

EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF THE VIRGIN ISLANDS
COMMERCIAL DIVISION

IN THE HIGH COURT OF JUSTICE

Claim No. BVIHC (Com) No. 098 of 2013

BETWEEN:

ALEXANDER PLESHAKOV

Claimants

and

[1] SKY STREAM CORPORATION

[2] SERGEY LINKOV

[3] IRINA KAZANTSEVA

Defendants

Appearances:

Mr Terence Mowschenson QC and Mr Grant Carroll for the Claimant
Mr Clive Freedman QC and Mr Brian Lacy for the second Defendant
Ms Barbara Dohmann QC and Ms Arabella di Iorio for the third Defendant
The first Defendant was not represented

2014: October, 27-31
November 12

JUDGMENT

(Beneficial ownership of shares in BVI company – whether shares registered in names of second and third Defendants held by them as nominees for Claimant)

- [1] **Bannister J [Ag]:** In this case the Claimant, Alexander Pleshakov ('Mr Pleshakov'), claims beneficial ownership of all of the issued shares of the first Defendant company ('Sky Stream'), which have at all times been and remain registered in the names of the second and third Defendants (together 'the Defendants'¹ and severally 'Mr Linkov' and 'Ms Kazantseva').

¹ although Sky Stream put in a separate defence, it did not appear at trial

The parties

- [2] Mr Pleshakov is a prominent Russian businessman who has also held, from time to time, high political office in the Russian Federation. In 1990 he was behind the foundation of a Russian company, Transaero Airlines OJSC ('Transaero'), which pioneered air travel out of the Russian Federation using leased foreign made passenger jets. Mr Pleshakov is the Chairman and CEO of Transaero and, together with other members of his family, holds a significant shareholding in the company. I do not think that it is an oversimplification to say that since at any rate 2005 he has had as one of his aims the achievement of direct or indirect shareholder control of Transaero. In 2005 he held, directly or indirectly, around 32% of Transaero's shares and members of his family together held another 11% or so. A group of companies under the control of the late Boris Berezovsky and associates of his ('the BB Group') held a little over 43%. Mr Pleshakov says that in late 2005 or early 2006 he caused arrangements to be entered into for the purchase of the entirety of the BB Group's Transaero holding, financed by a bond issue made by a subsidiary of Transaero called Transaero-Finances LLC ('Transaero Finance'). The precise nature of the arrangements with the BB Group never became clear. In particular, it never became clear that Mr Pleshakov himself acquired (as he contends in his evidence) a beneficial interest in any of the shares formerly held by the BB Group, including 19.99% of Transaero which was transferred to Sky Stream on 31 March 2006. The issue in this case, however, is not the beneficial ownership of any of Transaero's shares, but the beneficial ownership of Sky Stream's shares.
- [3] Mr Linkov is an experienced Russian advocate, now resident in Germany. He was at the material time practising as senior partner of a firm of Russian Lawyers, Linkov and Partners. Until matters soured between them he was a long standing friend and associate of Mr Pleshakov, having become acquainted with him in around 1998. Mr Linkov has a history of bad health, in particular of cardiac problems, although, happily, he appeared to be in robust health during the course of the trial.
- [4] Ms Kazantseva is a lawyer who married Mr Linkov in 2012. She had worked at Linkov and Partners since 2002 and became a partner in the firm in 2004.
- [5] Sky Stream was incorporated in the BVI on 14 December 2005. It has an authorized capital of 50,000 shares of \$1 each, of which half were allotted to Mr Linkov and half to Ms Kazantseva on incorporation, when they were also appointed as Sky Stream's Directors. They remained its only Directors until 27 December 2010, when Mr Pleshakov and his daughter, Tatiana ('Ms Pleshakova'), were appointed in addition. The latter were removed by members' resolution on 30 March 2013 and Mr Linkov and Ms Kazantseva continue as the only directors of the company.

