Neutral Citation Number: [2012] EWHC 237 (Comm)

Case No: 2009 FOLIO 1099

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/02/2012

Before :

MR. JUSTICE TEARE

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Between :

JSC BTA BANK	**Claimant**
- and -	
MUKHTAR ABLYAZOV	**Defendant**

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- -

Stephen Smith QC and Tim Akkouh and Caley Wright (instructed by **Hogan Lovells International LLP**) for the **Claimant**
Duncan Matthews QC, Ian Winter QC, George Hayman and James Sheehan (instructed by **Addleshaw Goddard LLP**) for the **Defendant**

Hearing dates: 30 November, 1-2, 5-6,8-9,12-16 and 20-21 December 2011

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Judgment

Mr. Justice Teare :

1. It may assist if I give the following guide to the contents of this judgment:

Introduction

2. This is the judgment of the court upon the hearing of an application by the Claimant ("the Bank") to commit the First Defendant, Mukhtar Ablyazov, for contempt of court and for other associated relief. The application is the latest step in the Bank's relentless campaign to persuade Mr. Ablyazov, as the Bank would put it, to comply with the terms of a worldwide freezing order (the "WFO") made against him in this and related actions. At an earlier stage in this litigation and with the same aim the Bank sought and obtained the appointment of a receiver over Mr. Ablyazov's assets in support of the freezing order; see *JSC BTA Bank v Ablyazov* [2010] EWHC 1779 (Comm). An appeal from my decision was dismissed; see [2010] EWCA Civ 1141.

3. The nature of the claims made by the Bank against Mr. Ablyazov in the several actions commenced by the Bank and the nature of his response to them were summarised by me at [2010] EWHC 1779 (Comm) at paragraphs 2-4:

> "2. The Claimant ("the Bank") is a bank in Kazakhstan, 75.1% of whose share capital has, since 2 February 2009, been owned by the State of Kazakhstan through a sovereign wealth fund, Samruk-Kazyna. On that date the State effectively took control of the Bank when, according to the evidence of the Bank, there was significant concern as to the ability of the Bank to continue as a going concern. ……
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> 3. The Defendant ("Mr. Ablyazov") is the former chairman of the Bank and is accused by the Bank of "widespread misappropriation of the Bank's funds." It is said that he has treated the Bank "as if it were his own private source of funds". Four claims have now been issued in this jurisdiction against Mr. Ablyazov. The total sum claimed is in excess of US$1.8 billion. Further claims are anticipated which I was told will bring the total sum claimed to US$4 billion.
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> 4. Mr. Ablyazov denies these claims. He states that the claims are an attempt by the President of Kazakhstan, Nursultan Nazarbayev, to take control of his assets in support of a politically motivated claim against Mr. Ablyazov, who is a leading figure in Kazakhstan's democratic opposition. ……."

4. In short, fraud on an epic scale is alleged. Mr. Ablyazov denies the allegation and says that the allegations are an attempt by the President of Kazakhstan to eliminate him as a political opponent.

5. On this application the court has to determine three allegations of contempt. The Bank initially advanced no less than 35 allegations but for case management reasons I determined that only three should be heard and gave other directions; see [2011] EWHC 1522 (Comm). An appeal by Mr. Ablyazov from those directions was

dismissed; see [2011] EWCA Civ 1386. Mr. Ablyazov denies that he has failed to comply with the freezing order or has otherwise acted in contempt of court. He says that this contempt application, like the entirety of the proceedings against him, is motivated by a desire to eliminate him as a political opponent to the President of Kazakhstan.

6. The three allegations may be summarised as follows:

   i) Mr. Ablyazov failed, in breach of the WFO, to disclose his beneficial ownership of the shares in Bubris Investments Limited, a company incorporated in the British Virgin Islands.

   ii) Mr. Ablyazov, when cross-examined under oath as to his assets, lied to the court when (a) he stated that he was merely the short-term tenant of two properties in London and stated that all the residential properties he owned were included in his schedule of assets and (b) he denied that he was the beneficial owner of shares in FM Company Limited (a company incorporated in the Marshall Islands), Bergtrans Contracts Corp and Carsonway Limited (both being companies incorporated in the BVI).

   iii) Mr. Ablyazov, in breach of the WFO, dealt with an asset, namely loans held by Stantis Limited (a company incorporated in Cyprus) by assigning them to Nitnelav Holdings Limited in December 2010.

7. It is common ground that the burden is on the Bank to satisfy me so that I am sure that Mr. Ablyazov is guilty of the alleged contempts. That is the criminal standard of proof.

8. It is notable that the Bank's case against Mr. Ablyazov, on the first two allegations of contempt, depends upon inference from such circumstantial facts and matters as the Bank is able to prove. As in any criminal trial circumstantial evidence can be relied on to establish guilt. It is however important to examine the evidence with care to see whether it reveals any other circumstances which are or may be of sufficient reliability and strength to weaken or destroy the Bank's case; see *Teper v R* [1952] AC 480 per Lord Norman. Further, I respectfully adopt the words of David Richards J. in *Daltel v Makki* [2005] EWHC 749 (Ch) at paragraph 30: "In particular if, after considering the evidence, the court concludes that there is more than one reasonable inference to be drawn and at least one of them is inconsistent with a finding of contempt, the claimants fail." I accept the submission of Mr. Matthews QC, counsel for Mr. Ablyazov, that where a contempt application is brought on the basis of almost entirely secondary evidence the court should be particularly careful to ensure that any conclusion that a respondent is guilty is based upon cogent and reliable evidence from which a single inference of guilt, and only that inference, can be drawn.

9. Although there is no burden on Mr. Ablyazov to prove anything on this application he has advanced a case in relation to each of the three alleged contempts. It is a corollary of the burden of proof being upon the Bank that if, after considering the evidence, I consider that Mr. Ablyazov's case is or may be true then the Bank will have failed to establish the alleged contempt.

10. In support of the application the Bank relied, in the main, on documents it had obtained from disclosure, search and *Norwich Pharmacal* orders against third parties both here and abroad. The Bank also called evidence from Mr. Anuar Aizhulov who worked for Mr. Ablyazov from about 2005 until 2009. His evidence related to the third allegation of contempt concerning alleged dealings with the assets of Stantis. Counsel for Mr. Ablyazov also wished to cross-examine Mr. Hardman, a solicitor at Hogan Lovells who has spent much of the last two years working on this case and has, by way of affidavits and witness statements, presented the documentary evidence relied upon by the Bank to the court. He was therefore tendered for cross-examination.

11. Mr. Ablyazov gave evidence and was cross-examined for two and half days. He also adduced oral evidence from Salim Shalabayev (said to be the owner of 17 Albert's Court), his brother Syrym Shalabayev (said to be the owner of Carlton House, Oaklands Park, 79 Elizabeth Court and FM Company) and from Mr. Golovkin, a Russian lawyer who acts for Mr. Sadykov (said to be the owner of Bubris). Salim Shalabayev was cross-examined for a little less than a day and his brother Syrym Shalabayev was cross-examined for over two days.

12. Several statements in writing were also adduced in evidence.

13. The determination of just three allegations of contempt took some 13-14 days.

14. It was put to Mr. Hardman in cross-examination that the purpose of this application was not to "police" the WFO but to "knock out" Mr. Ablyazov, by which I understood counsel to allege that the Bank wished to prevent him from defending the claims which have been brought against him. However, I accept Mr. Hardman's evidence that he, as the solicitor at Hogan Lovells with primary responsibility for pursuing this litigation against Mr. Ablyazov and in particular this contempt application on behalf of the Bank, has brought this application for the purpose of bringing further pressure to bear on Mr. Ablyazov to comply with the WFO. Notwithstanding the determination and aggression with which these proceedings have been pursued I do not consider that there is any reason for me to doubt his evidence on that matter. Whilst the consequences of Mr. Ablyazov being committed for contempt may impede his ability to defend the claims brought against him (as well as being damaging to his financial and political future) I am satisfied that Mr. Hardman's purpose, and the Bank's purpose, in bringing this application, is legitimate. Committal for contempt may bring with it certain consequences but that does not persuade me that the Bank has not brought this contempt application for the legitimate purpose of bringing pressure to bear upon Mr. Ablyazov to comply with the WFO; cf *JSC BTA Bank v Solodchenko, Kythreotis and others* [2011] EWCA Civ 1241 at paragraph 45 per Jackson LJ. An attempt to stay the proceedings as a whole on the grounds that they are being pursued for an improper or illegitimate purpose has already failed; see [2011] 1 WLR 2996 at paragraphs 49-55. Permission to appeal from that decision was refused; see [2011] EWCA Civ 1588.

15. It was further submitted that the Bank did not play the role of a "dispassionate prosecutor" on this quasi-criminal matter but presented its case by the use of evidence and submissions which were at times prejudicial, tended towards rhetoric and exaggeration and strayed beyond the scope of the issues in dispute. Mr. Smith QC, counsel for the Bank, pointed out that the Bank did have its own legitimate private

interest to pursue and was therefore not wholly to be equated with a prosecutor in a criminal case. I consider that whilst Mr. Smith may have made use of one or two matters which might be regarded as prejudicial, that at times he deployed (no more than) a touch of rhetoric, that on at least one occasion the evidence strayed into matters not formally in issue on this application and that he relied upon some matters which were merely consistent with his case rather than probative of it, Mr. Smith's general approach was, fairly and correctly, to let the facts adduced in evidence and which were relevant to the issues in dispute speak for themselves.

16. Before summarising the parties' respective cases it is necessary to note three matters. The first is the manner in which Mr. Ablyazov "holds" his assets. In my judgment on the receivership application, [2010] EWHC 1779 (Comm) at paragraph 7, I described it in these terms:

> "7. Mr. Ablyazov does not hold his assets in his own name. Rather, a trusted associate appears to hold shares in a holding company on his behalf and by that means controls the shareholdings in a chain of other companies at the bottom of which chain is an operating business. The use of a nominee and of companies registered in offshore jurisdictions makes it difficult to trace his assets. He says that the elaborate scheme by which he owns his assets is necessary to protect him from unlawful depredations by the President of Kazakhstan."

17. Assets held in this way are assets of Mr. Ablyazov within the wide definition of assets in the WFO. They are assets which Mr. Ablyazov has the power indirectly to dispose of as if they were his own. Although not the registered owner of any shares in a company he is the "ultimate beneficial owner" of them ("the UBO") and can dispose of the assets held by the company as if they were his own by reason of being able to instruct his nominee.

18. Mr. Alexander Udovenko was one of Mr. Ablyazov's most trusted associates until sometime in late 2009 (when, it seems, he disappeared). He was a Russian lawyer who had practised with an American firm in Moscow and had then worked for an American bank in Moscow. From 2001-2003 he studied in London obtaining a diploma in law and an MBA. From 2003 he worked at Eastbridge Capital Limited in London. He appears to have provided his services to Mr. Ablyazov in London at the offices of Eastbridge. He was the nominee UBO of at least some of Mr. Ablyazov's companies and as such made use of corporate service providers in off-shore jurisdictions, in particular in Cyprus and the BVI. He was assisted by Syrym Shalabayev, Mr. Ablyazov's brother-in-law who, in the Autumn of 2008, replaced Mr. Udovenko as the nominee "beneficial owner" of at least some of Mr. Ablyazov's companies and was perceived by at least one person familiar with the workings of Eastbridge as Mr. Udovenko's "successor". The family connection was continued by the assistance given from time to time by Salim Shalabayev, a younger brother of Syrym, whose name was either used or suggested as a nominee UBO of at least two companies. In the Autumn of 2009, after the WFO had been granted and Mr. Udovenko had disappeared, Syrym Shalabayev appears to have transferred the work of Eastbridge Capital in London to Euroguard in Cyprus.

19. The second matter to note, much stressed by Mr. Matthews, is that when considering whether the Bank has made the Court sure of the truth of the allegations made against Mr. Ablyazov the Court must keep well in mind that the manner in which a wealthy Kazakhstan citizen (who fears confiscatory action by the Kazakhstan Government) holds his assets and protects his identity as the holder of such assets is very different from the manner in which a wealthy citizen of this country would hold his assets. A wealthy Kazakhstan citizen (who fears confiscatory action by the Kazakhstan Government) has a need for secrecy in the ownership of his assets. That there is both fear and a consequent need for secrecy in Kazakhstan was not expressly challenged by the Bank on this application.

20. The third matter to note is the chronology of the steps taken by the Bank in this litigation. This is relevant because the Bank relies upon the juxtaposition in terms of timing between changes in the identity of the trusted associate or nominee UBO and steps in the litigation. The chronology (which has been agreed by the parties) is set out in Appendix 1 to this judgment.

The first allegation: Bubris Investments Limited

21. Bubris Investments Limited ("Bubris") is a company incorporated in the British Virgin Islands. In what are known as the AAA proceedings (which were commenced by the Bank in the Chancery Division) the Bank alleges that Bubris was involved in a fraud on the Bank in January 2009 whereby some US$300m. of bonds were misappropriated from the Bank.

22. It is the Bank's case on this contempt application that at all material times and in particular in August 2009 when the WFO was granted the true beneficial owner of the shares in Bubris was Mr. Ablyazov and that several trusted associates who were named successively as the ostensible beneficial owner of those shares in fact held the shares on his behalf as his nominee. The Bank says that that is the only reasonable inference which can be drawn from the identity from time to time of the nominee UBO and from the circumstances in which the nominee UBO was changed.

23. Mr. Ablyazov's case is that he did not and does not own Bubris. He has adduced evidence from others to the effect that Mr. Sadykov is and always has been the true UBO of Bubris. Those named as the UBO of the shares in Bubris held them on behalf of Mr. Sadykov until he himself was named as the (true) UBO in 2010.

The second allegation (part one): English Real Estate

24. It is the Bank's case that Mr. Ablyazov is the true UBO of four properties in England: Carlton House on The Bishop's Avenue, Oaklands Park in Surrey, a flat in Elizabeth Court in St. John's Wood and a flat in Alberts Court, also in St. John's Wood.

25. The Bank says that the only reasonable inference to be drawn from a number of matters is that Mr. Ablyazov is and was the true beneficial owner of the shares in the companies who were the registered proprietors of the aforesaid four properties and that he lied to the court when he said, under cross-examination on oath, that he was only the short-term tenant of Carlton House and the flat in Elizabeth Court and that all his residential property was listed in his schedule of assets, which schedule did not include the shares in the registered proprietors of the four properties.

26. Mr. Ablyazov's case is that Syrym Shalabayev is the true UBO of Carlton House, Oaklands Park and Elizabeth Court and that Salim Shalabayev is the true UBO of Alberts Court. Accordingly he did not lie on oath.

The second allegation (part two): The Schedule C Companies

27. Drey Associates Limited is a defendant to the Drey proceedings, an action commenced in this court in August 2009. The Bank alleges that Drey received money fraudulently extracted from the Bank by Mr. Ablyazov. He admits that he owns Drey.

28. FM Company is incorporated in the Marshall Islands. Mr. Ablyazov's "Schedule C" disclosure showed that it received $41.1m. from Drey via Devesta (a company which Mr. Ablyazov at one stage admitted owning) on 27 June 2008. Bergtrans was shown as having received $500,000 on 1 July 2008 from monies coming ultimately from Drey and Carsonway was shown as having received $255,435 on 1 July 2008 from monies ultimately coming from Drey.

29. The Bank's case is that the only reasonable inference to be drawn from a number of matters is that the shares in these three companies, FM Company, Bergtrans and Carsonway, are beneficially owned by Mr. Ablyazov and that he lied on oath when he denied that he was the owner of those companies.

30. Mr. Ablyazov's case is that Syrym Shalabayev was the true UBO of FM Company and that Mr. Kossayev was the true UBO of Carsonway and Bergtrans. Accordingly he did not lie on oath.

The third allegation: Stantis

31. The Bank's case is that Mr. Ablyazov owns Stantis and that Stantis was owed certain monies exceeding US$80m. Mr. Ablyazov dealt with those debts in breach of the WFO by assigning them in December 2010. The mechanism by which that happened was, on the Bank's case, that Syrym Shalabayev instructed Mr. Batyrgarejev to execute deeds of novation in favour of Nitnelav Holdings Limited which he did.

32. Mr. Ablyazov's case is that the assignments took place but that such assignments were automatically effected on 1 May 2010 pursuant to (i) an agreement dated 13 April 2007 under which Stantis borrowed US$80m. from Alterson Limited ("the Alterson loan agreement"), (ii) an agreement dated 1 June 2009 under which Alterson was entitled to serve a notice which had the effect of assigning the loans made by Stantis to Alterson or its nominee ("the June 2009 agreement") and (iii) notices dated 20 and 28 April 2010 served under the June 2009 agreement. The assignments dated December 2010 merely gave effect to the automatic assignments which had taken place on 1 May 2010.

33. The Bank says that the version of the Alterson loan agreement dated 13 April 2007 relied upon by Mr. Ablyazov, the June 2009 agreement and the notices dated 20 and 28 April 2010 were fabricated for the purpose of providing Mr. Ablyazov with a defence to this allegation of wrongful dealing with assets. The Bank adduced evidence from Mr. Anuar Aizhulov, who is alleged to have signed the Alterson loan agreement relied upon by Mr. Ablyazov and the June 2009 agreement, that he did not sign either document.

Evidential matters

34. The manner in which Mr. Ablyazov holds his assets has created difficulties for both parties. The Bank is presented with the difficulty that it has no direct evidence that Mr. Ablyazov owns Bubris, the companies which own the English real estate or the Schedule C companies because he is nowhere recorded as the UBO of the shares in those companies. The Bank must therefore prove its case by inference from circumstantial evidence. Mr. Ablyazov has a related difficulty (though no burden of proof rests upon him) that stems from the manner in which he holds his assets. That is that the fact that someone other than him is the named beneficiary of the shares in Bubris or of the shares in the companies which are the registered proprietors of the English real estate or of the shares in the Schedule C companies cannot be regarded as reliable evidence that such person is the true beneficiary of those shares because the named beneficiary is routinely and deliberately not the true beneficiary. Since Mr. Ablyazov's acknowledged aim is to ensure the absence of a paper trail leading to him the fact that the paper trail leads to other persons is worthless as evidence that those persons are the owners of the assets in question. He must therefore rely on evidence from persons, including himself, who make or benefit from a business of creating documents which state things to be true which are not. The creation of such documents must cause the Court to exercise caution before accepting as true, or as possibly true, statements made by such witnesses notwithstanding that the creation of such documents may be a necessary practice to prevent the President of Kazakhstan from unlawfully appropriating such assets.

35. In such circumstances the email traffic and other contemporaneous documents which the Bank has been able to obtain are likely to be of considerable assistance to the Court. The cornucopia of material obtained from disclosure, search and *Norwich Pharmacal* orders against Yahoo!, the Yellow Box storage facility in north London and from the offices of corporate service providers in Cyprus demonstrates the value of such orders. The most striking example is the email traffic obtained from Yahoo! which, remarkably, enabled the Bank to read the emails of those who assisted Mr. Ablyazov right up until early 2011 without them (or Mr. Ablyazov) knowing that the Bank was doing so until the material was deployed in the evidence which supported the application made in April 2011 to extend the Receivership Order.

36. However, the importance of such documentation to the resolution of the issues before the Court means that the Court must be satisfied of what Mr. Matthews described as the "integrity" of the documentation. If the documentation is incomplete or if it has been "cherry-picked" (another of Mr. Matthews' words) it may be misleading. Mr. Matthews subjected some of the documentation to a close analysis which extended to express and implied criticism of the Bank's solicitors in their presentation of the documentation to the Court.

37. In his closing submissions (which extended to 226 pages) Mr. Matthews addressed the presentation of the documentary evidence at pages 25-45. His criticisms may be summarised as follows:

    i) The Bank used the same material which it used on without-notice applications to extend the Receivership Order to advance its allegations of contempt notwithstanding that the standard of proof in these contempt proceedings is the

criminal standard, which standard did not apply when the Bank was seeking the extension of the Receivership Order.

ii) The Bank's solicitors have not been frank with the court as to the source of certain documents.

iii) The discovery process was unsatisfactory in that:

a) Mr. Ablyazov has been hampered in understanding the sources of the documents.

b) An email dated 21 September 2010, apparently from Mr. Kythreotis to Mr. Hercules, has been misrepresented.

c) The disclosure of the documentation by the Bank has been incomplete.

d) The documents have not been properly proved.

