Neutral Citation Number: [2018] EWHC 1368 (Comm)

Case No: CL-2015-000549

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
COMMERCIAL COURT (QBD)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 08/06/2018

Before :

PATRICIA ROBERTSON QC (Sitting as a Judge of the High Court)

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Between :

JSC BTA BANK	**Claimant/ Applicant**
- and -	
(1) MUKHTAR ABLYAZOV	**First Defendant**
(2) ILYAS KHRAPUNOV	**Second Defendant/ Respondent**

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Stephen Smith QC and Tim Akkouh (instructed by **Hogan Lovells International LLP**) for the **Claimant**
The First Defendant was not represented
Charles Samek QC and Marc Delehanty (instructed by Hughmans Solicitors LLP) for the Second Defendant

Hearing dates: 13 March 2018

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Judgment Approved

Patricia Robertson QC:

Introduction

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

Background

2. Mr Khrapunov and the first defendant ("Mr Ablyazov") are each subject to a worldwide freezing order ("WFO"). In previous litigation between the Bank and Mr Ablyazov, a WFO was made against Mr Ablyazov on 13 August 2009 (and continued on 23 November 2012) ("the Ablyazov WFO"). I will not rehearse in any detail the background to the Ablyazov WFO, which has been set out many times in other judgments. Mr Ablyazov has fled the jurisdiction and has taken no part in this

litigation, which is being fought out between the Bank and Mr Khrapunov. By this claim, the Bank alleges that Mr Khrapunov has been involved in diminishing the value of Mr Ablyazov's assets, in the knowledge that Mr Ablyazov was subject to a WFO obtained by the Bank in that previous litigation, and that Mr Khrapunov and Mr Ablyazov have conspired together to prevent the Bank making recoveries in respect of the monies that Mr Ablyazov misappropriated from the Bank, in respect of which the Bank has obtained judgments against Mr Ablyazov in that litigation. A WFO was made against Mr Khrapunov in this litigation on 17 July 2015 (and continued on 23 March 2016) ("the Khrapunov WFO"). The Khrapunov WFO restrains dealings both with Mr Khrapunov's personal assets and with Mr Ablyazov's assets (the latter also being subject to the Ablyazov WFO).

3. The agreed procedural chronology shows how very frequently this matter has been before the Courts since this action began in July 2015. In the time since I heard this application, other issues arising in this litigation have been the subject of a judgment in the Supreme Court (*JSC BTA Bank v Khrapunov* [2018] UKSC 19) and in the Court of Appeal (*JSC BTA Bank v Khrapunov* [2018] EWCA Civ 819). As the Supreme Court observed (at [1]), this is litigation on a grand scale. Whilst there is only very limited information in the materials before me as to the extent of Mr Khrapunov's costs, it is reasonable to assume that they are likely to be on a broadly comparable scale, given the extent of legal activity (measurable by the number of judgments to which this litigation has given rise to date).

4. Mr Khrapunov has said that his mother is funding his legal expenses. The Bank's application was made on the basis that she does not appear to have sufficient means of her own to do so and that there is reason to believe she is funding her son's legal expenses from funds belonging to Mr Ablyazov, which are subject to both of the WFOs. In the course of the hearing, the Bank developed an alternative argument that Mr Khrapunov may be using concealed assets of his own, in breach of the Khrapunov WFO. (I will have to say more about that alternative, below.) Either way, the issue is whether there are sufficient grounds for concluding that disclosure should be ordered in order to ensure that the WFO can be effectively policed.

5. A second application, by which the Bank sought to release its legal team from confidentiality undertakings given in, and restrictions imposed by, three orders previously made, had been opposed but was consented to the day before the hearing. (This related to the undertakings given in recitals to the order of Mr Justice Phillips on 20 January 2016, restrictions imposed by paragraph 6(1) of the order of Mr Justice Teare on 23 March 2016 and restrictions imposed by paragraph 4 of the order of Mr Justice Popplewell on 6 November 2015.) I made the order sought and the hearing took place on the basis that confidentiality was lifted in respect of the material in the confidential bundles.

6. I should note that the time estimate for the two applications was clearly inadequate – dealing with just the remaining live application took a longer than normal Court day and, even then, what emerged was that it was necessary for me to read and consider material to which I had not been directed in pre-reading and which there was not sufficient time to absorb during the course of the hearing itself.

7. There is perhaps a tendency, when a matter is so frequently before the Courts, to assume that successive judges can somehow magically acquire, as if by osmosis, the

knowledge of the case which those judges who have dealt with it on previous occasions have acquired. Both sides need to remind themselves of the importance of encapsulating, in a manageable form, everything that is necessary to a given decision, by a given judge, on a given occasion. There is otherwise a risk of relevant material being overlooked or misunderstood by the judge, or of one side or another being taken by surprise in respect of what material is relied upon for the purposes of the application that is in hand.

