BTA/ Ablyazov Summary of Judgements:

<u>Focus of Judgments</u>

1. Mr Ablyazov stole money from the Bank and the value of the money stolen by procuring that the Bank made loans to off-shore companies owned or controlled by him;

2. Mr Ablyazov failed to disclose his assets; and

3. Mr Ablyazov was shown to be in contempt of court, or his assets placed into receivership and/or judgments on any arrest warrants.

*Judgments that are not highlighted do not directly relate to the issues above. Highlighted Judgments in are **directly relevant to the issues listed above**.*

1. **Order for cross-examination 16 October 2009**

   - Application by BTA that MA tend for cross-examination on his affidavits as to assets.

   - MA's counsel contend that he complied with order to swear affidavits setting out MA's assets and answer "Schedule C" questions and no requirement for him to take further. Judge agreed with claimant that affidavits provided were inadequate. A letter from MA's lawyers was promised to rectify certain deficiencies. Judge proposed that if letter was sufficiently detailed then would not be appropriate to make such an order.

   - Claimants requested court fix date for hearing w/c 19 Oct 2009. MA's defence due 20 Oct as is MA's reply vis MA's application to set aside freezing order – due to be heard 3 Nov 2009.

   - Def argued if order to be made then needs be after return date for freezing order (i.e. 9 Nov) as time period for providing defence expires on 20 Oct and likely more time will be needed and a request for extension till 27 Oct already made. Judge agreed would be unfair that MA's cross-examination take place w/c 19 Oct as MA's counsel would be busy preparing for return date.

   - Judge argued unfair on BTA to delay cross-examination until after return date as affidavits and answers were ordered to be provided back in Aug. At that stage courts refused an application that info should only be provided after return date. This decision was appealed, and the appeal was dismissed – therefore court and court of appeal envisage info should be provided before return date. Therefore, Judge argued only fair cross-examination take place prior to return date.

   - Judge found was just to order a cross-examination of MA before return date on 27 Oct.

   - Defendant ordered to pay costs of application on standard basis as need arose from inadequate affidavits.

2. **Appeal on Ruling Relating to Self-Incrimination and Exception to Privilege re s.328 POCA and S.13 Fraud Act – 27 October 2009**

   - Drey Associates Limited ("**Drey**") argue that were it comply with Teare J's order could be used to find a charge against it under s.328 POCA.

   - 11 Sept 2009 was ruled Drey not entitled rely defence privilege against self-incrimination as offence under s.328 is a "related offence" and so within meaning

s.13(4) FA. Drey argue that scope section FA is too broad and embraces conduct that does not involve fraud and so not a "related offence".

- In 11 Sept 2009 claim was argued (Flaux J) that Drey was used as vehicle by which ultimate beneficial owner diverted monies away from bank dishonestly and by deception by not disclosing connection with Drey". Argued obvious that Drey and 5th Defendant (?) were aware of compensation agreements at heart of fraud and must enabled bank's funds to be transferred in England.

- 13 August 2009 – date of first order (Blair J) Clyde & Co asserted that Drey were a shareholder in BTA and that it had a claim of US$1.5bn suggesting conspiracy to defraud in which Drey participated.

- Drey's counsel argued that fraud as not a necessary/inevitable characteristic of corruption as i.e. bribe might be offered where no fraudulent conduct. Judge reluctant to accept this view. Acknowledged that there is considerable difficulty in identifying the essential characteristics of a s.328 offence.

- Judge focused on definition 13(4) FA and significance that it defines a related offence to quality of conduct brought within scope of the charge and not by reference to intention. Conduct under 328(1) is entry into or being concerned in arrangement that facilitates acquisition, use, control of criminal property. Enables someone obtains proceeds crime to retain benefit proceeds while concealing true source. What the offender knows or suspects is irrelevant. S.13(4)(b) wide enough charge conduct which has fraudulent quality notwithstanding fraudulent purpose, the effect of the arrangement is to conceal the criminal source of property. Not relevant that criminal property is not derived from as a result of fraud (i.e. example given was drug dealing). The element of concealment is what is deceptive and fraudulent even if offender was only suspicious when entered/ or became concerned.

- Judge dismissed appeal.

3. Treare J - Application to extend WFO 12 November 2009

- Application by BTA to continue a WFO granted 13 Aug 2009. Defendants have made own applications to discharge.

- In skeleton BTA allege that during course 2008 defendants engaged in huge misappropriate on BTA's funds totalling excess $295M. Mukhtar Ablyazov ("**MA**"), Roman Solodchenko ("**RS**") and Zhaksylyk Zharimbetov ("**ZZ**") set up and controlled Drey which received the $295M. Anthony Edward Thomas Stroud, John Dominic Wilson and Sarah Juliet Wilson were nominee directors of Drey (and other companies). MA, RS and ZZ admitted that Drey received sums in question but say was part of consideration paid by BTA for purchase of shares in three other banks. These agreements allegedly valid and so allege that they did not act in bad faith or contrary to BTA's best interests. Alleged MA did not disclose interest in Drey to BTA's board – and so acted in breach of Kazakh law – to which MA claims that his interests were well known to board of BTA. English nominee directors not yet plead defences. They were directors of Drey until Oct 2007 and June 2009 (Anthony Stroud only).

- MA, RS and ZZ argue that WFO not continue as no sufficient risk of dissipation; was material non-disclosure; and is not just and convenient to grant WFO. Have supporting evidence that Kazakhstan is country where rule law not observed, therefore, was incumbent on BTA not to disclose this feature of Kazakh life when making order for WFO without notice. Expert witness alleges that in Kazakhstan there

are: (i) politically motivated charges; and (ii) state owned organisations with no independence from the state (permitting authorities to obtain information by any means in absence of proper civil law safeguards) – i.e. BTA.

- Risk of Dissipation – concluded BTA has established real risk of dissipation sufficient to justify WFO.

  Judge found no reason why conditions in Kazakhstan should suggest would be inappropriate to infer a risk of dissipation. BTA have good arguable case, and therefore, will be a risk. In MA's cross-examination at Court of Appeal, he confirmed monies paid to Drey were quickly paid out to other companies, who paid monies to yet other companies which largely then ended up in bank accounts at BTA. No explanation for these payments was provided. Pattern is consistent with money laundering and the ease and speed of payments suggests risk of dissipation. When asked about own assets MA confirmed indirect interests in several companies in foreign jurisdictions i.e. Dom Rep, Cyprus, BVI, Seychelles, Marshall Isl., Panama, Kazakh, Russia, Belarus and Ukraine, without any particulars as to the nature of these interests – which appeared very evasive. Indirect/ beneficial ownership of assets etc. also indicates an ease of hiding/ dissipating assets.

  Alleged that in Kazakhstan the use of nominees to hide ownership of assets from Gov. to avoid seizure without lawful jurisdiction. However, when use of nominees is coupled with good and arguable cause for misappropriation $295M it adds to risk dissipation.

  RS and ZZ could not provide addresses in England other than solicitors due to fears for safety – judge found this fanciful and suggests evasive conduct adding to risk of dissipation.

  Alleged BTA knew of misappropriation in Mar 2009 yet did not seek WFO till Aug suggests could not have thought was a real risk dissipation – judge did not agree that can be said there was delay as was considerable work to do.

- Non Disclosure

  <u>Context:</u> Allegations that was political dispute between MA and Kazakh president are incomplete and inadequate. Judge found BTA had disclosed sufficient history/ background to place claim in context and give fair presentation. Mr. Varenko (Dept. Chairman) in affadvit confirmed that:

  In 2002 MA was sentenced to 6 years for abusing public office (as Minister for Energy, Industry and Trade and formed a govt. reform movement called Democratic Choice Kazakhstan) serving 14 months and was released due to domestic/Intl' pressure on govt. By May 2005 he was Chairman of Board of Directors of BTA. 2009 Govt. acquired 75.1% BTA. Mr. Varenko states was due to financial assistance being required due to global financial crisis. MA disagrees and counsel state that allegations of misappropriation are false and politically motivated.

  <u>Alleged criminality</u>: Alleged Varenko is presenting MA as an "established criminal" having been convicted of abusing public office and misappropriating funds. Judge did not accept unfair presentation was made.

  <u>Role Kazakh Authorities</u>: Soon after Govt. became majority shareholder BTA started investigate MA's alleged embezzlement, fraud and money laundering. Info passed to BTA will find way to Govt authorities and therefore incumbent on BTA when apply

WFO to disclose to court risk existed and Govt. authorities might use info to seize assets. Judge did not accept this.

Reliability of BTA's Undertakings: Mr. Varenko was previously director of Fellowes International Holdings Limited which subject to anti-suit injunction in High Court, Isle of Man Court and Isle of Man Court of Appeal. Was not disclosed to Court when seeking WFO which is said to be a material non-disclosure as it was material to reliance Court could place on Mr. Varenko's undertakings given on behalf BTA. Judge found unless Varenko authorised breach it was not material fact required to be disclosed (although matter is "close to the line").

Failure to mention other proceedings: complaint that references in affidavits and witness statements to seizure of assets did not allege Bank had made these claims but rather Govt. authorities. BTA should made investigation into Govt. investigations. A sum equivalent to $180M had been recovered in respect 3 Govt. claims. Would be relevant to amounts covered by the WFO. Judge acknowledged failure but did consider it justified refusal to continue injunction as would be unfairly penal. Reduction in amount subject to WFO could be appropriate.

- Just and convenient: argued that the litigation is part wider dispute with president and inappropriate state-owned Kazakh entity to ask English courts to assist it in its campaign to control ATB. Judge stated that it would require a second trial in order to establish whether the takeover of bank was a part of this campaign or a consequence of global economic crisis.

- Judge held that there was good arguable cases and a real risk that defendants would dissipate assets to avoid execution of judgement obtained by ATB. Concluded that WFO should be continued against MA, RS and ZZ. Was held that WFO be continued against Drey and also 3 English nominee directors.

4. Two applications by MA and Drey to correct an "accidental slip in an order" made by Court on 12 Dec 2009 (pursuant to CPR 40.12) or vary that order (pursuant to CPR 3.1(7)) if order is corrected BTA make their own application

Without notice standard freezing order was made in Nov 2009. Claimant provided a draft order to Defendants after judge had made judgment available which was sealed. The Sealed order differed in several respects from original without notice order handed down by judge.

After judgment was handed down there was debate as to appropriateness of changes, but judge ordered that original order should not be altered. There was a change that was not pointed out to the judge and therefore was omitted from this consideration. The effect of this un-noted change was that "it prevents the Defendants from dealing with their assets anywhere in the world whilst the value of their assets in England and Wales did not exceed £175M". MA and Drey then issued application under CPR 40.12 and/or CPR 3.1(7) for order to be corrected or varied. BTA then issued own application that the court vary the order so that it be in the same terms as the draft order that was sealed.

5. Application Order that Affidavit be released from restrictions 28 January 2010

- Application that MA's affidavit and exhibit MKA 1 and information therein be released from restrictions in the order made on 12 Nov 2009 i.e. that the information only be provided to BTA's solicitors and counsel and not BTA itself.

- In affidavit and exhibit MA sets out what happened to the US$295M, in it MA alleges that a substantial part of those funds have found way back to BTA. BTA argue that

without such release it is not possible to ascertain accuracy MA's responses to Schedule C questions (see above) as to movement money under compensation agreements – to enable BTA to trace monies misappropriated from it.

- Application first opposed on grounds that is risk info will reach Kazakh prosecuting authorities and persons linked to companies may be unlawfully imprisoned or tortured.

- Claimant has argued that individuals linked to 3 companies referred to in MA's Defence (30 Oct 2009) have not come to any harm (as the Defence is not subject to the embargo under WFO). Def argued that Mr. Rizoyev who is associated with Kinmate Trading Limited (refered to in MA's affidavit) has been targeted by Kazakh authorities with criminal proceedings brought against him in Mar 2009 and extradited to Kazakhstan to give evidence and was charged with money laundering offences – no evidence other than speculation that been inappropriately/ unlawfully treated. Court of opinion no evidence that person dealing with 3 companies referred to in Defence has come to harm and risks have not materialised.

- Defence allege that application is misconceived and unnecessary. All necessary check accuracy of MA's information is BTA's solicitors make use facility granted to them 13 August 2009 to view BTA's automated banking system to enable them to discover where sums have been paid and on what dates. Judge found this unrealistically narrow of level BTA's checks as will want to see purpose of payment as well i.e. payment or deposit in discharge of obligation? Would be possible for BTA to make individual applications for each payment made – but this would be an unnecessary expense.

- Judge acceded the application and release restrictions on MA's affidavit and exhibit without the need to redact names of the companies linked MA. MA ordered to pay 90% BTA's costs.

6. Application for non-release of material to public 17 March 2010

- Application MA to set aside BTA's order to appoint a receiver without notice order 8 Mar 2010. Return Date 10 Mar 2010 and MA's application was heard on 10 and 11 Mar. BTA says order should be set aside as MA ought not have proceeded *ex parte*, failed to disclose material matters and misrepresented others. BTA does not accept should be set aside for any reasons on behalf of MA.

- BTA has reason to believe MA dealt with one or more of assets in breach Freezing Order and applied for receiver be appointed over assets. MA withdrew instructions for previous solicitors (Clyde & Co).

- Judge found that MA's counsel and solicitors failed to give full and frank disclosure as to why the application to "close down" the appointment of receivers over MA's assets (i.e. documents on court file and publication should not be made public) due to negative connotation news of the receivership would have on MA's banking and business interests (esp. in Emerging Markets).

- However due to particular circumstances of case Judge found it was justified to continue the order (with certain amendments) including the fact that there is a Court of Appeal order to embargo the disclosure of information given by MA as to his assets.

7. **Decision of Court of Appeal against application for non-release of material to public dated 23 June 2010**

- Case was adjourned by LJ Longman – expressed concern about setting a precedent for further appeals in relation to interlocutory applications and the impact that this will have on court availability.

- Longman found that appeal should not be heard until Tear J handed down his judgement. Listed the appeal for two days in next term.

8. **Application for Appointment of Receivers 16 July 2010**

- Three applications (i) to appoint receiver over MA's assets in support of the Freezing Order ("**Receivership Application**"); (ii) clarification as to liberty to deal with assets in ordinary course ("**Clarification**"); and (iii) application for return of passport ("**Passport Application**").

- BTN relied on the following 8 natters to support submission that Receivership Order was just and convenient:

    i. BTN good and arguable cause that MA has defrauded huge sums money and is serious risk MA will dissipate his assets;

       MA argues that BTN does not have good arguable case and has issued application to stay Drey proceedings on grounds they are an abuse of court.

    ii. MA's business/ assets structure is "more than paradigm example" of cases that cry out for Receivership Orders in particular use of nominees to carry out MA's requirements and corporate structures in jurisdictions "renowned for secrecy and light regulation";

       MA argues that the structure is to prevent Kazakh president from unlawfully seizing his assets. Not accepted by BTN and Judge found he cannot determine this dispute.

       MA has breached terms of Freezing Order. Several alleged breaches. Until 11 Dec 2009 MA was entitled to dispose of / deal with assets outside England in any way provided English assets remained above £175M. As bank is not in position to assess MA's assets have that value it cannot allege a breach prior to 11 Dec 2009. MA does not claim to have assets of that value in England.

       BTN's alleged breaches of the Freezing Order are:

        o MA's sale of his interest in Omsk Bank and then use of proceeds to acquire Tier 2 subordinated debt in BTA Mosco. MA explained (2nd Witness Statement 16 Mar 2010) shares in Omsk Bank were owned by BTA Moscow (19.99%) Rikas Finance (19.99%); TuranAlem Capital 19.92%); Delta Torg (18.98%) and AMK Invest (9.99%) with remainder owned by unconnected parties to dispute. BTA Moscow had branch in Omsk that competed with Omsk Bank. 2007 decided divest of shares in Omsk Bank. It was understood that when BTA Moscow sold shares in Omsk Bank the four other companies controlled by MA would do the same. BTA had nominee on board of BTA Moscow (Mr Yuldashev) aware of this strategy. Jan 2010 the sale completed with BTA Moscow receiving $2.9M, Rikas Finance receiving $2.6M, TuranAlem receiving $2.6M, Delta Torg received $2.5M and AMK Invest received $1.3M. On 11 Feb 2010 Four other companies acquired subordinated debt in BTA Moscow with carried interest at 10% which MA deemed a less risky investment than holding shares in Omsk Bank. BTA does not accept these

transactions are in ordinary course of business or business conducted personally by MA. Hardman suggested (15th Witness Statement 11 May 2010) was very risky investment and comparison should be cash received verses subordinated debt in BTA Moscow. Judge disagreed with BTA and argued that no justification prevent MA, who conducts business through other entities he controls, from dealing with assets he holds through those entities in ordinary and proper course of that business;

- BTA alleges that MA does not conduct business personally. MA causes money to be applied in purchase of assets and has power to deal in those assets – the holding and management of assets is not the conduct of business. Judge found that there was no reason why activity of holding and management of assts should not be regarded as a business (using the *Angel Bell Principle*). The use of proceeds of sale to purchase another asset to add to portfolio of assets in ordinary course of managing that portfolio does not conflict with underlying Freezing Order and is not prohibited;
- MA has not established the sale of Omsk Bank and purchase debt in BTA Moscow was in ordinary course of business as no evidence of similar sale being effected before. Judge did not consider this needed to be shown to establish ordinary course as a transaction may be in ordinary course even if it is only ever performed once.; and
- Purchase of debt is an incredibly poor investment and so not in ordinary course of business. Judge found that fact an investment is “incredibly poor” does not preclude from being in ordinary course. Test is if investment is so inexplicable and unreasonable that appears to be no reason why MA would sensibly made that investment so can only conclude was done in bad faith to cheat BTA. MA stated purchase of debt was to assist with maintaining required capitalisation – as using funds to prop up an ailing bank that he owns Judge did not find that purchase was outside ordinary course of business.

