Judgments

Milsom and others v Ablyazov

[2011] EWHC 955 (Ch)

CHANCERY DIVISION

Briggs J

8 April 2011

Arbitration – Disclosure and inspection of documents – Production of documents – Assets of respondent being subject to freezing order and receivership order – Receivership order providing for wide disclosure in favour of receivers – Respondent seeking to extend temporary restriction placed on receivers' disclosure powers relating to arbitration proceedings – Whether temporary restriction to be made permanent.

Judgment

JUDGMENT: APPROVED BY THE COURT FOR HANDING DOWN (SUBJECT TO EDITORIAL CORRECTIONS)

MR JUSTICE BRIGGS:

1. This is the adjourned hearing of an application by Messrs Milsom, Standish and Outen, as court-appointed receivers, of certain assets of a Mr Mukhtar **Ablyazov**, for production by Mr **Ablyazov**, or at his direction, of specified classes of documents, deployed or produced in arbitration proceedings between companies beneficially owned by Mr **Ablyazov** and entities beneficially owned by joint venture partners of his, in relation to their joint ownership and exploitation of a port in the White Sea known as the Vitino Port.

2. The application first came before Warren J on 31 March of this year when, because of the late delivery of papers to him, he adjourned it. Nonetheless, he did so on terms that the documents were required to be produced to the Receivers, subject to a temporary undertaking, pending the effective hearing of the application, by the Receivers not to disclose any of the documents to any third party, including the Claimant in the Commercial Court claim in which the Receivers had been appointed, without seven working days' notice to Mr **Ablyazov**'s solicitors, specifying the information or documents which they intended to disclose and the reason for their wishing to do so.

3. The documents were produced shortly thereafter. Issues arose as to whether the adjourned application should be heard by Teare J who made the receivership order in the first place or by some other judge in the

Commercial Court or, in the Chancery Division, by me. I resolved those issues by deciding to hear it myself, for reasons given ex tempore yesterday which I shall not now repeat.

4. The issue now between the parties to the application, the Receivers and Mr **Ablyazov**, is not whether the Receivers should keep the documents, but whether the temporary notice regime which I have described should be made permanent, discharged or replaced by some other restriction upon the use or disclosure of the documents by the Receivers. In summary, the Receivers say that the terms of paragraph 27 of the receivership order, to which I will come in due course, provide the appropriate restriction; namely use only for the purposes of the receivership, and that the proposed notice regime would hamstring the receivership and be a recipe for satellite litigation.

5. Mr **Ablyazov** says that the notice regime is the only, or best, way of preserving his rights of confidentiality in the arbitration process to which the documents relate; and that the Receivers' conduct to date demonstrates that, if left unrestrained, they are likely to use the documents in a manner which will ride roughshod over his rights and interests and, in particular, to the prejudice of a level playing field, both in the arbitration proceedings and in the heavy and hard-fought litigation in the Commercial Court in which the Receivers were appointed.

THE FACTS

6. Mr **Ablyazov** is the first and principal defendant in heavy high value litigation, mainly in the Commercial Court, brought by JSC BTA Bank, headquartered in Kazakhstan, which is now nationalised, but of which Mr **Ablyazov** was formerly the chairman. The bank seeks to call Mr **Ablyazov** to account for the alleged widespread misapplication of its funds. Mr **Ablyazov** claims that the proceedings are a trumped-up means whereby the current president of Kazakhstan is pursuing a politically motivated campaign to neutralise or silence him as a leading figure in Kazakhstan's democratic opposition. For a summary of the very complex background, reference may be made to the judgment of Teare J dated 16 July 2010 which resulted in the receivership order dated 6 August 2010 and to the Court of Appeal's judgment on appeal from that order, given on 19 October 2010. I do not propose to repeat the background at all in this judgment, but rather to take it as read.

