

**EASTERN CARIBBEAN SUPREME COURT
BRITISH VIRGIN ISLANDS**

**IN THE HIGH COURT OF JUSTICE
(COMMERCIAL DIVISION)**

CLAIM NO. BVIHC (COM) 2019/0127

BETWEEN:

JOINT STOCK COMPANY ALFA-BANK

Claimant

and

**(1) EMMERSON INTERNATIONAL CORP
(2) BATIOS HOLDINGS LTD
(3) BRASSPOINT TRADING LTD
(4) OTOBA ASSETS LTD
(5) AVS PARTNERS GLOBAL CONSULTING GROUP LTD**

Defendants

Appearances:

Mr. Paul Lowenstein QC, with him Mr. Gerard Clarke of Collis Crill for the claimant
(the respondent)

Mr. Andrew Emery of Emery Cooke for the second and third defendants (the
applicants)

No appearance for the first, fourth and fifth defendants

Mr. Shane Donovan of Mourant Ozannes for the receivers, Mr. Borrelli and Mr.
Wilson

2020 March 17, 18
April 6.

JUDGMENT

[1] **JACK, J [Ag.]**: On 14th October 2019, Ann-Marie Smith J granted a world-wide freezing injunction against the second to fifth defendants in the sum of €120 million. By an order of the same day, she appointed Cosimo Borrelli and Colin

Wilson as interim receivers of those defendants. The orders were continued by Wallbank J on 17th and 28th October 2019. Before me, by an application of 14th January 2020, the second and third defendants seek to discharge the orders.

[2] In this judgment I shall describe the parties as follows:

Mr. Abyzov: Mikhail Anatolyevich Abyzov, a former Russian government minister and at least at one time a wealthy businessman, currently in prison in Russia awaiting trial on unrelated matters

Alfa-Bank: the claimant

The Andex Foundation: a Liechtenstein foundation founded for the benefit of Mr. Severilov's family

Batios: the second defendant, a BVI company, the beneficial owner of which is in dispute

Mr Borrelli: Cosimo Borrelli, one of the interim receivers of Batios and Brasspoint

Brasspoint: the third defendant, a BVI company, the beneficial owner of which is in dispute

Mr. Cabrera: Armando Rogel Vila Cabrera, said to be an associate of Mr. Severilov

Ms. Costi: Miranda Costi, said to be an associate of Mr. Severilov

Dayneswood: Dayneswood Investments Ltd, a Cypriot company beneficially owned by Mr. Abyzov

E4: the JSC E4 Group, a Russian entity, said to be beneficially owned by Mr. Abyzov

Emmerson: the first defendant, a BVI company beneficially owned by Mr. Abyzov

Ms. Eremina: Marina Eremina, said to be an associate of Mr. Abyzov and said to hold 4 per cent of the shares of Brasspoint

Mr. Fridman: Mikhail Fridman, a major owner of Alfa-Bank

Hillestrato: Hillestrato Investments Ltd, a Cypriot company in the beneficial ownership of Mr. Abyzov

Joule: Joule Consultants Pte Ltd, a Singapore company beneficially owned by Mr. Abyzov

Ms. Kalinkina: Natalia Kalinkina, a sometime director of Brasspoint

Mr. Khan: German Khan, a major owner of Alfa-Bank

Komaro: Komaro Pte Ltd, a Singapore company beneficially owned by Mr. Abyzov

Leguma: Leguma Ventures Ltd, a BVI company, said to have held shares in Brasspoint

Mr. Malyshev: the president of E4, said to have been the subject of attempted suborning by Alfa-Bank

Oriden: Oriden Holdings Ltd, a BVI company beneficially owned by the Andex Foundation

Mr. Papademetriou: Demetrakis Papademetriou, a director of Sundance resident in Cyprus

Mr. Parinov: Sergey Parinov, a sometime director of Brasspoint and an associate of Mr. Titarenko

Ru-COM: AO Ru-COM Invest, a Russian company beneficially owned by Mr. Abyzov

Mr. Severilov: Andrey Vladimirovich Severilov, who claims to be, either in his own name or on behalf of his family the beneficial owner of Batios and 96 per cent of Brasspoint

Sundance: Sundance Services Ltd, a corporate services company incorporated in St Vincent and the Grenadines

Mr. Titarenko: Andrey Titarenko, a one-time associate of Mr. Abyzov, but who has since fallen out with him

