the insolvency has been obtained by what would, in the eyes of the English court, be a fraud. Indeed, that point highlights one of the difficulties of applying Mr Fenwick QC's approach as a jurisdictional bar to recognition. If a foreign bankruptcy order has been obtained on the basis of a regular judgment at the behest of a genuine creditor whose claim cannot be impugned, recognition of that bankruptcy order could not be refused on grounds of fraud. Why then, should recognition of the bankruptcy subsequently be refused because another creditor, whose debt is said to be tainted by fraud, is later admitted to participate in the bankruptcy?

Bars to recognition: the facts

157. As I have said, in the instant case, there are three known creditor claims which have been accepted in Mr Bedzhamov's bankruptcy, namely, the VTB 24 Judgment debt (upon the basis of which the Debt Restructuring Order was made); the Bank's Unjust Enrichment Judgment debt (which is by far the largest debt admitted in the bankruptcy); and a Russian revenue claim (which is, by comparison to the other two, of negligible amount).

The VTB 24 Judgment Debt

158. Mr Bedzhamov's written submissions did not suggest, in terms, that recognition should be denied due to any fraud or other impropriety on the part of VTB 24 in procuring that judgment. However, in oral submissions, Mr Fenwick QC did seek to make this argument.

159. I have set out above that the VTB 24 Judgment is based on a claim against a personal guarantee purportedly given by Mr Bedzhamov as security for a loan made to his sister, Ms Markus.

160. Mr Fenwick QC submitted that the personal guarantee was fraudulent on the basis that it contained a forged signature of Mr Bedzhamov. This submission was based upon the following evidence:

i) a comment in the evidence of Mr Belchich that, at a hearing on 20 September 2017 to consider the petition by VTB 24 to declare Mr Bedzhamov bankrupt, Mr Belchich,

> "stated [that Mr Bedzhamov] did not provide a personal guarantee to VTB24 in respect of the loan agreement between VTB24 and [Ms Markus] and the document suggesting otherwise was a forgery … Whilst [Mr Bedzhamov] accepts pledging his assets as security for the VTB24 loan to Ms Markus, he denies that he provided a personal guarantee in favour of VTB24 in respect of this loan. I should note that under Russian law a pledge and a personal guarantee are two distinct forms of security";

ii) an English translation of an expert report in separate proceedings between the Bank and a Mrs Zolotova, Mr Bedzhamov's partner, in connection with certain loan agreements. The expert concluded in those proceedings that the signatures on the loan agreements were not made by Mrs Zolotova, but by another person by copying; and

iii) a further set of proceedings, again involving the Bank and an unrelated third party, a Ms Panina, in which Ms Panina obtained a declaration that a loan agreement purportedly made by her with the Bank was invalid, again on the basis of expert evidence suggesting the signature purportedly made by her was in fact forged.

161. The second and third matters are, in my judgment, unpersuasive. They relate to entirely separate proceedings which were on their face between the Bank and other parties, neither of whom (as far as it is possible to tell) have anything whatsoever to do with the proceedings by VTB 24 which led to the VTB 24 Judgment. That does not, in my judgment, provide even an arguable basis on which to impeach the VTB 24 Judgment as having been obtained by fraud, much less does it establish such fraud to the requisite standard.

162. As to the first matter which does at least concern Mr Bedzhamov and VTB 24, Mr Belchich's evidence was merely to repeat an allegation that had been made and rejected by the Russian court. I bear in mind the authorities I have cited above to the effect that the mere fact that allegations of fraud have been made to (and rejected by) a foreign court is not, in and of itself, necessarily a sufficient ground on which to conclude that there was no fraud. However, Mr Belchich did not offer any substantial evidence of the forgery of the personal guarantee for which Mr Bedzhamov contends.

163. Indeed, by the end of the second day of the three-day hearing before me, no direct evidence from Mr Bedzhamov on this matter had been adduced at all. After I drew attention to this, I was shown a witness statement from Mr Bedzhamov which had been prepared overnight, together with a further witness statement from Mr Belchich.

164. In his statement, Mr Bedzhamov said that that the guarantee on which the VTB 24 debt was based was not signed by him but that, for a combination of medical reasons and fear of detention and/or imprisonment if he returns, he has been unable to go to Russia to vindicate his defence in this respect by having his signature examined in person. Mr

Bedzhamov also stated that, due to lack of funds, he has been unable to obtain an expert report opining on the authenticity of the signature but that, in his view, it is clear on their face that the signatures on the guarantee were not made by him. Mr Belchich's evidence was to much the same effect.

165. I do not accept that Mr Bedzhamov's evidence is sufficiently strong to demonstrate that any of the bars to common law recognition apply. I also do not accept that the question of recognition should be adjourned to await the outcome of the trial in the UK Proceedings at which (it was asserted by Mr Fenwick QC) these issues would be ventilated in evidence. This is for the following reasons.

166. First, as matters stand today, there is an unsatisfied judgment debt against Mr Bedzhamov which has not been overturned on appeal. The VTB 24 Judgment debt is the basis of the orders made against Mr Bedzhamov in the Russian bankruptcy proceedings. The bankruptcy petition of VTB 24 based upon that debt was accepted as reasonable by the Arbitrazh Court and that decision has not been overturned on appeal.

167. I accept that the fact that Mr Bedzhamov has been unable to establish fraud or breach of natural justice in Russia is not dispositive in this jurisdiction. However, I have no reason to conclude that the conduct of proceedings in Russia is *per se* contrary to natural justice, or that decisions of Russian courts are inherently unreliable. Indeed, that argument was not made by the parties in these proceedings. Accordingly, although foreign judgments are not afforded the same finality as domestic judgments, it seems to me that the various unsuccessful challenges made by Mr Bedzhamov in Russia are at least an appropriate starting point, and a relevant factor, when assessing the allegations he now makes about the VTB 24 judgment debt.

168. Second, and equally importantly, I consider that the evidence which was adduced before me to impeach the VTB 24 Judgment debt is insufficient to establish fraud on the balance of probabilities. It will be recalled that Mr Bedzhamov does not deny that he mortgaged three properties to secure his sister's loan agreement with VTB 24. Although I accept that a mortgage and a personal guarantee are different legal documents giving rise to different legal relationships, there is nothing inherently unusual in a person who charges property to support a loan to a third party borrower also providing a personal guarantee. Nor does Mr Bedzhamov explain why he would not have been willing to provide such guarantee in addition to providing mortgage security for the loan to his sister.

169. Mr Bedzhamov also does not offer any real explanation as to why or how his signature on the guarantee might have been forged (presumably with the connivance of VTB 24) other than to assert that it is part of the campaign against him and his family by the DIA, and to suggest that it was used by the DIA as a back-up to the Bank's petition since the Bank's Unjust Enrichment Claim was under appeal.

170. Third, although Mr Bedzhamov contends that it is "clear on its face" that the signature on the personal guarantee is "markedly different" from his authentic signatures from the time, I do not agree. Mr Bedzhamov has produced two personal guarantees executed at about the same time as the alleged personal guarantee in favour of VTB24. My (inexpert) eye cannot detect that the short-hand/initials on those documents are obviously in different hands.

171. In that regard, Mr Bedzhamov also contends that I should place no weight on the fact that he has been unable to produce an expert report opining on the validity of his signature. He attributes the lack of such a report to a lack of funds, but gives no explanation for that. That is surprising, since the VTB 24 Judgment was given in December 2016, almost two and a half years before the WFO. At that time it must have been apparent to Mr Bedzhamov (or his advisers), that if he had not signed the personal guarantee, he needed to obtain expert evidence to support that contention. This was also a time at which, as described in the Court of Appeal judgment to which I have referred, Mr Bedzhamov had no restrictions on his expenditure and, by all accounts lived a lavish lifestyle, spending sums which would have been more than adequate to pay for a report from a handwriting expert.