7. The bank obtained a worldwide freezing order against Mr **Ablyazov** on 12 November 2009, and the receivership order was obtained in support of the freezing order, as I have said, on 6 August 2010 from Teare J and upheld in the Court of Appeal on 19 October 2010. In the Court of Appeal's judgment at paragraph 29, which was the judgment of the court, this was said:

> "In all the circumstances, it is not surprising that Mr Justice Teare, who has after all been familiar with the case since August 2009 and has seen and heard Mr **Ablyazov** being cross-examined over a two-day period, came to the conclusion that Mr **Ablyazov** wanted to make it difficult for the bank to enforce the freezing order and might use the structure by which he holds his assets to deal with them in breach of the order. These are exactly the circumstances in which a receivership order will be justified."

8. Relevant provisions of the receivership order for the purposes of the present application are as follows. By paragraph 1, the Receivers were appointed joint receivers to receive what are defined as all the Disclosed Assets and all the Undisclosed Assets. I need say nothing about the Undisclosed Assets in the present circumstances. Paragraph 2 further appointed the Receivers to receive a number of specified sums of money, to which again I need not make any further reference. By paragraph 3, the Disclosed Assets and the paragraph 2 assets are further defined as "the Property" and are to be held by the Receivers to the order of the court. By paragraph 5, the receivers are to have power:

> "To take all such steps as may seem expedient to recover and preserve the Property and the Undisclosed Assets, and in particular shall have the powers set out in Schedule 4 hereto."

9. Schedule 4 contains detailed powers including, at paragraph 1, power to take possession of, collect, get in, receive and preserve the Property and the Undisclosed Assets; and at paragraph 2 power:

> "to carry on the business of, or associated with, any part of the Property or any part of the Undisclosed Assets, insofar as may be necessary for the preservation of its value provided for the avoidance of doubt that where the company whose shares are receivership assets holds shares in another company, the Receivers shall not, without further order of the court, carry on any business of the other company or of any other company of which it is a shareholder."

10. By paragraph 5, the Receivers are given power to exercise voting rights or other rights attaching to shareholdings or other security. By paragraph 10, the Receivers are given the power to bring or defend any action or other legal proceedings in the courts of this or any other country, in order to achieve the purposes of the receivership. By paragraph 12, they are given power:

> "To do all such things as may be necessary for the preservation and maintenance of the Property and the Undisclosed Assets or any of the share certificates, securities, books, instruments, evidence of title and other documents and records, whether electronic or otherwise, that are required hereunder to be delivered up."

11. Returning to the main body of the order, paragraph 12 provides:

> "The First Defendant shall:
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> (a) give to the Receivers such information and documentation relating to the Property and the Undisclosed Assets, and where the said Property or Undisclosed Assets consist of shares in companies used by the First Defendant as part of a structure through which to hold his interests in a business or asset, such information and documentation relating to all companies and their respective business and assets within that structure.
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> (b) attend on the Receivers at all such times, and
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> (c) do all such things (including, without limitation, using its best endeavors to procure its agents, nominees, trustees or attorneys to do all such things),
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> as the Receivers may reasonably require for the purposes of getting in the Property and Undisclosed Assets, and carrying out their functions."

12. By paragraph 22, it is provided that the claimant, that is the bank, Mr **Ablyazov** and the Receivers are to have liberty to apply. The order then continues:

> "The receivership application is transferred to the Chancery Division, pursuant to CPR Rule 30.5, to which division all applications relating to the receivership shall be made."

Paragraph 27 provides as follows:

> "The Receivers shall be permitted to use and/or disclose all information that has come, or will come, into their possession for the purposes of the receivership and no such use shall be restricted by or be a breach of, paragraph 15 of the order of Mr Justice Teare dated 12 November 2009 (and subsequently amended), and/or paragraph 5 of the order of Mr Justice Teare dated 22 April 2010; save that such disclosure (insofar as it relates to information provided by the

> First Defendant), if directed towards the Claimant, shall in the first instance be provided to the Claimants' solicitors, Hogan Lovells International LLP, who shall continue to comply with paragraph 15 of the order of Mr Justice Teare dated 12 November 2009, (as subsequently amended), absent further order."