For the above reasons Judge did not find that MA had breached terms of Freezing Order.

iii. MA’s disclosure of assets has been evasive and he has failed to reveal dealings in his assets.

MA was cross-examined for two days and provided a fuller account in 3rd Witness Statement 16 Apr 2010. In deciding disclosure was evasive Judge focused on:

(a) <u>MA’s initial disclosure of assets</u>: Judge uses example of MA’s description of asset 15 in his initial list of assets (1st affidavit 27 Aug 2009) being “indirect interest in Blackdesert Holdings Ltd” BVI company valued at approx. $50M, MA gave no explanation as to Blackdesert’s business or assets and no explanation as to MA’s indirect interest. Supplied share certificate stating Handcart Investments Limited owned 5000 shares in Blackdesert and a further share certificate stating that 10000 shares in Handcart were owned by Company A – on basis of this inadequacy a cross-examination was ordered.

In 3rd Witness Statement MA states that the asset at bottom of structure was Eurasia Tower (skyscraper in Moscow would be tallest building in Europe). Eurasia Tower owned by ZAO Tekhinvest. Tekhinvest is owned by Company P which in turn is owned by Blackdesert. Shares in Company P are owned on trust by a nominee for MA. Judge found that the underlying asset should have been

disclosed in the initial affidavit given in Aug 2009 and that there was substantial grounds to believe MA wished to make enforcement of Freezing Order difficult.

b) The Schedule C Disclosure: Part Freezing Order MA was required answer questions concerning what happened to $295M paid to Drey. In response information an illustrated chart was provided showing what happened to the monies (the Schedule C Disclosure).

Chart indicated that of substantial monies paid to and then disbursed by Drey $215M found way back to BTA (which BTA have now confirmed is true). $41M is still "missing" with a further $30M paid to Estar Developments also "recently" (i.e. 2010) being paid back to BTA.

BTA submit that MA must have interest in these companies otherwise he: (i) could not known or ascertained this information; (ii) speed and sequence of payment would be incredible if involved independent 3rd parties; or (iii) MA not disclosed any consideration or assets received in return for payments made.

MA has denied any interest in any companies other than Drey, Devesta, Company Z, AMK Invest and Company Y. Said the Chart was provided by Mr.Y who has been unable to contact since Sept 2009.

MA cannot say why $41M and $30M were paid to FM Company and Estar Developments – but in contrast MA can account for a $5.75M loan to a Julia Seliverstrova.

BTN made a number of connections when analysing the SWIFT reports for the money paid back to BTN: (i) from accounts with Trasta Komercbanka (Latvia) and BTA Moscow; (ii) links to incorporation addresses; and (iii) numerous connections to addresses of off-shore entities.

In 7th Witness Statement MA explained that Trasta Komercbanka is a leading bank used by businessmen inside and out (former Soviet Union) so nothing significant in their use. BTA Moscow is also their correspondence bank. It is common for Offshore Companies to be set up and use the same agents so same addresses is unsurprising (summarised in written submissions 18 June 2010). BTA rejects these responses and further alleges that there is considerable inferences as to the powers of attorney having been granted to persons in Schedule C companies who also have power of attorney over MA's companies.

MA confirmed that Mr Y arranged short-term loans for MA for 3rd parties and the repayment of such loans. Also made payments for assets purchased by MA. In any 1 year Mr Y would handle payments for MA between $500M and $1BN. Payments in Chart are likely to represent repayment of loans or payment for purchase of assets (as was Mrs Seliverstrova. The $41M loan might have been in part a repayment of loan and part repayment to Mrs Seliverstrova for purchase for her of a company from FM Company.

Judge not convinced that MA would lie as to ownership of companies in Schedule C as would be "remarkably stupid", whilst also not convinced that MA has "bared his soul" as to his assets.

Judge stated that Mr Y's considerable power over MA's funds emphasises need for receiver to be appointed. MA's changed his statement to now deny owning Devesta, a company recorded as having maid transfers of sums paid to Drey also emphasises need for a receiver.

Judge also focused on MA's alleged interest in Glintmill Investments which BTN alleged he has not disclosed. Glintmill was either sold or is "on the market". Glintmill owns 70% Gainsford Investment which holds indirect interest in constructing Holiday Inn / Expo in Belgrade. BTA's evidence is from Serbian investors (claim own other 30%) Gainsford Investments and representative of BTA Moscow in Apr 2009. An officer of Kazakh Secret Service was also in attendance. Serbian invetors tried to meet Mr Hardman after had met with Clyde & Co – which Clyde deny. Reliance also placed on testimony of a lady in relation to Glintmill proceedings in Cypriot proceedings. Judge said he is unable to resolve Glintmill issue.

1. Failure to mention dealings in assets: BTA allege that MA's statements in cross-examination were misleading as they failed to mention: (i) sale agreement of interest in Eurasia Tower; and (ii) sale interest in BTA Kazan.

Eurasia Tower – 16 Apr 2010 MA revealed agreed sale interest in Eurasia Tower to Mr Fuchs (other JV party owner) for $50M. Agreement was varied 26 Nov and 1 Dec 2009 1st tranche of $20M was paid and MA's title passed to Mr Fuchs.

MA's list of assets was disclosed on 30 Sept 2009 (i.e. after sale agreement) but list had in fact been prepared well in advance (end Aug 2009). MA was cross-examined on 27 Oct and 18 Nov -2009. In 27 Oct examination MA mentioned that Blackdesert owned asset in construction project that was presently frozen and his share valued at $50M (not that this figure was in fact the sale price). 18 Nov he said that he owned 50% Blackdesert and made no reference of his agreement to sell. On 15 Dec 2009 Clyde & Co asserted that Handcart owned 50% of Blackdesert, when in fact they had sold their interest on 1 Dec 2009.

Judge found that "there are substantial grounds to believe, based on material currently before the court, that this was [MA's] purpose" as it "fits with his earlier inadequate which made the task fo BTA's advisers to enforce Freezing Order very difficult.

BTA Kazan – when cross-examined 18 Nov 2009 reference was made to an interest in BTA Kazan despite this interest being sold the prvious month. Stated that "Company F owns 34% of BTA Kazan". No refernce made to it in Clyde & Co's letter dated 15 Dec 2009 which stated Company F owns Company G which owns 50% TuranAlem Capital which holds 14.8% BTA Kazan. Not denied MA failed to inform Clyde and Co of his sale of his interest in Company F. Evidence that sale was not secret and that BTA wished to merge BTA Kazan with BTA Moscow – was a deadlock as MA owned 51% shares in BTA Kazan and BTA owned 47%. MA eventually sold his shares to companies owned by Mr Phlikov.

Judge found that there remain grounds to believe that MA's had the aim of keeping the sale secret (despite this being unlikely considering the press-release that was put out following sale of interests in BTA Kazan).

Trust Deeds: A set of written trust deeds were produced evidencing relationship between MA and nominee between the initial disclosure of assets and cross-examination. MA said in second cross-examination he dictated these to nominee in Russian who translated to English (C&Co were not involved). In 3rd Witness Statement MA states intention was "to show transparency and as an act of good faith in this litigation" and they "formalised an existing relationship".

Judge found this surprising as nominee has provided a witness statement in which states that he speaks Russin and the statement ws translated into Russian for him. At least 1 trust deed was in existence from 7 Aug 2009, therefore, if deeds dated Oct 2009 were produced on MA's instruction it is more likely that they were based on contents of 7 Aug doc. Judge would also expect MA to consult Clyde & Co about need to produce them and wisdom of doing so. Ultimately Judge found production of trust deeds assist rather than frustrates enforcement of Freezing Order nor that MA is likely to disobey it.

Ultimately Judge found that initial disclosure failings and failure to mention certain transactions as reason to believe Freezing Order would not be obeyed nor provide BTA with sufficient protection against risk of dissipation.

iv. The "Restrictive Information Regime" (where information disclosed by MA can only be seen by those advising BTA i.e. lawyers, rather thn BTA itself) fetters ability of BTA to police the Freezing Order and is reason believe MA has ulterior motive for insisting on its use i.e. so BTA does not learn other bad "loans" made in connection with assets claimed by MA.

Judge found likely regime impedes BTA's solicitors/ advisers from policing the Freezing Order as are unable to discuss disclosure with BTA. But Judge did not consider this an adequate reason for making a receivership order.

v. Drey has sought to assert privilege against self-incrimination in circumstances suggesting money laundering by MA.

It is assumed that the "other person" concerned in the "arrangement, which facilitates the acquisition, retention, use or control of criminal property" must been MA as he owns and controls Drey – this suggests a high risk of dissipatino fo assets. Judge said not sure that the "other person" must be MA, but if it wasn't him it would be a .company owned or controlled by him. A risk of dissipation is suggested by the fraud in any event. However Judge did not think that Drey claiming privilege against self-incrimination materially adds to that risk.

vi. Receivership Order is proportionate and reasonable

KPMG are appointed receivers. KPMG been criticised for absence of pre-planning but were only given access to "Restricted Information" on 21 Apr 2010. More prudent response would been to decline receivership until had been given more access to info. Proposed strategy was to control MA's assets by taking control of shares in companies at top of each chain that leads down to "operating business". Receivers do not envisage carrying on business save with consent of court. Looking to follow and secure the sums transferred by BTA to Drey – but did not anticipate becoming involved in management of the operating companies but did intend to monitor business performance on regular basis to ensure value MA's interest not being improperly diminished. Draft receivership order has wide terms to enable this. MA will be obliged deliver (or cause to deliver) property in his possession, under his control or inspect of which he has power to dispose or deal and in particular to deliver share certificates and nominees will be instructed to execute share transfer forms in names of receivers. Draft order includes requirement MA to give instructions to Mr. Y which based on evidence it is unclear how he will do this. Seems to be a best endeavour rather than absolute obligation on MA. MA's lawyers state an order for further information and disclosure from MA would be required. Instead MA has given undertaking to: (i) use best endeavours as soon reasonably practical to "procure letters to companies in Schedule 1 and individual nominees in Schedule 2 in forms annexed …. and (ii) provide to court and Hogan Lovells LLP the most recent financial statements of the companies at Schedule 5".

Judge stated that delivery of documentation of title appears to be essential step in receivers assuring themselves that they have control of relevant companies, therefore, judge accepts that MA's undertaking above does not go far enough.

MA's defendants argue that receivership will be expensive and knowledge of appointment will dissipate down the chain of companies and consequently risk damage to MA's assets and lead to receivers assuming control of operating businesses causing considerable damage to them and MA. Cost will be amplified given that litigation and proceedings are likely to continue "for years".

Judge agreed that cost and risk of damage caused by receivership are highly material factors decide if just and convenient to make receivership order. Judge took into account the following: (i) not interest of receivers damage operating business as had duty to preserve assets; (ii) MA obliged to cooperate and with greater cooperation there is less risk of damage; (iii) powers and provisions in draft order may be excluded with liberty to apply to include at later stage, as such a further court order is required before receivers can manage a company's business; and (iv) BTA must give undertaking in damages, at present is a $5M bond, but if greater fortification is required BTA argue that MA still owed a considerable amount money by companies involved in fraud and in effect MA already has security in those amounts owed.

MA's lawyers submit that if Receivership Order is made a fortification of £900M would be required assed on MA's assets at $5BN and assessing loss likely caused by order at 50% with 50% of $2.5BN taken to represent possible los of value in relation to assets as a whole – in sterling amounts to £870M to which sum for costs of receivership is added giving £900M.

Judge admitted difficult estimate costs, esp as the $5M figure BTA agreed to has not been provided with methodology (NB in the 2011 application for cost order this figure is listed as $57M). Judge agreed given size MA's assets $5M may not be adequate, but equally £900M does not reflect receivers duty to preserve rather damage MA's assets.

BTA was also subject to insolvency proceedings in Kazakhstan therefore may not be able to provide the security promised. BTA provided evidence from White & Case Kazakhstan that any claim to enforce charge would not face any impediments under the proposed restructuring arrangements.

Judge did not believe that making a Receivership Order should be ruled out. Would be necessary to examine terms of proposed order and extent Bank's undertaking would be forfeited.

In MA's Sixth Witness Statement he confirmed that he has appointed nominee as sole-director certain companies in various chains of companies. BTA deem this as a blatant attempt undermine application by ensuring a person MA trusts stands between receivers and valuable assets at bottom of the chains. Whereas MA's defence submit that this ought be source re-assurance rather concern. Judge found that this appointment would reduce risk of damage to MA's companies/ assets by any receivership appointment.

vii. No good reason for not making the Receivership Order:

Judge also considered the following reasons for whether Receivership Order should be made:

- <u>Political backdrop</u> – established defence that Kazakh president has motives against MA and that alleged BTA is under control of then Kazakh president and that actions are politically motivated. On 23 Apr 2010 MA made application to stay proceedings on grounds are abuse of processes of court (i.e. after receivership order made). MA's

defence argue if there is any risk intention of President and MTA to damage MA via receivership order then court should refuse to make it. BTA denies this and has adduced evidence that with assistance of its creditors (western) that it is trying to recover monies that have been wrongfully misappropriated by MA for the benefit (in part) of those creditors. Judge stated court cannot make findings as to BTA's motivation but is start conflict of evidence. Judge found that he not able to accept submissions of either counsel as to how political backdrop affects application for receivership.

- Human Rights – MA's defence argued that appointing receiver would interfere with MA's human rights under EU convention. Art 1 First Protocol peaceful enjoyment of possession and right not to be deprived of them unless in public interest. Receivership order must be justified and proportional. Freezing Order strikes fair balance between MA's rights and BTA's right not to be deprived opportunity to enforce judgement (i.e. illegitimate dissipation of assets). Also referred to Art 8 and respect for private and family life – and how draft order was extremely wide and invasive and would substantially interfere with private life. Also Art 6 would involve effective determination of MA's civil rights and obligations where was a risk of irreversible damage to business – required cross-examination of BTA's witnesses. Judge confirmed that he would consider this in reaching decision.
- Proprietary Claim – part Receivership Order concerned BTA's proprietary claim for $80M. MA's defence alleged this was flawed and BTA relies on evidence of Kazakh law from Mr. Markov. MA instead relies on evidence of Mr Newton and Professor Maggs. Argue as to whether Kazakh law recognises proprietary claims, MA's advisors argue that Kazakh law cannot recognise proprietary claims as transferor retains no interest in the fund until the court provides a remedy. Judge ruled that he was not concerned with this dispute all needs to decide is whether BTA have a good an arguable claim.

Judge found that he had no alternative but to grant a receivership order as a lesser order could not be trusted to offer BTA adequate protection. Risk damage to MA could be reduced in several ways i.e. enable receivers control of top of chain companies only as operating business can continue to be operated as before. Damage to MA on other companies become aware of receivership can be curtailed by MA's cooperation with receivers and he can continue to give appropriate instructions to his nominees who will continue to operate businesses. Receivers will not have power to carry on business of a company without further court order therefore receivership ought not to interfere with MA's decisions that may with to take vis managing his portfolio. Some loss may still be caused to MA but difficult to make realistic estimate of such loss in which case BTA may be ordered to compensate MA should be later held that order should not been granted – but that is not reason alone for not granting the order. Bank's undertaking for damages must be fortified – considered £25M to e appropriate considering MA's ability to cooperate with receivers – sum will be kept in review.

"Clarification Application" – Judge ruled that BTA's applications in respect of the Eurasia Tower and BTA Kazan (as above) are rejected. Declarations on any future proposed sales / negotiations should not be ruled on until transactions have actually taken place.

"Passport Application" – Application made on 14 Jan 2010 to be heard concurrently with Receivership Application. Judge found that passport

order interreference with MA's freedom to travel. Only be maintained if necessary to ensure compliance with receivership order. Judge found that given prior conduct he is unable to trust MA to obey Freezing Order and that passport application should be extended for a limited time (6 weeks) will be re-considered at that stage.

MA asked in letter from Stephenson Harwood 13 Jul 2010 that postpone giving judgement on grounds that he will also offer share certificates and participation rights – on 28 May and 8 Jun 2010 BTA's counsel stated that no undertaking had been offered to deliver up or supply documents. There were two further witness statements 14 June and 18 June 2010 and submissions by MA's counsel 18 June 2010 – the undertaking was not offered in any of the above. Judge did not consider it fair to delay giving judgement.

