

**EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
BRITISH VIRGIN ISLANDS
(COMMERCIAL DIVISION)**

CLAIM No: BVIHC (COM) 2014/0062

BETWEEN:

JSC VTB BANK

Claimant

and

~~(1) ALEXANDER KATUNIN~~

(2) SERGEY TARUTA

(3) ARROWCREST LTD

Defendants

Determined on the papers after receipt of the memorandum from the Attorney-General's Chambers:

Mrs. Fiona Forbes Vanterpool as *amica curiae* on the nomination of the Attorney-General provided the memorandum

2022 March 11

JUDGMENT

- [1] **JACK, J [Ag]:** By an application dated 6th January 2022, the third defendant, Arrowcrest Ltd ("Arrowcrest"), a Cypriot company wholly owned by the second defendant ("Mr. Taruta") seeks the discharge of an order in favour of the claimant ("VTB") appointing receivers over the shares of a BVI company, Enard Investment Ltd ("Enard") by way of enforcement of a judgment debt for just under \$30 million plus interest and costs. Arrowcrest owns all the shares in Enard. This application is listed for hearing on 17th March 2022.

[2] This matter has already been the subject of a number of judgments. On 15th June 2021 I held orally that VTB was entitled in principle to a judgment against Mr. Taruta for the judgment debt ordered to be paid by the Meshchansky District Court of Moscow in its judgment of 28th February 2014 (as varied by a subsequent decree of the same Court dated 24th March 2014). The precise amount due was stood over for determination on 25th November 2021.¹ On 25th November 2021, the parties agreed that the sum due under the Meshchansky judgment was US\$29,993,498.25.² I made an order reflecting this and quantifying the judgment debt.

[3] On 29th November 2021, I made an order in these terms:

“UPON the judgment obtained by the Claimant against the Defendants with Civil Case No. 2-1929/2014 in the Meshchansky District Court of Moscow, Russia dated 28 February 2014 (the **‘Russian Judgment’**) being recognised in the Territory of the Virgin Islands pursuant to the Order of Mr Justice Jack dated 15 June 2021 (the **‘BVI Judgment’**)

AND UPON reading the Notice of Application dated 27 July 2021 (the **‘Receivership Application’**) and the Witness Statement of James McDermott dated 26 July 2021

AND UPON the Court directing that Arrowcrest Ltd, a company incorporated in the Republic of Cyprus be added as a Defendant, so that, if it wishes to apply to vary or discharge the current order it may do so

AND UPON the Court considering that there are exceptional circumstances making it appropriate to dispense with service of the proceedings on Arrowcrest Ltd

AND UPON hearing Grant Carroll and Daniel Mitchell, counsel for the Applicant and Adrian Francis and Carl Moran for the Defendant

IT IS HEREBY ORDERED THAT

1 Wesley Arthur Edwards of Begbies Traynor Group (B.V.I.) Limited of PO Box 2295, 1st Floor Folio Building, Road Town, Tortola, British Virgin Islands and Darren Reeds of Begbies Traynor Group (Cyprus) Limited, LEDRA Business Centre, 1 Poseidonos, Nicosia, 2406 Engomi, Cyprus (the **‘Receivers’**) be appointed as receivers for the purposes of equitable execution over all the issued share capital in Enard Investment Limited (**‘Enard’**), a BVI company (the **‘Enard Shares’**).”

The order then set out the powers given to the receivers.

¹ The oral judgment was put in written form and handed down on 19th October 2021, but has not yet been reported and given a neutral citation number.

² [2021] ECSCJ No 776.

[4] On 31st January 2022, I determined that interest under the **Judgments Act 1907**³ should run from 15th June 2021 rather than from 25th November 2021.⁴ For reasons which are unclear no draft order has been submitted to me reflecting this judgment.