13. Pausing there, those references are to the worldwide freezing order; and I am told, and it is common ground between counsel, that those detailed provisions in relation to Teare J's orders are of no consequence in relation to the documents produced on this application.

14. Schedule 3, which defines the Disclosed Assets, includes at paragraph 13 as a heading: "The First Defendant's interest in the Vitino Port." Under that heading there is in bold type: "Appoint receiver of all shares in Direct Logistics Ltd". There is a dispute, which I do not have to decide, as to whether the receivership order extends in relation to Vitino Port only to Direct Logistics Limited, which is one of a chain of four companies lying between Mr **Ablyazov** and the operating companies running the business of the Vitino Port, or to all Mr **Ablyazov**'s beneficial interests in the whole of the structure.

15. On 11 February 2011, Tedcom Finance Limited and Lux Investing Limited, two companies down the chain below Direct Logistics Ltd, applied in the Commercial Court under Section 44 of the Arbitration Act, without notice, for interim relief for the preservation of the subject matter of pending LCIA arbitration proceedings between them and Mr **Ablyazov**'s joint venture partners and entities controlled by them. I will refer to them as "the Vetabet parties". The subject matter to which the Section 44 application related was the respective joint venture interests of the parties in the Vitino Port. That application, which I will call the Section 44 application, was rejected by Mr Justice Teare on jurisdictional grounds, but granted on appeal on 24 February. The inter partes hearing of that application was originally listed to come on in the Commercial Court on 1 April, but it has since been adjourned and has yet to be heard.

16. By letter dated 7 March, Mr **Ablyazov**'s solicitors, Stephenson Harwood, informed the Receivers' solicitors, Freshfields, about the Section 44 application. Perceiving that there might therefore be a risk to part of the Property, in other words Mr **Ablyazov**'s interests in Vitino Port including Direct Logistics, the Receivers sought to get involved in the Section 44 hearing. On 8 March, by an open letter to Stephenson Harwood, the Receivers by their solicitors sought production by Mr **Ablyazov**, under paragraph 12 of the receivership order: first, of all evidence filed in support of the Section 44 application; and secondly, of copies of transcripts of the hearings in the Commercial Court and the Court of Appeal. They also sought Mr **Ablyazov**'s consent to their attendance at any further hearings of the Section 44 application, and threatened an application to this court if Mr **Ablyazov** declined any of those requests.

17. Mr **Ablyazov**, by his solicitors, did decline those requests on 11 March, but at a meeting attended by representatives of Stephenson Harwood, Freshfields and by one of the Receivers in person, Stephenson Harwood provided an oral summary of parts of the underlying evidence and comment about the arbitration and the Section 44 application, all of which was transcribed at Stephenson Harwood's request.

18. Meanwhile on 22 March the Receivers, by Freshfields, sought from Edwin Coe, the solicitors for the Vetabet parties, their clients' consent that the Receivers could attend all hearings of the Section 44 application and their clients' consent that the Receivers should have disclosed to them the documents arising in connection with the Section 44 application. The letter sought that consent so as to enable the Receivers to inform themselves about the subject matter of the Section 44 application and prepare to attend. Edwin Coe replied, giving that consent, on 23 March.

19. The Receivers had still not obtained Mr **Ablyazov**'s consent that they could attend the Section 44 application or his production of all the documents requested. Accordingly they issued applications; firstly, on 24 March to this court for production of the documents, and then on 25 March, an application to the Commercial Court for permission to attend the Section 44 hearings. Both applications were supported by substantially the

same evidence, which included a transcript of the meeting on 11 March. The evidence relating to the application for production of documents was served on Mr **Ablyazov** on 24 March, and the evidence relating to the application for permission to attend the Section 44 hearings was served on Mr **Ablyazov** and Edwin Coe for the Vetabet parties on 25 March. The application to the Commercial Court by the receivers for permission to attend the hearings remains pending.

