



Neutral Citation Number: [2024] EWHC 929 (Ch)

Case No: BL-2020-001050

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

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL
Date: 23 April 2024

Before :

MR JUSTICE TROWER

Between:

- (1) LOUDMILA BOURLAKOVA
- (2) HERMITAGE ONE LIMITED
- (3) GREENBAY INVEST HOLDINGS LIMITED
(formerly known as Maravan Services Limited)
- (4) VERONICA BOURLAKOVA

Claimants

- and -

- (1) OLEG BOURLAKOV
- (2) DANIEL TRIBALDOS
- (3) LEO SERVICES HOLDING LTD
- (4) LEO TRUST SWITZERLAND AG
- (5) REUWEN SCHWARZ
- (6) SEMEN ANUFRIEV
- (7) NIKOLAI KAZAKOV
- (8) VERA KAZAKOVA
- (9) COLUMBUS HOLDING AND ENTERPRISES SA
- (10) FINCO FINANCIAL INC
- (11) GATIABE BUSINESS INC
- (12) EDELWEISS INVESTMENTS INC
- (13) IPEC INTERNATIONAL PETROLEUM CO INC

Defendants

JEFFREY CHAPMAN KC and MAX EVANS (instructed by **Mishcon de Reya LLP**) for
the 1st and 4th Claimants

DAVID DAVIES KC and ANTON DUDNIKOV (instructed by **PCP Byrne LLP**) for the 7th
and 8th Defendants

Hearing date: 19 April 2024

Approved Judgment

MR JUSTICE TROWER:

Introduction

1. On 28 February 2024, the first and fourth claimants (“the claimants”) issued an application for an order restraining the seventh defendant (“Mr Kazakov”) from pursuing or taking any further steps in proceedings numbered A56-4507/2024 (“the Bankruptcy Application”) initiated by his application dated 19 January 2024 to the Arbitrazh Court of St Petersburg and the Leningrad region (“the Russian court”). The claimants also seek orders that Mr Kazakov take all necessary steps within his power to withdraw the Bankruptcy Application and apply for its discontinuance, together with certain other ancillary relief against him and the eighth defendant (“Mrs Kazakova”).
2. The Bankruptcy Application alleges that Mr Kazakov is a creditor of the estate of the first defendant (“Mr Bourlakov”) and seeks an order declaring the estate of Mr Bourlakov to be bankrupt and appointing a receiver (also called a bankruptcy administrator) from a firm of insolvency practitioners. The amount of the alleged debt is €1.485 billion which is said to arise by reason of an agreement Mr Kazakov says that he entered into with Mr Bourlakov dated 15 April 2020 (“the April 2020 Agreement”). It is said that the debt arises out of a monetary obligation to pay Mr Kazakov the value of his stake in a business partnership.
3. As a general rule, Article 213.5(1) of the Russian Federal Law No 127-FZ on Insolvency (Bankruptcy) (the “Bankruptcy Law”) requires that a bankruptcy application must be supported by a judgment confirming the existence of the debt. However, there are a number of exceptions to the general rule in Article 213.5(2), one of which permits an application to be filed if the debtor has acknowledged but not satisfied the debt, and the creditor provides documentary evidence to establish that this is the case. Mr Kazakov relied on this exception when making the Bankruptcy Application.
4. The claimants seek the court’s decision as a matter of urgency because there is a hearing of the Bankruptcy Application (adjourned from the original date of 20 March 2024) fixed for 3 May 2024. There is evidence that, if the Russian court is satisfied that the necessary jurisdictional requirements are met, it may make an order recognising the Bankruptcy Application as justified and appointing a bankruptcy administrator at that hearing. The nature of the current dispute is such that it might be thought surprising if the Russian court were to take that course at the 3 May hearing. However, on the current information, it is difficult to make a full assessment of the prospects that this might happen, and I have concluded that there is some risk that it may, if the Bankruptcy Application is not withdrawn before that date. I have been told that, if the Bankruptcy Application is to be withdrawn, Mr Kazakov must apply to do so by Friday 26 April.
5. In these circumstances, I do not propose to give any more than a short summary of the background to the dispute. That background has, in any event, been addressed in some detail in two judgments with which the parties will be very familiar: one which I delivered on 26 May 2022 after a jurisdiction challenge by some of the defendants including the Kazakovs ([2022] EWHC 1268 (Ch)) and one delivered by Richard Smith J on 8 September 2023 on an application by the claimants to amend their particulars of claim and for the joinder of an additional claimant ([2023] EWHC 2233 (Ch)).

Summary of these proceedings

6. The claimants allege that, after an irretrievable breakdown in the marriage of the first defendant (Mr Bourlakov) and the first claimant (Mrs Bourlakova) at the end of 2017 caused by an affair Mr Bourlakov was having with Ms Sofia Shevtsova, Mr Bourlakov engaged in a dishonest and unlawful strategy directed at maximising his own share of the family assets and minimising those of Mrs Bourlakova and their two daughters, Veronica and Elena. The evidence is that these assets are worth several billion euros. It is said that, as one part of this strategy, Mr Bourlakov claimed for the first time in April 2018 that all of the family's business interests were subject to a long-standing orally-agreed partnership with Mr Kazakov. Mr Bourlakov claimed that, pursuant to this oral agreement, Mr Kazakov was entitled to 50% of the partnership's assets and profits. The claimants allege that these assertions by Mr Bourlakov were all lies, and were wholly inconsistent with the apparent lifestyles enjoyed by Mr Bourlakov (which was that of a multi-billionaire) and Mr Kazakov (which was one of "comparative poverty").
7. These proceedings were then commenced by Mrs Bourlakova in July 2020 seeking various forms of relief against Mr Bourlakov and a number of other individuals and entities said to have been involved in devising and implementing Mr Bourlakov's strategy. Mr Kazakov and Mrs Kazakova, who is Mr Bourlakov's sister, were amongst those defendants. Shortly before these proceedings were commenced, Mr Bourlakov had begun his own proceedings in Monaco which had at their heart allegations that, far from Mrs Bourlakova being a victim of Mr Bourlakov's dishonest strategy, it is she (and the other claimants) who have misappropriated and concealed valuable assets entrusted to her for safekeeping. These are said to include assets which were the fruits of the partnership I have already mentioned.
8. The proceedings commenced by Mrs Bourlakova were met by the jurisdiction challenge I have already mentioned. After a five-day hearing, I rejected an argument for the Kazakovs that Monaco was a more appropriate jurisdiction than England, and concluded that there were a number of reasons why England was the appropriate forum. In the course of making their arguments on the jurisdiction challenge, the Kazakovs had stressed the importance of a single forum for resolution of all disputes relating to the Bourlakovs' assets. Permission to appeal my decision was refused by the Court of Appeal on 28 September 2022.
9. On 21 June 2021, which was shortly before the jurisdiction challenge was made, but some time before it could be heard, Mr Bourlakov died. Following his death, the disputes between the claimants and those who are alleged to have participated in Mr Bourlakov's dishonest strategy have expanded to include questions relating to the devolution and administration of his estate. In particular there is a significant issue as to the validity of a manuscript will said to have been written by Mr Bourlakov in October 2019, which purports to make Mr Kazakov and Mrs Kazakova his heirs.
10. The dispute as to the validity of the 2019 will has led to proceedings in Monaco (the forum preferred by the Kazakovs) and Latvia (the forum preferred by Mrs Bourlakova and Ms Shevtsova). The present state of play is that the Monaco courts have accepted territorial jurisdiction to rule on any dispute in relation to Mr Bourlakov's estate,

including the validity of the 2019 will. The evidence is that any Monegasque decision on the merits is unlikely to be given before September 2024 and it may be some time later than that. The evidence from the claimants' solicitor is to the effect that the state of play in Latvia is such that it is entirely plausible that there may be competing inheritance proceedings in Latvia and Monaco. Both parties submitted that the other has adopted inconsistent positions in these proceedings. I am not in a position to express any view as to who is right.