The pleadings

- [6] Mr Pleshakov's pleaded case is spare. The defence is scarcely more expansive. Mr Pleshakov says that from 1998 until 2013 Mr Linkov was his personal legal adviser. With two immaterial exceptions, Mr Linkov denies that. Mr Pleshakov then pleads that in 2005 he entered into negotiations to acquire a substantial stake in Transaero from the BB Group. The Defendants do not admit this.
- [7] Mr Pleshakov pleads that in late 2005 Mr Linkov advised him that if he, Mr Pleshakov, were to acquire a holding in Transearo exceeding 50%, he would become obliged to offer to buy out the remaining shareholders, but that this obligation could be avoided if part of the shareholding to be acquired from the BB Group were to be held by a newly formed company, whose shares were held by nominees for Mr Pleshakov. Mr Pleshakov pleads that Mr Linkov offered to incorporate such a company on Mr Pleshakov's behalf and, together with Ms Kazantseva, to hold its shares on his behalf and act as its directors. In return, Mr Pleshakov would pay each of the Defendants a salary of €4,000 per month, which Mr Pleshakov says he paid to Ms Kazantseva between 2006 and early 2013. The Defendants deny all of this.
- [8] Mr Pleshakov goes on to plead that on his instructions Mr Linkov caused Sky Stream to be incorporated for these purposes on 14 December 2005. It is admitted that that happened, but denied that it happened on the instructions of Mr Pleshakov or for those purposes. Mr Pleshakov pleads that the Defendants travelled to the BVI in December 2005 and, while there, signed a Deed of Trust, dated 28 December 2005, evidencing a trust over the Sky Stream shares in Mr Pleshakov's favour. The Defendants admit their visit to the BVI, but say that it was Sky Stream that, by a power of attorney ('PoA') granted on 15 December 2005 and pursuant to a board resolution of 3 January 2006, authorized Mr Pleshakov to enter into negotiations on its behalf pursuant to which on 31 March 2006 Sky Stream acquired a holding of 19.99% in Transearo from a company called Housecroft Holding Limited ('Housecroft'). It is not admitted that Housecroft was connected to the BB Group. As for the Deed of Trust, the Defendants admit signing it, but plead that it was not effective to create a trust over the Sky Stream shares and that its purpose was to enable Mr Pleshakov to act for Sky Stream should the PoA not be renewed after its term of three years had expired. The pleading relies upon Russian law in that last regard, although no evidence of Russian law was admitted at trial.
- [9] Mr Pleshakov pleads that on his return to Moscow from the BVI Mr Linkov provided Mr Pleshakov with what he told Mr Pleshakov was the original Sky Stream Trust Deed and the Sky Stream share certificates which had been issued to the Defendants, telling Mr Pleshakov that the shares were held by the Defendants on Mr Pleshakov's behalf. It is denied that the original Deed of Trust and certificates were provided for any purpose other than as earlier pleaded and in order that they could be translated into Russian and notarized.

- [10] Having pleaded that Sky Stream's acquisition of the 19.99% of Transaero on 31 March 2006 was part of a transaction between himself and the BB Group, Mr Pleshakov goes on to plead that between October 2006 and 22 February 2012 Sky Stream dealt in Transaero shares on his instructions, leaving it with a holding at the end of the day of 12.74%.² The Defendants admit Sky Stream's acquisition of the 19.99% and the subsequent dealings by Sky Stream in Transaero shares, but say that they were carried out on the instructions of the Defendants – denying, as Mr Pleshakov pleads, that they were carried out for the benefit of Mr Pleshakov and his family.
- [11] The Defendants admit that they have refused to comply with a demand from Mr Pleshakov dated 27 May 2013 that they transfer the Sky Stream shares to him and further deny that Mr Pleshakov is entitled to have Sky Stream's register of members rectified to show him as their owner.

The parties' positions

- [12] At trial Mr Pleshakov's case, boiled down to its essentials, was that the Transaero shares obtained by Sky Stream on 31 March 2006 belonged to him beneficially. He would never have agreed to give 20% of Transaero to the Defendants *via* Sky Stream because that would have destroyed his (Mr Pleshakov's) majority. That being so, it was only natural that Sky Stream should also belong to him; and the opposite of natural that the company holding the Transaero shares on his behalf should belong beneficially to third parties. He relied upon the fact that all realisations of Transaero shares by Sky Stream had been on his instructions and that on one occasion he had even effected a sale at a very heavy discount without the prior knowledge of the Defendants as a favour to an associate of his. He stuck to his case that the Defendants had been paid a monthly salary, claiming that sums in cash had been given by him to Mr Linkov from time to time which covered this alleged obligation. He pointed out that on her own admission Ms Kazantseva had paid herself a salary of €4,000 a month from April 2007 from Sky Stream's Luxembourg bank account (which held cash from January 2007 onwards as a result of sales of parcels of Transaero shares held by Sky Stream).
- [13] The Defendants' (unpleaded) case is that Mr Pleshakov telephoned Mr Linkov while he and Ms Kazantseva were in Antigua in December 2005, *en route* to a sailing holiday in the BVI, to tell him that he was about to provide him with the opportunity to acquire up to 20% of Transaero at a favourable price. They say that this opportunity was given to them by way of late, but not unexpected, remuneration for their having acted unpaid for Transaero in 2003/4 in the course of two significant legal cases whose loss would have meant the collapse of Transaero. They say (and there was no evidence to contradict them) that Ms Kazantseva paid the costs of the incorporation of Sky Stream (\$1,000) and that Mr Linkov

² the correct figure appears to be 12.94%, as pleaded by the Defendants

paid the price stipulated for in the Housecroft SPA for the 19.99% acquired by Sky Stream on 31 March 2006 (\$55,000) and that Mr Pleshakov never reimbursed them for these costs. They say that sales of Transaero shares to Sky Stream by Mr Pleshakov himself, by his wife, Madame Pleshakova and by his mother, Madame Anodina, for cash would have been unnecessary had he owned Sky Stream, since Mr Pleshakov could have arranged matters to declare distributions which could have been paid to them without any need for them to have given up their shares in exchange had that been the case.

