Neutral Citation Number: [2023] EWHC 2816 (Comm)

Case No: CL-2023-000787

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

Royal Courts of Justice, Rolls Building
Fetter Lane, London, WC4A 1NL

Date: 3 November 2023

Before :

MRS JUSTICE DIAS

- -

Between :

RENAISSANCE SECURITIES (CYPRUS) LIMITED	**Claimant/ Applicant**
- and -	
(1) CHLODWIG ENTERPRISES LIMITED **(2) ADORABELLA LIMITED** **(3) GEKOLINA INVESTMENTS LTD** **(4) DUBHE HOLDINGS LIMITED** **(5) OWL NEBULA ENTERPRISES LIMITED** **(6) PERPECIA LIMITED**	**Defendants/ Respondents**

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Mr Paul Lowenstein KC (instructed by **CANDEY Limited**) for the Claimant
(instructed by) for the Defendant

Hearing dates: 3 November 2023

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JUDGMENT

The Honourable Mrs Justice Dias DBE:

1. On Friday 3 November 2023 I heard an urgent without notice application by the Claimant for both an anti-suit injunction ("ASI") and an anti-anti-suit injunction ("AASI") against the Defendants. I granted the application, giving brief oral reasons for doing so and indicating that I would provide written reasons in due course. These are those written reasons.

Background

2. The Claimant ("RenSec") is an investment services company incorporated and registered in Cyprus. It provides investment and brokerage services to companies and individuals worldwide and is part of the Renaissance Capital group.

3. The First Defendant ("Chlodwig") was incorporated in Cyprus in 2009. It is wholly owned by the Fifth Defendant, which in turn is beneficially owned by Mr Andrey Guryev and his wife and daughter. According to new reports, Mr Guryev used to live in London and has a number of properties in England. Chlodwig's General Director is a Mr Sergey Tarakhnenko.

4. The Second Defendant ("Adorabella") was likewise incorporated in Cyprus in 2009. It is wholly owned by the Fourth Defendant, which in turn is also beneficially owned by Mr Guryev and his wife and daughter. Its General Director is a Mr Sergey Ryzhikov.

5. In June 2021, both Chlodwig and Adorabella re-domiciled from Cyprus to Switzerland. On 19 April 2022, they re-domiciled again from Switzerland to Russia, becoming ILLC Chlodwig Enterprises and ILLC Adorabella respectively with adjacent offices at the same registered address in Kaliningrad.

6. On 6 April 2022, Mr Guryev was designated as a sanctioned person by the Office of Financial Sanctions Implementation in the UK. On 2 August 2022, he became a US sanctioned individual and on 14 November 2022, both Chlodwig and Adorabella became US sanctioned entities on the basis that they had been designated as companies holding assets for trusts that benefitted Mr Guryev and his family.

7. The Third Defendant ("Gekolina") was incorporated in Cyprus in 2017 and is a 100% subsidiary of Chlodwig. It is therefore ultimately owned and controlled by Mr Guryev and his wife and daughter. Its director is Ms Stella Konstantinou. As a subsidiary of Chlodwig, Gekolina is an indirectly US sanctioned entity.

8. The Fourth Defendant ("Dubhe") and the Fifth Defendant (Owl") were both incorporated in Cyprus in 2003. Ms Konstantinou is also the director of Dubhe, while a Ms Georgia Georgiou is the director of Owl. Although beneficially owned by Mr Guryev and his wife and daughter, neither company has apparently yet been sanctioned, although RenSec is concerned that they may be indirectly sanctioned in light of their ownership structure and are accordingly treating them as such in the absence of clear evidence to the contrary.

9. The Sixth Defendant ("Perpecia") was incorporated in Cyprus in 2019 and is a 100% subsidiary of Adorabella. It is therefore likewise ultimately owned and controlled by Mr Guryev and his wife and daughter. Its director is Ms Georgiou. As a subsidiary of Adorabella, Perpecia is an indirectly US sanctioned entity.

10. Each of the Defendant was a client of RenSec and party to an Investment Services Agreement ("ISA"), pursuant to which RenSec would arrange and execute various investments on the instructions of the relevant Defendant. The ISAs with Chlodwig

and Adorabella were dated 11 April 2019, while the other ISAs were dated 21 December 2020 (Owl), 22 December 2020 (Dubhe) and 23 December 2020 (Gekolina and Perpecia).

