



Neutral Citation Number: [2020] EWHC 321 (Ch)

Case No: BR-2018-001469

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)

The Rolls Building
Fetter Lane, London EC4A 1NL

Date: 26 February 2020

Before :

INSOLVENCY AND COMPANIES COURT JUDGE BURTON

Between :

PJSC VTB BANK **Petitioner**
- and -
VALERIY VLADISLAVOVICH LAPTEV **Respondent**

Tim Akkouh (instructed by **Steptoe & Johnson UK LLP**) for the **Petitioner**
Alexander Halban (instructed by **New Media Law LLP**) for the **Respondent**

Hearing dates: 4 - 6 November 2019

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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ICC Judge Burton :

1. This is a contested bankruptcy petition presented by a Russian, predominantly state-owned bank PJSC VTB Bank (the “Bank”) against Mr Laptev, a Russian citizen.
2. From 2007 to 2017 Mr Laptev was president of the Generation Group which, until 2017, was Russia’s largest manufacturer of oil and gas drilling equipment. Mr Laptev personally guaranteed Generation’s facilities with the Bank. When Generation entered an insolvency process in Russia, the Bank called on the guarantees for an amount, the calculation of which was not in dispute in these proceedings and converts to approximately £25 million (“Debt”).
3. The contracts of guarantee are governed by Russian law. On 15 June 2017, the Russian court made a bankruptcy order against Mr Laptev. On 3 August 2017, the Bank submitted its claim to be included as a creditor in Mr Laptev’s Russian bankruptcy proceedings. The claim was registered by the Russian court on 30 August 2017 and the Bank was recognised as a creditor in respect of the Debt.
4. On 30 August 2018, the Bank presented a statutory demand against Mr Laptev in respect of the Debt which was followed on 28 September 2018, by the Bank’s petition, now before me, seeking a bankruptcy order against Mr Laptev in England.
5. Mr Laptev opposes the petition on the basis that:
 - i) having “proved” in the Russian bankruptcy proceeding, the Bank is no longer a creditor to whom the Debt is payable, and therefore not entitled to bring the petition (“Locus Issue”); and
 - ii) Mr Laptev is beyond the jurisdiction of the court. He disputes, as claimed by the Bank, that he had a place of residence in this jurisdiction in the relevant three-year period which preceded the presentation of the petition (“Place of Residence Issue”); or
 - iii) if the Court should find that it does have jurisdiction, he pleads in the alternative that the Court should not exercise its discretion in favour of making a bankruptcy order (“Discretion Considerations”).

Relevant English statutory provisions

6. Section 264(1)(a) of the Insolvency Act 1986 (“IA86”) provides:

“264 Who may present a bankruptcy petition

(1) A petition for a bankruptcy order to be made against an individual may be presented to the court in accordance with the following provisions of this Part—

 - a) by one of the individual's creditors or jointly by more than one of them...”
7. “Creditor” for the purposes of a petition is defined in section 383(1)(b) IA86:

(1) Creditor –

... (b) in relation to an individual to whom a bankruptcy application or bankruptcy petition relates, means a person who would be a creditor in the bankruptcy if a bankruptcy order were made on the application or petition.

8. Section 265 IA86 provides that where, as in Mr Laptev’s case, the centre of a debtor’s main interests is not in a member state of the European Union which has adopted the EU Regulation on Insolvency Proceedings, a bankruptcy petition may only be presented to the court if the test in subsection (2) is met. It is common ground that of the tests set out in subsection (2), the only one which might apply to Mr Laptev (although he disputes that it does apply) is set out in subsection 2(b): “that at any time in the period of three years ending with the day on which the petition is presented, the debtor has had a place of residence in England and Wales”.

9. Section 267 IA86 provides:

267 Grounds of creditor's petition

(1) A creditor's petition must be in respect of one or more debts owed by the debtor, and the petitioning creditor or each of the petitioning creditors must be a person to whom the debt or (as the case may be) at least one of the debts is owed.

(2) Subject to the next three sections, a creditor's petition may be presented to the court in respect of a debt or debts only if, at the time the petition is presented—

(a) the amount of the debt, or the aggregate amount of the debts, is equal to or exceeds the bankruptcy level,

(b) the debt, or each of the debts, is for a liquidated sum payable to the petitioning creditor, or one or more of the petitioning creditors, either immediately or at some certain, future time, and is unsecured,

(c) the debt, or each of the debts, is a debt which the debtor appears either to be unable to pay or to have no reasonable prospect of being able to pay, and

(d) there is no outstanding application to set aside a statutory demand served (under section 268 below) in respect of the debt or any of the debts.

The Locus Issue - Can the petition be brought before the English court?

10. Counsel for the Bank and Mr Laptev disagree whether this court should determine the issue of the Bank’s entitlement to petition for Mr Laptev’s bankruptcy by reference to English or Russian law. As will be seen, this requires me to determine

whether the relevant provisions of Russian law are procedural, substantive or both. Everything starts then, with Russian law.

11. Chapter 9 of *Dicey, Morris & Collins*, “*The Conflict of Laws*” concerns “Proof of foreign law; Use of foreign sources”. Rule 25 states:

“In any case in which foreign law applies, the law must be pleaded and proved as a fact to the satisfaction of the judge by expert evidence or sometimes by certain other means”.

The chapter provides helpful guidance regarding the approach which should be taken to cases where foreign law applies. Omitting the footnotes, the following paragraphs are pertinent to the evidence before me of Russian law.

Paragraph 9-013 provides:

“It is now well settled that foreign law must, in general, be proved by expert evidence. Foreign law cannot be proved merely by putting the text of a foreign enactment before the court, nor merely by citing foreign decisions or books of authority. Such materials can only be brought before the court as part of the evidence of an expert witness, since without his assistance the court cannot evaluate or interpret them.”

12. Paragraph 9-015, “Use of foreign sources

“An English court will not conduct its own researches into foreign law; in the common law system, “the trial is not an inquisition into the content of relevant foreign law any more than it is an inquisition into other factual issues that the parties tender for decision by the court”. But if an expert witness refers to foreign statutes, decisions or books, the court is entitled to look at them as part of his evidence. But the court is not entitled to go beyond this: thus if a witness cites a passage from a foreign law-book he does not put the whole book in evidence since he does not necessarily regard the whole book as accurate. Similarly, if the witness cites a section from a foreign code or a passage from a foreign decision the court will not look at other sections of the code or at other parts of the decision without the aid of the witness, since they may have been abrogated by subsequent legislation.”

Expert evidence regarding Russian law

13. Each party obtained and relied upon expert evidence as to Russian law in relation to four issues:
- i) Whether, as a matter of Russian law, the making of a bankruptcy order in Russia discharges or releases a debt to which the debtor was subject prior to the making of the order;
 - ii) Whether, as a matter of Russian law, a creditor who has been recognised in Russian bankruptcy proceedings has the right to take steps separate from its participation in those proceedings (such as by taking other enforcement

action in Russia or elsewhere, or by petitioning for bankruptcy in a foreign jurisdiction);

- iii) Whether an English bankruptcy order made against a debtor who is domiciled and resident in Russia would be recognised in Russia; in particular, whether the Russian court can and would recognise an English bankruptcy order against such a debtor where the debtor is already subject to Russian bankruptcy proceedings; and
- iv) How Russian law treats matrimonial and other property owned by spouses and gifts between spouses (in the absence of a marital property contract between the spouses regulating their property affairs).

Expert witnesses

- 14. The petitioner's expert witness was Ms Varvara Knutova, a partner at TRUBOR law firm. In 2005, Ms Knutova received the "Commercial and International Private Law Division – Specialist" qualification from the Moscow State Institute of International Relations (University) MFA Russia (MGIMO), International Law Department. Before joining TRUBOR she was head of the international arbitration group within the dispute resolution and mediation practice of Pepeliaev Group law firm after which she was group head of a dispute resolution practice of the international law firm, Golsblat BLP. Ms Knutova's expertise in respect of both domestic dispute resolution and international arbitration has been noted in the Legal 500. Ms Knutova's initial report was dated 16 October 2018 and was supplemented by two additional reports dated 9 December 2018 and 1 August 2019.
- 15. Mr Laptev's expert witness was Dr Viktor Stanislavovich Gerbutov. Dr Gerbutov has worked as a lawyer in private practice since 2006 and has been head of the dispute resolution practice of the Moscow office of international law firm Noerr since 2012. Dr Gerbutov lectures in unjust enrichment and dispute resolution issues and has been recognised in the 2020 edition of The Best Lawyers in Russia for insolvency and reorganisation law as well as for litigation. His expert's report was dated 15 July 2019.
- 16. Both Experts are experienced in providing expert evidence on matters of Russian law in foreign courts.
- 17. In addition to their separate reports, I had the benefit of a joint memorandum dated 23 August 2019 which sets out a summary of the principal points of agreement and disagreement between the Experts.
- 18. The Experts agree that the making of a bankruptcy order by the Russian court does not discharge or release the debts due to a creditor. Article 213.28(3) of the Federal Law on Insolvency (Bankruptcy) dated 26 October 2002 ("Russian Insolvency Law") provides that "After settlement of accounts with creditors, the citizen recognised to be a bankrupt shall be released from subsequent performance of creditors' claims". Consequently, such discharge would usually arise on termination of the bankruptcy, but that is not guaranteed. Article 23 provides that in various circumstances, including where the debtor fails to provide necessary

information or provides deliberately false information, the relevant Russian arbitrazh court may make a ruling, following the sale of the debtor's assets, that the usual rule on release from debts, does not apply to the debtor.