The facts

- [14] There is no doubt that the Defendants were in Antigua between about 10 and 12 December 2005 and that they were in the BVI thereafter until 4 January 2006. I find that this trip had been planned and pre-booked. The Defendants were not 'sent' there at the behest of Mr Pleshakov. There was no need for anyone to travel to the BVI in order to acquire a BVI company.
- [15] Mr Linkov's evidence is that Mr Pleshakov telephoned him in Antigua at least once. Mr Linkov says that in the course of these calls he was told by Mr Pleshakov that he was offering him the opportunity to purchase Transaero shares at a favourable price. Mr Pleshakov denies that he spoke to Mr Linkov in Antigua. Mr Linkov said that he did not ask Mr Pleshakov how many shares were on offer or what the price would be. Mr Linkov explained that his omission to ask how many shares were on offer was the result of the fact that Sky Stream had yet to be incorporated. I did not find this answer convincing, although to be fair to Mr Linkov he did say at another point that he was told in one of the telephone conversations that the number would not exceed 20% of Transaero.
- [16] Despite not knowing any of the terms of the opportunity which they say was being offered to them, Mr Linkov and Ms Kazantseva nevertheless incurred the cost of incorporating Sky Stream on 14 December 2005 – on or shortly after their arrival in the BVI from Antigua. I see no reason to doubt that Ms Kazantseva used her own money for that purpose, but as I have said, she has drawn €4,000 per month from Sky Stream between April 2007 and around March 2013, so that, whether or not what she received was perceived as reimbursement of her expenses of Sky Stream's incorporation, it has been more than covered.
- [17] On 20 December 2005 and while still in the BVI Mr Linkov emailed Ms Olga Simonova, secretary to the board of Transaero and General Director of Transaero Finance ('Ms Simonova'), who worked closely with Mr Pleshakov, saying: *'As for us, everything is proceeding according to plan. AP shall be informed that the name of our new partner is Sky Stream Corp.'* Mr Linkov tried to explain the 'plan' away by saying that it referred to some other transaction, but I cannot accept that. The words (which are too simple to have suffered in translation) clearly show that the incorporation of Sky Stream was part of the

'plan.' The wording of the email does not compel the conclusion that the incorporation of Sky Stream was part of a plan for the exclusive benefit of either party, but I found Mr Linkov's reaction to questions about its terms highly defensive. In my judgment the natural reading of the email is that the Defendants were assisting Mr Pleshakov in a plan of his.

[18] I have already referred above to the PoA in favour of Mr Pleshakov and to the so called 'Deed of Trust.' The former, of course, was going to be necessary to enable Sky Stream to enter into the Housecroft SPA (Mr Linkov was absent from Russia between 9 December 2005 and the end of March 2007), and is therefore neutral on the question of the beneficial ownership of Sky Stream, but the latter requires some further consideration.

[19] The copy document relied upon at trial is headed 'The [blank] Trust.' The Trust's proper name has been obliterated from that copy, although it is possible to discern the fragments of a capital 'S' as the initial letter of the name. Indeed, a further copy of the document, in the bundles but not relied upon at trial, is headed 'The Sky Stream Trust.' The document is governed by the law of the Virgin Islands. It is expressed to be made between Mr Linkov and Ms Kazantseva as Settlers and Mr Pleshakov as Trustee. It recites (1) that the certificates for 50,000 shares in Sky Stream have been transferred to or placed under the control of Mr Pleshakov as Trustee and (2) an intention that the deed should be irrevocable. The Beneficiaries are defined as: the persons specified in the Third Schedule (which was left blank and has never been completed); any persons subsequently added to that class; less any persons subsequently excluded. The document was signed by each of the Defendants and the original forwarded to Mr Pleshakov some time after 28 December 2005, together with the originals of the two share certificates; the original Memorandum and Articles of Association; and one exemplar of Sky Stream's seal.

[20] Mr Pleshakov said that the documents were handed over to him in Moscow by Mr Linkov personally, when Mr Linkov explained their meaning, but I accept Mr Linkov's evidence that he did not visit Russia again until 2007 and that he sent these materials to Mr Pleshakov by courier. Mr Linkov said that they were accompanied by no explanation, since he had explained them to Mr Pleshakov previously. Mr Pleshakov's evidence was that the Deed of Trust was not accompanied by a Russian translation and that he did not read it until April 2013. He never signed it. He said that Mr Linkov told him (although at what point is unclear) that the Deed of Trust was to be used only in an extremity. Like the original share certificates (which I will mention in a moment), the Deed of Trust has remained in Mr Pleshakov's custody ever since.

[21] It must have been established by 3 January 2006 that the number of shares on offer was not more than 20% of Transaero, because on that date the Defendants, while still in the BVI, passed a board resolution of Sky Stream providing for Mr Pleshakov to purchase, for and at the expense of Sky Stream, up to that amount of Transaero shares. The resolution is silent as to the amount which Sky Stream was to pay for each share. Indeed, both

Defendants said that they were unaware of the actual purchase price until they saw the Housecroft SPA. That document is dated 31 March 2006 and provides for the transfer of 307,540 Transaero shares for a consideration of \$55,000.

