

Case No: HC10C02462

Neutral Citation Number: [2011] EWHC 1687 (Ch)

**IN THE HIGH COURT OF JUSTICE**  
**CHANCERY DIVISION**

Royal Courts of Justice  
Strand  
London WC2A 2LL

Monday, 23<sup>rd</sup> May 2011

BEFORE:

**MR JUSTICE HENDERSON**

BETWEEN:

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**JSC BTA BANK**

Claimant  
and  
Applicant

- and -

**ROMAN SOLODCHENKO AND OTHERS**

Defendants

- and -

**PAUL KYTHREOTIS AND OTHERS**

Respondents

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MR TIM AKKOUH (instructed by Hogan Lovells International LLP) appeared on behalf of the Claimants  
Person

Defendants not in attendance

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**Approved Judgment**  
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MR JUSTICE HENDERSON:

1. I have a procedural issue to deal with, which is not entirely straightforward. Simply stated, the question is whether notice of the current application should be given to Mr Ablyazov before I make any order. The background, in brief, is that on 12<sup>th</sup> May the Claimant made an application without notice to myself, seeking permission to use various documents, which had been disclosed under compulsion, for the purposes of proposed committal proceedings to be brought in the Commercial Court in the Drey proceedings against Mr Ablyazov. The named Respondents to that application were Mr Kythreotis, the Second Defendant in the Chancery AAA action, together with Eastbridge Capital Limited, Park Hill Capital Limited, Mr Ereshchenko and Mr Salim Shalabayev. The reason they were joined as Respondents that they were the parties who had disclosed the documents that the Claimant sought permission to use.
2. At the hearing I was not satisfied that it was appropriate to proceed without notice against those Respondents, given what seemed to me the unconvincing evidence of urgency which had been placed before the court, and the distinction between that application and the earlier ones, which had been made in preparation for the widening of the already very extensive receivership orders made against Mr Ablyazov in the Commercial Court.
3. I also raised the question whether notice of the application should be given to Mr Ablyazov, on the footing that he was the person against whom the proposed contempt proceedings were to be brought, and as such it seemed to me at least arguable he had an interest in the matter and should have a right to be heard before the court ruled on the application. I referred Mr Akkouh to observations made by the Court of Appeal in the Dadourian case, Dadouran v. Simms (No. 2) [2006] Civ 1745, [2007] 1WLR 2967, which appeared to provide some support for that view of the matter. But on examining it, and with the help of his submissions, it did seem to me that that case could properly be distinguished on the footing that the Defendant there, whom the Court of Appeal said should be joined to the application, was the person who had disclosed the relevant documents as well as being the object of the proposed contempt proceedings. The present case was therefore distinguishable, because Mr Ablyazov himself had not, at least directly, disclosed the relevant documents.
4. There was, however, a possible further wrinkle, as Mr Akkouh termed it, in that it might emerge in due course that Mr Ablyazov is the ultimate beneficial owner of some at least of the documents which were disclosed, or disclosure of which was obtained from Mr Shalabayev's laptop. Nevertheless, taking everything into consideration it seemed to me, at that point, that there was no need for Mr Ablyazov to be made a party, and I therefore granted limited permission for the documents to be used for the purposes only of issuing the relevant contempt application with a view to obtaining a hearing date, and I adjourned further consideration of the matter, upon notice to the named Respondents, until last Friday.