MA via further letter from Stephenson Harwood 15 July 2010 stated that judgement should be delayed as there was new evidence being witness statement from Mr Flannery – that MA had told Clyde & Co (then lawyers) that "Eurasia Agreement had signed and BT Kazan". Judge found that no effort been made by Stephenson Harwood to adduce further evidence until they had seen draft judgement. Flannery does not explain why these enquiries were not made on 26 May when BTA's counsel made allegations or 27 May when MA's counsel said there was no evidence from Clyde & Co or 8 June when BTA's said there was any relevant evidence it could have been given. Judge therefore found inappropriate to alter his judgement.

8. Adjourned application for an "unless" order debarring respondents from defending and entitling claimant to enter judgment unless certain information and documentation are provided date 24 August 2010

- Application for unless order was made in the context of a jurisdictional appeal by the Respondents that the proper jurisdiction to hear the claims was Kazakhstan rather than England and Wales.

- Despite the jurisdictional challenge Clarke J ruled in favour of the order sought on the basis that the prejudice that the respondents would suffer if they were required to, and did, produce information sought and then subsequently succeed in their jurisdiction application – which Clarke J determined to be minimal. Clarke J ruled that all the production of information would show was a truthful affidavit and would reveal the extent of the respondents' assets and where the money went. If the transactions were regular bona fide purchases by borrowers from intermediaries the claim would fail and revelation of details as to what happened to the monies and assets of respondents would unlikely be prejudicial.

- Clarke J also considered the likelihood of the jurisdiction challenge succeeding. Found that, based on material before him, that this was "distinctly unpromising" given first and second defendants are domiciled in England and had been living there for a number of months, and therefore, in accordance with s.41 Civil Jurisdiction and Judgments Act 1982 there is no question of staying proceedings against them on grounds of *forum non conveniens*. Clarke J also noted that they are fugitives and have no wish to be tried in the Courts of Kazakhstan.

- Clarke J also considered the prospect of the relevant information incriminating those connected with the respondents. Found that this point did not carry any specific weight - as the privilege of self-incrimination was not invoked by any of the respondents – to whom it would / could only be relevant. Further since any relevant

incrimination would not be in respect of offences committed under laws of England and Wales – there would in any event be no absolute right to invoke.

- Clarke J approved order sought, clarifying tat would allow claimant to enter into judgement against any of respondents in so far as that respondent does not comply with the provisions, except with the permission of the court. Clarke J included a restriction on enforcement until the jurisdictional challenge has been determined – so that if any challenge to jurisdiction is successful the judgement will fall away.

9. Application to dismiss application for stay of four actions 10 February 2011

- Application by BTA to dismiss applications by MA and three other defendants to stay four actions of court. On 2 Aug 2010 ordered following issues be tried: (a) whether stay applications raise issues not justiciable by court; and (b) is arguable that actions involve indirect enforcement of a foreign penal, revenue or public law. Having determined (a) and (b) judge considered remaining issues.

- Stay applications published on 23 Apr 2010 (Drey), 4 May 2010 (2010 Folio 93 Chrysopa and Tech 2010 Fiolio 362) and 3 Sept 2010 (2010 Folio 706 Granton).

- Grounds for stay applications were that MA was victim of illegal scheme by Kazakh authorities to eliminate him as political opponent a key step of which being forced nationalisation of BTA and implementation of scheme involved breaches of Kazakh law, International law and Human Rights. Several reasons for seeking the order including: (i) abuse processes of English court and oppressive to permit it to proceed and would be contrary to public policy; (ii) tantamount to giving effect to a flagrant breach of international law namely Expropriation which should not be permitted under English public policy; (iii) claim brought for collateral purposes of political oppression and persecution of MA in order to eliminate him as a political force in opposition to current Kazakh regime and therefore abuse of English courts; (iv) involves indirect enforcement of a penal, revenue or other public law of Rep of Kazakhstan namely forced nationalisation of ATB and use of back-dated legislative changes to legitimise such Expropriation and other laws employed by Kazakh authorities to effect Expropriation; and (v) impossible to have a fair trial as in breach of MA's rights at common law and under Art 6 EU Convention Human Rights. As MA will not have reasonable opportunity to present case to court under conditions that did not place at significant disadvantage by reason of the illegal/ illegitimate activities of Kazakh authorities and abuse of powers in relation to availability of willingness of witnesses to give evidence and availability of documents, information and or disclosure of such.

- 9 July 2010 (Drey, Chryopsa and Teckhinvest) and 11 Nov 2010 (Granton) BTA sought to dismiss stay application on 6 grounds one those being issues raise were non justiciable and other was actions did not involve direct enforcement of foreign penal, revenue or public law.

- In the application the Judge specifically considered:

    - o whether ATB's actions involve the indirect enforcement of foregin penal, revenue or other public law – Judge did not find in favour of this argument;

    - o whether the stay applications were justifiable on grounds of:

        - whether there was any illegality – judge found that this claim was unjustifiable as it was inviting the court to decide on whether nationalisation of ATB in Kazakhstan was illegal or invalid;

        - International and Human Rights – judge did not consider that circumstances fell within or engage with any public policy exemptions and was not find in favour of the argument that nationalisation of ATB was in breach of international law or human rights;

        - Collateral Purpose to eliminate MA as political opponent –Judge considered this but did not find it unjustifiable by reason of the act of state doctrine. Arguing that court should not close its eyes to this matter. However, there may be reasons based on comity for court to proceed with caution when examining motives or conduct of a friendly sovereign power/ or authority.

        - Actions brought without authority – judge did not rule on this.

    - Judge ruled that it is not arguable that the actions of the court involve the indirect enforcement of foreign penal, revenue or public law or of a sovereign or government interest. That stay applications, save for argument on collateral purpose (and need for a fair trial) raise issues which are not justiciable.

10. **Judgement against 12 Defendant (Maden Holding Inc) for failure to comply with "Unless" Order 24 February 2011**

    - Judgement of in respect of Maden Holding Inc's failure to comply with "unless" order handed down also by Clarke J on 24 August 2010 and further non-compliance with conditions for relief from sanction in "unless" order also by Clarke J on 10 December 2010 ("Conditional Order").

    - On 3 September 3rd, 7th, 9th, 10th and 12th Defendants ("**Represented Defendants**") served the affidavit of Denis Silyutin – purporting to be in compliance with the "unless" order. The information in that affidavit was substantially insufficient and did not comply with the order. Hogan Lovells, on behalf of BTA, set out such deficiencies in letters dated 8 September 2010 and 15 September 2010.

    - 24 September 2010 BTA issued application for judgment against Maden and others on grounds of non-compliance with "unless" order. 4 October Represented Defendants issued cross-application for declaration that they had complied with "unless" order or alternatively for relief from sanctions. Was held that Maden failed to comply with disclosure provisions of freezing order of 9 June and with "unless" order of 24 August, in particular in respect of a sum of $2,516,000 ("untraced sum") which BTA contended formed part of proceeds of fraud, and pars of funds received by 6th Defendant from BTA as part of a sham loan transaction – paid into an account with JSC Trasta Komercbanka of Riga.

    - Clarke J granted relief from sanction on condition that Maden should provide by 17 December 2010 a power of attorney in favour of BTA to request from JSC Trasta information as to what has become of monies paid by BTA to Maden and any document that shows such disposition.

    - Maden is incorporated in the BVI, which raised certain administrative and procedural difficulties in respect of procuring the power of attorney. Including, need for beneficial owner to travel to BVI/ or a BVI lawyer to obtain a certificate of good standing; need for such documents to be legalised/ apostilled and taken to Dept. Governor's office which could take 48hrs, for such documents to be send to Belarus where beneficial owner was domiciled and to have a notary attend with such documents and power of attorney, and then for such documents to be sent to BTA's lawyers in London. In light of these

difficulties, Maden requested an extension of the deadline to 28 days. This extension was granted.

- Maden failed to execute or deliver a power of attorney as required by the extended deadline (5 January 2011). It was indicated on that day that, rather than comply with the requirement to provide a power of attorney, Maden were willing to provide $2,329,000 of the untraced sum. BTA's lawyers indicated that this was unacceptable because Maden were still unable to account for $187,000 of the untraced sum. Explained that if Maden wanted further time then it must apply to court.

- On 12 January Maden's solicitors wrote to BTA's solicitors to providing a schedule that purported to account for the untraced sum save for $923 which was attributed to a clerical error or a mistake with BTA's figures.

- Clarke found that as no power of attorney was provided by the stipulated date, it follows that if judgement is not entered into then Maden needed to obtain relief from sanction – which it failed to do. Maden did not apply, as it should have done, for such relief.

- Clarke J noted that, despite the history of failure to provide the power of attorney, and despite "significant failures on Maden's part" he proposed that it would be unjust to enter judgement now for something above $1 billion in light of what has happened and not what happened in respect of a power of attorney. As such Clarke J sought fit to grant further relief from sanction subject to certain conditions.

11. Judgement on application by 3rd Defendant (Tekhinvest) for a stay of claims pursuant to s.9 Arbitration Act 2006 and by 7th Defendant (Colligate) for stay of claims on case management grounds dated 28 March 2011

- Applications are for declarations that (a) English court has no jurisdiction over defendants; or (b) stay on *forum non conveniens* principles.

- Clarke J noted that these applications were bound to fail.

- Repeated the subject matter of BTA's claim being against MA and Mr Khazhaev in respect of:

    - A loan of $100m made available by BTA to Tekhinvest (a Russian entity) pursuant to a Master Facility Agreement dated 22 July 2004 and various amending agreements and various individual drawdown agreements;

    - Advance of a further $108,276,5000 by BTA to the 4th to 6th Defendants (all incorporated in Russia) of the following amounts:

        - $29,925,000 to 4th Defendant (Konovis);

        - $38,325,500 to 5th Defendant (PaladioExport); and

        - $40,025,500 to 6th Defendant (CityBestPlus),

      Purportedly pursuant to various master facilities, amending agreements and individual drawdown agreements; and

    - Release of BTA's security taken in respect of the loan to Tekinvest pursuant to a pledge order without any replacement security being provided.

- BTA claimed that the loans to Tekhinvest and 4th to 6th Defendants were invalid because each of the 3rd to 6th Defendants were owned and/or controlled by MA and was a participant in MA's dishonest scheme to defraud BTA. The current sole-shareholder of Tekhinvest is Colligate.

- MA's interest in these companies was not disclosed to BTA prior to execution of such loans as required by Articles 67(3), 71 and 72 of Law of Republic of Kazakhstan on Joint Stock Companies dated 13 May 2003 ("JSC Law") and/or Article 40 of Law of Republic of Kazakhstan "On Banks and Banking Activities" dated 31 August 1995 ("Banking Law") nor was it expressly approved as required under Article 73 of JSC Law by majority of BTA's board of directors not interested in tractions. Such disclosure was required as MA was both (a) majority shareholder and Chairman of BTA; and (b) chairman and ultimate controller of Tekhinvest. Tekhinvest was thus a related party because MA was an "affiliate" of each of BTA and Tekhinvest.

- BTA claims declarations pursuant to Art 74(1) of JSC LAaw and Articles 157-159 of Civil Code of Republic of Kazakhstan that loans to Tekhinvest are invalid and/or not binding on BTA; and for the return of all monies paid under such loans together with all profits and interest which has arisen thereon, as well as any interest or other income or profit made; and similar relief is sought against 4th to 6th Defendants in respect of their respective loans.

- BTA also claims damages against Tekhinvest under Art 8 (and other articles) of Kazakh Civil Code or for dishonest assistance in breach of fiduciary duty, or knowing receipt in English Law. BTA also has like claims against Colligate.

- Loans to Tekhinvest were governed by an arbitration clause. BTA argued that the arbitration clause did not extend to intentional wrongs and therefore does not extend to its non-contractual claim against Tekhinvest. Clarke J found that this contention was not contained in the Kazakh law expert opinion that was produced by the applicants, nor was this contradicted or commented on in any other expert report.

- Clarke J determined that BTA's proceedings against both Tekhinvest and Coligate should be stayed as it was made plain the parties' willingness to have such disputes arbitrated and to participate in arbitration rather than before a civil court.

12. **Judgment on application by receivers for production of classes of documents deployed or produced in arbitration proceedings between companies owned by MA and the White Sea/ Vitino Port Project - a joint venture in which he was interested dated 8 April 2011**

    - Not applicable for summary as is procedural in nature dealing with purpose for which receivers may use certain documents they have been provided with.

13. **Judgement on application to dismiss application to stay actions on grounds of abuse of process – Teare J dated 10 May 2011**

    - Concerns whether it is arguable that actions should be stayed on grounds that they have been pursued for a collateral purpose, and so are an abuse of process. The alleged collateral purpose being that actions have been brought to assist the President of Kazakhstan in a scheme to eliminate MA as a political opponent.

    - Whilst this judgement is procedural in nature and does not deal with asset recovery Teare J did find that the application to stay proceedings against MA on grounds of

collateral purpose should be dismissed. Teare J reached this conclusion on the basis that:

- o BTA had a legitimate interest for taking proceedings against MA, namely to recover assets that he had appropriated;
- o Application does not contend that BTA does not have a good and arguable case against MA;
- o BTA is contractually obliged to pursue its case pursuant to its restructuring and its debts being renegotiated with its creditors;
- o Unrealistic, in circumstances where BTA is insolvent, to suppose the proceedings are not being taken for that purpose;
- o If consequence of case succeeding is President of Kazakhstan is assisted in eliminating MA as political opponent and that that would be advantageous to President of Kazakhstan – it was found that the collateral purpose or advantage does not make the proceedings an abuse of process of this court because:
  - ▪ It is the natural consequence of BTA's case of fraud succeeding and so would follow even if President had not persuaded BTA to take proceedings; and
  - ▪ In absence of President's alleged reason for and interest in BTA talking proceedings against MA, BTA would have legitimate reason for and interest in taking such proceedings and in circumstances where BTA is insolvent, it is unrealistic to suppose BTA would not have taken those proceedings for that purpose.

14. Judgement in respect of an application by BTA to seeking committal of MA for contempt of court dated 21 June 2011

- On 16 May 2011 BTA issued an application seeking committal of MA for contempt of court. Pursuant to a suggestion by Teare J, the number of allegations was limited for case management reasons, in the first instance, to 23.
- MA objected to the application on the basis that the contempt allegations could not be heard until after the trials in the Drey, Chysopa and Granton actions (scheduled for November 2012) as well as the trials for the AAA Proceedings and the Paveletskyay Proceedings, as the contempt hearings would prevent MA from being able to prepare for trial in those proceedings. Additionally, it was argued that the credibility of MA was an issue in contempt applications and it would be better assessed in the proceedings, and that the contempt application raises issues which will also arise at the trial, and therefore, these should be addressed at trial.
- Teare J determined that where allegations of a breach of a freezing order have arisen and a claimant is bringing a contempt application as a means to put pressure on defendant's compliance with the freezing order, it will usually be appropriate to determine the contempt application promptly and before the trial of the underlying action. Teare J noted that MA was preparing for trial in a number of actions and also that he spoke little to no English which causes significant delay in his preparations.

- It was for this reason that Teare J at a hearing on 10 June 2011 suggested that the number of contempt allegations be reduced to 3: one for failure to disclose; one for failure to disclose; one for failure to tell the truth on oath; and one of a wrongful dealing with assets.

- Teare J determined that if BTA's contempt application was so limited was so limited (i.e. to 3 allegations) – he did not consider that it should unduly disrupt the preparation for the main trial or cause unfairness for MA.

15. Application by Receivers for an order that they be provided with responses to four requests for information which they have made in relation to assets in receivership, before Roth J dated 18 July 2011

- Receivers were appointed by Teare J on 6 August 2010 in an action brought by BTA ("Receivership Order"). Receivership Order appointed KPMG as receivers to receive all assets specified in the order, and in particular required MA to:

    - Give receivers such information and documentation relating to Property and the Undisclosed and Further Undisclosed Assets and where the said Property or Undisclosed or Further Undisclosed Assets consist of shares in companies used by the First Defendant as part of a structure through which to hold his interest in a business or asset, such information and documentation relating to all companies and their respective businesses and assets within that structure,

    - Attend on the Receivers at all times, and

    - Do all such things (including, without limitation, use his best endeavours to procure his agents, nominees or attorneys to do all such things) as the Receivers may reasonably require for the purposes of getting tint eh Property and Undisclosed and Further Undisclosed Assets.

- MA did not object to providing the requested information to Receivers, however, he seeks the imposition of a restricted information regime in the light of pending committal application that BTA brought against him. MA's concern is that his answers should not be passed to BTA prior to disposal of committal application.