19. The Experts disagree as to whether a creditor whose claim has been included in the register of the debtor's claims (which for the purposes of this judgment I shall describe as a creditor who has "proved" in the Russian bankruptcy) is precluded by Russian law from taking steps in relation to the same claim in foreign proceedings against the bankrupt.
20. Whilst accepting that the issue has not been formally considered by the Russian court in a case with sufficiently comparable facts, Ms Knutova's opinion is that Russian law does not expressly prohibit such a creditor from taking foreign action and that public policy considerations would be likely to dictate that the debtor should not be allowed to use the Russian bankruptcy proceedings as a shield to prevent creditors from trying to reach his foreign assets through an English bankruptcy. Dr Gerbutov, however, opined that a creditor's "proof" in the bankruptcy proceedings provides an exclusive remedy. Articles 63(1) and 213.11(2) of the Russian Insolvency Law (the latter, I understand, applying to the insolvency of individuals who are citizens but not entrepreneurs) provide that from the opening of bankruptcy proceedings, creditors' claims relating to monetary obligations can only be submitted by complying with the procedure for submitting claims in the bankruptcy. He considers that this would apply as much to the commencement of bankruptcy proceedings in England as it would to the commencement of any other proceedings against the debtor in Russia, regardless of whether the petitioner is prepared to ensure that all realisations from the bankruptcy are applied for the benefit of all of the debtor's creditors.
21. The Experts' evidence in relation to this issue is only relevant if I determine that the question should be determined by reference to Russian rather than English law.

Conflict of laws issue: Should this court determine the Bank's entitlement to petition by reference to English or Russian law?

22. For the Bank, Mr Akkouch contends that questions of procedure are always governed by the *lex fori*. Determining the methods by which the Bank may enforce the Debt, including its decision whether to apply for bankruptcy proceedings in England and its *locus standi* to do so, is a procedural issue and should be governed by English law. This, he says, is supported by three factors. First, the language of Article 23 of the Russian Insolvency Law refers to the debtor being "released from subsequent performance of creditors' claims" after settlement of their accounts by the bankruptcy trustee. This, Mr Akkouch says, highlights that a liability to the Bank remains, and the Russian Insolvency Law merely restricts the methods by which it can be enforced. Secondly, it is clear from the provisions of Article 23 which set out the circumstances in which the court will make a ruling that the debtor will not be released from his debts, that the restriction which prevents the Bank enforcing its rights in Russia against Mr Laptev during the currency of his bankruptcy, is temporary. Thirdly the language of the relevant articles of Russian law refers to claims which may only be submitted through the bankruptcy "procedure". All three factors, he submits, point to procedural questions regarding the enforcement of rights. This is important because under

English law, section 285(3)(b) IA86 provides that after the making of a bankruptcy order, a creditor may not commence any action or other legal proceedings against the bankrupt except with the leave of the court. Consequently, under English law, the Court may permit such proceedings.

23. For Mr Laptev, Mr Halban relies on Article 12 of the Rome I Regulation (EC 593/2008):

(1) The law applicable to a contract by virtue of this Regulation shall govern in particular:

(a) interpretation;

(b) performance;

(c) within the limits of the powers conferred on the court by its procedural law, the consequences of a total or partial breach of obligations, including the assessment of damages in so far as it is governed by rules of law;

(d) the various ways of extinguishing obligations, and prescription and limitation of actions;

(e) the consequences of nullity of the contract.

(2) In relation to the manner of performance and the steps to be taken in the event of defective performance, regard shall be had to the law of the country in which performance takes place.

24. He submits that the language of Articles 12(1)(b) and 12(2) distinguishes between substantive performance of the obligation (12(1)(b)) and the manner in which it is to be performed (12(2)). As Russian law governs the contracts which gave rise to the Debt, pursuant to Article 12(1), it also governs the interpretation, performance and remedies which may be claimed in respect of those contracts. Under Article 12(1)(c) remedies for breach of contract, which before Rome I and under common law rules, were considered to be procedural, are now regarded as substantive.

25. Mr Halban accepts the Experts' shared opinion that the Debt has not been discharged by the Russian bankruptcy proceedings, but submits that the prohibition on a Russian creditor bringing proceedings for its debt outside the bankruptcy is, according to Dr Gerbutov's Expert's Report, widely accepted by the Russian courts and academics to be a matter of both substantive as well as procedural law.

26. It is appropriate for me to pause here to explain that Dr Gerbutov's Expert's Report also provides a brief overview of the Russian civil law system. He explains that the main source of Russian law is its statutes and that whilst court judgments are not formally regarded as a source of Russian law:

“those of the highest courts (the Constitutional Court, the Supreme Court and the Supreme Arbitrazh Court [(“SAC”)] (until its abolition in 2014)) in certain cases are mandatory for lower courts, including in regard to questions of interpretation of provisions of laws and other statutes. In any event, in practice Russian court judgments (especially the ones of the highest courts)

provide important guidance on the correct interpretation of laws. This is so despite the fact that sometimes Russian court judgments reflect opposite interpretations of law.

Scholarly writings, especially of reputable Russian scholars, are also taken into account by Russian judges. However, usually such writings are not explicitly referred to in court judgments”.

27. Dr Gerbutov also explains that there are two systems of courts hearing civil matters, arbitrazh courts and courts of common jurisdiction. Civil procedure in arbitrazh courts is governed by the Arbitrazh Procedural Code (“APC”). He states that “Bankruptcy cases fall within the exclusive competence of arbitrazh courts (Article 27(6(1)) of the APC)”. “The Supreme Court is now the highest court in civil cases for both arbitrazh courts and courts of common jurisdiction. Until its abolition in 2014, the SAC had been the highest court in the system of arbitrazh courts”.
28. Having put in context the limitations of Russian judgments as “precedent”, he explains that the Russian courts have established that the prohibition which prevents creditors who have proved in a Russian bankruptcy from taking other steps or proceedings against the debtor, creates, in Russia, an exclusive remedy which goes well beyond mode-of-performance issues, such as whether performance can be achieved at a particular time or place due, for example, to public holidays.
29. Dr Gerbutov’s Expert’s Report summarises four concepts, in part overlapping and some competing, proposed by Russian legal scholars which seek to explain the substantive nature of the prohibition:
 - i) Registration of a creditor’s claim is an exclusive remedy (“Exclusive Remedy Theory”);
 - ii) Following the commencement of insolvency proceedings, performance by the debtor of his obligations changes: creditors can no longer individually approach the debtor for settlement of their claims but must instead submit their claims in compliance with the Russian Insolvency Law procedure (“Change in Performance Theory”);
 - iii) After commencement of insolvency proceedings, individual obligations between the debtor and his creditors cease to exist and are replaced with a new “protective shared obligation”; and
 - iv) The fact that creditors’ claims cannot be enforced outside the insolvency proceedings gives rise to a limitation on the debtor’s legal capacity.
30. Dr Gerbutov provides detailed references and citations for each scholar’s view. He quotes two scholars who state that remedies, or “the means of protection of rights” are part of substantive law and to five scholars who share the view that the registration of creditors’ claims is a special remedy provided by Insolvency Law. Among them, he quotes Dr S A Karelina’s article “Mechanism of Legal Regulation of Insolvency Relationships” Wolter Kluwer 2008:

“What happens with the initial debt obligation? Does it terminate or transform into a different legal relationship? ...

In our view, the more justified is the position, according to which the initial relationships do not disappear, they continue to exist and not lose their essential character.

... It appears that when a legal relationship is changing from a regulatory into a protective one, it is possible to speak about change of its legal status, including the status of rights and obligations of the parties, as well as status of relationships of the debtor and creditors with the state and other persons ...

... One of the special means of protection of violated substantive norms peculiar to insolvency procedure is a submission by the creditor of the claims to the debtor.”

31. I found Dr Gerbutov’s Expert’s Report to be well-researched, and his opinion that the prohibition of enforcement of creditors’ claims outside of insolvency proceedings (the “Prohibition”) creates a special regime, which is both procedural and substantive, to have been carefully and logically formed. He repeated his opinion that “The prohibition on enforcement of creditors’ claims outside of pending bankruptcy proceedings has not only a procedural, but also a substantive character” in the Joint Memorandum.
32. Ms Knutova’s Expert’s Report did not specifically address whether registration of a creditor’s claim gives rise to procedural, substantive or both consequences. She explained during cross-examination that she did not address this part of Dr Gerbutov’s evidence in the Joint Memorandum because she considered it was not one of the questions which the Experts were asked to consider. In her opinion, for Russian law purposes, it is of little relevance.
33. Ms Knutova said that she did not fully agree with the scholars on whose writing, for the first theory Dr Gerbutov had relied because she considered that “if we are talking about something which is exclusively available as a matter of substantive law” then in her opinion the scholars fail to take into account the consequences when a party breaches the Prohibition and does pursue a direct claim or receive a direct payment from the debtor. She explained that the law does not render such a transaction or payment null and void; rather it gives the insolvency administrator and other creditors a right to challenge. The reason they are given such rights is because the payment violates the law on priority of payments to creditors.
34. I took from this that Ms Knutova did not consider the Prohibition to be exclusively a matter of substantive law. She very clearly and repeatedly stated that the purpose behind the Prohibition was “to ensure that creditors are equally compensated and that the prescribed order of priority of payments is not violated”.
35. Ms Knutova appeared to concede that the requirement for creditors to register their claims in the bankruptcy was a remedy. When asked whether she agreed with the view taken by the scholars referred to in Dr Gerbutov’s Expert’s Report that in Russian law, the issue of remedy is a matter of substantive law, she said that she had no opinion on the matter because: “for the Russian domestic purposes, it is a

purely academic discussion which does not really have great practical value. It is clear for everyone that bankruptcy is dealing with the monetary claims and whenever you have a claim which can be estimated, you want a thing or money, you should go to the bankruptcy case and ask for payment. So, in terms of, how I say, these articles, they do not expand the practical use of this approach abroad.”