11. There is also a succession case and a proceeding relating to the validity of the 2019 will in Russia, the latter of which features in one of the arguments made on this application by the Kazakovs. The succession case was opened with a notary by Veronica in June 2021 and is currently suspended. The will validity proceedings were commenced by the Kazakovs in December 2021 and they were successful at first instance, on appeal and in the second cassation court of general jurisdiction. However, on 30 January 2024, the Supreme Court of Russia overturned the decisions of the lower courts and sent the case back to the court of first instance for a new trial. I will revert to their significance later in this judgment.
12. The issue of the proper forum for these proceedings arose again on an application by the claimants to amend their particulars of claim. On this occasion, the Kazakovs advanced arguments that, for various reasons, either Panama or Florida was now the appropriate forum. Initially, they said that Panama was a more appropriate forum than England because it was a jurisdiction in which there were further proceedings relating to certain Panamanian companies. Subsequently, Florida was advanced by the Kazakovs on the grounds that Veronica had already commenced proceedings against them in Florida relating to her claim to the ownership of both the twelfth defendant (Edelweiss Investments Inc) through which very substantial assets are held, and certain real property located in Florida. In those proceedings, she had made allegations (amongst others) as to the Kazakovs' involvement in the dishonest strategy advanced by Mr Bourlakov, including the existence of the partnership. I shall revert to the Florida proceedings later in this judgment.
13. This amendment application led to the judgment of Richard Smith J I have already mentioned. He rejected the Kazakovs' arguments that the claimants' proposed new claims changed the conclusions I had reached on the jurisdiction challenge, holding that England was by some considerable distance a more appropriate forum than Panama, and that the case for England was overwhelming when compared to Florida. In the course of his judgment, Richard Smith J noted at [221] that it is highly desirable that the claims and defences of all those alleged to have participated in the international fraud allegedly perpetrated by Mr Bourlakov should be brought forward and resolved at the same time in the same set of proceedings in the appropriate forum, which he said continued to be England. This reflected the view that I had expressed on the jurisdiction challenge.
14. No attempt was made by the Kazakovs to appeal the decision of Richard Smith J. It has never been argued that Russia is the more appropriate forum for resolution of the issues which arise in these proceedings. In my view, any attempt to reopen in this court the question of whether England remains the natural forum for these proceedings as a whole would stand little prospect of success.

15. The allegations and counter-allegations made in these proceedings are both wide-ranging and complex. There are a number of different ways in which Mrs Bourlakova and her daughters on the one hand and the Kazakovs on the other claim an interest in what were at one time the family's assets, or at least assets controlled (or thought to have been controlled) by Mr Bourlakov at the time of the breakdown of the marriage. I have been told that the dispute as a whole has spawned proceedings in nine separate jurisdictions. It can properly be described as a global dispute. The Kazakovs rely on the fact that none of this litigation has ever led to an attempt by any party to seek anti-suit injunctive relief from the English court.
16. Most of these complications are not of direct relevance to the issue which arise on the present application. However, what is relevant is that, throughout these proceedings, the allegation of partnership which I mentioned at the beginning of this judgment, has been at the heart of the Kazakovs' case that Mr Kazakov is entitled to 50% of the assets which, on the claimants' case, continued to belong to Mr Bourlakov at the time of the breakdown of the Bourlakovs' marriage. Of less relevance for present purposes but still a material part of the background, is that one of the other principal means by which the Kazakovs assert an entitlement to the assets is as Mr Bourlakov's heirs pursuant to the disputed will. The position as to this issue is made more complicated by the fact that a minor, Nicole Shevtsova, who has been recognised by the Russian court as the daughter of Mr Bourlakov and Sofia Shevtsova, also claims through her mother to be an heir to his estate.
17. In arguments that did not feature at the time of the jurisdiction challenge or the application to amend, the partnership is now said by Mr Kazakov and Mrs Kazakova to have been evidenced by the April 2020 Agreement. This emerged for the first time with the Kazakovs' defence and counterclaim in these proceedings dated 27 November 2023. It is described by them as one of two "subsequent declarations of the partnership". The other one was a notarised declaration made in Monaco on 20 December 2018, which had been in evidence on the jurisdiction challenge, and was then said by the claimants to be a sham. The Kazakovs' defence and counterclaim also describes the background facts which are said to manifest the existence of the partnership in much greater detail than had been given at the time of the jurisdiction challenge.
18. The description of the April 2020 Agreement as a subsequent declaration of the partnership reflects one of its recitals, which is in the following terms: "although this de facto association was never formalised given the close family links between Nikolai Kazakov and Oleg Bourlakov, and their total trust in each other, they always agreed that the profits, and any losses, would be distributed or borne between them equally". The claimants have not yet pleaded their reply and defence to counterclaim, but they have already served a notice to prove disputing the authenticity of the April 2020 Agreement. I was told at the hearing of this application by Mr Jeffrey Chapman KC that the claimants' case is likely to be that it is a forgery and if it is not a forgery, it is a sham and not the document that it purports to be.
19. It is also the Kazakovs' case on this application that the April 2020 Agreement was entered into not just for the purposes of acknowledging the existence of the partnership, but also to recognise the need for an account between the partners leading to the payment to Mr Kazakov of his share of the partnership assets. There are two substantive provisions in the April 2020 Agreement which reflect this purpose. The first is Article

1, which amounted to an agreement that Mr Bourlakov should within eight days of signature pay Mr Kazakov a sum of €15 million. This was said by Mr Kazakov to be by way of part payment of his share of the partnership assets. It is said that this payment was made, although his case has changed as to how (in the Bankruptcy Application, Mr Kazakov initially relied on three SWIFT transfers originally exhibited by the claimants to a Swiss criminal complaint, but Mr Kazakov now says that they are not authentic). The second is Article 2 which recited as follows:

“THE PARTIES formally acknowledge that given the length of their association, the multiple acquisitions or disposals made during this period, the various transfers or deductions made to either of the partners, the accounts between the PARTIES remain to be calculated in order to determine the share that must be returned to each of them.

“However, by mutual agreement, the PARTIES agree that the total and cumulative sum to be paid to Nikolai Kazakov at the end of these operations should not be less than €1,500,000,000”.

20. The significance of the allegation of partnership to the Kazakovs’ case in these proceedings is reflected by the fact that allegations relating to its existence and operation feature in the frontline of their defence and are pleaded in considerable detail. The partnership is also sought to be recognised by the first declaration they seek by way of counterclaim:

“Mr Kazakov is entitled to and seeks declarations that there was a contract of partnership, alternatively a sui generis contract, between Mr Kazakov and Mr Bourlakov pursuant to which Mr Kazakov was entitled to an equal share in the assets of and the profits generated by the Partnership (including the proceeds of sale of the direct and/or indirect interests held by or for the benefit of Mr Bourlakov and/or Mr Kazakov in the Belgorod Cement Plant, Novoroscement and Burneftegaz).”

21. Although the April 2020 Agreement is now relied on in these proceedings as a subsequent declaration of the partnership, no attempt has been made to counterclaim in England to enforce the obligations which Mr Kazakov says that Mr Bourlakov undertook pursuant to Article 1 and Article 2 of the April 2020 Agreement. It is part of the Kazakovs’ case that he could not in any event have done so, because the April 2020 Agreement is governed by Monegasque law and “any dispute directly or indirectly relating thereto will come under the exclusive jurisdiction of the Monegasque courts”.
22. The claimants also submitted that a claim based on the monetary obligations for which those Articles appear to provide would be inconsistent with his claim to be a partner entitled to 50% of the partnership assets. I do not think that is necessarily the case. If valid, Article 2 appears to give rise to a freestanding undertaking, enforceable as a personal obligation, to ensure that Mr Kazakov received the sum identified. Ultimately, the answer will depend on Monegasque law but, as a matter of English law, it is capable of being analysed as a provision for the payment of a debt subject to a contingency and/or at a future time.