- MA argued that, in light of the pending committal application, he should be afforded protection under the privilege against self-incrimination. Roth J considered three separate points when determining whether MA could invoke such protection:

    - Disclosure to Third Parties – Roth J found that the Receivers' investigations are not being made as part of the committal proceedings, and therefore, it was unrealistic in all circumstances to regard such enquiries addressed to 3rd parties as infringing MA's privilege against self-incrimination;

    - Use of pre-existing documents – i.e., such documents that have an existence independent of and prior to the requests addressed by Receivers to MA. Roth J invited parties to address the court on question of whether such documents are covered by privilege at all. Roth J relied on prior judgements of *Saunders v United Kingdom (1996)*, *Jalloh v Germany (2006)* and *C plc v P* (2007) where in particular it was held by Igor Judge P in the Court of Appeal that the "*principle that evidence existing independent of the will of the suspect does not normally engage the privilege against self-incrimination is clearly establish[ed] in domestic law*". Roth J did not see any ground on which to

impose a restriction on Receivers' use of pre-existing documents obtained as part of MA's answers to their requests.

- o Disclosure to BTA – Receivership Order contains condition that such information is not disclosed to BTA itself. Roth J accepted that submission advanced by MA is that this in itself does not give him adequate protection as it is through its legal advisors that BTA is conducting the committal proceedings. An undertaking was offered by BTA's solicitors and BTA itself, that information derived solely from Receivers cannot be deployed as evidence against MA in committal proceedings without permission of the court having conduct of those proceedings. Roth J sought fit not to impose any restriction on Receivers as regards disclosure of intimation provided by MA in course of inquiries made to BTA's solicitors – as such disclosure will not violate MA's rights under Article 6 European Convention Human Rights (right to a fair trial).

16. Application for security as to costs by MA and Mr Solodchenko for order that BTA should provide security for costs in relation to 5 actions brought against them 29 July 2011

- Applicant’s case was that justice lies in granting security because: (i) real concerns as to claimant’s stability and creditworthiness and its ability to meet costs award; (ii) applicants will have no way to enforce costs award even assuming claimant can meet it if BTA doesn’t pay voluntarily. Enforcement in Kazakhstan is both in principle and practical terms impossible; (iii) litigation being fought by claimant with striking aggression which has and will significantly continue to increase size of costs incurred justifying need for claimant to have comfort as of security; and (iv) as BTA sought to make clear in stay applications the applicants say litigation is motivated by political and personal undercurrents, ultimate end being political destruction of MA i.e. not ordinary commercial litigation for recovery of money. BTA has real concern that every possible step will be taken to avoid enforcement of costs.

- Judge agreed that there are real concerns vis first ground i.e. BTA’s stability and creditworthiness and ability to meet costs. BTA has a very poor credit rating given by i.e. Moodys (B minus) i.e. vulnerable to adverse business, financial and economic conditions but currently has capacity to meet financial commitments. Fitch stated was highly “speculative” indicating material default risk is present but a limited margin of safety remains but capacity for continued payment is vulnerable to deterioration. Ratings reflect history of bank. Now Kazakh sovereign wealth fund stepped in, made payments $500M to creditors June 2011 and condition of BTA is improving. But professional ratings show still not entirely convinced but it is on more stable foundations.

- Judge considered second ground – applicants have no way to enforce costs award if BTA does not meet it voluntarily. BTA has assets in UK and EU but these assets are liquid (i.e. German Bonds which around time of application). Judge considered that this shows that MA and RS will have no difficulty in forcing a costs award against assets in these jurisdictions.

- Judge considered the third ground - that the costs of fighting litigation will be substantial and are likely to increase and therefore obliges defendants to incur significant costs.

- Judge considered the fourth ground and that MA / RS will have real concerns if they are successful as BTA will take every possible step to avoid the enforcement of a

costs order. BTA state that this is fanciful. BTA also argue that if a claim against MA fails, BTA will nevertheless pursue separate claims against the companies invovled in the actions as BTA are under an obligation to their creditors pursue the recovery of sums due to it. BTA also argue that a costs order is not necessary as MA/RS have "de facto" security. BTA also argue that it would be unjust to make an order when MA has himself failed to comply with the terms of his own Freezing Order and is facing a contempt of court hearing.

Judge first considered the "de facto" security point. BTA rely on the $57.5M (note this figure is listed as $5.75M elsewhere – may be typo) it has already paid to the court prusaunt to orders on freezing order application and the receivership order. This sum is to stand as "fortification for the undertakings given by the Bank". Judge does not consider it appropriate to "water down" that security by making it also applicable to the costs order. BTA argued that it also has outstanding costs orders in its favour already in excess of £4M. However, judge considered that it is likely the cost of defending the upcoming actions would likely far exceed the total of these outstanding costs orders. BTA also argued that it is still owed substantial sums of money from companies owned and controlled by MA. Therefore, as MA is able to control these companies he can cause them to set off costs orders in his favour against sums to be paid by those companies to the Bank in discharge of those companies debts to BTA.

BTA's counsel identified a number of companies owned by MA which owe money to BTA. In particular focused on company called Paveletskaya which is owned 100% by MA, referring to evidence that Paveletskaya owes over $170M in principle and interest to BTA. Other examples were also given such as the KPC Loans as set out in a note on 28 July 2011 given by BTA's junior counsel and other projects such as Oceanarium and Business Centre and 1812 Projects.

BTA also argued that if necessary the court should lift the corporate veil. That it may be possible that having regards to large debts owed by companies controlled by MA could be utilised to provide security for MA's costs.

However, judge found that it would be "unsafe and unsure" to seek to construct security out of debts owed by MA companies to BTA as his ownership and control of those companies and the undertaking offered have not been properly documented. Whilst might be possible to fashion some form of security it would be optimistic to suggest that enforcement of that security would be simple and straightforward and executed easily. Judge found the same applied to charges over debts (which has already been debated and left undecided in receivership order with conflicting views as to whether the charge would be effective as BTA has recently taken in steps in administration). Judge also found the same in relation to suggestion that BTA can sell their liquid EU / UK assets. <u>Judge concluded that the application should not be ruled out on the grounds of the existence of "de facto" security</u>.

BTA also argued that would not be appropriate to rule order for costs as MA and associates are responsible for BTA's current dire financial condition. Judge concluded that it would not be right at this stage (i.e. before the trial) to make a ruling to refuse an application for costs.

Finally judge considered MA's disregard for his obligations pursuant to his own freezing order in particular his initial disclosure obligations – which led to the receivership order being granted. BTA also list further additional failures on the part of MA including: (i) failure to mention Mr. S until 13th Witness Statement; (ii) that a sum of £50,000 of MA's assets was used to fund legal fees for the Chrysopa proceedings in breach of the terms of the Freezing Order; (iii) Court of Appeal decision ruled that

Freezing Order was breached as result of MA dealing with assets; and (iv) they also note that MA has failed to cooperate with the receivers (KPMG) who have mentioned in this in their receivership reports. As a result of the failure to cooperate there have been two extensions to the length of receivership.

Judge found that it must be right in principle for the court to consider whether it is just and appropriate to give a party the benefit of a court order when it has a flagrant disregard for other court orders that have been made against it. **Judge found that it would not be right in principle to order security before the contempt hearing is resolved, therefore, he did not make an order for security as to MA's costs. However, as RS was not subject to contempt and has not disobeyed any court orders he would be awarded an order for security for costs.**

17. **Judgement on application by BTA to set aside relief from sanction granted in respect of 3rd to 7th and 9th to 10th and 12th Defendants and to enter judgement against all respondents before Clarke J dated 4 October 2011**

- BTA contends that Clarke J was misled by the Respondents into believing that they had made a genuine, if belated, attempt to comply with a freezing order dated 9th June 2010 (as continued).

- On 10 December 2010, Clarke J found that there had been material non-compliance with terms of the freezing order. The term so the freezing order were not complied with and information provided was materially false. Clarke J noted that Respondents cannot be better off by putting untruths before the Court than if they had put nothing at all.

- Clarke J noted that he understood why BTA thought it appropriate to apply for revocation, as this would in any event have been necessary in relation to the two defendants in respect of whom relief against sanction had been granted unconditionally. Clarke J clarified that the fact that it was sought against all Respondents affected this understandings.

- Clarke J determined that he was not disposed to (re)grant such relief on the basis that (para 169):

    - Court has been "*seriously misled*";

    - "*no explanation, let alone any hint of regret, has been expressed as to how this has come about*";

    - "*no offer has been made to explain the nature of the arrangements …. Or who else (if anyone) is involved in giving instructions*";

    - "history of non-compliance with orders of the Court"; and

    - "*application was made at the last moment, without proper notice, without any evidence in support of it … and without adequate opportunity for consideration*" by BTA.

- Clarke J also considered a number of factors when considering whether to (re)grant such relief, namely: the interests of the administration of justice; whether the application for relief was made promptly; whether the failure to comply was intentional; whether there was a good explanation for the failure; extent to which the party in default has complied with other rules, practice directions, court orders or

pre-action protocols; whether failure was caused by the party or its legal representatives; whether trial date or likely date can still be met if relief is granted; the effect that the failure to comply has had on each party; and the effect which granting relief would have on each party. In each of these considerations, Clarke J did not find any reason for (re)granting such relief for the Respondents.

- Clarke J noted that the effect of the (re)grant of such relief would meant that the Respondents did not have a judgement of over $1 billion against them. On that basis Clarke J did not accept that this should deter him from refusing further relief. Noted that the "*armoury of the Court in cases of very large international fraud is likely to be seriously weakened if, when it makes orders which are not obeyed and grants relief against sanction the conditions for which are not complied with, the size of the claim and the alleged iniquity of the alleged participants is likely to preclude the Court from giving effect to the sanction*".

- In light of these findings Clarke J revoked the order he had previously made granting relief against sanctions and entered into judgement against the Respondents.

18. Judgement on an appeal by MA in respect of a contempt of court application brought against him – dated 28 November 2011

- Teare J previously granted permission for BTA to proceed against MA in respect of a limited number of allegations of contempt of court, without requiring BTA to abandon other allegations of contempt it had previously raised. Teare J approved BTA's selection of allegations to form the subject of hearing (notwithstanding a degree of overlap between the contempt allegations and the substantive trial hearings) and allowed BTA's contempt application to proceed.

- Lord Gross' discussed his reasons for dismissing the following grounds for appeal:

    - **Ground I** – the decision of Judge to permit BTA to reserve a purported right to bring forward for future determination allegations of contempt which are not among the three allegations to be heard in BTA's contempt application was wrong as a matter of both fact and law and involved a serious procedural irregularity which caused this decision to be unjust;

    - Ground II – decision of the Judge to permit BTA to select three allegations of contempt to be heard before the trials in the substantive proceedings, where two of those allegations directly overlap with issues in substantive proceedings, was wrong as a matter of both fact and law and involved a serious procedural irregularity which caused this decision to be unjust.

- Ground I – Lord Justice Gross found that overall, the circumstances of this case were such that the interest of justice point to the correctness of Judge's decision to leave over the fate of 32 allegations of contempt while directing that the committal should proceed in respect of only three allegations – in Gross' view the Judge was amply entitled to come to this conclusion.

- Ground II – Gross found that "overlap, of itself and without more, does not necessitate postponing the determination of a contempt application until after the trial. It is, instead, a factor to be taken into account; the weight to be given to it – and the pointer, if any, it gives to the decision to be taken – must depend on the facts of the individual case." (para 42). Gross concluded that Teare J was right, and that it was of paramount importance that the Court, does and is seen to be doing all it can to

ensure the efficacy of the freezing order. It suffices that Teare J was amply entitled to reach the conclusion he did.

- Lord Justice Moss and Sir Andrew Morritt agreed with Lord Justice Gross' reasoning.

19. Judgement on application by BTA (originally made 7 September 2010) that 3rd to 7th, 9th, 10th and 12th Defendants should provide information relating to person(s) funding their legal costs dated 20 December 2011

- BTA submit that (a) since there is an extant and largely unpaid costs order, the jurisdiction to make an order requiring identity of funder be revealed has arisen; and (b) that it should be exercised. It is not, in BTA's opinion, acceptable that the Represented Defendants ignore the date by which Court has ordered costs to be paid, and when this failure is complaint of, to indicate that payment will be made some two months after original date and suggest that if any order is made it should only be for provision of identity of source if payment is not made by the date which Represented Defendants have selected.

- Judge agreed with limb (a), however, whilst he saw the force of limb (b) he was not persuaded that, on this occasion, it should require the making of an immediate order.

- Judge noted that it is not acceptable for the Represented Defendants to simply ignore dates set by which Court orders costs to be paid; or to treat them as nothing more than a target. In respect of future costs, the Judge was minded to order that the costs be paid by a specific date, and to order that, unless they were, the identity of the source should be revealed.

20. Judgement on application for contempt of court 16 February 2012

- BTA made an application for three allegations of contempt of court:

    - MA failed (in breach of WFO) to disclose beneficial ownership of shares in Bubris Investments Limited;

    - When cross-examined MA lied under oath as to his assets when he stated: (a) only short-term tenant of two properties in London and that all residential properties he owned were in his schedule of assets; and (b) denied being UBO shares in FM Company Limited (Marshall Islands), Bergtrans Contracts Corp and Carsonway Limited (BVI).

    - MA is in breach of WFO by dealing with assets, namely loans held by Stanis Limited (Cyprus) by assigning them to Nitnelav Holdings Limited in Dec 2010.

- **Buburis Onwership** – part of the AAA proceedings – BTA alleges that Bubris was involved in fraud on BTA in Jan 2009 whereby $300M of bonds were misappropriated. BTA alleges that when WFO was made the true UBO of Buburis was MA. Judge found that MA was at all times the UBO and true beneficiary of shares in Buburis. Found that was deliberate act of MA to hide ownership and was found in contempt of court.

- **English Real Estate Ownership** – BTA alleges that MA was true UBO of 4 properties in UK (Carlton House in North London, Oaklands Park in Surrey, Elizabeth Court and Alberts Court, both in North London). When under cross-examination MA said he was only a short-term tenant of Carlton House and Elizabeth Court and all

residential property was listed in his schedule of assets, which did not include shares in the registered proprietors of 4 UK properties.

- Carlton House – BTA allege that shares in Mount Properties (proprietor of property) are beneficially held by MA. In support of this argument BTA allege that the purchase price was funded by Sunstone Ventures Limited (who's UBO is MA); (ii) Syrym S. did not have means to buy the property; (iii) registered proprietor Mount Properties is administered by M. Udovenko and Syrym S in same manner as administer MA's other companies; (iv) changes were effected to ownership in Oct/Nov 2009 after grant of WFO in attempt to distance MA; and (v) a lease of Carlton House in favour of MA was a sham and not existing prior Nov 2009 and when MA said in his cross-examination that such a lease existed; (vi) expenses in relation to Carlton House were not distinguished between owner and occupier; and (vii) although shares in Mount Properties were within extended receivership, no person sought to challenge their addition to the receivership. Judge found that only possible inference was that MA was beneficial owners of Carlton House and that evidence under oath in 2009 that was only short term tenant was untrue and must have been given with intention of impeding justice and efficiency of WFO.

- Oaklands Park – BTA allege that shares in Lafe are beneficially held by MA and not Syrym S as alleged, in doing so they rely on: (i) purchase price being funded by Sunstone Ventures Limited; Mega Property Limited and Widely Worldwide Inc (all controlled by MA); (ii) Syrym S did not have means to purchase Oaklands Park; (iii) that Lafe (registered proprietor) is a company administered by Udovenko and Syrym S in manner as they administer MA's other companies; (iv) changes to ownership structure in Oct 2009 after WFO to distance MA from asset; (v) shares in Lafe were added to the extended receivership order but no complaint has been made as to this. Judge also found that MA's evidence as to ownership of Oaklands Park was given in contempt of court.

- Elizabeth Court – judge found that he could not be sure that MA was the UBO of Rocklane Properties (the proprietor of flat at Elizabeth Court) and as such did not find this limb to be a contempt of court.

- Albert Court – BTA alleged that shares in Bensbourogh Trading (the proprietor) were held on trust for MA. Primarily relying on the fact that shares in Bensbourogh were added to the extended receivership order but no complaint has been made as to this, as well as aspects of Salim Shalavayev's use of the flat. Judge admitted that was not as clear as the case with Carlton House of Oaklands Park, but ultimately found that MA was the UVO and therefore the evidence he had given was in contempt of court.

- **Schedule C Companies** – BTA alleges that Drey received money fraudulently from BTA, and MA admits that he owns Drey. FM Company is shown in MA's Schedule C disclosure to be recipient of $41.1M from Drey via Devesta (company which MA at one stage admitted to owning, although he later retracted this statement) in Jun 2008. Bergtrans is shown as having received $500,000 in Jul 2008 and Carsonway is shown as receiving $255,435 in Jul 2008 both from monies ultimately coming from Drey. BTA claims that MA is the benefical owner of FM Company, Carsonway and Bergtrans and that MA lied as to his ownership of these companies under oath – alleging that Syrym Shalabayev was UBO of FM Company and Mr Kossayev was UBO of Carsonway and Bergtrans. Judge found that the only reasonable inference

that could be made was that MA was in fact the beneficial owner of FM, Bergtans and Carsonway, and as such, MA's denial of having interest in his cross-examination was false information and therefer such evidence was in contempt of court.