172. Mr Belchich's evidence is that the Russian court hearing VTB 24's claim in 2016 required Mr Bedzhamov to attend in person to have his signature examined. Mr Belchich and Mr Bedzhamov say that Mr Bedzhamov was (and is) unable to do so for fear of detention and imprisonment (and the consequences for his health) if he returned to Russia. Whether Mr Bedzhamov's fears of the consequences of returning to Russia are well founded, and indeed whether the criminal proceedings against him which give rise to such fear are, or are not, well-founded, are matters which I cannot possibly determine on this application. But whatever the position in that regard, it does not explain why no expert evidence has been provided to this court to support Mr Bedzhamov's contentions, especially given the extensive other evidence produced in the UK Proceedings.

173. I also cannot accept that the VTB 24 Judgment is impeachable on the ground that it is contrary to natural justice because Mr Bedzhamov has not had an opportunity to challenge the claim properly. I have identified above two critical components of natural justice, namely, that a person who is the subject of proceedings is given notice of them and the opportunity to participate in them. On the facts of this case, it is clear that Mr Bedzhamov has had both notice of, and the opportunity to participate in, the proceedings in Russia.

174. The VTB 24 Judgment was handed down on 22 December 2016. The decision of the court in that case makes it plain that Mr Belchich appeared and made submissions on behalf of Mr Bedzhamov. Similarly, Mr Belchich appeared the hearing before the Arbitrazh Court on 20 September 2017 at which Mr Bedzhamov was made bankrupt on the petition of the VTB 24 based on the unsatisfied judgment debt. He appeared again before the Ninth Commercial Appeal Court on 8 December 2017 to appeal against the bankruptcy.

175. Against those points, the fact that Mr Bedzhamov might have been unable to present handwriting evidence because he felt unable to return to Russia does not come close to establishing that the Russian proceedings were conducted in breach of basic principles of natural justice.

176. I thus conclude that Mr Bedzhamov has not established that recognition of the Bankruptcy Order made on VTB 24's petition should be barred on grounds of fraud or breach of natural justice.

The Bank's Unjust Enrichment Judgment

177. Insofar as they dealt with bars to common law recognition, Mr Bedzhamov's written submissions focused exclusively on the allegation that the Bank had procured the Unjust Enrichment Judgment improperly and that it was being maintained by fraud. As I have said above, the Unjust Enrichment Judgment was obtained by the Bank in August 2016 following an action against Mr Bedzhamov in connection with 42 credit agreements entered into between Mr Bedzhamov and the Bank, by which Mr Bedzhamov was found to have been unjustly enriched through the receipt of funds from the Bank.

178. The premise of Mr Bedzhamov's allegations of impropriety and/or fraud was that the credit agreements on which the action in Russia was founded were largely fictitious. The DIA Report – which it will be recalled was the material which led Mr Bedzhamov to apply to reopen the proceedings some years after judgment against him was entered – was said to demonstrate that approximately two-thirds of the sums claimed by the Bank from Mr Bedzhamov were derived from loans which had not in fact been made. Mr Bedzhamov further contended that the Bank's conduct in continuing to pursue the proceedings after the DIA Report was published fell below the standards of ordinary and honest people. Finally, the suggestion by the Bank's lawyers (Delo) that they had been unaware of the DIA Report at the time of the proceedings (and could not therefore have drawn the attention of the Russian court to its findings) was dismissed by Mr Bedzhamov as "*implausible*" and, in any event, no proper justification.

179. Mr Bedzhamov further submitted that the dismissal of his appeal against the judgment was procedurally irregular and contrary to natural justice. In particular, it was submitted that the appellate court relied in reaching its decision on documents handed up by the Bank's lawyers which Mr Belchich was not permitted to see.

180. All of these allegations were rejected by the Trustee, who submitted in response that: (i) the judgment against Mr Bedzhamov was based on voluminous supporting documentation; (ii) Mr Bedzhamov is seeking to relitigate before this court arguments that have been rejected by several Russian courts; (iii) there is no good reason to believe that the Russian appellate court had relied on new evidence which Mr Belchich was not permitted to see in reaching its decision to uphold the judgment against Mr Bedzhamov; (iv) the evidential status and significance of the DIA Report has been considered by three Russian courts, all of which have rejected Mr Bedzhamov's attempts to overturn the judgment against him based on the evidence in that report; (v) in any event, to engage the fraud or natural justice bar to common law recognition, the relevant order or judgment must be the one that commences the foreign insolvency proceedings.

181. In my judgment, it is unnecessary to explore the complex details of the allegations and counter-allegations in respect of the Unjust Enrichment Judgment. That is because even if Mr Bedzhamov could arguably impeach the Unjust Enrichment Judgment on the grounds of fraud, breach of natural justice or otherwise, I do not think that would operate as a bar to the English court recognising the Russian bankruptcy.

182. This is essentially for three reasons. The first is that because, as I have said, the petition upon which Mr Bedzhamov was declared bankrupt was not based on the unsatisfied Unjust Enrichment Judgment debt – it was based upon the unsatisfied VTB 24 Judgment debt.

183. Second, although the claim of the Bank in Mr Bedzhamov's bankruptcy greatly outweighs that of VTB 24, I do not consider that I should simply ignore the fact that the bankruptcy is also being conducted for the benefit of VTB 24 in respect of its judgment debt. This is, in short, not a case like Peter Buchanan in which it was accepted that the sole purpose of the foreign insolvency was to achieve repayment of a single debt owed to the Scottish revenue, which was unenforceable as a matter of public policy in Eire.

184. Third, although there are, as I have indicated, some aspects of the Trustee's evidence as to her knowledge, motivations and independence that have been questioned by Mr Bedzhamov, I simply do not have a sufficient evidential basis (particularly without cross-examination) to conclude that the Trustee is (to use the expression of Lord Keith in Government of India) simply acting as a nominee for the Bank (or A1 or the DIA) and hence could be said to be tainted by any of the factors which are said to taint the Bank's Unjust Enrichment Judgment.

Conclusion on recognition

185. I therefore conclude that the Bankruptcy Order made in Russia against Mr Bedzhamov should be recognised in this jurisdiction – at least to the extent that the English court should acknowledge its existence and the status of the Trustee. However, the consequences and effect of such recognition were very much the matter of dispute between the parties, and it is to those matters that I now turn.

The effects of recognition

Moveable property

186. The approach that English common law took to the effect of recognition of a foreign bankruptcy proceeding upon a bankrupt's moveable property is expressed in the ancient maxim *mobilia sequuntur personam*: see Freke v Lord Carbery (1873) LR 16 Ew 461 at 466 per Lord Selborne LC:

> "When 'mobilia' are in places other than that of the person to whom they belong their accidental situs is disregarded and they are held to go with the person".

187. The origins of the legal fiction embodied in the maxim can be traced to the Middle Ages, when moveable property consisted chiefly of items which could be easily carried by the owner from place to place or secreted in places known only to himself: see Pullman's Palace Car Co. v Pennsylvania, 141 US. 18 (1891), per Justice Gray. The scope of the maxim has receded in modern times, commensurate with the increase and variety of personal property belonging to individuals, but it provides a useful basis on which to understand the consequences of recognition on a bankrupt's moveable property.

188. Those consequences are described in Rule 216 of *Dicey* at [31R-072]:

> "an assignment of a bankrupt's property to the representative of his creditors under the bankruptcy law of any other foreign country whose courts have jurisdiction over him … is, or

> operates as, an assignment of the movables of the bankrupt situate in England".

189. To similar effect is *Fletcher, The Law of Insolvency* at [29-057],

> "In the case of movables, English law has for well over two centuries maintained the principle that any of the bankrupt's movable assets which are situate within the jurisdiction of the English court automatically vest in the foreign trustee in bankruptcy (or equivalent) from the moment of adjudication."

190. The principle expressed in these texts can be seen in a number of cases. In Re Anderson, (referred to above), a dispute arose between the official assignee of an earlier bankruptcy in New Zealand and the trustee in bankruptcy of a later bankruptcy in England over the entitlement to the reversionary interest in personalty of the debtor in England. Phillimore J proceeded on the basis that the debtor was domiciled in England, but accepted that New Zealand trustee's argument that the maxim *mobilia sequuntur personam* applied to the case, saying at 902:

> "In the present case, if the New Zealand bankruptcy passed as against the debtor all his movable property wherever situate, it passed it equally against all persons claiming under later titles from him, such as an executor, an incumbrancer, an assignee for value, or even an official trustee or assignee in bankruptcy. Therefore this equitable reversion with which I have to deal had ceased to be the bankrupt's, and was no longer part of his assets when the second bankruptcy supervened. Therefore it did not pass to the trustee in the second bankruptcy".