38. I have considered these criticisms. My conclusions are as follows:

i) It is true that the Bank is using the same material which it used on without-notice applications to extend the Receivership Order to advance its allegations of contempt. I do not find that surprising. If the material was good reason for extending the Receivership Order it will also suggest that there has been a failure to disclose assets. However, the Court must keep well in mind that the Bank bears the burden of establishing its case on this application to the criminal standard of proof.

ii) I have considered the material which is relied upon to support the suggestion that the Bank has not been frank with the Court or Mr. Ablyazov as to the source of certain documents. The material relied upon was or appeared to be privileged material which had been sent to the Court of Appeal by Mr. Kythreotis on 7 October 2011 in connection with the Bank's appeal in connection with contempt proceedings against Mr. Kythreotis. The Court of Appeal referred only to a redacted version of that material, excluding the privileged material; see *JSC BTA Bank v Solodchenko, Kythreotis and others* [2011] EWCA Civ 1214 at paragraph 41 per Jackson LJ. However, it appears that the unredacted version of the material was placed on an internet site which was accessed by Mr. Ablyazov's solicitors before an injunction was sought restraining publication of the material. On this hearing the Bank did not object to Mr. Ablyazov relying upon the material so long as the Court considered the material in private. I acceded to that course. For that reason I have put the part of my judgment which deals with this part of the case in Appendix 2 to this judgment which must not be published without further order. My conclusion is that I do not accept the criticisms which have been made against Mr. Hardman. In particular, I accept his evidence that the documents he has placed before the court include documents which he obtained by way of a disclosure order against Mr. Hercules in Cyprus rather than documents which he obtained from Mr. Hercules pursuant to a deal which he did with Mr. Hercules.

iii) As to the allegation that the disclosure process was unsatisfactory:

a) I agree that it is likely that Mr. Ablyazov and those advising him were presented with a difficult task in understanding from which cache of documents particular documents came. The indexing system for the 4057 documents in Bundle B provided by the Bank did not give much detailed assistance in this regard. However, I was not persuaded that this ultimately gave rise to any unfairnesss. Mr. Ablyazov had no less than four counsel representing him on this application. If doubt remained as to the source of any document Mr. Ablyazov's counsel were able to ask for assistance from the Bank.

b) For the reasons which appear later in this judgment (in the section dealing with the Bubris allegation) I do not consider that the email dated 21 September 2010 was misrepresented.

c) Mr. Matthews submitted that in the context of a committal application Mr. Ablyazov ought to have known the full extent of the documentation available to the Bank. He made this submission, or a similar submission, at the directions hearing for the committal application. I considered and rejected that submission but ordered that the Bank must disclose those documents which damaged the Bank's case or assisted Mr. Ablyazov's case; see [2011] EWHC 1522 (Comm) at paragraphs 12-13. Although there was an appeal against my directions (which was dismissed) it does not appear that Mr. Ablyazov pursued any appeal against my order on disclosure.

d) I have considered each of the matters which Mr. Matthews has submitted gives rise to a reasoned suspicion that Mr. Ablyazov has been deprived by the Bank of relevant material, in particular material relating to Individual C (whose identity is protected and so is known only to the Bank's lawyers and not the Bank itself). Those matters are the fact that the Bank itself (rather than its lawyers) carried out the first review of its hard copy documents, the late disclosure of material relating to the wealth of Syrym Shalabayev, the failure to locate a list of companies and their true beneficiaries (which Syrym Shalabayev said existed) and the inadequacy of the electronic keyword searches of the documents.

e) It is inevitable in a case of this magnitude that some documents of possible relevance are not located at first but are located later. The documents relating to Individual C probably fall in to this category. But I am wholly unpersuaded that Hogan Lovells and in particular Mr. Hardman have failed to carry out a reasonable search of the documents. I have had to read and study the product of Mr. Hardman's work on several occasions over the last two years. I do not consider that he has failed to interrogate the material which he has obtained with a lack of proper care or fairness to Mr. Ablyazov. In his evidence he described the extent of his personal involvement in the disclosure exercise. He considered that he had probably had a greater "hands on" role than would be usual amongst partners in City firms. I hope he is mistaken in that. Having regard to the gravity of the allegations the Bank is making against Mr. Ablyazov I would expect the partner in charge to have such

a personal involvement. Mr. Hardman may have drawn certain conclusions from the documentation which ultimately appear unjustified. But I am not persuaded that in his zeal to advance the Bank's case (which Mr. Matthews described as a "determination to secure a conviction") he failed to carry out those searches which he ought to have done in fairness to Mr. Ablyazov.

f) I do not find it surprising that the Bank carried out the first review of its hard copy documents. However, the documents at the heart of the present application are not so much the Bank's hard copy documents but those which have been found as a result of the disclosure, search and *Norwich Pharmacal* orders. Those documents, like the Bank's electronic documents, have been searched by reference to electronic keyword searches. Mr. Ablyazov's solicitors have had an opportunity to suggest additional keyword searches but did not avail themselves of that opportunity. In those circumstances there must be a limit to the extent to which Mr. Ablyazov can criticise the electronic search. I am not persuaded that the search was unreasonably narrow.

g) It is true that documentation relating to Syrym Shalabayev's wealth was produced at a late stage. But it was only at a late stage that it was said by Mr. Ablyazov that Syrym Shalabayev was the owner of certain of the English real estate and of FM Company.

h) So far as the suggested list of companies and their true beneficiaries is concerned the Bank's searches (of those caches of Eastbridge's documents which it has obtained) have not found it. However, if there was a list of companies and their true beneficiaries as Syrym Shalabayev suggested, I would have expected that he, who gave evidence expressly to support Mr. Ablyazov, his brother-in-law, would have produced it, for such a list would (potentially) greatly assist Mr. Ablyazov's case. Syrym Shalabayev said he had kept a copy of Eastbridge's documents on a memory stick yet he did not produce such a list. Mr. Matthews said that Syrym Shalabayev could not be expected to have produced the list because it would mean disclosing the names of owners who wished to remain unknown. However, there has been a restricted information regime in this case for a long time and in circumstances where his brother-in-law's liberty was at stake I would have expected Mr. Syrym Shalabayev to have disclosed the list on that restricted basis, if the list existed.

iv) I did not consider there was any substance in the suggestion that the documents had not been properly proved. It was clear from Mr. Hardman's evidence that the documents had been obtained as a result of various disclosure, search and *Norwich Pharmacal* orders. In those circumstances the documents were likely to be authentic. Where the Bank did not consider a document to be authentic it said so and Mr. Ablyazov was also free to do that if he challenged the authenticity of any particular document. It is true that there remained obscurities as to the order in which some emails were sent and what was attached to them. However, even if such documents had been proved in a formal manner those obscurities might still have existed.

39. Although I have rejected Mr. Matthews' criticisms of the disclosure process I nevertheless accept that the Court must exercise care when relying upon and drawing conclusions from the disclosed material. That is because it is possible that the Bank may not have had access to all caches of Eastbridge's electronic documents and that some relevant documents may have escaped the electronic searches directed by Mr. Hardman. These matters must be borne in mind when considering whether the Bank has been able to discharge the burden of proof to the criminal standard. I have sought to do that.

The Claimant's oral witnesses

40. Mr. Aizhulov appeared to be a man of ability. He was a member of the board of a Kazakh bank from 1997-1998 when aged 24 or 25 (which he said was not unusual in Kazakhstan at the time). He then became an assistant governor of the Pavlodar region in Kazakhstan from 1998 to 2001. Mr. Ablyazov was a friend of the governor and in that context Mr. Aizhulov met Mr. Ablyazov. But the governor was removed from his post, arrested and imprisoned. Mr. Aizhulov's perception was that the charges were unjustified. At about the time of the governor's removal from office Mr. Aizhulov decided to move to England to study English and read for an MBA. He studied English in Oxford for a year and thereafter obtained an MBA from Cranfield University. He did not return to Kazakhstan during this period. He said that was because he was too busy with his studies but he accepted that he was concerned about going back while the former governor was still in prison. In 2004, whilst studying for his MBA, he worked for Eastbridge Capital in London. From 2006-2009 he held directorships of banking and insurance companies in Ukraine and Kazakhstan which were associated with Mr. Ablyazov. He described himself as having "worked with" Mr. Ablyazov. When he became head of BTA Kazakhstan's representative office in Kiev in about 2007 he moved to Kiev. But in about April 2009 he decided to return to London. He was concerned that his continued connection with Mr. Ablyazov (who by this time had been accused of criminal offences by the Kazakh authorities) might reflect adversely on him and on his father's reputation in Kazakhstan (he had been a senior figure in the KNB, the Kazakh equivalent of the Russian KGB). Later in 2009, in August, his business connection with Mr. Ablyazov appears to have come to an end. Thereafter he has earned his living as a self-employed consultant.

41. Mr. Aizhulov was called by the Bank to say that he did not sign the Stantis documents, either the version of the Alterson loan agreement relied upon by Mr. Ablyazov or the June 2009 agreement. It may be that he could have given other evidence relevant to the issues in this case but he did not. He gave very clear evidence as to why he was giving limited evidence:

> " A. Okay, I want to make clear two things. First, I'm not giving evidence against anyone, including Mr Ablyazov, here. What I am saying in my evidence, saying now, I did not sign those documents, and this is the only reason I have come here to give evidence. Before, if you asked why I didn't take part in the proceedings before, the reason is simple: I didn't want to be involved in these proceedings, which didn't affect me directly, because I had no time to be involved and had no money to have lawyers for those proceedings. Now, in the situation when someone submits documents to the court with signatures on the

> documents which I didn't sign, I find it entirely relevant and reasonable to come and say to the court that I did not sign those documents.
>
> Q. What difference does it make? If there's a hearing going on as to whether you signed them or not, you just don't turn up, you ignore it, it's nothing to do with you and you can avoid getting involved in all this.
>
> A. I couldn't ignore the case when someone is submitting documents with forged signatures of mine."

42. I observed Mr. Aizhulov being cross-examined for a day. On the subject on which he had come to court to be cross-examined (whether he had signed the Stantis documents) he gave his evidence with confidence and clarity. He was unshaken in his evidence that he had not signed those documents. With regard to matters on which he had not been expected to be asked, namely, his income, the value of his shareholdings, the prices at which and the dates on which he had bought and sold real property, and the dates when he had travelled to the Ukraine or Kazakhstan he was not as clear or as confident. This is unsurprising. I do not accept Mr. Matthews's submission that his memory was "strikingly poor" on significant points. I would not have expected him to have had a clear and accurate recollection of these matters when he was not expecting to have to answer questions on such matters.

43. A substantial attack was made on Mr. Aizhulov's credibility both in cross-examination and in argument. (Mr. Matthews addressed this topic at pages 68-83 of his Closing Submissions.) It was suggested that Mr. Aizhulov was less than frank about his involvement in criminal proceedings in Ukraine, that his evidence fell short of explaining how his current lifestyle was maintained and that he was unable satisfactorily to explain why he now travels to Ukraine and Kazakhstan having avoided doing so for some time. It was suggested that his evidence was motivated by an agreement (reached in mid-December 2010) with the Bank and the Kazakhstan and Ukrainian authorities that he would give evidence against Mr. Ablyazov, in return for which he would receive some form of financial incentive and/or protection against criminal prosecution. It was suggested that the arrangement with the Bank may have been made when he met a Mr. Prosyankin, an employee of the Bank involved with this litigation. It was said that such an arrangement was consistent with the fact that the Bank does not appear to have pursued its disclosure orders against Mr. Aizhulov. For these reasons Mr. Matthews invited the court to find that his evidence regarding his signature on the Stantis documents was untrue.

44. Criminal proceedings: Mr. Ablyazov asserted that Mr. Aizhulov was the subject of criminal proceedings in Kazakhstan but there was no evidence of any such proceedings. I accept Mr. Aizhulov's evidence that there were none. It was suggested that Mr. Aizhulov left the Ukraine suddenly in April 2009 and that this was consistent with there having been proceedings commenced against him in Kazakhstan. I do not accept that submission because I accept Mr. Aizhulov's evidence as to why he left Ukraine. First, he wanted his elder daughter to start her education in London and, second, he was concerned that in circumstances where Mr. Ablyazov was under

investigation in Kazakhstan for fraud his continued involvement with Mr. Ablyazov might adversely affect his reputation and that of his family and affect his employment prospects. It seems probable that the second reason was the principal motivation for leaving Ukraine.

45. There was evidence of a criminal investigation in Ukraine in December 2009 into the affairs of BTA Kazakhstan of which Mr. Aizhulov was the representative in Ukraine and that Mr. Aizhulov was questioned in that regard. He gave clear and unwavering evidence that he was questioned as a witness and not as a suspect. He must have been an important witness because he was the head of the representative office in Ukraine but I did not consider that Mr. Aizhulov's evidence in this regard "rang hollow" or that he was less than frank concerning this criminal investigation. The suggestion that there was no lawyer present at the interview because Mr. Aizhulov was "striking a deal" with Mr. Melnik was based on nothing more than speculation.

46. Current lifestyle: I accept that it was not clear how Mr. Aizhulov maintains his current lifestyle in London with his wife and two daughters. They live in a flat in Gloucester Place which costs about £60-70,000 per year in rent. His two daughters attend private school. Yet he said his income from providing consultancy services was about £60,000 per year. He said that he had saved some money whilst working in the Ukraine and from selling his shares in a company. But earlier he had said that his savings were limited to the proceeds of the sale of shares, about $150,000. His evidence that his father paid for the school fees of his daughters did not sit happily with his earlier evidence that his father was "not very well paid" as an officer in the KNB. It may be therefore that despite the manner in which he gave his evidence as to his financial affairs, which appeared to me to be that of a person doing his best to answer honestly the questions put to him, he was not in fact giving a complete or accurate picture of his financial affairs. However, I do not consider that it is therefore to be inferred that he had received a financial inducement from the Bank to give untrue evidence against Mr. Ablyazov. I accept his evidence that he was giving evidence in this action because he objected to it being said that he had signed the Stantis documents when, he said, he had not done so. His evidence did not betray signs of animosity to Mr. Ablyazov. On the contrary, when asked whether he thought Mr. Ablyazov dishonest he said he did not think him dishonest.

47. It was submitted by Mr. Matthews on the basis of documents obtained after Mr. Aizhulov had given evidence (and so were not put to him) that his evidence that he purchased property with the assistance of mortgages was untrue. I gave permission for these documents to be admitted in evidence on the basis, so Mr. Ablyazov said, that the documents were publicly available. There is now a dispute as to whether the documents were publicly available. However, further enquiries by Hogan Lovells showed that Mr. Aizhulov's evidence that he purchased property with the assistance of mortgages was true. I therefore reject Mr. Matthews' submission. Mr. Matthews made further submissions concerning the dates on which property in Ukraine was bought and the price at which it was sold. In circumstances where the information obtained by Mr. Ablyazov concerning mortgages was inaccurate I do not consider that I can safely regard the information obtained by him concerning sale and purchase agreements as accurate. But even if it were accurate I am not at all surprised that Mr. Aizhulov might have been mistaken as to the details of his property purchases and sales in circumstances where he had not appreciated that he would be asked about

such matters. In any event the suggestion made by Mr. Matthews in argument that Mr. Aizhulov sold his house in Ukraine at a tiny fraction of the price for which he bought it (he accepted that he sold the house at a loss when he sold it to his brother-in-law) because of fear of confiscation as a result of the ongoing criminal investigation in Ukraine appears to me to be no more than speculation.

48. Travels to Ukraine and Kazakhstan: It was suggested that the fact that Mr. Aizhulov did not travel to Kazakhstan between January 2009 and December 2010, thereby missing his father's birthday in December 2009, was consistent with there being criminal proceedings against him in Kazakhstan. I do not consider these matters probative of there having been criminal proceedings against him or even raising an issue that there were such criminal proceedings. Although Mr. Aizhulov attended his father's birthday in December 2010 it is a common experience in life that sons from time to time miss being present at their father's birthdays. I do not regard his absence in December 2009 from his father's birthday as being remotely suspicious. His visit in December 2010 was to see his father on his birthday and to visit his sister and her family. At or about the same time he also visited Ukraine and answered questions from a police officer, Mr. Melnik, concerning the investigations the police were making. There is no evidence that charges were ever brought against Mr. Aizhulov or that charges were dropped in return for Mr. Aizhulov giving evidence against Mr. Ablyazov. It is again speculation to suggest that he was able to visit Ukraine in 2011 because charges against him had been dropped.

49. The suggested arrangement with the Bank: Mr. Aizhulov said that he may have first met Mr. Prosyankin in the summer or autumn of 2010. However, he said that the discussions were about projects of the Bank in Ukraine but not about proceedings against Mr. Ablyazov. I accept that evidence.

50. So far as the pursuit (or non-pursuit) of the disclosure order against Mr. Aizhulov is concerned Mr. Hardman said in cross-examination that he was unable to find him to enforce the order. I accept that evidence. He also said that whilst there was considerable documentary evidence against other associates of Mr. Ablyazov he "had not found anything against Mr. Aizhulov." The inclusion of him in the disclosure order had thus been "casting the net wide." Later when he was seen in London "there was less attention on Mr. Aizhulov". Mr. Hardman's evidence was inconsistent with the suggestion that Hogan Lovells decided not to pursue the disclosure order against Mr. Aizhulov because a deal had been done with him to give evidence against Mr. Ablyazov. Had Mr. Hardman simply desisted from pursuing Mr. Aizhulov on instructions from the Bank (who had done a deal with him) his evidence to the court would have been untrue and I do not consider that it was.

51. There is an overarching matter to be borne in mind. The only evidence Mr. Aizhulov has given relates to his apparent signature on the Stantis documents. There is no indication that he has given or will give any other evidence. That matter is relevant because the Stantis documents are relied upon by Mr. Ablyazov in defence to the allegation of contempt concerning dealing with Stantis' loans. That allegation was first made on 16 May 2011 when the contempt application was issued. The existence of the loans was only discovered by the Bank as a result of the Norwich Pharmacal orders made against Yahoo! in early 2011. Mr. Ablyazov's reliance on the Stantis documents emerged by way of the evidence adduced by him in defence of that allegation much later in 2011. In those circumstances the suggestion that in or about

December 2010 Mr. Aizhulov made an arrangement with the Ukranian authorities to give evidence against Mr. Ablyazov is fanciful. The relevance of the Stantis documents was not revealed until later in 2011 and there is no other issue on which Mr. Aizhulov has given evidence. Nor is there any reason apparent as to why the Ukranian authorities would benefit from such evidence being given. The suggestion that a deal was done with the Bank in a meeting with Mr. Prosyankin in 2010 runs up against the same difficulty. The Bank could not have known about the relevance of the Stantis documents until later in 2011 when they were relied upon by way of defence to the Stantis allegation.

52. I therefore am unable to accept the serious attack made on Mr. Aizhulov's credibility with regard to his evidence on the Stantis documents. However, his evidence that he did not sign those documents, though given honestly and clearly, may of course be mistaken. I will consider that possibility when dealing with the Stantis allegation.

53. Mr. Hardman was the partner at Hogan Lovells with the conduct of this matter. I have already mentioned aspects of his evidence which I have accepted. I consider that, whilst he has pursued this matter with energy, rigour and indeed aggression and may have pursued some lines of argument which have not found favour with me or which have been given up at a late stage, he gave his evidence honestly and carefully. Mr. Matthews criticised Mr. Hardman's conduct in his cross-examination of Mr. Hardman and in his closing submissions with regard to the obtaining and presentation of certain evidence. But I have rejected those criticisms for the reasons set out in Appendix 2.

The Defendant's oral witnesses

54. Salim Shalabayev gave evidence through an interpreter. He is a Kazakh national who came to this country in 2008 and is a brother-in-law of Mr. Ablyazov. He gave evidence that he is the owner of Bensbourogh Trading Inc. which is the registered proprietor of the flat in Alberts Court.

55. It is, however, undeniable that he is prepared to lie on oath. He gave clear evidence that he had not seen his brother Syrym Shalabayev in 2011. When confronted with photographs of him with his brother in Latvia in 2011 he agreed that his evidence was untrue. It is said that he lied in order to keep secret the location of his brother (who has been sentenced to 18 months imprisonment for contempt of court but has not served his sentence) and that therefore his evidence about other matters, not affected by the same motivations, should not be disbelieved merely because he was prepared to lie to assist his brother. It is probably the case that he lied to protect the location of his brother's house in Latvia but the fact that he was prepared to lie so blatantly means that I must exercise very great caution before accepting anything else he says.