- **Stantis** – BTA allegs that MA owns Stantis and that STantis was owed monies exceeding $80M. MA dealt with those debts in breach of WFO by assigning them in Dec 2010. BTA alleges that Syrym Shalabayev instructed Mr Batygarejev to execude deeds of novation in favour of Nitnelav Holdings Limited on 1 May 2010. Pursuant to agreement Apr 2007 Stantis borrowed $80M from Alterson Limited which were assigned back to Alterson in April 2010. Bank alleges that this mechanism is fabricated to provide MA with defence to allegations of wrongfully dealing in assets. Judge found that MA dealt with the Stathis loans in breach of the WFO and that he did so deliberately, not accidently. MA knew the terms of WFO and must have known he had been ordered not deal in assets held by Stantis. Therefore, was in contempt of court.

MA was committed to prison for 22 months for each the 3 deliberate and substantial contempt of court.

21. **Judgement on application by BTA for mandatory judgement requiring MA to surrender himself to tipstaff and file a full and proper disclosure of assets, and for an order that, unless he does so, his defence will be struck out – before Teare J dated 29 February 2012**

- Teare J noted that MA was found to be in contempt of court and was sentenced to 22 months' imprisonment in his absence, noting that MA had gone into hiding – and that even his own solicitors (who continue to act for him and receive instructions) do not know where he is. It was in those circumstances that BTA issued the current application.

- Teare J noted that the argument focuses on 4 matters whether: (i) Court has jurisdiction to make an order requiring MA to surrender to the tipstaff and whether such an order is appropriate; (ii) it is appropriate to make order for disclosure of assets; (iii) it is appropriate to make either order an "unless" order; and (iv) whether sum £45m paid into court by BTA by way of fortification of its undertaking in damages should be paid out to BTA.

- Teare J ruled in favour in respect of first issue on basis that MA had gone into hiding, and therefore, the warrant was unlikely to be executed. If MA were required to surrender to the tipstaff then the warrant can be executed, and therefore, such an order is appropriate and necessary.

- Teare J noted that there is no dispute the court has jurisdiction to make a disclosure order, and that disclosure of assets is a necessary adjunct of a freezing order to make such an order effective. Dispute is whether such an order should be made when an order for disclosure of assets has already been made. Teare J found that the Court should not be dissuaded from making the order sought because MA would be compelled to reveal his whereabouts by reason of a public notary before whom he swears his affidavit stating where the affidavit was made – Court is under no obligation to assist MA to remaining in hiding and MA cannot claim any right to avoid execution of warrant for committal. ON that basis Teare J granted the disclosure order sought.

- In respect of the unless order, that unless MA complies with the above two orders his defences to the actions against him shall be struck out and BTA will be at liberty to

enter into judgment in default. Teare J noted that it was not suggested that MA's failure to comply with disclosure of assets order would impede conducting a fair trial, rather the "unless" order was sought to bring further pressure on him to comply with the disclosure order – which Teare J determined was a legitimate reason in principle and was supported by authorities. Were it otherwise the Court would be powerless when faced with a defendant who refused to comply with an order for disclosure of his assets and when sentenced to imprisonment for contempt of court went into hiding. Teare J did not consider that MA's defence being struck out for failing to provide a full affidavit of assets would deny him of a fair hearing or his civil rights and obligations as such an affidavit is required to ensure a fair resolution of BTA's claim against him. If MA chooses not to provide an affidavit of assets then his defence will be struck out, this is not because the court has denied him an entitlement to a fair hearing of his civil rights and obligations. On basis of interests of overall fairness the "unless" order should be granted in respect of the disclosure obligation.

- In respect of the £45m, if MA's defences are struck out then it is unlikely that BTA's undertaking in damages will be called upon, therefore, Teare J ordered that if defences are struck out and judgement entered for BTA – the sum paid into court shall be paid out unless MA files a statement of evidence of facts and matters he says might cause undertaking to be called upon.

22. Application by BTA to amend aspects of a receiving order obtained against MA in August 2010 dated 8 March 2012

Application is being made following the conviction of MA for contempt of court. Since conviction MA has gone into hiding, he failed to attend the judgement and "disappeared" not informing his solicitors. Mr. Batyrgareyev, (MA's) principle disclosed nominee has taken a number of steps to procure formal documentation relating to companies within MA's asset holding structures for purpose dealing with those companies contrary to terms of freezing orders and receivership orders (i.e. attempt to sell MA's 10% interest in Novaya Tabachnaya Companiya for €77M). Also been Cypriot proceedings by 3rd parties relation to the proposed sale that refer to a company called Instem that Batyrgareyev is a director of. Judge granted the application to amend the receivership order to enable receivers to obtain information on disclosed assets; make it clear that receivers have power to carry on the business of disclosed companies but not the of the local operating companies at the bottom of each corporate structure; amending to cover the three UK properties that were found to be owned by MA in the contempt of court proceedings (the registered proprietors were already caught under the receivership) but receivers have real concerns as the management, maintenance, up-keep and insurance on these properties. Judge found these amendments to be in line with earlier orders.

23. Judgement on application by BTA for an order for interim payment against the 4th Defendant 16 March 2012

- BTA applied for an interim order against 4th Defendant Chrysopa Holding in amount of $65m. Application was made on the basis that the court can be satisfied that Chrysopa has admitted liability to pay such sum of money to BTA pursuant to CPR 25.7(1)(a) and/or that if the claim goes to trial BTA will obtain judgement for substantial amount of money from Chyrsopa CPR 25.7(1)(c).

- BTA's claim concerns a purported loan of $120m made by BTA to Chrysopa on 1 August 2008. BTA claims the loan was, in reality, a contrivance by which MA

unlawfully misappropriated monies from it. BTA seeks to invalidate the loan and claim compensation form defendants involved for the alleged misappropriation.

- Hamblen J was satisfied that either BTA's claim would succeed for the return of the loan sum, or if it is proven that the loan agreements were legitimate agreements – then it would succeed on its interest claims. On basis that Chyrsopa had had its defences struck out, BTA was bound to succeed. Hamblen also noted that this is not a case in which irrevocable harm could be caused to Chyrsopa as it was merely a shell company whose shares had been placed into receivership and no application had been made to set this order aside.

- Hamblen noted that the $65m claimed represented a reasonable proportion of the sum which BTA will recover at trial; BTA's primary claims being for $120m plus interest with the alternative interest claim currently being for a sum of $78m (increasing at a rate of $60,000 per day). With BTA deducting interim payment figure of $30m to take account of possibility that one of the loan agreements may have had effect of waving interest for a 6 month grace period.

- BTA also noted that it has done all it can to draw the application to the attention of Chrysopa.

- In those circumstances Hamblen J was satisfied that it was an appropriate case for interim payment to be made in sum of $65m.

24. Application by MA to appeal against the order for his committal dated 16 May 2012

- Court of Appeal considered the following issues (i) requirement that MA surrender to custody as a condition to be allowed to continue with his appeal:(ii) Interim payment, security for costs and disclosure; (iii)

- <u>Surrender to Custody</u>: LJ Moore-Bick found that, in the circumstances, it would not be in the interests of justice to require MA to surrender himself to custody as a condition of proceeding with his appeal – regardless of his conduct, as MA is seeking to challenge an order that affects his personal liability. Accepted that a full and proper disclosure of the location of assets which BTA is seeking to recover is necessary if there is to be a fair trial, LJ Moore Bick did not accept that an order of the kind being sought was the right was to protect BTA's position. MA had not been committed simply for failing to give the disclosure required by the freezing order, but also for specific acts and omissions amounting to contempt of court. If MA succeeded in his attempts to have his committal set aside the requirement to surrender would disappear. Therefore, subjecting him to custody would not be available as a way of compelling him to give the required disclosure. If MA's appeal failed it may then be appropriate to require him to surrender to custody as the price for being allowed to contest his claim. However, LJ Moore-Bick did not find that MA should be required to custody simply to have his appeal heard.

- <u>Interim payment, security for costs and disclosure</u>: MA had failed to satisfy the order that he make interim payment of £750k to BTA on account of its costs of the committal proceedings. Reason that was given was MA does not personally have means to satisfy such an order, or finance his own legal costs, and that those who are providing his funds were not willing to lend him the money to pay BTA's costs. LJ Moore-Bick determined that if MA were ordered to make the interim payment this would add nothing to the existing position without the addition of a sanction that his appeal be dismissed if he fails to comply; however, if that sanction were to become effective, this would deprive him of the opportunity to challenge the committal order

altogether. Same could also be said for the application sofr security for costs and disclosure. On that basis LJ Moore-Bick determined that it would not be right to impose on MA any of conditions sought by BTA as a consequence of a failure on his part to comply with them would be disproportionately severe.

25. **Judgement on application by BTA for a declaration that MA's rights arising under certain loan agreements entered into with BTA are MA's assets for the purpose of the freezing order dated 4 July 2012**

- BTA seeks:

    - a declaration that MA's rights arising under certain loan agreements entered into with BTA (if found to be valid agreements) are MA's assets for the purpose of the freezing order and that drawdowns thereunder could only be lawfully made in accordance with freezing order; or

    - disclosure of all drawings which have been made under loan agreements to ascertain whether there are any assets which represent traceable proceeds of such drawings or whether grounds exist to make applications against recipients on basis they knowingly received property transferred under freezing order.

- Clarke J refused to grant the declarations sought on basis that MA's rights under loan agreements were not assets within meaning of the freezing order; nor was his exercise of his rights a disposal of or dealing therewith. A right to borrow under a loan agreement is not an asset which the freezing order contemplates. MA's rights under loan agreements were of no value to BTA. Loans, if not shams, were personal – and incapable of assignment without the lender's consent and rights to draw down could be withdrawn. A such there was no realistic prospect of BTA securing the right to borrow on terms by execution.

26. **Judgement on applications by BTA for declarations that MA breached the terms of Freezing Order and that MA owns certain assets that have not been disclosed. Application by MA for retrospective permission from Court to pledges made by his companies on grounds that do not conflict with purposes of Freezing Order 21 September 2012**

    BTA applied for two declarations and corresponding orders, being: (1) (a) a declaration that MA has acted in breach of the terms of his Freezing Order made in Aug 2009, and (b) order MA exercise best endeavours to reverse certain dealings with his disclosed assets; and (2) (a) a declaration that MA owns certain assets that he has not disclosed and has acted in breach of the terms of his Freezing Order; and (b) order MA exercise best to reverse certain dealings with undisclosed assets.

    Alleged dealings consist of intended pledges of certain assets (incl. 1812 Business Centre, Oceanarium, Kaluga land, Paveletskaya Square, Cosmos Hotel) by property companies to AMT Bank ("**AMT**") and Central Bank of Russia ("**CBR**") as a part of AMT's restructuring of its loan of $270M from CBR following the Freezing Order. Judge was not clear whether MA can do anything to reverse pledges of property which he has made in their favour. The orders BTA are seeking will also affect the property rights of AMT (or its liquidator) and CBR, and therefore, bring an advantage to BTA at the disadvantage of those third parties.

    MA is seeking an application requesting that the court grant permission, retrospectively, for pledges made by the property companies on grounds that they were made for purposes that did not conflict with Freezing Order. Request is made despite being found in contempt of court

and having absconded to avoid a 22-month prison sentence. In Court of Appeal decision [2010] EWCA Civ 1141, that those pledges were made in breach of the terms of the Freezing Order. CoA held that MA was unable to deal with his assets in ordinary course of business because "he had no relevant business", and he was "merely managing his investments". MA alleges that reasons for the pledges "did not conflict with purposes of Freezing Order … not designed to avoid satisfaction of judgement" as the purpose was i.e. for CBR loan to grant security for loans made by CBR to AMT. BTA alleges that this is untrue and that there are deficiencies in evidence and if (pre-event) permission were to be granted the court would have required much fuller evidence that has been submitted, and therefore, application should be refused.

MA argued that the court should only examine whether the objective purpose of the dealing in question conflicted with the Freezing Order, if not, then the permission should be given. Whilst, BTA argued that the court had much wider discretion and should do "what is just and convenient" regarding all circumstances. Ultimately the Judge found that the question before the courts was to look at all circumstances of the case in order to establish justice between the two parties.

AMT/ CBR loan restructuring was documented in an agreement dated 28 Sept 2010. Judge found that the agreement clearly required the loan from CBR to AMT to be restructure and that AMT was obliged to pledge certain plots of land in Moscow to CBR, however, the agreement does not obtain obligations on AMT to improve security from MA's companies in relation to loans made to AMT's companies. There was also a letter submitted from CBR to AMT "Activity of AMT Bank" dated 31 May 2011 states AMT undertook to "take all measures to strengthen the security component of loan portfolio as soon as possible". Letter expressly refers to certain pledged assets i.e. Hotel Cosmos and Paveletskaya assets. This corroborates MA's evidence regarding AMT's obligation to strengthen security using MA's companies.

Summary of Pledges:

- Oceanarium – pledge of repayment rights and mortgage in favour AMT on 24 Feb and 6 Apr 2010. Was security for the repayment of loans required so MA could continue construction of Oceanarium;

- 1812 Business Centre – pledge shares and mortgage in favour AMT on 28 Feb and 7 Dec 2010 as security for repayment of loans so MA could satisfy claims of Codest (contractor). Pledge and mortgage made after CoA's ruling;

- Paveletskaya – mortgage and pledge over repayment rights in favour AMT on 10 Nov 2010 and May 2011. Required of MA by CBR as condition not calling in loan to AMT. Before CoA ruling. Also security was required for short term loan in Sept 2010 to demonstrate liquidity; and

- Kaluga Highway – transferred into fund managed by Fleming and then pledged to CBR on 3 Nov 2011. Required by CBR as part restructuring CBR's loan to AMT.

Judge found that as the pledges were made following CoA decision they were in breach of the Freezing Order. Judge acknowledged that the reversal of pledges is more difficult. BTA was found to lack evidence to say that MA must be ordered to reverse pledges and security on basis that they conflict with purposes of Freezing Order. What BTA states is that as MA has acted in breach of Freezing Order (except in case of Oceanarium) it is appropriate that court should order him to exercise best endeavours to reverse the pledges and mortgages his companies have made. The judge highlighted two counter-arguments to this being that (i) that BTA has not identified any step MA could take to undo the pledges; and (ii) there is previous caselaw (*Normid Housing v Ralphs*)

states that court must give consideration to 3rd party interests. Judge ruled that MA must use his "best endeavours to intervene in any enforcement proceedings brought by CBR or the liquidator of AMT to ensure that a Russian Court is informed that these pledges were in breach of CoA judgment.

Judge decided that it was not in the interests of justice to grant MA retrospective permission to make the pledges.

Judge ordered that MA make further disclosures in respect of the following property assets only Paveletskaya, Oceanarium and Cosmos Hotel.

BTA also made an application with regards to undisclosed assets namely that MA owns two logistic park companies (i) LLC Logopark Pyshgma and (ii) LLC Logopark Kolpino. BTA alleges that pledges over plots of land held by Kolpino in favour of AMT in Mar and Feb 2011. BTA seeks for this order to be reversed. BTA allege that further pledges were proposed in respect of Kolpino's land to CBR and Pyshma's land to AMT – BTA seems further disclosure in respect thereof. Judge was persuaded that "more likely than not" MA was owner of both companies. Judge found that a declaration of ownership should be made along with a declaration of breach.

MA's application was dismissed.

27. Judgement on an application by certain parties connected to the 5th Defendant following BTA's claims that 5th Defendant was involved in the alleged fraud known as Chrysopa dated 8 October 2012

- BTA issued an application in respect of its claim that chrysop was advanced a sham loan in value of $120m from BTA in an attempt to disguise the transfer of that sum to entities owned and/or controlled by MA. BTA now alleges that the 5th Defendant Usarel Investments Limited was also involved in this fraud.

- This application was issued by a number of entities who claim to have been shareholders in Usarel and also by two entities claiming to be corporate directors of Usarel.

- BTA argue that the Court has no jurisdiction to determine the application, but if it is found that the Court does have jurisdiction then the Court should not, in the exercise of discretion, accede to it.

- Jurisdiction: Applicants are asking Court to appoint a receiver, and such application concerns the ability of MA to be represented at trial. Despite the application being made by persons who are not party to the action, it was not suggested that the Applicants did not have sufficient *locus* or standing to make it. In this respect Teare J determined that he was unable to accept BTA's submission that Court has no jurisdiction to determine the application;

- Discretion: Teare J noted that in principle the requested appointment of a receiver was just and convenient to ensure that Usrael, a defendant in a very large fraud claim, was represented at trial by solicitors and counsel. Teare J noted that it must be in the interest of justice that they be represented at trial. Court was not being asked to determine the identity of the purported shareholders of Usrael or whether directors had been validly appointed, rather it is being asked to appoint a receiver so that if, as suggested by BTA, the directors have not been validly appointed so that Usarel does not have any directors, the receiver can confer authority to act on its own solicitors to act on Usarel's behalf. Teare J reasoned that the only effect of appointing the receiver would be so that there would be no doubt that the receiver's solicitors have

authority to act on behalf of Usarel. Teare J considered the lateness of the applicants' application, but did not consider it as overriding the interests of justice. Teare J concluded that Court should accept the application.