11. These ISAs were in materially identical terms and contained governing law and dispute resolution provisions as follows:

> *"43.1 This Agreement and any non-contractual obligations arising in connection with it shall be governed by and interpreted in accordance with the laws of England and Wales.*
>
> *43.2 If any dispute should arise in relation to the Customer Document Pack[1] and it cannot be resolved within thirty (30) Business Days by negotiation between the Parties, such dispute shall be referred to and finally resolved by arbitration under the rules of the London Court of International Arbitration which are deemed to be incorporated by reference into this Clause 43. Such arbitration shall take place in London and shall be conducted by a single arbitrator appointed by agreement between the Parties or, failing agreement, by the London Court of International Arbitration. The language in which such arbitration shall be conducted shall be English. Any award rendered shall be final and binding on both Parties and may be entered in any court having jurisdiction and application may be made to such court for an order of enforcement as the case may require."*

12. It is not in dispute that RenSec currently holds substantial sums and securities for each of the Defendants. Some of those assets were held at Euroclear Bank SA/NV in a sub-custody account of the Russian National Settlement Depositary ("NSD") which in turn held them in a sub-custody account for RenSec. After Chlodwig and Adorabella were sanctioned, Euroclear wrote to RenSec seeking information about assets held by RenSec on their behalf. Following provision of that information, Euroclear segregated and froze the assets of these companies in specially designated accounts for each entity.

13. NSD itself has also been sanctioned by the EU with the result that any of the Defendants' assets held in or via NSD are now inaccessible.

[1] The Customer Document Pack referred to in this clause was defined in the ISAs to include the ISA itself.

14. In these circumstances, RenSec took the decision to block the Defendants' trading accounts and to freeze their assets.

15. On 26 June 2023, each of the Third to Sixth Defendants wrote to RenSec referencing its particular ISA and requesting that its assets be transferred to bank accounts in Russia in aid of a corporate restructuring. Gekolina and Owl requested transfer to an account held by Chlodwig , while Dubhe and Perpecia requested transfer to an account held by Adorabella (Dubhe and Perpecia). RenSec did not comply with these demands, taking the view that to do so would involve a breach of US and/or EU and/or UK sanctions.

16. On 4 July 2023, RenSec received further letters from each of the Third to Sixth Defendants, again referring to their respective ISAs and asking for information as to why their accounts had been blocked and assets frozen. RenSec responded to each company on the same day acknowledging the requests for consolidation of funds but stating that it could not comply as to do so would involve a breach of sanctions. On 11 July 2023, RenSec received letters from Chlodwig and Adorabella in materially identical terms.

17. On 26 July 2023, RenSec received yet further letters from each of the Third to Sixth Defendants, requesting transfer of any balances/assets held on its behalf by RenSec to an account in Russia with Raffeisen Bank and giving notice of termination of the ISA.

18. Shortly thereafter, RenSec received letters before action from Chlodwig and Adorabella on 15 and 16 August respectively and from the other Defendants on 21 August. All the letters were in materially identical terms. Each referred to the applicable ISA and previous correspondence and continued:

"We hereby ask to transfer the aforesaid amounts to the bank account of [ILLC CHLODWIG ENTERPRISES/ILLC ADORABELLA] immediately. If you fail to transfer the amounts due to us, we will be initiating legal proceedings against you in the appropriate forum. We propose negotiations in order to resolve the dispute."

19. RenSec did not respond to these letters. The evidence of one of its directors, Mr Marios Hadjiyiannakis was that RenSec understood the reference to *"appropriate forum"* to mean that the Defendants would abide by their obligation to refer disputes arising in relation to the ISAs to LCIA arbitration in London. Nonetheless, RenSec was aware from Russian legal advice that it had obtained that the Defendant might be able to commence proceedings in Russia and its legal department started monitoring the Russian court website periodically on a precautionary basis, as a result of which it discovered in the evening of 13 October 2023 that each of the Defendants had commenced proceedings in Russian courts effectively seeking damages in the amount of its blocked assets.