191. In Bergerem v Marsh (see above), Bailhache J heard an action brought in England by the Belgian trustee in bankruptcy of a defendant domiciled in England. The defendant was a member of a Belgian partnership whose members had been declared bankrupt in the Belgian courts. Having concluded that the proceedings in Belgium were not contrary to natural justice, at page 197, Bailhache J went on to consider the effect of the Belgian bankruptcy order by reference to a line of cases (including Re Anderson):

> "On the second question whether the order vested in the trustee the defendant's moveable property in this country, his counsel cited the cases of Blithman, In Re; Anderson, In re; and Craig, In re; and counsel for the plaintiff has referred to Burke, In re; King v Terry. The three most recent decisions all agree that, under circumstances like this, the decree of a Court such as this does vest the personal property of a debtor, wherever that personal property may happen to be, and is not confined to personal property in the country in which the decree was made … I hold that the moveable property of the defendant in this country vests … in the Belgian Trustee in Bankruptcy, and that a receiver must be appointed to protect the property until an ultimate decision is arrived at."

192. It is apparent from the foregoing that the general rule is that the effect of recognition of a foreign bankruptcy is *automatically* to treat the bankrupt's moveable property as having vested in the foreign trustee from the date of the bankruptcy order. That effect does not appear to be contingent upon the court granting any further assistance to the foreign insolvency office-holder – it is a legal consequence of recognition.

193. The general rule is subject to certain exceptions. First, the assignment only takes place if, under the law of the foreign bankruptcy, provision is made for the extraterritorial effect of the bankruptcy. Second, the property in England passes subject to any existing charges upon it recognised in England: see *Dicey* at [31.075] – [31.076].

194. These basic principles were not in dispute between the parties and the consequences of recognition for moveable property therefore appears to be common ground: if and to the extent Mr Bedzhamov has any moveable property situated in England, the consequence of granting recognition to the Trustee will be automatically to recognise that she is the owner of, and entitled to, Mr Bedzhamov's moveable property in England. The dispute between the parties did not, however, concern movable property. It concerned immovable property (and in particular the Belgrave Square Property). It is to that matter that I now turn.

Immovable property: the authorities

195. It was common ground between the parties that the position in relation to immovable property following recognition of a foreign bankruptcy is different to that in relation to moveable property. However, the precise nature of the difference was a matter of considerable dispute.

196. Mr Davies QC and Mr Willson on behalf of the Trustee submitted that the Trustee's rights to the Belgrave Square Property derived from the rights created by the Russian Bankruptcy Order, and that following recognition of that order, the only real difference between the position in relation to moveable and immovable property in England resulted from the particular nature of registered title to immovable property:

> "In relation to English immovable property, the position is different [from the position in relation to movable property] due to the systems of registration for passing title in the lex situs. The foreign bankruptcy order cannot bypass those local systems for effecting transfers under the lex situs. But, as recognised in the English bankruptcy cases relating to foreign immovables … this does not affect the automatic vesting, only the perfecting of title."

197. Mr Davies QC contended that the English court had, pursuant to the principles of "modified universalism" in relation to international insolvency proceedings, a common law power and discretion "actively" to assist foreign insolvency proceedings. He contended that this extended to ordering immovable assets to be vested in or transferred to the foreign office-holder, or sold by a receiver appointed by the court on the basis that the proceeds would be remitted to be dealt with in the foreign insolvency.

198. Mr Fenwick QC and Mr Robins rejected that thesis, and submitted that the rule was that:

> "Where a foreign court makes a bankruptcy order which is said to have the effect of transferring the bankrupt's immoveable property in England to the foreign trustee in bankruptcy, the English court will not recognise or give effect to that transfer."

199. Although Mr Fenwick QC and Mr Robins accepted that the English court could grant assistance to a foreign trustee in relation to a bankruptcy which it had recognised, they contended that the forms of assistance available at common law were strictly limited, and could not extend to making an order that would deprive the debtor of his immovable property located in the UK by vesting it in, or ordering it to be sold for the benefit of the foreign trustee. They contended that any cases that suggested that such assistance could be given were actually explicable on the basis that there was a statutory power for the giving of such assistance which was not present in the instant case; and that following the rejection in subsequent cases of Lord Hoffmann's wider approach in Cambridge Gas v Navigator Holdings [2007] 1 AC 508 ("Cambridge Gas") there was no precedent for such assistance to be given at common law.

200. Before turning to the relevant cases, I should first note the approach taken in the leading textbooks.

201. *Fletcher, The Law of Insolvency* (5th ed) states, at [29-060]:

> "In the case of English immovable property belonging to a debtor adjudicated in any foreign country apart from Scotland or Northern Ireland, the established rule at English law is that such a bankruptcy is not of itself capable of effecting a transfer of title to the property in question … However, in practice the English courts are likely to afford a foreign trustee a considerable degree of assistance in taking steps to obtain a vesting order in his favour, or to procure the formal conveyance to himself of the bankrupt's English immovable property. Indeed, the English court may empower the trustee to effect a sale of such property by formally appointing him a receiver of the bankrupt's property here, clothed with a power to sell the same and to deal with the proceeds in accordance with the provisions of the *lex concursus*."

202. The cases cited as authority for this analysis are Re Levy's Trusts (1885) 30 Ch D 119 ("Re Levy's Trusts"), Re Kooperman (1928) 13 B&CR 49 ("Re Kooperman"), and Re Osborn (1931-32) 15 B&CR 189 ("Re Osborn").

203. Likewise, *Sheldon, Cross Border Insolvency* (4th ed) states, at [10.9],

> "A foreign bankruptcy confers upon the foreign trustee no title to immovables in England … But the English court may appoint the foreign trustee as receiver with authority to sell land in England and, after satisfaction of mortgages or charges, the proceeds of sale may be remitted to the jurisdiction of the foreign insolvency."

204. Again, reference is made to Re Kooperman and Re Osborn.

205. Rule 217 of *Dicey* at [31R-081] also cites Re Levy's Trusts, Re Kooperman and Re Osborn for the following propositions,

> "an assignment of a bankrupt's property to the representative of his creditors, under the bankruptcy law of any foreign country, other than Scotland or Northern Ireland, is not, and does not operate as, an assignment of any immovables of the bankrupt situate in England. But in a proper case the English court may authorise the appointment of a receiver of the rents and profits of such immovables."

206. That rule is explained in the text as follows:

> "According to Rule 217, no assignment of a bankrupt's property under the bankruptcy law of a foreign country operates as an assignment of the bankrupt's immovables in England, or has any effect upon title to them, unless the bankruptcy takes place in Scotland or Northern Ireland.
>
> A foreign trustee who would otherwise be met by the obstacle contained in this Rule may be able to mitigate its effect if the English court, in a proper case, is prepared to appoint a receiver of the rents and profits of the immovables. Furthermore, the trustee may be able to invoke the provisions of Section 426 of the Insolvency Act 1986 with a view to achieving the same result."

Re Kooperman is cited as authority for the proposition in the penultimate sentence of the text. Re Levy's Trusts and Re Osborn are cited as authority for the proposition in the last sentence relating to Section 426.

207. Before turning to consider the cases of Re Levy's Trusts, Re Kooperman and Re Osborn, it is first necessary to refer to Waite v Bingley (1882) 21 Ch D 674, which is clear authority for the proposition, endorsed in those later cases, that the making of a foreign bankruptcy order does not vest immovable property in England in the foreign trustee.