- [22] On 11 January 2006 Ms Simonova sent Mr Linkov an email telling him that the name of the company that *'[was] going to assist us'* was Freshfields Bruckhaus. Derringer ('Freshfields'). She says in her witness statement that this information concerned the buyout. That, of course, was the source of the shares ultimately transferred from Housecroft to Sky Stream.
- [23] Payment of the stipulated price for the shares was made to Housecroft on 13 April 2006 from Sky Stream's account with Bank International à Luxembourg ('BIL'), funded by a deposit of \$56,000 made the same day. Ms Kazantseva says that the money for the deposit came from a long standing account of Mr Linkov with the same bank. I have no reason not to accept that evidence. Certainly Mr Pleshakov was unable to identify any other source for the funds. Housecroft acknowledged receipt of the payment on the following day.
- [24] Between then and 2 February 2012 Sky Stream entered into seven transactions involving Transaero shares. Not a single one of these transactions was arranged by either or both of Mr Linkov and Ms Kazantseva.
- [25] On 3 October 2006 1% of Transaero was sold by Sky Stream to an associate of Mr Pleshakov, S.A. Tereschenko, for \$20,000. Mr Tereschenko subsequently sold the parcel for in excess of \$5 million. The Defendants accept that this sale was effected by Mr Pleshakov without their knowledge and approval, although they say that they had been aware that some transaction relating to Transaero shares was in the offing. They explain their failure to protest what, on their case, amounted to a fraudulent misappropriation of property of their company by its agent by asserting that they decided to let the matter go as a result of their friendship, or at any rate Mr Linkov's friendship, with Mr Pleshakov, and because they secured Mr Pleshakov's agreement that no further transactions involving Transaero shares should be undertaken without their consent. Indeed, the latter appears to have been the fact. Unless I have missed something, all further dealings were authorized by formal board resolutions.
- [26] There was, however, no documentary evidence that the Defendants ever refused to carry out a transaction in Transaero shares proposed by Mr Pleshakov. I reject the evidence of Ms Kazantseva that on occasions she and Mr Linkov did so. The parties show themselves to be prolific emailers, and I am sure that had there been a dispute about an acquisition or disposal proposed by Mr Pleshakov there would have been email evidence to prove as much. I find that dealings by Sky Stream in Transaero shares were invariably

carried out either by Mr Pleshakov (in the case of the disposal of 6 October 2006) or on his instructions and that such instructions were invariably complied with.

- [27] On 23 January 2007 Sky Stream sold a 2.5% stake in Transaero to a company called Faendo Limited for \$6.4 million. On 28 May of that year a four per cent stake was sold to a company called Roinco Enterprises Limited for \$18 million, reducing Sky Stream's holding of Transaero shares to 12.49%.
- [28] On 29 May 2007 Sky Stream purchased a 0.75% stake from Madame Pleshakova for \$5 million and two days later bought 0.3% from Madame Anodina for \$2 million.
- [29] On 9 September 2010 Mr Pleshakov emailed Mr Linkov. His first concern was that Sky Stream's details as held by Transaero's depositary company, where Sky Stream held its Transaero shares, needed updating. Mr Linkov's reply was to the effect that he was obtaining a new certificate of incumbency. The next point dealt with the fact that at that time Russian depositaries did not offer accounts denominated in roubles, so that dividends paid in roubles would be returned to the company paying them after three years unless arrangements had been made to collect them. Mr Pleshakov suggested that *'Your abandoned and problematic rouble dividends'* be transferred to his own rouble account, and the application of the money transferred be discussed between them. Mr Linkov's response to that was to suggest, among other things, that the dividends could be used to pay for representation services provided in Russia by Mr Pleshakov (or by some entity controlled by him). Much was made of the fact that the Russian word for 'Your' is given a capital initial in the email, signifying that the word was being used formally, rather than familiarly, but I am quite unable to draw any inferences from this fact. After reference to a matter regarding a Cyprus company, which is not relevant to present purposes, Mr Linkov went on to say that he would prepare fees and expenditure accounts quarterly from then on. He ended his reply email by saying: *'Anyway all your instructions will be rigorously performed, but please give me a right to worry.'* This last was rendered by the interpreter as: *'All your requirements will be filled to the point . . .'*
- [30] On 5 October 2010 Sky Stream passed a members' resolution amending its Articles of Association to provide that, unless Sky Stream was then insolvent, a resigning director should receive a bonus of €1.2 million. Mr Linkov explained the self evident inconsistency of this resolution with the notion that Sky Stream was owned beneficially by Mr Linkov and Ms Kazantseva by saying that it would be a useful provision in case it was decided to appoint some unconnected party to the board. I was not convinced by that explanation. It seems to me that it must have been what it appears to have been - protection for Mr Linkov and Ms Kazantseva in case the relationship between them and Mr Pleshakov broke down.