Ms. Uryupina: Victorya Uryupina, an associate of Mr. Abyzov

Mr. Wilson: Colin McBeath Wilson, one of the interim receivers of Batios and Brasspoint

The background

- [3] Alfa-Bank says that it is the victim of a US\$120 million fraud. It lent money to E4 in reliance on inflated financial statements. Alfa-Bank alleges that E4 is beneficially owned by Mr. Abyzov and that Mr. Abyzov is liable for fraudulently borrowing the money. The claims against Mr. Abyzov are currently being litigated in Cyprus. Mr. Abyzov denies fraud and says that he is the victim of a vendetta by Mr. Fridman and Mr. Khan.
- [4] Alfa-Bank has obtained world-wide freezing orders in Cyprus and Singapore against various companies beneficially owned by Mr. Abyzov. The freezing orders obtained before Smith J as extended by Wallbank J were all forms of **Black Swan** relief¹ against the five defendants to the current action. The appointment of interim receivers was in support of the **Black Swan** relief.
- [5] For the purposes of the current application Batios and Brasspoint accept that in principle Alfa-Bank is entitled to **Black Swan** relief against assets beneficially owned by Mr. Abyzov. The point these two companies take is that they are not beneficially owned by Mr. Abyzov. Rather they are beneficially owned by Mr. Severilov, who is unconnected with Mr. Abyzov.

The delay

- [6] Mr. Lowenstein QC on Alfa-Bank's behalf says that Batios and Brasspoint have delayed too long to bring their application to discharge. I should therefore dismiss the application on that ground alone. The relevant chronology, he says, is this. On 23rd September 2019 Alfa-Bank obtained a world-wide freezing order against Emmerson as well as an order appointing interim receivers over Emmerson. On 14th October 2019, it obtained world-wide freezing orders against, and the appointment of receivers, over, inter alia, Batios and Brasspoint. 17th October 2019 was the return date on the Emmerson orders. On that occasion Emmerson,

¹ See *Black Swan Investment ISA v Harvest View Ltd and another* BVIHCV 2009/399 (decision of 23rd March 2010).

Batios and Brasspoint all appeared, represented by counsel. The Emmerson, Batios and Brasspoint return dates were adjourned to 28th October 2019, when the orders were continued until “trial or further order”. Batios’ and Brasspoint’s application was only issued on 14th January 2020, which, Mr. Lowenstein QC submitted, is far too late: they should have disputed the granting of the injunction on the adjourned return date of 28th October.

[7] The authorities on which Mr. Lowenstein QC relied do not, in my judgment, show that there is some mechanical rule that a party is automatically debarred from seeking to set aside a freezing order or an order appointing interim receivers, if that party does not argue the matter fully at the first possible opportunity. The first authority cited, **Network Multimedia Television Ltd v Jobserve Ltd**², was a case of an ordinary *ex parte* injunction, not a case of a freezing order. Neuberger J (as he then was) said, quite uncontroversially in my judgment, that generally cross-applications for continuance and for setting aside should be heard together, but did not set down — or purport to set down — any invariable rule to that effect. The second is **MacKay v Ashwood Enterprises Ltd**³ which concerned a costs order and is very far removed from the current case.

[8] I agree with Mr. Lowenstein QC to this extent. If there is a return date on an *ex parte* application and the Court on the return date, after hearing full argument with perfected evidence from all parties, decides to continue the injunction until trial or further order, then the party enjoined may in general only seek to have the injunction set aside or varied if there is a change in circumstances. The Court retains a discretion to hear an application to set aside or vary, but will not usually exercise that discretion when there has been a full hearing on the merits.⁴

² English High Court, Chancery Division, unreported 15th December 2000; see *Jobserve Ltd v Network Multimedia Television Ltd* [2001] EWCA Civ 2018 for subsequent proceedings.

³ [2013] EWCA Civ 959.

⁴ *Chanel Ltd v F W Woolworth & Co Ltd* [1981] 1 WLR 485.

[9] In the current case there was no full merits hearing. The return date of 28th October was listed for only half an hour. Mr. Carroll of counsel appeared for Emmerson. Mr. Emery appeared for the other four defendants. Various matters were raised by them. All five defendants had potential applications. At page 28 of the transcript, the judge pointed out: "We've got four minutes before 1:00 o'clock." Mr. Clarke, appearing for Alfa-Bank, said:

"Anyway, My Lord, we can't be expected to deal substantively with any of these matters today. The Court has to hold the ring. The Court should, in my submission, continue the injunction and receivership order until some future date and we should try and agree some timetabling."