20. It is unnecessary for the purposes of this judgment to give details of each individual court process. It is sufficient to note that:

i) The claims of Chlodwig and Adorabella are proceeding in the Commercial Court of Kaliningrad (where they are now domiciled), while the claims of the Cypriot Defendants are proceeding in the Commercial Court of Moscow;

ii) Each of the claims has been accepted for consideration by the court concerned;

iii) Preliminary hearings are currently scheduled to take place on:

a) 7 November 2023 in Perpecia's claim;

b) 13 November 2023 in Owl's claim;

c) 6 December 2023 in Gekolina's claim;

d) 11 December 2023 in Dubhe's claim;

e) 14 May 2024 in Chlodwig's claim;

f) 15 May 2024 in Adorabella's claim.

iv) RenSec has not as yet been served with any of the proceedings and is not aware of any steps having been taken to notify it of their commencement;

v) RenSec has not taken any steps in relation to the Russian proceedings which might amount to a submission to the jurisdiction.

21. It is in these circumstances that RenSec comes to this court to seek an ASI and AASI.

Preliminary matters

22. Before turning to the substance of the application, it is necessary to deal first with a number of preliminary matters, namely permission to rely on expert evidence as to Russian law and whether it was appropriate for the application to have been brought on an urgent, without notice basis and heard in private.

Expert evidence

23. For the purposes of the application, RenSec sought to rely on the expert opinion of Mr Aleksander Anatolievich Simonov on a number of issues of Russian law. These includequestions of jurisdiction and procedure in the Russian Proceedings, the availability of anti-suit relief in Russia and the likelihood of its being granted, and various matters relating to service in Russia.

24. CPR Part 35.4(1) requires the court's permission before expert evidence can be adduced. The test is whether such evidence is reasonably required in order to resolve the proceedings.

25. I have no doubt that it is appropriate to give permission to rely on Mr Simonov's opinion in this case. The matters which he covers are not matters on which the English court has expertise of its own and they are plainly material to the questions which arise on this application.

26. Mr Lowenstein KC who appeared for RenSec also sought permission to rely on the evidence of Mr Hadjiyiannakis in so far as he deposed on information and belief to the fact that service on a company at its registered office by a bailiff is a permitted method of service in Cyprus. This is a short point which would normally be covered by a solicitor or foreign lawyer. In so far as permission is required, I grant it.

Without notice application

27. CPR Part 23.4(2) provides that service of an application notice may be dispensed with if this is permitted by a rule of court, a practice direction court order. Part 25.3(1) provides that the court may grant an interim remedy without notice if there are good reasons for not giving notice. This is also reflected in paragraph F2.1 of the Commercial Court Guide, which expressly refers, as an example of "good reason", to the situation where notice would or might defeat the object of the application.

28. In the present case, the Defendants have actively taken steps to assert claims in a forum which, on the face of it, is in flagrant breach of their contractual obligations. Moreover, the evidence of Mr Simonov is that:

i) Article 248.1 of the Russian Commercial Procedure Code (the "CPC") was introduced specifically to allow Russian parties to submit disputes to the jurisdiction of the Russian courts where they are unable to arbitrate or litigate outside Russian due to "restrictive measures" such as sanctions;

ii) The article applies irrespective of any contrary contractual arbitration or jurisdiction provision and confers exclusive jurisdiction on the Russian courts;

iii) Article 248.1 includes not only Russian entities who are sanctioned but also non-Russian entities against whom restrictive measures are taken on the basis of restrictive measures imposed in relation to Russian entities;

iv) The Russian courts have adopted a broad interpretation of Article 248 and held that the mere fact of being sanctioned is sufficient to trigger the article;

v) The Russian courts have jurisdiction under Article 248.2 to grant anti-suit relief to restrain any foreign proceedings or arbitration in relation to disputes falling within the scope of Article 248.1 and also to restrain any English anti-suit proceedings;

vi) Such relief could be obtained within 5-15 days of the Defendants learning of such proceedings;

vii) While an application for anti-suit relief must be notified to RenSec, the court has power to proceed in its absence;

viii) The threshold for the grant of relief is low and the likelihood of the court granting relief is high given that the rationale of Article 248 is confer exclusive jurisdiction on the Russian courts;

ix) Breach of a Russian ASI could result in an order to pay the entire amount claimed in the Russian legal proceedings.