8. In the end, for reasons further explained below, I do not think Mr Khrapunov can realistically complain that he has been taken by surprise or prejudiced in his ability to meet this application. However, the way in which the matter developed was not, if I may say so, best designed to assist the Court in its task of fitting this one piece into a rather large, complex and developing jigsaw.

The applicable principles

9. The Khrapunov WFO contains the standard requirement (at paragraph 9(1)) that before spending money on legal expenses Mr Khrapunov must tell the Bank's solicitors where the money is to come from. The information supplied, to date, in that respect is that Mr Khrapunov's mother is meeting his legal expenses. On the basis that his legal expenses are not being met from frozen funds, Mr Khrapunov's position is that there is no obligation under paragraph 9(1) of the WFO to provide any further disclosure.

10. This is not an application for committal. I am not deciding whether there has been a breach of paragraph 9(1) on the footing that Mr Khrapunov is, in fact, meeting his legal expenses from frozen funds without making full and proper disclosure, as required by that paragraph. Rather, the issue before me is whether Mr Khrapunov should be ordered to make disclosure because he may be doing so.

11. The Order sought is that Mr Khrapunov supply further detail and supporting documentation as to the source of the funding of his legal expenses, to the best of his ability and having made reasonable inquiries (including making inquiries of his mother). The information sought would include, for example, identifying the ultimate source from which she has obtained the funds, any intermediary entities and (so far as available to Mr Khrapunov) bank statements showing the flow of funds and documents evidencing ownership.

12. This is not a proprietary claim (where additional considerations would apply); however, the Court is concerned to ensure that its Orders are effective and may order disclosure in relation to the source of funds used to meet legal expenses for that purpose.

13. I take the correct approach to be as set out by Christopher Clarke J in *JSC BTA Bank v Ablyazov* [2011] EWHC 2664 (Comm) at [47]: "The jurisdiction is essentially protective: its purpose is to ensure that assets are not disposed of in (disguised) breach of the freezing order. It is not, I think, necessary to set a particular threshold which the claimant must cross in order to secure such an order. The order may be made if it is just and convenient to make it in order to ensure that the injunction is effective. There must, therefore, be grounds to believe that there is a real risk that the injunction may be being broken. Whether the order is in fact made is likely to depend on the

strength of those grounds and the considerations which militate in favour and against making such an order."

14. Similarly, in *JSC Mezhprom Bank v Pugachev* [2017] EWHC 1847 (Ch) at [71], Birss J articulated the principle as being that the court may make such an order where there is, "a properly arguable case that the funding is or may be from frozen funds".

15. In circumstances where the Claimant is applying for an order for disclosure, it seems to me it is for the Claimant to establish that there are adequate grounds for making the order. There was some debate before me as to what was to be drawn from the extempore judgment of Peter Smith J in *JSC Bank v Solodchenko* (unreported) 17th January 2011, where (at page 65 of the transcript) he appeared to say it was for the Defendant to show there was no possibility of his legal expenses being funded in breach of the order. I take that passage to do no more than acknowledge that on the facts of that case the evidential burden had passed to the Defendant because the Claimant's evidence was such as to establish a risk that frozen funds were being used. Certainly, in both of the subsequent cases to which I have referred, above, the approach taken, after having cited the judgment of Peter Smith J, was to examine whether the Claimant had established the risk and then to consider discretionary factors.

16. In each of those cases, on the facts, the evidence was such as to establish "strong ground" and "good reason" (*JSC BTA Bank v Ablyazov* [2011] EWHC 2664 (Comm) at [71]) or that "there was a properly arguable case that it was likely" (*JSC Mezhprom Bank v Pugachev* [2017] EWHC 1847 (Ch) at [81]) that the funds for legal expenses were coming from funds frozen by the WFO. However, those phrases express the Court's view of the strength of the evidence before it in those particular cases, rather than setting a threshold which necessarily has to be met before an order can be made. Evidence may be such as to establish a risk which is real, and not fanciful, of a breach of the WFO, without being "strong" or making it "likely" that there is a breach of the WFO. As Christopher Clarke J put it, the strength (or otherwise) of the evidence is then a factor which needs to be weighed with other considerations for and against making an order.

17. Whilst, in principle, the Court will be alert to the need to police its own orders effectively, it must also be astute to prevent a WFO becoming an instrument of oppression.

18. A further legal issue emerged quite late in submissions, namely as to the extent to which it was open to me to rely upon judgments in other litigation relating to Mr Ablyazov, to which Mr Khrapunov himself was not a party, as establishing an arguable case that the monies being used to fund Mr Khrapunov's legal expenses may be funds that are subject to the WFOs, as assets of Mr Ablyazov. The parties each submitted further short written submissions and additional authorities on that point.