208. In Waite, Hall V.C. considered a claim brought by the plaintiffs to certain undivided shares in real property in England formerly belonging to their father. The plaintiffs sought from the court an order for the sale of the property, over the objections of the defendant to the action, in whom certain undivided shares of the same property were vested. Among the grounds on which the defendant objected was that the property in question had not passed to the plaintiffs under their father's will as a result of a sequestration order made against him by the Insolvency Court of Victoria. The defendant argued that the property had therefore been vested in the official assignee in Australia. Hall V.C. rejected this argument at 682:

> "Now, even supposing the statements in the defence to be proved, it seems to me not only that the contention is not made out, but that the contrary is the just conclusion. The just

> conclusion from all that has been stated and explained to me on this head is that although this property in England of the Plaintiffs' father might possibly have been got at by some separate and independent proceeding to be taken in Australia (which of course would not have been allowed unless for good cause), under which the father of the Plaintiffs, if he was alive, might have been called upon to make it over and transfer it to this Australian assignee, no such application ever was made, and the Plaintiffs' father is dead. Under these circumstances I consider that the property did not vest in the assignee under the Australian insolvency, or pass by the transfer from him. It appears to me, therefore, that there is no impediment at all to the Plaintiffs' title by reason of their father's alleged insolvency, and if so, it follows that this property passed by his will, and upon the construction of that will I hold it to be plain that (subject to the life interest of his widow) it passed to his children who survived him".

209. In Re Levy's Trusts, the claimant (L) was entitled under a settlement to the rents and profits from real estate in England for life or until he should become bankrupt. L was adjudicated bankrupt in New South Wales but after his discharge sought an order reappointing trustees of the settled land in England. That order was opposed by the persons interested in the land in remainder, and Kay J held that the life interest had indeed been determined by the bankruptcy in New South Wales.

210. In the course of his judgment, Kay J first observed that the New South Wales statute that purported to vest real estate worldwide in the New South Wales trustee in bankruptcy could not operate in England to vest the life interest in the property in England in such trustee.

211. Kay J then referred to section 74 of the Bankruptcy Act 1869 (a forerunner of Section 426 of the 1986 Act) which gave power to the bankruptcy court in England to act in aid of "every British Court elsewhere having jurisdiction in bankruptcy" by making any order that could have been made either in the foreign jurisdiction or in England. Kay J observed,

> "From the facts before me I am bound to infer that if the Chief Commissioner [in New South Wales], or the person who exercises the functions of what used to be called the official assignee in England, had applied to the Court of Bankruptcy in England for an order in aid of the bankruptcy in [New South Wales], to enable the assignee to receive the rents and profits of the property of which [L] is tenant for life during the rest of the life of [L], that order would have been made as a matter of course. Therefore, on his becoming bankrupt in New South Wales, the real estate in this country became liable at once, or rather would have so become liable if it had belonged to him indefeasibly for his life, to be attached and taken possession of by the proper authority in New South Wales for the purposes of his bankruptcy there. "

212. I accept the submission of Mr. Robins that the basis upon which Kay J thought that assistance could be given to the trustee from New South Wales was that a request might be made under section 74 of the Bankruptcy Act 1869 - the equivalent of Section 426.

213. In Re Kooperman, K was declared bankrupt in Belgium, and his Belgian trustee in bankruptcy applied for an order vesting leasehold property located in England in the trustee, alternatively for an order for appointment of a receiver with power to sell the property. K did not appear at the hearing and counsel for the foreign trustee accepted that the Belgian bankruptcy order could not vest the English property in the trustee.

214. However, counsel then contended that the court should assist a foreign trustee, and Astbury J thereupon simply pronounced that he would make an order appointing the trustee "receiver of the property with authority to sell and retain the proceeds as trustee". No case was cited for the proposition that such order was available to the court, and the brief report contains no indication as to the jurisdictional basis for the order made.

215. Re Kooperman was referred to in Re Osborn. In that case, O was declared bankrupt in the Isle of Man, and her trustee applied under section 122 of the Bankruptcy Act 1914 (a forerunner of Section 426) for declarations that real property in England had vested in the trustee, alternatively for orders vesting the property in the trustee, or appointing the trustee as receiver of such property with power to sell and retain the proceeds for the purposes of the bankruptcy in the Isle of Man.

216. Farwell J refused to make an order declaring that the property had vested in the trustee as a result of the bankruptcy order in the Isle of Man order. He held,

> "In my judgment, the effect of the order made in the Isle of Man does not *ipso facto* vest the assets in this country in the trustee, but if the trustee desires to get those assets vested in him, or to get control over them, his only course is the course which he has adopted in this case of coming to this court and obtaining the aid of this court to enable him to get the control and possession of the assets."

217. In giving assistance to the Isle of Man trustee, Farwell J was prepared to follow the course of appointing a receiver over the immovable property in England. In deciding to do so, he clearly had in mind the procedure adopted in Re Kooperman. However, it is equally clear that Farwell J considered that he was only able to give such assistance because of the terms of section 122 of the Bankruptcy Act 1914. He stated, at page 194,

> "I think it is clear that I am bound in a proper case, under section 122, to assist the court in the Isle of Man in the bankruptcy which is the bankruptcy under that jurisdiction. I think under the section it is plain that this court must give such assistance as it can, but subject, of course, to the considerations which would arise if there was also a bankruptcy in this country, as to the rights of the creditors and other persons in this country. There not being any such conflict, I think this court is bound to give all the assistance that it can. On the other hand, it is, in my

> judgment, a matter of discretion in this court as to what assistance it ought to give in each case, and I think I am therefore certainly entitled to impose conditions in any order which I think it right to make in aid of the bankruptcy in the Isle of Man."

218. Farwell J did not have to consider what (if any) jurisdiction he might have to give such relief in the absence of section 122 of the Bankruptcy Act 1914. It is, however, of some significance that he refused to make an order vesting the real property located in England in the Isle of Man trustee. Farwell J observed, at page 195, that he knew of no jurisdiction enabling him to make such an order, pointing out that although the Bankruptcy Act 1914 automatically vested property in an English trustee, it did not empower the court to vest property in a foreign trustee.

219. Moreover, when Farwell J came to consider the precise form of the relief to be granted, there was a lengthy exchange with counsel in the course of which Farwell J pointed out, at page 197, that he could only appoint the trustee receiver of the rents and profits of the freehold and leasehold property. He reiterated that he could not appoint the receiver as receiver of the property itself or vest the property in the foreign trustee. The order eventually made was as follows,

> "AND THIS COURT DOTH ORDER that the applicant be appointed receiver without security of the rents, profits, and other moneys receivable in respect of the bankrupt's interests in the immovable property situate in England with liberty to sell the same or any part thereof and to receive the proceeds thereof but without prejudice to the rights of any prior incumbrancers."

220. There was little, if any, further analysis or development of these principles over succeeding years. That was referred to by Lord Hoffmann giving the judgment of the Privy Council in Cambridge Gas in 2006. He stated,

> "18. As Professor Fletcher points out (Insolvency in Private International Law, 1st ed (1999), p 93) the common law on cross-border insolvency has for some time been "in a state of arrested development", partly no doubt because in England a good deal of the ground has been occupied by statutory provisions such as section 426 of the Insolvency Act 1986, the European Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ 2000 L160, p 1) and the Cross-Border Insolvency Regulations 2006 (SI 2006/1030), giving effect to the UNCITRAL Model Law. In the present case, however, we are concerned solely with the common law.
>
> 19. The underdeveloped state of the common law means that unifying principles which apply to both personal and corporate insolvency have not been fully worked out. For example, the rule that English moveables vest automatically in a foreign trustee or assignee has so far been limited to cases in which he was appointed by the court of the country in which the bankrupt was domiciled (in the English sense of that term), as in Solomons v Ross, or in which he submitted to the jurisdiction: In re

> Davidson's Settlement Trusts (1873) LR 15 Eq 383. It may be that the criteria for recognition should be wider, but that question does not arise in this case. Submission to the jurisdiction is enough. In the case of immovable property belonging to a foreign bankrupt, there is no automatic vesting but the English court has a discretion to assist the foreign trustee by enabling him to obtain title to or otherwise deal with the property.
>
> 20. Corporate insolvency is different in that, even in the case of moveables, there is no question of recognising a vesting of the company's assets in some other person. They remain the assets of the company. But the underlying principle of universality is of equal application and this is given effect by recognising the person who is empowered under the foreign bankruptcy law to act on behalf of the insolvent company as entitled to do so in England. In addition, as Innes CJ said in the Transvaal case of In re African Farms Ltd [1906] TS 373, 377, in which an English company with assets in the Transvaal had been voluntarily wound up in England, "recognition which carries with it the active assistance of the court". He went on to say that active assistance could include:
>
> > "A declaration, in effect, that the liquidator is entitled to deal with the Transvaal assets in the same way as if they were within the jurisdiction of the English courts, subject only to such conditions as the court may impose for the protection of local creditors, or in recognition of the requirements of our local laws.""