29. In these circumstances, I have no doubt that there is a real risk that the Defendants would apply for their own ASI and/or AASI if notified of this application and that that would defeat the purpose of the application. Any potential prejudice to the Defendants is sufficiently covered by RenSec's cross-undertaking and, in any event, the injunction is at this stage only being granted on an interim basis such that the Defendants have liberty to apply to discharge it either at the return date or sooner if they wish.

Private hearing

30. CPR Part 39.2 sets out the general rule that hearings before the English courts should be held in public unless the court concludes that it is necessary to sit in private to secure the proper administration of justice because, amongst other things, publicity would defeat the object of the hearing.

31. For the same reasons as given above, I am satisfied that publicity would defeat the purpose of the application since it would potentially alert the Defendants to the fact that an application for an ASI was being made and provide them with the opportunity to take pre-emptive or countermeasures.

Urgency

32. As is apparent from paragraph 20.iii) above, procedural hearings were due to take place in two sets of proceedings in Russian within days of the application. The evidence of Mr Simonov was that preliminary court hearings are to be conducted

inter partes under Article 136(1) of the CPC but that the judge is entitled to continue the hearing in the absence of the parties. Moreover, pursuant to Article 137(4), if RenSec had been notified about the hearing but did not participate, the court would have a number of options, including adjourning the preliminary hearing, concluding the preliminary hearing and setting a trial date, or concluding the preliminary hearings and resolving the claim on the merits immediately.

33. It is impossible to say what course the Russian courts would take in this particular case. There is therefore plainly a risk of serious prejudice to RenSec in the event that they decided to proceed to a judgment on the merits. Given the imminence of the hearings in the Owl and Perpecia claims, I am satisfied that this is a case where it is appropriate to proceed as a matter of urgency.

Anti-suit injunction

34. The principles on which the English court will grant an ASI are now well-established and I summarise them as follows:

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

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

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

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

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

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

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

35. In illustration of these principles, I was referred by Mr Lowenstein to the case of *Deutsche Bank AG v Ruschemalliance LLC,* [2023] EWCA Civ 1144 in a similar situation to the present save that the arbitration clause in that case provided for arbitration in Paris under the auspices of the ICC. The claimant had applied for anti-suit relief to restrain Russian proceedings in breach of the arbitration but the application had been refused on the basis that England was not the proper forum for resolution of the application in circumstances where the evidence suggested that no equivalent injunction could be obtained in France and (wrongly, as it turned out) that the French courts would regard such an injunction as contrary to fundamental principles of freedom of legal action and of a judge to determine his/her own competence.

36. Before the Court of Appeal, further evidence as to French law established that the position was more nuanced and that, while a French court did not have the ability to grant its own ASI, it would recognise an ASI granted by a foreign court providing there was no infringement of international public policy. Delivering the judgment of the court, Lord Justice Nugee confirmed the principles set out above, explaining that:

    i) The policy of the English courts is that parties to contracts should abide by them and, in particular, that parties to an arbitration agreement who have promised not to litigate elsewhere should not do so;

    ii) The court will therefore readily grant an ASI in support of an arbitration agreement in a contract governed by English law, on the basis that it is thereby seeking to uphold and enforce the parties' contractual bargain;

    iii) While such ASIs can be seen as an exercise of the exclusive supervisory jurisdiction of the English courts where the arbitration in question is seated in England, the power of the court is not limited to such situations and can extend to arbitrations seated abroad;

    iv) Accordingly, England was the proper forum for the application where the contract containing the arbitration clause was governed by English law and equivalent relief could not be obtained in the courts of the seat.

37. In this case, of course, the arbitration proceedings contemplated by each of the ISAs is seated in England, so that the particular problem confronting the court in the *Deutsche Bank* case does not arise. The decision does nonetheless confirm the strong predisposition of the English courts to enforce and uphold arbitration agreements by the grant of injunctive relief where necessary.

