

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT
BETWEEN:



2010 Folio 706

JSC BTA BANK

Claimant

- and -



- (1) MUKHTAR ABLYAZOV**
- (2) ZHAKSYLYK ZHARIMBETOV**
- (3) GRANTON TRADE LTD**
- (4) BRANDEN & ASSOCIATES LTD**
- (5) ALDRIDGE VENTURES LTD**
- (6) ZAFFERANT PARTNERS INC**
- (7) FOREST MANAGEMENT LTD**
- (8) LOGINEX PROJECTS LLP**
- (9) INCOMPRO MANAGEMENT LTD**
- (10) PERSPECTIVE COMMUNICATIONS INC**
- (11) AUSTIN UNIVERSAL INC**
- (12) MADEN HOLDING INC**

Defendants

RULING

1. This is my ruling on an application by the claimants (“the Bank”), originally made on 7 September 2010, that the 3rd to 7th, 9th, 10th and 12th Defendants (“the Represented Defendants”) should provide information relating to the person or persons who are funding their legal costs. It is common ground that there is such a third party or parties.
2. On 10th September 2010 I made a more limited order than the one sought. I ordered that, unless by 17 September 2010 the costs outstanding under orders made by Blair J and myself on 13th and 24th August 2010 were paid, full details of the source (s) of funding should be provided by 20 September 2010. I adjourned further consideration of the application. In the event the costs were paid by 17 September 2010. Subsequent orders for costs made in November and December 2010 were paid, albeit late.
3. On 11th October 2011 I made an order revoking the relief against sanctions which I had previously granted on 10 December 2010. That order required the Represented defendants to pay damages in a sum in excess of \$ 1 billion together with interest and to pay £ 169,710 in respect of the costs of the application to revoke the relief within



14 days i.e. by 25 October 2011. The Bank now seeks an unconditional order for disclosure of the ultimate funder of the Represented Defendants.

- 4 On 25 October 2011 the Represented Defendants applied for permission to appeal. Enforcement of the judgment for damages and interest was stayed pending the appeal. But there has been no stay of the costs order. On 8 November 2011 the Represented Defendants' application for permission to appeal was granted by Rix, L.J., in part. The Bank has applied to the Court of Appeal for an order that the appeal be made subject to conditions including a condition that the Represented Defendants pay the costs.
- 5 No payment of costs was made by 25 October as ordered, although £ 20,000 was later paid. The draft order produced by the Bank requires iLaw Legal Services Ltd ("iLaw"), the solicitors of the Represented Defendants to request from Law Office SPB Limited ("SPB"), the Russian Law office from whom they receive payment, full details of the source, and, upon receipt, to provide the information to the Bank forthwith. By a letter of 12 July 2011 SPB confirmed to iLaw that it acted for Mr Timichev only, and not for the Defendants, and said that no provision of the Russian Civil Code compelled it to deliver to the Represented Defendants any document held by them for him.
- 6 On 17 November 2011 iLaw wrote to the Bank in connection with the Bank's proposal that conditions should be imposed on the permission to appeal. iLaw stated that they were instructed that their clients intended to pay the costs by 23 December 2011 plus interest.
- 7 The Bank submits (a) that, since there is an extant and largely unpaid costs order, the jurisdiction to make an order requiring revelation of the funder(s) has arisen; and (b) that it should be exercised. It is not, the Bank submits, acceptable for the Represented Defendants to ignore the date by which the Court has ordered costs to be paid and, when this failure is complained of, to indicate that payment will be made two months after the original date and suggest that, if any order is to be made, it should only be for provision of the identity of the source if payment is not made by the date which the Represented Defendants have selected.
- 8 I agree with the first submission : see *Abraham v Thompson* [1997] 4 AER 362, 368d - g.
- 9 I see the force of the second. But I am not persuaded that I should, on this occasion, make an immediate order. Although the application was renewed on 2 November 2011 it was accepted that it would be dealt with by written submissions and that those of the Defendants should be filed by 5 December. These were followed by submissions from the Bank on 7 December. Because of my involvement in a murder trial in Preston it has not been possible to give the submissions immediate attention. The time by which payment has been promised is now less than a week hence. In those circumstances it seems to me that justice will be done if I make a similar order



to that which I made in 2010 namely for provision of the identity of the source if payment is not made by then.

- 10 It is not, however, acceptable for the Represented Defendants to ignore the dates by which the Court orders costs to be paid; or to treat them as nothing more than a target. In the case of any future costs order I would be minded to order that the costs be paid by a specific date, and at the same time to order that, unless they were, the identity of the source should be revealed. A fortiori I would be minded to do so within a matter of days after any order for payment of costs remained unfulfilled.
- 11 I do not propose to order iLaw to request from SPB full details of the source from which the Represented Defendants' costs have been met. SPB cannot be compelled to reply and it is apparent from the stance taken by SPB in its letter of 12 July and the filing of the report of Professor Bogush that it is practically certain that SPB will decline to do so on the grounds of privilege and/or confidentiality (whether Professor Bogush is right or not).
12. In my judgment the Represented Defendants should pay the costs of this application, which I will summarily assess. The order that I propose to make is attached.