221. In making his comment at paragraph 19 of the judgment in Cambridge Gas that the English court has a discretion to assist the foreign trustee by enabling him to obtain title to or otherwise deal with immovable property, Lord Hoffmann did not refer to any English authority. He did, however, refer in the corporate context to the Transvaal case of African Farms [1906] TS 373 ("African Farms"). In argument he was also referred to the earlier Transvaal case of ex parte Stegmann [1902] TS 40 ("Stegmann").

222. In Stegmann, a trustee in bankruptcy appointed in the Cape Colony applied for an order from the High Court of Transvaal for recognition and an order giving him power to administer the bankrupt's real property in the Transvaal. Innes JP referred to the rules governing movable property, and then continued, at pages 47-48,

> "…immovable property is governed by the lex rei sitae, and … an order of sequestration made by a judge of an insolvent's domicile does not vest in his trustee the right to administer any immovable property located outside the jurisdiction. Such property can only be dealt with by invoking, in some form or other, the authority of the courts of the territory where it is situated."

223. Innes JP then held that to answer the question of whether recognition and assistance should be granted, the court had to look to Roman-Dutch law, since,

> "The English courts would, in all probability, pronounce a negative reply; those courts do not appear to favour co-operation with foreign judges in the sense of enabling their decrees, as such, to have any effect in England. Such co-operation would be opposed to the principle on which alone foreign bankruptcies are recognised in that country … British lawyers never seem to have so much as entertained the question of whether a foreign bankruptcy can operate on immovables."

After a lengthy analysis of Dutch law, Innes JP granted the order sought on the basis of comity.

224. Four years later, in African Farms, Innes CJ (as he had become) explained the basis for the decision in Stegmann when recognising the status of an English voluntary liquidator and declaring him entitled to administer the assets of an English company in the Transvaal, subject to protections for local creditors. The main issue was whether execution by a local creditor against the assets of the company in the Transvaal should be stayed. Innes CJ identified the question as being whether the court could grant recognition which carried with it "the active assistance" of the court, and affirmed that the policy underlying such recognition and assistance was the desirability of preventing local creditors from seizing the property of the company in execution of their own judgments rather than seeing it "duly divided and properly applied in satisfaction of the company's debts" (page 377).

225. Innes CJ stated, at page 378,

> "The recognition which our courts, in common with those of most civilised countries, accord to a foreign trustee in bankruptcy does not depend merely on the doctrine that sequestration duly made in an insolvent's domicile vests in his trustee his movable property wherever situated. In ex parte Stegmann such recognition was extended in respect of immovable property, the *dominium* in which could in no sense be said to have vested in the trustee, on the wider principle that the right of administration conferred upon the trustee by a foreign law might, with propriety, be recognised and enforced by this court on grounds of comity."

226. Mr. Robins submitted that the underlying basis for the decision in Stegmann was Roman-Dutch law rather than the common law of England. He also submitted that to the extent that this approach was adopted in African Farms, the views of Innes CJ to which Lord Hoffmann subsequently referred in Cambridge Gas could not be said to reflect the common law of England (at least as at the date of those two cases in 1902 and 1906). I accept that analysis.

227. The decision in Cambridge Gas was addressed in re HIH Casualty and General Insurance Limited [2008] 1 WLR 852 ("HIH"). The House of Lords held that it was appropriate for the English court to accede to a request under Section 426 from the Australian court conducting the liquidation of an insolvent Australian insurer. The request sought the remittance of funds from the English provisional liquidators to the Australian liquidators, notwithstanding that the regimes for distribution of those funds

differed between England and Australia, such that the outcome for creditors would inevitably differ from that which would have applied if the funds in question were to be distributed according to English law.

228. In his speech, Lord Hoffmann reiterated what he took to be the common law approach of the English courts to international insolvencies and the giving of assistance to foreign proceedings and courts. He indicated,

> "6. Despite the absence of statutory provision, some degree of international co-operation in corporate insolvency had been achieved by judicial practice. This was based upon what English judges have for many years regarded as a general principle of private international law, namely that bankruptcy (whether personal or corporate) should be unitary and universal. There should be a unitary bankruptcy proceeding in the court of the bankrupt's domicile which receives worldwide recognition and it should apply universally to all the bankrupt's assets.
>
> 7. This was very much a principle rather than a rule. It is heavily qualified by exceptions on pragmatic grounds; elsewhere I have described it as an aspiration: see Cambridge Gas, para 17. Professor Jay Westbrook, a distinguished American writer on international insolvency has called it a principle of "modified universalism": see also Fletcher, Insolvency in Private International Law, 2nd ed (2005), pp 15–17. Full universalism can be attained only by international treaty. Nevertheless, even in its modified and pragmatic form, the principle is a potent one."

229. In HIH, all of the judges agreed that Section 426 authorised remittance of funds to be distributed other than in accordance with the English statutory scheme. However, whilst Lords Hoffmann and Walker thought that the order could have been made at common law under the court's inherent power to co-operate with the courts in the country of the principal liquidation, Lords Scott and Neuberger thought that the order could not have been made in the absence of Section 426, and Lord Phillips did not express a view on the point.

230. After Cambridge Gas and HIH, the next, and now leading, English authority on the common law power of the English court to assist a foreign insolvency was the decision of the Supreme Court in Rubin in 2013. In that case, Lord Collins traced the history of cooperation in international bankruptcy and insolvency cases, identifying three statutory bases for cooperation, namely Section 426, the EC Insolvency Regulation and the UNCITRAL Model Law (and CBIR), before turning to the common law. In relation to the common law, Lord Collins observed, at paragraphs 29 – 34,

> "29. … at common law the court has power to recognise and grant assistance to foreign insolvency proceedings. The common law principle is that assistance may be given to foreign office-holders in insolvencies with an international element. The underlying principle has been stated in different ways: "recognition … carries with it the active assistance of the court": In re African Farms Ltd [1906] TS 373 , 377; "This court … will

> do its utmost to co-operate with the US Bankruptcy Court and avoid any action which might disturb the orderly administration of [the company] in Texas under ch 11": Banque Indosuez v Ferromet [1993] BCLC 112, 117.
>
> 30. In Credit Suisse v Cuoghi [1998] QB 818, 827, Millett LJ said:
>
> > "In other areas of law, such as cross-border insolvency, commercial necessity has encouraged national courts to provide assistance to each other without waiting for such co-operation to be sanctioned by international convention … It is becoming widely accepted that comity between the courts of different countries requires mutual respect for the territorial integrity of each other's jurisdiction, but that this should not inhibit a court in one jurisdiction from rendering whatever assistance it properly can to a court in another in respect of assets located or persons resident within the territory of the former."
>
> 31. The common law assistance cases have been concerned with such matters as the vesting of English assets in a foreign office-holder, or the staying of local proceedings, or orders for examination in support of the foreign proceedings, or orders for the remittal of assets to a foreign liquidation, and have involved cases in which the foreign court was a court of competent jurisdiction in the sense that the bankrupt was domiciled in the foreign country or, if a company, was incorporated there.
>
> 32. An early case of recognition was Solomons v Ross 1 H Bl 131n , where, as I have said, the bankruptcy was in Holland, and the bankrupts were Dutch merchants declared bankrupt in Amsterdam, and the Dutch curator was held entitled to recover an English debt: see also Bergerem v Marsh (1921) 6 B&CR 195 (English member of Belgian firm submitted to Belgian bankruptcy proceedings: movable property in England vested in Belgian trustee).
>
> …
>
> 34. Cases involving remittal of assets from England to a foreign office-holder include In re BCCI SA (No.10) [1997] Ch 213 (Luxembourg liquidation of Luxembourg company); and HIH (the view of Lord Hoffmann and Lord Walker of Gestingthorpe) (Australian liquidation of Australian insurance company); and In re SwissAir [2010] BCC 667 (Swiss liquidation of Swiss company)."