56. In addition, other aspects of his evidence did not inspire confidence in him as a witness. He has, from time to time, been asked to sign documents by his brother. It appears that he does so willingly. Thus he signed a document declaring that he was the UBO of Millenium Support Group Limited when he was not the true UBO. He is therefore willing to make written statements which he must know to be untrue. He also authorised payment by that company of the sum of US$25m. When asked about Millenium he at first said that he was unable to assist the court as to why he was the UBO of that company or why he authorised payment by it of US$25m. to another company. Yet the next day he gave an account of how it had come about that he was

named as the UBO and had authorised the transfer of US$25m. His explanation for not having first mentioned these matters was that the matters were confidential and that he "did not remember everything exactly". However, he did not rely on confidentiality when first asked. I consider that either he lied when first saying that he could not assist or, if he could not assist, he spoke to someone overnight as to how he might answer such questions in breach of my direction to him not to discuss his evidence with anyone. Either way he proved himself to be an unreliable witness.

57. In these circumstances the court is unable to accept his evidence unless it is supported by reliable documentary evidence.

58. Syrym Shalabayev, the elder brother of Salim, also gave evidence but by video link. He has been found guilty of a contempt of this court (for refusing to obey the disclosure provisions of a freezing order) and has been sentenced to 18 months imprisonment in consequence. He has not served his sentence and is currently abroad. Since it is Mr. Ablyazov's case that Syrym Shalabayev is the owner of Carlton House, Oaklands Park, the flat in Elizabeth Court and FM Company Mr. Ablyazov obviously wished to call him as a witness. Syrym Shalabayev would only give evidence by video link and on condition that his whereabouts were not disclosed to the Bank. I gave permission for his evidence to be given on that unusual basis because Syrym Shalabayev was a crucial witness on Mr. Ablyazov's case and because the Bank would not be prevented from cross-examining him effectively on account of not knowing the location from which he was giving evidence. In the event he gave his evidence by video link but interrupted his cross-examination because he claimed that he was being followed. He was, however, persuaded to continue his cross-examination, having moved to a different location. Although he had some command of English he gave his evidence through an interpreter.

59. In his two affidavits which stood as his examination in chief he gave an account of his rise to financial prosperity. In his first affidavit dated 18 October 2011 he said that in the 1990s he traded commodities such as sugar and flour with distribution companies belonging to Mr. Ablyazov who was married to his sister. He said that in the 1990s and 2000s his business interests expanded considerably and included, in particular, real estate.

60. In his second affidavit dated 23 November 2011 he gave a fuller account of his life and business interests. He was born in 1969 in Kazakhstan and graduated from the Kazakh State University in Almaty in 1997 with a law degree. In addition to trading in commodities (exploiting price differentials between different regions in Kazakhstan) he imported cars into Kazakhstan from Russia and owned "a number of shopping centres". He was also involved in the recovery of minerals (mainly manganese ore) and the supply of petroleum products. He owned "a few fuelling stations and petroleum product storage facilities." By 2000 he had "become stuck in the commerce and intermediary business" and wished to acquire experience in the "fashionable" banking sector. He was offered a position by the chairman of the Claimant Bank. He "jumped at the chance". Having become the director of the Zhezkazgan Branch he resigned in 2002 because he wished to be in Almaty and had a longer term intention to leave the country. Fearing that political repression directed at Mr. Ablyazov might involve him he decided to "wrap up" his business in Kazakhstan. When Mr. Ablyazov was imprisoned in 2002 Syrym Shalabayev took Mr. Ablyazov's wife and children to London. He paid for their stay and the education of the children.

By 2004 he had realised about US$40m. by selling his business. He started to invest in real estate in Russia and also, he said, bought 79, Elizabeth Court in London.

61. He said that in 2003 he had turned his attention to the uranium industry in Kazakhstan. In that year, on 14 August, he founded a company which secured a contract to form a joint venture with the Government of Kazakhstan which was anxious to invest in the uranium industry. His company was to invest "at least US$2m." The price of uranium increased. But there was "political risk" because "control over natural resources which become more expensive and profitable for investors is grabbed by President Nazarbayev's family." Mr. Ablyazov advised him to sell and offered to find an investor in return for 30% and if the price was more than US$50m. the excess would be split 50/50. Syrym Shalabayev also had help from Mr. Udovenko "in changing the ownership structure" to improve the proposed sale from a "tax and regulatory" point of view. This involved transferring his interest in the joint venture to an off-shore company owned by another off-shore company Widley Worldwide of which Mr. Syrym Shalabayev was the UBO. On 7 November 2005 he sold his uranium business to Urasia Energy Limited for US$350m. This was his "biggest transaction". Mr. Ablyazov was entitled to US$160m. of the sale proceeds.

62. During this period Syrym Shalabayev had also enrolled at the Westminster University to obtain, in one year, an MBA. In addition to his MBA studies and his administration and subsequent sale of his uranium business in Kazakhstan he started working for Mr. Udovenko and his company Eastbridge who were providing corporate and consulting services for CIS clients. At times Mr. Udovenko suggested that Syrym Shalabayev "act as the owner of record for some companies." By 2008 Mr. Shalabayev was giving instructions to some of the companies under Eastbridge's management and was "helping out" in the administration of Mr. Ablyazov's offshore interests.

63. In pursuance of his interest in real estate he said that he decided to invest in real estate in England buying Oaklands Park and Carlton House as investment assets in 2006. He said he paid for them with his own money. He denied the Bank's allegation that he bought these properties on behalf of Mr. Ablyazov.

64. In the course of his work with Mr. Udovenko and Eastbridge it seems that Syrym Shalabayev routinely allowed his name and the names of others to be recorded as the beneficial owner of shares in a company when neither he nor they were in fact the real beneficial owner of the shares but held them for another, the true beneficial owner. Also, in the course of his work he gave instructions that documents which recorded the names of apparent UBOs should be backdated. He is therefore a man who is willing to cause to be created documents which contain untruths and are designed to hide the truth. He did not appear to see anything wrong about this practice. It was, as he described it, his "business". In ordinary circumstances such conduct would lead me to be very cautious indeed before accepting anything he said. But Mr. Matthews reminded me that I was dealing with conditions in Kazakhstan where there is, on the evidence of Mr. Ablyazov and others, good reason for a wealthy Kazakhstan national to hide his assets from the President of Kazakhstan and Syrym Shalabayev was merely assisting Mr. Ablyazov (and, he said, others) to keep his assets secret. I have kept that in mind but I nevertheless consider that Syrym Shalabayev's willingness to create misleading documents must cause me, at the very least, to exercise caution before accepting what he says.

65. There were, in addition, several striking features of his evidence which also suggested that I should be wary of accepting his evidence. First, he often said that he was unable to answer detailed questions about companies which he had administered or which, on his case, he owned. This suggested to me that he was minded not to provide helpful answers. I did not think that his inability to answer detailed questions was explained by poor recollection. Second, although he admitted to administering over 800 companies he said that he never saved or kept any documents. "As a rule I never save information." This is very difficult to accept, given the nature of his work in London when associated with Eastbridge. Third, he refused to answer certain questions. Mr. Matthews submitted that there were limitations on what Syrym Shalabayev could and could not say in the light of his role as "a professional nominee" to maintain his clients' trust and confidence and their undisclosed ownership of assets in the face of threats to their safety and assets. Whilst some of his refusals to answer could have been based on a fear that persons in Kazakhstan or Russia might come to harm others could not have been. In any event there was a restricted information regime of which use could have been made. I was left with the distinct impression that when questions were asked which were difficult to answer he chose not to answer them. Fourth, the vague and uncertain manner in which he responded to many questions suggested that he was fearful that a definite answer could be contradicted and he therefore gave a vague answer which he hoped could not be contradicted.

66. There was therefore good reason for me not to accept his evidence unless it was supported by reliable contemporaneous documents.

67. Furthermore there was one particular part of his evidence, that in 2003 he started a uranium business in Kazakhstan which he sold in 2005 for US$350m., which was contradicted by documents relied upon by the Bank in response to that evidence. This was an important part of his evidence because the proceeds of this sale were said by Syrym Shalabayev to have funded his purchase of Carlton House and Oaklands Park, at least in part.

68. The Bank accepted that there had been a uranium business which had been sold in 2005 but said that it was Mr. Ablyazov's business.

69. The Bank relied on two documents in particular. The first was a letter written by Mr. Ablyazov to the President of Kazakhstan dated 14 January 2004. There was no dispute that Mr. Abylazov had written it. Mr. Ablyazov was described as the "Head of the Board of Directors of Astana Kazakhstan Investment Group." In the letter he requested the President to support a plan for private investment in the production of uranium. Astana was to provide 70% of a joint venture. Thus, far from only being brought in to sell the investment in 2005, Mr. Ablyazov was head of the board of directors of the investing company.

70. Syrym Shalabayev's explanation for this letter was that he asked Mr. Ablyazov to write it in the hope that it would persuade ministry staff still loyal to Mr. Ablyazov to push the project through. This seems most unlikely given what Mr. Ablyazov said concerning his relations with the President to whom it was addressed. In any event it does not explain why Mr. Ablyazov was described as the head of the board of directors of Astana, the majority investor in the uranium joint venture. The obvious explanation for that description is that it was true.

71. The second document was an email written by Mr. Udovenko to Denton Wilde Sapte dated 16 August 2005. Denton Wilde Sapte had been instructed to act in connection with the sale of the uranium business and had asked Mr. Udovenko for information as to who their client was. Mr. Udovenko replied that the holder of the uranium deposits was a joint venture owned as to 70% by "our private Kazakhi company TOO Investment Company Astana." That company was owned by a Cypriot company which was in turn owned by a BVI company Widley Worldwide Inc. Mr. Udovenko said that the "beneficiary of the structure is Mukhtar Ablyazov – currently Chairman of the largest private bank in Kazakhstan – Bank TuranAlem."

72. Syrym Shalabayev's explanation for this was that he, Syrym Shalabayev, had given Mr. Ablyazov a bearer share in Widley Worldwide so that he could show the lawyers that he was authorised to act in the sale of the uranium business. The difficulty with this explanation is that it conflicts with his written evidence, given as part of his evidence in chief, that he always kept the bearer share.

73. These two documents are in my judgment compelling evidence that the uranium deal was Mr. Ablyazov's deal, not Syrym Shalabayev's deal. The Kazakh entity which participated in the joint venture was Astana, of which Mr. Ablyazov was head of the board of directors. The company which ultimately owned the shares in Astana was Widely Worldwide of which Mr. Ablyazov was, according to his trusted associate Mr. Udovenko who would know about such matters, the "beneficiary". Syrym Shalabayev gave evidence that he was the beneficiary of Widley Worldwide but there is no reason why Mr. Udovenko, when asked by an English law firm who their "client" was, should say it was Mr. Ablyazov if he were not the true beneficiary of the shares in Widley Worldwide.

74. Thus Syrym Shalabayev's evidence that it was the proceeds of sale of the uranium business which enabled him, at least in part, to purchase Carlton House and Oaklands was untrue.

75. The Bank's case in this regard is supported by Mr. Ablyazov's Third Affirmation dated 16 October 2011 made in response to the contempt application. Mr. Ablyazov there gave an account of Syrym Shalabayev's business career (at paragraphs 52-62) but did not mention the uranium business or its sale. If he had assisted Syrym Shalabayev to sell his valuable uranium business he would have mentioned it in that account. He did not, because it was his own business, not Syrym Shalabayev's business.

76. There is evidence of Syrym Shalabayev having been described as the seller of the uranium business in 2008 but that appears to have been in connection with a document which suggested that he was the beneficial owner of Northern Operations and the White Sea Complex which are in fact assets of Mr. Ablyazov. The document does not therefore appear to be reliable.

77. So Mr. Shalabayev was not only a witness whose evidence I should treat with caution but he was also a witness whose evidence on a key aspect of the case has been shown to be untrue. I am therefore unable to regard him as a reliable witness and can only accept his evidence when it is supported by reliable contemporary documents.

78. Mr. Ablyazov also gave evidence through an interpreter. He is aged 47 or 48. He graduated in theoretical physics and worked in the department of physics at the Kazakhstan State University. After the break-up of the Soviet Union he started a career in business. He established a company called Astana-Holding Company which, he said, became one of the largest multi-sector private holding companies in Kazakhstan. It acquired banking and media interests. He entered public service and became Minister of Energy, Industry and Trade in Kazakhstan. However, he had differences of opinion with the President and became an opponent of him. In 2002 he was imprisoned on what he and others say were politically motivated charges. He claims to have been tortured and ill-treated whilst in prison and to have been the victim of an assassination plot. He claims that his assets were seized. He was released in May 2003 but was required to give up politics. He moved to Moscow and started to rebuild his business career but secretly continued with his political activities. In 2005 the President asked him to return to Kazakhstan to run the Bank on condition that he did not interfere in politics. In May 2005 he took over as Chairman of the Bank. In 2009 he was dismissed as Chairman and left Kazakhstan hurriedly. The claims of the Bank in this litigation stem from Mr. Ablyazov's time as Chairman of the Bank.

79. Although his written evidence was substantial much of it was argument, necessarily so in circumstances where he denied being the owner of the assets in question. The manner in which he gave evidence on this application showed that he is a man of ability. He had a clear grasp of the issues on this application. His appreciation of the nature of the evidential arguments was revealed when, from time to time, he asked Mr. Smith what evidence he had for an allegation. He consistently denied the allegations put to him. However, in evaluating the weight which could properly be placed on his denials it is necessary to bear in mind the following:

    i) He supported Syrym Shalabayev's evidence that it was he, Syrym, who had owned and sold the uranium business in Kazakhstan. For the reasons I have already given in relation to Syrym Shalabayev I am sure that that evidence is untrue. Mr. Ablyazov had no coherent explanation as to why he had written the letter dated 14 January 2004 as the head of the board of directors of Astana, the majority partner in the joint venture. As for Mr. Udovenko's email to Denton Wilde Sapte of August 2005 he suggested that Mr. Udovenko was not "au fait" with the subtleties of the offshore business, which is most improbable. Like Syrym Shalabayev he suggested that he had been given the bearer share in Widley Worldwide but this was inconsistent with Syrym Shalabayev's evidence in chief.

    ii) Mr. Ablyazov uses offshore companies and trusted associates for the very purpose of keeping his ownership of companies and assets hidden from view. Holding companies and assets in that manner necessarily involves the creation of documents which state untruths, namely, that X is the UBO of a company when X is not the UBO and Mr. Ablyazov is. Moreover, his trusted associates are willing to change the apparent UBO and backdate the change. Whether or not assets are held in this way to avoid the reach of the President of Kazakhstan Mr. Ablyazov is prepared to make false statements to this court based on the documents created by his associates. Thus, in November 2009 those who worked for him made arrangements (under the heading "another creative project from the management") to transfer the shares in Stantis (a

company he has admitted owning) to Mr. Batyrgarejev as nominee and to backdate the change. At the time Syrym Shalabayev was the nominee. Yet Clyde and Co. on behalf of Mr. Ablyazov by letter dated 15 December 2009 informed the Bank and thus the Court that Mr. Batyrgarejev had been the nominee from 7 August 2009. This falsification of the position in the context of these proceedings cannot be justified by a fear of reprisal by the President of Kazakhstan.

iii) It is clear from the evidence in this case that Mr. Udovenko and Syrym Shalabayev had a leading role in holding and administering Mr. Ablyazov's assets. Yet in his cross-examination as to his assets in October and November 2009 Mr. Ablyazov did not reveal the roles of Mr. Udovenko or Syrym Shalabayev. Notwithstanding his claim that he was not obliged to disclose their roles I am sure that the reason he did not do so in 2009 was that he simply did not wish to disclose their role.

80. In these circumstances, notwithstanding the clarity and firmness with which Mr. Ablyazov gave much, though not all, of his evidence I concluded that I could place little weight on his denials and could only accept what he said if it was supported by reliable contemporary evidence.

81. Mr. Golovkin, a Russian lawyer who acted for Mr. Sadykov (said to be the true UBO of Bubris), was called to give evidence. Whilst I have no reason to doubt that he gave evidence in accordance with the instructions given to him by Mr. Sadykov it was plain that he had no personal knowledge of those matters and considered himself barred by the law of privilege from answering any questions about them. In circumstances where Mr. Sadykov was apparently willing for his lawyer to say what Mr. Sadykov had told him but unwilling to give evidence himself orally and so be cross-examined on his evidence I am unable to give any weight to the content of Mr. Golovkin's evidence (save that it shows Mr. Sadykov gave him certain instructions). I am equally unable to give weight to Mr. Sadykov's statement dated 25 November 2011 which he made notwithstanding his claimed fear of harassment by the Kazakhstan authorities. Written statements can be given weight but in this case, where certificates that X is the UBO are routinely designed to be untrue, it is difficult to give weight to a written statement by X that he is indeed the UBO.

82. There were written statements from others. Mr. Matthews submitted that there was no reason "to diminish the weight of the evidence of witnesses for Mr. Ablyazov who were unable to attend." He relied upon "the climate of fear that pervades this litigation". However, where a witness submits a written statement he thereby makes known his support for Mr. Ablyazov and the nature of the evidence he gives. Allowing himself or herself to be cross-examined by video link would not materially increase the risk to the witness, especially if it were given without the witness' location being revealed. Mr. Batyrgarejev swore an affidavit on 17 October 2011. He confirms that he has undertaken the "role" of UBO in respect of a number of companies which "are ultimately owned by Mr. Ablyazov." He gave some evidence concerning the Bubris and Stantis allegations but in circumstances where he makes a practice of performing the "role" of being the UBO when he in fact is not the true UBO I am unable to give any significant weight to his evidence. Ms. Kabanova, who worked for Eastbridge and then Euroguard, swore an affidavit on 16 October 2011. She gave evidence about the Bubris, Schedule C companies and Stantis allegations.

Since she was the author of the email which referred to "another creative project from the management" pursuant to which she transferred shares in Stantis to a nominee and backdated the trust deed I am unable to give any significant weight to her evidence.

83. The statements from Mr. Gilmore and Mr. Hargreaves of Addleshaw Goddard exhibiting certain documents and reporting what others have said are uncontroversial and, as one would expect, unchallenged.

Allegation A1: Bubris

84. Mr. Ablyazov gave disclosure of his assets pursuant to the WFO by an affidavit which was released to the Bank's solicitors on 30 September 2009 after the Court of Appeal had dismissed an appeal from my decision of 21 August 2009 dismissing Mr. Ablyazov's application to stay the disclosure aspects of the WFO until after the return date; see [2010] All ER (Comm) 1029.

85. On this contempt application the Bank has alleged that in breach of the WFO Mr. Ablyazov failed to disclose that his assets included 100% of the shares in Bubris.

86. There is no dispute that Bubris is a company which was incorporated in the BVI on 2 January 2008 and that the shares in Bubris were registered in the name of Valen Limited, a company incorporated in the Bahamas.

87. The Bank's case against Mr. Ablyazov is that at the date of the WFO and when he provided his affidavit of assets (August 2009) Valen held the shares in Bubris in trust for Syrym Shalabayev and that Syrym Shalabayev held them for Mr. Ablyazov.

88. Mr. Ablyazov denies that the shares were held in trust for him and contends that they were held in trust for Mr. Sadykov.

89. From 2008 until 2010 there were a number of changes in the apparent beneficiary of the trust of the shares in Bubris. It is necessary to note who the apparent beneficiary was from time to time and the circumstances in which the apparent beneficiary changed, for the Bank says that those matters show that the true owner of the shares, the UBO, was Mr. Ablyazov.

90. It appears that until about 9 October 2008 the apparent beneficiary was Mr. Udovenko. It is common ground that Mr. Udovenko provided "corporate services" to Mr. Ablyazov through Eastbridge and that Mr. Udovenko used a corporate services agent in Cyprus, Mr. Paul Kythreotis, to assist him in his work. On 9 October 2008 Mr. Udovenko sent an email to Mr. Kythreotis in the following terms:

> "As you can understand our Group is growing and we need some intergroup restructuring. So in accordance with the current policy of the Group we would like to have in all companies under your administration Mr. Shalabayev as UBO. Could you send us all papers we need to sign in order to make necessary changes. After that we would like you to issue new Trust Declarations. Anna and Daria will provide you with information and copy of passport of Mr. Shalabayev if

> necessary……..Below there is a list of companies under your administration."