38. I am quite satisfied that that RenSec has demonstrated to the requisite high degree of probability that the disputes raised in the Russian proceedings fall within the scope of the arbitration agreements contained in clause 43 of each of the ISAs. The ISAs themselves are governed by English law which is therefore also *prima facie* the governing law of the arbitration agreements: *Enka Insaat ve Sanayi AS v OOO "Insurance Co Chubb",* [2020] UKSC 38; [2020] 1 WLR 4117. These provide for arbitration of any dispute which arises *"in relation to"* the ISAs. The evidence of Mr Simonov is that, so far as is apparent from publicly available information, Chlodwig, Adorabella, Gekolina and Perpecia are seeking to recover the funds blocked by RenSec and Euroclear as well as damages for breach of obligation, while Dubhe and Owl are seeking to recover debts, the nature of which is not specified. However, in their pre-action correspondence, the Defendants themselves relied on the terms of the ISAs in demanding the transfer of their assets to Russia. It therefore seems highly probable that their claims are likewise based on the ISAs.

39. At this point, I should mention that in pursuance of RenSec's duty of full and frank disclosure, Mr Lowenstein very properly drew my attention to a Global Master Repurchase Agreement ("GMRA") between RenSec and Adorabella dated 19 September 2017. Clause 17(b) of this agreement (as amended) also contains an LCIA arbitration clause in similar terms to clause 43 of the ISAs. It is not apparent from any of the material before me that Adorabella seeks to rely on this agreement; indeed Mr Hadjiyiannakis's evidence is that RenSec's brokerage and custody arrangement with Adorabella was covered by the ISA not the GMRA. But in any event, it would make no difference to the issues which arise on this application since the relevant principles would apply as much to clause 17(b) of the GMRA as they do to clause 43 of the ISAs.

40. On that basis, the claims in Russia are being brought in breach of the Defendants' clear contractual obligation to refer them to LCIA arbitration in London. That was a deliberate choice on the part of the Defendants since Mr Simonov's evidence is that they were under no obligation to invoke Article 248. It follows that I should grant an ASI as requested unless there are strong reasons not to do so.

41. As to this, it is irrelevant that Article 248 of the CPC purports to allocate exclusive jurisdiction to the Russian court. The arbitration agreements here are contained in contracts governed by English law, the application is being brought before the English court and it is for the English court as a matter of private international law to determine its own jurisdiction, irrespective of whether a foreign court might also consider itself entitled to assert jurisdiction: *Tamil Nadu Electricity Board v ST-CMS Electric Co Pte Ltd,* [2007] EWHC 1713 (Comm); [2007] 2 All ER (Comm) at [34]-[37].

42. By contrast, if the Russian proceedings were permitted to proceed, it would potentially allow the Defendants to bypass the sanctions regime altogether by obtaining judgment in Russia and then enforcing against RenSec's assets there which are currently frozen.[2] Further, Mr Simonov's evidence is that the Russian courts are unlikely to consider foreign sanctions a legitimate excuse for RenSec's failure to comply with the Defendants' instructions. Indeed, this is entirely plausible given that the rationale for the introduction of Article 248 in the first place seems to have been to permit Russian entities to bypass the effects of sanctions. Accordingly, RenSec is unlikely to be able to rely on the imposition of sanctions as a defence to the Defendants' claims in Russia, whereas this is a matter which an LCIA tribunal would

[2] Mr Hadjiyiannakis gives evidence that RenSec has some US$206 million of assets in Russia which have been blocked by the authorities.

no doubt at least take into account in considering whether RenSec was in breach of contract or not.

43. In my judgment, these considerations alone make it just and convenient to grant the injunction sought, quite irrespective of any prejudice caused to RenSec through being deprived in breach of contract of its right to have disputes resolved in the contractually agreed forum. In *The Angelic Grace,* it was stated by Millett LJ that damages are *"manifestly an inadequate remedy"* for such a breach. All the more so in this case, since RenSec would itself have to obtain permission under the sanctions regime to bring proceedings against the Defendants for breach of the arbitration agreements and would then be left in a situation where it was unable to enforce any award without obtaining a licence to do so. As Mr Lowenstein submitted with some force, it is clearly unjust to thrust the burden of navigating the sanctions regime on to the shoulders of the unsanctioned claimant. Moreover, the evidence of Mr Hadjiyiannakis is that it would not be possible for RenSec to enforce any award in Russia which contradicted a judgment of the Russian courts.

44. Where no arbitration proceedings are in existence and where, for the reasons just given, it would be unjust to require RenSec to commence arbitration, the question of obtaining anti-suit relief from the tribunal as an alternative to a court injunction plainly does not arise. In any event as a matter of principle it cannot on its own be a good reason for refusing an ASI otherwise it would never be possible to obtain such relief in support of an arbitration.