28. **Judgement on application by MA to set aside statutory demand dated 1 November 2012**

- Application by MA to set aside a statutory demand dated 5 December 2011 by MA's former lawyers seeking a sum of £695,290.20 which was stated to be due in respect of an undertaking given on 20 September 2011.

- Statutory demand was set aside.

29. **Order dated 23 November 2012**

Ordered that the defence of each of: (i) Second (RS); (ii) Fourth (Drey); (iii) Eighth (Interfunding Facilities Limited); (iv) Fifteenth to Seventeenth Defendants (OOO Proyektno-Stroitelnaya Kompaniya AMK-Invest; Turanalem Capital LLC and ZRL Beteiligungs AG) be struck out.

Judgement against MA, RS, Drey and interfunding Facilities Limited, - ordered to pay BTA by 7 Dec 2012 to BTA:

- $401,508,769 (or sterling equivalent);

- $3,224,794 in respect of interest accrued in period from date of payment between PoC and 6 May 2010;

- $15,609,340 in respect of interest between 6 May 2010 and 7 Dec 2012;

- $92,105 per day in respect of continuing interest at 8% per annum from 7 Dec until payment.

Judgment against OOO Proyektno-Stroitelnaya Kompaniya Amk-Invest to pay by 7 Dec 2012 to BTA:

- $44,835,282;

- $1,728,307 in respect of interest accrued in period from date of payment between PoC and 6 May 2010;

- $1,728,307 in respect of interest between 6 May 2010 and 7 Dec 2012;

- $10,205 per day in respect of continuing interest at 8% per annum from 7 Dec until payment.

Judgment against Turanalem Capital LLC to pay by 7 Dec 2012 to BTA:

- $251,359,292;

- $1,587,538 in respect of interest accrued in period from date of payment between PoC and 6 May 2010;

- $9,689,384 in respect of interest between 6 May 2010 and 7 Dec 2012;

- $55,092 per day in respect of continuing interest at 8% per annum from 7 Dec until payment.

Judgment against ZRL Beteiligungs AG to pay by 7 Dec 2012 to BTA:

- $29,505,549;
- $124,070 in respect of interest accrued in period from date of payment between PoC and 6 May 2010;
- $1,137,378 in respect of interest between 6 May 2010 and 7 Dec 2012;
- $6,743 per day in respect of continuing interest at 8% per annum from 7 Dec until payment.

BTA's applications against Anthony Stroud, John Wilson and Sarah Wilson (i.e. nominee directors) was adjourned for a future date.

Judge also found that in respect of Drey the three compensation agreements were declared to be invalid (not provided). In respect of each of the BTA Moscow and BTA Belarus transactions the SPAs are invalid. Costs were awarded against MA and his Co-Defendants.

Tab 31 – Judgment dated 1 November 2012 handed down by Teare J

Subject of Judgment: Application by Mr Ablyazov for an order of recusal of the relevant judge based on possible bias arising from his previous involvement in the committal application against Mr Ablyazov.

Decision: Application for recusal denied on the basis of unfairness to the other parties and that it would undermine the reality and the appearance of justice as in *Locabail*.

Tab 32 – Judgment dated 6 November 2012 handed down by Rix LJ, Toulson LJ and Maurice Kay LJ

Relevant to Issue 3

Subject of the Judgment: In the present round of appeals, Mr Mukhtar Ablyazov appeals from three judgments of Mr Justice Teare under which the judge has respectively (i) found him guilty of contempt of court; (ii) sentenced him on each of three proven contempts to 22 months in custody concurrently; and (iii) in consequence has made an "unless" order whereby Mr Ablyazov will be debarred from defending the claims made against him, and his defences will be struck out, unless within a stated period he both surrenders to custody and makes proper disclosure of all his assets and his dealings with them. The stated period for surrender was until 9 March 2012, and for disclosure until 14 March 2012.

Decision: A unanimous decision to dismiss all the appeals before the court.

Tab 33 – Judgment dated 28 November 2012 handed down by Rix LJ, Toulson LJ and Maurice Kay LJ

Subject of the Judgment / Decision: Dismissal of Mr Ablyazov appeal with respect to the refusal of a judge to recuse himself as the nominated judge of trial in circumstances where he has had to hear prior to trial, an application to commit one of the parties for contempt of court and has found a number of contempts proven leading to a sentence of 22 months imprisonment.

Tab 34 – Judgment dated 18 January 2013 handed down by Mr Justice Flaux

Relevant to Issue 3

Subject of the Judgment: By the present application the bank seeks similar orders in relation to the shares in OJSC Pabliskaya, held by Simple City Holdings Limited, a Cypriot company beneficially owned by Mr Ablyazov, which in turn was 99.9 per cent owned by a company called Invest Club Investments Limited in the British Virgin Islands. Ultimately all these companies are beneficially owned by Mr Ablyazov and clearly are assets of Mr Ablyazov caught by both the freezing order and the receivership order. So in those circumstances what is quite clear is that any dealing with that asset, including seeking to deal with it by way of a pledge of the shares in Simple City, would be and was a breach of the receivership order.

In this application the bank is seeking inter alia a declaration that to the extent the share pledge was perfected, the grant of the pledge constituted a breach of the freezing order and, if perfected after 9 November 2010, was contrary to both the freezing order and the receivership order.

Decision: It seems to me therefore that the order which is sought is one which it is appropriate to make, it is not simply hypothetical, it does serve a useful purpose and it seems to me it is an order which, in the exercise of the court's discretion and given the history of this case and the history of Mr Ablyazov's defaults, is one in which the balance is very much in favour of the claimants. So for those reasons I propose to make the or-der sought.

Tab 35 – Judgment dated 19 March 2013 handed down by Teare J

Relevant to Issue 1

Subject of the Judgment: The Bank seeks judgment in the Granton and Drey actions against Mr. Zharimbetov (a 45 year old Kazakhstani citizen who now lives in London but who held office in the Bank under Mr. Ablyazov) and in the Chrysopa action against Mr. Khazhaev (a 31 year old Russian citizen who lives in Moscow and was employed by the Bank in Moscow) and Usarel (a Cypriot company).

The Bank claims that Mr. Ablyazov defrauded it by procuring the payment of the Bank's money to offshore companies which he owned or controlled. In the Granton action the Bank claims that sums approaching US$2.5bn. were paid away in this fashion. In the Drey action the Bank claims that some US$400m. was paid away and in the Chrysopa action the Bank claims that US$120m. was paid away.

Decisions

Granton Action: Between March 2006 and August 2008 the Bank made 20 loans to 17 companies totalling US$1,428,840,000 (the "Original Loans"). The Bank's case is that the Original Loans were "a misappropriation of money from the Bank by Mr. Ablyazov on a massive scale, crudely disguised as commercial lending." The Bank says that the companies involved in the Original Loans were affiliated to Mr. Ablyazov, that this affiliation was not disclosed to the Bank's Board of Directors and that the true purpose of the loans, namely, to benefit Mr. Ablyazov, was not disclosed to the Board.

Drey Action: In mid-2008, at a time when the AFN was investigating the Bank's loan portfolio, the Bank, under the control of Mr. Ablyazov, entered into transactions to purchase a controlling interest in three foreign banks in Moscow, Belarus and the Ukraine (the "Target Banks"). It is the Bank's case that these transactions were in reality a means by which Mr. Ablyazov procured the payment out by the Bank of its money for Mr. Ablyazov's purposes. The Bank says that the Target Banks were owned and controlled by Mr. Ablyazov, that his affiliation with them was not disclosed to the Bank's Board of Directors, that the total price to be paid by the Bank was greatly in excess of the market value of the Target Banks and that because the Target Banks were owned and controlled by Mr. Ablyazov there was no need for the compensation agreements. Thus the Bank says that Mr. Ablyazov engineered a scheme whereby (i) the money paid by the Bank under the compensation agreements was used for

his own purposes (in particular repaying loans made by the Bank to other companies owned or controlled by Mr. Ablayzov) and (ii) the Bank overpaid for the shares in the three foreign banks. 99. The second part of the scheme was a plan, in relation to at least BTA Moscow and BTA Ukraine, whereby there would be a new share issue by those banks and that more of the Bank's money, under the guise of loans to companies owned or controlled by Mr. Ablyazov, was to be used to purchase the new shares issued by the Target Banks with the result that, notwithstanding the purchase of the old shares in the Target Banks, Mr. Ablyazov would remain in control of the Target Banks.

Chrysopa Action: In August 2008 the Bank paid US$120m. to Chrysopa Holding BV, a Dutch company ("Chrysopa") pursuant to a loan transaction. It was passed on to Usarel, a Cypriot company who used it to purchase the Vitino port on the White Sea. It is the Bank's case that, although the funds were in fact used by Usarel to purchase the Vitino port, the transaction between the Bank and Chrysopa was a sham transaction because there was no intention that Chrysopa would repay the loan and that the transaction was only entered into because Mr. Ablyazov, who owned Chrysopa, required the funds to enable Usarel, with which he was also associated, to purchase the Vitino port. If the loan transaction was not a sham it was, says the Bank, brought about by the fraud of Mr. Ablyazov who, by failing to disclose his interest in the transaction to the Board, kept the Board in ignorance of the fact that the loan was being used for the purpose of funding Mr. Ablyazov's own business interests.

Tab 36 Judgment 19 April 2013 handed down by Teare J

Subject of the Judgment: Following my judgment on liability (see [2013] EWHC 510 Comm – Tab 35) the court has had to deal with a number of ancillary matters, one of which concerns the interest claimed by the Bank on the sums in respect of which it has been awarded judgment. This is the court's ruling on the question of interest.

Decision: The court awarded simple interest at 8% per annum pursuant to s 35A of the Senior Courts Act running from the date on which the relevant cause of action accrued.

Tab 37 – Judgment dated 25 April 2013 handed down by Hamblen J

Relevant to Issue 2 and 3

Subject of Judgment: This is an application by the claimant bank to vary the receivership order made in relation to Mr Ablyazov's assets on 6 August 2010 so as to permit the receivers to sell three properties.

It had been alleged by Mr Ablyazov that Carlton House in fact belonged to his brother-in-law, Syrym Shalabayev. This contention was rejected by the court. After the trial before Teare J had concluded but before judgment was handed down there was a further witness statement provided by Mr Shalabayev which suggested that an individual called Roland Koefer was claiming beneficial ownership of the shares in Mount Properties (registered owner of Carlton House).

Decision: Teare's J conclusion was "I do not consider the claim to be true that Roland Koefer may have pur-chased Carlton House from Syrym Shalabayev in November 2002.

The finding of Teare J in the contempt hearing in relation to this property was " I am persuaded so that I am sure that Mr Ablyazov is the beneficial owner of the shares in Lafe and, hence, Oaklands Park. My rea-sons are essentially the same as found in my decision in relation to Carlton House."

Teare's J finding in relation to Albert's Court was "I am persuaded so that I am sure that the only rea-sonable inference to be drawn from the evidence is that Mr Ablyazov was the beneficial owner of Albert's Court."

I am persuaded that it is appropriate that the order be varied in that way.

Tab 38 – Judgment dated 17 May 2013 handed down by Teare J

Subject of the Judgment: Decision of the court to determine whether Mr Salim Shalabayev should be heard on the Bank's application for a final charging order in respect of the flat in Albert's court.

Decision: The Bank's position is that as the appellant is in contempt of court as he did not comply with the Norwich Pharmacal Order, he shouldn't be heard in the circumstances.

The court decided that Mr Matthews (on behalf of Mr Shalabayev) should be heard on this application.

The judgment deals with the test that establishes the circumstances in which the interests of justice are best served by hearing a party's case who has been found to be in contempt of court.

Tab 39 – Judgment dated 17 May 2013 handed down by Teare J

Subject of the Application: Successful application by the Bank for a final charging order in respect of a flat in Alberts Court in London. The Bank applies for a final charging order because in the contempt proceed-ings brought by the Bank against Mr Ablyazov it was determined that the flat in question was owned by Mr Ablyazov who is now a judgment debtor.

The issue in this application for a final charging order is whether the judgment debtor, Mr Ablyazov, is the owner of the flat. That was one of the issues determined by the court in the contempt proceedings. It is true that Mr Salim Shalabayev was not a party to those proceedings but he was a witness in those proceed-ings called by Mr Ablyazov to say that he, Mr Salim Shalabayev, was the owner of the flat in Alberts Court. So the issue which arises in this application for a final charging order is the very issue which was determined by the court in the contempt proceedings.

The question, therefore, is whether to permit Salim Shalabayev to challenge the finding in the contempt proceedings that the flat in Alberts Court was owned by Mr Ablyazov would bring the administra-tion of justice into disrepute.

Decision: I do consider that this is as plain a case as there could possibly be of a collateral attack which would bring the administration of justice into disrepute.

Tab 40 – Judgment dated 2 July 2013 handed down by Field J

Relevant to Issue 2 and 3

Subject of the Judgment: Application to amend the receivership order made by Teare J on 6 August 2010 and the freezing order made by Teare J on 23 November 2012 and any other relevant orders made in the underlying proceedings whose potential effect is to prevent Dregon Land Ltd from dealing with its interest in a large storage facility near Domodedovo Airport in Moscow.

The Bank's position is that shares in Dregon Land Ltd are in scope of the Receivership Order or the Freezing Order. It is the Bank's case that either the enforcement of the Dregon Land Share Pledge was wholly fictitious in that Mr Ablyazov was always intended to be, and did remain, the true beneficial owner of Dregon Land (in whole or in part); or, if it was intended that Mr Gutseriev should acquire all or part of Dregon Land, the purported enforcement of the Dregon Land Pledge was collusive, being designed to dress up a sale by Mr Ablyazov of Dregon Land as something that would not constitute a blatant breach of the freezing order made against him, in which case the enforcement of the Dregon Land Pledge would be a breach of the freezing order then in place to which Mr Gutseriev was a collusive party.

As the Domodedovo Logistics Park was Mr Ablyazov's principal undisclosed asset – it had been conservatively valued at between US$360 and US$390 million by Eurohypo in mid 2010 – and given Mr Ablyazov's well-demonstrated determination to hang on to his assets in the face of the freezing orders made against him, it was inconceivable that he would have taken a business decision to allow enforcement of the Dregon Land Pledge to take place when what was owed was US$337 million and he had access to many millions of dollars that he was hiding from the court which he could have used to discharge this indebtedness.

Decision: I dismiss the Applicants' application to have the Receivership and Freezing Orders amended so as not to apply to the Dregon Land shares and I order instead that there be a trial of the competing claims made by the Bank and the Applicants as to where lies the beneficial ownership of the Dregon Land Shares.

Tab 41 – Judgment dated 25 July 2013 handed down Rimer LJ, Beatson LJ and Floyd LJ

Relevant to Issue 3

Subject of the Judgment: The questions for decision in this appeal are narrow but important ones relating to the scope of the standard Commercial Court form of freezing order which prohibits a Defendant subject to such an injunction from disposing, dealing with or diminishing the value of his assets. The principal one is whether a contractual right to draw down under an unsecured loan facility qualifies, either generally or in particular circumstances, as an "asset" for the purpose of the order? The second question is whether, if the right to draw down is an "asset", the Defendant's exercise of the right by directing the lender to pay the sum drawn down to a third party constitutes "disposing of" or "dealing with" an asset? The answer of Christopher Clarke J to both ques-tions was "no". JSC BTA Bank ("the Bank"), which obtained the freezing order, contends that the judge was wrong. There is also a question as to whether, even if the judge was not wrong, in the particular circum-stances of this case it is just and convenient to order the disclosure of all drawings which have been made pursuant to such loan facilities.

First Instance Decision: As I have stated, Christopher Clarke J held that the contractual rights to draw down under the loan fa-cilities do not qualify as "assets" for the purpose of the standard form of freezing order and that their exercise by directing the lender to pay the sum drawn down to a third party does not constitute "disposing" or "dealing" with an asset. He dismissed the Bank's application seeking a declaration that if, as Mr Ablyazov contends but the Bank denies, the four loan facilities constituted valid contracts, his rights under them were assets for the purpose of the freezing order and that any drawings under them could only be made in accordance with the provisions of para 9 of the order, which is set out at 6 above. He also declined (see judgment, 85) to grant any consequential relief, and thus refused the Bank's application for disclosure of all drawings which had been made pursuant to the loan facilities. The Bank sought this disclosure in order to ascertain whether there were any assets which represent the traceable proceeds of such drawings, or whether other grounds exist to enable it to make applications against the recipients on the basis that they knowingly received prop-erty transferred contrary to the terms of the freezing order.