19. The following principles appear to be settled and uncontroversial:

    i) This Court cannot rely upon a bare finding of a prior Court in a matter in which Mr Khrapunov was not a party or privy: *Hollington v Hewthorn & Co Ltd* [1943] KB 587. The rationale for that rule is that fairness requires that this Court must decide on the basis of the evidence before it, rather than simply

adopting the opinion of another Court (including when that other Court was making its findings of fact on the evidence that was before it): *Rogers v Hoyle* [2014] EWCA Civ 257 at [39]-[40] per Christopher Clarke LJ (approving the reasoning of Leggatt J at first instance, at [2013] EWHC 1409 (QB), in particular at [93], [101] and [104]).

ii) However, this Court can take into account the substance of the underlying evidence as set out in prior judgments (such as the contents of documents or the evidence of witnesses), giving this such weight as is appropriate (and on the basis that it is entirely open to Mr Khrapunov to challenge that evidence and adduce other evidence): *Rogers v Hoyle* [2013] EWHC 1409 (QB) at [115]-[117]; [2014] EWCA Civ 257 at [54] and [99]; and *JSC BTA Bank v Ablyazov and another* [2016] EWHC 3071 (Comm) at [24]. Furthermore, as detailed below, some of the same underlying evidence was, in fact, also before me.

20. I do not think it is necessary, or desirable, for me to travel beyond that statement of the principles. Whilst the Bank submitted (by way of its supplemental submissions after the hearing) that it was open to me to adopt findings made in the litigation involving Mr Ablyazov, to which Mr Khrapunov was not a party, as long as this was "not unfair", I am not satisfied that that is a correct reading of the cases to which I was referred and, moreover, having regard to the procedural history of this matter to date, it seems to me far preferable to deal with this application on a basis which, as far as possible, avoids the risk of encouraging an appeal on a point of law.

21. As to Eder J's reasoning in *Okritie International v Gersamia* [2015] EWHC 821 (Comm) at [23], I take that to mean no more than that a later Court, having as evidence before it an earlier Court's account of the underlying documents and witness evidence, is entitled (but not bound) to reach for itself the same findings of fact as those reached by the earlier Court on that evidence. That is covered by paragraph 19.ii) above. Eder J cannot have intended to say that the earlier findings of fact entitle a later Court to arrive at the same conclusions without exercising its own judgment, because that would be directly contrary to the principles summarised at paragraph 19.i) above.

22. If and to the extent that *Okritie International v Gersamia* [2015] EWHC 821 (Comm) was treated by Cranston J in *JSC BTA Bank v Ablyazov and Shalabayev and another* [2017] EWHC 2906 (Comm) (at [28]-[29]) as authority for any broader approach than I have set out above, then it seems to me that the correctness or otherwise of that approach should be left to be determined on another occasion where it necessarily arises. For the purposes of this application, for the reasons dealt with below, it is sufficient for me to apply the uncontroversial principles summarised at paragraph 19.

Relevant findings in previous judgments

23. For the reasons set out above, I do not take findings in previous judgments as between the Bank and other parties as being in themselves a basis for my own analysis, as opposed to those judgments providing a convenient summary of underlying evidence, some of which is relevant to the issues before me. That evidence is addressed below.

24. Matters have moved on, in a significant respect, since the hearing before me, in that certain findings have now been made directly in this action, which are binding on Mr Khrapunov, and which are highly relevant to this application. Specifically, the Court of Appeal gave judgment on 24 April 2018 (following a hearing on 27 March 2018) dismissing Mr Khrapunov's appeal in respect of the order that he be cross-examined in relation to assets he either owns or controls: *JSC BTA Bank v Khrapunov* [2018] EWCA Civ 819.

25. The Court of Appeal noted at [8] that the effect of the prior rulings in this action made by Teare J and Phillips J (to which I was also referred) was such that, "we proceed on the footing that the Bank has, at the least, a good arguable case that the appellant has lied when purporting to provide information pursuant to the freezing order about the non-personal assets" (i.e. the assets which the Bank alleges he has controlled on behalf of Mr Ablyazov).

26. The Court of Appeal went on to hold at [18], having reviewed the evidence as to the disclosure given by Mr Khrapunov as to his own assets (which is also before me) that "the Bank has a good arguable case that [Mr Khrapunov] has lied in the disclosure he has given in relation to his personal assets in the same way that it has a good arguable case that he has lied in the disclosure he has given in relation to the non-personal assets".

27. At [94], having considered Mr Khrapunov's appeal against the Order requiring him to attend for cross-examination, the Court of Appeal held that, "the Bank has made out a strong case that the appellant has been involved in assisting in a massive international fraud and is concealing evidence about relevant assets. The public interest in the court trying to give maximum practical effect to the freezing order it has granted against him and in being seen to do so is strong."