36. I took from this that Ms Knutova neither agreed nor disagreed with the scholars’ and Dr Gerbutov’s view that in Russian law, the issue of remedy is a matter of substantive law.

Conflict of laws Issue - Summary

37. The learned authors of *Dicey & Morris* state at Paragraph 7-002 that the English court will always apply its own rules of procedure and will refuse to apply any foreign rule which it considers to be procedural. While procedure is governed by the *lex fori*, matters of substance are governed by the law to which the court is directed by its choice of law rule (*lex causae*).
38. Rome I extended the application of the *lex causae* to provide that questions of remedy and damages are governed by the law of the contract. The contracts of guarantee giving rise to the Debt are governed by Russian law.
39. Articles 63 and 213.11 of the Russian Insolvency Law prescribe that from the date when the arbitrazh court issues a ruling granting an application and declaring a citizen bankrupt and commencement of restructuring of his debts, a moratorium arises and creditors’ monetary claims may be submitted only through the procedure established by the Russian Insolvency Law.
40. Where the debtor conceals his assets or deliberately fails to cooperate with the insolvency administrator, the prohibition on creditors pursuing monetary claims in any way other than by “proving” in the bankruptcy will be merely temporary. Dr Gerbutov recognised this. He also recognised that the rules of the APC and Russian Insolvency Law which provide for the Russian arbitrazh courts to have the exclusive right to hear insolvency cases, are procedural. However, his expert opinion, supported by the scholars he cites, considers these Articles of the Russian Insolvency Law to give rise to issues which at law are both procedural and substantive. Throughout the currency of the insolvency proceedings, a creditor’s claim against the debtor may no longer be settled individually or claimed outside of the insolvency proceedings. Statute affects the parties’ substantive rights. I find Dr Gerbutov’s opinion, with which Ms Knutova did not disagree, that the imposition in Russia of a statutory remedy, even if only on a temporary basis, in place of the parties’ agreed contractual remedies, gives rise in Russia to both procedural and substantive issues, compelling.
41. Consequently, I shall look to the law of Russia to determine whether, having proved for the Debt in Mr Laptev’s bankruptcy, the Bank remains entitled to petition for his bankruptcy in respect of the Debt in England. As Mr Halban has put it, I must decide whether, for the purposes of section 267(2)(b) of the Insolvency Act 1986, the Bank is a creditor to whom the Debt is “payable”.

Is the Bank entitled to petition for Mr Laptev’s bankruptcy in England?

42. This hinges on the court's decision in the light of the Experts' diverging answers to the second question put before them: Whether, as a matter of Russian law, a creditor who has been recognised in Russian bankruptcy proceedings has the right to take steps separate from its participation in those proceedings (such as by taking other enforcement action in Russia or elsewhere, or by petitioning for bankruptcy in a foreign jurisdiction).
43. Due to Dr Gerbutov's availability Ms Knutova was cross-examined after him. This gave her an opportunity to see and comment upon points raised during his cross examination. I shall therefore consider his written evidence and cross-examination before returning to hers.
44. Dr Gerbutov's Expert Report recited the relevant provisions of the Russian Insolvency Law. He then referred to certain Russian case law including *Answer to Question 3 of the Survey of Court Practice of the Supreme Court No 1 for 2016* adopted by Resolution of the Presidium of the Supreme Court dated 13 April 2016, *Answer to Question 8 of the Survey of Court Practice of the Supreme Court No 1 for 2015* adopted by Resolution of the Presidium of the Supreme Court dated 4 March 2015; paragraph 3 of the *Informational Letter of the Presidium of the SAC* dated 22 December 2005 No96; *Resolution of Plenum of the SAC* dated 23 July 2009 No 58 and the case of *Uralsib v Kamaz* (Resolution of the Presidium of the SAC dated 13 November 2013). Each, he said, confirm that after commencement of insolvency proceedings in Russia, a creditor is not allowed to enforce its claims outside of the bankruptcy.
45. None of his references in this part of his Report, bar one, concern cross-border scenarios. The exception was a resolution of the Arbitrazh Court of the Povolzhsky Circuit dated 10 April 2018, case number A12-29155/2016 in the matter of *Maloy v VAZL*. Mr Maloy took an assignment of a creditor's rights against VAZL and, after insolvency proceedings had been commenced against VAZL in Russia, obtained a judgment against VAZL in Ukraine. The Russian arbitrazh court refused to recognise the Ukrainian judgment. Dr Gerbutov described it thus: "the first level and appeal courts refused to take into account in Russian insolvency proceedings a foreign court judgment granting the applicant's monetary claims, *inter alia* because the claim was brought by the applicant before the foreign court after the commencement of the insolvency proceedings in violation of Article 63(1) of the Insolvency Law".
46. After citing these sources, he opined: "Given the above, from a Russian law standpoint, a creditor of a debtor against whom insolvency proceedings were commenced in Russia is not allowed to take enforcement steps separate from its participation in those proceedings (such as by taking other enforcement action in Russia or elsewhere, or by petitioning for bankruptcy in a foreign jurisdiction)".
47. During cross-examination Dr Gerbutov confirmed that he was not aware of any case in which the Russian court has considered whether a creditor who has proved in a Russian bankruptcy is allowed to petition for the appointment of a foreign trustee in bankruptcy.
48. When Mr Akkouh suggested that if the Russian court were considering whether a creditor could petition abroad for the benefit of all creditors that it would construe

Article 63 as being limited to prohibiting claims that sought to prioritise one creditor ahead of another, Dr Gerbutov did not agree. He said that to allow such applications would open a “Pandora’s Box” and that “you cannot ensure that the creditor is acting for the benefit of the creditors and not for itself. There is no mechanism to ensure this”.

49. He concurred with the “building blocks” which Mr Akkouch sought to establish: that the Supreme Court in Russia would adopt a teleological or purposive approach to interpretation of the Russian Insolvency Law and that the purpose behind the establishment of a special bankruptcy regime, which does not permit individual creditors to pursue their claims, is to achieve the fullest possible satisfaction of the claims of all creditors. However, subject to expressing concern that one can never be 100% certain in anticipating judicial decisions, he again firmly refused to accept that these two principles could give rise to a situation where the Russian courts would permit a creditor, who has proved in the debtor’s Russian bankruptcy, to petition a foreign court to make a bankruptcy order against the same debtor, even if for the benefit of all creditors.
50. Mr Akkouch referred Dr Gerbutov to *Zibrov*. In that case, the Supreme Court implied or imposed a word into the Russian Insolvency Law: it interpreted the provision that a debtor will not obtain his discharge from bankruptcy where he has failed to disclose information, only to apply where the failure is significant – or rather that it would not apply where the failure was “insignificant”. Dr Gerbutov confirmed that the word “insignificant” was not used in the relevant provision of the Russian Insolvency Law, but he was not prepared to accept that the case demonstrated that the court, adopting a teleological approach, could similarly construe Article 63 as being limited to prohibiting claims that sought to prioritise one creditor ahead of others. Dr Gerbutov said that it was controversial whether the Supreme Court was allowed to take the approach it appears to have taken in *Zibrov* and “it could be a question whether it would be mandatory for other courts in future cases” to follow the reasoning.

“Q. Let us just say on the facts of the particular case that all the creditors are agreed that the creditor was acting for the benefit of everyone else.

A. Sorry, are you speaking about this particular case or a hypothetical case?

Q. Hypothetically.

A. As I said in the beginning, the Russian law still does not provide such a possibility. What you are suggesting is changing the law, just based on the fact that in one case, the Supreme Court slightly extensively interpreted, not extensively but narrowly interpreted the provision on the admissibility of the release from the obligation. It says that a discharge still can occur if the failure to disclose was insignificant or made in good faith. So, this just was a narrow interpretation.

What you are suggesting is something much more significant. At least, for the time being, the Russian insolvency law is not interpreted in this way, so you cannot elaborate new concepts or new possibilities just on such general

consideration. At least, maybe in future, the Supreme Court would allow this, and that situation would be different, but I am afraid this particular case is not a correct place for elaboration of Russian law.

Q. I sense you are wavering a bit here. You cannot say categorically that the Russian court would not allow this?

A. Say that again, please?

Q. You cannot say categorically that the Russian court would say, "No, a creditor acting in the interests of all creditors cannot bring claims abroad"?

A. Well, the Russian courts and the Supreme Court said already numerous times that enforcement actions, individual enforcement actions outside of insolvency proceedings are not allowed, are prohibited. This is a clear position. As I said, there are no grounds now to (unclear) an exception from this and there is not any authority known to me which would allow this.

Q. Equally, there is no authority dealing with the situation saying it cannot be done, as we have agreed already?

A. Regarding appointment of the receiver, yes. Regarding enforcement actions abroad, no. I have referred to some authorities, at least one judgment, specifically.

Q. So, if a case, on the assumed facts we have been discussing, went to the Supreme Court, are you absolutely convinced that the Supreme Court would not say, "No, it is appropriate to construe this legislation as permitting a creditor, acting in the interests of all other creditors, to seek ---

A. I do not think so because again it would be a Pandora's box.

Q. Are you 100% sure about that?

A. In Russia, it is difficult to be 100% sure about anything, especially about the judicial minds, but I do not think that it is possible."