91. The list included the names of 102 companies including Bubris. Mr. Kythreotis replied the following day saying "Content duly noted" and indicating what he required. There is no dispute that pursuant to this instruction Syrym Shalabayev became the declared UBO of the shares in Bubris.

92. However, in April 2009 the UBO was changed to Mr. Rinat Batyrgarejev. On 24 April 2009 Victoria Kolyasova (who appears to have worked at Eastbridge) sent an email timed at 1225 to Mr. Udovenko asking him to forward a request if he approved it. The request was for the UBO of Bubris to be changed from Syrym Shalabayev to Mr Batyrgarejev and for certain documents to be issued. On the same day, in an email timed at "11:47:31 AM" Mr. Udovenko sent to Syrym Shalabayev, copied to Victoria Kolyasova (amongst others), (i) a request for certain documents to be issued in respect of Bubris, including a declaration of trust, and (ii) a copy of Mr. Batyrgarejev's passport. The purpose of the request was stated to be the opening of a securities account. Shortly afterwards, at 1233, still on 24 April 2009, Syrym Shalabayev emailed Mr. Kythreotis asking him to change the name of the UBO of Bubris from himself to Mr. Batyrgarejev. These instructions appear to have been carried out by 28 April 2009. The change was backdated to 3 November 2008.

93. Mr. Matthews submitted that the first email in this exchange was in fact that of Mr. Udovenko on the grounds that his email was timed at "11:47:31 AM" and that Victoria Kolyasova's email was timed at 1225. He said, in addition to other points, that the difference was unlikely to be the result of different time zones. But, although the timing of the emails is difficult to explain and the timing of the third email by Syrym Shalabayev at 1233 means that all emails must have been sent in quick succession, the location of the emails on the page and a comparison of the "request" which Victoria Kolyasova asked Mr. Udovenko to send with the "request" sent by Mr. Udovenko, coupled with the addition of "OK" in the subject line of Mr. Udovenko's email which is suggestive of approval, indicate that Mr. Udovenko's email was in response to Victoria Kolyasova's email.

94. Mr. Batyrgarejev remained the apparent UBO of Bubris until February 2010. There is evidence that in November 2009 he was referred to expressly as a "nominal beneficiary owner" and that in the event of his death his relatives were to have no right to manage the company. Syrym Shalabayev gave evidence that Mr. Batyrgarejev did not, so far as he was aware, act as a nominee for anyone other than Mr. Ablyazov.

95. On 12 February 2010 the High Court of the BVI, on the application of the Bank, ordered the agent of Bubris (and four other companies) in the BVI to disclose the beneficial owner of Bubris (and of the other companies). That order, a *Norwich Pharmacal* order, was served on 15 February 2010. On 18 February 2010 the agent, Totalserve Management Limited, sought the name of the UBO from Mr. Kythreotis. No reference was made to the court order because the order restrained the respondents from notifying any person of the existence of the order. Instead the agent said that there had been a request for information from the "BVI Financial Investigation Authority". On 22 February 2010 Mr. Kythreotis forwarded the request to Syrym Shalabayev saying "the matter is now very serious". On the same day Syrym Shalabayev emailed Mr. Kythreotis stating that he would like to change the UBO of

the companies. The UBO of Bubris was to change from Mr. Batyrgarejev to Mr. Kovalenko. It appears that this change was effected and backdated to 8 April 2008. On 22 February 2010 Appleby, acting on behalf of Totalserve, informed Conyers Dill & Pearman, acting on behalf of the Bank, that the UBO of Bubris was Mr. Kovalenko.

96. On 26 July 2010 Henderson J. granted the Bank a freezing order against Bubris in what are known as the AAA proceedings. The application was supported by a statement from Mr. Kovalenko stating that he had no knowledge of Bubris. The order was served on 29 July 2010.

97. On or about 23 September 2010 the UBO of Bubris was changed to Mr. Sadykov.

98. The Bank's case is that throughout this time, from 2008 – 2010, the true UBO of Bubris was Mr. Ablyazov and that Messrs. Udovenko, Shalabayev, Kovalenko and Sadykov were all, in their turn, nominees of Mr. Ablyazov. In support of that case the Bank made the following (amongst other) submissions. (i) Mr. Batyrgarejev was a trusted associate of Mr. Ablyazov and so his presence as the ostensible UBO of Bubris from April 2009 until February 2010 is a striking affirmation that Mr. Ablyazov was the true UBO of Bubris. (ii) The removal of Mr. Batyrgarejev as the ostensible UBO in February 2010 was engineered by Syrym Shalabayev to ensure that the Bank did not learn of the role of Mr. Batyrgarejev as the ostensible UBO of Bubris which information (by reason of Mr. Ablyazov's evidence when cross-examined in October 2009 as to his assets) would have alerted the Bank to a connection between Mr. Ablyazov and Bubris. (iii) When served with a Freezing Order against Bubris and evidence that Mr. Kovalenko was unaware of his appointment as UBO Syrym Shalabayev had to appoint another ostensible UBO and explain why false evidence had been given to the Bank in February 2010. He did so in September 2010 by introducing Mr. Sadykov as UBO and suggesting that Mr. Kythreotis was only made aware of Mr. Sadykov's involvement in May 2010, *after* compliance with the BVI court order in February 2010. These steps were taken to avoid disclosing Mr. Ablyazov as the true UBO of Bubris. (iv) The written evidence of Mr. Sadykov that he managed Bubris from 7 May 2010 without the assistance of nominee owners is untrue, being contradicted by the contemporaneous documents. (v) Mr. Sadykov, being a former employee of the Bank and having a history of acting in the administration of Mr. Ablyazov's companies, is an unlikely real UBO of a company which had entered into agreements with the Bank for the purchase of bonds worth US$300m. (the subject of the AAA proceedings). If he were the true UBO of Bubris, 2010, when the AAA proceedings against Bubris were instituted, was an unlikely time to bring his ownership of Bubris out into the open.

99. Mr. Ablyazov denied that he was the true UBO of Bubris and contended that Mr. Sadykov was. On his behalf the following response was made to the Bank's submissions. (i) Mr. Batyrgarejev was mistakenly used as UBO of Bubris. (ii) The mistake was discovered in February 2010 by Syrym Shalabayev when he was changing the nominee ownership of companies he managed. There is no evidence that Syrym Shalabayev changed the UBO because of the BVI court order in February 2010. (iii) On 7 May 2010 Mr. Sadykov advised Mr. Kythreotis that he had been the beneficial owner of Bubris since April 2008 and said that he had been unable to disclose his ownership before for confidentiality reasons. There is no support for the Bank's assertion that Mr. Sadykov's letter was created in September 2010. (iv) The

documents do not contradict Mr. Sadykov's evidence that he managed Bubris from May 2010. (v) Mr. Golovkin gave evidence that Mr. Sadykov had various business interests and that salary levels in Kazakhstan did not reflect success fees and bonuses that Mr. Sadykov received for arranging major deals in Kazakhstan.

Mr. Batyrgarejev's appointment as UBO

100. Although it was Mr. Ablyazov's case that Mr. Batyrgarejev had been appointed UBO by mistake neither Mr. Ablyazov nor Syrym Shalabayev was able to explain how Mr. Batyrgarejev had been appointed by mistake or what the nature of that mistake was. Mr. Matthews submitted that the mistake may have been made by Mr. Udovenko when, on 24 April 2009, he provided Mr. Batyrgarejev's passport, alternatively it may have been made by Victoria Kolyasova if her email of that day was sent first.

101. However, whichever email was sent first, the notion that Mr. Batyrgarejev was appointed UBO by mistake appears to me to be fanciful. Victoria Kolyasova's draft request of 24 April 2009 referred clearly to Mr. Batyrgarejev. Mr. Udovenko attached Mr. Batyrgarejev's passport details to his email of 24 April 2009 in clear terms. Syrym Shalabayev passed on the instruction to Mr. Kythreotis without delay. He clearly saw no mistake at that time. (In his second affidavit Syrym Shalabayev said that he realised his mistake at the time and called Mr. Kythreotis to cancel his instruction but that Mr. Kythreotis failed to convey the cancellation to his employees. I am unable to accept his evidence that he realised there was a mistake in April 2009. There is no documentary evidence of that call and in his oral evidence he said that he discovered the mistake in February 2010.) The fact that Bubris was administered from April 2009 until February 2010 without anybody noticing the suggested mistake is a powerful indication that there was no mistake.

102. Mr. Batyrgarejev said in his affidavit that he had not been the nominee UBO of Bubris. For the reasons I have already given I am unable to give weight to this statement. Ms. Kabanova swore an affidavit about this matter in which she explained how a mistake might have been made but I am unable to give weight to that statement, again for the reasons I have already given.

103. Mr. Matthews pointed out that a document dated 23 November 2009 lists a number of companies with the words "Batyrgarejev, Trust for MK" but that no such words follow Bubris in that document. This is said to be consistent with the suggested mistake and, at the very least, to cast serious doubt on the Bank's case. But another document dated 25 November 2009 expressly refers to Mr. Batyrgarejev as the "nominal beneficiary owner" of Bubris. It seems likely that the explanation for the absence of the words "Batyrgarejev, Trust for MK" against Bubris in the document dated 23 November 2009 is, as suggested by Mr. Smith, that the trust referred to is the express written trust created after Mr. Ablyazov had been cross-examined in October 2009 in relation to those assets which he had admitted to owning. Bubris was not an admitted asset and so there was no express written trust (see my judgment on the receivership application, [2010] EWHC 1799 (Comm) at paragraphs 119-120 where the creation of the express trusts is mentioned).

104. Mr. Matthews also relied on the fact that Mr. Batyrgarejev had not been appointed the UBO of the other four BVI companies involved in the AAA proceedings as being indicative of a mistake. Mr. Smith suggested that this was because only Bubris was

involved in dealing in securities but I was not referred to any evidence in support of that suggestion.

105. However, and notwithstanding these matters, I am sure from the manner in which Mr Batyrgarejev was appointed UBO and the length of time that he remained UBO of Bubris that there was no mistake in appointing him UBO.

106. I accept Mr. Smith's submission that the appointment of Mr. Batyrgarejev as the nominal UBO of Bubris is a striking indication that Mr. Ablyazov is the true owner of Bubris. It is common ground that he is a trusted associate of Mr. Ablyazov. Mr. Ablyazov has given evidence that Mr. Batyrgarejev has been his friend since 1992, that he trusts him absolutely and that he always adheres to their verbal agreements. Mr. Ablyazov has told the receivers that Mr. Batyrgarejev is entitled to 10% of the value of Mr. Ablyazov's assets in return for the "risks he takes" in managing the corporate structures. Syrym Shalabayev said that so far as he was aware Mr. Batyrgarejev did not provide nominee services for anyone else.

The removal of Mr. Batyrgarejev as UBO

107. Mr. Batyrgarejev was removed from his position as nominal UBO by Syrym Shalabayev in February 2010 after Syrym Shalabayev had been informed by Mr. Kythreotis of Totalserve's request for information as to the UBO of Bubris. That request was made because of the *Norwich Pharmacal* order made against Totalserve in the BVI. However, Totalserve was not free to refer to the order and did not do so and instead said that the information was requested by the BVI Financial Investigation Authority. There is therefore no evidence that Syrym Shalabayev was aware of that court order. However, he had been told that the FIA required the information and that the matter was "very serious". It is an inescapable conclusion that in directing a change of the UBO from Mr. Batyrgarejev to Mr. Kovalenko Syrym Shalabayev was intending to keep secret from the FIA the fact that Mr. Batyrgarejev was the UBO of Bubris.

108. Mr. Matthews submitted that Syrym Shalabayev changed the UBO having discovered the "mistake" after Mr. Sadykov had decided to change the nominee UBO of "his" five BVI companies including Bubris. I am unable to accept this submission. First, there was no mistake in the appointment of Mr. Batyrgarejev. Second, in the absence of reliable contemporaneous documents I am unable to accept the evidence of Syrym Shalabayev or Mr. Sadykov for the reasons I have given. Third, the contemporaneous documents show convincingly that the change in UBO was initiated because of Totalserve's request for information as to the UBO.

109. I accept Mr. Smith's (amended) submission that Syrym Shalabayev removed Mr. Batyrgarejev as UBO because he did not wish the identity of Mr. Batyrgarejev as UBO of Bubris to get into the public domain in circumstances where Mr. Ablyazov had not disclosed that Bubris was his asset but had revealed in cross-examination as to his assets that Mr. Batyrgarejev was his trusted nominee. That is, in the circumstances, the most likely explanation and there is no credible alternative explanation for the removal of Mr. Batyrgarejev. Mr. Matthews objected to this amended submission being made because it was not the submission made in the Schedule of Contempts served pursuant to my order dated 28 June 2011. However, the allegation remained the same. Particular A1.8 (dealing with the change of UBO in

February 2010) remained part of Mr. Smith's case. It was probably implicit in Particular A1.8 that Syrym Shalabayev was aware of the BVI court order. However, Mr. Smith was unable to point to any evidence of that and therefore submitted that Syrym Shalabayev feared that if he disclosed to the FIA that Mr. Batyrgarayev was the UBO of Bubris the Bank might, once such information got into the public domain, be alerted to the fact that the true UBO of Bubris was Mr. Ablyazov. I consider that Mr. Smith was entitled to make that submission. He relied upon the same evidence as he always had done and there was therefore no unfairness to Mr. Ablyazov.

Mr. Sadykov's appointment as UBO

110. The first matter to resolve is when Mr. Sadykov was appointed UBO. The Bank has made a case that he was appointed in September 2010. Mr. Ablyazov has made a case, though there is of course no burden on him to prove it, that Mr. Sadykov was appointed in May 2010. It is therefore necessary to note what the documents purport to show.

111. There is amongst the documents a letter dated 7 May 2010 signed by Mr. Sadykov and addressed to Mr. Kythreotis which states that he had been the beneficial owner of Bubris since April 2008 but had been unable to reveal that earlier "for confidentiality reasons". The authenticity of this letter has been challenged by the Bank. By an email dated 26 July 2010 Syrym Shalabayev informed Mr. Kythreotis that "some companies" are going to be transferred to "third parties" involving some changes to the "contact person" and to the UBO. Although Mr. Sadykov is noted as the new contact person for Bubris the new UBO of Bubris was to be Mrs. Degtyareva from the date of incorporation. Two emails dated 5 August 2010 from Syrym Shalabayev to Mr. Kythreotis suggest that at that time arrangements were in hand to change the UBO of Bubris to Mr. Sadykov. An exchange of emails on 26 August between Mr. Kythreotis' firm and Syrym Shalabayev show that Mr. Sadykov was being made a director of Bubris. On 21 September 2010 an email was sent, apparently by Mr. Kythreotis to Mr. Hercules, another corporate services provider in Cyprus. It attaches a copy of the letter dated 7 May 2010 from Mr. Sadykov to Mr. Kythreotis. On 23 September 2010 a trust deed, backdated to 7 May 2010, in respect of the shares in Bubris, showing Mr. Sadykov as the beneficiary was sent to Syrym Shalabayev. On 24 September 2010 Euroguard sent, or prepared in draft, a letter containing a number of documents including a "letter to Paul Kythreotis from Sadykov to inform about being the UBO for several companies."

112. Mr. Smith submitted that it is "plain" from this chronology that the May 2010 letter was produced in September 2010. Whether or not that is "plain" the documents do support that allegation. In addition Mr. Smith had the benefit of a confession by Mr. Kythreotis, made when seeking to avoid being imprisoned for contempt of court, that he had given false evidence in saying that he had learnt of Mr. Sadykov's beneficial ownership of Bubris in May 2010 when in fact the letter from Mr. Sadykov was received by him in September 2010. That gives further support to Mr. Smith's submission.

113. Mr. Matthews submitted that the letter dated 7 May 2010 was so dated because on that day Mr. Kythreotis had asked for confirmation that Mr. Sadykov was the beneficial owner of Bubris but that it was finalised a few days later (which explains the use of Bubris' new name of which Mr. Kythreotis learnt on 12 May 2010 and

must have passed on to Mr. Sadykov). He further submitted, in the light of Mr. Hercules' redacted note put before the Court of Appeal in October 2011 by Mr. Kythreotis on the occasion of the Bank's appeal against the refusal of Proudman J. to imprison Mr. Kythreotis for contempt of court, that there was no support for the suggestion that the letter dated 7 May 2010 was in fact created in September 2010. The explanation for the email dated 21 September 2010 which enclosed that letter was, said Mr. Matthews, that Mr. Hercules had gained access to Mr. Kythreotis' files and sent himself a copy of what he had found on those files.

114. In response Mr. Smith observed (i) that whilst Mr. Hercules had said that he had been in Mr. Kythreotis' office on particular dates he had not said that he had been in his office on 21 September 2010 and (ii) that the email of that date was signed "Regards Paul Kythreotis" which did not suggest that it had been forwarded to Mr. Hercules by himself.

115. I am sure that Mr. Kythreotis did not learn that Mr. Sadykov was the UBO of Bubris in May 2010 and that he only received the letter dated 7 May 2010 in September 2010. There can be no reason for him to admit having given false evidence to the court when faced with contempt proceedings other than that such admission was true, notwithstanding that other parts of his evidence are not accepted by the Bank and that his explanation for having given false evidence under duress is remarkable, is denied by Mr. Ablyazov and was not put to him by Mr. Smith. (Mr. Kythreotis' evidence of duress was not accepted by the Court of Appeal; see [2011] EWCA Civ 1241 at paragraphs 62-63 per Jackson LJ.) It must follow that the letter was not written in May 2010 (because otherwise Mr. Kythreotis would have received it then rather than in September 2010) and that the letter must, in all probability, have been created in September 2010 but backdated to 7 May 2010. It was sent by Mr. Kythreotis to Mr. Hercules on 21 September after he had received it.

116. It is difficult to conceive of any reason why Mr. Sadykov's letter should have been backdated to May 2010 other than as part of an attempt to hide Mr. Ablyazov's interest in Bubris, in circumstances where Bubris had been served with a Freezing Order on 29 July 2010 requiring disclosure of who ultimately controlled Bubris' affairs and also served with evidence that Mr. Kovalenko knew nothing of being UBO.

117. Mr. Kovalenko made a second statement dated 26 July 2011 in which he "refuted" his first statement saying that he had been misled. He said he was indeed the official beneficiary of Bubris and subsequently transferred the beneficial ownership to Mr. Sadykov. In circumstances where he has made two conflicting statements I cannot give weight to his statements.

Post-May 2010 management of Bubris

118. Mr. Sadykov has claimed that from 7 May 2010 he managed the BVI Defendants (which include Bubris) without the assistance of the nominee owners. In one sense that is true. There is no evidence that Mr. Kovalenko assisted from 7 May 2010 (or at all). But if the statement is intended to suggest that he managed the company himself that is not true because Syrym Shalabayev continued to be involved; see for example Syrym Shalabayev's email dated 18 November 2010.

Who was the true beneficial owner of Bubris ?

119. I accept that there is no direct evidence that Mr. Ablyazov was the true ultimate beneficiary of the shares in Bubris. In the circumstances of this case that is not a matter of surprise. His ownership of assets is expressly structured to ensure that no paper trail leads to him. Nevertheless, the Bank has the burden of making the court sure that the only reasonable inference to be drawn from the matters to which I have referred is that Mr. Ablyazov is the true beneficiary of those shares.

120. Mr. Sadykov has said in a written statement dated 25 November 2011 that he was the owner of Bubris. But he also said that he informed Mr. Kythreotis by post in May 2010 that he had been the owner or beneficiary of Bubris since April 2008. The suggestion that he wrote such a letter in May 2010 was untrue for the reasons I have already given. He does not explain why he decided to come out into the open in 2010. He merely said that "after that time [May 2010] I no longer used the services of Mr. Shalabayev." I do not find his evidence as to ownership reliable. Syrym Shalabayev, when asked by me whether there came a time when Mr. Sadykov was happy for his name to be recorded as the UBO of Bubris, said that he knew nothing of such facts.