- [31] On 20 December 2010 Sky Stream sold a 0.75% stake in Transaero to a company called Jeimbo Cyprus Limited for just under \$6 million. Finally, on 22 February 2012 Sky Stream bought a 0.2% stake from Mr Pleshakov for \$1.6 million. The upshot was to leave Sky Stream with a balance of 12.94% of Transaero. That remains the position today.
- [32] The evidence about what happened to the proceeds of sale of the Transaero shares which Sky Stream disposed of during this period is surprisingly, or perhaps unsurprisingly, vague. It is known that a little short of \$4 million was spent upon the acquisition of an apartment in Miami for the use of Mr Pleshakov³ and Mr Linkov spoke vaguely about an investment in an enterprise exploiting sand and gravel deposits in the Smolensk region, but apart from that there is silence. At trial Mr Pleshakov expressed himself uninterested in any of the current assets of Sky Stream other than its remaining Transaero shares and the shares of its wholly owned subsidiary ('Sky Ocean') which had held the apartment in Miami (and which now, presumably, holds the proceeds of its sale). He was content for any remaining assets to go to provide Mr Linkov (I paraphrase) with a healthy and comfortable retirement.
- [33] On 27 December 2010 and as I have already mentioned, Mr Pleshakov and Ms Pleshakova were appointed as directors of Sky Stream. It appears that this happened because Sky Stream was then in the process of acquiring the Miami apartment and Mr Pleshakov seems to have wanted board representation in order to protect his interests in that regard. The purchase of the apartment appears to have completed on 21 December 2011.
- [34] Mr Linkov claimed that the arrangement regarding this apartment was for Mr Pleshakov to use it, but with an agreement that he would later purchase it from Sky Ocean with a ten per cent uplift, thus providing a profit for Sky Ocean (a Florida corporation of which Mr Linkov was President) and, on the Defendants' case, ultimately for the Defendants. I have no hesitation in rejecting this version of events. Contemporary email traffic, which I do not need to set out in this judgment, makes it clear that the intention was that Mr Pleshakov should own the apartment beneficially. This was certainly the impression gained by Mr Arkady Kats, the Florida realtor engaged in the transaction, who on 11 February 2011 received an email from Mr Linkov promising to provide him with an access authorization from Mr Pleshakov to enable a firm of renovators and decorators to enter the apartment, as well as '*Authorisation for [Mr Pleshakov] being the owner.*' There was no reason why Mr Pleshakov should have entered into an agreement, which he denies, to purchase the apartment at an increased price at some later date and I reject the suggestion that he did so.
- [35] The appointments of Mr Pleshakov and Ms Pleshakova to the board of Sky Stream subsequently gave rise to regulatory concerns and a Mr Vorobiev, of Transaero's finance

³ it has since been sold

department, was asked to advise whether it could give rise to disclosure obligations by rendering Sky Stream an affiliate of Transaero. Mr Vorobiev's advice, given on 12 December 2011, was that it did not. On the same day, the board of Sky Stream, including Mr Pleshakov and Ms Pleshakova, passed a resolution permitting Mr Linkov alone to form a quorum for the purposes of board business. Whether that resolution had any connection with the concerns about possible affiliation was not addressed in the evidence. When asked about the resolution, Mr Pleshakov said that he had no objection to it because he trusted Mr Linkov not to abuse it. At any event, it was the evidence of Mr Evgeny Temyakov, a former employee of Russian Development Bank and as such involved on the Transaero Finance bonds issue, but from 2007 and until recently an employee of Transaero, that no such affiliation disclosure has ever been made.

- [36] In 2012 Mr Pleshakov appears to have started to press Mr Linkov for an account of Sky Stream's financial position, but he seems to have got nowhere. Mr Pleshakov explained his tardiness by saying that 2011 was the first full year during which he and his daughter had had directorial responsibility and so after the year end he started pressing for information. I did not find that explanation very convincing. It is obviously of significance that, as he accepted, Mr Pleshakov did not seek out financial information of Sky Stream during the six years before April 2012
- [37] On 5 March 2013 Mr Pleshakov emailed birthday greetings to Mr Linkov. In a post script he said that he needed to meet Mr Linkov urgently in connection with a high priority matter – adding that it was almost a matter of life and death. The two met in the Kempinski Hotel in Munich on the following day, accompanied by Ms Kavantseva and Ms Pleshakova.
- [38] The men conferred alone. Mr Linkov's account of what transpired is that Mr Pleshakov told him that violent corporate raiders were waiting to pounce upon Transaero and that not only he, Mr Linkov, would be targeted with respect to the Transaero shares held by Sky Stream, but harm could also be directed at his two daughters, then aged fourteen and fifteen and at school in Moscow. Mr Pleshakov suggested that Sky Stream be liquidated and that Mr Linkov execute SPA's providing for the transfer of Sky Stream's Transaero shares to, among others, Madame and Ms Pleshakova – the idea apparently being that this would throw the raiders off the scent and induce them to abandon their efforts against any Transaero shares formerly held by Sky Stream. Mr Linkov says that he responded by saying that while drafting a liquidation resolution would be a matter of moments, SPA's would take time to be prepared. To Mr Linkov's astonishment, Mr Pleshakov produced from his briefcase four ready prepared SPA's comprising all the Transaero shares then held by Sky Stream and providing for their transfer to himself, his wife and daughter and a lady called Natalia Nosova. Mr Linkov, who was unwell at the time, says that he was so alarmed by the threats conveyed by Mr Pleshakov that he agreed to sign (on their reverse) two copies of what he believed to be identical handwritten minutes dealing with Sky Stream's liquidation and the four SPA's and associated transfer documents – believing,

correctly, that the latter would be ineffective unless Mr Linkov was prepared (which he was not) to present himself to Transaero's custodian to ensure that the transfers took effect. Later, Mr Linkov claims, he realized that the minutes which he had signed (without reading both copies) were in fact different texts. One was in fact a minute (described by Mr Linkov as 'fictitious' and dated 28 March 2013) providing for the liquidation of Sky Stream; the other, dated 6 March 2013, purported to be a resolution approving the transfer of all of Sky Stream's Transaero shares and the Sky Ocean shares to Mr Pleshakov or to his nominees. Mr Linkov says that this latter document was never shown to him at the 6 March 2013 meeting and claims that it was forged using the signatures on the back of the document on the face of which it appears.