[5] On 24th February 2022, Russian military forces invaded the Ukraine. As a response to this, the United Kingdom has imposed sanctions on various Russian entities, including VTB. The current legal position on sanctions has been helpfully set out in a memorandum dated 8th March 2022 prepared by Mrs. Fiona Forbes Vanterpool, of the Attorney-General's Chambers, acting as *amica curiae* on the nomination of Ms. Dawn Smith, the Attorney-General. I am grateful to both for their assistance.

[6] The memorandum says:

“The United Kingdom **Sanctions and Anti-Money Laundering Act 2018** (‘SAMLA’) provides the legal framework for the implementation of sanctions in the United Kingdom. Pursuant to SAMLA, UN designations and UN Security Council Resolutions automatically apply in the [UK] and are implemented through the relevant UK Sanctions Regulations and under the **Immigration Act 1971** in relation to travel bans.

As [a British Overseas Territory], the Virgin Islands [are] required to implement the international sanctions obligations of the UK. The sanction measures for various sanction regimes are extended to the Virgin Islands via Overseas Territories Orders in Council.

SAMLA provides at section 63(3)(c) that Her Majesty may by Order in Council provide for any provision of Part 1 of the Act or any regulation under Part 1 of the Act to extend with or without modifications to any British Overseas Territory. This includes pursuant to section 63(4) the power to extend any regulations as amended from time to time.

The **Russia (Sanctions) (EU Exit) Regulations 2019**⁵ (the ‘Regulations’) made pursuant the SAMLA have been extended to the Virgin Islands by the **Russia (Sanctions) (Overseas Territories) Order 2020**⁶ (the ‘OT Order’) as amended by the **Russia (Sanctions) (Overseas Territories) (Amendment) Order 2021**.⁷

³ Revised Laws of the Territory of the Virgin Islands, cap 35.

⁴ [2022] ECSCJ No 32.

⁵ SI 2019/855.

⁶ SI 2020/1571.

⁷ SI 2021/288.

In respect of provisions under the domestic law of the Virgin Islands, the **Proliferation Financing (Prohibition) Act 2021**⁸ ('the PFA') provides that a designation of a person or entity by the UN Security Council or its Committees under a UN Security Council Resolution shall apply in the Virgin Islands with effect from the date of the designation.

The Regulations apply to any person in the Virgin Islands and to any person outside the Virgin Islands who is a British Citizen, a British Overseas Territories Citizen, a British Overseas citizen, a British Subject, a British National (Overseas) or a British protected person ordinarily resident in the Virgin Islands or a body incorporated under the laws of the Virgin Islands and any person on board a ship or aircraft registered in the Virgin Islands. Similar provision is contained in section 4 of the PFA.

The Regulations prohibit any person from dealing with any funds or economic resources owned, held or controlled by a designated person.⁹ A person deals with funds if that person uses, alters, moves, transfers or allows access to the funds, deals with the funds in any other way that would result in any change in volume, amount, location, ownership, possession, character or destination or makes any other change, including portfolio management that would enable the use of the funds. A person deals with economic resources if the person exchanges the economic resources for funds, goods or services or uses the economic resources in exchange for funds, good or services (whether by pledging them as security or otherwise).

Funds or economic resources that are 'owned, held or controlled' by a designated person includes funds or economic resources in which the person has a legal or equitable interest, regardless of whether the interest is held jointly with another person and regardless of whether another person holds an interest in the funds or economic resources; any tangible property (other than real property), or bearer security, that is comprised in funds or economic resources in the possession of the designated person.

Pursuant to the Regulations, funds or economic resources are to be treated or controlled by a designated person if they are owned held or controlled by a person who is owned or controlled directly or indirectly by a designated person. The Regulations also prohibit making funds or economic resources available or for the benefit of the designated person. The OT Order provides for an exception to the prohibited activities where such prohibited activities are done under the authority of the Governor with the consent of the Secretary of State.¹⁰

⁸ No of 2021, Laws of the Virgin Islands.

⁹ These and the subsequent prohibitions are all in reg 11.

¹⁰ Para 38 of Schedule 2 to the OT Order.