The Bankruptcy Application

23. The Bankruptcy Application takes the form of a request by Mr Kazakov to the Russian court to commence bankruptcy proceedings concerning Mr Bourlakov's estate by declaring Mr Bourlakov's estate to be insolvent and to approve the financial administrator. The proposed administrator is from a named firm of insolvency practitioners. It relies on the alleged debt of €1.485 billion which is said to arise by reason of the April 2020 Agreement. This debt is the claim on which Mr Kazakov relies to establish his status as a creditor of Mr Bourlakov's estate.
24. Mr Kazakov is the applicant. There are also five named interested parties (Mrs Kazakova, Mrs Bourlakova, Veronica, Elena and Nicole Shevtsova) and two third parties (the notary appointed by Veronica in the Russian succession case and the trustee, Grifon LLC, appointed by that notary). The evidence is that they will be recognised by the Russian court as having a full range of procedural rights within the Bankruptcy Application, including to make written submissions and present evidence, to participate in all court hearings and to appeal the court's judgments. If the relief sought by Mr Kazakov is granted, they will be permitted to participate in the bankruptcy case by challenging the actions and decisions of the bankruptcy administrator and any creditors' committee.
25. In the relevant parts of Mr Kazakov's petition to the Russian court (where he is described as the Creditor and Mr Bourlakov is described as the Debtor) the significance of the partnership and its interrelationship with the April 2020 Agreement is described in a manner which reflects the case which the Kazakovs make in their counterclaim. Having referred to the December 2018 notarised statement, the petition pleads as follows:
- “In addition, on 15.04.2020, the Creditor and the Debtor entered into a private agreement in the Principality of Monaco (hereinafter referred to as the Agreement; ...) where the Debtor acknowledged its obligation to pay the Creditor no less than €1,500,000,000 for the Creditor's share in the partnership (Articles 1-2 of the Agreement). Out of this amount, the Debtor in his lifetime, only paid €15,000,000 to the Creditor....
- “So on the date of death the Debtor owed the creditor €1,485,000,000 arising out of a monetary obligation to pay the Creditor the value of its stake in the business partnership. The said amount of debt exceeds the value of the inherited estate of the Debtor, identified in inheritance case No. 28/2021 consisting of the following assets ...”
26. The amount pleaded in the petition as the value of Mr Bourlakov's inherited estate is c.RUB 621 million, a sum the euro equivalent of which is about €6.25 million. The reference to the case in which that value is identified is a reference to the Russian succession case opened with the notary by Veronica in June 2021. The figure is identified for the purpose of establishing that the value of the estate is not sufficient to pay the alleged debt to Mr Kazakov, a contention which (as it is put in the petition) “testifies to the need to declare the Debtor (his estate) insolvent”. As the value is less than 0.5% of the amount of Mr Kazakov's claim, any dividend he might recover (anyway from the estate's Russian assets) after deduction of any costs and expenses, will be no more than minimal.

27. The Bankruptcy Application was accepted as admissible by the Russian court on 23 January 2024 and listed for a first hearing to be held on 20 March 2024. The decision to accept the Bankruptcy Application was then appealed by Elena on 6 February 2024 with a hearing of that appeal fixed for 1 April 2024. On the day fixed for the hearing, Elena's appeal was withdrawn.
28. Ten days before Elena withdrew her appeal, Mrs Bourlakova had also appealed against the decision of the bankruptcy court. However, this appeal was only extant for a short time and was revoked on 28 March 2024. It is the claimants' case (asserted through their English solicitor) that Mrs Bourlakova's appeal was filed by her Russian lawyer without her authority or instructions. From an English perspective, this is an unusual state of affairs, but I merely note my surprise that a Russian lawyer might proceed in this way without instructions. I am not in a position to make any more specific findings as to what occurred.
29. After the Russian court had accepted the admissibility of the Bankruptcy Application this application for an anti-suit injunction was issued. Shortly thereafter the first return date in Russia was adjourned, and as I have already mentioned the adjourned hearing is now listed for 3 May 2024.
30. The expert evidence (from Professor Anton Asoskov for the Kazakovs and Ms Svetlana London for the claimants) addressed the question of what steps will have to be taken by the Kazakovs if the Bankruptcy Application is to proceed. There are certain formal requirements and then certain requirements of substance. It appears that the formal requirements have been satisfied. The Russian court has accepted the Bankruptcy Application for consideration on the merits and appointed a hearing date. Appeals against those decisions by the claimants have been withdrawn. The evidence also showed that there is a sufficiently close connection to Russia for the Russian court to accept international jurisdiction (in particular Mr Bourlakov was a Russian citizen and there are some assets in Russia, albeit minimal in the context of his global estate).
31. As to the substantive requirements, the first one relates to establishing the debt. A creditor's claim must either be confirmed by a previous court judgment or fall within one of a number of exceptions in Article 213.5 of the Bankruptcy Law. As I have already mentioned, the one relied on by Mr Kazakov is "claims based on documents provided by the creditor and stating monetary obligations acknowledged but not satisfied by the individual". The Bankruptcy Application refers to three pieces of evidence as confirmation that Mr Bourlakov acknowledged the debt owed to Mr Kazakov: the notarised statement dated December 2018, the April 2020 Agreement and partial payment of the outstanding debt in the amount of €15 million said to have been made on the same day as the April 2020 Agreement.
32. The expert evidence adduced from Professor Asoskov expressed the view that the Russian court will have to decide whether these three pieces of evidence state monetary obligations acknowledged but not satisfied by Mr Bourlakov. He also said that, in his opinion, the documents referred to in the Bankruptcy Application bear evident similarities to the types of document typically recognised as signifying an acknowledgement of debt in Russian law. He then gave examples which appeared to illustrate that, where a debtor disputes the existence or amount of a previously acknowledged claim after a bankruptcy application has been filed, that is capable of being sufficient to cause the bankruptcy application to be rejected. However, the court

can ignore the debtor's objection if it finds that it is not made in good faith and constitutes an abuse of right. By way of example, this concept permitted a bankruptcy court to reject a debtor's objection on the grounds that a loan was invalid as a sham transaction, where it concluded that the debtor had abused his right to raise objections about the validity of the debt when he had previously acknowledged it as valid.

33. Professor Asoskov accepted that there was uncertainty about how the issue of acknowledged debt would be resolved in the context of the bankruptcy of a deceased person's estate, where the deceased acknowledged the creditor's claim before death but the heirs or some of them dispute the same claims after the debtor's death. He was unable to find any cases which had dealt with the point, but said that there is a good argument that, so long as the debtor acknowledged the relevant debt during his lifetime, the requirements of this exception is met even if the heirs dispute the debt after the debtor's death.
34. Once the question of acknowledgement has been dealt with, the next substantive requirement, is that the court is still required to verify the creditor's claim on the merits. In Professor Asoskov's view, this means that Mr Bourlakov's heirs will have an opportunity to present their objections to the validity and/or amount of Mr Kazakov's claim which would then have to be resolved by the bankruptcy court. In other words, the heirs will have the opportunity to raise any objections to the underlying debt, an exercise which on its face would require an enquiry into the existence of the partnership out of which the debt is said to arise.
35. This element of Professor Asoskov's evidence seems to have been common ground between him and Ms London, although Ms London did not explicitly say that she agreed with Professor Asoskov. Both experts referred to the same authority (the panel of the Russian Supreme Court in the case of *Re Savvin Bankruptcy* included in section 15 and the review of court practice of the Russian Supreme Court number one 2017, approved by the presidium of the Supreme Court of Russia on 16 February 2017), in which it is made clear that the mere fact of the debtor's acknowledgement of the existence of the debt and failure to fulfil the obligation to repay is not of itself sufficient to initiate bankruptcy proceedings. The court is still required to verify the creditor's claim on the merits.
36. It was also Ms London's evidence that, as a matter of Russian law, the court should take the course of verifying the debt, regardless of whether there is a disagreement between creditor and debtor. She also expressed the view that if, at the point of filing a bankruptcy application, there is no court decision confirming the debt and there is a dispute between a creditor and debtor to be resolved by proceedings separate from the bankruptcy proceedings (whether that dispute relates to the existence of the debt its amount or any deadline for fulfilling the obligation that is due), the court considering the bankruptcy application should rule that the creditor's claim is not justified and should terminate the bankruptcy proceedings.
37. The final matter which may have to be proved on the Bankruptcy Application relates to the insolvency of the debtor. There was an argument explained by Mr Asoskov to the effect that, in the case of a deceased debtor, insolvency does not need to be established. I am not in a position to express a concluded view on that point, but, even if it is wrong, he said that insolvency is assumed where a debtor has stopped payment or failed to fulfil his monetary obligations within one month of the date they should

have been fulfilled. In my view, the evidence gives rise to a clear argument that, if the debt claimed by Mr Kazakov is payable in the first place, the estate is to be treated as insolvent, and so the jurisdiction to declare it bankrupt is established, even though it may prove to have substantial unrealised assets (whether in Russia or elsewhere).