51. When questioned about the relevance of the court's decision in *Maloy v VAZL* Dr Gerbutov conceded that Mr Maloy was pursuing his claim in Ukraine for his own benefit and not for the benefit of all of VAZL's creditors. However, he refuted Mr Akkouh's suggestion that there was not much discussion in the judgment concerning Article 63 of the Insolvency Law. He said that the court started its reasoning with a reference to Article 63 and explained why he considered the court rejected Mr Maloy's claim in the liquidation of VAZL: the foreign judgment was obtained after the bankruptcy proceedings had been commenced. The foreign judgment violated public policy because it violated Article 63.
52. Dr Gerbutov was also asked during cross examination about decisions of the Russian court in relation to a Mr Kekhman, a Russian citizen, domiciled in Russia, who petitioned for his own bankruptcy in England in 2012 and then sought to

obtain recognition of his English bankruptcy order in Russia. Whilst the Kekhman cases are relevant to consideration of the third question put to the Experts, in my view, the facts giving rise to his petition for bankruptcy in England, at a time when there were no bankruptcy proceedings on-going against him in Russia (nor, due to limitations in Russian insolvency law at the time, could there have been) are sufficiently distinguishable to render them of limited or no assistance in relation to the second question before the Experts. Furthermore, I note that the first decision was of the 13th Arbitrazh Appeal Court and in accordance with Dr Gerbutov's summary, would not bind other courts considering the same issues.

Ms Knutova's expert evidence

53. Ms Knutova's Expert Report explains that whilst, in 2011, the Russian Parliament introduced the UNCITRAL Model Law on Cross Border Insolvency, the draft law has not yet been adopted. Consequently, Russian legislation currently focusses only on domestic bankruptcy procedures and there are no provisions for the coordination of domestic and foreign insolvency proceedings. She notes that Russian insolvency law purports to include in the bankrupt estate, all the debtor's assets, including those situated outside Russia. She opines, without reference to scholars or case law:

“(26) So, in the normal course of actions Russian law expects all creditors of a Russian debtor to participate in the Russian bankruptcy, however, it also expects the Russian debtor to include all available assets in the bankruptcy estate rather than apply a “catch me if you can” approach. That being said, Russian law does not impose an obligation on a creditor to chase for foreign assets of a Russian debtor and to make sure that these assets are included into the Russian bankruptcy estate.

(27) Russian law does not therefore contain any express prohibition on a creditor in a Russian bankruptcy procedure from pursuing the same debtor in a separate jurisdiction. However Russian law does not contain an express provision allowing for such actions. In such a scenario, Russian law would likely consider a creditor's actions from the perspective of public policy.

(28) On that basis it is fair and reasonable for me to suggest that as a matter of public policy, the Debtor cannot use a reference to the Russian bankruptcy as a shield to prevent creditors from trying to reach his foreign assets through an English bankruptcy case, particularly where the Debtor failed to disclose his assets located abroad.”

54. Ms Knutova's appears to have extended her consideration of the second question put before the experts in her answer to the third question (regarding recognition of a foreign bankruptcy order by the Russian court). Having considered the *Kekhman* case she concluded this part of her Expert's report:

“(39) The Russian courts did not want to assist Mr Kekhman in using the English bankruptcy as an excuse to evade his obligations, with which he failed to deal with in the English case in due course. Moreover, the Russian bankruptcy was concluded on 19 July 2018, but the Russian courts refused

to release Mr Kekhman from his obligations. Hence, from Russian law viewpoint Russian creditors are still capable of chasing after his assets.

(40) To summarise: currently the Russian courts will not recognize English court judgments in respect of the Debtor's bankruptcy, in particular where there is a domestic Russian bankruptcy case. Having said that, I opine that Russian courts do not treat the opening of a parallel bankruptcy case abroad as a violation of the Insolvency Law, as long as it is a good faith attempt of the creditors to chase after assets of the debtor which the latter is hiding from the Russian bankruptcy case. I have not heard of a stay order from any Russian court which would prohibit a creditor from doing so.

(41) Naturally, it goes without saying that Russian courts would not permit a double collection attempt in two parallel bankruptcies (based on article 10 of the Russian Civil Code which does not permit abuse of rights)".

55. During cross-examination, Ms Knutova explained that she did not consider that any of the scholarly or judicial authorities to which Dr Gerbutov referred in his report were relevant: "all these cases are absolutely irrelevant for the question that was addressed to the experts because the question which was addressed to the experts was related to the consequences of what will be happening if a creditor is trying to chase after assets and tries to initiate a separate bankruptcy abroad."
56. She opined that the Russian court would be likely to determine the issue on public policy grounds. In her opinion, the public policy which would be likely to influence the court's decision in such a case would rest on whether the creditor was seeking to pursue the debtor for his own benefit or for the collective benefit of the debtor's bankruptcy estate. The former would violate the priority rules which govern the fair treatment of creditors in a bankruptcy, and the court would not be likely to permit such action. However, the latter would be consistent with the public policy of maximising returns to creditors and of recovering assets not disclosed by the debtor.
57. Ms Knutova was asked various questions about the court's decision in *Maloy*. She did not agree with Mr Halban's interpretation that the judgment held that a creditor cannot go to a foreign court to sue the debtor and get a judgment; he must proceed instead through the Russian bankruptcy proceedings. Her interpretation of the judgment in *Maloy* was that the court was concerned to prevent creditors seeking to gain an advantage by *enforcing* foreign judgments. The Russian court could not prevent the foreign court hearing an application against the Russian debtor. But if the creditor wished to receive payment from the Debtor in Russia, he would have to prove in the bankruptcy. If the creditor sought to enforce the judgment against foreign assets, it would be open to the insolvency administrator to challenge the arrangement and collect the asset or its proceeds for the benefit of the bankruptcy estate. Ms Knutova did not accept that the right of challenge arose because the foreign creditor had breached the Prohibition. She explained it thus:

"There is a general principle of good faith, Article 10 Civil Code, which is now really very broadly applied. Whenever you are taking steps which are not in good faith, for example when you are chasing after foreign assets just for your own benefit, of course, it can be challenged by the rest of the

creditors, but if the efficient way is to start foreign bankruptcy and to take the proceeds and to ensure that they are delivered to the bankruptcy estate in Russia and proportionately distributed between all the creditors, I do not see any prohibition of the Russian law to do so”.

Locus Issue - Summary and conclusion

58. Having concluded that I must decide this issue by reference to Russian law, I am reliant upon the Experts’ evidence. There is no known Russian decision which determines precisely the issue before me. The Experts’ opinions are therefore limited to addressing how they think the Russian court would interpret the law. It falls to me to decide which I prefer.
59. Both agree that the court would take a teleological approach and apply public policy considerations. Dr Gerbutov considers that the Russian court would not permit a creditor who has proved in the Russian bankruptcy to commence parallel insolvency proceedings abroad because it would violate the clear and fundamental principle that a creditor cannot claim outside Russian bankruptcy proceedings.
60. Ms Knutova considers that the court’s consideration of public policy issues would take into account the motives of the particular creditor who appeared before it and possibly also the motives of the debtor. If it were shown to be acting altruistically, for the benefit of all creditors, in her opinion, Russian law would not be interpreted so as to prohibit the creditor who has proved in a Russian bankruptcy procedure from pursuing the same debtor in a foreign bankruptcy. As for the debtor, he should not be allowed to use a reference to the Russian bankruptcy court as a shield to try to prevent creditors from trying to reach his foreign assets.
61. The doctrine of public policy is as protean and difficult to define as concepts such as fairness and justice. In my opinion the purpose of any policy is to apply principles with a view to achieving sensible or rational outcomes. I am more persuaded by Dr Gerbutov’s opinion of the manner in which the court would be likely to apply public policy considerations to this question than Ms Knutova’s. Dr Gerbutov appeared fully to understand his duty to assist the court by providing his objective, unbiased opinion on matters within his expertise. He engaged in the “building block” approach put to him by Mr Akkouh, appeared to give it proper and impartial consideration before giving reasons for rejecting the teleological interpretation promulgated by Mr Akkouh. I accept his evidence that the consistent approach of the Russian courts including the Supreme Court in domestic matters, has been to prohibit enforcement actions outside of insolvency proceedings. A body of Russian scholars consider that recognition of a debt in the Russian bankruptcy comprises the only remedy available to the creditor during the currency of the bankruptcy. It would be inconsistent with this for the Russian court to hold that the creditor can nevertheless proceed against the same debtor for the same debt, in another jurisdiction. It is in the nature of public policy considerations that they should be applied widely. The fact that one creditor’s motives in seeking to pursue the Debtor in a foreign jurisdiction are altruistic would, in my mind, be unlikely to justify a wholly new approach and be a marked departure from the consistent, domestic policy. I am persuaded by Dr Gerbutov that such an approach would “open a Pandora’s box” as there would be no mechanism to ensure that the creditor was acting altruistically. I find his argument

compelling, well-researched by reference to comparative domestic decisions and preferable to the opinion of Ms Knutova who dismissed the relevance of domestic decisions and appeared less open to considering the merits of arguments which conflicted with the opinion set out in her written report.