[10] Wallbank J then noted that both Mr. Carroll and Mr. Emery had applications and said:

"What I am going to order today is that the injunction, the receivership and injunction shall continue until further order with costs reserved. And if you [clearly indicating Mr. Carroll and Mr. Emery] make your applications, file them and think realistically that the shorter the time I am asking for, for a hearing, the more likely it is to come on earlier and you can get earlier hearings."

[11] In my judgment, this shows that the Court was adjourning consideration of the merits of continuing the orders. Mr. Lowenstein QC points to a further hearing on 16th December 2019 before Wallbank J. This was an application by Emmerson to replace the receivers and to have the cross-undertaking in damages given by Alfa-Bank fortified. It was attended by Mr. Emery on behalf, inter alia, of Batios and Brasspoint, but neither of these companies had a live application before the Court. It is true that Mr. Severilov had on 11th December 2019 sworn his first affidavit in these proceedings, however, since neither Batios nor Brasspoint were making any application at the hearing on 16th December, this point seems to me to be irrelevant.

[12] Whilst it is true that there was a delay until 14th January 2020 in Batios and Brasspoint issuing their application, there is in my judgment no prejudice to Alfa-Bank or to the administration of justice generally such as to debar Batios and Brasspoint under the overriding objective from making their application. Indeed, as I pointed out in **Re Wardour Trading Ltd; Cohen v Nekrich**⁵, “the more marginal the case on the merits, the more work needed to establish the necessary prospect of success.” Accordingly, I do not refuse Batios’ and Brasspoint’s application summarily on the ground of delay.

Preliminary point in relation to Brasspoint

[13] I turn then to Mr. Lowenstein QC’s preliminary point on Brasspoint’s standing to bring the current application. Smith J’s order of 14th October 2019 appointing receivers of, inter alia, Batios and Brasspoint, provided:

“5. This Order shall not prevent the directors of each of the Second to Fifth Defendants in office at the date of this Order from applying to vary or discharge this Order (or other ancillary reliefs granted by the Court) and/or appointing legal practitioners at such defendant’s own expense with assets outside the scope of the receivership for the same purpose.”

[14] This is a standard provision, since otherwise there would be no one with immediate standing to apply in the company’s name for the discharge of the order for the appointment of the receivers. The current application is brought by Ms. Costi on behalf of Batios and Sundance on behalf of Brasspoint. There is no dispute that Ms. Costi was a director of Batios and was therefore able, pursuant to the exception which I have just read, to bring the application on behalf of Batios. Alfa-Bank, however, disputes that Sundance was ever a director of Brasspoint.

[15] Alfa-Bank produces from the registered agent a copy of the register of directors. This shows that Ms. Kalinkina and Mr. Parinov were directors from 11th December 2015 and 1st November 2016 respectively until 14th October 2019, on which date

⁵ [2016] Gib LR 46 at para [72].

they were replaced by Mr. Wilson and Mr. Borrelli, the Court-appointed interim receivers. (This register is of individual directors, however, Mr. Donovan appearing for the receivers said on instructions that there was no separate list of corporate directors.)

[16] Mr. Emery sought to rely in answer on a witness statement of Mary-Frances Morris, a barrister with his firm. The witness statement was made on 16th March 2020, in other words the eve of the hearing before me. It exhibits what purports to be a register of directors of Brasspoint. This shows Ms. Kalinkina being appointed as a director on 11th December 2015 and Mr. Parinov on 1st November 2016. Both were replaced by Sundance on 11th July 2019. The register is stamped with a rubber stamp of Sundance with an illegible signature over the date of 5th August 2019.

[17] Ms. Morris' witness statement says that the "contents of this witness statement are made from my own knowledge and are true, save that where this witness statement contains matters of information or belief, I indicate where that is so and I believe those matters to be true." It proceeds to state: "Exhibited to this witness statement is... a Register of Directors of Brasspoint."