The Legal Principles

38. The jurisdictional basis for the claimants' application is section 37 of the Senior Courts Act 1981, which empowers the court to grant an injunction in all cases in which it appears to the court to be just and convenient to do so. It is not in dispute that this power permits the court to grant an anti-suit injunction restraining foreign proceedings in a proper case.
39. As Clarke LJ explained in *Seismic Shipping Inc & Anor v Total E & P UK plc (The Western Regent)* 2005 EWCA Civ 985 at [44] and [45], approving the summary of the principles set out in the judgment of Evans Lombe J at first instance, the jurisdiction to grant an anti-suit injunction arises in two broad categories of case. The first is where a claimant can invoke a contractual provision conferring on him the right to be sued in a particular forum. The second is where the claimant can point to clearly unconscionable conduct or the threat of unconscionable conduct on the part of the party sought to be restrained. Such unconscionable conduct will normally be established if the pursuit of foreign proceedings is vexatious or oppressive or interferes with the due process of the court.
40. The circumstances on which the claimants rely fall into the second category. They submitted that the test of justice and convenience is satisfied because the relevant foreign proceeding (in this case the Bankruptcy Application) is vexatious or oppressive. They also submitted that, in the light of the conclusion that I reached on the jurisdiction challenge and Richard Smith J reached on the application for permission to amend, this application should proceed on the basis that England is the natural forum for the trial of the dispute. The claimants accept that this will normally be a necessary prerequisite to the grant of an anti-suit injunction on the grounds of vexation or oppression. However, an important question to which I will revert is whether the issues which arise in the Bankruptcy Application are themselves issues which can properly be characterised as part of the dispute in respect of which the natural forum is England.
41. It is well established that the grant of an injunction must be necessary in the interests of justice: *Deutsche Bank v Highland Crusader Partners* [2010] 1 WLR 1023 at [50(1)]. It is also necessary for the court to have in mind that, in exercising its jurisdiction to grant an anti-suit injunction, regard must be had to comity and "the jurisdiction is one which must be exercised with caution". As Clarke LJ explained in the *Western Regent* at [44(vi)] "generally speaking in deciding whether or not to order that a party be restrained in the pursuit of foreign proceedings the court will be reluctant to take upon itself the decision whether a foreign forum is an inappropriate one". This same point has been made by many judges using essentially the same language.
42. In other cases it has been said that the power to restrain foreign proceedings in the absence of a jurisdiction agreement is exceptional and must be exercised with great circumspection: *Barclays Bank plc v Homan* [1992] BCC 757, 761F and 762G. This

was a case which, like the present one, was concerned with a foreign insolvency process, but the English court was familiar with the relevant foreign procedures (in that case the US). It left the question of vexation and oppression to be dealt with in the foreign jurisdiction.

43. However, in all of these cases, the essential touchstone is whether there has been unconscionable conduct or the threat of unconscionable conduct. In answering that question, the court will pay careful regard to the fact that at [44(vi)] and [45] of his judgment, Clarke LJ approved the following description of a context in which unconscionability may be established:

“The Court may conclude that a party is acting vexatiously or oppressively in pursuing foreign proceedings and that he should be ordered not to pursue them if (a) the English court is the natural forum for the trial of the dispute, and (b) justice does not require that the action should be allowed to proceed in the foreign court, and more specifically, that there is no advantage to the party sought to be restrained in pursuing the foreign proceedings of which he would be deprived and of which it would be unjust to deprive him: *Société Aerospatiale*, *ibid* at pp 895D and 896F–G.”

44. The second part of the test is sometimes put the other way round. Thus in *Deutsche Bank v Highland Crusader Partners*, Toulson LJ said at [50(3)] that, where the issue is whether proceeding in a foreign court is or would be vexatious or oppressive on grounds of *forum non conveniens*, it is generally necessary to show that England is clearly the more appropriate forum (also called the natural forum) and that justice requires that the claimant in the foreign court should be restrained from proceeding there. Toulson LJ then went on to explain that, even when England is the natural forum and the court can see no legitimate personal or juridical advantage for the claimant in the foreign proceedings being allowed to pursue them, questions of comity may still point to the exercise of judicial restraint and the refusal of an anti-suit injunction accordingly.

45. In the seminal decision of the Privy Council in *Société Nationale Industrielle Aerospatiale v Lee Kui Jak* [1987] 1 AC 871, Lord Goff at 893F-894A confirmed that the categories of vexatious conduct are not closed, but said that they will include a situation in which the foreign proceedings are so utterly absurd that they cannot possibly succeed. The test of utter absurdity has been reformulated in many cases and language such as a case that is bound to fail, doomed to fail, hopeless or bogus is often used (see *Star Reefers Pool Inc v JFC Group Ltd* [2012] EWCA Civ 14 at [31] per Rix LJ), but as Males J explained in *Vitol Bahrain EC v Nasdec General Trading LLC* [2013] EWHC 3359 (Comm) when discussing Rix LJ’s judgment in *Star Reefers*:

“it is not the function of the English court to determine which cases proceeding in foreign courts have sufficient merit to be allowed to proceed. The cases mentioned by Rix LJ where the weakness of the foreign proceedings has been a factor, including in rare cases a decisive factor, in the grant of an injunction on the ground that their pursuit constitutes unconscionable conduct which the English court can restrain have all been cases where the English court has intervened to protect an interest of its own – or, more accurately, to protect an interest of the applicant which is justiciable and suitable for vindication here. Indeed in the absence of such an interest there is no reason why the English court should intervene. They are also cases which have involved something akin to bad faith on the part of the foreign

claimant. In such cases the hopeless nature of the claim has provided evidence of such bad faith or similarly vexatious conduct, as distinct from being a reason in itself to grant an injunction.”

46. In single forum cases, i.e., “when the cause of action relied on in the foreign court cannot be advanced in England, and there is no cause of action available (as a matter of English domestic law or the law applicable under its choice of law rules) to the claimant to allow him to win before the English courts ...” (see Dicey, Morris and Collins on *The Conflict of Laws* (16th edn, 2022) vol 1 at [12–136]), particular caution is required. As Gross LJ said in *Oceanconnect UK Ltd v Anagara Maritime Ltd* [2010] EWCA Civ 1050 at [43]:

“The need for particular caution in single forum cases is readily apparent; as the only possible forum is the foreign forum, the risk of injustice is very real: ‘The decision the court has to make is therefore not in which forum the claims should proceed, but rather whether they should proceed at all.’ (See Thomas Raphael *The Anti-Suit Injunction* (2008) p 133 (para 5.19).)”

47. A similar but not identical question arose in *Barclays Bank v Homan*, a case arising out of the administration of Maxwell Communications Corporation Plc, in which the underlying issue related to an allegation that Barclays Bank was liable to repay a voidable preference it received shortly before the administration. On the facts of that case, the administrators were more likely to be able to satisfy the test for challenging a preference under section 547 of the US Bankruptcy Code than they were the test under the English equivalent (section 239 of the Insolvency Act 1986), and so sought to proceed in the US. Hoffmann J refused an injunction. He pointed out that the US was the only forum for a claim under section 547, and said that this was analogous to a “single forum” case from which it followed that particular caution was required.
48. The claimants submitted that conduct is capable of being subjectively or objectively vexatious or oppressive. They submitted that, where the foreign proceedings have been brought in bad faith or with the intention and effect of harassing the person seeking an anti-suit injunction, this can justify grant of the relief sought. I agree with this point in principle, not least because it will normally be appropriate to stigmatise such conduct as unconscionable. Conduct which is objectively vexatious or oppressive may include initiating foreign proceedings which are bound to fail or participating in English proceedings and then seeking to proceed elsewhere irrespective of subjective intent. There will be a fact sensitive question as to whether taking such steps in any particular case gives rise to unconscionability.
49. Commencing proceedings abroad which raise issues that are already subject to proceedings in England is also capable of amounting to vexatious or oppressive conduct, but that is not necessarily the case. It was stressed in submissions on behalf of the Kazakovs (and I agree) that, in the context of the anti-suit jurisdiction, there is no presumption that a multiplicity of proceedings is vexatious, and that proceedings are not to be regarded as vexatious merely because they are brought in an inconvenient place: *Société Nationale Industrielle Aerospatiale v Lee Kui Jak* at p.894D. Likewise, it is not vexatious to bring an action in more than one country where there are “substantial reasons of benefit” to the claimant, see e.g., *Deutsche Bank* at [50(6)] where Toulson LJ also made clear that the prosecution of parallel proceedings in different jurisdictions is undesirable but not necessarily vexatious or oppressive.