Similar provision exists in the PFA which prohibits any person from dealing with an asset knowing that, or reckless as to whether, the asset is owned, controlled or held, directly or indirectly, wholly or jointly (a) by a designated person or entity; (b) on behalf of a designated person or entity; or (c) at the direction of a designated person or entity.

The PFA also prohibits, persons from making assets available knowing that, or reckless as to whether, it is being made available, directly or indirectly, wholly or jointly (a) to a designated person or entity; (b) to a person or entity owned or controlled by a designated person or entity; (c) to a person or entity acting on behalf of a designated person or entity; or (d) for the benefit of a designated person or entity regardless of whether the assets are located inside or outside the Virgin Islands.

The Governor may upon application being made, issue a financial sanctions licence which authorises acts by a particular person which would otherwise be prohibited by regulation 11.¹¹ However, the Governor may only issue such a licence where he considers that it is appropriate to do so in order to, for example, enable the payment of reasonable professional fees for the provision of legal services or reasonable expenses associated with the provision of legal services or to enable the use of a designated person's frozen funds or economic resources for the implementation or satisfaction (in whole or in part) of a judicial, administrative or arbitral decision or lien in accordance with Schedule 5 of the Regulations.

Regulation 70 as modified by [para 43 of Schedule 2 to the OT Order] provides that a relevant firm must inform the Governor as soon as practicable if (a) it knows or has reasonable cause to suspect that a person (i) is a designated person or (ii) has committed a breach of a financial sanction and (b) the information or other matter on which the knowledge or cause for suspicion is based came to it in the course of carrying on its business.

The definition of a relevant firm under the OT Order includes a person domiciled in the Virgin Islands with permission to carry on a regulated activity with its registered office or head office in the United Kingdom, any entity regulated by the Financial Services Commission for example banks and trust companies as well as entities performing non-financial services business for example real estate agents, vehicle dealerships and legal practitioners. Similarly, under the PFA any person who holds an asset which he or she suspects is, or may be, owned, controlled or held on behalf, or at the direction, of a designated person or entity to may make a request in writing to the FIA to verify that suspicion.

The PFA also provides that a person who holds an asset of a designated person or entity shall report the holding of that asset to the Agency as soon as reasonably practicable and, in any case, within five (5) working days from the date — (a) the person received notification of the designation of publication of the designation or

¹¹ Ibid.

the person became aware that the asset belonged to, or was connected to, the designated person or entity, whichever occurs first. There is no requirement under the PFA for the reporting entity to disclose to anyone else that a request has been made to the FIA.

Sections 44 of SAMLA provides for protection of person from liability in civil proceedings for acts done in the reasonable belief that the act is in compliance with the OT Order.

In the Virgin Islands, the Governor is the Competent Authority for the implementation and enforcement of the OT Orders. The Governor is responsible for initiating and coordinating any action in response to suspected sanctions breaches.

This includes the power to issue, amend and revoke sanctions licences (subject to the consent of the Secretary of State) issued to sanctioned individuals or their representatives in justified cases, which would permit the conduct of otherwise prohibited acts. The OT Orders also require the Governor to publish a notice of each OT Order in addition to a consolidated list of designated persons or restricted goods and to keep such lists updated. Under [modifications effected by para 5 of Schedule 2 to the OT Order], the Governor may delegate some or all of his powers.

In practice, the Governor delegates his power to investigate reports of funds and or economic resources held on behalf of designated persons as well as report of sanctions breaches to the Financial Investigation Agency.