45. I also bear in mind that an injunction at this stage would be interim only and so would merely seek to preserve the *status quo* until the return date in a few weeks' time. If

the Defendants believe that there are strong reasons militating against the continuation of the injunction, they can raise them at that stage – or earlier if they so choose.

46. Finally, I consider the question of delay. According to the evidence of Mr Hadjiyiannakis, RenSec first learned about the Russian proceedings on the evening of 13 October although it had been monitoring the Russian court website for some months before then. In those circumstances, I considered whether it could be said that RenSec could and should have applied for an injunction at that stage and, if so, whether its delay since then should count against it.

47. In this regard, the relevant principles are authoritatively set out in *Ecobank Transnational Inc v Tanoh,* [2015] EWCA Civ 1309; [2016] 1 WLR 2231 and involve looking at all the circumstances, including prejudice to the respondent and waste of the foreign court's time and resources. Absence of prejudice alone does not mean that delay is immaterial.

48. Mr Hadjiyiannakis's evidence was that although RenSec appreciated from at least mid-July 2023 that it was possible for the Defendants to invoke the jurisdiction of the Russian courts, it had never been given any unequivocal indication that the Defendants would in fact ignore the clear LCIA arbitration clauses in the ISAs. On the contrary, the first explicit threat of legal proceedings was contained in the letters before action sent in August 2023 which did not refer to proceedings in Russia but, on the contrary, stated that they would be brought *"in the appropriate forum"*, suggesting at least a possibility that the Defendants would abide by their contractual obligations.[3]

[3] As I felt there was some ambiguity in Mr Hadjiyiannakis's evidence on this point, I asked for the matter to be clarified in a further witness statement which was signed that same evening.

49. An ASI may be granted even in advance of the commencement of foreign proceedings, provided there is a sufficient threat that they will be commenced and that they will be such as to justify the injunction: *Hospira UK Ltd v Eli Lilly & Co,* [2008] EWHC 1862 (Pat) at [11]-[13]; *Raphael, The Anti-Suit Injunction* (2nd ed., OUP) §4.101. In these circumstances, I do not think that RenSec can be criticised for waiting to see whether in fact the Defendants did take steps to litigate otherwise than in accordance with the arbitration clauses. Indeed, given the reference in the letters before action to *"appropriate forum"*, a court faced with a *quia timet* application for an injunction might well have taken the view that the application was premature unless and until there was some more concrete indication that the arbitration agreements would be breached. It was for that reason that RenSec started to monitor the Russian court website in order to be alerted as soon as possible should proceedings be commenced.

50. In my judgment, there has therefore been no undue delay in bringing the application. The Russian proceedings are still at an early stage, having only been commenced between 6-15 October and, on the material as it currently stands, I can see no good reason not to grant an ASI as asked. I would only add that in my judgment it is plainly appropriate to grant relief against all Defendants at the same time, notwithstanding that hearings in Russia are only imminent in two of the six claims. Were an injunction only to be granted against those two Defendants, there is an obvious risk that the others might seek to expedite their cases or seek their own AASI (as to which see further below.)

Anti-anti-suit injunction

51. The purpose of an AASI is to ensure that any measures which an applicant may take to protect and enforce its contractual rights (including by ASI) are not rendered nugatory and futile as a result of pre-emptive actions or countermeasures taken by the respondent. The principles applicable to the grant of an AASI are the same as those which apply to general ASI, although considerations of comity dictate that the court should proceed with particular caution, especially where there may be a legitimate dispute as to the most appropriate jurisdiction for resolution of the dispute in question. In many cases, a foreign ASI restraining proceedings in England will be legitimate and unobjectionable: see, generally, *Raphael (op.cit.)* §§5.57-5.63.

52. Where, however, the foreign ASI is obtained on a basis which is vexatious or oppressive, for example, because the proceedings which it seeks to protect are themselves brought in breach of an exclusive jurisdiction or arbitration clause, such objections do not apply and the English courts have shown themselves willing to counter by way of an AASI, not only prohibiting the pursuit of the foreign proceedings but mandatorily ordering that the respondent take positive steps to discontinue them: *Ecom Agroindustrial Corp Ltd v Mosharaf Composite Textile Mill Ltd,* [2013] EWHC 1276 (Comm); [2013] 2 All ER (Comm) 983 at [36]-[39].