[39] Mr Pleshakov's account is that the meeting dealt with the termination by Mr Pleshakov of Mr Linkov's services. He described the atmosphere as calm and measured and that Mr Linkov not only signed the SPA's, as he accepts, but signed each of two differently worded minutes. He explains the date borne by the liquidation minute as a clerical error. I do not accept that part of Mr Pleshakov's evidence, since it is plain from the documents that the two men had arranged for a subsequent meeting to take place on 28 March 2013, which Mr Linkov subsequently cancelled. It appears that it had been the intention to deal with the liquidation of Sky Stream at that later meeting. Otherwise, however, I prefer Mr Pleshakov's account to that of Mr Linkov. It is consistent with subsequent communications between the two men and in any case I do not believe that Mr Pleshakov would attempt to intimidate Mr Linkov with threats of violence (albeit at the hands of others) to close members of Mr Linkov's family. In my judgment, Mr Linkov's execution of the documents which he signed was voluntary and unpressured. Any idea that the execution and registration of such transfers would stop any raiders dead in their tracks is, in my judgment, far fetched. The problem was Mr Linkov's vulnerability and exposure. As for the minute dealing with the approval for the transfer of the Transaero shares and the shares in Sky Ocean, I reject Mr Linkov's evidence of forgery. If Mr Linkov was prepared to sign SPA's and transfer documents for Sky Stream's Transaero shares, there was no reason to suppose that he would balk at signing a board resolution authorizing the transfers.

[40] It is agreed that the documents were taken down to the hotel lobby, where the ladies were waiting, and signed by them without giving them any consideration.

[41] I mention at this point that neither witness says that there was any discussion at this meeting of the beneficial ownership of the Sky Stream shares. Indeed, Mr Pleshakov said that the Sky Stream shares were not discussed. In my judgment, Mr Pleshakov's concerns in convening this meeting were, first, the state of Mr Linkov's health and, secondly, that he and Ms Kazantseva might be made an offer for the Transaero shares which they might feel unable to resist. I find that Mr Pleshakov's concerns about corporate raiders were real and

that the steps taken at the Kempinski Hotel were designed to remove any risk that Sky Stream's Transaero shares might end up in the hands of strangers.

- [42] On 20 March 2013 Mr Linkov emailed Mr Pleshakov saying that the 6 March meeting had had a harsh impact upon him and that his understanding was that fears of a hostile takeover had receded. There is then reference about the need to obtain advice, apparently from BVI lawyers, and to Mr Linkov's inability, through illness, to attend a meeting arranged for 28 March (the date borne by the liquidation minute).
- [43] On the following day Mr Pleshakov replied saying that he was sorry to have burdened Mr Linkov with problems, but that the danger had not receded. He told Mr Linkov that he needed to meet him.
- [44] On 27 March 2013 Mr Pleshakov emailed saying that he could not help Mr Linkov with his medical problems and denying that he had threatened him. Instead, he claimed to have appealed to his senses.
- [45] On 29 March 2013 the Defendants passed a members' resolution of Sky Stream removing Mr Pleshakov and his daughter from Sky Stream's board.
- [46] On 10 April 2013 Mr Linkov and Mr Pleshakov met in Frankfurt. There are contradictory accounts of what transpired at this meeting in the witness statements but in an email of 21 April 2013 Mr Linkov appears to have accepted that the shares of Sky Stream and, it seems, of Sky Ocean, were going to be transferred to Mr Pleshakov. There is no mention of Mr Pleshakov being obliged to pay \$4.5 million, or any other sum, for the Sky Ocean shares. On the following day Mr Pleshakov again denied threatening Mr Linkov and complained about Mr Linkov's failure to provide him with information as to Sky Stream's net asset position. Mr Linkov replied saying that he made no claim to any assets or securities⁴ and that once the securities and shares had been transferred to Mr Pleshakov the fate of Sky Stream *'would not be subject to debate.'*
- [47] On 21 May 2013 Mr Linkov repeated that the assets that interested Mr Pleshakov (including eight boxes of Transaero archives that were in Mr Linkov's possession) were to be transferred to Mr Pleshakov. The following day Mr Linkov wrote thanking Mr Pleshakov for not having 'fired' him and asking for a work reference. Mr Pleshakov replied that it really had been a matter of life and death as a significant portion of the Transaero stake was linked to the interests of *'very serious people.'*
- [48] On 24 May 2013 a stop notice was served and filed by Mr Pleshakov in respect of the Sky Stream shares. These proceedings were commenced on 8 August 2013.