231. However, although accepting the common law principle of assistance to foreign insolvency proceedings, the Supreme Court in Rubin held that Cambridge Gas had been wrongly decided. It held that there was no special rule for recognition and enforcement

of judgments in insolvency proceedings, and since the respondent in Cambridge Gas had not submitted to the jurisdiction of the US Bankruptcy Court, the judgment of that court was not binding upon it as regards its property located in the Isle of Man.

232. In the subsequent Privy Council case of Singularis Holdings v PricewaterhouseCoopers [2015] AC 1675 ("Singularis"), Lord Sumption reviewed the common law power of assistance, referring first (at paragraphs 13-14) to African Farms, then (at paragraphs 15-17) to Cambridge Gas and finally to HIH. Lord Sumption identified the three principles for which Cambridge Gas might have been said to be authority, as follows,

> "The first is the principle of modified universalism, namely that the court has a common law power to assist foreign winding up proceedings so far as it properly can. The second is that this includes doing whatever it could properly have done in a domestic insolvency, subject to its own law and public policy. The third (which is implicit) is that this power is itself the source of its jurisdiction over those affected, and that the absence of jurisdiction *in rem* or *in personam* according to ordinary common law principles is irrelevant. "

233. Lord Sumption reaffirmed the view of the Supreme Court in Rubin, that Cambridge Gas had been wrongly decided in so far as the second and third principles were concerned. But at paragraph 18, Lord Sumption endorsed the first principle, namely the existence of the principle of modified universalism and the common law power of the court to assist foreign insolvency proceedings "so far as it properly can". Lord Sumption continued, however, to indicate some limitations on the common law power of assistance,

> "In the Board's opinion, the principle of modified universalism is part of the common law, but it is necessary to bear in mind, first, that it is subject to local law and local public policy and, secondly, that the court can only ever act within the limits of its own statutory and common law powers. What are those limits? In the absence of a relevant statutory power, they must depend on the common law, including any proper development of the common law. The question how far it is appropriate to develop the common law so as to recognise an equivalent power does not admit of a single, universal answer. It depends on the nature of the power that the court is being asked to exercise."

234. Lord Collins (agreeing with Lord Sumption) also expressly affirmed that the decision of the Supreme Court in Rubin was to the effect that the court has a common law power to assist foreign winding up proceedings so far as it properly can. Lord Collins identified the question put before the Privy Council in Singularis as being whether Cambridge Gas correctly decided that the court has a common law power to assist foreign winding up proceedings by exercising powers which are analogous to statutory powers which would have been exercisable in the case of a domestic insolvency, but do not apply to the international insolvency.

235. Lord Collins went on to reiterate his view that Cambridge Gas had been wrongly decided in those respects. He summarised his reasons as follows,

> "38. In my judgment the answer to the present appeal is to be found in the following propositions. First, there is a principle of the common law that the court has the power to recognise and grant assistance to foreign insolvency proceedings. Second, that power is primarily exercised through the existing powers of the court. Third, those powers can be extended or developed from existing powers through the traditional judicial law-making techniques of the common law. Fourth, the very limited application of legislation by analogy does not allow the judiciary to extend the scope of insolvency legislation to cases where it does not apply. Fifth, in consequence, those powers do not extend to the application, by analogy "as if" the foreign insolvency were a domestic insolvency, of statutory powers which do not actually apply in the instant case."

236. Lord Collins expanded upon his view of the ability of a court to give assistance at common law to foreign insolvency proceedings, quoting from his own decision in Rubin and the dictum of Millett LJ in Credit Suisse v Cuoghi. He then suggested that most of the cases fell into two categories: the first being cases where proceedings had been stayed using the common law or procedural powers of the court, and the second being cases where statutory powers had been used in aid of foreign insolvencies.

237. Lord Collins cited African Farms as an example of the first category, but sought to downplay its significance. He did not comment on Stegmann, which was not cited to the Privy Council.

238. In relation to the second category, Lord Collins gave two examples of the application of English statutes to assist foreign insolvencies. The first example was Re BCCI (No.10) [1997] Ch 213 in which the English court conducted a liquidation of the Luxembourg Bank under which assets were remitted to the Luxembourg liquidators for pari passu distribution to creditors worldwide, but subject to retentions to ensure that creditors proving in England were not deprived of the benefit of their statutory rights of insolvency set-off in the English liquidation.

239. The second example was HIH, in which, as Lord Collins pointed out, the majority of the House of Lords based their decision on the fact that a letter of request had been received from the Australian court, bringing into play the power of the English court to assist under Section 426.

240. Importantly, in Singularis, Lord Collins then went on to spell out the limits on the power of the judiciary to develop the common law in this area. He made very clear that the common law did not permit a court to make an order "as if" a statute applied to the situation in hand even though it did not. The tenor of Lord Collins' judgment can be seen from the following paragraphs,

> "82. The liquidators' argument is that the common law rule of assistance in insolvency matters extends to the application of local legislation even though as a matter of its legislative scope it does not apply to the case in hand. In the present case the argument is that, even if section 195 of the [Bermudian] Companies Act 1981 does not apply to foreign companies, it

> should be applied by analogy or "as if" the Cayman Islands company were a Bermuda company.
>
> 83. In my judgment, that argument is not only wrong in principle, but also profoundly contrary to the established relationship between the judiciary and the legislature. To the extent that it depends on some part of the opinion in Cambridge Gas, that decision was not only wrong in its recognition of the New York order regulating the title to Manx shares, as decided in Rubin, it was also wrong to apply the Manx statutory provisions for approval of schemes of arrangement by analogy or "as if" they applied."

Analysis

241. Against this background, it is clear that the English court has a common law power, once it has recognised a foreign insolvency proceeding, to grant assistance to that foreign proceeding and those conducting it. For his part, Mr. Robins did not dispute that general proposition, and did not contend that modified universalism was not part of English common law.

242. However, as I have indicated, I consider that Mr Robins is correct that there is no English case that shows the court making an order at common law vesting immovable property located in England in a foreign trustee or ordering a bankrupt to transfer any such property to a foreign trustee. No such order was made in any of the trilogy of early cases, i.e. Re Levy's Trusts, Re Kooperman or Re Osborn.

243. Moreover, in Re Osborn Farwell J was adamant and explained why a vesting order under the Bankruptcy Act was not available in favour of a foreign trustee as a matter of interpretation of the statute. That reasoning applies with equal force to the Insolvency Act 1986.

244. The comments of Kay J in Re Levy's Trusts to the effect that real estate in England might have become liable to be "attached and taken possession of" by a foreign trustee were plainly *obiter* and were made in the context of an application for assistance from a foreign court under the equivalent of what is now Section 426. Re Osborn is also a case in which, having refused to make an order vesting the property in England in the Isle of Man trustee, Farwell J nonetheless acted pursuant to the equivalent of Section 426 to appoint a receiver of the rents and profits of the immovable property.

245. Accordingly, none of these cases provide any support for proposition that there is a common law power to make an order vesting immovable property in a foreign trustee, or authoring them to sell the property for the benefit of the foreign insolvency.

246. Re Kooperman is the only case in which any order for assistance in relation to immovable property in England has been made in the absence of a statutory power. The order was for the appointment of a receiver of the rents and profits of the property with power to sell the same and remit the proceeds to the foreign trustee. But the decision is unsatisfactory, because there was no contrary argument, and the judgment consists of only one sentence setting out the order to be made but giving no indication of the basis upon which the power to do so was thought to exist.

247. In argument I asked Mr Davies QC what jurisdictional basis existed for the order made in Re Kooperman. Mr Davies QC's answer was that the court has a long-standing equitable jurisdiction to appoint a receiver. He did not, however, take me to any authorities to illustrate the existence of such a power or the circumstances in which such an order had been made at common law.