The evidence on this application

28. The Bank's evidence in support of this application was set out in the Fifth Witness Statement of Mr Lewis, of Hogan Lovells. The Bank pointed to its own legal costs (in excess of £2 million) and questioned how Mr Khrapunov was funding the costs on his own side, given the striking paucity of assets of his own which he had disclosed in response to the Order. The Bank took issue with his claim that his mother was funding the costs on the basis, in summary, that: (a) her own website, describing her business history as a "visionary Kazakhstan businesswoman", does not identify any ongoing businesses and suggests she is "unlikely to have acquired significant wealth" by reason of her sales of her past businesses, given what she herself says about the circumstances in which those business were sold (essentially that she was forced to suspend her businesses and sell up at less than their true value because of political pressure "originating from the governing powers"); (b) she is also funding substantial legal costs (to date some £0.5 million) for Mr Ablyazov's son, purportedly by way of a loan, when it is not obvious why she would agree to do this for someone who is not a close family member (his sister is Ms Khrapunova's daughter-in-law) and the more obvious explanation is that she is acting as a channel for funding passing from Mr Ablyazov to his son; (c) disclosure obtained, pursuant to a Norwich Pharmacal Order, from Mr Aggarwal, a Dubai-based corporate services provider, who administered assets on the instructions of Mr Khrapunov, shows (at least) that Mr Khrapunov planned to place in the name of the Classic Design Trust, with his mother as

beneficiary, certain assets under his control, purportedly owned by individuals known to have previously acted as nominees for Mr Ablyazov (as further described below), and that he may have actually followed through on that intention. I address the documentation obtained from Mr Aggarwal and his explanations of that documentation in more detail below.

29. Mr Khrapunov's Fourth Witness Statement addresses the application to lift confidentiality (which ultimately was conceded) and in that context expressed concern that revealing to the Bank that his mother is the funder will expose her to pressure from the Bank or the Kazakhstan authorities to dissuade her from continuing funding. Mr Khrapunov himself has not provided a witness statement responding to that of Mr Lewis in respect of the funding application, although he had previously filed affidavitsconfirming his disclosure in respect of assets managed on behalf of Mr Ablyazov and in respect of his own assets. The former states that he has not administered any assets on behalf of Mr Ablyazov since 1 January 2013 and that he does not know of the nature of any interest Mr Ablyazov may have had in the assets after 1 August 2009. The latter identifies as his sole personal asset his interest in the Vilder Foundation, which owns a chain of companies whose worth is in doubt given that the two for which a value is provided appear either to be subject to bankruptcy proceedings or in insolvent liquidation. According to this disclosure he does not own a home or a car or a bank account worth in excess of £10,000. As I have noted above, the Court of Appeal has held there to be a good arguable case that his disclosure in these two affidavits is not truthful.

30. The evidence filed on behalf of Mr Khrapunov in opposition to this application comprises a witness statement from his mother and from his solicitor, Mr Jenkins.

31. Ms Khrapunova states that the funds used to pay her son's legal expenses are 100% hers but declines to provide any further detail on the basis that the information is confidential to her, providing it would be an unjustified intrusion and she is concerned that the authorities in the Republic of Kazakhstan would make use of it to further persecute and intimidate her. (Her position is that legal proceedings making allegations of corruption that are currently on foot against her, and others of her family, in California and Switzerland are politically motivated.) She says her website does not purport to be an up-to-date source of information about her assets. She states that she is not prepared to provide the information sought even if confidentiality undertakings are provided, because she would lose control over it, not being a party to the proceedings. She says she has had no involvement with the Classic Design Trust.

32. Mr Jenkins objects to the fact the Bank first questioned the source of funds many months after first having been told that Ms Khrapunova is paying the legal expenses and that the Bank kept the Aggarwal disclosure "up their sleeves" until it was deployed in Mr Lewis's witness statement. He suggests that the motivation for the application is to deter Ms Khrapunova from continuing to pay her son's legal fees and thus prevent Mr Khrapunov from having a properly funded legal team. He links this to the Bank's application to lift the confidentiality restrictions, suggesting this "has resonance" with Ms Khrapunova's concerns that the Bank has other purposes in seeking the disclosure (i.e. that information about her assets will end up in the hands of the City of Almaty and the Kazakh state and will be used against her in the litigation they are conducting).

33. The Aggarwal disclosure includes:

i) An email dated "03/05/2012" with the subject line "Ilyas Trust formation and registration" giving instructions to proceed with the preparation of a number of trusts, including the Classic Design Trust. Ilyas is Mr Khrapunov's first name.

ii) An application to form a trust named the Classic Design Trust, with Ms Khrapunova as ultimate beneficiary, and an agreement between Ms Khrapunova, an Administrator and a Nominee for the provision of nominee services to that trust, both dated 26 March 2012, and a Deed of Trust in her favour, dated 27 March 2012. Those dates would fit with the above-mentioned email, assuming the email uses the American dating convention and hence dates to 5 March 2012. The documents are unsigned but that would be consistent with them being the documents prepared by Mr Aggarwal for signature, since of course he would only have had soft copies of signed documents if these had been scanned. (For reasons Mr Aggarwal explained in his affidavit, there are no hard copy documents in his disclosure.)