62. Mr Akkouh submitted in closing that Dr Gerbutov's opinion (that the law would prohibit a creditor who has proved, from commencing foreign bankruptcy proceedings) amounts to an undue restriction on the rights of debtors and creditors to judicial protection and respect for property. He said that authority confirms that Russian law abhors such restrictions. I do not agree that my decision gives rise to such undue restrictions. The Bank entered into contracts with Mr Laptev, governed by Russian law. Russian law imposes a restriction on creditors' rights. It provides that during the currency of the bankruptcy proceedings, a creditor's sole remedy lies in his right to register his claim in the bankruptcy. That is the law which the parties chose to govern their contractual relationship. It is the law which precludes any other remedy. It alters the creditors' substantive and procedural rights, in some cases, only on a temporary basis. But for the period during which Russian law prescribes registration of creditors' claims to be their sole remedy, it would be inconsistent for this court to grant an alternative remedy.
63. Preferring, as I do, Dr Gerbutov's evidence, I find that the Debt remains due to the Bank only in principle. Despite the support of Mr Laptev's trustee in bankruptcy and one of his other major creditors, Sberbank, and despite the potential benefits that it is said could inure to Mr Laptev's creditors, comity requires that I should find that the Debt is not currently payable to the Bank in a manner that entitles the Bank to petition for Mr Laptev's bankruptcy in this jurisdiction.
64. My conclusion does not, however, deprive Mr Laptev's creditors of the right collectively through the bankruptcy in which they have registered their claims to pursue his assets in this jurisdiction. Since her appointment, it has been open to the Russian insolvency administrator of his estate to apply to this court pursuant to the Cross-Border Insolvency Regulations 2006 (SI 2006/1030) for recognition and assistance in connection with his bankruptcy. The procedure is relatively straightforward. The Regulations provide that an application for recognition shall be decided upon at the earliest possible time. Several such applications are decided on paper. The relief which may be granted both on an interim basis (upon application and pending decision) and also upon recognition, is wide. It includes entrusting the administration or realisation of all or part of the debtor's assets located in Great Britain to a foreign representative or another person designated by the court. Similarly, Article 11 of the Regulations entitle a foreign representative to apply to commence proceedings under British insolvency law (provided the conditions for commencing such a proceeding are otherwise met).
65. For the reasons I have given, I have decided this issue by reference to Russian law. If that were found not to be the correct approach, Mr Akkouh contends that it would be open to the court, under section 285(3)(b) IA86 to permit the Bank's petition to proceed. In light of the collective remedy available to the Russian insolvency administrator under the CBIR I would decline to exercise discretion under this section to permit one creditor to pursue its bankruptcy petition, preferring instead to leave it to the party properly appointed to protect the interests

of all creditors to choose whether to apply for recognition and, if so, for whatever relief she considers would best serve the interests of the Russian bankruptcy.

66. Deciding as I have that the Petition should be dismissed on grounds of jurisdiction, it is not necessary for me to deal further with the matter. However, having heard evidence in relation to the issue of residence and in case I am found to be wrong, I shall deal with the issue of residence.

Place of residence Issue

67. The Bank submits that for the purposes of section 265(2)(b)(i) IA86, within the relevant three-year period, which starts from 28 September 2015 (“Relevant Period”) Mr Laptev had at least one place of residence in the jurisdiction. The test requires him, “at any time” within the Relevant Period to have been “ordinarily resident” or to have had “a place of residence in England and Wales”.

Place of residence - applicable legal principles

68. In *Reynold Porter Chamberlain LLP v Khan* [2017] BPIR 722, Chief Registrar Baister (as he was) recognised that although there is some overlap in the factors to determine each, the terms “ordinarily resident” and “place of residence” are different. In that case, the debtor was found to have been ordinarily resident in England as well as having a place of residence here. He had spent at least 285 days here in the three-year period leading up to the presentation of a petition against him. At paragraph 26 of his judgment, the Chief Registrar summarised the applicable principles for a debtor’s place of residence:

“(1) Having a place of residence is a de facto situation rather than a matter of legal right (*Skjevesland* para 50 and the passage from *Brauch* there cited). So a licensee may have a place of residence (*Brauch* 334).

(2) A moral claim to premises may be sufficient (*Skjevesland* para 52).

(3) The person concerned may well have to phone to make arrangements to occupy because others use the premises as well as him but this is no obstacle to a finding of having a place of residence (*Skjevesland* para 53).

(4) It is possible to have a dwelling house without being in occupation in the relevant period (*Brauch*, 335) but the greater the occupation the more likely the finding; but not perhaps if the relevant property has been abandoned (*Nordenfelt* and *Brauch*, 335).

(5) Living in a place with one's family as a tenant in rooms makes those rooms a dwelling house (*Hecquard* 74)”.

Did Mr Laptev have a place of residence in the jurisdiction within the Relevant Period (from 28 September 2015)?

69. The Bank submitted that Mr Laptev had two places of residence in this jurisdiction within the Relevant Period: Flat 96, Artillery Mansions in London and Park House in Virginia Water.

Artillery Mansions was purchased in Mr Laptev's sole name for £1,645,000 on 2 June 2008. On 4 September 2017, it was transferred to Mr Laptev's former wife, Ms Stepanenko as part of their divorce.

Park House was purchased for £5.2 million on 20 June 2012 in Ms Stepanenko's name, part-funded by a £3.64 million mortgage which Mr Laptev guaranteed. He also paid the deposit.

70. It is Mr Laptev's case that he and Ms Stepanenko had always agreed that she beneficially owned Artillery Mansions. This, he claims, is recorded in a declaration of trust (which is undated but indicates the year 2016) which records Ms Stepanenko's beneficial ownership. He claims that his bare legal title gave him no rights of occupation. Counsel for Mr Laptev submits that the authorities require a debtor's place of residence to be determined as a matter of fact, not legal right. He claims not to have stayed at the property since 2014.
71. In relation to Park House, it is Mr Laptev's case that although he paid the deposit and guaranteed the mortgage, it was always intended that it would be Ms Stepanenko's home in which she would live with their two children who attended school in England. When Mr Laptev visited the UK to see his children after his separation with Ms Stepanenko in the summer of 2016, he stayed in the guest apartment above the garage and asked Ms Stepanenko's permission to do so. The fact that he asked for such permission suggested that he was staying as her guest, and that the court should infer from this that it was not his place of residence. Mr Halban submits that this is in stark contrast with the circumstances under consideration in *Skjevesland* where the debtor directed the occupants to vacate the property in order that he could stay there alone.

Evidence

72. The Bank's evidence in relation to the Place of Residence Issue comprises two witness statements of its solicitor, Ivan Gordienko. There were two key witnesses of fact, Mr Laptev and Ms Stepanenko. Mr Laptev's sole witness statement is dated 1 March 2019 and given in English. He confirms at paragraph 24 that the statement was translated and read over to him and that he agreed with its contents. He confirms that he was content to give it only in English but that, as was the case, his oral evidence in Court would be given in Russian via an interpreter.
73. Ms Stepanenko's sole witness statement was dated 28 February 2019 and is in English. It makes no reference to Ms Stepanenko needing the contents to be translated for her. Ms Stepanenko was cross-examined in English and gave her evidence in English, relying only occasionally on the interpreter.
74. During cross-examination the Bank sought to expose (i) lies which it considered Mr Laptev and Ms Stepanenko had told regarding the date on which they separated and (ii) that they had suppressed or failed to disclose relevant documents, in particular Mr Laptev's full details of the transactions taking place from his Russian bank and credit card statements and passports which the Bank considers he must hold in addition to those which he has disclosed. It is the Bank's case that if these documents had been disclosed, they would have revealed further visits to the jurisdiction within the Relevant Period and assets which Mr Laptev wanted to hide.

75. I shall consider the evidence of the two key witnesses in relation to each of the following three issues:
- i) Date of separation, including time spent by Mr Laptev and his connections and assets within this jurisdiction after the breakdown of the marriage
 - ii) Artillery Mansions as a place of residence
 - iii) Park House as a place of residence

Witnesses of fact

76. First a few words about the witnesses. Mr Laptev gave his evidence through the interpreter. Even Mr Halban conceded that “in many respects he was not a satisfactory witness at all”. I had the benefit of observing him for several hours during cross-examination by Mr Akkouh. On several occasions, his answers were impertinent and flippant. Mr Akkouh provided me with a summary of ten such incidences. Key among them in my mind, were two occasions when he suggested to Mr Akkouh: “catch me if you can”. When asked about a company known as Pure Gas Technology Limited, for which he is listed as the owner of one of the two shares, he claimed to know nothing about the business. He recognised that his name was there but highlighted the absence of his signature. He said Mr Akkouh should ask his former wife about it as it was “probably one of her initiatives”. Upon further questioning he replied “Once again, I do not have anything to do at all with the incorporation of this company. If you have any paperwork, any documents, related to the incorporation of this company and signed by me, please show it to me and show it to the court. Papers like that could be printed out in huge numbers. You can write anything here, Mr Putin or whoever, and you will accuse me of forming a company with Mr Putin then, or what?”. When asked about another Pure Gas company, Pure Gas Technology Globe Limited and its agreement with SAPE Group, where PGTG was stated to be the exclusive agent for the sale of a patented SCV Gas Separator, Mr Laptev again highlighted that his signature was not on the document. “Once again, this is for the first time that I have seen this document, and please show me my signature there. You are asking me to comment on a document that I am seeing for the first time, without showing me my signature anywhere there. Maybe tomorrow you will accuse me of scheming towards arranging a Brexit or something”.
77. Whilst flippancy demonstrates a lack of respect for the court process, that alone should not influence the judge’s assessment of the witness’ credibility. Of relevance to his credibility was Mr Laptev’s poor recollection of dates and events. When questions during cross examination appeared difficult, he claimed not to be able to remember. He claimed not to remember paying £1million for the deposit on Park House. One example concerned a discussion regarding Artillery Mansions:

“Q: I will move on. I want to ask you some questions about the transfer of Artillery Mansions to Ms Stepanenko in 2017.