121. Whether or not Mr. Sadykov is a man of such wealth as would enable him, through the vehicle of a creature company, to enter into obligations to the Bank worth $300m., the fact that Mr. Batyrgarejev was appointed the UBO in April 2009 and remained so until February 2010 sits most unhappily alongside the notion that Mr. Sadykov is and always was the true beneficial owner. For, as I have already said, Mr. Batyrareyev's appointment as UBO is a powerful indication that Mr. Ablyazov was the true beneficial owner. Further, the circumstances in which Mr. Batyrgarejev was removed as UBO in February 2010 and the fact that the letter dated 7 May 2010 from Mr. Sadykov was backdated are indicative of steps being taken by those administering Bubris to keep Mr. Ablyazov's interest in Bubris secret from the Bank. Finally, there is no credible reason why Mr. Sadykov, if he were the true owner of Bubris and had remained hidden since 2008, should choose September 2010 to take centre stage after Bubris had been made a defendant to the AAA proceedings.

122. For these reasons I am persuaded so that I am sure that Mr. Ablyazov is and has been at all material times the true beneficiary of the shares in Bubris. The shares were held on his behalf, successively, by Mr. Udovenko, Syrym Shalabayev, Mr. Batyrgarejev, Mr. Kovalenko and finally Mr. Sadykov. In reaching this conclusion I have considered all of Mr. Matthews' submissions at pp.112-145 of his Closing Submissions but they do not cause me to doubt the conclusion I have reached. Nor do I consider that Mr. Ablyazov's denial of ownership may be true. I am sure that it is not. I have noted the submission that in circumstances where the ownership of Bubris is an issue in the AAA action I ought not to decide the matter now when I have not heard all the evidence which will be adduced at trial and that in such circumstances I cannot be sure that Bubris is owned by Mr. Ablyazov. When giving directions for the trial of the contempt allegation this point was considered and rejected. There was an appeal from my decision and the appeal was dismissed; see [2011] EWCA Civ 1386. In any event I remain of the view that it is unlikely that there will be any more material evidence on this issue beyond that which has been provided on this occasion.

123. There is no evidence of the precise value of Bubris. However, I was referred to evidence of substantial sums being paid to and by Bubris and to the making of loans

by Bubris in August and September 2009. It is therefore improbable that Bubris is worth less than £10,000. Mr. Sadykov has given evidence that Bubris' asset value is close to zero. However, he is merely a nominee owner and his evidence in this regard cannot be reliable. Mr. Ablyazov is the true owner and has chosen not to tell me what Bubris' value is. If Bubris had been worth less than £10,000 the steps taken to hide Mr. Ablyazov's ownership of it would have been unnecessary. I am sure that in August 2009 Bubris was worth more than £10,000.

124. It follows that Mr. Ablyazov was obliged to disclose his interest in Bubris by the terms of the WFO and that in breach of that order he failed to do so. That was a contempt of this Court. Mr. Ablyazov knew of the terms of the WFO. He failed to comply with its terms. It is improbable that Mr. Ablyazov was unaware of the monies being paid to and by Bubris in August and September 2009. That suggests that his failure to disclose his interest in Bubris was deliberate. The steps which have been taken since then to hide Mr. Ablyazov's interest in Bubris also suggest that. If his failure had been accidental he could have said so. He must therefore have known that Bubris was one of his assets. It is unrealistic to suppose that he may not have done. His conduct was deliberate. It was not casual, accidental or unintentional. For the reasons given by Christopher Clarke J. in *Masri v Consolidated Contractors International* [2011] EWHC 1024 (Comm) at paragraphs 150-155 it is not necessary to show that the defendant to a contempt application appreciated that what he was doing was a breach of the court order and intended to breach the court order. I respectfully agree with that decision. I am not persuaded that *Irtelli v Squatriti* [1993] QB 83 is a decision to the contrary (as opposed to the expression of an assumption as to the law).

Allegation B3(1): The English Real Estate

125. When cross-examined as to his assets in October 2009 Mr. Ablyazov said that he was the short-term tenant of Carlton House, London and of 79 Elizabeth Court, London. He said that all the residential properties he owned were included in his disclosed schedule of assets. The Bank alleged that this evidence was untrue and given without an honest belief in its truth. The Bank said that in fact Mr. Ablyazov is the true UBO of the companies which are the registered proprietors of Carlton House, Oaklands Park Estate, Surrey, 79 Elizabeth Court, London and 17 Alberts Court, London.

126. Mr. Ablyazov denied that he lied on oath. He says that he is not the UBO of those companies which are the registered proprietors of the four properties. His case, though he bears no burden of proof, is that Mount Properties Limited, a company incorporated in the BVI, which is the registered proprietor of Carlton House, is owned by Syrym Shalabayev, that Lafe Technology Limited, a company incorporated in the Seychelles, which is the registered proprietor of Oaklands Park Estate, is owned by Syrym Shalabayev and that Rocklane Properties Limited, a company incorporated in the BVI, which is the registered proprietor of 79 Elizabeth Court, is owned by Syrym Shalabayev. Finally, he says that Bensbourogh Trading Inc., a company incorporated in the BVI, which is the registered proprietor of 17 Alberts Court, is owned by Salim Shalabayev.

127. Although the arguments concerning the several properties are similar and some of Mr. Ablyazov's responses overlap it is sensible, since this is a quasi-criminal matter and

the court's judgment in relation to each property may not be the same, because the evidence in relation to each is not the same, to treat each property separately.

Carlton House

128. Carlton House is on the Bishop's Avenue in Hampstead. It comprises, inter alia, a 50ft. ballroom, a library, 9 bedroom suites, a swimming pool and a 12 person Turkish bath. The shares in Mount Properties, the registered proprietor of Carlton House, were purchased on 26 April 2006 for the sum of £15.5m. It is common ground that Mr. Ablyazov has lived there since May 2009 though the Bank also maintains that Mr. Ablyazov and his family have lived there since at least 2007. Whilst Mr. Ablyazov accepted that Mrs. Ablyazov stayed there when she visited London (he said she "stayed with her brother") I do not consider that the question of the ownership of Carlton House can be determined by the pieces of evidence on which the Bank relied to say that the family lived there since 2007.

129. Amongst the matters relied upon by the Bank in support of its case that the shares in Mount Properties are held beneficially for Mr. Ablyazov are (i) that the purchase price was funded by Sunstone Ventures Limited, a company beneficially owned by Mr. Ablyazov, (ii) that Syrym Shalabayev did not have the means to buy Carlton House, (iii) that the registered proprietor Mount Properties is a company administered by Mr. Udovenko and Syrym Shalabayev in the same manner as they administer Mr. Ablyazov's other companies, (iv) that changes were effected to the ownership structure in October/November 2009 after the grant of the WFO in an attempt to distance the asset from Mr. Ablyazov, (v) that a lease of Carlton House in favour of Mr. Ablyazov was a sham and was not entered into prior to November 2009 when Mr. Ablyazov had said in his cross-examination as to his assets that such a lease existed, (vi) that the expenses in relation to Carlton House were treated in an homogenous fashion with no distinction between the owner and the occupier and (vii) that although the shares in Mount are within the extended receivership order no person has sought to challenge the addition of the shares to the receivership.

130. In response to these arguments Mr. Ablyazov said (i) that he did not own Sunstone, (ii) that Syrym Shalabayev did have the means to purchase Carlton House, (iii) that the fact that Mr. Udovenko and Syrym Shalabayev may have been involved in the administration of Mount Properties did not assist because they were involved in the administration of companies for the benefit of clients other than Mr. Ablyazov, (iv) that the changes in the ownership structure in October/November 2009 occurred because Syrym Shalabayev wished to sell Carlton House and so wished to separate his assets, (v) that the lease of Carlton House was not a sham, (vi) that the expenses of Carlton House in so far as they related to occupation were paid for by Mr. Ablyazov and (vii) that there is no evidence that the new owner of Carlton House is aware of the extended receivership order and its application to Carlton House. These and other points are developed by Mr. Matthews at pp.149-163 of his Closing Submissions.

Sunstone Ventures

131. There was not, I think, any dispute that the purchase monies were provided by Sunstone. An account in the name of Sunstone shows the deposit and balance of the purchase price apparently being paid out in March and April 2006 and Mr. Ablyazov accepted in evidence that the deposit was paid by Sunstone. The dispute was whether

Mr. Ablyazov owned Sunstone. Mr. Smith submitted that Mr. Ablyazov owned Sunstone in 2006 because Mr. Ablyazov admitted that he owned a Russian company TechStroyAlyans and the Russian corporate register showed that between 2004 and 2007 Sunstone was the sole shareholder of TechStroyAlyans. Mr. Matthews objected that there was no mention of Sunstone in the Schedule of Contempts or in Mr. Hardman's evidence. However, the matter was explored with Mr. Ablyazov as it plainly had to be in circumstances where Sunstone had paid the purchase price. Mr. Matthews said that the register showed that the current or later owners of TechStroyAlyans were "citizens of the Russian Federation". However, the document does appear to suggest that, in 2004 and 2005 and possibly until February 2007, Sunstone was the sole shareholder of TechStroyAlyans. In any event Mr. Ablyazov accepted in evidence that Sunstone held his interest in TechStroyAlyans for his benefit. Sunstone could only have done that by holding the shares in TechStroyAlyans.

132. Mr. Ablyazov said that Sunstone was an agent holding property on his behalf. However, there was no written agency agreement with Sunstone. Instead there was, according to Mr. Ablyazov, an oral agreement with Mr. Udovenko pursuant to which Sunstone held Mr. Ablyazov's asset on his behalf. It seems to me that this arrangement must have been typical of the way in which Mr. Ablyazov holds his assets; see paragraphs 16-17 of this judgment and my judgment on the receivership application [2010] EWHC 1779 (Comm) at paragraphs 57 and 76-78. The shares in the holding companies are assets of Mr. Ablyazov because they are held indirectly on his behalf and that is how he is able to exercise control over the physical asset at the bottom of the chain. I therefore consider that in all probability the shares in Sunstone were held by Mr. Udovenko on trust for Mr. Ablyazov. He was the beneficial owner of Sunstone.

133. In any event, both Mr. Ablyazov and Syrym Shalabayev gave untrue evidence that Syrym Shalabayev was the seller of the uranium business in 2005. That evidence was given in order to explain how Syrym Shalabayev had the means to purchase Carlton House in 2006. In fact it was Mr. Ablyazov who had sold the uranium business in 2005 and so had the means to purchase Carlton House in 2006. In those circumstances it is likely, given what may be described as Mr. Ablyazov's "connection" (at the very least) with Sunstone, that the funds used to purchase Carlton House in 2006 came from the sale of the uranium business and were channelled through Sunstone.

Smartwhere Limited

134. There is no dispute that in October 2009 a new company, Smartwhere Limited, was purchased to hold the shares in Mount Properties which would be transferred to it from Mega Property Limited, and that Syrym Shalabayev was involved in this transaction. Indeed he said in his evidence that he was the owner of both Smartwhere and Mega Property Limited and that is why the recorded consideration, US$50,000, did not reflect the value of Carlton House. He said that this transfer was in preparation for the future sale of Carlton House. However, since I have been compelled to reject Syrym Shalabayev's evidence that he had the means to pay for Carlton House as untrue there is no basis upon which I can accept his evidence that he was the beneficial owner of the shares in Mount Properties. The much more likely explanation for the transfer of shares in Mount Properties was that Syrym Shalabayev was seeking to distance Mr. Ablyazov yet further from Carlton House notwithstanding the point

made by Mr. Matthews to the effect that it was unlikely that the Bank would ever be able to link Mr. Ablyazov with Mega Property, a company incorporated in the Marshall Islands.

135. It seems that Syrym Shalabayev was undecided for a time as to who would be the nominal beneficiary. On 16 October 2009 it was to be himself. On 19 October 2009 it was to be someone else. On 11 November 2009 he reverted to his first idea. None of this suggests that he was the true beneficial owner. By 25 June 2010 yet another individual was the beneficiary of Smartwhere.

The lease

136. Although Mr. Ablyazov said when cross-examined as to his assets in October 2009 that he had a lease of Carlton House in writing the documentary evidence does not support the existence of such a document at that time. Rather, the documentary evidence shows that the lease was sent for execution in Cyprus by Syrym Shalabayev on 11 November 2009. The corporate services provider Consulco agreed to execute the document but asked for confirmation that Mount Properties had the right to Carlton House which suggests that there had been no prior lease.

137. The circumstances in which this lease was executed (not long after Mr. Ablyazov had mentioned the existence of a lease in his cross-examination as to his assets), the delay in producing it (it was not produced until November 2010), the fact that it was backdated to 1 May 2009, that it contained a 5 month rent free period (May to September 2009), that it provided for a deposit of £60,000 payable prior to the commencement of the Term but in fact such a deposit was only paid on 20 December 2010 and then paid out to Proserve Limited on 8 January 2011 were all likely to fuel the Bank's suspicions as to the genuineness of this lease.

138. To allay those suspicions Mr. Matthews observed that an independent third party estate agent, Ashbury & Bloom, had answered Hogan Lovells' questions, that the first rental demand was dated 1 October 2009 (almost four weeks before Mr. Ablyazov was cross-examined as to his assets), that the rental payment was made on 23 October 2009 (again, before the cross-examination), that a five month rent free period is readily explicable between brothers-in-law and that the payment of the deposit to Proserve Ltd. had been requested by the director of the landlord company.

139. For obvious reasons attention was directed to Ashbury & Bloom's letter dated 1 October 2009. Mr. Smith accepted that it was created by Ashbury & Bloom but questioned when it was created. He suggested that it may have been created later than 1 October 2009 at the request of those acting for Mr. Ablyazov. Mr. Matthews said there was no evidence to support that suggestion.

140. I will return to the question of whether the tenancy was a sham after considering the other main points relied upon by the Bank in support of its case that Carlton House was owned by Mr. Ablyazov.

Expenses

141. Mr. Smith suggested that the expenses of Carlton House co-mingled both landlord and tenant type expenses. He said that this suggested that the same person was both

owner and occupier. I have looked at the expenses sheet relied upon by Mr. Smith and he may be right but, without examining the expenses in detail (which detail does not appear to be available), I cannot be sure that he is. Mr. Smith further said that, although Syrym Shalabayev said that he met all the expenses in the first instance whereafter there was an accounting process to assess which expenses were to be paid by Mr. Ablyazov, in fact a payment by Fitcherly on behalf of Mr. Ablyazov in the sum of £40,000 was in respect of landlord-type expenses. This was disputed by Mr. Matthews who said that the sum of £40,000 related to council tax and utility expenses and did not relate to landlord-type expenses. I was not persuaded that Mr. Smith was right.

No challenge to the inclusion of Mount Properties in the Receivership

142. Syrym Shalabayev said that he had sold Carlton House in November 2010 but refused to tell the Court who the purchaser was or the price at which he sold on the grounds that such information was confidential. He even refused to disclose which firm of lawyers had acted in the transaction. It seemed very likely to me, notwithstanding his evidence that he had agreed with the purchasers not to "talk about this transaction in this court", that the reason he refused to divulge this information was that he had not sold Carlton House. The shares in Mount Properties were brought within the scope of the receivership on 8 April 2011. The receivers must have made enquiries about that company and yet no application has been made to this court to remove Mount Properties from the receivership on the grounds that the shares in that company had been bought by a bona fide purchaser for value in November 2010. Mr. Matthews said that there was no evidence that the new owner was aware of the receivership order. But it is unlikely that if there is a new owner the inclusion of Mount Properties within the receivership has not been brought to his attention. The failure by the supposed new owner to apply to the court to remove Mount Properties from the scope of the receivership order is an indication that there is in fact no new owner. Further, on 18 April 2011 a note was placed on the Land Register that "under an order of the High Court made on 12 November 2009 (as amended by orders dated …..8 April 2011) no disposition by the proprietor of the registered estate is to be registered except with the consent of [the Bank] or under a further order of the Court." This was a reference to the WFO.

143. On 11 January 2012 I received a second witness statement from Syrym Shalabayev dated 10 January 2012. In that statement he said that the person who had bought Carlton House was Roland Koefer, a resident of Switzerland. He exhibited a Cypriot court document dated 14 December 2011 (which was the last day on which Syrym Shalabayev gave evidence before me) in which Roland Koefer (in fact Kofer Roland Christian) claims to be the "essential and/or ultimate beneficiary of 100% of the authorised stock capital of [Smartwhere Limited] and/or [Mount Properties] pursuant to a written and/or oral and/or explicit and/or implied and/or resulting trust." No reference is made to a sale of shares in 2010. There is no explanation as to why Roland Koefer now feels able to let his identity be known when he had apparently refused to let his identity be known until 13 December 2011. There has not been provided any supporting documentation to show that he bought Carlton House (through Mount Properties and Smartwhere) in November 2010. Now that the supposed purchaser has revealed himself Syrym Shalabayev would be free to provide such documentation but he has not done so. If Roland Koefer were a bona fide

purchaser for value he would have applied to the English Court which had granted the receivership order. For these reasons I am unable to give any weight to this late, unexplained and unsupported evidence. I do not consider that it may be true that Roland Koefer may have purchased Carlton House from Syrym Shalabayev in November 2010.

144. Having reviewed what I regarded as the main points relied upon by Mr. Smith (he had several others), I have to ask myself whether I am sure that Mr. Ablyazov is and was in October 2009 the beneficial owner of the shares in Mount Properties such that Carlton House was effectively his property.

145. The fact that the money for the purchase in 2006 came from Sunstone and that in all probability the shares in Sunstone were held for Mr. Ablyazov points to Mr. Ablyazov as having been the purchaser of the shares in Mount Properties in 2006. Syrym Shalabayev claims to have been the purchaser of those shares. He said that he was able to make such a handsome purchase in part because he had sold a uranium business in Kazakhstan in 2005 for $350m. But that evidence was untrue. The uranium business belonged to Mr. Ablyazov and it was he who sold it. It follows that he, rather than Syrym Shalabayev, was able to purchase Carlton House. Both Mr. Ablyazov and Syrym Shalabayev must have given untrue evidence that Syrym Shalabayev had sold the uranium business in an attempt to hide Mr. Ablyazov's ownership of Carlton House. There is no other explanation for that lie. The fact that there has been no challenge in this court to the inclusion of the shares in Mount Properties in the Receivership is evidence that whoever is the owner of those shares is not a third party unconnected with this litigation. The transfer of shares in Mount Properties in 2009 is likely to have been designed to distance Mr. Ablyazov further from Carlton House.

146. These points taken together amount to cogent and compelling evidence that Mr. Ablyazov was the UBO of the shares in Mount Properties and thus that he owned Carlton House. That evidence has persuaded me, notwithstanding the points made by Mr. Matthews in relation to the lease on Carlton House, that that lease must have been a sham, brought into existence after the WFO had been served to explain Mr. Ablyazov's occupation of Carlton House. The rental payment on 23 October 2009 must also have been a sham, paid in order to give the impression of a lease. I am unable to explain the precise circumstances in which the document apparently dated 1 October 2009 from Ashbury and Bloom came into existence. But in order to determine whether Mr. Ablyazov is guilty of the alleged contempt it is not necessary that I should be able to answer all the questions which have arisen in the course of the trial so long as I am sure that he is guilty of the alleged contempt, in particular that he was the true beneficial owner of the shares in Mount Properties and thus of Carlton House. I am so sure. I do not consider that Syrym Shalabayev's evidence that he owned Carlton House may be true.

147. I accept that the Bank's case is based upon inference from circumstantial evidence but I am persuaded so that I am sure that the only reasonable inference to be drawn from that circumstantial evidence is that Mr. Ablyazov was the beneficial owner of the shares in Mount Properties and hence the beneficial owner of Carlton House. His evidence on oath in October 2009 that he was only the short term tenant of Carlton House was untrue. He cannot have had any belief in the truth in what he said. His evidence must have been given with the intention of impeding or interfering with the

course of justice, in particular with the efficacy of the WFO. Such conduct was a contempt of court.

Oaklands Park

148. Oaklands Park is a 100 acre estate four miles from Windsor comprising 8 houses, lawns, arboretum, formal and walled gardens, lakes and woodlands. The registered proprietor is Lafe Technologies Limited, a company incorporated in the Seychelles. The shares in Lafe were purchased for £18.15m. Until Christmas 2010/New Year 2011 Mr. Ablyazov and members of his family visited Oaklands Park at weekends.