iii) A flowchart in relation to the "N Project", dated 02.10.2013, which Mr Aggarwal explains as relating to monies he understood to belong to the Petelin family, but which he was managing on instructions from Mr Khrapunov. This shows a substantial flow of funds coming from entities named as Claremont and Sartfield, some $69m of which passed to Vilder Company SA as loans and $5.56m is shown as transferred to Classic Design Trust. Mr Aggarwal explains in his affidavit that the flowcharts may not be the most up-to-date versions, as opposed to what he happened to have on his laptop. He says that he believes the transfer to Classic Design Trust was to fund an investment on behalf of the Petelin family, via various entities, but that this did not go ahead and "from memory" the money was returned to Crownway, the entity which acted as the distribution point for most of the funds shown as coming in. I was also referred to a chart headed "New Project – September 2013" which showed 10m passing to Vilder Company SA and a "gift into trust" of $10m to Classic Design Trust, identified as "Mum". The chart also shows various other transfers from Crownway to others of the trusts named in the email of instructions referred to at (i) above, described as "P's wife" or "P's son".

iv) Another flowchart, headed the A Project, is described by Mr Aggarwal as relating to funds he understood to belong to Mr Amangeldiyev, again managed on instructions from Mr Khrapunov.

v) An email dated "06/04/2012" (which again, may be the American dating convention and hence 4 June 2012) relates to the trustee of the Classic Design Trust being changed, which would appear to confirm that the trust was established.

34. Those documents show that (in addition to transferring $69m of funds to Vilder Company SA) it was intended to place, ostensibly in Ms Khrapunova's beneficial ownership, funds controlled by Mr Khrapunov (whatever their origin, a point I come back to below). Whether those funds remained in the Classic Design Trust is not certain, given what Mr Aggarwal says. However, he qualified that as being from memory and, moreover, he also says that he was side-lined and had minimal

involvement after the relationship with Mr Khrapunov deteriorated in late 2013. It remains possible, on the evidence before me, that some funds originating from Claremont and Sartfield were left in the Classic Design Trust. There is also an unanswered question as to what has become of the funds that went into Vilder Company SA.

35. I was referred briefly at the hearing to some passages in Mr Aggarwal's affidavit, producing that disclosure. I have since considered that affidavit in more detail.

36. It is Mr Aggarwal's evidence, in his First Affidavit filed in response to the Norwich Pharmacal Order, that he took his instructions in relation to the management of all of these assets from Mr Khrapunov. He says his understanding was that Mr Khrapunov was managing the assets on behalf of Mr Amangeldiyev (in respect of the A Project assets) and the Petelin family (in respect of the N Project assets). I note that Mr Aggarwal's affidavit lists, among assets he describes as administered on behalf of the Petelin family "and/or IK" (i.e. Mr Khrapunov), Vilder Company SA, the Panama incorporated company which was identified by Mr Khrapunov in his disclosure as his sole asset. The ensuing list does not identify which of the listed assets, if any, Mr Aggarwal understood to belong to Mr Khrapunov, as opposed to the Petelin family. In the text at paragraph 5.1 of his affidavit, Mr Aggarwal seems to be identifying Vilder Company SA as being, as he understood it, a Petelin family asset when it is in fact (on Mr Khrapunov's own case) an asset belonging to Mr Khrapunov.

37. Mr Aggarwal says he understood that FBME Bank, who provided accounts for the relevant corporate entities, had performed KYC checks to satisfy themselves that the beneficial ownership was as stated by Mr Khrapunov. He says he understood that FBME took two months to satisfy themselves that the funds did not emanate from Mr Ablyazov but he has no documentary evidence on his laptop in respect of this (although he thought it possible that he might have selected KYC material, as opposed to a full copy, in Dubai). He also says that at a subsequent point in December 2012 he was contacted by FBME who were "unhappy" that their KYC records did not show the Petelin family as the beneficial owners for Crownway and various other of the corporate entities and that backdated documentation was created to remedy this. He says he does not know who was shown in FBME's records as the beneficial owner of those entities prior to this. I note that he does not mention either Vilder Company SA or the Classic Design Trust as one of the entities beneficially owned by the Petelin family in respect of which this "remedial" measure was taken. He also describes a further instance in 2013 when he was asked to take similar measures because FBME had discovered that the beneficial owner of two other entities shown as receiving funds channelled to them via Crownway was a relative of Mr Ablyazov. Mr Aggarwal says he understands the "inadvisability" of acting as he did but that he relied on FBME's KYC as to the original source of funds and believed his "corrections" were to reflect the true position.

38. In short, Mr Aggarwal relied on Mr Khrapunov's say-so and on his own belief that FBME Bank had performed adequate KYC (which these subsequent events call into doubt) for the proposition that the N Project funds received from Claremont and Sartfield, some of which were transferred to Vilder Company SA and to Classic Design Trust, belonged beneficially to the Petelin family. He does not produce documentary evidence corroborating that asserted beneficial ownership.