A: Okay. Ask questions.

Q: Your financial administrator was appointed in Russia on 15th June 2017?

A: Possibly.

Q: On 17th July, you gave disclosure to the financial administrator of your assets?

A: I do not remember. It is possible.

Q: You did not disclose Artillery Mansions or Park House, did you?

A: I do not remember about this.

Q: But you did tell the administrator that all of the property acquired during the marriage with Ms Stepanenko is joint property. Do you remember that?

A: I never said that, and I could not have possibly say that because it is not true.”

78. When shown a copy of a document in his name and apparently bearing his signature, addressed to the insolvency administrator dated 12 July 2017 in which details of his assets are listed, without mention of Artillery Mansions and containing a statement that all property is held in joint ownership, he claimed that the signature did not look like his signature. When asked whether he was saying that the information contained within the document was not given by him he said he did not remember, that for him, two years (since the date of the document) is a very long period of time.

79. Mr Laptev seemed not to be concerned to admit that he signed a letter written in English, addressed to the Home Office, in support of an application by Ms Stepanenko and their children for British citizenship, without apparently asking what it said or taking any steps to verify the statements within it before signing it:

“Q: Did you appreciate the letter was a very serious matter?

A: I do not care.

Q: Would you have cared if the Home Office had been misled by your letter?

A: Then probably I would be in prison for that.

Q: Are you telling this court that you took no steps whatsoever to independently verify the truth of the matters contained in your letter?

A: That is exactly what I want to say to the court. I neither had it translated, nor was it read to me. Is it in contradiction to anything?”

80. The fact that Mr Laptev’s evidence about one, or even several aspects of the case is unsatisfactory, should not lead me to regard all of his evidence as unconvincing. Mr Halban sought to justify Mr Laptev’s bad memory on the basis that from 2014 onwards, his attention was taken up in Russia by financial difficulties for his company and personally. There was apparently a criminal investigation in which one of Mr Laptev’s associates was said to have been imprisoned for several years for not giving evidence against him. His recollection of matters in England was

poor, Mr Halban said, because “the UK part of his life is very peripheral and tangential”. To some extent, at the heart of this case, is the extent to which Mr Laptev was involved with Ms Stepanenko and family life in England. I have therefore sought to test each aspect of the petitioner’s case, by reference not only to his and Ms Stepanenko’s testimony but also to the documents in the court bundle.

81. I concur with Mr Akkouh that Ms Stepanenko presented as a composed witness. She appeared keen to ensure that she properly understood the questions being asked of her and to try accurately to remember relevant details and facts. As set out below, I did not, however, find all aspects of her evidence to be credible.

Date of separation

82. During the course of these proceedings, Ms Stepanenko provided three accounts of when she and Mr Laptev formally or entirely separated. In her witness statement dated 28 February 2019 she said that they had entirely separated “by 2013”. Her witness statement continues that “In 2014 I applied for indefinite leave to remain for myself and the children, which was granted”. In a letter dated 28 October 2019, her solicitors wrote to the Bank’s solicitors saying that she would be seeking to amend her witness statement as she “was slightly mistaken in her recollection. She will state that the complete separation occurred in early 2014 and not in 2013 as previously set out”. During cross examination, when she was asked about this amendment and whether she could remember exactly when in 2014 they finally separated, she said that it was closer to the end of 2014 and followed this by referring to December:

“Q: ...So you are now adopting a third case as to when you entirely separated?”

A: Because it is not a specific date. You know, we were talking and we already separate. It was just process, you know, like month by month. We were just far from each other, that is it”.

83. The petitioner sought, with the support of a considerable volume of evidence, to persuade the court that Mr Laptev and Ms Stepanenko’s romantic relationship carried on well beyond any of the dates, when, according to their evidence, it came to an end. They conceded that following a reconciliation in February 2012 they had a lavish 20th wedding anniversary party, went to Cannes together in May 2013 and took several expensive holidays together, which they claimed were family holidays, including a trip in March 2013 to the Seychelles. A magazine article was in evidence in which Ms Stepanenko talks about romantic ways to celebrate the new year. The article was published in December 2014 and included photographs of Mr Laptev and Ms Stepanenko appearing to enjoy a romantic holiday together.
84. The fact that Ms Stepanenko provided inconsistent dates is not, of itself, incredible. However, I viewed the revisions to her recollection of the date, spanning as they did, a year, with considerable suspicion before reaching my conclusion. I accept her evidence that the photographs of the holiday in the Seychelles were taken before their separation in 2014. I accept that in the absence of any particularly ugly or decisive moments, when two parties to a relationship are leading busy lives, thousands of miles apart for many years, but of course remaining as parents of their two children, it may be difficult to pin-point the precise time when the

relationship can be said to have come to an end. I was not provided with any evidence which persuasively demonstrated that beyond December 2014, Ms Stepanenko and Mr Laptev's relationship continued to be romantic. Against this, I found the evidence that they both entered new relationships in 2014, supported by email correspondence between them and photographs of Ms Stepanenko with her new partner, to be credible.

85. The precise nature of Mr Laptev's relationship with Ms Stepanenko is not an issue which the court must decide. It merely forms part of the backdrop to the evidence of the time which the petitioner sought to show Mr Laptev spent in England and his connections and assets within this jurisdiction, all to support its contention that he had a place of residence in the jurisdiction during the Relevant Period.

Factual matrix

86. It is clear from the stamps in Mr Laptev's passport that between 2012 and 2014 he visited this country on many occasions. He spent 63 days here in 2012, 45 days in 2013 and 60 days in 2014. In the passports which he disclosed, he came here for 10 days in May and a week in June 2015. During the Relevant Period, his passports disclose only two trips: 9 days in April 2016 and 10 days in June 2016. This, Mr Halban submitted, was consistent with the witnesses' evidence that their romantic relationship came to an end in December 2014. Against this, the petitioner sought to persuade the court that Mr Laptev must have at least one passport that he has failed to disclose. He was the director of a Romanian company called UPET. He said during cross-examination that he was a member of the board from 2018 to 2019 and travelled two or three times in 2018 and two or three times in 2019. His passports in evidence showed two trips to Romania in 2018, but none in 2019. Mr Laptev offered to bring his passport to court. Mr Akkouh accepted that it might contain stamps for entry into Romania after the copies which had been taken for disclosure but when Mr Laptev produced the passport, there appeared to be no stamps within it for his entry or exit to Romania.
87. Mr Laptev's recollection of his visits to England, their timing and purpose in 2016 was poor. He was asked whether he visited Cornwall in 2016.

“A: What is Cornwall? What country?”

Q: it is in England, in the south west.

A: What shall I say to this?

Q: Do you deny that you visited Cornwall?

A: It is possible. It is possible that I visited Cornwall. I just do not remember. It was not the most important thing in my life. It is possible that I visited my children at that time and together we went to Cornwall”.

He said he did not remember the name the Fistral Beach Hotel. Mr Akkouh referred him to a credit card payment from his Barclays Wealth Account for the Fistral Beach Hotel in August 2016. He was asked to confirm that he stayed at that hotel in August:

“A: Well, as I made this payment, then this appears to be so. What does this supposed to prove? Is it a crime to be in Cornwall, or what?”

Q: Now, Ms Stepanenko was in Cornwall with you in August 2016, was she not?

A: It is possible, yes. Are we supposed to hate one another? Am I supposed to greet her when I see, or what? [*I interject here to say that my recollection is that rather than “greet” Mr Laptev said “beat”*]

Q: Can we please look in D, tab 20, page 22.3

A: Once again I would like to reiterate that every year, I stayed in England for about two or three weeks and my goal was to maintain some kind of relationship with my children. It is quite possible that on several occasions, we went together somewhere, including Cornwall, and I could not tell my children, you know, “Let us go to Cornwall and let us not take mum with us because she is bad, or because she is in a relationship with another man” or something else. That is why.”

88. When asked how he could account for the trip in August when it did not appear in his passport, he replied that it probably meant that he did not visit the UK in August but visited at some other time. He confirmed that Russian citizens are allowed to have more than one passport but said that he only has one passport.
89. Ms Stepanenko’s evidence was that Mr Laptev did not go to Cornwall or the Fistral Beach Hotel at all. She stayed there having driven her son to Cornwall and whilst he attended a music festival there. She paid for the room using Mr Laptev’s credit card.
90. I found Ms Stepanenko’s account of her trip to Cornwall to be credible: she went there without Mr Laptev.
91. Mr Laptev will have appreciated the importance of being able to show the amount of time he spent in the UK, where he spent that time and with whom. His evidence is that he came to England only twice in 2016 and not since then. Despite this he either failed to prepare for the trial or deliberately purported not to remember details such as whether he stayed in a hotel with Ms Stepanenko and his children. His unsatisfactory evidence led me to believe that he has something to hide. In respect of the Relevant Period, he has failed to disclose:
 - a) statements for Sberbank Platinum Visa account which provide any meaningful description of the transactions,
 - b) any of his diaries, travel documents or other records.

Each of these documents could have helped to confirm his case, that during the Relevant Period he only travelled to England twice, in 2016. Mr Gordienko’s witness statement for the Bank dated 14 June 2019 highlighted the absence of detail from the statements and that he had not disclosed statements for the entire Relevant Period. Mr Laptev was asked in cross-examination about the absence of detail in the Sberbank statements that were disclosed. He claimed never to have been asked by his solicitors about the lack of detail in the statements and suggested

that his bankruptcy trustee in Russia would be able to get full information if required. I do not believe that Mr Laptev was not told by his advisors of the criticism levelled against him regarding the scant detail in these statements.