20. Mr **Ablyazov** has since then obtained an order on a without notice application against Edwin Coe, restraining disclosure of the transcript of the 11 March meeting to their clients. That was obtained on 29 March. It was continued by consent on 6 April over to a return date of 19 April. The basis of the application was that the contents of the transcript were said to include privileged material. The question whether the transcript did include privileged material has yet to be decided in that application.

THE LAW

21. Mr **Ablyazov**'s case, that the notice regime imposed temporarily by Warren J should be made permanent, rested on two separate foundations. The first was that, otherwise, Mr **Ablyazov**'s rights to confidentiality in the arbitration process, including the Section 44 application, would be fatally undermined in a manner not warranted by the receivership order. The second foundation was that the Receivers' conduct in serving the 11 March transcript on the Vetabet parties displayed a cavalier indifference by the Receivers to Mr **Ablyazov**'s rights of privacy, confidentiality and privilege, which was by no means justified by the terms of the receivership order, such that the Receivers needed to be brought under control, by means of the notice regime to which I have referred. The first of these submissions necessitated a review of the law relating to what may loosely be called arbitration confidentiality.

22. In *Emmott v Michael Wilson & Partners* [2008] 1 Lloyd's Law Reports 616, at paragraph 79, Lawrence Collins LJ provides the following useful summary of the types of confidentiality which may arise in arbitration proceedings:

> “Three legal concepts or categories have been in play in these cases. The first is privacy, in the sense that because arbitration is private that privacy would be violated by the publication or dissemination of documents deployed in the arbitration. The second is confidentiality in the sense where it is used to refer to inherent confidentiality in the information in documents, such as trade secrets or other confidential Information generated or deployed in an arbitration. The third is confidentiality in the sense of an implied agreement that documents disclosed or generated in arbitration can only be used for the purposes of the arbitration. The distinction between the second and third cases may be illustrated by the case (not far from this one) where the relevant documents in the arbitration (such as the defence) do not contain anything in themselves which is confidential; nevertheless the parties are under an obligation not to use it for any purposes other than the arbitration, and that obligation is described in the authorities as an obligation of confidence.”

23. Under the heading “Limits on confidentiality”, he noted at paragraph 86 that the applicable rules governing the arbitration may provide the answer, or at any rate an answer, to the extent to which that general confidentiality right is circumscribed. In his summary at paragraphs 103 to 107, he continued as follows; at paragraph 103:

> “The conduct of arbitrations is private. That is implicit in the agreement to arbitrate. That does not mean that the arbitration is private for all purposes.”

At paragraph 104, he noted the increasing trend for the privacy of arbitrations to be protected. At paragraph 105, he said as follows:

> “But case law over the last 20 years has established that there is an obligation, implied by law and arising out of the nature of arbitration, on both parties not to disclose or use for any other purpose any documents prepared for and used in the arbitration or disclosed and produced in the course of the arbitration, or transcripts or notes of the evidence in the arbitration or the award, and not to disclose in any other way what evidence has been given by any witness in the arbitration. The obligation is not limited to commercially confidential information in the traditional sense.”

At paragraph 107, he concluded:

> “In my judgment, the content of the obligation may depend on the context in which it arises and on the nature of the information or documents at issue. The limits of that obligation are still in the process of development on a case-by-case basis. On the authorities as they now stand, the principal cases in which disclosure will be permissible are these:
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> The first is where there is consent, express or implied. Second, where there is an order, or leave of the court, (but that does not mean the court has a general discretion to lift the obligation of confidentiality); Third, where it is reasonably necessary for the protection of the legitimate interests of an arbitrating party; Fourth, where the interests of justice require disclosure; and also (perhaps) where the public interest requires disclosure.”

24. The present arbitration is, as I have said, governed by the LCIA rules. Rule 30.1 provides as follows, under the heading “Confidentiality”:

> “Unless the parties expressly agree in writing to the contrary, the parties undertake as a general principle to keep confidential all awards in their arbitration, together with all materials in the proceedings created for the purpose of the arbitration and all other documents produced by another party in the proceedings not otherwise in the public domain - save and to the extent that disclosure may be required of a party by legal duty, to protect or pursue a legal right or to enforce or challenge an award in bona fide legal proceedings before a state court or other judicial authority.”