[18] It is obvious that Ms. Morris will have no personal knowledge of the veracity or otherwise of the register of directors which she produces. She gives no detail of the provenance of the register, nor of whose signature appears on it. Alfa-Bank's evidence exhibiting the registered agent's copy of the register was served on about 20th February 2020, so it was incumbent on Sundance to explain (a) the discrepancies between the dates of the replacement of Ms. Kalinkina and Mr. Parinov on the two documents and (b) why the register held by the registered agent did not show Sundance as a director. No minutes of the meeting showing the change of directors has been produced by Sundance.

[19] On a fair reading of Ms. Morris' witness statement, she does not aver that the register of directors which she exhibits is a genuine document. Certainly she gives

no basis for any belief in its genuineness. No explanation is given for why someone from Sundance has not explained the provenance of the document.

[20] In my judgment, Sundance has not shown that it was ever a director of Brasspoint. Accordingly it has no standing to bring the current application on Brasspoint's behalf. Brasspoint's application therefore necessarily fails.

[21] This is not necessarily the end of the matter as regards Brasspoint. The proviso in Smith J's order allowing the existing directors to apply on Brasspoint's behalf to vary or discharge is intended to be a practical means of allowing those interested in the company to challenge the appointment of receivers. It is not a *numerus clausus* of those whom the Court will permit to make the challenge. It certainly seems arguable that the holders of Brasspoint's shares might be able on **Duomatic** principles⁶ to appear and ask to represent the company on an application to discharge the receivership. Indeed, it may even be that Mr. Severilov or the Andex Foundation, as the putative ultimate beneficial owners of 96 per cent of the shares, might be able to ask the Court to exercise a discretion to allow him to appear on Brasspoint's behalf.

[22] Since neither Brasspoint's shareholders nor Mr. Severilov nor the Andex Foundation have made such an application, I do not need to consider it further. However, such an application may be made in the future. I have heard full argument on Brasspoint's behalf. It is therefore sensible for me to determine this matter on its substantive merits, so that any application to reconsider my decision on the substantive merits would be an abuse in the event of the shareholders or Mr. Severilov or the Andex Foundation getting their procedural tackle in order.

The merits and the law

⁶ See *Re Duomatic Ltd* [1969] 2 Ch 365 and *Multinational Gas and Petrochemical Co v Multinational Gas and Petrochemical Services Ltd* [1983] Ch 258 at 280 ("a company is bound, in a matter which is intra vires and not fraudulent, by the unanimous agreement of its members"), approved by the Privy Council in *Meridian Global Funds Management Asia Ltd v Securities Commission* [1995] 2 AC 500 at 506.

[23] I turn then to merits of the application and consider, first, the legal principles to be applied. It will be recalled that Mr. Severilov does not dispute that Alfa-Bank has established a sufficiently strong case of fraud against Mr. Abyzov to mount a case against any companies beneficially owned by him. The sole point in dispute between Mr. Severilov and Alfa-Bank is whether Batios and Brasspoint are beneficially owned by Mr. Abyzov or by Mr. Severilov or his foundation.

[24] Mr. Lowenstein QC again takes a preliminary point. He submits that, because it is these companies which are bringing the application to discharge, they bear the burden of proof. This is, at least in part, a restatement of the submission on delay. I have determined that the application before me is the substantive determination of both Alfa-Bank's continuation application and Batios' and Brasspoint's application to discharge. There is no particular burden on the latter companies: the Court will look at the evidence on the substantive cross-applications holistically and see whether the appropriate legal test is made out.

The legal principles

[25] There was ultimately little dispute between the parties as to the relevant legal principles. So far as the case is made against Mr. Abyzov, I summarized the test to be applied in granting a freezing order and appointing interim receivers in **VTB Bank v Miccross Group Ltd and another**⁷ as follows:

“[26] The Court of Appeal in **Vinogradova v Vinogradova**,⁸ on appeal from this Court, held that an applicant for the appointment of an interim receiver:

‘needed to satisfy the three elements that apply in all applications for appointing receivers, namely

That he has a good arguable case for the appointment of a receiver;

That there is a real risk of dissipation; and

It is just or convenient to appoint a receiver.”

⁷ BVIHC (COM) 2018/0067 (delivered 23rd January 2020).

⁸ BVIHCMAP 2018/052 (delivered 30th July 2019) at para [18].

[27] The Court of Appeal cited the definition of a 'good arguable case' in **Ninemia Maritime Corp v Trave Schiffahrtsgesellschaft mbH & Co KG; The Niedersachsen**,⁹ before Mustill J and the English Court of Appeal and held:

'that the good arguable case test... has a higher threshold in applications for the appointment of receiver (as opposed to the grant of an injunction).'