92. International border control agencies rely increasingly on digital records rather than passport stamps. No evidence was before me of the use of stamps, or not, by the UK or Romanian border control agencies since May 2016, nor of whether it would have been possible for Mr Laptev to have had a second or duplicate copy of his 10-year UK entry visa in another passport. I am therefore left in a position where I attach weight to and draw adverse inferences from Mr Laptev's failure to provide documentary evidence that should be in his possession and from which he could have shown conclusively that he did not come to England in the relevant period, but no concrete evidence to prove that he did so. I find that on the balance of probabilities, Mr Laptev may have travelled to England during the Relevant Period, whether on a passport that he has failed to disclose or at a time when passports were not routinely stamped for Russian nationals entering the UK for the purposes given by Mr Laptev on entry. Nevertheless, as I have insufficient evidence to decide the issue conclusively, I shall proceed on the basis that in the three-year period up to the date of presentation of the petition, Mr Laptev only made two visits to England, both in 2016 and for a total of 20 days. Taking those visits into account, did he have a place of residence here in the Relevant Period – ie since 28 September 2015?

Artillery Mansions as a place of residence

93. This property was purchased in Mr Laptev's sole name for £1,645,000 on 2 June 2008. In July 2017, it was marketed for sale with an asking price of £3.5 million. It remained in his sole name until two months before the bankruptcy order was made against Mr Laptev in Russia. On 14 September 2017 it was transferred into Ms Stepanenko's name. Mr Laptev and Ms Stepanenko both stated in their witness statements that it had always been agreed between them that she owned it beneficially. Mr Laptev exhibits a draft, unsigned marriage agreement dated 2011 which would deal with the division of their assets on separation. He states that the agreement illustrates their mutual understanding that Artillery Mansions would be held both legally and beneficially by Ms Stepanenko in consideration of her giving up claims to properties in Russia. Ms Stepanenko's evidence is that she had been unable to sign the initial purchase or mortgage documents because she was in Russia attending her grandmother's funeral at the time. She said: "From the time of purchase, Valeriy and I agreed that Artillery Mansions was my property. Despite being in Valeriy's name, Artillery Mansions was my property. I paid all the mortgage instalments". The property was re-mortgaged in early 2014 but remained in Mr Laptev's sole name. In 2016, the parties signed but did not date, a declaration of trust, which recites that Ms Stepanenko is the beneficial owner of the property and provided that he would hold the property on trust for her and that she would be entitled to sell the property and retain 100% of the proceeds of sale.
94. Ms Stepanenko's evidence that she paid the mortgage instalments is directly contradicted by copies of Mr Laptev's bank accounts from which quarterly interest payments were clearly being made until the loan was paid off in September 2017. During cross-examination she sought to say that she *managed* the payments of the mortgage with the assistance of Mr Laptev's UK-based personal assistant, from his

bank account. She also explained that at some stage she made payments with her money. During re-examination she explained that she received approximately £234,000 in respect of a mis-selling claim which she used to pay the mortgage for approximately two years.

95. The property was ultimately transferred in 2017, according to the witnesses, as part of their divorce settlement. Ms Stepanenko said that HSBC had stopped the mortgage, Mr Laptev could not get a new mortgage and she needed hurriedly to resolve the matter. The property was transferred into her name as part of an unusual arrangement, with SapeCapital Ltd which purported also to provide for Ms Stepanenko to be employed by Sape for an annual wage of £120,000.
96. Artillery Mansions was used as an address by Mr Laptev for several purposes. Mr Gordienko's witness statement exhibits a screen shot from Barclays website stating: "Wealth Management Services are only for UK residents". Mr Laptev opened a Barclays Wealth Management account in June 2014, for which he provided Artillery Mansions as his address. Statements from that account were sent to Artillery Mansions until April 2018. In 2008 statements for Mr Laptev's HSBC Private Bank account were being sent to an address in Russia. This changed in 2010 and the evidence shows that until December 2017 they were sent to Artillery Mansions. HSBC Private Bank wrote to Mr Laptev at Artillery Mansions in April 2016 with details of the new loan for that property.
97. Ground rent and service charge letters for the property were sent to him there, these perhaps not remarkable as he held the registered title to the property.
98. Mr Laptev and Ms Stepanenko's evidence conflict on the amount of time, if any, that he stayed at Artillery Mansions. He claimed never to have stayed there. I do not believe him. Ms Stepanenko was quite clear in her witness statement that at the time when they were still together as a couple, he stayed with her and the children at Artillery Mansions. She confirmed this during cross-examination, saying that before 2014 when Mr Laptev wanted to be in London, he would stay at Artillery Mansions. She said that he never had a key to the property. It was established that he did not need one as the concierge would let him in.

Park House

99. This property was purchased for £5.2 million in 2012 in Ms Stepanenko's sole name. Mr Laptev paid the deposit and guaranteed the mortgage. Their evidence is that it was always intended between them that it would be Ms Stepanenko's house where she would live with the children. During cross-examination, Ms Stepanenko said that before their separation, Mr Laptev would stay with her and the boys in the house, but after that, he only ever stayed in the guest apartment above the garage which is annexed to the property. Ms Stepanenko recalled that in 2016 she was living there with her new partner. Mr Laptev asked for permission to stay. She said yes but he stayed only in the guest apartment. Her new partner understood the delicacy of the situation and stayed during that time, at Artillery Mansions.
100. Both Mr Laptev and Ms Stepanenko said that he never had a key to Park House. She explained that he would not need one. She would drive to the airport to pick him up or drive anywhere they all wanted to go, then she would take the car into

the garage and let everyone into the house. Mr Laptev paid for several cars in England but did not drive. He said that he preferred a bicycle and kept a “very nice” Scott bicycle at the house.

101. Mr Laptev paid over £176,000 for works in the garden at Park House shortly after it had been purchased. Ms Stepanenko explained that there had been drainage problems and extensive reparation work had to be undertaken. She said Mr Laptev had no interest in the garden. It was her house.
102. In a draft declaration of trust, which was prepared in English, Mr Laptev provided Park House as his address.

Gifts and payments to Ms Stepanenko

103. In the two years since Mr Laptev and Ms Stepanenko now say they separated, Ms Stepanenko’s bank statements disclose payments received from Mr Laptev’s account described as gifts (including one described as “donation”) totalling approximately £242,000. Other payments were made from his HSBC bank account with more generic descriptions such as, on 19 September 2014, £30,276.82 - “Transfer to Olga Stepanenko” and on 17 July 2015, £48,049.68 - “Electronic payment in favour of O Stepanenko”. During re-examination Mr Halban took Ms Stepanenko through the payment of £30,276.82 moving into and out of her accounts, ultimately showing it being applied towards the interest payment on the mortgage of Park House.
104. To provide a few examples of the gift payments, in January 2015, almost immediately according to their revised positions, the couple separated, there was a payment for £20,000 designated as “GIFT FOR NEW YEAR”, on 6 March 2015 a payment of £10,000 - “GIFT W ANNIVERSARY”; on 16 November 2015 £45,000 – “GIFT” and on 20 May 2016 “GIFT OR BIRTHDAY”. Ms Stepanenko’s birthday is stated on her passport to be 31 May. Each was for a round sum, bar one on 20 June 2016 as “GIFT” for £31,309.98.
105. Ms Stepanenko said in cross examination that the new year’s gift was probably a mortgage payment. When counsel suggested that the “W Anniversary gift” was for their wedding anniversary, she replied:

“It was not exactly our wedding anniversary because wedding anniversary, our wedding anniversary, 8th February. This is just money, just money for me, and also I remember at that time, Artillery Mansions was under renovation and Valeriy just helped me to renovate the flat”.

106. When asked about a payment of £400 labelled “Royal Philharmonic” and a payment in February for a Stella McCartney dress, she replied:

“It was me probably. I do not remember, because I .. I managed those accounts. Yes it was me probably. It was me probably me paying because I managed two accounts, Barclays and HSBC, yes”

Q: So are you now saying that it was you that transferred this money to yourself?

A: Yes”.

107. She proceeded to explain that Mr Laptev had a personal assistant who managed his accounts but that when he left his employment in 2014, he passed all the files to her. When counsel asked why she should make a payment to herself from his account labelled “gift, she replied:

“Probably for Easter, yes, but it was just money. We put it always “Gift”. How should I call it, just money for what?”

108. She persisted in refusing to accept that the payments labelled “gift” were in fact gifts:

“This is not a gift. These are just funds provided to me and my children to cover our current expenses related to our life in London”.

109. Ms Stepanenko confirmed that in November 2016, Mr Laptev made payments to her of £35,000 and £20,000 in February 2017.

110. On 16 March 2017, the Bank made its first demand for payment of the Debt. After this, on 24 March 2017, Ms Stepanenko’s son, Nikita, paid her £19,602.12. He made five further payments to her up to September 2017, together with the first, totalling £99,195.64. The Bank contends that this is in fact money from Mr Laptev, being redirected to Ms Stepanenko via his eldest son who was 26 at the time. Mr Akkough took Ms Stepanenko to various payments which she had made to Nikita’s account in 2018 and suggested that she was making the payments because he did not have enough money to support himself. He referred also to a request that \$30,000 be deducted from the sale proceeds of Park House (which are currently being held by solicitors) because he needed the money for medical treatment in Israel. Ms Stepanenko said the payment was made by her because he was already undergoing the treatment and he could not physically pay it from his account whilst in Israel. She said that the money used for his medical treatment would be repaid. Her evidence was that the smaller payments from her account were made because it was sometimes easier for to make the payments from her UK account. She denied that she was providing him with money to fund his day-to-day expenses or that he needed her financial assistance. She knew little about his job in Russia, his salary or his ability to pay for things saying simply that she thought he was a company director and that he must have been able to afford to pay her the money because he sent it to her.