53. I have summarised above the evidence of Mr Simonov as to the likelihood of the Russian courts themselves granting anti-suit relief and as to the relative speed and ease with which this could be done. It can be anticipated that the Defendants will seek to pursue the Russian proceedings by whatever means available to them since this is likely to represent their only means of recovering their assets while sanctions are in place. As such, I consider there to be a very high probability that they will try to obtain ASIs of their own in Russia unless steps are taken to prevent them. Such an

attempt and, if successful, any ASI granted by the Russian court would in itself be a breach of the English court's exclusive supervisory jurisdiction over the contractually contemplated arbitrations.

54. For these reasons, as well as those given above in relation to the ASI, it is in my judgment just and convenient to grant an AASI against all the Defendants to pre-empt any such attempt.

Non-disclosure

55. As part of the relief sought, RenSec seeks a non-disclosure order effectively preventing any of the Defendants (or other persons served with the injunction) from "tipping off" other Defendants who have not yet been served and who might therefore be able to obtain an urgent ASI and/or AASI from the Russian courts in the meantime. The moratorium on disclosure would come to an end as soon as all Defendants had been served and so could be anticipated to last no more than a few days at most.

56. The court has power to make such an order pursuant to its inherent jurisdiction in order to ensure that its orders are not rendered futile or ineffective. The matters which must be taken into consideration are set out in *Practice Guidance (Interim Non-disclosure Orders),* [2012] 1 WLR 1003.

57. In the present case, I have already concluded that there is a high risk that the Defendants will seek their own anti-suit relief if given the opportunity. The proposed order is moreover strictly limited in duration to the time it will take to effect service on all parties. In these circumstances, I take the view that it is appropriate to include such an order in the terms of the injunction.

Matters relating to service

Service by an alternative method

58. Since this application is made by way of Arbitration Claim Form, permission to serve out of the jurisdiction is not required because RenSec is seeking a remedy affecting arbitration agreements to which the Defendants are parties and the seat of the arbitrations will be in London: CPR Part 62.5(1)(c) and (2A). Nor, by virtue of CPR Part 6.38(b), is permission required to serve any orders or other supporting documents out of the jurisdiction.

59. Service of process in Russia is governed by the Hague Convention, in relation to Article 10 of which Russia has entered a reservation, effectively precluding service by other direct means. The evidence before the court is that service in Russia under the Hague Convention could take 17 months or more to effect: 5 months for the Foreign Process Section at the Royal Courts of Justice to process the application and send the papers to the Russian authorities and a further 12 months for the proceedings to be served in Russia.

60. RenSec accordingly seeks the court's permission to serve Chlodwig and Adorabella by alternative methods. Under CPR Part 6.15, the court may permit service by alternative methods where there is good reason to do so. Where, however, a foreign state party to the Hague Convention has entered a reservation to Article 10 (as Russia has done in this case), then exceptional circumstances must be shown: see CPR at 6.40.4; *M v N, [2021] EWHC 360 (Comm)* at [8]-[9].

61. The grant of an ASI/AASI involves the court making coercive orders backed by penal sanctions which can be enforced by way of proceedings for contempt. The orders

take effect from the moment they are pronounced. It is therefore plainly of the utmost importance that they are not only brought to the attention of the respondents as soon as possible so as to minimise the chances of an inadvertent breach, but also that the proceedings in which they are issued are formalised as soon as possible. The effect of prolonging the injunction on an applicant's cross-undertaking in damages must also not be overlooked.

62. Accordingly, while the mere fact of delay under the Hague Convention (even a lengthy delay) would not on its own necessarily justify alternative means of service where a reservation had been entered to Article 10, I am satisfied that the circumstances of this case are sufficiently exceptional to warrant an order under Part 6.15. I note that a similar view has been taken recently in similar cases by Calver J in *Axis Corporate Capital UK II Ltd v Absa Group Ltd,* [2021] EWHC 225 (Comm); [2021] Lloyd's Rep.IR 195 at [104] and by Bryan J in *Commerzbank AG v Ruschemalliance (supra)* at [81]-[82].