This is because, as our Court of Appeal held in **Norguff Holdings Ltd v Michael Wilson and Partners Ltd**¹⁰ at para [27]:

'the appointment of a receiver is more intrusive, more expensive, and less reversible than the grant of an injunction... [T]he appointment of a receiver is usually more draconian than issuing a freezing order because of the expenses and inconvenience which often arise with the appointment.'

[26] It was common ground that the case against Mr. Abyzov satisfied this test.

[27] Mr. Severilov, however, disputes that Batios or Brasspoint are in Mr. Abyzov's beneficial ownership. The basis for the grant of interim relief against these companies is that, if and when judgment is obtained against Mr. Abyzov, these companies will be assets of his against which execution can be made. As such Batios and Brasspoint are, in the jargon, non-cause of action defendants or NCADs. In **Gilfanov v Polyakov**¹¹ the Court of Appeal approved the statement of law of Sir John Chadwick, sitting as the president of the Caymanian Court of Appeal in **Algosaibi v Saad Investments Co Ltd**.¹²

"It is necessary that the court be satisfied that there is good reason to suppose either (i) that the CAD defendant can be compelled (through some process of enforcement) to cause the assets held by the NCAD to be used for that purpose; or (ii) that there is some other process of enforcement by which the claimant can obtain recourse to the assets of the NCAD."

⁹ [1983] 1 WLR 1412 (CA only); [1984] 1 All ER 398, (Mustill J) at p 400, (CA) at p 415.

¹⁰ BVIHC VAP 2007/0008 (delivered 29th October 2007, unreported).

¹¹ BVIHC MAP 2016/0009 (delivered 3rd February 2017, unreported).

¹² [2011] 1 CILR 178 at para [43].

[28] The parties were agreed that the “good reason to suppose” test is no different to the **Niedersachsen** “good arguable case”.

[29] Originally Mr. Emery submitted that, if he was able to show that Mr. Severilov could show a good arguable case, then that necessarily meant that Alfa-Bank did not have a good arguable case. On the authorities, however, this is not sustainable. Mustill J’s classic formulation in **The Niedersachsen**, which has been repeatedly applied is this:¹³

“I consider that the right course is to adopt the test of a good arguable case, in the sense of a case which is more than barely capable of serious argument, and yet not necessarily one which the judge believes to have a better than 50% chance of success,”

[30] It is possible to have two opposing cases, both of which satisfy the “good arguable” test, since the threshold is the low hurdle of being more than capable of serious argument. Faced with this logic, Mr. Emery retreated to two propositions. First, he said that Mr. Severilov’s case was sufficiently strong that Alfa-Bank could not show that it itself had a good arguable case. Second, the strength of Mr. Severilov’s case was relevant to the Court’s discretion in deciding whether to set aside the order.

The facts

[31] I turn then to the facts. There is an extremely complicated background to Alfa-Bank’s case against Mr. Abyzov with many companies in many jurisdictions used for holding (Alfa-Bank would say: concealing) his wealth. I propose to give only the bare bones of the case and only insofar as they touch on the claim against Mr. Severilov. Alfa-Bank invites me to draw various inferences. In view of the conclusion I reach on the question of a good arguable case or the “good reason to

¹³ [1984] 1 All ER 389 at p 404.

suppose” test I do not propose to discuss all the inferences relied on by Alfa-Bank. The bare bones are sufficient.

[32] Mr. Severilov says that he is a wealthy businessman and philanthropist. He gives details of his wealth. He explains that back in 2006-07 he got to know Mr. Titarenko. Thereafter they lost contact until Mr. Titarenko left a voice message for him in late 2017. When they subsequently spoke, Mr. Titarenko said that Emmerson owned a company, Batios, which it wanted to sell. Batios owned shares in a number of start-up companies. Mr. Severilov arranged for Oriden to purchase the shares. His family foundation, the Andex Foundation, was the beneficial owner of Oriden. The sale of Batios was the subject of a share purchase agreement made 27th December 2017 for a total price, payable by instalments of US\$3,388,000. These were subject to adjustment under an oral risk-sharing agreement made between him and Mr. Titarenko, if the assets as at 31st December 2019 were less than €3 million. The final payment of the purchase price was made on 17th July 2018. There were various currency adjustments made to convert Oriden’s payments in euros into dollars. On 1st August 2018 Mr. Titarenko and another nominee of Mr. Abyzov resigned as directors of Batios. The same day Oriden appointed Mr. Cabrera, Ms. Costi and a Ms. Maria Panagiotou as directors. On 12th April 2019 Oriden and Emmerson entered a deed of discharge whereby sufficient debts owed by Batios to Emmerson were waived so as to leave Batios with a net worth of €3 million, thereby satisfying the risk-sharing agreement. The debt written off amounted to about US\$80 million.