111. Mr Laptev was also questioned about the source of Nikita’s funds.

“Q. What was Nikita's job in 2017?

A. Well, he is involved in some kind of illegal activities in Russia, so in all probability, he received some money, accumulated the money, and it was his Christian duty to support his mother and probably he paid her. This is what I think about it, but he may have his own opinion, so please ask him. He is a fully grown-up person. He lives his own life now. I cannot be held responsible in any way for his life or his money.

Q. So, you are saying that Nikita is entirely financially independent?

A. Absolutely.

Q. He can be financially independent because he is involved in some illegal activity in Russia?

A. This is what I think.

Q. And how long has he been financially independent for?

A. Since he turned 20”.

Did Mr Laptev have a “place of residence at either Artillery Mansions or Park House during the Relevant Period?”

112. Against the facts and evidence now set out, I return to the seminal summary of Registrar Baister in *Khan*. The first point was that “place of residence” is a de facto situation rather than a matter of legal right. The authority for this was paragraph 50 of *Skjevesland* and the passage which it cited from *Brauch*. At paragraph 50 Howarth J said:

[50] “I do not find fault with the registrar's comment about what is to be found in the case of *Re Brauch*. It seems to me where you are saying that a person has a place of residence, you are looking at a de facto situation, not necessarily matters of legal right. If one goes to the *Re Brauch* [1978] Chancery Reports at p 335 Goff LJ said this:

“There only remains a question of a dwelling house. Mr Crystal in his submissions urged that the debtor must have a legal or equitable interest in the alleged dwelling house. It is not necessary for us to decide whether that be right or wrong, because in this case the debtor did in fact have such an interest because the lease of 51, Connell Street, which is put forward as the dwelling house, was vested in him. Although he had taken most of the steps necessary to assign it, he had not succeeded as the matter had been held up because of a question of breach of covenant contained in the lease. I doubt whether the submission is in truth correct. I do not see why a licensee should not be held to have a dwelling house.”

[51] He concluded that where there is actual occupation, it is easier to reach a conclusion that there was a dwelling house, and the shorter the period of actual occupation, the more difficult it becomes to reach that conclusion. I am sure that is right.

[52] It seems to me that a moral claim is quite sufficient in a family context. One knows from family situations that people say, this is Uncle William's house, and after Uncle William has died, we find that the house actually has been put in the name of his son many years before with a view to inheritance tax saving. It does not cease to be Uncle William's house upon the transfer of the legal estate to his son. If he is the only person living there, it is Uncle William's house.

[53] Flat 8, in this case, was normally occupied first of all by Anna, and then by John, and finally by John and Charlotte together. But the evidence seems to be clear that Mr Skjevesland would phone up on a regular basis, and he and John between them would discuss when Mr Skjevesland could come over and stay there. On those times, first of all, John would move out to Charlotte's flat. Then after Charlotte had given up her flat, they would both move out and go somewhere else. It seems to me on those facts it was open to the registrar to conclude that Mr Skjevesland called the tune in regard to that flat. If he decided that he wanted to go there and stay there for a period of three or four days in a week or two weeks' time, he would get his own way. It was certainly open to the registrar conclude that. Thus it seems to me that the registrar was entitled to conclude that Flat 8 was a place of residence in this country for Mr Skjevesland, and that he had a place of residence there and in this country. That being so, that ground of appeal must fail.”

113. There are several important points to draw from this passage. The first is that the learned judge and registrar before him were not, in my mind, saying that legal ownership was irrelevant. In the cases they were considering, there was no legal ownership. Here, Mr Laptev was the sole legal owner of Artillery Mansions and well into the Relevant Period, provided all the money to pay for its refurbishment and upkeep. He also funded, entirely, the purchase of Park House. I accept that it was never intended that Mr Laptev would live at either property, full time. He wanted to live in Russia. But his children were being educated in England and the lady who was legally his wife, again well into the Relevant Period, was to live in the properties and he would visit them there. Their evidence is that they separated romantically before the commencement of the Relevant Period and that he visited England only twice after that, when he stayed “as a guest” in the guest apartment at Park House.
114. I have already expressed my concern regarding the lack of information put in evidence by Mr Laptev from which he could have demonstrated, if this was the case, a complete absence of payments from his Sberbank account or other credit cards travelling to or from and spending time in England. His oral evidence was equally unsatisfactory. The fact that he initially claimed never to have stayed at Artillery Mansions was a pointless lie. I suspect that he did come to England more times in the past few years than has been proved. Ultimately, however, in my judgment it is not necessary for the petitioner to prove that Mr Laptev came here more often than he claims to be the case, nor for the petitioner to prove that his relationship with Ms Stepanenko continued romantically for longer than they claim to be the case. The cumulative effect of the information in evidence before me, establishes no doubt in my mind that at least until their assets were finally divided on divorce, Mr Laptev had two places of residence in England:
 - a) He was at all relevant times, the legal owner of Artillery Mansions;
 - b) He purchased it and his funds met all the mortgage payments up until his bankruptcy in Russia;
 - c) He could gain access via the concierge at any time he wanted. Even if the concierge had not recognised him, his passport would almost certainly have been enough to gain him access as he was the legal owner

of the property and all service charge and several other items of post were sent to him there. The concierge in my mind would recognise it as one of Mr Laptev's places of residence, even if (as is the case with many wealthy property owners who live overseas) Mr Laptev rarely visited the property;

- d) He paid for very expensive refurbishment works at the flat;
 - e) He entirely funded the purchase and renovation of Park House. He visited and stayed there regularly with his wife and children before the deterioration in their relationship. He kept a bicycle there.
 - f) Until his Russian bankruptcy proceedings in 2017, he entirely funded Ms Stepanenko's and their children's lives in England. Ms Stepanenko's evidence that she sought to become financially independent from 2010 is of no consequence as she failed to achieve any such independence.
 - g) Mr Laptev may not have been able to drive any of them, but he paid for all the expensive cars in England.
 - h) Between November 2015 and July 2016 transfers, described for whatever reason as "gifts" to the tune of £121,000 were made from his account to Ms Stepanenko. I found both their evidence surrounding Nikita's ability to pay Ms Stepanenko approximately £100,000 after that, entirely unconvincing. It seems likely to me that that money also originated from Mr Laptev.
115. As noted in *Re Brauch*, it is possible to have a dwelling house without being in occupation in the relevant period, but the greater the occupation the more likely the finding. Although the legislative test at the time of *Brauch* concerned the question of whether the debtor "ordinarily resided" at the relevant property, I am satisfied that the period of occupation is an equally relevant consideration to the question of whether a debtor has a place of residence or not. But it is not solely determinative.
116. Registrar Baister included in his list of relevant factors in *Khan* that a moral claim to premises may be sufficient. He referred to paragraph 52 of *Skjevesland* which I have set out above. There, Mr Skjevesland would telephone on a regular basis to discuss his frequent visits to the property and whichever of his family members or other occupants were then living there, would move elsewhere temporarily in order to give him exclusive occupation. Much has been made by and on behalf of Mr Laptev during these proceedings that, in comparison, during the Relevant Period he rarely visited England and that when he did so, he visited only as a guest of Ms Stepanenko because he stayed at her house, not his.
117. If this was in fact the case, then it was Mr Laptev's choice to respect Ms Stepanenko's wishes by not staying in the main house. It is clear from his continued, seemingly unrestricted financial support for Ms Stepanenko that even when their relationship was strained and they were with other partners, they sought to cooperate with each other and to spend time together with their children. Ms Stepanenko was not in a position to fund her own lifestyle. To use the phrase from *Skjevesland*, Mr Laptev "called the shots". I anticipate that if he had wanted to

stay in the main house, it would have been very difficult for Ms Stepanenko to have prevented him from doing so without causing potentially serious repercussions. If he had wanted to stay in London at any time, he could have done so. Ms Stepanenko respected her husband's sensitivities and wishes, she ensured that her new partner moved back to London when Mr Laptev visited in 2016 and I consider that she would have been equally accommodating in relation to either property, if he had wished to stay there.

118. The phrase "place of residence" should be interpreted in the context in which it appears. It comprises part of the test to determine whether the court should assume jurisdiction to administer the affairs of a debtor who does not have a centre of main interests in the jurisdiction. During the Relevant Period, Mr Laptev owned and/or paid for significant assets within the jurisdiction including two domestic properties. He had originally paid for each, they had been entirely refurbished and for many years, including part of the Relevant Period, maintained at his expense. For the reasons I have stated, I consider each should be regarded as among his places of residence.

Discretion

119. The court has a broad discretion whether to make a bankruptcy order. If I had considered that the court has jurisdiction to make a bankruptcy order on the Bank's petition, I would have done so. Mr Laptev clearly paid for valuable assets within the jurisdiction. His unreliable testimony and inadequate disclosure cause me to consider that he has something to hide. He himself laid down the gauntlet: "Catch me if you can". The assets are of sufficiently high value for a trustee in bankruptcy to be justified in wanting to make enquiries within the jurisdiction regarding their current whereabouts and ownership.