⁴ it was explained by the interpreter that the Russian word for 'securities' can mean financial instruments or, more generally, valuables

- [49] Before leaving factual matters I should mention an issue that arose at various points during the trial, which was whether Mr Pleshakov from time to time made cash payments to Mr Linkov by way of, I suppose it is best put, general honorariums for services rendered. I have no doubt that he did. That was confirmed by Ms Simonova, who described Mr Pleshakov giving Mr Linkov cash filled envelopes on occasion. Ms Simonova was a calm and impressive witness whose evidence I am not disposed to reject. The fact that other evidence offered to support cash payments made to Mr Linkov was concocted and absurd does not detract from what she said.
- [50] Mr Linkov denied ever receiving any cash payments on the grounds that it would have breached the rules of professional conduct relating to the conduct of the business of a Russian advocate to take cash from a client – at any rate in the absence of a properly drawn retainer. I did not find that part of Mr Linkov's evidence persuasive and in any case it was not supported by the evidence of any independent expert on the regulation of the conduct of lawyers in the Russian Federation. I therefore find that Mr Linkov was provided by Mr Pleshakov with cash payments from time to time for services rendered, although I have no material upon which to make any finding as to the quantum of the amounts so received over the years.
- [51] Another issue that arose generally during the evidence was the matter of Mr Linkov's voting of Sky Stream's Transaero shares at General Meetings of Transaero. It was the evidence of Mr Pleshakov that he gave instructions to Mr Linkov how he was to vote the shares. Mr Linkov accepted that he discussed voting with Mr Pleshakov, who offered proposals on the subject, and went on to say that he always supported Mr Pleshakov at General Meetings of Transaero. Ms Simonova said that she provided Mr Linkov with instructions how the shares were to be voted and that those instructions were invariably followed. I accept Ms Simonova's evidence on this point, which is consistent with the closing words of Mr Linkov's email of 9 September 2010.

Discussion

- [52] The evidence at trial ranged, as can be seen from what I have said above, widely. At times it seemed as though what is in issue was the beneficial ownership of the Transaero shares. It is not. The sole question in this case is whether the Defendants acquired Sky Stream pursuant to an arrangement with Mr Pleshakov that they should do so as his nominees. While I accept that the whole of the parties' conduct in any given case may be capable of throwing light upon the arrangements under which property has been acquired, it will, in my judgment, be the circumstances surrounding its acquisition which will have the most bearing upon the resolution of that question.
- [53] Focusing first, therefore, upon the acquisition itself, it is clear that Sky Stream was acquired on 14 December 2005 for the purpose of taking a transfer, to be procured at

some unknown time in the future by Mr Pleshakov, of Transaero shares whose number was then unknown to the Defendants and at a price and upon terms equally unknown to them. This seems to me to make it improbable that the Defendants procured the incorporation of Sky Stream for their own benefit. I find it unlikely that persons in the BVI for a cruising holiday would spend time and not insignificant money on the incorporation of a company in order to be in a position to take a transfer of some shares at some indefinite time in the future once the terms of any offer that might be made had been considered and accepted. There would be plenty of time for that once the terms of the offer had materialized.

[54] I think it much more likely that the incorporation of Sky Stream was done at the request of Mr Pleshakov. The terms of Mr Linkov's email of 20 December 2005 to Ms Simonova chime very well with that. I do not think that if Mr Linkov had simply procured a company in anticipation of holding some shares for himself, he would have written to Ms Simonova from holiday in such terms, referring to 'our plan' and 'our new partner.' This was obviously something that Mr Linkov thought that Ms Simonova needed to know in her professional capacity, as one of Mr Pleshakov's staff.

[55] This view of the matter is of a piece with Ms Simonova's email to Mr Linkov of 11 January 2006, informing him that Freshfields would be assisting. Freshfields would hardly have been engaged in order for some shares to be transferred to Mr Linkov in a personal capacity and Ms Simonova would not have needed to tell him that Freshfields would be assisting in anything at all unless it was necessary for him to know that. Mr Linkov would not have needed this information unless he was involved in the matter otherwise than in a purely personal capacity as a potential future transferee of a parcel of shares. For this reason, too, it is, in my judgment, significantly more probable that Sky Stream was formed to further Mr Pleshakov's intentions in relation to the incoming Transaero shares than to further any private intentions on the part of Mr Linkov and Ms Kazantseva. As Mr Pleshakov himself said, why should he go to the trouble of obtaining the additional shares only to give the best part of half of them away to the Defendants.

[56] These inferences are consistent with the events surrounding the incorporation and its immediate aftermath. The Deed of Trust is compelling evidence that it was the intention of the Defendants that Sky Stream was to be and remain under the control of Mr Pleshakov. The document did not create any trust of the Sky Stream shares but it did, or might, give Mr Pleshakov, in the unhappy event that Mr Linkov and/or Ms Kazantseva became incapacitated or disaffected, a second string to his bow. Even if the attempt were to fail, it is the fact that trouble was taken to arm Mr Pleshakov with such a document that is so telling. Its genesis must have, or at any rate is likely to have, involved the giving of instructions to a BVI lawyer. Those instructions can only have been to the effect that a document was required which could, or could conceivably, be used to provide continuity for Mr Pleshakov should some calamity befall the Defendants or should they fall out with

him. That is consistent with Mr Pleshakov's evidence that Mr Linkov told him that it was to be used only *in extremis*. There would have been no need for any such continuity had the Defendants themselves not been intended to hold their Sky Stream shares in a representative, rather than in a personal capacity.