5. In the course of last week correspondence ensued between the Respondents' solicitors and Hogan Lovells, as a result of which it had become clear by Friday that there was no substantive opposition to the order sought, although one or two of the Respondents made a few complaints about the procedure which had been followed and the fact that the application had been made without notice in the first place. So, in relation to the original Respondents, the application was not opposed, and had that been the only relevant consideration for the court to bear in mind I would have made the order on paper without further attendance on Friday.
6. However, the application had, it does not matter for present purposes precisely how, come to the notice of Mr Ablyazov's solicitors, Stephenson Harwood, and they wrote to Hogan Lovells, firstly on 16<sup>th</sup> May and then again on 18<sup>th</sup> May and finally on 20<sup>th</sup> May, partly asking what the nature of the proceedings was, because, of course, they had not been served with the relevant papers, but also expressing the view that Mr Ablyazov was a proper Respondent, on the footing that at least arguably the application concerned him, and undoubtedly the purpose of the application was to use the documents for the purposes of the committal application against him. That correspondence, including in particular the letter of 20<sup>th</sup> May, was very properly brought to my attention by Hogan Lovells on Friday, and I therefore postponed making any order on paper and expressed a provisional opinion that the prudent course would indeed be to give notice to Mr Ablyazov so that the matter could then be dealt with on that basis.
7. However, that provisional view did not commend itself to the Claimant and accordingly Mr Akkouch has appeared before me this morning seeking to persuade me to take a modified or different view. His arguments are essentially threefold. Firstly, he argues that Mr Ablyazov is not a proper Respondent to the application. Secondly, he says that if Mr Ablyazov wishes to object it would be better for a number of reasons if such an objection were dealt with in the Commercial Court in the context of the committal proceedings. Thirdly, as a possible halfway house, he suggests that the court might make the order requested today, but direct service of the papers on Mr Ablyazov and give him permission to apply within a fixed period if he chooses to make his objection in these proceedings rather than in the contempt proceedings.
8. Taking those points in turn, firstly, I agree to a certain extent with the argument that Mr Ablyazov is not a necessary Respondent to the present application. The basic issue is one between the parties who disclosed the documents and the Claimant. It involves balancing the Claimant's desire to make use of the documents for a closely connected purpose in the committal proceedings against the privacy of the Respondents who had, under compulsion, disclosed the documents in question. That is an issue between those parties, and does not as such directly concern the object of the committal proceedings.
9. However, the wrinkle which I mentioned earlier does come into the picture at this point, because it may be the position, I cannot say either way at this stage whether it is the position, that at least some of the documents are ones that do in fact belong to Mr Ablyazov; and if that is the case then he would, it seems to me, have a much more close and direct interest in the present application. Quite apart from that, it seems to me that the court anyway has a discretion as to who should

be joined as a Respondent to the application. There are no hard and fast rules, but the interests of justice and fairness have to be followed in every case and in that context it is plain that Mr Ablyazov has, at least in layman's terms, a very obvious interest in the matter as the party against whom the documents are going to be used. It is also perhaps of some relevance that he is now himself a party to the Chancery AAA action; and the fact that the proposed use is for committal, is something to which the court must pay very careful attention, because it plainly engages his human rights, the liberty of the subject, and is, for the purposes of the European Convention on Human Rights, to be treated as a criminal matter. So, I am not necessarily persuaded that I should accede to Mr Akkouh's first argument, and I think it is rather a matter for the exercise of the court's discretion.

10. Secondly, however, Mr Akkouh submits that for practical reasons the matter would be better dealt with in the context of the committal proceedings in the Commercial Court, and he gives three reasons in support of that submission. Firstly, he says that the Commercial Court will anyway have to look at a number of similar issues, including in particular use of the cross-examination of Mr Ablyazov on his earlier disclosure for the purposes of the committal, so the court will anyway be grappling with considerations of a comparable nature and will have to do that in the context of the committal proceedings. Secondly, he submits that the Commercial Court will be more familiar with the nature of the allegations against Mr Ablyazov and with the voluminous evidence filed in support of the committal application. Thirdly, he submits that if this court were to embark upon a contested application it would inevitably have to look at restricted material in the Drey proceedings in order to resolve it, and from that perspective too he submits that it is better for the matter to be dealt with in the Drey proceedings rather than outside them.
11. I see force in all of those points, and taken together, and viewing the matter as one of discretion, I think the appropriate way forward is to adopt the halfway house that Mr Akkouh has proposed. On that footing I will make the order which was sought, and which is not objected to by any of the named Respondents, but I will direct service of the application and of the papers, including the transcripts of the hearings before me, upon Stephenson Harwood. And I will give an express liberty to apply to Mr Ablyazov within 14 days if, having taken advice, he wishes to contend that the application should not have been granted and that it is better or preferable, for whatever reason, to make such application before this court rather than, as at present seems to me likely to be more sensible, in the context of the committal proceedings themselves.
12. Proceeding in that way, it seems to me, will provide proper and adequate protection for Mr Ablyazov's interests, but I have explained the matter at some length in this judgment so that he will, I hope, understand how matters have reached the position where we now are, and will also understand that the court has been very concerned to take his interests into account, and to protect them as appropriate, from the without notice application onwards.