248. *Snell's Equity* (34th ed) at 19-01 and 19-03 describes the longstanding equitable jurisdiction to appoint a receiver, to which Mr Davies QC referred, as follows,

> "… The remedy is purely equitable in its origin. The common law courts had no power to appoint receivers, but the Judicature Act 1873 enabled all divisions of the High Court to make such an appointment, though this power is exercisable only in accordance with the settled practice of equity. In broad terms, the main function of a receiver is to collect, preserve and apply the income of the property which is subject to his authority, and preserve the outstanding assets…
>
> The court may appoint a receiver at any stage: before proceedings have started; in existing proceedings or on or after judgment. There are two purposes for making such an appointment. First, the court may appoint a receiver as an interim means of preserving property until the rights of those interested in it can be determined … Secondly, where a litigant has obtained judgment, the court will sometimes appoint a receiver as a form of execution."

249. Plainly the power to appoint a receiver as an interim means of preserving property pending the determination of rights would not justify the appointment made in Re Kooperman. As to the power to appoint a receiver by way of equitable execution, *Snell's Equity* summarises the jurisdiction in the following way at 19-26 (citations omitted),

> "A judgment creditor normally obtains satisfaction of his judgment by execution at common law, using the writ of *fieri facias*, attachment of debts and, formerly, in the case of land, the writ of *elegit*. There were cases, however, where the creditor could not levy execution at law owing to the nature of the property, the principal case being where the property was merely equitable, such as an interest under a trust or an equity of redemption. Another example was a covenant of indemnity or other chose in action of which the debtor has the benefit, but which could not be reached by attachment. In order to meet this difficulty, the Court of Chancery evolved a process of execution by way of appointing a receiver of the equitable interest, and if necessary supplemented this by an injunction restraining the judgment debtor from disposing of his interest in the property. This process was not "execution" in the ordinary sense of the word, but a form of equitable relief for cases where execution was not possible. The effect of such an appointment "is that it does not create a charge on the property, but that it

> operates as an injunction against the judgment debtor receiving the income", or dealing with the property to the prejudice of the judgment creditor. The jurisdiction is discretionary, and save in respect of interests in land, will not be exercised unless there is some hindrance or difficulty in using the normal processes of execution. It is not sufficient that appointing a receiver would be more convenient. Although the court's power to appoint receivers is now conferred by statute in general terms, these principles continue to be applied. "

250. A similar paragraph in an earlier edition of *Snell* was approved by the Court of Appeal in Masri v Consolidated Contractors (No.2) [2009] QB 450 ("Masri (No.2)"), which considered the nature of the appointment of a receiver and the scope of the current statutory power to do so contained in section 37(1) of the Senior Courts Act 1981. After quoting the paragraph from *Snell*, Lawrence Collins LJ continued, at [53],

> "53. The authorities bear out the proposition, important in this case, that the appointment does not have a proprietary effect. It has effect as an injunction restraining the judgment debtor from receiving any part of the property which it covers, if that property is not already in his possession, but it does not vest the property in the receiver. As Cotton LJ said in Re Sartoris [1891] 1 Ch 11, 22 (CA): "It operates as an injunction restraining the defendant from getting in money which the receiver is appointed to receive." See also Stevens v Hutchinson [1953] 1 Ch 299, 305. The judgment creditor receives no interest in the received property until it is transferred to him in satisfaction of the judgment debt: Re Potts [1893] 1 QB 648, 661."

251. On the basis of these authorities, it appears clear to me that there is no general power in the court at common law to make an order vesting the Belgrave Square Property in the Trustee, or ordering it to be transferred to the Trustee, or in some way conferring possession and control of the property on the Trustee. If and to the extent that Re Kooperman might be thought to support a wider proposition, I do not regard it as a persuasive authority and I decline to follow it.

252. In my judgment the common law position in this respect is correctly stated in Rule 217 of *Dicey* and the note to it. To the extent that the commentaries in *Fletcher* and *Sheldon* might be thought to state a wider proposition as to the availability of relief, they should be understood to be dealing with the type of orders that might be available in response to a request under Section 426, but not with the relief that is available at common law.

253. Having regard to the warnings given by Lord Collins in Singularis, I would also decline any invitation to extend the common law in the instant case. As I have remarked above, the broad form of "entrustment" relief sought by the Trustee takes the form of the relief that could be granted by the English court if Article 21 of the CBIR was applicable. That Article empowers the court which has recognised a foreign insolvency to entrust the administration or realisation of a debtor's assets located in Great Britain to a foreign representative or some other person. However, as I have explained, the CBIR is not available to the Trustee, because Mr Bedzhamov did not have his COMI or an establishment in Russia at the relevant time. What, in reality, the Trustee therefore

seeks, is an order "by analogy" or "as if" the CBIR did apply to Mr Bedzhamov's bankruptcy, notwithstanding that the express statutory bases for recognition and assistance under the CBIR are not present.

254. In Singularis, Lord Collins recognised that judges can make law "interstitially", e.g. by modest developments filling in gaps in the existing law. But he was clear that judges cannot, under the pretext of extending the common law, apply legislation "by analogy" to situations to which, by its terms, it does not apply. It seems to me that this is precisely what the Trustee seeks by the Recognition Application. Put another way, the availability of relief under Article 21 depends upon the court being satisfied of the conditions for recognition and the grant of such relief as set out in the Article, including, in particular, that the foreign insolvency proceeding should be taking place in the country of the debtor's "centre of main interests" (COMI) or where the debtor had an "establishment" as defined in the CBIR. I do not think that it would simply be filling a gap in that scheme for the court to hold that there was, in fact, a common law power to grant the same relief as would be available under Article 21 in a case in which the specific conditions in the CBIR were not met.

255. Nor is the point a matter of arid technicality. As I have indicated above, the underlying rationale for the principles of modified universalism was explained by Lord Hoffmann in HIH as the view of English judges that as a matter of private international law,

> "6. … bankruptcy (whether personal or corporate) should be unitary and universal. There should be a unitary bankruptcy proceeding in the court of the bankrupt's domicile which receives worldwide recognition and it should apply universally to all the bankrupt's assets."

256. As Lord Hoffmann noted, the basis for identifying the place of the unitary and universal insolvency proceeding to which assistance might be given by the English court had in the past focussed on the place of the debtor's domicile. More recently, the focus in international insolvency, and in particular under the CBIR, has been on the jurisdiction of the debtor's COMI or where the debtor has an establishment. Although submission to a foreign jurisdiction has been accepted as a basis for recognition of foreign insolvency proceedings at common law, it is by no means obvious that primacy should be given to a bankruptcy in a jurisdiction to which the debtor has submitted rather than one in which he is domiciled or in which he has his COMI. Indeed, in the modern international business world it is very possible that a debtor might be held to have submitted to the insolvency jurisdiction of more than one country in which he has done business or entered into contracts, including on a one-off or transitory basis. Hence submission to the jurisdiction may be an unsatisfactory basis for identifying the place of a universal insolvency proceeding to which assistance should be given. If such a development is to take place, it should be the result of intervention by the legislature and not by the courts.

257. In this regard, and to illustrate the point, at the time of his bankruptcy, Russia was neither the place in which Mr Bedzhamov was domiciled, nor the place of his COMI. Instead, it would seem likely on the evidence that Mr Bedzhamov's domicile and COMI was, at the time of appointment of the Trustee, and is now, in England. If, for example, Mr Bedzhamov were to lose the UK Proceedings and be made bankrupt here on the basis of a judgment in favour of the Bank, it is likely that those bankruptcy proceedings

in England (where the largest judgment debt would have been established and where the most significant asset (the Belgrave Square Property) is located), would be regarded by the English court as the principal insolvency proceedings in which assets should be realised and distributions made to creditors, rather than the Russian bankruptcy.

258. For completeness I should add that I do not consider that two further authorities to which Mr Davies QC referred support his contention that there is a common law power to divest Mr Bedzhamov of ownership of the Belgrave Square Property and entrust it to the Trustee.

259. The first such authority was Radich v Bank of New Zealand [2000] BPIR 783. This was an appeal to the Federal Court of Australia from a sequestration order pronounced against the estate of the appellant, Mr Radich, who had lived in New Zealand prior to settling in Australia. Mr Radich was made bankrupt in New Zealand on the application of the respondent bank based upon an unsatisfied judgment debt owed to it. When the respondent bank brought a subsequent petition in Australia to make Mr Radich bankrupt in that jurisdiction, based upon the same judgment debt, Mr Radich objected on the grounds that a further sequestration order would be unnecessary and unjust.