[57] The Defendants' explanation for the genesis of the Deed of Trust, that it was intended as some sort of civil law *fideicommission* to justify the fact that Mr Pleshakov was in possession of the original share certificates, was fanciful. Had such a document been thought necessary, it would surely have been obtained from a Russian, rather than from a BVI lawyer.

[58] The fact that the original share certificates for Sky Stream were lodged with Mr Pleshakov is consistent with this view of the matter. The certificates were not the equivalent of the shares themselves, but the fact that Mr Pleshakov held them would have put very considerable obstacles in the way of the Defendants had they attempted to transfer the Sky Stream shares to some third party. I reject the Defendants' evidence that Mr Pleshakov was given the original certificates in case depository agents should demand to see them before opening an account. Apart from the fact that it seems inherently improbable that business practice in Russia would require a company with a significant number of shareholders to collect perhaps hundreds of original share certificates from its members before it could open any such account, it would have been a simple matter to provide evidence, if that is the case, that that is so. Instead of which we have Mr Linkov dealing with Mr Pleshakov's inquiry of 9 September 2010 about the updating of Sky Stream's entry with the Transaero depository by telling him that he was obtaining an up to date Certificate of Incumbency. As for opening a deposit account with a bank, the Defendants themselves managed to do that at BIL without having to produce original share certificates.

[59] In any case, Mr Pleshakov has now held the original share certificates for nearly ten years. Had the Defendants believed that they were theirs, they would surely have demanded their return so soon as it had become clear that no depository was in the slightest way interested in viewing the original share certificates of Sky Stream. The most natural explanation for the fact that the certificates were placed in Mr Pleshakov's possession and left permanently in his custody is that he is beneficially entitled to the shares which they represent.

[60] It is true that the evidence shows that Ms Kazantseva paid for the incorporation of Sky Stream and that Mr Linkov appears to have provided the \$55,000 that had to be paid for the Transaero shares. In the ordinary way, such evidence would have gone a long way to show that the company had been formed by them as beneficial owners in order to hold shares beneficially owned by them. But this is not the ordinary way. This is a case where there was clearly a financial relationship between Mr Linkov on the one hand and Mr

Pleshakov on the other. Ms Kazansteva appears to have been in receipt of something in the region of €620,000 of monthly payments from Sky Stream over the six year period between April 2007 and March 2013. On the footing that Sky Stream was beneficially owned by Mr Pleshakov, Ms Kazantseva and Mr Linkov were clearly entitled to be indemnified for each of these expenditures and I think it likely that one way or another they will have been. Even if that is not so, the other factors in this case referred to above mean that I am not persuaded that these payments, even if they have not been reimbursed, are capable of outweighing the evidence of a clear intention that Sky Stream was formed on behalf of Mr Pleshakov.

- [61] As for the pleaded case that Mr Linkov and Ms Kazantseva agreed to act as nominee shareholders of Sky Stream in return for €4,000 per month, it is the fact that Ms Kazantseva has drawn that amount since April 2007. As for Mr Linkov, I accept the evidence of Mr Pleshakov that he accounted from time to time to Mr Linkov in cash for whatever was due to him. Mr Linkov gave it as his intention in his 9 September 2010 email to submit quarterly fees and expenditure accounts.
- [62] In my judgment the evidence establishes that the Defendants acquired the Sky Stream shares as nominees for Mr Pleshakov. Nothing that happened subsequent to that acquisition is inconsistent with that finding. Indeed, it fully harmonises with it. It was suggested that the manner in which shares belonging to himself or to members of his family were dealt with was inconsistent with any suggestion that the Defendants held their shares as nominees for Mr Pleshakov. In particular, it was submitted that if Mr Pleshakov was, as I have found, the beneficial owner of Sky Stream, he and members of his family would not have sold their Transaero shares to the company. Instead, they would have given directions to Mr Linkov and Ms Kazantseva for Sky Stream to declare dividends, which they would be obliged to account for to Mr Pleshakov and which he could then have distributed as he wished. In this way the Pleshakov family could have received benefits from Sky Stream while at the same time retaining their shares.
- [63] I do not think that the fact that Sky Stream paid to acquire shares from Mr Pleshakov and from members of his family is inconsistent with his beneficial ownership of Sky Stream: Mr Pleshakov was in effect buying shares from family members, together with the ability to vote them in the name of an apparent stranger to him or them.
- [64] Nor do the facts that Sky Stream was never declared as an affiliate, or that Mr Pleshakov does not seem to have been interested in its finances until very late in the day, affect my conclusion. As to the former, the answer is that it should have been. As to the latter, Mr Pleshakov appeared to me to be someone more interested in power than money. His absence of curiosity about Sky Stream's finances is not sufficient to outweigh the mass of evidence that it was formed for his benefit.

Conclusion

- [65] This claim therefore succeeds. I will make the declarations sought and order that the register of members of Sky Stream be rectified to delete the names of Mr Linkov and Ms Kazantseva and to substitute therefor the name of Mr Pleshakov.



Commercial Court Judge
12 November 2014