[33] As to Brasspoint, Mr. Severilov says that at the end of 2018 Mr. Titarenko introduced him to Ms. Eremina. She originally tried to interest him in investing in a stud farm, but Mr. Severilov was not interested. Some months later she told him that she was running Brasspoint, which, she said, owned stakes in various start-ups and that the owner was interested in selling the company. A price of US\$1 million was agreed. Ms. Eremina was to be given 4 per cent of the shares in the company as an introducer’s fee. The balance was to be held on trust for the Andex Foundation. Mr. Severilov denies that he knew Ms. Eremina had a

connection with Mr. Abyzov or that Brasspoint had been an Abyzov company. The share purchase agreement completed on 11th July 2019.

[34] As regards Brasspoint, Alfa-Bank relies on two key matters plus the Titarenko letter to which I shall refer later. First, it produces a deed of transfer and declaration of trust dated 18th July 2019 made by a BVI company, Leguma. This deed recites that Ru-COM is “Mr. Abyzov’s company established for the purpose of holding and managing all his overseas assets.” By the deed, Leguma “irrevocably transfers and assigns without consideration to [Ru-COM] all interest and benefits in the 100% shares of Brasspoint... and shall declare holding the shares of Brasspoint for the benefit of [Ru-COM].” (Emphasis in the original.) The date of this document is inconsistent with the share purchase agreement on which Mr. Severilov relies. That share purchase agreement must therefore, Alfa-Bank submits, have been backdated to 11th July 2019.

[35] Second, it relies on the “know-your-client” materials disclosed by Leguma’s BVI registered agents, Icaza, Gonzalez-Ruiz and Aleman (BVI) Trust Ltd. A declaration of 21st August 2019 made by Ms. Uryupina, a nominee of Mr. Abyzov, shows that Leguma was receiving income from Brasspoint. That is only consistent, it submits, with Mr. Abyzov remaining the ultimate beneficial owner of Brasspoint. Moreover on 29th July 2019, after the alleged share purchase agreement, the shares in Dayneswood, another Abyzov company, were transferred to Brasspoint, again something only consistent with Mr. Abyzov retaining the beneficial ownership.

[36] As regards Batios, Alfa-Bank says that the risk-sharing agreement is a fiction. There was no reason to have such an oral agreement. It could have been included in the share purchase agreement. As to the supposed purchase price of US\$3,388,000, this in fact came from Batios itself. In 2018 Batios lent Oriden €3.05 million, which equates to the US\$3,388,000 purchase price. Mr. Severilov’s denial of knowing Mr. Abyzov does not, Alfa-Bank says, stand up to scrutiny. Emmerson’s litigation with Mr. Vekselberg was well known internationally. Any

due diligence carried out by Mr. Severilov would have revealed Mr. Abyzov's connection with Emmerson and the litigation. Further Batios received other loans from companies associated with Mr. Abyzov. On 18th March 2019, Hillestrato, an Abyzov company, lent €6.5 million to Batios. This shows a continuing close connection between Batios and Mr. Abyzov.

[37] Alfa-Bank also relies on Mr. Severilov's failure to address many of the points made on its behalf by Mr. Melnikov. In particular, Alfa-Bank served Mr. Melnikov's fourth affidavit shortly after it was made on 20th February 2020. No further evidence in answer (apart from Ms. Morris' witness statement to which I have referred above) has been served. Indeed, apart from very short witness statements from Ms. Costi and Mr. Papademetriou, a director of Sundance, Mr. Severilov has relied solely on his own affidavit. Ms. Costi and Mr. Papademetriou simply state baldly that Mr. Severilov's family is the ultimate beneficial owner of Batios and Brasspoint respectively. The complete absence of any supporting narrative, Alfa-Bank submits, renders the evidence of Ms. Costi and Mr. Papademetriou virtually worthless.