149. Amongst the matters relied upon by the Bank in support of its case that the shares in Lafe are held beneficially for Mr. Ablyazov are (i) that the purchase price was funded by Sunstone Ventures Limited, Mega Property Limited and Widley Worldwide Inc., (ii) that Syrym Shalabayev did not have the means to buy Oaklands Park, (iii) that the registered proprietor Lafe is a company administered by Mr. Udovenko and Syrym Shalabayev in the same manner as they administer Mr. Ablyazov's other companies, (iv) that changes were effected to the ownership structure in October 2009 after the grant of the WFO in an attempt to distance the asset from Mr. Ablyazov but then reversed, and (v) that although the shares in Lafe are within the extended receivership order no person has sought to challenge the addition of the shares to the receivership.

150. In response to those points Mr. Ablyazov says that (i) Syrym Shalabayev had the means to purchase Oaklands Park and did so in 2006, (ii) when Mr. Ablyazov visited Oaklands Park in 2009 and 2010 he did so openly and without any attempt to hide his visits, (iii) Mr. Ablyazov did not own Sunstone, Mega Property or Widley Worldwide, (iv) the fact that Mr. Udovenko and Syrym Shalabayev may have been involved in the administration of Lafe did not assist because they were involved in the administration of companies for the benefit of clients other than Mr. Ablyazov, (v) the proposed changes in the ownership structure in October 2009 occurred because Syrym Shalabayev wished to sell the property, (v) there is no evidence that the new owner of Oaklands Park is aware of the extended receivership order and its application to Oaklands Park. These and other points are developed by Mr. Matthews at pp.164-169 of his Closing Submissions.

The purchase price

151. UBS accounts in the name of Sunstone Ventures and Mega Property Limited show that those companies and Widley Worldwide were involved in the payment of the purchase price for Oaklands Park.

152. I have already noted that Sunstone is at least associated with Mr. Ablyazov and is probably owned by him. Mega Property held the shares in Mount Properties which was the registered proprietor of Carlton House. In view of my finding that Mr. Ablyazov was the beneficial owner of Carlton House it follows that Mr. Ablyazov was the beneficial owner of Mega Property. He was also, as stated by Mr. Udovenko to Denton Wilde Sapte, the beneficiary of Widley Worldwide, through which the uranium business was owned. Thus the monies used to purchase Oaklands Park came from companies associated with and owned by Mr. Ablyazov.

No complaint by a third party owner

153. Had Lafe and hence Oaklands Park been sold by Syrym Shalabayev in late 2010 (as alleged by him) it seems to me likely that the new owner would have protested to this court against Lafe being included within the extended Receivership Order on 8 April 2011. There has been no such protest which indicates that Syrym Shalabayev did not sell Lafe and hence Oaklands Park and that he was not telling the truth as to his having been the beneficial owner of Lafe and hence of Oaklands Park.

154. As with Carlton House Syrym Shalabayev told me in his second statement provided to me on 11 January 2012 that the purchaser of Oaklands Park was Mrs. Fabienne Beaud, another Swiss resident, and that she has issued proceedings in Cyprus. As with his similar evidence in relation to Carlton House and for the same reasons I am unable to place any reliance on this evidence.

Syrym Shalabayev

155. Syrym Shalabayev has claimed to own Lafe and hence Oaklands Park but I am unable to accept his evidence. His evidence that he had the means to purchase the property by reason of having sold a uranium business was untrue.

156. In October and November 2009 Syrym Shalabayev was arranging to change the beneficiary of Lafe just as he thought of doing so with Smartwhere in the case of Carlton House. By July 2010 the beneficiary had been changed. None of this suggests that Syrym Shalabayev was the true beneficial owner. I do not consider that his evidence that he was the owner of Oaklands Park may be true.

Mr. Ablyazov

157. Mr. Ablyazov also gave untrue evidence concerning the sale of the uranium business. He must have done so in order to hide his ownership of Oaklands Park. There is no other explanation.

158. As with the allegation concerning Carlton House the evidence that Mr. Ablyazov owned Oaklands Park is circumstantial. But I am persuaded so that I am sure that Mr. Ablyazov is the beneficial owner of the shares in Lafe and hence of Oaklands Park. My reasons are essentially the same as found in my decision in relation to Carlton House. His evidence that his properties were included in his list of assets was untrue. He cannot have had any belief in the truth in what he said. It must have been given with the intention of interfering with or impeding the course of justice. His evidence was given in contempt of court.

Elizabeth Court

159. The registered proprietor of the flat in Elizabeth Court is and has been Rocklane Properties Limited, a company incorporated in the BVI. The flat was purchased in January 2002 for £650,000. Rocklane was one of the companies administered by Mr. Udovenko and Syrym Shalabayev. It was one of the 102 companies mentioned in the email dated 9 October 2008 pursuant to which the UBO was changed from Mr. Udovenko to Syrym Shalabayev. Thus before October 2008 the UBO was Mr. Udovenko.

160. The case of the Bank is that the beneficial owner of the shares in Rocklane and hence of the flat in Elizabeth Court is and was Mr. Ablyazov. Mr. Ablyazov's case is that the beneficial owner from 2003 until December 2009 was Syrym Shalabayev. It was said that Syrym Shalabayev sold it in late 2009.

161. The Bank's case is supported by the fact that at first the apparent UBO was Mr. Udovenko and then, in October 2008, became Syrym Shalabayev when the UBO of (at least) some of Mr. Ablyazov's companies became Syrym Shalabayev. There was also evidence that on 15 October 2009 the UBO was again changed to Salim Shalabayev and on 3 March 2010 to Mr. Ivan Terenov. These changes in the UBO, apparently from one trusted associate to another, are suggestive of there having been a single true beneficial owner. (There was no documentary evidence of an arm's length sale of the shares at any stage.) The Bank's case that that owner was Mr. Ablyazov is supported by the fact that the occupants of the flat were variously the Shalabayev brothers and Mr. Aizhulov which suggests that it was available for use by what Mr. Smith called members of Mr. Ablyazov's entourage. Furthermore, a lease in favour of Mr. Ablyazov was sent for execution on 11 November 2009 which was also when the sham lease on Carlton House was sent for execution. The Bank also pointed to oddities in the evidence called by Mr. Ablyazov, namely, that Mr. Ablyazov should take out a lease on a (relatively) small flat when he was about to take out a lease on Carlton House, that when Salim Shalabayev moved in after May 2009 he paid rent into the account of Bensbourogh Trading, said to be owned by Salim Shalabayev and that, when in late 2009, the flat was (allegedly) sold by Syrym Shalabayev, Salim Shalabayev continued to pay rent to Bensbourogh Trading. These oddities cast considerable doubt on the evidence adduced by Mr. Ablyazov.

162. However, it is important to note that the Bank is not able to show that the funds used to purchase the flat came from other companies owned by Mr. Ablyazov or that Syrym Shalabayev lacked the means to purchase the flat (his evidence as to his business career in Kazakhstan was not challenged save as to his evidence with regard to the uranium business). Thus the evidence with regard to Carlton House and Oaklands Park is materially different in these two respects. Also, although the lease on the flat was sent for execution in November 2009 there is evidence, unchallenged by the Bank, that a rental payment and a deposit were paid by Mr. Ablyazov in April 2009, the start of the tenancy period, four months before the issue of WFO. For this reason the Bank had to say that Mr. Ablyazov, who had taken advice from Clyde and Co. with regard to freezing orders, was seeking to create the false impression that he had leased the property (though he must have overlooked the need for accompanying documentation and failed to take any steps at the same time to create an impression that he had leased Carlton House).

163. In these circumstances, I have considered whether the Court can be sure on the evidence presently available that Mr. Ablyazov was the owner of Rocklane and hence of the flat in Elizabeth Court. The evidence in favour of the Bank's case with regard to Elizabeth Court is materially weaker than with regard to Carlton House and Oaklands Park. Moreover, Mr. Ablyazov can point to evidence that he was not the owner, namely, that he paid a deposit and rent long before the WFO was issued. In those circumstances, notwithstanding the matters which strongly support the Bank's case and the odd aspects of the evidence relied upon by Mr. Ablyazov, I do not

consider that the Bank's case is sufficiently cogent to expel all reasonable doubt that it is correct, though it may well be.

164. I therefore do not find this limb of the contempt charge to have been proved.

Alberts Court

165. The registered proprietor of the flat in Alberts Court was at all material times Bensbourogh Trading Inc., a company incorporated in the BVI on 6 March 2008. The flat was bought for £965,000 on 27 June 2008. Thus it was bought some 6 years after Elizabeth Court was purchased and some 2 years after Carlton House and Oaklands Park were purchased.

166. Salim Shalabayev claims to be the UBO of the shares in Bensbourogh Trading and hence the beneficial owner of the flat. However, on 15 October 2009 he was made the UBO of Rocklane which owned the flat in Elizabeth Court and yet nobody claims that he was the true beneficial owner of the shares in that company and on 16 October 2009 an email was sent which contemplated naming him as the UBO of a new company which would own the shares in Mount Properties, the owner of Carlton House. That these arrangements were even contemplated illustrates that no reliance can be placed on any evidence which purports to show that Salim Shalabayev was the UBO of Bensbourogh Trading. Rather it suggests that Mr. Salim Shalabayev may be made to appear to be the UBO of a company at the direction of others.

167. The Bank's case is that the shares in Bensbourogh Trading are held as trust for Mr. Ablyazov. His case is that they are held on trust for Salim Shalabayev. Mr. Matthews developed his case in relation to Alberts Court between pp. 177 and 181 of his Closing Submissions.

168. The Bank's case is supported by the fact that despite the addition of the shares in Bensbourogh Trading to the receivership on 8 April 2011 no independent third party has sought to challenge the addition of the shares to the receivership which suggests that the property is not beneficially owned by an independent third party. On 26 April 2011 Piper Smith Watton contacted the Bank on behalf of Mount Properties (the registered owner of Carlton House) and Bensbourogh Trading (the registered owner of Alberts Court) which suggests that each is in common ownership. Since Carlton House is beneficially owned by Mr. Ablyazov this is evidence that the flat in Alberts Court is also beneficially owned by him.

169. The Bank also relied upon three aspects of Salim Shalabayev's evidence. The first was that when asked about a document evidencing a proposed lease of Alberts Court to him he said that he was proposing to rent the flat "from myself". The second was that he said that he allowed Mr. Ablyazov's driver to live at Alberts Court with his wife free of rent. In the meantime he lived at Carlton House. When the driver and his wife (who had given birth in May 2009) moved out Salim Shalabayev moved to Elizabeth Court. The third was that he claimed little involvement in the purchase of the property. He bought it without viewing it or even knowing whether a survey had been carried out. His brother Syrym selected the property, negotiated the price and provided the purchase price. Mr. Smith submitted that in circumstances where Syrym Shalabayev had not claimed ownership of the property himself he must have purchased it on behalf of Mr. Ablyazov.

170. In response it was said that Salim Shalabayev had given evidence of his ability to purchase a property like 17 Alberts Court and that the involvement of his brother Syrym in the purchase was what one expects of an older brother. It was "frank and credible" that Salim, having been advised to pay rent for tax reasons, intended to rent the flat from his own company. With regard to the driver he had invited him to live at the flat in order to learn English but the driver had moved in with his pregnant wife and Salim had not felt able to ask them to leave. Salim was however able to move into Carlton House. He had since tried to sell the flat and discovered that he could not because of the receivership and had therefore decided to challenge the receivership order over Bensbourogh.

171. The Bank's case that Mr. Ablyazov was the true beneficial owner of the flat in Alberts Court was not as strong as its case with regard to Carlton House and Oaklands Park but it did raise a prima facie case. However, Salim Shalabayev's evidence that he purchased the flat was unpersuasive. It is not credible that he would purchase a flat for almost £1m. without viewing it, even if his elder brother was purchasing it for him. He did not produce any documentary evidence that he had funded the purchase. Yet if he had purchased it in 2008 there is no apparent reason why some documentary evidence of such purchase could not have been provided to the court. He does not appear to have lived in it after Mr. Ablyazov's driver had vacated the flat and instead appears to have lived in the flat in Elizabeth Court and to have paid rent for doing so. That is an odd thing to do if he is the owner of a flat in the same development. In the result I was unable to accept his evidence that he was the owner of the flat in Alberts Court. Moreover, I did not consider that his evidence might be true.

172. The evidence of Syrym and Salim Shalabayev as to the former's role in purchasing the flat means that Syrym must have purchased it on behalf of himself, a third party or Mr. Ablyazov. The possibility that he purchased it on behalf of himself or a third party can be discounted because Syrym Shalabayev does not claim to have done so. In those circumstances the flat must have been purchased on behalf of Mr. Ablyazov. I therefore conclude that Mr. Ablyazov was the true beneficial owner of the shares in Bensbourogh Trading and hence of the flat in Alberts Court.

173. As with the allegations concerning Carlton House and Oaklands Park the evidence that Alberts Court is owned by Mr. Ablyazov is circumstantial. But I am persuaded so that I am sure that the only reasonable inference to be drawn from that evidence is that Mr. Ablyazov was the beneficial owner of Alberts Court. His evidence that all the properties he owned had been listed in his schedule of assets was therefore untrue. He did not have any belief in the truth of what he said. It must have been given with the intention of interfering with or impeding the course of justice. His evidence was therefore given in contempt of court.

Schedule C Companies

174. FM Company Limited, Bergtrans Contracts Corporation and Carsonway Limited are three companies named in Mr. Ablyazov's Schedule C disclosure. (For an explanation of the Schedule C disclosure see [2010] EWHC 1779 (Comm.) at paragraph 87.) In his cross-examination as to his assets he said that he did not own them. The Bank says that this was untrue, that Mr. Ablyazov had no honest belief in the truth of his denials and that the denials were given with the intention of interfering with and/or impeding the administration of justice.

175. The Bank says that Mr. Ablyazov's beneficial ownership of these companies is to be inferred from several matters: the speed with which the payments recorded in the Schedule C disclosure were made and the ability of Mr. Ablyazov to obtain the information recorded in the Schedule C disclosure, the false evidence which Mr. Ablyazov gave concerning the source of the information in the Schedule C disclosure, that the three companies are administered in the same manner as Mr. Ablyazov's other companies, the powers of attorney over the affairs of Bergtrans and Carsonway held by Mr. Ablyazov's associates, the efforts taken in 2010 to hide the real beneficial ownership of Bergtrans and Carsonway, the loans made by FM Company to companies admittedly owned by Mr. Ablyazov, and the incredibility of the assertion that Syrym Shalabayev and Mr. Kossayev own the companies.

176. Mr. Ablyazov says that the matters relied upon do not enable the Bank to discharge the burden of proof to the criminal standard. He says that many of the matters relied upon were relied upon by the Bank in support of the receivership application but that I was not persuaded that Mr. Ablyazov's ownership was proved even on the balance of probabilities; see [2010] EWHC 1779 at para.99. Mr. Matthews' submissions are at pp.182-199 of his Closing Submissions.

Speed of payments

177. The chart provided by Mr. Ablyazov as part of his Schedule C disclosure showed payments from Drey followed by the recipient companies passing on the money without much if any delay.

178. Mr. Smith says that it is inconceivable that the payments in question could have been made as quickly as they were or that the information could have been obtained as quickly as it was unless all the companies were in common ownership. On the receivership application I considered this point and was not persuaded that by itself it established that all the companies were in common ownership though it gave grounds for suspecting that that was in fact the case.

Source of information

179. Mr. Ablyazov maintained when cross-examined in October 2009 that Individual C provided him with the Schedule C disclosure. In his seventh witness statement dated 14 June 2010 he said at paragraphs 7-10 that Individual C "dealt with the movement of funds through the treasury companies KSC and Devesta". Mr. Ablyazov contacted him by telephone and asked him to provide information as to the movement of the $295m. paid by Drey. Individual C "sent" him the Schedule C chart.

180. The Bank challenges this evidence and says that the information and the chart were not provided by Individual C but that it was probably provided by Mr. Udovenko and Syrym Shalabayev. The Bank relies on documents from June to October 2008 which suggest that Mr. Udovenko was involved in the making of payments, the fact that the Bank has not found any documentary support amongst the documents obtained by the disclosure, search and *Norwich Pharmacal* orders for the proposition that Individual C fulfilled the role of "treasurer" for Mr. Ablyazov's companies (though some documents were found which suggested that he fulfilled some sort of financial role for other companies), that in their evidence on this contempt application both Syrym Shalabayev and Mr. Ablyazov acknowledged that Mr. Udovenko and Syrym

Shalabayev (in addition to Individual C) were asked to assist Mr. Ablyazov to provide the Schedule C disclosure and that Mr. Ablyazov has not produced any document to show Individual C performing a treasury role in relation to a company of which he admits ownership or any document to support his evidence that Individual C sent him the Schedule C chart.

181. In response Mr. Ablyazov has said that he never suggested that Individual C actually administered his businesses and that it is unsurprising that, as an administrator, Mr. Udovenko's name appears in some documents relating to some of the Schedule C payments.

182. Mr. Matthews submitted that the purpose of this attack was unclear because even if Mr. Udovenko organised the Schedule C payments it did not follow that the Schedule C companies are or were owned by Mr. Ablyazov. The "purpose of the attack" was however made clear by Mr. Smith in his closing submissions. He says that the role of Individual C with regard to the Schedule C disclosure was invented to cover up the role of Mr. Udovenko (and later Syrym Shalabayev) in administering Mr. Ablyazov's companies and so hide the true beneficial ownership of the Schedule C Companies.

183. It is first necessary to consider who provided Mr. Ablyazov with the Schedule C disclosure. The Bank's case that it was not Individual C is supported by the fact that it has not found any evidential support amongst the thousands of documents obtained for the suggestion that Individual C performed some form of "treasury" role for Mr. Ablyazov's companies. The absence of any such document (notwithstanding that the Bank may not have had all caches of Eastbridge's documents) suggests that it is most unlikely that Individual C could have put together the Schedule C disclosure as quickly as he is said to have done. It is more likely that Mr. Udovenko and/or Syrym Shalabayev assisted in putting together the Schedule C disclosure because Mr. Udovenko was the nominal UBO of Mr. Ablyazov's companies until October 2008 and Syrym Shalabayev was thereafter. Against that evidence is the oral evidence of Mr. Ablyazov and Syrym Shalabayev that Individual C was involved. However, for the reasons I have given I am unable to accept their evidence unless it is corroborated by reliable contemporaneous documents. There are none. If there were any such documents I would have expected Syrym Shalabayev (who claimed to have kept a copy of Eastbridge's documents on a memory stick) to have produced at least one such document to support the case of his brother-in-law on this application when his liberty is at stake. It is also remarkable that Mr. Ablyazov who was represented by Clyde and Co. at the time he gave his Schedule C disclosure has not been able to produce any document evidencing the sending of the Schedule C chart by Individual C in August 2009. Having considered these matters I am sure that Individual C did not supply Mr. Ablyazov with the Schedule C disclosure and that Mr. Ablyazov lied to the court when saying that he did.

184. Why did he lie? The only explanation, it seems to me, is that he did not wish to reveal the role of Mr. Udovenko and Syrym Shalabayev in administering his assets, fearing that revelation of their role might lead the Bank to more of his assets. Bergtrans and Carsonway were amongst the companies listed in the email dated 9 October 2008 and there were documents in existence recording that Mr. Udovenko and Syrym Shalabayev were successively the UBO of those companies. The explanation cannot be that he wished to hide their identity from the President of Kazakhstan because their

identity, like that of Individual C, could have been protected under the restricted information regime.

Administration of the companies

185. The three companies were administered in the same manner as Mr. Ablyazov's disclosed companies, that is, by the nominee UBO, Mr. Udovenko and then Syrym Shalabayev, giving instructions to corporate service agents such as Mr. Kythreotis. In addition those who held powers of attorney over Mr. Ablyazov's companies also held powers of attorney over Bergtrans and Carsonway.

186. Mr. Matthews submitted that this point goes nowhere because both Mr. Udovenko and Syrym Shalabayev acted for clients other than Mr. Ablyazov such as Mr. Kossayev who was, it was said, the true UBO of Bergtrans and Carsonway. Further, Syrym Shalabayev was the owner of FM Company and he and Mr. Udovenko were business associates. As to the powers of attorney this only shows that the companies were administered by the same corporate service provider and does not establish that the corporate service provider had only one client.

187. Although the absence of any list of the companies together with their respective true UBO (see above at paragraph 38(iii)(h)) suggests that Mr. Udovenko and Syrym Shalabayev provided their corporate services for Mr. Ablyazov exclusively I consider it preferable to address the ownership of companies individually rather than generically because there may be points which arise in connection with some companies which do not arise with others.