In Merkin on Arbitration Law at paragraph 17.26, the editors speak of a duty of confidentiality. The editors of Gee on Commercial Injunctions, (5th ed), make a similar distinction to that which is to be found in the Emmott case, between privacy on the one hand and confidentiality on the other. To these categories there is, of course, to be added legal professional privilege and litigation privilege; as to which the principles were not in dispute between counsel, but their application was.

ANALYSIS

25. For Mr **Ablyazov**, Mr Trace QC relied upon privacy and arbitration confidentiality, but he did not suggest that the relevant documents included inherently confidential material of the commercially confidential or trade secret type. He did not suggest that the arbitration documents produced pursuant to Warren J's order were themselves privileged, either in whole or in part. His submissions about privilege related solely to the content of the transcript of the meeting on 11 March.

26. In my judgment, the combined effect of paragraphs 12 and 27 of the receivership order was to override Mr **Ablyazov**'s own rights of privacy and confidentiality, but not privilege, to the extent that the receivers reasonably considered it expedient to do so for the achievement of the purposes of the receivership, both by requesting production of information and documents by Mr **Ablyazov** and, having obtained that material, by using it or disclosing it to third parties.

27. Any more limited construction of paragraph 27 in particular would, in my view, be contrary to a purposive interpretation since it may readily be assumed that most of Mr **Ablyazov**'s information about his assets was, at least, private and some of it indeed confidential. To treat paragraph 27 as leaving intact a right of Mr **Ablyazov** to require the receivers to keep material disclosed to them confidential from third parties is both contrary to the clear language of the opening sentence of paragraph 27 and would impose a serious fetter on the effective conduct of the receivership.

28. There is no reason to suppose that in framing paragraph 27 of the receivership order, Teare J had arbitration confidentiality specifically or particularly in mind; but that does not, in my judgment, mean that such confidentiality was rigidly preserved, notwithstanding the terms of paragraph 27. That said, the liberty to apply in paragraph 22 of the receivership order plainly entitles Mr **Ablyazov** to come back to the Chancery Division and invite the court to impose restrictions on the Receivers' use of information disclosed to them where particular circumstances, which may not have been envisaged when the receivership order was made, make it just to do so.

29. There may for example be circumstances where the expediency of the disclosure by receivers to third parties of particular information is outweighed by the risk thereby caused of irreparable damage to Mr **Ablyazov**. I am by no means persuaded that the loss to Mr **Ablyazov** of rights of privacy or even arbitration confidentiality which would be occasioned by the Receivers' disclosure of the documents or information in issue to a third party is of itself such a circumstance. Still less am I persuaded that the permanent imposition of the temporary notice regime, given by way of undertaking to Warren J, would be a just or convenient mechanism by which to protect those rights even if the need for such protection was regarded as potentially overriding the disclosure of information by the Receivers for the purposes of the receivership. My reasons follow.

30. First, arbitration confidentiality or privacy is not absolute. Its preservation in any particular situation, for example an arbitration appeal, is only the starting point and may be overridden where either the public interest or, I would add, the interests of justice require. I have referred already to Lawrence Collins LJ's observations to that effect in the *Emmott* case. Similar observations are to be found in the Court of Appeal's decision in *City of Moscow v Bankers Trust* [2005] QB 207. In the present case, the documents in issue consist of or contain information which may broadly be divided into two classes. Class A is material originating from Mr **Ablyazov**'s side; and Class B is material originally emanating from the opposing Vetabet parties. As to Class A, the deployment by Mr **Ablyazov** of his own documents or of his own information in an arbitration, whether in a statement of case, a witness statement or by exhibiting the documents themselves, does not make the information itself confidential if it was not originally of the inherently confidential type. Arbitration confidentiality in that context means only that the fact of its use in the arbitration is confidential.