39. On the other hand, there is evidence, which was considered in other litigation relating to Mr Ablyazov and some of which was also before me, that each of Mr Amangeldiyev and the Petelin family have previously acted as nominees for Mr Ablyazov. I shall concentrate primarily on the evidence relating to the Petelin family, since it is the N Project funds, which purportedly belonged to them, which include payments to Vilder Company SA and the Classic Design Trust.

40. Mr Samek QC, in his post-hearing submissions, objected that Mr Khrapunov had not had proper notice of the Bank's intention to rely in support of this application on any evidence other than that in Mr Lewis's Fifth Witness Statement in this respect. However, as further described below, the fact that the Bank's submissions on this application included this contention was made clear and the relevant evidential materials were in the bundles for this application, even if prepared for the purpose of other applications. Mr Khrapunov has previously responded to this issue, both in evidence, and by his pleading, as set out below. I have taken the view (contrary to the Bank's submission) that I should look at the evidence itself, rather than simply adopting the findings of Christopher Clarke J on this particular issue. That has made it necessary for me to travel beyond that judgment and the Fifth Witness Statement of Mr Lewis to other witness statements which were also in the bundles before me. I do not accept that it is in any way unfair to Mr Khrapunov for me to take into account the evidence before me as a whole.

41. Christopher Clarke J in *JSC BTA Bank v Ablyazov* [2011] EWHC 2664 (Comm) held that it was arguable that an entity called Green Life, purportedly owned by Mr Petelin (referred to as "Mr P" in that judgment), was an asset of Mr Ablyazov, held by Mr Petelin as his nominee. For my purposes, what is relevant is not that finding, as such, which was made in an action in which Mr Khrapunov was not a party, but the evidence which was before the Court, which was summarised in the Judgment, at [26]-[29] and [48]-[70] (which I will not repeat, but which I take into account). Subsequently, in July 2015, the Bank successfully applied in that action to have Green Life added to the Ablyazov WFO and the receivership order made in respect of Mr Ablyazov's assets.

42. The Bank's Skeleton Argument and Mr Lewis's Fifth Witness Statement in support of this application made clear that the Bank is also maintaining, in <u>this</u> action, that Green Life is an Ablyazov asset and that this, in turn, was relied on in support of the application for disclosure in respect of the funding of legal expenses, on the footing that it suggests Mr Petelin may also have been a nominee for Mr Ablyazov in relation to the N Project monies. In addition to the matters that were before Christopher Clarke J, Mr Lewis points to the fact that there has been no subsequent attempt to remove Green Life from the receivership, as might have been expected if it was genuinely a third-party entity. Whether Mr Petelin is a nominee for Mr Ablyazov was also addressed in Mr Hardman's Fourth Witness Statement (in opposition to Mr Khrapunov's application to discharge the Khrapunov WFO and the cross-examination order), Mr Khrapunov's Third Witness Statement in response to that, and Mr Hardman's Sixth Witness Statement. Indeed, that Green Life was an Ablyazov asset is also part of the Bank's pleaded case against Mr Khrapunov in respect of alleged breaches of the Ablyazov WFO, at paragraphs 30-31 of the Particulars of Claim, to which Mr Khrapunov has pleaded in his Defence. In no sense could the raising of this issue be said to take Mr Khrapunov by surprise.

43. In broad summary, Mr Khrapunov maintains that Mr Petelin is a wealthy businessman and that he believed him to be the owner of Green Life (and he points to the fact that those acting for Mr Ablyazov had evidently satisfied themselves of that), whereas the Bank relies upon a wider pattern of use by Mr Ablyazov of other nominees as setting the context within which the evidence in relation to Mr Petelin needs to be evaluated, points to a lack of evidence in the public domain as to Mr Petelin having wealth on the requisite scale, questions the commercial rationale for the purported loan agreements between Green Life and Mr Ablyazov (and hence whether these are sham), and points to the fact that some of the N Project monies were used in connection with what is said to be a known asset of Mr Ablyazov, Medion.

44. The Bank has raised by way of its Amended Particulars of Claim the allegation that the A Project and N Project monies belonged beneficially to Mr Ablyazov. Mr Khrapunov has filed an Amended Defence in response to that pleading. He maintains that he believed the monies belonged to Mr Amangeldiyev and the Petelin family, from whom he received the instructions he passed on to Mr Aggarwal. He accepts that Vilder Company SA received a loan, says he cannot confirm how much and says it no longer holds those assets (without saying what has become of them). The transfer to Classic Design Trust was not specifically addressed in the Amended Particulars of Claim and there is therefore no pleading in response on that particular point.

Developments since the hearing before me

45. Since the hearing before me, Mr Khrapunov's appeal in respect of the cross-examination order has been dismissed, such that a date is to be set (on a confidential timetable) for him to be cross-examined. In the course of that judgment, the findings to which I have referred at paragraphs 25-27 were made.