FM Company

188. There is no dispute that FM Company made payments and loans to Mr. Ablyazov's companies eg payments of $5m. to Asset 18 on 12 October 2006 and of $21.5m. to Asset 11 on 14 December 2006 and loans of $7m. to each of InvestClub Investments Limited and Squarecut Trading Limited on 8 August 2007.

189. Mr. Smith says that such substantial loans and payments indicate that FM Company was another of Mr. Ablyazov's companies. Mr. Matthews says that such loans and payments are unsurprising because Syrym Shalabayev owed a large sum of money to Mr. Ablyazov and was also accustomed to act as a provider of short-term finance.

190. The difficulty, it seems to me, with Mr. Matthews' response is that the evidence that Syrym Shalabayev owed $160m. to Mr. Ablyazov for his assistance in selling Syrym Shalabayev's uranium business was untrue, for the reasons I have already given. Thus the substantial payments made by FM Company cannot be explained in that way. The further difficulty is that neither Syrym Shalabayev nor Mr. Ablyazov has produced a document evidencing the state of the loan account between the brothers-in-law even though Syrym Shalabayev said that he supplied Mr. Ablyazov with such documents. Such a document, if it existed, could (potentially) explain the payment of $41m. by Drey to FM Company. The absence of any such document indicates that there was no loan account between Syrym Shalabayev and Mr. Ablyazov.

191. In the absence of reliable evidence of either a debt owed by Syrym Shalabayev to Mr. Ablyazov to explain the payments made by FM Company to companies owned by Mr.

Ablyazov or of the state of the loan account allegedly operated by Syrym Shalabayev in favour of Mr. Ablyazov there is only one explanation for the payments and loans made by FM Company, namely, that FM Company was one of the group of companies owned by Mr. Ablyazov. That is also the only credible explanation for the payment of $41m. by Drey to FM Company.

Bergtrans and Carsonway

192. There is no dispute that in 2010 Syrym Shalabayev effected changes to the UBO of Bergtrans and Carsonway from himself to Ms. Gracheva and Mr. Degtyarev (which were backdated to the dates of the companies' incorporation) and from Ms. Gracheva and Mr. Degtyarev to Mr. Kossayev (again backdated). The dispute between the parties is why such changes were effected. Mr. Smith submits that they were effected to distance the companies from Mr. Ablyazov (by removing any record of Mr. Shalabayev as UBO). Mr. Matthews, relying on the evidence of Mr. Shalabayev, submits that they were effected as part of a process of returning the companies to their true beneficial owner who was, in the case of Bergtrans and Carsonway, Mr. Kossayev.

193. It is first necessary to note what was done. Since October 2008 Syrym Shalabayev had been the nominal UBO of Bergtrans and Carsonway, in place of Mr. Udovenko. On or about 16 February 2010 (after the Bank had commenced proceedings against Mr. Ablyazov, the WFO had been granted in August 2009 and continued in November 2009 and further disclosure of Mr. Ablyazov's assets had been given by Clyde and Co. on behalf of Mr. Ablyazov in December 2009) corporate service providers in Cyprus provided declarations of trust for Bergtrans and Carsonway. I have not been referred to the terms of such trusts but Mr. Smith says in his Closing Submissions at para.370(a) that these were in favour of Ms. Grachev and Mr. Degtyarev. This does not appear to be disputed; see para.172 of Mr. Matthews' Closing Submissions. On 9 March 2010 instructions were given by Euroguard to Mr. Kythreotis to "remove" Syrym Shalabayev from the "Services Agreement" in relation to Bergtrans and Carsonway (and 8 other companies). On 22 April 2010 Syrym Shalabayev instructed Mr. Kythreotis to reissue the trust declarations in relation to Bergtrans and Carsonway (and 7 other companies) and to change the date "we have in the trust declaration" of 12 February 2010 to "the date we need" of 2 August 2008.

194. Then on 26 July 2010 Syrym Shalabayev informed Mr. Kythreotis by email that "we are going to transfer some companies to the third parties therefore we need to change a Contact Person for these companies and also make some changes concerning the Beneficiary Owner. Please be informed that all companies for which we change the Contact Person are not under our administration from now. Some other companies we are not going to transfer and I still remain the only contact person but I would like to ask you to change the UBO." A list of new contact persons (including Mr. Batyrgarejev and Mr. Kossayev) was given, together with a list of new UBOs including Ms. Degtyareva and Mr. Kossayev. There then followed a long list (over 7 pages) of about 103 companies with details of the required changes to contact persons and UBOs. Mr. Ablyazov accepted that the first 13 and the last company were his. He had given disclosure of them and there were no required changes to the UBO (although the contact person was to be changed to Mr. Batyrgarejev). Amongst the many other companies were Bergtrans and Carsonway whose contact person and

UBO were to be changed to Mr. Kossayev. (He was also to become the contact person and UBO of 15 other companies.)

195. Mr. Smith submitted that these changes were made to distance Mr. Ablyazov from Bergtrans and Carsonway but made no submission as to why the changes were, first, in favour of Ms. Gracheva and Mr. Degtyarev and, second, in favour of Mr. Kossayev. Syrym Shalabayev said in his affidavit sworn on 18 October 2011 that "maintaining the practice of showing me as the contact person could injure the owner's interest. This was due to the risk of my involvement in the English proceedings." In cross-examination he said that he was returning the companies to their true owners because:

> "I didn't want my clients to suffer if I were to be involved in something, if I were to be brought in some proceedings."

196. This was, it was said, a reference to the proceedings commenced against Mr. Ablyazov and a fear that because Mr. Ablyazov was his brother-in-law he, Syrym Shalabayev, might be brought into those proceedings with adverse consequences to his clients. However, if the true owner was not ready to be named UBO then another nominee was to be provided until he was so ready.

197. Mr. Matthews submitted that initially Mr. Kossayev was not ready to be revealed as the UBO and so Ms. Gracheva and Mr. Degtyarev were named as UBOs of Bergtrans and Carsonway but eventually Mr. Kossayev was ready to be revealed as the UBO. Accordingly instructions were given on 25 July 2010 to change the UBO of Bergtrans and Carsonway to Mr. Kossayev.

198. However, Syrym Shalabayev did not appear to know that this was what happened. After he had been re-examined he answered questions from me as follows:

> "MR JUSTICE TEARE: Mr Shalabayev, am I right in understanding your evidence that Mr Kossayev, is and always was, the true ultimate beneficial owner of Carson Way and Bergtrans?"
>
> A. Yes, my Lord.
>
> MR JUSTICE TEARE: Did there come a time when Mr Kossayev was happy for his name to be recorded as the ultimate beneficial owner of those two companies?
>
> A. I don't know, my Lord, I don't know the facts of that. I don't know about any such facts."

199. It is therefore unclear on Syrym Shalabayev's evidence why Mr. Kossayev, in respect of whom Syrym Shalabayev said there was an arrest warrant and who had kept his identity as the true UBO secret for over two years, should choose July 2010 to come out into the open. There was no evidence that political conditions in Kazakhstan had changed making it "safe" for rich men to be revealed as the owners of their assets.

200. More generally, it seems improbable, as submitted by Mr. Smith, that a number of true UBOs (Syrym Shalabayev said that Mr. Kossayev, Mr. Burkitbayev and Mr. Pakhomov - whose names were on the 26 July list - were each true UBOs) should agree to be named as the true UBO of their companies at the same time, after having been the secret owner for some time for what Mr. Ablyazov and Syrym Shalabayev say are very good reasons.

201. Mr. Smith submitted that there were several matters which indicated clearly that Mr.Kossayev was another nominal UBO and not the true UBO of Bergtrans and Carsonway. First, those two companies had borrowed in excess of $200m. from the Bank and yet Mr. Kossayev had borrowed approx. £10,000 from the Bank to purchase a second hand car. He was therefore an unlikely true UBO of such companies. Second, the reference in respect of Mr. Kossayev suffered from the same defects as other references provided for other nominee UBOs, which suggested that he too was another nominee. Third, Syrym Shalabayev accepted that he operated Mr. Kossayev's email address, which also suggests that Mr. Kossayev was a nominee. Fourth, there is no evidence from Mr. Kossayev asserting his ownership of the two companies, something one would expect him to do if they truly were his companies and he had decided to be the declared UBO in July 2010.

202. As to these points Mr. Matthews replied, first, that there was meagre evidence of what the two companies were said to owe the Bank and that in any event, according to Syrym Shalabayev, there were reasons why a rich man might borrow even a small sum of money (to avoid having to disclose the source of his funds). Second, he said that there is nothing surprising in the references being in similar terms because they probably derived from a pro forma document. Third, he said that Mr. Shalabayev had merely said that he might have used the email address at the request of Mr. Kossayev but could not remember. Fourth, he said that since there was a warrant out for Mr. Kossayev's arrest that explained his reluctance to become involved in these proceedings. He also said that Mr. Kossayev might well fear that if he disclosed details of his wealth the Bank's lawyers might threaten to report him to the tax authorities and with other unidentified consequences.

203. Although the Bank did not explain why two changes were required to the UBO in February and July 2010 I consider it much more likely than not that Mr. Kossayev was merely another nominee UBO and that the changes to the UBO of Bergtrans and Carsonway were designed to make it more difficult for the Bank to link them with Mr. Ablyazov. Having regard to his answers to me I do not consider that Syrym Shalabayev gave firm or reliable evidence that the change of UBO to Mr. Kossayev was made because, in circumstances where Mr. Shalabayev wished to return companies to their true owners, the time came when Mr. Kossayev was happy for his name to be recorded as the UBO. Also, it seems improbable that three owners would choose to have their companies back in their own name at the same time. Finally, the taking out of a loan to buy a car does not appear to me to be the likely action of a man who owns companies which borrow substantial amounts from the Bank.

Conclusion with regard to FM Company, Bergtrans and Carsonway

204. There is now much more material before the Court than there was before the Court on the receivership application. That Mr. Ablyazov was the true beneficial owner of the shares in all three companies is indicated by (i) the speed of the payments recorded in

the Schedule C chart and the speed with which the information was obtained and (ii) by Mr. Ablyazov's lie that he received the Schedule C disclosure from Individual C which is only explicable by a desire to avoid mentioning the role of Mr. Udovenko and Syrym Shalabayev who were, successively, the UBOs of Bergtrans and Carsonway and probably of FM Company also (at any rate Syrym Shalabayev claims to have been the UBO of FM Company). In the case of FM Company, those two matters, coupled with there being only one explanation for the loans and payments by FM Company to Mr. Ablyazov's companies and for the payment of $41m. from Drey to FM Company, have made me sure that Mr. Ablyazov is the true beneficial owner of FM Company. I do not consider that Syrym Shalabayev's evidence that he was the owner of FM Company may be true. In the case of Bergtrans and Carsonway those two matters, coupled with the likelihood that Mr. Kossayev is another nominee UBO who was inserted to make it more difficult to trace those companies to Mr. Ablyazov, have also made me sure that Mr. Ablyazov is the true beneficial owner of Bergtrans and Carsonway.

205. Although the case against Mr. Ablyazov depends upon circumstantial evidence I have concluded that the only reasonable inference to be drawn from that evidence is that he was the beneficial owner of FM Company, Bergtrans and Carsonway.

206. It follows that when Mr. Ablyazov denied having any interest in those companies in his cross-examination as to his assets he gave false evidence. I am also sure that he had no honest belief that his denials were true and that he gave such evidence with the intention of impeding the administration of justice by seeking to frustrate the efficacy of the WFO. He therefore acted in contempt of court.

Allegation D1: Dealing with the assets of Stantis Limited

207. The Bank alleges that the rights to the repayment of certain loans totalling $80m. made by Stantis Limited, a Cypriot company, were assets of Mr. Ablyazov within the meaning of the WFO because he had "the power, directly or indirectly, to dispose of or deal with [those rights] as if [they] were his own." The Bank's case is that Stantis is a company which holds assets on Mr. Ablyazov's behalf. It has one director, Mr. Batyrgarejev, who does whatever Mr. Ablyazov tells him to do. The Bank says that Stantis was Mr. Ablyazov's creature. In December 2010 the repayment rights were assigned by Stantis to another Cypriot company, Nitnelav Holdings Limited, pursuant to novation agreements signed by Mr. Batyrgarejev. This was a dealing in assets by Mr. Ablyazov in breach of the WFO.

208. Mr. Ablyazov says that the repayment rights held by Stantis were not his assets within the meaning of the WFO. Stantis was not simply a vehicle for holding his assets but was in the business of providing finance for Ukrainian projects. Stantis' business was conducted independently of Mr. Ablyazov. In any event the repayment rights were assigned pursuant to an agreement, the June 2009 agreement, between Stantis and Alterson which preceded the WFO. All that Mr. Ablyazov did was authorise Mr. Batyrgarejev to execute the necessary documentation to formalise a transaction which had already become effective as a result of notices served by Alterson pursuant to the June 2009 agreement and not by any action of Mr. Ablyazov. The operation of the June 2009 agreement was said to have improved Stantis' balance sheet by US$8m. Mr. Matthews' argument in this regard is developed at pp.200-226 of his Closing Submissions.

209. There are at least two important issues of fact which must be resolved. The first is whether, as the Bank alleges, Stantis was nothing more than a company which held Mr. Ablyazov's assets and that it held the repayment rights in accordance with his instructions through Mr. Batyrgarejev. The second is whether, as the Bank alleges, the June 2009 agreement (together with the long form of the April 2007 loan agreement on which Mr. Ablyazov relies and the notices allegedly issued pursuant to the June 2009 agreement) were fabrications.

210. The evidence on which the Bank relies to establish that Stantis was nothing more than a company which held Mr. Ablyazov's assets and that it held the repayment rights in accordance with his instructions through Mr. Batyrgarejev was as follows:

i) Mr. Ablyazov's third witness statement dated 16 April 2010 in which he included Stantis as one of the companies by which he held his interest in BTA Ukraine. He did not identify Stantis as an operating company whose business might be damaged by the Receivership Order.

ii) The letter dated 12 July 2010 written by Mr. Ablyazov's then solicitors Stephenson Harwood to the Court offering certain undertakings in which, again, Stantis was listed as a holding company (in schedule 1) and not as an operating company (in schedule 7).

iii) Mr. Batyrgarejev's statement dated 4 June 2010 which refers to Stantis as a "holding company" or "nominee company" and not as an "operating company" or "underlying asset".

211. In response to that evidence it was said that:

i) Whilst Stantis held Mr. Ablyazov's interest in BTA Ukraine it had an operational role of providing finance for Ukrainian projects. In this regard reliance was placed not only on the evidence of Mr. Ablyazov but also on the evidence of the Bank's own witness, Mr. Aizhulov.

ii) The Bank's reliance on evidence given in relation to other aspects of this litigation was misplaced because it was given when Stantis' status in relation to the loans it had made was not in issue.

iii) The repayment rights held by Stantis were not held in accordance with Mr. Ablyazov's instructions but in accordance with Mr. Aizhulov's instructions.

212. In my judgment Mr. Ablyazov's third witness statement, Stephenson Harwood's letter written on his instructions and Mr. Batyrgarejev's statement constitute cogent evidence that Stantis was merely a holding company for Mr. Ablyazov's assets. Had Stantis been operating a loan business Stephenson Harwood would surely have been instructed by Mr. Ablyazov to include it in the list of operating companies in respect of whom a different form of undertaking was offered. It is true that those statements and letter were written before the allegation in respect of Stantis was made but I do not regard that evidence as less cogent on that account. If anything it makes them more cogent.

213. Mr. Ablyazov has now given evidence that Stantis was not merely a holding company but operated a business. However, for the reasons I have already given I am unable to accept that what he says is true merely because he says it is true. Moreover, it is contrary to what he said in his third witness statement and to the instructions he gave Stephenson Harwood.

214. The crucial evidential question is, it seems to me, the effect of Mr. Aizhulov's evidence. In the course of his evidence he said:

> "What I usually looked at at the time was the interest rate because in my opinion, it was important that there was -- because Stantis was providing finance to Ukrainian companies and they -- Stantis provided finance for certain interest and what I was looking at in the agreements I signed on whether -- at whether the interest rate is higher or lower than the interest rate from Stantis to Ukrainian companies. So it was just to make sure Stantis doesn't make any loss."

215. This evidence appears to support Mr. Ablazov's evidence that Stantis' role, at least in part, was to provide finance for Ukrainian projects. It also shows that persons other than Mr. Batyrgarejev took decisions concerning the activities of Stantis. Mr. Aizhulov had a power of attorney to act on behalf of Stantis.

216. In response to the reliance placed on Mr. Aizhulov's evidence Mr. Smith submitted that it was clear from Mr. Aizhulov's evidence that Mr. Ablyazov was "in control of the overall financing arrangements of the Ukranian projects" and that Mr. Aizhulov played "a relatively minor role drafting and executing documents, with the assistance of Eastbridge, to channel funds through Stantis when required by Mr. Ablyazov's Ukranian projects."

217. In his statement Mr. Aizhulov described Stantis as a "special purpose vehicle used in transactions where Mr. Ablyazov would organise funding for Ukrainian projects."

218. It is clear from Mr. Aizhulov's statement that the "Ukranian projects" were projects of Mr. Ablyazov and that when Stantis required money in connection with those projects Mr. Ablyazov made the appropriate arrangements with documentation coming from Eastbridge.

219. Was Stantis a "mere conduit" for channelling funds for Mr. Ablyazov's projects or did it carry on a lending business? Although the reference made by Mr. Aizhulov in his cross-examination to ensuring that Stantis did not make a loss suggests that it conducted a business I am sure, having regard to all of the evidence, that it did not. If it had done so Stephenson Harwood would have said so in its letter to me dated 12 July 2010. The fact that Mr. Batyrgarejev, who was the sole director of Stantis, was one of Mr. Ablyazov's trusted associates and did not, so far as Syrym Shalabayev was aware, act as a nominee for anyone other than Mr. Ablyazov, suggests that Stantis was a creature of Mr. Ablyazov. Mr. Batyrgarejev himself did not describe Stantis as an operating business.

220. I am also sure, for the same reasons, and notwithstanding Mr. Aizhulov's role in the affairs of Stantis and his power of attorney, that Stantis held its assets, in particular its rights to the repayment of monies, in accordance with Mr. Ablyazov's instructions.

221. I have therefore concluded that the debts owed to Stantis by Praym-Stroy, Galena and Max-Well were assets of Mr. Ablyazov within the meaning of the WFO.

222. In support of its case that the long form of the April 2007 agreement, the June 2009 agreement and the notices purportedly served pursuant to it were fabrications the Bank relied upon the following matters, amongst others:

i) The short form of the 2007 agreement was found both in the Bank's files and in the Big Yellow storage unit in North London. That suggests that the short form was genuine.

ii) Neither Mr. Ablyazov nor Syrym Shalabayev has suggested that the short form of agreement is not genuine.

iii) There are inconsistencies between the short form and the long form of the April 2007 agreement.

iv) Mr. Aizhulov, who purportedly signed the long form of the April 2007 agreement, has given evidence that he did not sign it.

v) Neither Mr. Ablyazov nor Syrym Shalabayev has produced the original of the long form of agreement, any contemporaneous documentation regarding the negotiation of the long form of agreement or an electronic copy of the long form of agreement.

vi) Mr. Aizhulov, who purportedly signed the June 2009 agreement, has given evidence that he did not sign it and that by the date of the apparent agreement he had refused to sign any more documents.

vii) Neither Mr. Ablyazov nor Syrym Shalabayev has produced the original of the June 2009 agreement, any contemporaneous documentation regarding the negotiation of the agreement or an electronic copy of the agreement.

viii) No contemporaneous documentation has been produced evidencing a threat by Alterson to accelerate payment allegedly pursuant to the long form of the 2007 agreement.

ix) Mr. Ablyazov gave incredible evidence that he had a poor filing system when seeking to explain why he could not produce the original notices served by Alterson.

x) The novation agreements contain no reference to the June 2009 agreement or to the notices.

223. In response to these matters Mr. Matthews submitted that both the short form and long form of the 2007 agreement may be genuine but if not then the short form must be rejected as a forgery. He relied upon the following, amongst other, matters.

i) The principal provisions of the long and short forms were consistent.

ii) The short form agreement contemplated that the agreement had to be executed and that further matters had to be resolved.

iii) The long form of agreement was in Russian and in English which is what one would expect of a transaction in the Ukraine.

iv) The long form of agreement was of a length that one would expect.

v) Whilst Mr. Aizhulov said that the signature on the long form of the 2007 agreement and on the June 2009 agreement was not his there was no expert evidence on the point.

