

Claim no 2009  
Folio 1099

Court No 8  
Neutral Citation Number: 2016 EWHC 900  
(Comm)

Royal Courts of Justice  
Rolls Building  
London EC4

23 March 2016

**Before:**

**MR JUSTICE TEARE**

---

BETWEEN:

**JSC BTA BANK**

Claimant/Respondent

-v-

**MUKHTAR ABLYAZOV and ILYAS KHRAPUNOV**

Defendant/Applicant

## **Approved Ruling**

### **MR JUSTICE TEARE:**

1. This is an application by the second defendant to vary, as I understand it, an order made by Popplewell J on 6 November. The history of the matter is that, on 17 July 2015, Males J issued a worldwide freezing order against Mr Khrapunov. Paragraph 7 of that order required Mr Khrapunov within ten days of service of the order to inform the applicants of all his assets worldwide and also of any assets administered by him for Mr Ablyazov.
2. On 11 September 2015 Mr Khrapunov visited a Swiss justice building following receipt of a letter requesting that he attend to collect a document. The letter did not specify the nature or contents of what was to be collected. He attended and presented the letter he had received.
3. In response the teller presented a document to sign to accept service. He was not given the documents, and so he did not know that the documents contained a freezing order. He enquired whether the documentation was all in English and he was told it was whereupon he refused to accept service. There is a document in volume 6, tab 36, page 1298 which appears to contain a signature by Mr Khrapunov dated 11 September in which he refuses either to accept what he is being offered or refuses to do something.
4. Mr Samek tells me, and it is not challenged, that under Swiss law in order for service to be effective service has to be of documents in the Swiss language. These documents were not in Swiss and so there was no service.
5. It is accepted that on 26 October Mr Khrapunov did receive a copy of the worldwide freezing order and he accepts that on that day he was served.

Accordingly, looking at Males J's order, Mr Khrapunov was obliged to give disclosure of his assets within ten days of service of the order.

6. Mr Smith cannot say that 11 September was service of that order but by concession it is accepted that the order was served on 26 October. Accordingly, Mr Khrapunov ought to have given disclosure within ten days of 26 October.
7. That was the context in which the matter came before Popplewell J on 6 November. The bank was represented. Mr Khrapunov was not represented nor, I apprehend, was the witness statement of Mr Jenkins from which I have taken the details of what happened on 11 September, available to the judge.
8. He made this order:

"The second defendant shall comply with paragraph 7 of the freezing order as follows: in respect of paragraph 71A of the freezing order, by 4 pm on 13 November 2015, giving disclosure of his asset position as of 11 September."
9. The second defendant was given the right to apply to set aside or vary this order and Mr Samek on behalf of Mr Khrapunov now applies to vary that order so that his client is obliged to give disclosure of his asset position not as of 11 September 2015 but as of 26 October 2015.
10. Normally, the question as to the date to which the asset position must relate does not feature in the worldwide freezing order because, of course, the assumption is that he will give disclosure within the time ordered and he will give disclosure of his asset position as of the date on which he does so, but since he did not do so the question has arisen as to what is the date by reference to which the asset position must be disclosed.
11. Since 11 September is not the date of service I do not consider that I can properly

order that the asset position be stated as of that date. Mr Smith says this is absurd, firstly because it is clear that Mr Khrapunov understands English. He has written letters in English. That is true. But had he complied with the order he would not have been complying with it or would not have been bound to comply with it on 11 September because there had not yet been service.

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

13. I should add that Mr Smith also said that there is a danger in acceding to Mr Samek's submission because in circumstances where Mr Khrapunov probably appreciated that what was in the bundle of documents was a freezing order, there is a risk that he then, as of 11 September, set about dealing with Mr Ablyazov's assets. There may be such a risk but for the reasons I have given it does not appear to me that I can properly order that the asset position be stated as of the 11 September. It should be in accordance with Mr Samek's concession as of 26 October.