50. The final, but important, point of principle relevant for present purposes emerges from the judgment of Glidewell LJ in the Court of Appeal in *Barclays Bank v Homan* at pp.773H to 774A. He made clear that, when deciding on whether the action in the foreign court is vexatious or oppressive, the court must ask itself how best to strike an appropriate balance between the possible injustice to the parties depending on whether the anti-suit injunction is granted or refused. He said that: “account must be taken of the possible injustice to the defendant if the injunction be not granted, and the possible injustice to the plaintiff if it is”. I accept the claimants’ submission that, in carrying out that exercise, only credible and legitimate advantages are to be given weight, because it is not unjust to deprive a party to foreign proceedings of illegitimate or theoretical advantages or ones which are hopelessly or cynically invoked.

The Parties’ submissions

51. The starting point for the claimants’ argument that an anti-suit injunction should be granted was that the commencement of the Bankruptcy Application in Russia is a blatant attempt by Mr Kazakov to extricate himself from the consequences of submitting to the jurisdiction in England and he does so in circumstances in which he and Mrs Kazakova have already sought a declaration that there was a partnership. It was said that he has taken this course in order to prolong or multiply this litigation by commencing further claims abroad premised on the very same documents and the very same issues, the resolution of which are to be determined by these proceedings in England.
52. The way that Mr Chapman put it during the course of his oral submissions was slightly different but was directed at the same essential point. He said that all of the documents on which reliance is placed to establish the petition debt in the Bankruptcy Application are already in issue in these English proceedings and have been expressly relied on by Mr Kazakov in his defence and counterclaim. It can be seen that the consequence of this is that the Bankruptcy Application is in fact being used by the Kazakovs as a shortcut to circumvent the progress of the English proceedings where all the issues including the partnership issue are going to be determined in the natural forum. He also said in a different context that the claimants “are quite keen – put it maybe higher than that – to avoid any consideration of the partnership outside these proceedings if it can be avoided”.
53. It is the claimants’ position that the existence of the partnership, and the importance of the April 2020 Agreement as one of the two “subsequent declarations of the partnership”, is therefore at the front and centre of Mr Kazakov’s case in the Bankruptcy Application. The fact that the partnership and the April 2020 Agreement feature in the way they do in both proceedings is an important building block underpinning the claimants’ submission that the court can and should infer that the Bankruptcy Application has been brought for the vexatious purpose of making a collateral attack on this court’s decision that England is the appropriate forum for determining the issues which arise in these proceedings, including in particular the existence and terms of the partnership.
54. In particular, the claimants point to Mr Kazakov’s pleading that the petition debt arises out of a monetary obligation to pay him the value of his stake in the partnership. They

therefore contended that the purported debt on which Mr Kazakov relies in the Bankruptcy Application arises directly out of the April 2020 Agreement and can only be properly payable if the partnership is found to have existed. It is said that a finding that Mr Kazakov is a creditor of Mr Bourlakov's estate in the amount claimed in the Bankruptcy Application necessarily carries with it a conclusion that the Russian court is satisfied as to the existence of the partnership.

55. It was said in the claimants' written submissions that it is indisputable that, if a Russian court rules in his favour in the Bankruptcy Application, Mr Kazakov will rely on that ruling as being a decision which accepts his case as to the existence of the partnership, which is the very question they seek to have determined by their counterclaim in these proceedings. This is said to be inevitable in light of the way in which Mr Kazakov claims that the petition debt arose and is demonstrated by the fact that the Bankruptcy Application is peppered with references to the partnership as underpinning the debt. They also submitted that even if the decision of the Russian court is not to be construed as determining the partnership issue it would be manifestly abusive and vexatious for Mr Kazakov to obtain a judgment premised on the existence of the partnership while circumventing the need for a decision as to its existence entirely.
56. In short, the claimants submitted that a judgment in the Bankruptcy Application based on a finding that Mr Bourlakov is indebted to Mr Kazakov to the tune of €1.485 billion would be irreconcilable with a judgment in the English proceedings finding that there was no partnership. As this court has already concluded that England is the natural forum for resolution of the partnership issue, amongst others, the risk of irreconcilable judgments is a significant factor in justifying the grant of anti-suit injunctive relief restraining the Russian proceedings because they require a determination of the very same issue.
57. This is said to be a particularly powerful point in the present case because this court's determination that there is a need for a single composite determination of the issues in the English proceedings relates to a case in which there are now 13 defendants, with an outstanding issue as to whether four more will be joined. There are therefore many more parties to the English proceedings than there are to the Russian Bankruptcy Application. It is highly undesirable for the parties to be faced with the situation in which a ruling in Russia on such a central issue to the main dispute has no binding effect on a significant number of defendants to the present proceedings.
58. The Kazakovs do not accept that this is the correct way of looking at the substance of the Bankruptcy Application. In making their arguments, they submitted that the court should approach the application for an anti-suit injunction on the basis that this is a single forum case, or anyway one that is analogous in the sense discussed in *Barclays Bank v Homan* (referred to above). The Kazakovs submitted that the analogy is apposite in the present case, because Russia is the only place in which a bankruptcy administrator can be appointed under the Russian Bankruptcy Law, with the consequence that particular caution is required before granting anti-suit relief. I shall deal with this point first.
59. The claimants submitted that the present case is not properly to be treated as a single forum case, simply because a Russian bankruptcy administrator can only be appointed in Russia. Mr Chapman said that in a single forum case, the courts are concerned not to prevent a party who has started proceedings in a foreign jurisdiction from vindicating

his rights at all, and accepted that, if that were to be the effect of the court's decision that would be a strong thing to do. I think he was right about that, but I do not think that he was correct to go on and submit that nothing of that sort was occurring in the present case.

60. The basis for this further submission was that it would always have been open to Mr Kazakov to vindicate such rights as he said he had under the April 2020 Agreement by making a part 20 claim in these proceedings in England. In my view, the problem with this argument is that it does not give sufficient weight to the fact that the right which Mr Kazakov is seeking to vindicate in Russia is his right to obtain the appointment of a bankruptcy administrator. Leaving aside any difficulties which might arise out of the Monegasque exclusive jurisdiction clause in the April 2020 Agreement, the only right which is capable of being vindicated by a claim in England is what he asserts to be his right to payment of a contingent amount payable under Article 2 of the April 2020 Agreement. That is not the same thing as the right to an insolvency appointment in Russia in respect of which the debt is only relied on to establish Mr Kazakov's status as a creditor who is then empowered to apply for the initiation of a class remedy in the form of bankruptcy proceedings.
61. Nobody suggested that there is a perfect analogy between the present case and other cases which have been characterised as single forum cases. But by the same token, Mr Chapman was not able to draw my attention to any case in which an anti-suit injunction has been granted to restrain the initiation of a foreign insolvency process on the grounds that a fact which underpinned the existence of the debt (on the basis of which the petitioner alleged standing to seek the foreign insolvency relief) was already subject to determination in English proceedings. In my judgment, and in agreement with the substance of the submission made by the Kazakovs, the reasoning which underpins the need for caution in granting anti-suit injunctive relief in a single forum case are applicable to a case such as the present.
62. Reverting to the Kazakovs' main argument, it is their case that the Bankruptcy Application is limited in scope and does not invite the Russian court to determine the existence of the partnership. They submitted that the Russian court is only concerned with the question of whether there was an express acknowledgment of the petition debt during Mr Bourlakov's lifetime. They said that this is the case, even though the petition debt owed is said in terms to be a debt "arising out of a monetary obligation to pay the Creditor the value of its stake in the business partnership".
63. They contended that the consequence of this is that it cannot be said that all of the interested parties in the Bankruptcy Application are at risk of being vexed twice. In support of this argument, they submitted that, although Mr Bourlakov's estate is the alleged debtor in the Bankruptcy Application (with a liability derived from the April 2020 Agreement), there is no part 20 claim against it based on the April 2020 Agreement in the English proceedings, and nor could there be because that agreement contains an exclusive jurisdiction clause in favour of the Monegasque courts. The position is said to be even clearer so far as Elena is concerned, because she is an interested party in the Bankruptcy Application but is not even a party to these proceedings.
64. As to Mrs Bourlakova and Veronica, it is said that they are not being vexed or oppressed by the Bankruptcy Application for a different reason, which also applies as against

Elena and Mr Bourlakov's estate. It is said that, although Mrs Bourlakova and Veronica are both interested parties in Russia and claimants in England, the issues that the Russian court is being asked to determine are not the same as the issues sought to be determined in England. It is said that the issue in Russia is the existence of the debt obligation, the source of which is Article 2 of the April 2020 Agreement, which, by reason of its status as an acknowledgment of a debt, is sufficient as a matter of Russian law to constitute Mr Kazakov a creditor of Mr Bourlakov with status to petition for the bankruptcy of Mr Bourlakov's estate. There is no such claim in these English proceedings, and indeed there is no claim at all in England by the Kazakovs against Mr Bourlakov's estate.