Decision: It is common ground that the judge did not deal with the Bank's alternative case on disclosure. The Bank contends that the judge erred in not ordering disclosure because there were grounds to believe, as the judge had previously found, that Wintop and Fitcherly, the BVI companies who were the lenders under the loan facility agreements, were the creatures of Mr Ablyazov, and also that it was just and convenient to make the order for other reasons in this case.

The Court of Appeal decided that the appeal on the main issue should be dismissed and that the Bank's alternative case for disclosure should be remitted to the Commercial Court.

Tab 42 – Judgment dated 26 November 2013 handed down by Mr Justice Henderson

Relevant to Issue 1

Subject of the Order: The AAA proceedings concern a portfolio of ten holdings of AAA-rated securities with a market value of approximately US$300 million (hence the label attached to the proceedings) which was allegedly misappropriated for the ultimate benefit of Mr Ablyazov by a series of linked transactions which took place in 2008 and early 2009.

Decision: The court found that the Bank's application for summary judgment should succeed. The principal amount for which judgment is claimed in the application notice is US$294,138,715.27, that being the total amount paid by Alfa Bank to the BVI Defendants in June 2008. I will order Mr Ablyazov to pay that sum, which represents the financial benefit received by his companies as a result of his fraud.

Tab 43 – Judgment dated 26 February 2014 handed down by Teare J

Subject of the Judgment: This is an application by Mr. Tyshchenko to adjourn two hearings, one is a further cross-examination of him which is scheduled to take place tomorrow, and the other is an application by the bank to add a company, Finansinvest, to the receivership order that is fixed to be heard on Friday of this week. I will deal first with the application to adjourn Friday's hearing.

Decision: It seems to me that it is appropriate to adjourn tomorrow's hearing. Judgment is not given in respect of the second application made by the bank.

Tab 44 – Judgment dated 28 February 2014 handed down by Teare J

Relevant to Issue 2

Subject of the Judgment: This is an application by the Bank for a declaration that Mr Ablyazov is "the beneficial owner of the property known as Flat 79, Elizabeth Court, 1 Palgrave Gardens, London NW1 6EJ ('Elizabeth Court') and the entirety of the issued share capital in Rocklane Properties, a company incorporated in the British Virgin Islands." The Bank wishes to enforce the judgments it has obtained against Mr Ablyazov (see JSC BTA Bank v Ablyazov and others [2013] EWHC 510 (Comm)) on those assets.

Decision: The court made the declaration that Mr Ablyazov is the beneficial owner of the shares in the Rocklane Properties.

Tab 45 – Judgment dated 14 May 2014 handed down by Moore-Bick LJ, Elias LJ and Christopher Clarke LJ

Relevant to Issue 3

Subject of the Judgment: The principal issue in this appeal is whether the judge was wrong to order the trial of an issue as to the ownership of shares in a company which owned, indirectly, an extremely valuable property in Moscow.

The dispute has three aspects. The first is whether there is any good reason to suppose, or any good ar-guable case, that Dregon Land is in fact beneficially owned and controlled by Mr Ablyazov so that it is properly brought within the Receivership and post judgment freezing orders. The second is whether the court has jurisdiction, at any rate in the events which have happened, to continue to include it in those or-ders. The third is whether the order in fact made by the judge goes beyond the scope of ordering an issue as to where the beneficial ownership lies, because it includes an issue as to whether, even if it does not lie with Mr Ablyazov, the Bank is entitled to some relief against Lapointec and Limia because there has been collusion between Mr Gutseriev and Mr Ablyazov to bring about the transfer of Dregon Land to Lapointec and Limia, in breach of the freezing order.

Decision: Accordingly I would allow the appeal but only to the extent of removing paras 1 and 2b of the judge's order, and would otherwise dismiss it. The removal of para 1 will make it plain that the application is not completely dismissed and that the first issue will be determined. It may be that that result can be reached by a process of interpretation but removing para 1 will remove any doubt. The removal of para 2 b will mean that the issue will be confined to the question of beneficial ownership of the shares in Dregon Land.

Tab 46 – Judgment dated 24 June 2014 handed down by Flaux J

Subject of Judgment: The Claimant bank applies by Application Notice dated 30 January 2014 to vary the order made by Eder J on 28 October 2013 that, subject to further order of the court, the costs of compliance by the Respondent with a Norwich Pharmacal disclosure order be paid by the Claimant, to provide that the Respondent should pay those costs himself.

Decision: Accordingly in my judgment the bank is entitled on this application to rely upon the entire conduct of Mr Tyschenko since the order of Eder J in support of its case that there has been a material change of circum-stances….At the end of the second day of the hearing of this matter, I indicated that the appli-cation would be allowed in substance and that I would give my reasons for that decision at a later date. This judgment sets out those reasons.

Tab 47 – Judgment dated 8 August 2014 handed down by Mr Justice Popplewell

Relevant to Issue 2

Subject of the Judgment: The main application before the Court is that of the Claimant ("the Bank") seeking disclosure from the First and Second Respondents ("Mr Ablyazov" and "Mr Shalabayev") of documents relating to their assets which would attract legal professional privilege unless falling within the iniquity exception to such privilege, and which are currently held by the Third to Fifth Respondents ("Clyde & Co", "Stephenson Harwood" and "Addleshaw Goddard" respectively) as their solicitors or former solicitors.

The disclosure sought is of "all documents provided to or produced for or by Clyde & Co LLP, Stephenson Harwood LLP and/or Addleshaw Goddard LLP as remain within their sole or joint control which (in whole or in part) concern or contain information about (i) the current and/or former assets of Messrs Ablyazov and/or Shalabayev and/or (ii) any prospective or actual injunction [in respect of such assets] against Messrs Ablyazov and/or Shalabayev."

Decision: The evidence establishes at least a very strong prima facie case that from the moment Mr Ablyazov engaged Clyde & Co he was bent on a strategy of concealment and deceit in relation to his assets which would involve perjury, forgery and contempt as and when such was required for that purpose. He sought advice from Clyde & Co at the outset in relation to civil claims which might be brought against him in the UK and about the possibility of search and seizure orders being granted against him. His subsequent conduct in carrying out the strategy of concealment, forgery and deceit in relation to the assets, and in breaching the Court's orders in dealing with assets in an attempt to conceal and preserve them, gives rise to a strong inference that the advice was sought from the start in order to assist in fashioning and pursuing such strategy. The strategy was pursued throughout the litigation which was, in February 2009, within his contemplation. By the time each of the other two firms was engaged on behalf of Mr Ablyazov the strategy was being pursued with vigour, and it has been relentlessly pursued throughout the period of the engagement of all three firms up to the present day.

Accordingly the Court should order the disclosure sought because the solicitors are likely to hold documents casting light on Mr Ablyazov's and Mr Shalabayev's beneficially owned assets which may assist the Bank in executing its judgments and enforcing the Court's orders against them.

Tab 48 – 10 February 2015 handed down by Tomlison LJ and Christopher Clarke LJ

Subject of the Judgment: In this judgment I shall refer to the Appellant/Intervener as Mr Shalabayev, to the Claimant/Respondent as "the Bank" and to the First Defendant as Mr Ablyazov. It is to be noted that the Appellant is Mr Salim Shalabayev as opposed to his brother Mr Syrym Shalabayev.

On 17 May 2013 Teare J made a final charging order in favour of the Bank over the interest of Mr Ablyazov in Apartment 17, Alberts Court, 2 Palgrave Gardens, London, NW1 6EL. I shall call this property "Alberts Court." It stands charged with payment of two judgments in favour of the Bank against Mr Ablyazov in the sum of £1.52 billion.

By a Respondent's Notice issued on 8 January 2014 the Bank invited this court to exercise its discre-tion not to hear Mr Shalabayev's appeal against the order of Teare J dated 17 May 2013 on the basis that he is now a committed contemnor whose contempts are unpurged. A hearing for directions was listed. We heard the Bank's application on 16 October 2014. At the conclusion of the hearing we announced that we would not exercise our discretion to decline to hear Mr Shalabayev's appeal and that the Bank's application in that regard was accordingly dismissed. These are my reasons for having joined in that decision.

Ultimately, the question is whether, taking into account all the circumstances of the case, it is in the interests of justice not to hear the contemnor. Refusing to hear a contemnor is a step that the court will only take where the contempt itself impedes the course of justice. What is meant by impeding the course of justice in this context comes from the judgment of Lord Justice Denning in Hadkinson v Hadkinson and means making it more difficult for the court to ascertain the truth or to enforce the orders which it may make..."

Mr Shalabayev's contempt has of course been serious, prolonged and deliberate. It is true that the court has few means at its disposal in order to bring pressure to bear upon him with a view to enforcing compliance with its orders. Nonetheless, whilst Mr Shalabayev's contempt has impeded the course of justice in ascer-taining the truth concerning the Millennium-Proteus transfer, his continuing contempt is of little consequence to the just resolution of the question of beneficial ownership of Alberts Court, or the enforcement of the charging order if that is upheld.

I would not permit the Bank to rely on the first of these arguments simply because it reserved the right so to do. In truth however the argument on abuse of process would be incomplete and possibly incoherent without an investigation of the extent to which there was an identity of interest between Mr Ablyazov and Mr Shalabayev. The second point is rather different, but there is no prejudice to Mr Shalabayev in allowing it to be taken provided he has the opportunity to deploy evidence in answer to it, if so advised. It is for these rea-sons that we both permitted the Bank to rely upon its two new grounds for upholding the judgment below, as set out in its Respondent's Notice, and permitted Mr Shalabayev to produce further evidence in relation to those grounds.

Tab 49 – Judgment dated 10 February 2015 handed down by Kitchin LJ

Subject of the Judgment: This is an application by the respondent, Mr Shegai, for permission to appeal against the judgment of Flaux J given on 27 June 2014 and his consequential order dated 7 July 2014. This order was made upon the application of the applicant, JSC BTA Bank, ("the Bank") on the basis that Mr Shegai had failed fully and properly to comply with an unless order dated 10 June 2014 [requiring Mr Shegai to conduct further searches, investigations, inquiries and requests to locate and give disclosure of documents in certain categories] and that pursuant to paragraph 4 of that unless order, he therefore stood debarred from pursuing his application.

Permission to appeal was refused on the papers by Lewison LJ by order dated 26 September 2014. Mr Shegai has requested that decision be reconsidered at an oral hearing which has come on before me today.

Decision: I disagree. The documents were relevant to the central issue in the case, namely whether or not Mr Shegai's claim to have a beneficial ownership of 9 Broad Walk had merit. He had failed to meet the De-cember 2013 disclosure deadline. He was well aware of the application made by the Bank on 1 May 2014. He knew that his disclosure was deficient and fully appreciated that he was required to conduct further inves-tigations, searches and inquiries and to make appropriate requests to locate and give disclosure of docu-ments within the categories the subject of the order. The substantive hearing was only a short time away. In my judgment, the judge placed appropriate weight on the short period of time for compliance and the diffi-culties that Mr Shegai faced and I have no doubt had well in mind the need for litigation to be conducted effi-ciently and at proportionate cost. At the end of the day, however, this disclosure was important going, as it did, to the central issue that the application raised. An Unless Order is of course a last resort but in this case it was justified and following Mr Shegai's further non-compliance, the judge was right to give effect to it. He has not erred in exercising his discretion in the way that he did. He has made no error of principle. He has not taken into account matters which were irrelevant; nor has he failed to take into account relevant matters. Despite Mr Gunning's able submissions, an appeal would not have a real prospect of success and accordingly this application must be dismissed.

Tab 50 - Judgment dated 21 October 2015 handed down by Lord Clarke, Lord Neuberger, Lord Mance, Lord Kerr and Lord Hodge

Relevant to Issue 3

Subject of the Judgment: This appeal is concerned with the interpretation and application of the standard form freezing order.

The statement of facts and issues identifies three issues, which all depend upon the terms of a freezing order which was made by Teare J on 12 November 2009 and was subsequently amended (together “the Freezing Order”). The issues were: (1) whether the respondent's right to draw down under certain loan agreements is an “asset” within the meaning of the Freezing Order; (2) if so, whether the exercise of that right by directing the lender to pay the sum to a third party constitutes “disposing of” or “dealing with” or “di-minishing the value” of an “asset”; and (3) whether the proceeds of the loan agreements were “assets” within the meaning of the extended definition in para 5 of the Freezing Order on the basis that the respondent had power “directly or indirectly to dispose of, or deal with [the proceeds] as if they were his own”. It can be seen that these are essentially questions of construction of the Freezing Order.

Decision: For these reasons I would answer the question posed in issue 3 in the statement of facts and issues, namely whether the proceeds of the Loan Agreements were “assets” within the meaning of the extended definition in para 5 of the Freezing Order because the respondent had the power “directly or indirectly to dispose of, or deal with [the proceeds] as if they were his own”, in the affirmative. It follows that I would allow the appeal on this ground.

I would dismiss the Bank's appeal on issues 1 and 2 but allow it on issue 3. I would invite the parties to make submissions in writing on the form of order and on costs within 21 days of this judgment being handed down.

Tab 51 – Judgment dated 20 January 2016 handed down by Phillips J

Subject of the Application: This is an application by the claimant ("the Bank") for an order that the second defendant ("Mr Khrapunov"), be required to give disclosure of his assets pursuant to a provision to that effect in a worldwide freezing order ("WFO"), notwithstanding that Mr Khrapunov

claims that such disclosure might reasonably be expected to expose him to the risk of criminal prosecution in overseas jurisdictions. The Bank does not accept that any such risk has been made out to the requisite standard, but in any event contends that such risk has been removed by the existing requirement that such disclosure be made only to solicitors and counsel directly involved in the case and kept confidential by them.

Decision: I will only recognise any such privilege to the extent that the documents should only be disclosed to the confidentiality club. Provided they are disclosed subject to that restriction, I do not consider that any further protection is necessary, proper or proportionate as a matter of discretion. I will therefore order disclosure subject to the existing confidentiality regime.

It might be said that there is a degree of uncertainty in the order as to exactly who is bound by what aspect and in what way. If Mr Samek were to invite me to do so, I would suggest that, rather than an order, the matter be dealt with by way of undertakings clarifying exactly who is undertaking what obligations. The application is so determined.

Tab 52 – Judgment dated 11 February 2016 handed down by Teare J

Subject of the Application: The focus of this submission is the question whether a contempt can constitute unlawful means for the purposes of the tort. Further, in circumstances where Mr Khrapunov is domiciled in Switzerland, the suggestion that this court has jurisdiction to hear and determine the claim against him pursuant to the Lugano Convention is said to be unsustainable. Mr Khrapunov therefore asks the court to set aside the Claim Form and the WFO which was issued against him.

Decision: The Bank has a good arguable case against Mr. Khrapunov in damages for the tort of conspiracy to injure by unlawful means. The Bank is able to establish that this court has jurisdiction over him pursuant to Article 5(3) of the Lugano Convention with regard to the damage caused by the wrongful dealing in assets of Mr. Ablyazov before 16 February 2012. I must therefore dismiss the application to set aside the claim form and the WFO issued against Mr. Khrapunov, though both may require to be amended so as to conform with this judgment. For example, in the light of my decision on jurisdiction it is not clear to me that the injunction against future dealings with Mr. Ablyazov's assets can be maintained or that the obligation to provide disclosure of assets of Mr. Ablyazov in which Mr. Khrapunov has dealt with since January 2013 can be maintained. These matters (and perhaps others) will have to be debated when judgment is handed down.

Although the order sought appears to relate both to Mr. Khrapunov's own assets and those of Mr. Ablyazov in which he has dealt since January 2013 the debate before me primarily concerned the latter. I would therefore prefer to deal with this application after it is clear in what terms the injunction and disclosure obligations are to continue.

Tab 53 – Judgment dated 23 March 2016 handed down by Teare J

Subject of the Judgment: This is an application by the second defendant to vary, as I understand it, an order made by Popplewell J on 6 November. The history of the matter is that, on 17 July 2015, Males J issued a worldwide freezing order against Mr Khrapunov. Paragraph 7 of that order required Mr Khrapunov within ten days of service of the order to inform the applicants of all his assets worldwide and also of any assets administered by him for Mr Ablyazov.

Decision: It is accepted that on 26 October Mr Khrapunov did receive a copy of the worldwide freezing order and he accepts that on that day he was served. Accordingly, looking at Males J's order, Mr Khrapunov was obliged to give disclosure of his assets within ten days of service of the order.

Normally, the question as to the date to which the asset position must relate does not feature in the worldwide freezing order because, of course, the assumption is that he will give disclosure within the time ordered and he will give disclosure of his asset position as of the date on which he does so, but

since he did not do so the question has arisen as to what is the date by reference to which the asset position must be disclosed.

It therefore appears to me that the 11 September date must be changed. By concession Mr Samek accepts that 26 October should be inserted and I accept that submission.