224. Mr. Aizhulov gave evidence that the signature on the long form of the 2007 agreement was not his. For the reasons which I have given earlier in this judgment I have rejected the suggestion that he was motivated to give untrue evidence against Mr. Ablyazov. I consider that the evidence he gave to the effect that the signature on the document was not his was honestly given. He also gave it clearly and firmly. However, although a person may be expected to recognise his own signature and sought to explain why the signature was not his, I must consider whether it is possible that he was mistaken in saying that it was not his signature because he was only looking at a copy rather than the original and he was not an expert in handwriting. Having considered that possibility the following matters seem to me to support his evidence:

i) No witness suggested that the short form of the 2007 agreement was not genuine. It is likely that it was genuine given that copies of it had been found both in the Bank's records and in the Big Yellow storage unit in North London which contained documents emanating from Mr. Ablyazov's side.

ii) There were significant differences between the two forms of the agreement. The short form provided that early repayment could not be demanded whereas the other permitted acceleration of the debt. The one contained an English choice of law clause whereas the other provided for the law of the Seychelles. Since it was likely that the short form of agreement was genuine these significant differences suggested that the long form was not genuine. The suggestion that they are to be explained by the process of finalising and executing the long form of agreement seems to me unlikely in the absence of any recital to that effect in the long form of agreement.

iii) Mr. Shalabayev's evidence as to the circumstances in which he produced the copy of the long form of agreement in September or October 2011 was odd and implausible. He said that although he had a copy of the agreement on a drive given to him by Mr. Udovenko in 2009 he obtained the long form of the agreement from Mr. Kossayev because he wanted to check that it was the relevant document. When asked whether he still had the drive he said he had given it to Mr. Kossayev because Mr. Kossayev had asked for the drive. To hand over the drive in September or October 2011 without taking copies of the relevant documents when the contempt hearing was to take place in November 2011 is an odd thing to do. Further, he said that he had asked Mr. Kossayev for

the original of the long form. He replied that he would have to check but did not come back on that. If Mr. Kossayev really had said that I would have expected him to have been pestered to produce the original given its importance in this case. Finally, although Mr. Shalabayev said that Mr. Kossayev also sent him "letters" and "some documents" (which Mr. Shalabayev had had on the drive given him by Udovenko) no copies of any contemporary documents evidencing the negotiation of the longer form of agreement have been produced.

225. Mr. Ablyazov in his Fourth Affirmation dated 23 November 2011 relied upon the shortness of the short form of loan agreement as indicating that it could not have been the final agreement but the trial bundles contained similar short forms of loan agreements involving Mr. Ablyazov's companies. Moreover, Mr. Aizhulov explained that such short forms were acceptable because they were loans between companies within Mr. Ablyazov's group of companies. He described this loan as "an inter-company loan". It was "quite friendly" in the terms of interest rate, security and repayment. I accept this evidence. It is a strong indication that Alterson, like Stantis, was a creature of Mr. Ablyazov. There are other indications to the like effect. The short form of loan agreement was signed on behalf of Alterson by Mr. Udovenko. A structure chart attached to an email passing between Eastbridge employees in October 2008 indicated that the true UBO of Stantis was also the true UBO of Alterson. Since, for the reasons I have given, Mr. Ablyazov was the owner of Stantis this is a further indication that the loan agreement between Stantis and Alterson was an inter-group agreement. All these matters are inconsistent with Mr. Kossayev having been the true UBO of Alterson. Indeed on 28 April 2010 when the notices or demands allegedly given pursuant to the June 2009 agreement were being sent out Euroguard sent a document by hand to "Stelios" at Treppides Tower referring to someone else as the UBO of Alterson as from 20 May 2009. A similar document dated 31 August 2010 referred to Mr. Kossayev giving his consent to becoming UBO of Alterson but from 20 May 2009.

226. In these circumstances I am sure that Mr. Aizhulov is not mistaken in his evidence that he did not sign the long form of agreement relied on by Mr. Ablyazov and that it is a forgery.

227. Mr. Aizhulov also said that he did not sign the June 2009 agreement. This agreement is said (by Syrym Shalabayev) to have come about because Alterson threatened to accelerate the debt owed by Stantis. That was said to be the reason why Stantis agreed that it must assign to Alterson on demand its rights under the loan agreements between Stantis, as lender, and Praym-Stroy, Galena and Max-Well, as debtors. However, since the short and genuine form of the 2007 agreement provided for payment not later than March 2014 and that the lender was not entitled to demand payment ahead of schedule (whereas the long and fabricated form of the 2007 agreement provided for payment in March 2014 "unless the lender determine otherwise") Alterson was not in a position to threaten acceleration of the debt. That supports Mr. Aizhulov's evidence that he did not sign the June 2009 agreement. So do other circumstances, including the following:

i) No original of the June 2009 agreement or other supporting document has come to light or been produced by Syrym Shalabayev. Mr. Ablyazov said that his solicitors had an electronic version but none has been produced.

ii) The recitals to the novation agreements (which, though backdated, are not said to be forgeries) make no reference to the June 2009 agreement. On the contrary they say that Stantis "wishes to assign" the debts owed by Praym-Stroy (and the other two companies) to Nitnelav and that such assignment "will become effective…..upon the date of the registration of this deed with the National Bank of Ukraine." This is clearly not a reference to a situation in which Stantis is contractually obliged by the terms of the June 2009 agreement and demands served thereunder to "immediately assign" those debts. This suggests that the June 2009 agreement did not exist in December 2010 when the novation agreements were executed.

iii) Mr. Aizhulov gave evidence that by June 2009 he had informed Mr. Ablyazov that he was "no longer comfortable signing any documents" on behalf of his companies. This was consistent with his primary reason for leaving Ukraine in April 2009. I accept that evidence.

228. I am therefore persuaded so that I am sure that Mr. Aizhulov did not sign the June 2009 agreement and that it too has been fabricated. It follows that the demands made in April 2010 allegedly pursuant to the June 2009 agreement and signed by Syrym Shalabayev were also fabricated.

229. Having resolved those two important issues of fact the remaining issues concerning the Stantis allegation can be determined. The repayment rights in the name of Stantis were assets of Mr. Ablyazov. They were dealt with in December 2010 when they were assigned to Nitnelav. The attempt made on behalf of Mr. Ablyazov to justify the assignment depended upon documents which have been fabricated for the purposes of seeking to show that the assignment in December 2010 merely recorded an assignment which was pre-ordained by the June 2009 agreement which preceded the WFO. The assignment of the Stantis loans was therefore a dealing with Mr. Ablyazov's assets in breach of the WFO.

230. The assignments or novations were backdated to 2 July 2010 (in the case of the loan to Galena), to 6 October 2010 (in the case of the loan to Max-Well) and to 1 November 2010 (in the case of the loan to Praym-Stroy). These dealings in fact took place in mid-December 2010. (Mr. Matthews submitted that it had not been proved that the assignments were attached to the emails behind which they were placed in the bundle. But the similar text and formatting of the emails clearly suggests they were.)

231. On 19 October 2010 Mr. Ablyazov's appeal against my Receivership Order had been dismissed by the Court of Appeal and the appointment of the receivers had taken effect on 9 November 2010. Mr. Ablyazov sought permission to appeal from the Supreme Court. That application was dismissed on 25 November 2010.

232. Mr. Smith submitted that the assignments were backdated in an attempt to make them look as if they had been effected before the appointment of the receivers had taken effect. Mr. Matthews noted that Mr. Smith sometimes submitted that steps were taken in advance of the receivership application, sometimes in advance of the imminent appointment of the receivers and sometimes (as here) after the dismissal of the appeal against the receivership order. He said that there was no logic to this and that had steps been taken which were really connected with the receivership application, they

would have been taken once the application had been issued, not over a period of several months thereafter.

233. I accept that if a defendant is going to set about frustrating a receivership order he might well start to do so once he knows that an application for such an order had been made. However, it does not follow that steps taken later, after an order had been made, must be regarded as unconnected with the order. In the present case the assignment of the Stantis loans took place in December 2010 after the Court of Appeal and Supreme Court had dismissed appeals from the receivership order. The assignments were backdated to dates before the receivership took effect. It is difficult to think of a legitimate reason for so doing. Moreover, those who procured the assignments sought to justify them by means which involved the fabrication of documents. In such circumstances it seems to me that the only reasonable inference to draw is that the assignments, and the backdating thereof, were an attempt to frustrate the receivership order. Moreover, since the Stantis loans were assets of Mr. Ablyazov it is a further inevitable inference that he was complicit in the assignments. The assignments were signed by Mr. Batyrgarejev who takes his instructions from Mr. Ablyazov.

234. I have noted Mr. Matthews' point that there is no evidence that Nitnelav belonged to Mr. Ablyazov and that in those circumstances the argument that the assignment was to escape the reach of the receivers does not work. I agree that there is no such evidence (or at any rate none to which I was referred) but I do not consider that there must be such evidence in order for the argument to work. To secure for Mr. Ablyazov the benefit of the value of the Stantis loans does not require him to own Nitnelav. For there may be a transaction between Mr. Ablyazov and the owner of Nitnelav which means that putting the Stantis loans out of the reach of the receivers and into the possession of Nitnelav benefits Mr. Ablyazov. I accept that precisely how Mr. Ablyazov benefits by the transfer of the Stantis loans to Nitnelav is not known but I am nevertheless persuaded that he must have benefitted by it.

235. For these reasons I am sure that Mr. Ablyazov dealt with the Stantis loans in breach of the WFO and that he did so deliberately, not accidentally. He knew of the terms of the WFO and must have known of the assets held by Stantis and that he had been ordered not to deal with them. By dealing with them he thereby acted in contempt of court.

Conclusions and summary of reasons

236. Bubris: I find that Mr. Ablyazov has acted in contempt of court as alleged by the Bank. I am sure that he was the true UBO of Bubris because:

i) The appointment of Mr. Batyrgarejev as nominee UBO from April 2009 to February 2010 indicates that Mr. Ablyazov is the true UBO.

ii) The circumstances in which Mr. Batyrgarejev was removed from his appointment indicate that Mr. Ablyazov and Syrym Shalabayev did not wish information that Mr. Batyrgarejev was the nominal UBO to get into the public domain for fear that it would lead the Bank to conclude that Mr. Ablyazov was the true UBO of Bubris.

iii) The circumstances in which Mr. Sadykov was appointed the nominal UBO in September 2010, including the backdating of the letter dated 7 May 2010 from Mr. Sadykov, indicate that it was an attempt to hide Mr. Ablyazov's interest in Bubris.

iv) There is no reason why Mr. Sadykov, if he were the owner of Bubris, should choose to come out into the open as the true UBO in 2010.

237. Residential property: I find that Mr. Ablyazov has acted in contempt of court as alleged by the Bank (save with regard to Elizabeth Court).

238. I am sure that he was the true UBO of shares in Mount Properties, the registered proprietor of Carlton House because:

i) The money used for the purchase came from Sunstone. Sunstone is a company which was undoubtedly connected with Mr. Ablyazov and in all probability the shares in Sunstone were held for him by Mr. Udovenko.

ii) Both Mr. Ablyazov and Syrym Shalabayev gave untrue evidence that Syrym Shalabayev was the owner and seller of a uranium business when in fact Mr. Ablyazov was the owner and seller. That evidence was relied upon to show that Syrym Shalabayev had the means to purchase Carlton House. The lies can only have been told to hide Mr. Ablyazov's interest in Carlton House.

iii) The fact that no third party has applied to the English Court to challenge the inclusion of Mount Properties within the receivership order indicates that Mr. Ablyazov is the beneficial owner of Carlton House.

iv) The transfer of shares in Mount Properties in November 2009 was probably intended to distance Mr. Ablyazov from Carlton House.

v) The "lease" of Carlton House was a sham.

239. I am sure that he was the true UBO of shares in Lafe Technologies, the registered proprietor of Oaklands Park because:

i) The money used for the purchase came from Sunstone, with which Mr. Ablyazov was at least connected and in all probability owned, from Mega Property, of which Mr. Ablyazov must have been the beneficial owner and from Widley Worldwide, of which Mr. Ablyazov was the beneficial owner.

ii) Both Mr. Ablyazov and Syrym Shalabayev gave untrue evidence that Syrym Shalabayev was the owner and seller of a uranium business when in fact Mr. Ablyazov was the owner and seller. That evidence was relied upon to show that Syrym Shalabayev had the means to purchase Oaklands Park. The lies can only have been told to hide Mr. Ablyazov's interest in Oaklands Park.

iii) The fact that no third party has applied to the English Court to challenge the inclusion of Lafe Technology within the receivership order indicates that Mr. Ablyazov is the beneficial owner of Oaklands Park.

240. I am sure that Mr. Ablyazov was the true UBO of shares in Bensbourogh Trading, the registered proprietor of 17 Alberts Court because:

i) The fact that no third party has applied to the English Court to challenge the receivership order with regard to Bensbourogh Trading indicates that Mr. Ablyazov is the beneficial owner of 17 Alberts Court.

ii) Salim Shalabayev's evidence that he is the beneficial owner of 17 Alberts Court was not credible.

iii) Syrym Shalabayev arranged the purchase. He did not do so on behalf of his brother and did not claim to have done so on his own behalf or on behalf of third party. He must have done so on behalf of Mr. Ablyazov.

241. Schedule C Companies: I find that Mr. Ablyazov has acted in contempt of court as alleged by the Bank.

242. I am sure that he was the beneficial owner of shares in FM Company, Bergtrans and Carsonway because:

i) The speed with which the payments recorded in the Schedule C disclosure were made and the speed with which the information was obtained gives reason to believe that they were owned by Mr. Ablyazov.

ii) The only explanation for Mr. Ablyazov lying as to Individual C's role in providing the Schedule C disclosure is that he wished to avoid mentioning the role of Mr. Udovenko and Syrym Shalabayev who were the nominee UBOs of those companies.

iii) The only explanation for the loans and payments made by FM Company to Mr. Ablyazov's companies and for the payment of $41m. by Drey to FM Company is that FM Company is one of the companies owned by Mr. Ablyazov.

iv) It is likely that Mr. Kossayev was inserted as a nominee UBO of Bergtrans and Carsonway to make it more difficult to trace those companies to Mr. Ablyazov.

243. Stantis: I find that Mr. Ablyazov has acted in contempt of court as alleged by the Bank. I am sure that he dealt with his assets in breach of the WFO because:

i) Stantis was used as a vehicle to hold Mr. Ablyazov's assets, including the right to repayment of loans in the name of Stantis.

ii) The long form of the May 2007 agreement and the June 2009 agreement were forgeries.

iii) The novations in December 2010, backdated to dates before the receivership came into force, were an attempt to frustrate the receivership order.

244. I will decide what penalty is appropriate after hearing counsel for Mr. Ablyazov.

APPENDIX 1

JSC BTA BANK v ABLYAZOV: AGREED CHRONOLOGY

13 August 2009	Blair J grants a without notice freezing injunction against Mr Ablyazov and others (the "**Freezing Injunction**"); the Bank issues the Drey proceedings.
21 August 2009	Teare J dismisses Mr Ablyazov's application to stay the disclosure aspects of the Freezing Injunction until after the return date (listed for November 2009).
30 September 2009	The Court of Appeal dismiss Mr Ablyazov's appeal against the Order of Teare J dated 21 August 2009: see [2010] All ER (Comm) 1029; Mr Ablyazov gives disclosure later the same day.
16 October 2009	Teare J orders that Mr Ablyazov attend to be cross-examined: see [2009] EWHC 2833 (QB).
27 October 2009	Day 1 of Mr Ablyazov's cross-examination.
12 November 2009	Teare J continues the Freezing Injunction against Mr Ablyazov and others.
18 November 2009	Day 2 of Mr Ablyazov's cross-examination.
15 December 2009	Clyde & Co, Mr Ablyazov's then solicitors, provide a schedule containing further information relating to Mr Ablyazov's assets.
28 January 2010	The Bank's solicitors are given permission to share Mr Ablyazov's Schedule C disclosure with the Bank.
12 February 2010	The BVI High Court makes a Norwich Pharmacal order against the Totalserve Trust Company (the registered agent of, among others, Bubris Investments Limited).
19 February 2010	The Bank applies for the appointment of receivers over Mr Ablyazov's assets (the "**Receivership Application**"). Mr Ablyazov files his evidence on 16 April 2010.
16 March 2010	Mr Ablyazov issues an application for clarification of the terms of the Freezing Order (the "**Clarification Application**").
25-28 May, 8 June 2010	Receivership Application heard.
16 July 2010	Teare J accedes to the Receivership Application and decides the Clarification Application in Mr Ablyazov's favour: [2010] EWHC 1779 (Comm).
29 July 2010	The Bank serves Bubris Investments Limited with the freezing injunction granted by Henderson J in the AAA proceedings on 26 July 2010.
4-6 August 2010	The terms of the receivership order are settled (the "**Receivership Order**" and "**Receivership**").
25 August 2010	The Bank applies to commit Mr Kythreotis for contempt of court; the hearing takes place on 21/22 September 2010, with the question of sentence adjourned to 29 September 2010 and subsequently to 19 October 2010: see [2011] EWCA Civ 1241, [17] – [24].

13 October 2010	The Bank issues a contempt application against Jason Hercules in respect of alleged breaches of the freezing injunction in the AAA Proceedings, which is listed to be heard on 2 November 2010, but the Bank and Mr Hercules agree to adjourn the committal hearing until 19 November 2010, and then until 2 March 2011.
19 October 2010	Mr Ablyazov's appeal against the making of the Receivership Order is dismissed, and the Bank's appeal against the decision of Teare J on the Clarification Application succeeds: [2010] EWCA Civ 1141.
9 November 2010	The appointment of receivers takes effect.
10 November 2010	The Bank executes a search order against Mr Hercules in Cyprus.
25 November 2010	The Supreme Court refuses Mr Ablyazov permission to appeal.
26 January 2011	Teare J accedes to the Bank's without notice application to add the shares in 212 additional companies to the Receivership. Those companies include Bubris Investments Limited, Bergtrans Contracts Corp, Carsonway Limited and Rocklane Properties Limited.
28 January 2011	Peter Smith J accedes to the Bank's first Norwich Pharmacal application against Yahoo! UK Limited. Peter Smith J grants further orders on 2 March and 14 April 2011.
3 February 2011	Henderson J grants a search order in respect of a lock-up at the Big Yellow Self-Storage Unit in North London. That order is executed on 7 February 2011.
8 April 2011	Teare J accedes to the Bank's further without notice application to add the shares in 389 additional companies to the Receivership. Those companies include FM Company Limited, Lafe Technology Limited, Mount Properties Limited and Bensbourogh Trading Inc. The Order is served on Mr Ablyazov on 15 April 2011.
15 April 2011	The Claimant is granted permission to discontinue the AAA Proceedings as against Jason Hercules.
15 April 2011	The Nicosia District Court accedes to the Bank's application for a search order against Euroguard Assets Limited (executed that day).
16 May 2011	The Bank issues its contempt application against Mr Ablyazov (the "**Contempt Application**").
27 May 2011	Teare J accedes to the Bank's further without notice application to add the shares in 35 additional companies to the Receivership. Those companies include Smartwhere Limited.
16 June 2011	Syrym Shalabayev is committed to prison for 18 months for contempt of court: see [2011] EWHC 2908 (Ch).
28 June 2011	Teare J gives directions on the Contempt Application: see [2011] EWHC 1522 (Comm).
7 October 2011	Teare J refuses Mr Ablyazov's application to adjourn the trial of the Contempt Application: see [2011] EWHC 2545 (Comm).
26 October 2011	Christopher Clarke J accedes to the Bank's funding application: see [2011] EWHC 2664 (Comm).

28 October 2011	The Court of Appeal allows the Bank's appeal against Proudman J's refusal to commit Mr Kythreotis to prison, and imposes a sentence of 21 months: see [2011] EWCA Civ 1241.
23 November 2011	Pre-trial review.
28 November 2011	The Court of Appeal dismisses Mr Ablyazov's appeal against Teare J's Order of 28 June 2011: see [2011] EWCA Civ 1386.
30 November 2011	Trial of Contempt Application commences.

Appendix 2 : Not to be published without the Court's permission