63. The alternative methods by which service is sought to be effected on Chlodwig and Adorabella comprise:

i) Delivery in hard copy and/or by post to their respective office addresses;

ii) Email with a link to the documents to various email addresses;

iii) Delivery in hard copy and/or by post to Mr Tarakhnenko (for Chlodwig) and Mr Ryzhikov (for Adorabella) at their home and office addresses.

Mr Simonov's evidence is that none of these methods is contrary to Russian law despite the reservation to Article 10.

64. It is also proposed to send informal notice to two UK solicitors (currently working at PCB Byrne LLP) who are on record as having previously acted for Mr Guryev.

65. I am satisfied that use of these means will ensure that the orders come to the attention of the Russian Defendants in the shortest possible time. Given the volume of documentation placed before the court, it is plainly impractical to attach it to an email. RenSec accordingly proposes to provide a secure link to an encrypted online platform hosted within Europe in accordance with the guidance set out by HHJ Waksman QC (as he then was) in *CMOC Sales & Marketing Ltd v Persons Unknown,* [2018] EWHC 2230 (Comm); [2019] Lloyd's Rep. 62 at [191]. That is an obviously sensible way of proceeding.

Penal notice and dispensing with personal service

66. In this case, RenSec anticipates that the Defendants may well breach the ASI and AASI by continuing their proceedings in Russia and that there may well therefore be committal proceedings at some stage in the future. Since its case is that all the Defendants are under the ultimate control of Mr Guryev and his wife and daughter, in addition to formal service on the corporate Defendants, it asks for the penal notice attached to the order to name Mr Guryev and his wife and daughter as well as the individual directors identified above. Mr Lowenstein drew attention to the apparent co-ordination between the Defendants in the timing of their letters to RenSec and the commencement of proceedings as strongly suggesting that someone was directing their actions who he submitted was overwhelmingly likely to be Mr Guryev given the ownership and corporate structure of the various entities. I accept this submission and consider it appropriate that all these individuals should be named, at least initially. The matter can be considered further at the return date.

67. The general rule is that contempt proceedings for breach of a court order may only be brought against a person who has been personally served with the order: see CPR Part 81.4(2)(c). The court has a wide discretion to dispense with personal service either prospectively or retrospectively but should only do so exceptionally and relatively sparingly: *MBR Acres Ltd v Maher,* [2022] EWHC 1123 (QB); [2023] QB 186 at [105]; *Group Seven Ltd v Allied Investment Corpn Ltd,* [2014] 1 WLR 735 at [33]-[37]. One of the factors which may justify dispensing with personal service is where there is evidence that the individual in question is likely to attempt to evade service.

68. In this connection, I was referred to the case of *Gorbachev v Guriev,* [2019] EWHC 2684 (Comm) where the court was clearly of the view that Mr Guryev's entourage had taken active steps to prevent the personal service of documents on him in that case. And that some of the testimony in the case (including that of Mr Guryev himself) may not have been entirely truthful as to whether or not he had been served.

69. I accept that the evidence discloses a risk that Mr Guryev at least will seek to evade service of any papers and that he is therefore likely to direct his relatives and other relevant individuals to do so as well. For these reasons, I consider that I should exercise my discretion in favour of dispensing with personal service of the order. I am satisfied that it will nonetheless and in any event come to the attention of the named individuals by the methods of service proposed and I have included a provision in the order confirming that service by those means would constitute good service for the purposes of CPR Part 81.

70. RenSec also invited me to dispense prospectively with service of any contempt application in the future. This, however, seemed to me to be premature when it is not yet known whether either Mr Guryev or anyone else will in fact seek to evade service

or, indeed, whether the Defendants will fail to abide by the terms of the injunction. This, in my judgment, is an application best renewed at the return date by which time the position may be clearer.

Full and frank disclosure

71. Mr Hadjiyiannakis in his evidence and Mr Lowenstein in his skeleton argument set out at some length a number of matters which they believed could possibly be relied on by the Defendants as grounds for refusing to make the orders sought.

72. I have dealt with some of them above and do not propose to lengthen this judgment by dealing specifically with the remainder. Suffice it to say that I have looked carefully at them all and have satisfied myself that there is nothing in any of the points which requires me to make a different order to the one I propose to make.