Tab 54 – Judgment dated 23 March 2016 handed down Mr Justice Phillips

Subject of the Application: This is an application for permission to appeal. It is of some urgency since it concerns a freezing order. Therefore, when the application came to me on the papers it seemed to me a sensible course to adjourn it into open court, which I have done. I have had the good fortune of an argument from Mr Samek for the Second Defendant, Mr Khrapunov. On 17 July last year Males J granted a worldwide freezing order against Mr Khrapunov which required him, firstly, to identify and inform the bank of his assets if they were worth more than £10,000; secondly, to say what his interests in those assets were; and thirdly, to identify the location of the assets which the bank was able to identify. That was never complied with.

Decision: As to the bank's solicitors' alleged coyness as to the reasons for their wish for disclosure, it seems to me to be obvious that the bank hopes to get a judgment in due course and wants to ensure as far as it can that there are assets available to satisfy that judgment. They do not seem to have been able to do that yet much in Mr Ablyazov's case, but no doubt they hope they have better fortune if they do get a judgment in due course against Mr Khrapunov. As to the suggestion of coyness about the how the club would operate, it does not seem to me that it is necessary for the bank's solicitors to go into detail about what the judge intended when he ordered the confidentiality regime. As I say, they are not uncommon orders. Everyone knows how they work. There is no evidence before the court of their not having worked. Mr Samek says, and he is right about this, that if there were an appeal, this court would be in as good a position to make the relevant evaluation as the judge, but it seems to that only arises if there is some rea-son to suppose that the judge was wrong in the evaluation that he made. For my part, I see no such rea-son. It seems to me inappropriate, therefore, to grant permission to appeal in this matter.

Tab 55 – Judgment dated 14 June 2016 handed down by Mr Justice Walker

Subject of the Judgment: The order that is sought is in two main parts. The first part concerns disclosure. The second part concerns restrictions on movement of the respondent.

Decision: I have no doubt that the information provided by Mr Bourg amply warrants the order for disclosure. I say that, of course, on the footing that I have heard only one side. It may well be that, at a hearing where the respondent is represented, the position may tum out to be quite different. The restrictions on travel include a requirement to lodge the respondent's passport with the bank's solicitors. It is an extreme order which will, until the retum date of Friday this week, impose onerous restrictions on the respondent. There is, however, strong evidence that the respondent is closely associated with the first and second defendants.

Tab 56 – Judgment dated 15 August 2016 handed down by Mr Justice Snowden

Subject of the Judgment: In the course of the Chancery Division proceedings, an order was made by Mr Justice Henderson on 3 February 2011 for the search of a storage facility in Finchley, North London. On that application, as is con-ventional, the Bank gave an undertaking to the judge that it would not, without permission of the court, use any information or documents obtained as a result of the order, for the purpose of any civil or criminal pro-ceedings, other than the claim that was being brought, or for the purposes of a receivership order that was made in those proceedings.

Decision: The purpose of the search order, when made, was to preserve documents which might be relevant to the Bank's claim against Mr Ablyazov and, if successful, in assisting the Bank either to

recover its assets or otherwise obtaining satisfaction of the judgment in its favour. The Bank is now in the position of a judg-ment creditor of Mr Ablyazov, seeking such recovery, and it seems to me entirely just and convenient that it should be entitled to use the documents relating to him to pursue that end. It is also, in my judgment, ap-propriate in the interests of justice more generally that any decision taken in the proceedings in Virginia is taken on the basis that the fullest relevant evidence should be available to that court (subject, of course, to any decision that the Virginia court might make as to its admissibility or relevance). uments in a form which I have discussed with counsel, and of which he will produce an amended draft.

I therefore propose to make the order giving the Bank permission to use the documents in a form which I have discussed with counsel, and of which he will produce an amended draft. That draft shall con-tain a paragraph releasing the Bank from any implied undertakings which it might be said to have given pur-suant to the CPR. Although I think that this is probably unnecessary the paragraph can be included for the avoidance of doubt. As I have indicated, I have focussed on the express undertakings which the Bank has given, from which, for the reasons that I have given, I have decided that it should be released.

Tab 57 – Judgment dated 9 December 2016 handed down by Rabinowitz QC

Subject of the Judgment: More particularly, the dispute concerns a payment of £1.1 million made on 26 February 2009 (the Transfer) from an account held jointly by Mr Ablyazov and Madiyar (the Swiss Ac-count) with EFG Private Bank SA in Geneva (EFG Geneva) to an account in Madiyar's name (the Account) at EFG Private Bank Limited in London (EFG London). Madiyar was 17 at the time of the Transfer, living and attending school in London. He held a Tier 4 student visa.

More particularly, BTA contends (1) that in circumstances where no consideration was given by Madiyar, the Fund should be treated as having been received and held on trust by Madiyar for Mr Ablyazov (the Trust Claim); alternatively (2) that the Transfer was a transaction defrauding creditors which should be set aside pursuant to section 423 of the Insolvency Act 1986 (the Section 423 Claim).

There is also before me a cross-application by Madiyar for a declaration that he owns the Fund outright. If BTA's Trust Claim and Section 423 Claim both fail, then Madiyar would be entitled to the declaration he seeks.

Decision: In my view the points made by Mr Knox in this regard are compelling and I accept them. In particular, I find that it is most unlikely that Mr Ablyazov would have embarked on the pro-cess of obtaining an investor visa for Madiyar as part of a scheme to put the £1.1 million out-side the hands of any future creditors; it is far more likely that Mr Ablyazov initiated and carried through that process because he wanted Madiyar to have an investor visa and was willing as part of this to do what had to be done, including gifting the £1.1 million to Madiyar to enable him to acquire the necessary investments. The process of making that application was not one that had lapsed before February 2009; it was one that continued throughout the period from when it was initiated until its conclusion, albeit that activity and progress was sometimes sporadic.

My conclusion in this regard is unaffected by the fact that, in April 2014, Madiyar sought to have £1 million in the Account transferred to Mr de Bavier, nor by the fact that Madiyar only began using that money for his own expenses after the imposition of the Freezing Order in August 2009. Nor is my conclusion affected by the fact that the evidence of Madiyar and Mr Ablyazov was in important respects unreliable, and that Madiyar did not produce his mother, aunt or uncle as witnesses.

In short, and for the reasons set out above, I conclude that BTA's claims, both the Trust Claim and the Section 423 Claim, must fail. I accordingly decide (1) that BTA is not entitled to the relief it has sought and (2) that Madiyar is entitled to a declaration that he is the owner of the Fund.

Tab 58 – Judgment dated 2 February 2017 handed down by Beatson LJ, Gloster DBE LJ and Sales LJ

Subject of the Judgment: The present proceedings relate to a claim by the Bank against Mr Ablyazov's son-in-law, Mr Ilyas Khrapunov, for the tort of conspiracy to injure the Bank by unlawful means. It is alleged that Mr Khrapunov conspired with Mr Ablyazov to hide Mr Ablyazov's assets from the Bank or dissipate them, in breach of a worldwide freezing order against Mr Ablyazov and a receivership order made against him. The unlawful means relied on are breaches of that freezing order and that receivership order.

Mr Khrapunov and the Bank each appeal, to contest different parts of the [first instance] judge's ruling. Mr Khrapunov contends that (i) the judge erred in holding that there was a good arguable case against him as a matter of law, in that breaches of a court order cannot qualify as relevant unlawful means for the purposes of the law of conspiracy, and (ii) the judge was wrong to hold that there was a basis for any assertion of jurisdiction under limb (b) of Article 5(3). In other respects, Mr Khrapunov seeks to support the judge's ruling to the extent it was in his favour.

The Bank contends that (i) the judge erred in rejecting its case for jurisdiction based on limb (a) of Article 5(3), because the damage which it suffered directly from the tort relied upon was a diminution in the value of its cause of action, worldwide freezing order and judgments obtained in England against Mr Ablyazov; (ii) the judge erred in limiting the jurisdiction of the English court under limb (b) of Article 5(3) to acts in furtherance of the conspiracy in the period to 16 February 2012: the acts pursuant to the conspiracy for which the Bank could sue in England should not have been time-limited in this way; and (iii) the judge was wrong to reject its claim to establish jurisdiction under Article 6 of the Convention. The Bank also contends, under a respondent's notice, that the judge should have held that a cause of action in damages arises where a court order is breached and was wrong to reject the Bank's argument to this effect; and that accordingly there is this further basis on which the judge should have found that the alleged breaches of the freezing order and the receivership order constitute unlawful means for the purposes of the tort of conspiracy to injure by unlawful means.

Decision: I come, then, to the real point at issue, which is whether contempt of court in the form of breaches of court orders as alleged in this case qualifies as unlawful means for the purposes of that tort. In my judgment, it does and the judge was right so to hold. At the very least, the Bank has a good arguable case that it does for the purposes of the argument on jurisdiction… In my judgment, within this scheme civil contempt of court by breaching court orders qualifies as unlawful means for the purposes of the tort of conspiracy.

For the reasons given above, (1) I would dismiss Mr Khrapunova's appeal on the question whether the Bank has established that it has a good arguable cause of action against him for the tort of conspiracy to injure by unlawful means; (2) I would dismiss the Bank's appeal based on Article 6 of the Convention; (3) I would dismiss the Bank's appeal in respect of limb (a) of Article 5(3) (place where the damage occurred); however, (4) I would allow the Bank's appeal in respect of limb (b) of Article 5(3) (place of the event giving rise to the damage).

Tab 59 – Judgment dated 21 March 2018 handed down by Lord Sumption, Lord Mance, Lord Hodge, Lord Lloyd Jones and Lord Briggs

Subject of the Judgment: The present appeal arises out of an application by Mr Khrapunov contesting the jurisdiction of the English court. The application is made on two grounds. The first is that there is no such tort as the Bank asserts, because contempt of court cannot constitute unlawful means for the purpose of the tort of conspiracy. This, Mr Samek QC submits on his behalf, is because means are unlawful for this purpose only if they would be actionable at the suit of the claimant apart from any combination. Contempt of court, he submits, is not actionable as such. There is therefore no good arguable case on which to found jurisdiction. The second ground is that, Mr Khrapunov being domiciled in Switzerland, there is no jurisdiction under the Lugano Convention unless the claim falls

within the special jurisdiction conferred by article 5(3) on the courts of "the place where the harmful event occurred". The only event said to have happened in England is the conspiratorial agreement. Mr Khrapunov contends that the event that was harmful was not the conspiratorial agreement but the acts done pursuant to it. They were done outside England.

We conclude that the Bank's pleaded allegations disclose a good cause of action for conspiracy to injure it by unlawful means…The making of the agreement in England should, in our view, be regarded as the harmful event which set the tort in motion.

For these reasons, we would dismiss Mr Khrapunova's appeal.

Tab 60 – Judgment dated 24 April 2018 handed down by Sales LJ and Justice Newey LJ

Relevant to Issue 2

Subject of the Judgment: It concerns an appeal in respect of an order made for cross-examination of the appellant in relation to assets he owns or controls, with a view to ensuring the effectiveness of a worldwide freezing order made against him. He also appeals against a costs order made against him. The appellant is resident in Switzerland. He lives there with his wife and two young children.

Accordingly, we proceed on the footing that the Bank has, at the least, a good arguable case that the appellant has lied when purporting to provide information pursuant to the freezing order about the non-personal assets.

First Instance Decision: Therefore, on the [first instance] judge's assessment, the appellant [Mr Mukhtar Ablayzov] faced no real risk of being subject to any extradition process if he came to England to be cross-examined for a day and the Bank would suffer detriment if the 23 March order were varied, because it would not be able to question the appellant about relevant assets in such an effective way as it could if he were cross-examined in the High Court in London.

It is this decision of Phillips J which is the subject of the present appeal before us. This has come about in the following way.

Decision: Similarly, in the present case, we consider that the Bank has made out a strong case that the appellant has been involved in assisting in a massive international fraud and is concealing evidence about relevant assets. The public interest in the court trying to give maximum practical effect to the freezing order it has granted against him and in being seen to do so is strong.

Accordingly, there is no proper basis for allowing the appeal. Phillips J made a case management decision which was lawfully open to him. He did not misdirect himself as to the effect of the 23 March order or as to his own powers. The primary reason he gave for his decision was sound. It cannot be said that he reached a conclusion which was perverse. In no sense can his decision be said to be wrong or such as ought to be set aside by this court on appeal. It is not necessary to examine the judge's alternative reasoning in detail for the purposes of deciding the outcome of the appeal. However, we make our own assessment in our further analysis below of the risk to the appellant in relation to extradition and of the likely practical effectiveness of cross-examination in Switzerland in the context of this case.

Since the main appeal is dismissed, it follows that Phillips J was entitled to make the costs order that he did against the appellant. That order simply applied the usual rule that the loser on an application should pay the costs and was well within the judge's discretion in making an award of costs.

For the reasons given above, (1) we dismiss the appeal in relation to the decision of Phillips J of 26 May 2016 and in relation to the costs order made by him, and (2) we dismiss the appellant's application to discharge the order made by Phillips J and to vary the provision in the 23 March order requiring cross-examination of the appellant in the High Court in London. The court accepts the undertakings offered by the Bank's legal representatives. The parties should now seek to agree directions and a confidential timetable to set a date for the cross-examination.

Tab 61 – Judgment dated 22 May 2018 handed down by Gloster VP, Legatt and Coulson LJJ

Subject of the Judgment: The main question on this appeal is whether the trial judge made an error of law in reject-ing a claim that a payment of money made by the first defendant as a gift to his son (the sec-ond defendant) was made for the purpose of putting assets beyond the reach of the claimant and was therefore liable to be set aside under section 423 of the Insolvency Act 1986. A sec-ond question raised by a respondent's notice is whether the judge should have rejected the claim in any event on the ground that it is time-barred.

Decision: I agree with the judge that, had the claim under section 423 of the Insolvency Act 1986 succeeded, it would not have been time-barred. But, as discussed earlier, the claim failed because the judge found that the transfer was not made for the prohibited purpose. As the bank cannot in my view challenge that factual finding, I would dismiss the appeal.

Tab 62 – Judgment dated 8 June 2018 handed down by Patricia Robertson QC

Relevant to Issue 2 and 3

Subject of the Judgment: This is an application by the claimant ("the Bank") for an order that the second defendant ("Mr Khrapunov") provide full and proper disclosure regarding the way in which his legal expenses in these proceedings are being funded.

As Teare J noted in JSC BTA Bank v Ablyazov and Khrapunov [2016] EWHC 392 (Comm) at [15], it is "often a very difficult question to answer" as to who is and is not a nominee for Mr Ablyazov. The purpose of seeking disclosure here (as was also the case in that judgment) is to enable the Bank to check or police whether the sums in question do emanate from Mr Ablyazov.

Decision: On that basis, I am satisfied that there is jurisdiction to make the Order sought, that as a matter of discretion the balance is firmly in favour of making the Order and that it is just and convenient that I should make it. Subject to any further submissions the parties may wish to make on handing down this Judgment, as to the form of the Order and as to costs, I propose to make the Order in the terms of the draft which was supplied by the Bank's Counsel team with their supplemental submissions. I thank Counsel and solicitors on both sides for their assistance and I am sorry that the parties have had to wait rather longer for this Judgment than I would have liked.

Tab 63 – Judgment dated 21 June 2018 handed down by Waksman QC

Relevant to Issue 3

Subject of the Judgment: Judgment in default flowing from Mr Khrapunov's failure to attend cross-examination as ordered by on the 27 March 2018.

The underlying claim was that Mr Khrapunov had conspired with Mr Ablyazov to break the terms of an original freezing order and a receivership order granted against Mr Ablyazov by effecting or assisting the removal or transfer of a number of funds so as to take those funds out of the reach of the freezing order against Mr Ablyazov and thus to assist him in evading and breaking clear court orders.

One particular claim concerns what is called the A and N Project Monies; it is dealt with in the Amended Particulars of Claim at paragraphs 26(a) to 26(f). The allegation is that back in 2011, Mr Khrapunov engaged a corporate services provider, Mr Aggarwal, to administer assets for Mr Ablyazov.

The allegation is that Mr Khrapunov knew perfectly well what he was doing which was to assist Mr Ablyazov to evade the court orders to which I have referred.

Decision: As is evidenced by his non-appearance today, which was the date set for cross-examination, as he well knew, there is a breach of every part of the unless order, and the Bank has applied for there to be judgment in default. This occasion was used to deal with that application as well, and this was also identified to Mr Khrapunov.

On the face of the order and the non-compliance, the defence to the Relevant Claims (as defined in the unless order), which is that part that I recited, is struck out and the Bank is entitled to judgment in default.

The total principal sum claimed is $495.8 million. The Bank has discounted that to avoid any risk of double recovery, which concerns some New York proceedings, and the Bank has agreed to limit the sum claimed to US$424,110,000. The last transfer of the A and N Project Monies was 1 January 2014, and the Bank is content for interest to start then and not any earlier. Although higher figures have been awarded, particularly by this court, including in related litigation concerning Mr Ablyazov, the Bank here seeks simply 4 per cent as a flat rate of interest for all of the relevant period. That seems to me to be eminently reasonable and appropriate. Therefore, the interest claimed, at least to 5 July, would be a further US$76 million-odd. It seems to me that that needs to be adjusted so that the appropriate figure to today's date can be given as pre-judgment interest.