[38] Lastly, Alfa-Bank relies on the Titarenko, Parinov and Kalinkina letters. Mr. Titarenko was a close associate of Mr. Abyzov until a falling out between the two men last year. In July 2019 Mr. Titarenko was removed as a director of Emmerson. On 1st August 2019 he wrote a detailed letter to the directors of two Abyzov companies, Komaro and Joule. The letter came to light after freezing orders had been made against those two companies. Attached to the letter is a "family tree" of companies in the Abyzov empire. This shows that Batios is controlled through loan receivables by Emmerson and that Brasspoint is held in equity for Ru-COM. Now it is true that Mr. Titarenko may have "axes to grind", but he on the face of it is someone with a good knowledge of the Abyzov business empire. If what he says is true, his letter devastates Mr. Severilov's case.

[39] Mr. Parinov's letter is dated 9th August 2019. I found parts of the letter difficult to understand and there were internal inconsistencies in what he was saying, but it

supports Alfa-Bank's case on the beneficial ownership of Brasspoint. He is also an associate of Mr. Titarenko and may not be neutral in what he says. Ms. Kalinkina's letter is dated 12th August 2019. I also had similar difficulties with this letter. She denies that there has been any valid transfer of shares. I do not need to wrestle with these letters for the purposes of the current application.

- [40] In my judgment Alfa-Bank has established a good arguable case and shown good reasons for believing that Batios and Brasspoint remain beneficially owned by Mr. Abyzov. Especially telling is the evidence that the share purchase agreement of 11th July 2019 was backdated. This relates only to Brasspoint, but, if the backdating occurred, it raises a serious case in relation to the true ownership of Batios as well. Although Mr. Severilov has put forward a case to the contrary, his evidence is not so overwhelming as to destroy Alfa-Bank's case. This conclusion is necessary, but not sufficient, to establish Alfa-Bank's case for a continuation of the injunction. To decide that, I need to take a holistic view of the case. I need first to consider two points argued by Mr. Emery.

Clean hands and non-disclosure

- [41] Mr. Emery argues that Alfa-Bank does not come to Court with clean hands. The factual basis of this allegation is that Alfa-Bank approached Mr. Malyshev, the president of E4, in London in about 2015. It asked him to give evidence against Mr. Abyzov. In return Alfa-Bank offered to pay him €4 million. This was, he submitted, an obvious attempt to bribe and suborn a witness. The Court should refuse an injunction due to Alfa-Bank's misbehaviour. It was irrelevant that Mr. Malyshev had refused the bribe.
- [42] In **Royal Bank of Scotland plc v Highland Financial Partners LP**,¹⁴ the English Court of Appeal held:

"158. ...There is no dispute that there exists in English law a defence to a claim for equitable relief, such as an injunction, which is based on the

¹⁴ [2013] EWCA Civ 328, [2013] 1 CLC 596.

concept encapsulated in the equitable maxim 'he who comes into equity must come with clean hands'¹⁵...

159. It was common ground that the scope of the application of the 'unclean hands' doctrine is limited. To paraphrase the words of Eyre CB in **Dering v Earl of Winchelsea**¹⁶ the misconduct or impropriety of the claimant must have 'an immediate and necessary relation to the equity sued for'. That limitation has been expressed in different ways over the years in cases and textbooks. Recently in **Fiona Trust & Holding Corporation v Privalov**¹⁷ Andrew Smith J noted that there are some authorities¹⁸ in which the court regarded attempts to mislead it as presenting good grounds for refusing equitable relief, not only where the purpose is to create a false case but also where it is to bolster the truth with fabricated evidence. But the cases noted by him were ones where the misconduct was by way of deception in the course of the very litigation directed to securing the equitable relief.¹⁹ **Spry: Principles of Equitable Remedies**²⁰ suggests that it must be shown that the claimant is seeking 'to derive advantage from his dishonest conduct in so direct a manner that it is considered to be unjust to grant him relief.' Ultimately in each case it is a matter of assessment by the judge, who has to examine all the relevant factors in the case before him to see if the misconduct of the claimant is sufficient to warrant a refusal of the relief sought."

[43] Mr. Emery relied on section 1 of the **Bribery Act 2010** (UK)²¹ to show illegality, which provides:

"(1) A person ('P') is guilty of an offence if either of the following cases applies.