65. The Kazakovs also submitted that the only relevance of the April 2020 Agreement in England is that it evidences the existence of the partnership; it does not stand as the source of any obligation sued upon, that being the status and relevance which it has for the purposes of the Bankruptcy Application. For this reason, it is said that Mr Kazakov is not asking the Russian court to determine the partnership issue, a position which the Kazakovs said is supported by their expert evidence, in the course of which Professor Asoskov opines (at [147] of his report) that:

“the scope of issues to be determined by the Russian bankruptcy court is limited, and the Russian bankruptcy court does not need to determine “the entire issue” of the alleged partnership”.

66. The Kazakovs also submitted that the complaint that Mr Kazakov's claims in England and Russia are inconsistent is misconceived. It is said that they are different claims brought on different juridical bases under different governing laws and that the target of the Bankruptcy Application (Mr Bourlakov's estate) is not even a part 20 defendant in England. They go on to illustrate this submission when explaining why the decision of the Russian court on the Bankruptcy Application will not create an issue estoppel on the partnership issue in England by identifying the two different questions which arise as follows:

- i) In the Bankruptcy Application, the Russian court will have to decide whether the April 2020 Agreement and the subsequent payment of part of the debt constitutes a sufficient acknowledgment by Mr Bourlakov to satisfy the requirements of the bankruptcy law.
- ii) In the English proceedings the issue is whether there was a partnership, which requires examination of a detailed series of events going back to the 1980s.

67. It is well-established that parallel proceedings in a foreign jurisdiction which is not the natural forum will not necessarily be vexatious or oppressive (see e.g., the passage from *Deutsche Bank* at [56] referred to above). However the question of vexation and oppression is likely to be affected by the probability of an issue estoppel arising as a result of a foreign proceeding which is not the natural forum for that issue. From an English law perspective, this gives rise to the question of whether a determination of the Bankruptcy Application will or might give rise to an issue estoppel on the partnership issue. It is said by the claimants that, in the circumstances of this case, it would be vexatious if an issue estoppel were to arise in this way; important amongst those circumstances is the fact this court has already determined on two separate

occasions that the English court is the natural forum for the global dispute, including as it does the partnership issue.

68. However both parties, for very different reasons, said that no estoppel would arise, and in his oral submissions Mr Chapman submitted that I should proceed on that basis in any event. The position was made clearer by the position adopted by Mr Kazakov during the course of the hearing. At the outset of Mr Davies KC's submissions, I asked whether his client would be prepared to undertake not to argue for an issue estoppel on the partnership issue in England if the same issue had been determined on the Bankruptcy Application. He took instructions over the short adjournment and confirmed that this undertaking would be given.
69. In my view, this concession weakened the claimants' application for an injunction, although it is by no means a complete answer. Mr Kazakov is the person who would be entitled to argue for an issue estoppel on the partnership issue, and as he is now not able to do so in England, the impact of what may be decided in the Bankruptcy Application ought to be significantly less disruptive to the smooth conduct of the English proceedings than would otherwise have been the case. In short, the claimants' argument based on an issue estoppel arising in England out of a determination of the bankruptcy application in Russia has all but fallen away as a factor justifying the injunction sought.
70. However, there is a residual point on issue estoppel which remains. It relates to the response of the Russian court, if steps were to be taken subsequently to enforce a later English judgment that is inconsistent with decisions made in any Russian bankruptcy proceedings, whether that inconsistency arose out of the English court's refusal to recognise an issue estoppel or otherwise. It also related to the circumstances in which an estoppel deriving from the Bankruptcy Application would not arise in England (in any event, and irrespective of Mr Kazakov's undertaking) unless it amounted to an estoppel in Russia.
71. The evidence of Professor Asoskov was to the effect that the preclusive effect of a court judgment is limited to the factual circumstances of the case and does not extend to the legal characterisation of the parties' relationships. The way that this principle is expressed in some of the authorities is that the doctrine of preclusion exempts the parties from having to prove the factual circumstances of the case, but does not exclude their different legal evaluation, which depends on the nature of the particular dispute. Examples of contexts in which this distinction has been applied include cases in which there was no preclusion on a finding characterising an assigned claim as existing or future, and no preclusion where a court had found that a specific contractual provision was illegal.
72. The consequence of this is that the legal characterisation of a transaction as valid or invalid does not create an issue estoppel under Russian law. Where a previous court judgment has confirmed the validity of a creditor's claim in a previous ruling, an interested party is not then prevented from challenging the same transaction in subsequent litigation. Professor Asoskov gave a number of examples in his report of the way in which the doctrine of preclusion operated in the context of bankruptcy. In his view a proper application of this principle means that, even if the Russian bankruptcy court order implies the validity of the April 2020 Agreement and a later English judgment recognises it as invalid there would be no grounds to refuse the

recognition and enforcement of the English court's judgment in Russia. He relied on a decision of the Supreme Court as confirmation of this conclusion.

73. Ms London did not agree with this evidence. In her opinion it is not possible to say with any degree of certainty that there would be no grounds for refusal of recognition and enforcement in Russia of an English judgment recognising as invalid an agreement, which a Russian bankruptcy court has earlier held to be valid. Her opinion was that Professor Asoskov was not correct to say that "there will be no grounds" to refuse recognition in those circumstances. She pointed out that the case on which Professor Asoskov relied was quite old and that a particular UN Convention was important to the court's reasoning. She also said that it took no account of important principles of reciprocity which Russian courts were accustomed to apply, and which might affect the question of whether or not an English judgment in these proceedings which conflicted with a decision of the Russian court on the Bankruptcy Application would be recognised in Russia. Mr Davies also accepted during oral argument that, even if there was no estoppel in relation to the legal conclusion, an estoppel may arise in relation to the factual building blocks on which the legal conclusion was built.
74. In these circumstances Ms London's conclusion was that "there is a risk that a Russian court could refuse recognition and enforcement of a foreign (non-Russian) court decision which challenges transactions underlying Russian bankruptcy proceedings on the ground of violation of public policy." She therefore disagreed with the unqualified manner in which Professor Asoskov had expressed his own views on this point. The upshot of this evidence is that there is a possibility that a Russian court will refuse recognition of an English judgment which conflicts with a finding of a Russian bankruptcy court on the Bankruptcy Application.
75. However, I have reached the clear conclusion that this is no more than a possibility. As the impact of Mr Kazakov's undertaking on the potential outcome of any such argument has not been considered by the experts, I do not consider that the factor weighs significantly in the balance when determining the right way to proceed on this application. In these circumstances, I agree with the Kazakovs' submission that the claimants have overplayed the impact of any Russian decision in the Bankruptcy Application both on the English proceedings and on later enforcement in Russia of any judgment given in those proceedings. While it will have some effect, I do not think that it will amount to anything that could properly be described as vexatious or oppressive.
76. In making the submission that the Bankruptcy Application is vexatious, the claimants do not just rely on an assertion that it seeks the determination of one of the issues at the heart of these proceedings (the existence of the partnership), for which this court has already decided that England is the natural form. They also rely on the fact that the purpose for which Mr Kazakov says that he has commenced the Bankruptcy Application does not stand up to proper scrutiny. What does the evidence establish as the subjective reason for which Mr Kazakov seeks to pursue it in circumstances in which he stresses both the difficulty for a bankruptcy administrator acting outside Russia and the fact that the assets in Russia are only worth c.£6.25 million? This is of central relevance to the present application because it was submitted by the claimants that Mr Kazakov has failed to identify what legitimate legal advantage he can actually obtain through bankruptcy proceedings against Mr Bourlakov's estate and shows that the Bankruptcy Application can properly be characterised as subjectively vexatious.