Our Opinion

Having regard to the facts and law contained herein, our opinion is as follows:

1. The **Russia (Sanctions) (EU Exit) Regulations 2019** as extended to the Virgin Islands by the **Russia (Sanctions) (Overseas Territories) Order 2020** applies to Enard Investment Ltd as a company incorporated in the Virgin Islands.
2. The practical effect of the Regulations is to freeze the assets of the designated person which in the instant case includes the realised value of the assets of the BVI Company for repayment of the judgment debt. Accordingly, the Receivers appointed over the shares in the BVI Company are prohibited from dealing with the assets of the Company on behalf of or for the benefit of VTB.
3. The Receivers are required to make a report to the Governor regarding their appointment over the BVI Company and their duty to realise the assets of said company on behalf of or for the benefit of a designated person.
4. The Receivers are required to apply for a financial sanctions licence before taking any steps to deal with the assets of the BVI Company for the benefit of the designated person or to access any money derived from the sale of the Company's assets for the purpose of paying their fees."

[7] For completeness, I should add that there are further Regulations, the **Russia (Sanctions) (EU Exit) (Amendment) Regulations 2022**,¹² which widen the scope of the earlier legislation.

[8] Against this background, a number of questions arise. Firstly, have the receivers taken possession of the shares in Enard (a) as a matter of law and (b) as a matter of fact? As to (a), when the sheriff's officer or his BVI equivalent takes physical possession of goods (or enters a walking possession agreement) under a writ of fi.fa, the property ceases to be in the debtor's unencumbered ownership. Thus, for example, the goods cease to be part of the debtor's estate on bankruptcy, even if the goods have not been sold. However, the position is less clear in relation to intangible property such as shares.

[9] Mr. Richard Brown in his comments on the draft of this judgment submits:

“[The effect of the receivership order is not to give VTB any interest in the Enard shares. As explained at [8-0] of **Kerr & Hunter on Receivers and Administrators**.¹³

‘A receiver is an officer appointed to collect the rents and profits of real estate, or the income or capital of personal estate, upon the title of the parties to an action; the rights of those parties are not affected by the order, but the appointment operates as an injunction to prevent them from receiving the subject-matter of the order, or from dealing with it to the prejudice of other parties to the action. The rights of persons not parties are not affected by the order, but they cannot exercise those rights without the leave of the court.’

As the receivership order gives VTB no rights over the Enard shares, the receivership order cannot be viewed as amounting to or giving rise to any ‘funds’ or ‘economic resources’ of VTB which would be dealt with via the setting aside of the receivership. Nor do any assets which the receivers have in fact taken possession of become the assets of VTB. The effect of termination of the receivership would simply be to remove the current probator of the legal and beneficial owner of those assets (Arrowcrest) dealing with them. VTB’s economic resource is, and remains, the judgment debt, which is not being dealt with.”

[10] I should be grateful for submissions on this.

¹² SI 2022/123.

¹³ 21st Ed (2020).

- [11] As to (b), it is unclear what the receivers have to date actually done. I will request that the receivers provide a report to the Court by 4pm on Tuesday 15th March 2022 and (unless there are in the receivers' view good reasons not to) on the parties by the same deadline. The report should also state what steps are being taken to report the matter to the Governor and to obtain any licences which may be required.
- [12] The second question concerns the power of the Court under the sanctions legislation to discharge the receivership order, if the receivers have, whether constructively as a matter of law or actually as a matter of fact, taken possession of the shares in Enard. The effect of a discharge would be that VTB's interest in the shares reverted to Mr. Taruta, or Arrowcrest, his company. That may amount to a "dealing" in VTB's property, which is prohibited by the sanctions legislation.
- [13] Thirdly, if the receivers have not yet taken possession of the shares (whether constructively or actually), should they continue to take steps to do so? This is of course subject to the obtaining of the necessary licences. In principle, the purpose of the sanctions legislation is to freeze the sanctioned entity's assets. Thus, it might be desirable that receivers get in assets (like the judgment debt owed by Mr. Taruta), so that they can be frozen. There is otherwise a danger that VTB and Mr. Taruta might make a deal to settle the judgment debt in a jurisdiction which has not imposed sanctions. (I emphasise that there is no evidence of this risk, which may be wholly hypothetical.) There may, however, be arguments the other way.
- [14] All these issues will need to be considered on 17th March 2022.

Adrian Jack
Commercial Court Judge [Ag.]

By the Court

Registrar