(2) Case 1 is where—

(a) P offers, promises or gives a financial or other advantage to another person, and

(b) P intends the advantage—

(i) to induce a person to perform improperly a relevant function or activity, or

¹⁵ Snell's Equity (32nd Ed 2010) at para 15-15.

¹⁶ (1787) 1 Cos 318 at p 319.

¹⁷ [2008] EWHC 1748 (Comm).

¹⁸ *Armstrong v Sheppard & Short Ltd* [1959] 2 QB 384; *J Willis Son v Willis* [1986] EGLR 62; *Gonthier v Orange Contract Scaffolding Ltd* [2003] EWCA Civ 873.

¹⁹ Andrew Smith J at [20]. He said that in those cases the connection between the misconduct and the claim to equitable relief was far more immediate than in the case before him. [Footnote as in the original judgment.]

²⁰ 8th Ed, 2010.

²¹ 2010 c 23

(ii) to reward a person for the improper performance of such a function or activity.

(3) Case 2 is where—

(a) P offers, promises or gives a financial or other advantage to another person, and

(b) P knows or believes that the acceptance of the advantage would itself constitute the improper performance of a relevant function or activity.

(4) In case 1 it does not matter whether the person to whom the advantage is offered, promised or given is the same person as the person who is to perform, or has performed, the function or activity concerned.

(5) In cases 1 and 2 it does not matter whether the advantage is offered, promised or given by P directly or through a third party.”

[44] I accept that, if the purpose of the bribe was to persuade Mr. Malyshev to give false evidence, that would fall within section 1(2)(b)(i). However, there is no evidence that Alfa-Bank did want Mr. Malyshev to lie on oath. Much more likely is that it wanted Mr. Malyshev to reveal the truth about where Mr. Abyzov had concealed his wealth and how (through E4) he had defrauded the bank. Mr. Emery suggested that the size of the offer was such that an intention to obtain false testimony could be inferred. I disagree. The reason for the size of the offer was because Mr. Malyshev would effectively become unemployable ever again, once he broke with his patron, Mr. Abyzov. He had to be set up for life.

[45] It is true that the offer of such a large sum is liable to taint a witness who subsequently gives evidence. It is, however, well recognised, particularly in criminal cases, that rewards, including expensive witness protection programmes, have sometimes to be given to induce witnesses to come forward.

[46] Even if I am wrong about this, however, in my judgment there is no “immediate and necessary relation to the equity sued for”. First, Alfa-Bank has not relied on Mr. Malyshev’s evidence before me. (He has remained in the Abyzov camp.) Second, the evidence Mr. Malyshev was asked to give was in relation to the initial E4 litigation. Third, it was years before the case before me. Fourth, any judgment recovered against Mr. Abyzov in the E4 litigation will be a money judgment, not an

equitable remedy. The **Black Swan** injunction before me is a wholly different equitable remedy.

[47] Accordingly, I reject Mr. Emery's "clean hands" argument.

[48] I do not accept that there was any concealment of the approach to Mr. Malyshev from Smith J on the initial *ex parte* application for an injunction. Mr. Clarke, who appeared on behalf of Alfa-Bank on that application expressly drew her attention to Mr. Titarenko's letter and indeed offered to read it into the record. There was proper disclosure to the learned judge.

Conclusion

[49] I turn then to the holistic view I need to take of the case, in order to consider whether to continue the injunctions. It was accepted on the current application that there was a good arguable case in fraud against Mr. Abyzov. There is also a substantial risk of dissipation of assets. The whole structure of companies set up by Mr. Abyzov was designed to conceal his wealth. I have held that there is good reason to suppose that Mr. Severilov holds Batios and Brasspoint as nominee for Mr. Abyzov. It follows that the risk of dissipation exists equally with respect to Batios and Brasspoint.

[50] Mr. Severilov suggests that continuing the appointment of receivers will prevent him from making investments in the start-ups which constitute the assets of Batios and Brasspoint. I do not accept that. There seems no reason why he could not make additional investments in the start-up companies through other companies owned by him. In any event Alfa-Bank has given a cross-undertaking in damages.

[51] Looking at the matter holistically, in my judgment it is appropriate to continue the injunctions. The risk of prejudice to Alfa-Bank from a refusal to continue the

injunctions is much greater than the prejudice to Mr. Severilov from the continuation.

Adrian Jack
Commercial Court Judge [Ag.]

By the Court

Registrar