77. The explanation Mr Kazakov has given is that he initially considered that his rights were protected by the lower Russian courts who had ruled in the Kazakovs' favour on their application in the Russian will validity proceedings to be recognised as heirs to Mr Bourlakov's estate. It was only when the Supreme Court ruled that it would consider Mrs Bourlakova's appeal against those rulings that Mr Kazakov determined that there was a real risk that the appeal would succeed and that the judgments recognising him and Mrs Kazakova as heir to Mr Bourlakov's estate would be reversed. In these circumstances, he described the Bankruptcy Application as another way of protecting his rights.
78. The claimants submitted that this explanation is wholly unpersuasive. The claimed rights as Mr Bourlakov's heirs, which the Kazakovs sought to have recognised in the will validity proceedings, are not the same as the rights which Mr Bourlakov seeks to have recognised in the Bankruptcy Application, namely as a creditor pursuant to the April 2020 Agreement. It is said that it follows that there is no corollary between the Supreme Court's ruling and Mr Kazakov reaching the sudden conclusion that his claim to be a creditor needed to be brought. In particular, they submitted that Mr Kazakov must always have known that there was a real risk that his claim as a putative heir would fail. This all underpins the claimants' submission that Mr Kazakov has given no proper explanation as to why he made the Bankruptcy Application when he did or at all. It is said that the court can therefore legitimately conclude that the bankruptcy application is subjectively vexatious, and has been brought by Mr Kazakov in bad faith with the intention of harassing the claimants and oppressively multiplying the litigation.
79. Mr Kazakov has made a witness statement in which he verifies in some detail the explanation that I have summarised above. In the absence of cross-examination, and having regard to the guidance of the Supreme Court in *Griffiths v TUI (UK) Ltd* [2023] UKSC 47 at [60] to [62], I think that I could only reject this evidence if I were to conclude that it is manifestly incredible.
80. Mr Chapman submitted that the witness statement was both incoherent and incredible. Although I should not be taken as accepting that Mr Kazakov's evidence is obviously correct, I do not accept that submission. In particular, the ultimate issue in the Bankruptcy Application relates to the appointment of a person entitled to administer Mr Bourlakov's estate in Russia. Any relief which the Russian court may grant on the Bankruptcy Application will (if the Kazakovs are successful) include the appointment of a bankruptcy administrator. In my view, it is credible to suggest that control of the Russian estate by an independent person required to have regard to his interests to the extent that he can prove in the bankruptcy that he is a creditor, was the reason for commencing the Bankruptcy Application in circumstances in which Mr Kazakov could see that his claim as heir had reached the stage at which there was a real prospect that it would not succeed.
81. It is also credible to suggest that, while Mr Kazakov may have regarded the Bankruptcy Application as second best to success in the will validity or succession proceedings, it was subjectively intended by him as a second string to his bow in circumstances in which the procedure for the administration of the Russian estate is not yet settled. I accept that the fact that the Russian assets are minimal compared to the extent of the claim is not a powerful reason for thinking that the Bankruptcy Application is subjectively vexatious. It remains the case that the assets are still material (it is possible

that Mr Kazakov considers that €6 million is worth making an effort to preserve), and what matters is that someone is appointed to control the Russian estate.

82. Another point which goes to the possibility of subjectively vexatious conduct is the claimants' assertion in their evidence in support of the application that the existence of any debt based on the alleged partnership was not just disputed but was hopeless. Picking up on what Lord Goff had said in *Société Nationale Industrielle Aerospatiale v Lee Kui Jak*, this was said to be one of the reasons that the Bankruptcy Application was clearly vexatious and oppressive with no proper basis in fact or under Russian law. It was said to be an indication of bad faith.
83. On one level this argument is difficult to pursue in the light of Professor Asoskov's evidence in which he explained why the Bankruptcy Application cannot properly be regarded as hopeless in light of the acknowledgment in the April 2020 Agreement, irrespective of the existence of the partnership. This was a conclusion with which Ms Svetlana London for the claimants did not disagree.
84. However, I accept that it is well arguable that, leaving aside the legal effect of the acknowledgment, Mr Kazakov's case in the Bankruptcy Application that he is owed a debt of €1.485 billion is inconsistent with his claim to be entitled to 50% of the totality of the Bourlakovs' business assets pursuant to the terms of the partnership. Mr Kazakov's case is also difficult to reconcile with his claim to be the sole beneficiary of the Panamanian foundation which owns Edelweiss, an entity which I understand to have assets worth in excess of US\$840 million. In their written submissions the claimants described this position as incoherent.
85. If the Bankruptcy Application is to proceed, the claimants may well establish that that is the case, and they may also establish that the April 2020 Agreement is a sham or a forgery. But I do not consider that Mr Kazakov's position is so obviously unarguable, that this court should make that decision now. I think that to do so would be to ignore what Males J said in *Vitol Bahrain*, viz., that it is not the function of the English court to determine which cases proceeding in foreign courts have sufficient merit to be allowed to proceed. While the claim to a 50% interest in the partnership is not easy to reconcile with an *in personam* claim by one partner against the other for recovery of a minimum debt on the taking of a partnership account, the two are not wholly incompatible. In any event the question may be one of Monegasque law (as the law governing the April 2020 Agreement) or Russian law (as the law likely to govern the partnership). I have no evidence of either law which expressly addresses the point.
86. A different category of argument by the claimants relates to the appointment of a bankruptcy administrator and the risk that, once appointed, he may become or seek to become the representative for Mr Bourlakov's estate worldwide. It is said on the claimants' behalf that they are concerned that the Kazakovs will seek to use the appointment of a bankruptcy administrator to take control of assets in various jurisdictions, particularly where there is limited scope for the applicants to challenge any recognition of the administrator's appointment. This is said to be a basis for demonstrating vexatious and oppressive conduct in its own right.
87. This gives rise to the question, arising out of the way that Males J expressed himself in the *Vitol Bahrain* case, of whether the oppressive conduct of a Russian bankruptcy administrator seeking to claim assets in a foreign jurisdiction for the benefit of the

Kazakovs as a result of his appointment pursuant to the Bankruptcy Application is capable of amounting to oppressive interference with an interest of the claimants which is justiciable and suitable for vindication here as the natural forum for resolution of the main dispute. I think it is arguable as a matter of principle, that such conduct may be capable of amounting to relevant vexation or oppression of the claimants, but that will probably only be the case if it can be seen that the bankruptcy administrator's conduct flowed from the interference with the claimants' rights suitable for vindication in England. There was little argument on what I consider to be a difficult point. In the event I do not think it arises because of the view I take of the evidence in relation to the independence of the bankruptcy administrator so I say no more about it.

88. In answer to the claimants' concern, Professor Asoskov explained the required independence of bankruptcy administrators in some detail in his report. He said that the creditor requesting the court to commence the bankruptcy procedure can indicate the SRO of which the administrator should be a member but does not himself choose the administrator. The administrator's role is to realise the debtor's assets and distribute the proceeds amongst the creditors and in carrying out that role he is controlled by the court and his independence is checked by the court. He is under a duty confirmed by decisions of the Supreme Court "to act objectively and impartially in the interests of the civil legal community, uniting creditors and the debtor". If he shows himself to be lacking in independence he may be removed from office by the court and the SRO of which he is a member has a duty to forward a petition to the court supervising the bankruptcy if it receives information signifying reasonable doubts about his independence.
89. Professor Asoskov also drew the court's attention to a number of provisions of Russian law which bolster the obligations on a bankruptcy administrator to act in an independent manner. Whether these provisions are no more than high minded aspirations is difficult to say, but there is no specific evidence to support any suggestion that they do not operate in the manner in which the legislation appear to intend. In these circumstances, I can give little weight to any suggestion that there is a material risk that the relief sought by Mr Kazakov will give rise to the introduction in these proceedings of an officer who will simply act at the behest of the Kazakovs without regard to the question of what is in the best interests of Mr Bourlakov's estate.
90. Ms London did not dispute much of Professor Asoskov's evidence on this point, but she pointed out that, where a ruling granting a bankruptcy application determines an underlying debt, an appeal against that decision does not suspend its enforcement and the bankruptcy administrator is required to perform his duties under the bankruptcy law immediately. In explaining those duties she said that the Bankruptcy Law does not provide for territorial restrictions on the administrators' powers and the administrator may be granted powers to identify and recover assets of the debtor located abroad, including England and Wales. For these purposes, I am asked to assume in accordance with Professor Asoskov's evidence that the Russian bankruptcy would be the main insolvency proceedings.
91. The effect of this evidence is that it might be possible for the bankruptcy administrator to obtain recognition in jurisdictions other than Russia whether pursuant to a local enactment of the UNCITRAL Model Law on Cross Border Insolvency or otherwise. Were that to be the case, I would expect that any recognition would not be granted in circumstances in which it would be manifestly contrary to the public policy of the

accepting state for that to occur (c.f. Article 6 of the Model Law). It is at least possible that, although the public policy test is expressed in terms which erect a very high bar, conduct amounting to the Kazakovs' abusive utilisation of the appointment of a bankruptcy administrator to take control of assets for themselves would be manifestly contrary to the public policy of the relevant state (or might even amount to fraud) and ensure that recognition was not granted accordingly.