46. Following that judgment on 24 April 2018, Hughmans have ceased to act for Mr Khrapunov, who is now acting in person, and Mr Samek QC and Mr Delehanty are no longer instructed (beyond assisting the Court in respect of typos and obvious errors in the draft judgment).

Analysis

47. I do not accept that the evidence from Ms Khrapunova's website proves that she herself lacks substantial wealth. That material is part of a campaign of rhetoric and counter-rhetoric being carried on in the media and is of limited weight as evidence. On its own terms it suggests she did derive some wealth from sale of her businesses and what is being alleged against her in the separate litigation in which she is involved is that she has in fact amassed significant wealth. However, the fact she may have the means does not establish that she is in fact the true source of the funds used to pay her son's legal expenses.

48. Whilst the evidence referred to above is not such as to prove that the true beneficial owner of Green Life was Mr Ablyazov, it does, taken as a whole, show that to be arguable and, on that basis, that it is arguable that the same thing may have happened again in respect of the much larger sums involved in the N Project monies. Individual elements in the evidence are not strong taken in isolation – for example, there may be little evidence in the public domain about Mr Petelin's wealth simply because he

chooses, for his own reasons, to be secretive about his wealth – but the overall pattern, viewed as a whole, is sufficient to raise a real possibility that the source of the N Project monies may be Mr Ablyazov, acting through nominees.

49. I do not have any substantive response from Mr Khrapunov to the evidence about the Classic Design Trust, other than his mother's denial that she had anything to do with it. Why the Petelin family would place money intended (as Mr Aggarwal says he understood it) for an investment on their own behalves, into a trust with Mr Khrapunov's mother named as beneficiary, is therefore wholly unexplained. Absent that explanation, it appears possible that the trust was intended as, and may have been used as, a channel for transferring N Project monies originating from Mr Ablyazov to Ms Khrapunova for the purpose of meeting Mr Khrapunov's legal fees.

50. Likewise, unexplained, is what has become of the funds shown as loaned to Vilder Company SA. Whilst there is no evidence showing Ms Khrapunova receiving any of the funds that went to Vilder Company SA, until such time as an explanation is forthcoming about what has become of those monies and as to the resources of her own from which Ms Khrapunova is funding the legal expenses, it is at least possible that N Project monies originating from Mr Ablyazov could have been channelled to Mr Khrapunov by that route.

51. Mr Samek QC objected to the Bank's reliance on the flow of funds into Vilder Company SA, as opposed to Classic Design Trust, on the footing that the Skeleton Argument had focussed on the money paid to Classic Design Trust. However, it seems to me that both points, drawn from the N Project flowcharts, were properly open to the Bank in support of the proposition in its application notice that there is reason to believe that Mr Khrapunov's legal fees are being funded from Mr Ablyazov's frozen funds, in breach of the freezing orders. Both points derive from the Aggarwal disclosure, on which the Bank primarily relied. The fact that the Bank was calling into question what had become of the N Project loan to Vilder Company SA was addressed in other evidence which was before me and was pleaded in the Amended Particulars of Claim. Whilst it would have been more helpful, in terms of focussing the issues for the Court, if this aspect of the argument had been specifically addressed in the Skeleton Argument, I do not think it would be right to confine the Bank to the evidence in respect of Classic Design Trust. The evidence in respect of Vilder Company SA is not new and formed part of the wider material before the Court, with which Mr Khrapunov and his legal team are familiar.

52. As the evidence stands, the Bank has shown there to be a real risk that the WFOs may be being breached by channelling to Ms Khrapunova and/or to Vilder Company SA funds which may belong to Mr Ablyazov. That risk makes it reasonable for the Bank to seek to probe beyond the assertion in Ms Khrapunova's witness statement that she is meeting the legal costs from her own wealth, by seeking from Mr Khrapunov disclosure of the ways and means by which that is being achieved, against which the truth of the assertion can then be tested.

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

54. The importance of maintaining, and being seen to maintain, the effectiveness of the Court's orders is a potent factor here: *JSC Bank v Ablyazov (No 7)* [2011] EWCA Civ 1386 at [48]; *JSC BTA Bank v Ablyazov (No 8)* 2012] EWCA Civ 1411 at [188]; *JSC BTA Bank v Ablyazov and Khrapunov* [2016] EWHC 392 (Comm) at [15]; *JSC BTA Bank v Khrapunov* [2018] EWCA Civ 819 at [94] and [98]. In terms of discretionary factors, that weighs heavily in the scale in favour of making an order, even though I would not describe the evidence as raising a "strong" (as opposed to a good arguable) case of a breach consisting in the disguised use of frozen assets of Mr Ablyazov.

55. It does not seem to me oppressive to expect Mr Khrapunov to provide the disclosure that is sought, which extends only to what he knows or may by reasonable enquiry find out.