31. In those circumstances it would, in my judgment, be wrong to restrain the Receivers' use for the purposes of the receivership of Mr **Ablyazov**'s information or documents in Class A; and unlikely that the receivers would need to explain to any third party that Mr **Ablyazov** had used that information in an arbitration.

32. Even if that disclosure itself was expedient, I see no reason why Mr **Ablyazov**'s arbitration confidentiality or privacy rights should stand in the way. The interests of justice would be better served by the effective preservation by the receivers of Mr **Ablyazov**'s assets.

33. As to class B, the Vetabet parties have, subject to one point to which I shall return, consented to the disclosure to, and use by, the Receivers of that information. Their consent was, until late last night, only as to its disclosure to the Receivers and use by them for enabling them to understand the matters which may arise at the hearing of the Section 44 application, rather than to disclosure to third parties for the general purposes of the receivership.

34. However, since the end of yesterday's hearing, on enquiry by the Receivers, Edwin Coe for the Vetabet parties have extended that consent so as to permit the Receivers to use the information disclosed for all purposes in connection with the receivership. It follows that arbitration confidentiality is, again, no compelling reason for restraining the use of class B information, where expedient for the purposes of the receivership.

35. Mr Trace submitted that a notice regime was an entirely appropriate way of tailoring restrictions to particular instances of an objectionable disclosure by the Receivers. He sought to meet the Receivers' occasional need, which he acknowledged, to disclose relevant information to third parties without first tipping off Mr **Ablyazov**, by suggesting that the Receivers could have, or should have, permission to apply to the court without notice in such a case, where the circumstances could be shown to justify taking that shortcut.

36. I disagree. In my judgment, a notice regime, even one which is tempered by liberty to apply without notice, is a thoroughly inappropriate form of restriction to impose upon the Receivers. These receivers are experienced officers of the court who may, subject to one point to which I shall return, generally be trusted to perform their difficult task without having to be micro-managed by the court on repeated applications, either by Mr **Ablyazov** to restrain a particular notified use, or by themselves to use information without tipping off Mr **Ablyazov**.

37. The court has to bear constantly in mind the competing requirements of different litigants for the court's resources and facilities; and I do bear in mind in the present context that, as has been said by other judges in relation to this litigation, it is being conducted at a level which bears real comparison with trench warfare and involves very substantial use of the court's resources. The getting in and preservation of, or of the value of, complex commercial assets such as those that are the subject of this receivership demands on occasion speed, flexibility and the need in unpredictable circumstances to take steps requiring the use of disclosed information which would, to use Mr Miles QC's word, be hamstrung if attended by a prior requirement either to give Mr **Ablyazov** notice or to apply to the court on every occasion where the need for that use should arise. The need to use the information may arise, for example, in the middle of a meeting or when the Receivers are pursuing enquiries abroad. The proposed restriction is, quite simply, completely impracticable.

38. Mr Trace proposes, as a fallback, a notice regime limited to any proposed disclosure of the relevant information to the bank or its solicitors. Mr **Ablyazov** appears to fear or suspect that otherwise the Receivers will engage in some secret process of general information sharing with the bank, giving it an unfair advantage in the main litigation. Again, I regard this restriction as inappropriate for substantially the same reasons. I also consider that Mr **Ablyazov**'s suspicion or fear is unsupported by any evidence. The Receivers are no doubt well aware of the longstanding principle, dating back at least to 1823 in *Comyn v Smith*, that receivers appointed by the court over the subject matter of litigation must not take sides or make common cause with any of the parties. Nothing has happened to lead the court to conclude that information disclosure by the Receivers to the bank will occur, other than when expedient for the purposes of the receivership, or that the Receivers will not bear in mind the need to tailor any such disclosure to minimise the risk of giving the bank any advantage, let alone any unfair advantage, in the main litigation.