260. The Federal Court considered section 29 of the Australian Bankruptcy Act 1966, which is the equivalent of Section 426 in England. Drummond J said that:

> "But for an Australian bankruptcy court to act under section 29 to give the foreign trustee effective control of the bankrupt's Australian immovables and after-acquired movables, while all the time refusing to recognise the foreign trustee's title to any of that Australian property, does not involve the creation by the Australian court of new rights in the foreign trustee with respect to the bankrupt's property: he already has those rights under the foreign decree when the foreign law operates as a universal assignment to him of all the bankrupt's property, wherever situate (as does the New Zealand bankruptcy law here relevant). All the section gives the foreign trustee is a remedy, which he would not have apart from the section, for enforcing those rights in Australia."

261. If anything, I consider that this analysis supports Mr Robins' contentions rather than Mr Davies QC's. The basis for the order made by the Australian court was the presence of the equivalent of Section 426. Indeed, it is notable that Drummond J expressly referred to that statutory provision enabling the Australian court to give a remedy to the foreign trustee to enforce his rights in Australia, "*which he would not have apart from the section*" (my emphasis).

262. The second authority relied upon by Mr Davies QC was Ashurst v Pollard [2001] Ch 595. The Court of Appeal considered an appeal by a husband and wife from a decision of Jacob J. The couple, domiciled in England, jointly owned a villa in Portugal which was registered in the Portuguese register of titles in their joint names. A bankruptcy order was made in England against the husband, with the result that (as a matter of English law) the husband's interest in the villa was vested in his trustee. The trustee obtained from the county court an order for the sale of the villa. The couple appealed against the order on the ground that, by virtue of article 16(1) of the Convention on

Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters 1968 (the "Convention") (incorporated in the UK by section 2(1) of the Civil Jurisdiction and Judgments Act 1982), the Portuguese courts had exclusive jurisdiction to hear and determine the trustee's claim.

263. Article 16 of the Convention provided,

> "The following courts shall have exclusive jurisdiction, regardless of domicile: (1)(a) in proceedings which have as their object rights in rem in immoveable property … the courts of the contracting state in which the property is situated; (b) [exception in relation to certain tenancies of immoveable property] (2) … (3) In proceedings which have as their object the validity of entries in public registers, the courts of the contracting state in which the register is kept…"

264. Jacob J concluded that the order for sale sought by the trustee purported to have effect against the whole world and, as such, was precluded by article 16(1). However, he found that the case did not turn on the form of relief sought, and that where an English trust exists over land held abroad, the effect of article 16(1) is no bar to enforcement of that trust. He said,

> "There is no doubt that English law regards the Portuguese landholding as vested in the trustee. To the extent that the trustee's title has not been perfected, the bankrupt is, by English law, holding it for the trustee. So the bankrupt can be compelled to complete the trustee's title or do any other act in relation to the land at the trustee's direction. Any such order, provided it is *in personam*, is an order which the English court can make having, as it does, jurisdiction over the bankrupt who is domiciled here."

265. In the Court of Appeal, at paragraph [11], Jonathan Parker LJ accepted that, under section 306 of the Insolvency Act 1986:

> "Mr Pollard's joint ownership interest in the Portuguese property formed part of his estate for bankruptcy purposes and vested automatically in the trustee on his appointment, without the need for any further formalities. However, the vesting provisions of the Act plainly cannot effect a change in the Portuguese register of title, which continues to record Mr and Mrs Pollard as the joint owners of the property".

266. Ashurst v Pollard is, factually, the inverse of the current situation. The observations made in the case reflect the fact that the law of the jurisdiction which has made the bankruptcy order may take the view that such order has worldwide effect and that ownership of immovable assets located abroad vests in the trustee; and such the courts in the place of the bankruptcy can take whatever steps might be open to them to order the bankrupt to comply with his obligations under their bankruptcy law to vest title to such foreign assets in the trustee. But those courts cannot make changes to the position

on the register of title in the foreign country in which the property is situated. That would require assistance from the foreign court.

267. So, in the instant case, the Russian court doubtless views ownership of the Belgrave Square Property as having vested in the Trustee as a matter of Russian law. They might make orders against Mr Bedzhamov requiring him to transfer that property to the Trustee as a matter of Russian law. But they cannot enforce those orders in England against Mr Bedzhamov without the assistance of the English court.

268. Accordingly, I conclude that although the Russian Bankruptcy Order should be recognised here, there is no common law power to "entrust" the Belgrave Square Property to the Trustee. Nor is there a common law power to declare that it has vested in the Trustee or to order it to be transferred to the Trustee or sold by her or anyone else for her benefit.

269. My conclusion on the point of principle as to the (non) availability of an entrustment remedy in respect of the Belgrave Square Property means that I do not have to address any of the discretionary factors that might be relevant to the question of whether any such assistance should be given.

270. I should, however, observe that there would, to my mind, have been significant issues, as a matter of discretion. First, because of the fact that the Russian bankruptcy is not a bankruptcy in the place of Mr Bedzhamov's domicile or COMI; secondly because of the alleged priority position as regards Clement Glory; and thirdly because of the impact of any such relief upon the UK Proceedings, especially in light of the points to which I have alluded above concerning the arrangement that must exist between the Trustee, the Bank and A1 as regards the conduct of the proceedings.

271. As to the third of those points, I can also see considerable force in the submission on behalf of Mr Bedzhamov that if the Trustee stands to benefit from the Bank's continued pursuit of the UK Proceedings, and from the continuation of the WFO, she should not be able to undermine the protections which that order contains for Mr Bedzhamov in terms of being able to use assets covered by it to finance his defence of the UK Proceedings. Such points were very clearly in the mind of Falk J at the hearing on 5 March 2021, and I would respectfully agree with her concerns over them.

The further relief sought

272. As to the further relief sought in the Recognition Application, namely, an order entitling the Trustee to examine Mr Bedzhamov in respect of the Belgrave Square Property and the production of documents in relation to it, I accept Mr. Robins' argument that it would be inappropriate as a matter of discretion to grant that relief in the circumstances of this case, and I therefore decline to do so. Having concluded that there is no power to "entrust" the property to the Trustee, I cannot see the purpose of forcing Mr Bedzhamov to answer questions or produce documents in relation to it.

273. In Singularis, the majority of the Board indicated (*obiter*) that there is a power at common law to assist a foreign court of insolvency jurisdiction by ordering the production of information in oral or documentary form which is necessary for the administration of a foreign winding up: see the judgments of Lord Sumption at paragraph 25, Lord Collins at paragraph 33 and Lord Clarke at paragraphs 110. The

existence of such a power was rejected in the dissenting judgment of Lord Mance at paragraphs 130-148, with which Lord Neuberger agreed at paragraph 149.

274. Assuming such a power exists at common law, as the majority of the Board held, that power was expressed to be subject to five limitations identified by Lord Sumption in paragraph 25, the third of which is that the power is "*available only when it is necessary for the performance of the office-holder's functions*".

275. In the circumstances of this case, I am not persuaded that allowing the Trustee to question Mr Bedzhamov in respect of the Belgrave Square Property, or to require Mr Bedzhamov to produce documents in relation to it, is necessary for the performance of her functions *qua* trustee. The main purpose for which the Recognition Application was brought, and the main function of the Trustee in the bankruptcy, is to protect, realise and collect in assets for the benefit of the estate. The ability to examine Mr Bedzhamov and to require him to produce documents are ancillary to that purpose. Granting the relief would simply have the effect of further delaying the sale of the property in circumstances where the end result of the process could not, for the reasons I have given, on any view entitle the Trustee to rely on the assistance of the English court to take control of the property, nor to prevent a sale of the property.

Disposal

276. For the reasons that I have given, I will make an order recognising the Bankruptcy Order and the appointment of the Trustee in Russia.

277. I will, however, dismiss the remainder of the Recognition Application insofar as it seeks further assistance in relation to the Belgrave Square Property.

278. It must also follow from the fact that the Trustee is not entitled to any assistance in seeking to take control of the Belgrave Square Property that there is no reason to set aside the March Order. I will therefore dismiss the Set-Aside Application.