56. Whilst it may be that the response that will be obtained is that Mr Khrapunov does not know and his mother refuses to tell him from where she is sourcing the funds, if that is the answer it will be open to the Bank to test that answer in cross-examination. Moreover, if the truth of the matter is that Ms Khrapunova is indeed funding the legal expenses from her own resources, Mr Khrapunov may yet conclude that it is in his interests to demonstrate this and his mother may, whatever she may have said before now, then be prepared to act in accordance with what her son perceives as his best interests.

57. As regards Ms Khrapunova's concerns as to the risk of the information she supplies being used in the proceedings against her, it seems to me, as presently informed, that there may be some substance to that, since her personal asset position, and whereabouts of those assets, may well be relevant to those other proceedings. Moreover, unlike the information in respect of which the parties had agreed to lift the confidentiality club, the information to be supplied in response to the Order sought is information not already known to the Bank. I raised with the parties during the course of the hearing whether the Bank was prepared to agree to a confidentiality club to protect the information disclosed in response to my Order (subject to further order once the Court is in a position to assess whether that should continue). The Bank has indicated that it is prepared to do so and has supplied a revised draft Order which includes such protection. That seems to me the right way, at this stage, to address the impact the Order may have on the interests of Ms Khrapunova, as a third party, whilst also ensuring that as between the parties to this litigation, the Court has taken such steps as are properly available to it to ensure that the WFOs can be properly policed.

58. The Bank's application was made, firmly, on the basis that the relevant risk was that the legal expenses were being met by Mr Ablyazov, disguising this through his use of nominees. I have dealt with the application on that basis and have concluded that an Order is justified.

59. At the hearing before me the Bank indicated that it relied, in the alternative, on the argument that the funding of legal expenses might be coming from undisclosed assets of Mr Khrapunov himself, particularly given: (a) the discrepancy between the paucity of his asset disclosure and his assertions about how onerous an exercise his asset disclosure was going to be; and (b) factors calling into doubt the completeness of his asset disclosure (i.e. the mismatch between the value of the assets disclosed and what one might expect given Mr Khrapunov's history, the absence in that disclosure of the type of assets one would ordinarily expect to see, such as house, car and bank

accounts, and the lack of explanation as to what has become of assets held by Vilder Company SA, including the loans shown on the N Project flowchart, which still calls for explanation, in terms of Mr Khrapunov's own asset disclosure, even if the N Project monies did not originate with Mr Ablyazov).

60. Mr Samek QC objected to this alternative line of argument as not having been foreshadowed as the basis of the application. Having looked again at the application notice, the witness statement of Mr Lewis in support and the Bank's Skeleton Argument, it seemed to me at the time that there was force in that objection. I was concerned that there might perhaps have been evidence to which Mr Khrapunov would have wished to direct me had the Bank made clear that this alternative line of argument was not merely part of the general background but was relied upon as part of the basis for the Order sought.

61. It is, however, impossible to ignore the fact that in the meantime, in dealing with the appeal against the order for cross-examination, the Court of Appeal has reached findings to the effect that there is a good arguable case that Mr Khrapunov has lied in the disclosure he has given in relation to his personal assets (as well as in the disclosure he has given in respect of the non-personal assets). Mr Khrapunov had his chance to take issue with the evidence, in that regard, in the context of the hearings before Teare J and on the appeal from his Order. In those circumstances, notwithstanding Mr Samek QC's objections, it seems to me that it is not unfair to Mr Khrapunov to take account of those findings, which are binding upon him, and indeed that it would be wrong in principle for me to ignore them.

62. Those findings raise the possibility (to the level of a good arguable case) that it may follow that Mr Khrapunov has hidden assets (of his own or, at least, within his control) and may be resorting to those assets to meet his legal costs, using his mother as a screen. That alternative could in principle be established even if the Bank is wrong about its primary case (that he is making use of disguised assets belonging to Mr Ablyazov). The balance of discretionary factors would still be in favour of making an order.

63. The fact that it is uncertain which of these two scenarios (or neither of them) is the true position is not a reason against making the order. Disclosure is necessary and appropriate to establish whether either of those two possible scenarios, both of which would involve breach of the Khrapunov WFO (and in the first scenario, also a breach of the Ablyazov WFO), is what is actually happening, or whether the truth is, as Ms Khrapunova claims, that she is meeting the legal expenses from her own resources.

64. Either one of the two bases dealt with above would have been sufficient to justify the Order sought. I have dealt with them separately, making clear my reasoning on each (rather than adopting the shortcut of dealing with the application in light of the Court of Appeal's findings, solely on the second basis), with a view to minimising the scope for an appeal and consequent delays. However, when taken together, it seems to me that the case for ordering disclosure is indeed strong on the evidence that is before me. None of the above amounts to a finding that either WFO has in fact been breached. It is simply that the Bank has done enough to raise very real questions, showing an arguable case, which deserve to be given (and have not to date received) answers. Those answers may instead demonstrate that there has been compliance.

Conclusion

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