39. My one reservation as to the extent to which the Receivers can be trusted to perform their difficult task without micro-management by the court arises from the disclosure of the transcript of the 11 March meeting to Vetabet's solicitors. Mr Trace made three submissions in relation to this disclosure under the general heading of a complaint that the Receivers thereby showed a cavalier disregard for Mr **Ablyazov**'s rights. The first was that the transcript contained privileged material. The second was that even if it did not, it revealed aspects of Mr **Ablyazov**'s tactical approach to the arbitration and/or to the Section 44 application and views about its merits to Mr **Ablyazov**'s opponents in that very dispute. The third was that the disclosure of the transcript to Edwin Coe could not reasonably, or objectively, be regarded as expedient for the achievement of any purpose of the receivership.

40. To make good his first and second points, Mr Trace took me in detail through the transcript. I will not overburden this judgment by retracing those steps. The transcript speaks for itself and, on any appeal, a higher court can form its own view about the detail.

41. In my judgment, there was no disclosure of privileged material or, if there was, no disclosure which was not accompanied by a waiver of privilege. The meeting took place to resolve issues raised in open correspondence between the Receivers' solicitors and Mr **Ablyazov**'s solicitors against a threatened application to the court by the Receivers for disclosure. It was not held on a without prejudice basis and on earlier occasions Mr **Ablyazov**'s solicitors had made clear their view, with which I agree, that the receivership order did not of itself oblige Mr **Ablyazov** to make disclosure of any privileged material to the Receivers.

42. At its highest, there were two expressions of a view that Mr **Ablyazov** would succeed on certain aspects of the Section 44 application, but that did not, in the context, involve the disclosure of privileged material in relation to legal advice to Mr **Ablyazov**. If it did, privilege was, to that extent, waived. By contrast, there were expressions of views about Mr **Ablyazov**'s tactics in the litigation and views about his opponents' tactics which I consider it surprising that the Receivers regarded it appropriate or fair, save in a case of real necessity, to disclose to Mr **Ablyazov**'s opponents in the arbitration. I can well understand Mr **Ablyazov**'s sense of indignation that this was done.

43. More seriously, I cannot understand, and Mr Miles could not explain, why disclosure of the transcript, at least without considerable redaction, needed to be made to the Vetabet parties, or why it was expedient. The only reason for the disclosure was that it formed part of the evidence being used for the Receivers' applications against Mr **Ablyazov** for disclosure, and against Mr **Ablyazov** and the Vetabet parties for permission to attend the Section 44 application. But the Vetabet parties had consented to the Receivers attending the Section 44 application two days before the disclosure of the transcript was made to them; and the contents of the transcript, however relevant to the disclosure application, were of marginal, if any, relevance to the application for permission to attend.

44. What appears to have happened was that the whole of the evidence to be used in the disclosure application in the Chancery Division was simply bundled up and exhibited to a short covering witness statement in the Commercial Court application for permission to appear, without any real thought being given to the necessity or the expediency of disclosing the transcript or its contents to the Vetabet parties. It was an act of unthinking carelessness, rather than wrongheaded judgment, still less partiality as between Mr **Ablyazov** and the bank. It was, to that extent, at least in its effect, cavalier.

45. What should be the court's response? In my judgment, it should clearly not be to impose the notice regime sought by Mr **Ablyazov**, with all its attendant disadvantages in hamstringing the receivership. Nor does this one instance of carelessness justify removing the Receivers, and in fairness Mr Trace did not suggest that it did. It does, however, justify a direction, which I give by this judgment, that wherever in future the Receivers propose to disclose originally private or confidential information of Mr **Ablyazov** obtained by them pursuant to the receivership order, they give specific consideration to the expediency for the purposes of the receivership of the disclosure of each part of it and to the question whether that expediency is a reasonable basis for overriding Mr **Ablyazov**'s original, but of course heavily qualified, rights of privacy and/or confidentiality.

46. Subject only to that direction, I discharge for the future the undertakings given by the Receivers to Warren J in relation to the giving of notice to Mr **Ablyazov** before disclosing the information in the documents in issue, or the documents themselves, to third parties, including for that purpose the bank and its solicitors.