92. The Kazakovs also submitted that the claimants' concern is misplaced for another reason. Insofar as the bankruptcy administrator attempts to lay claims to assets outside Russia, Russian law does not recognise the concept of trusts or beneficial ownership with the result that he would be confined to collecting assets legally owned by Mr Bourlakov himself. It is said that it is only if the administrator manages to challenge relevant transactions between Mr Bourlakov and third parties that he would have power, as a matter of Russian law, to seek to gather in assets that are or were (in English terms) "beneficially owned" by Mr Bourlakov or his estate.
93. The evidence about the power of a Russian bankruptcy administrator to recover trust assets struck me as surprising, but it was not specifically controverted and for present purposes I think I must accept that it is accurate. Be that as it may, I am not persuaded that the appointment of a Russian bankruptcy administrator, whose duties will be subject to the supervision of the Russian court, will enable the Kazakovs to steal a march on the claimants in relation to the preservation or realisation of assets of the estate located outside Russia. In my view the evidence falls well short of establishing that there are any particular jurisdictions in relation to which a Russian bankruptcy administrator will be recognised with illegitimate adverse consequences to the claimants' claims to those assets.
94. It is also said in the claimants' evidence that the Kazakovs may seek to use the appointment to derail the English proceedings. As to that, the current position is that this court has appointed Mr Nicholas Jacob, a partner at Forsters to represent the estate in these proceedings pursuant to CPR 19.12. Mr Jacob has made an application for directions which has not yet been heard. I received no submissions one way or the other as to Mr Jacob's role, but at first blush, if there is to be any dispute as to the persons entitled to conduct the estate's defence to these proceedings in England, including the steps that should be taken to do so, the ends of justice are best served by that issue being determined through directions in England, rather than by seeking to affect the outcome of that aspect of the dispute by restraining Mr Kazakov from proceeding with the Bankruptcy Application in Russia.
95. Finally, I should deal with developments in Florida which bear on the issues with which I am concerned. They are addressed at some length in the factual evidence adduced from the solicitors for both the claimants and the Kazakovs. In my view, these developments do not of themselves affect the question of whether or not this court should continue to regard England as the natural forum for resolving the global dispute, but they are of some relevance to the question of whether the court should grant injunctive relief to restrain the Bankruptcy Application on the grounds that its further pursuit would be vexatious or oppressive.
96. More specifically, what has been going on in Florida is said by the Kazakovs to affect the question of whether these proceedings are the only proceedings in which the partnership issue will or may be decided. This is said to undermine the claimants'

suggestion that England is the sole jurisdiction for resolution of the partnership issue, whatever the context in which it may arise. More colloquially, the Kazakovs contended that, on a proper analysis, the claimants' application for an anti-suit injunction can be seen to be an example of the pot calling the kettle black. The claimants have themselves raised the partnership issue as part of their case in the Florida proceedings. It follows from this, so the Kazakovs submitted, that it is scarcely open to the claimants, in their objection to the Bankruptcy Application, to rely on the fact that the partnership issue may fall to be decided in that context.

97. The procedural history of the Florida proceedings is not entirely straightforward, but for present purposes I can take it quite shortly. When commenced, the Florida proceedings had a relatively limited scope. They were commenced by Veronica and Elena on behalf of their minor children and related to the misappropriation of property from a Florida trust including real property at Fisher Island in Florida. Since September 2022, the active defendants have included the Kazakovs, who are said to have stolen the Florida trust property, and Mr Anufriev together with others who are or have been trustees.
98. In September 2022, which was after I had ruled on the jurisdiction challenge in England, Veronica and Elena amended their Florida complaint to make allegations in relation to the global conspiracy by Mr Bourlakov, including a complaint that the conspiracy involved a false assertion by Mr Bourlakov that Mr Kazakov was his business partner and entitled to half his assets. In their counterclaim dated December 2022, the Kazakovs filed a wide-ranging counterclaim which covered much of the same subject matter as the issues in the present proceedings. This included an allegation that there was a partnership.
99. The issues to be determined in the Florida proceedings were considered in some detail by Richard Smith J, when he rejected the suggestion that the steps that had been taken in Florida and the issues which arose in the Florida proceedings meant that it had become the natural forum for the issues which would arise in these proceedings if permission to amend were to be granted. The claimants submitted that this remains the case not least because there are a number of defendants in these proceedings who are not parties in Florida and the connections which the overarching dispute has to Florida are limited. Richard Smith J also rejected arguments that the Florida proceedings were vexatious or abusive.
100. As matters stand, there are a number of jurisdictional arguments that have been made in Florida, essentially focused on the question of whether the Kazakovs' counterclaim should be dismissed for lack of subject matter jurisdiction, on the grounds of forum non conveniens and for lack of personal jurisdiction. These arguments are not yet finally resolved but have so far failed at first instance.
101. As well as the Florida trust property proceedings, Veronica issued what the claimants have called the Florida Protective Claim in order to halt the running of time pursuant to any applicable statute of limitations. The claimants said that it was not her intention to serve these proceedings pending the determination of the amendment application with which Richard Smith J was concerned, but the Kazakovs made a voluntary appearance in the Florida Protective Claim, and filed an answer and counterclaim making very similar arguments to those advanced in response to the Fisher Island claim. In

November 2022, the claimants had also issued RICO proceedings which Richard Smith J explained were withdrawn before service.

102. On 24 January 2024, after Richard Smith J had delivered judgment on the amendment application, Judge Thomas Rebull, sitting in the Eleventh Judicial Circuit for Miami-Dade County, Florida, gave judgment on the claimants' motion to dismiss the Kazakovs' counterclaims. In that judgment he made a number of findings on which the Kazakovs rely in the current application. As a result of those findings, together with his explanations as to the likely progress of the Florida proceedings, I think that the Kazakovs were justified in submitting that the Florida court may have to determine the claimants' allegations in relation to the partnership, regardless of whether or not the Kazakovs' counterclaim is ultimately dismissed. While I accept that it may be possible for the Florida claim to be reformulated in a way which makes that unnecessary, that is not the current state of the pleadings.
103. Furthermore, I am satisfied that the Florida court has determined (albeit in the context of a motion to dismiss) that this situation has arisen as a result of the claimants' conduct. Judge Rebull explained that it was the amended complaint, not the counterclaim, which introduced what he called "a much wider swath" and directly implicated "a broader dispute between the Bourlakovas and the Kazakovs as to the ownership of assets estimated to exceed \$3 billion in value". He then went on to refer to the partnership and explained how the allegations in relation to it were part of the pre-planned and widespread fraudulent scheme alleged by the claimants, which was not mere surplusage in the Florida proceedings but were vital to the civil theft counts requiring evidence of criminal intent on the part of the Kazakovs. He also made similar findings in relation to the Florida Protective Claim, which he called the Companion Case, and the RICO proceedings in both of which he explained that the allegations of sham in relation to the partnership were put in issue by the claimants.
104. Towards the end of his ruling Judge Rebull summarised his view of the claimants' role in the Florida asset proceedings (in a passage which was also reflected in his findings relating to the other two sets of proceedings) as follows:

"Notably, Veronica and Elena could have filed a simple complaint asking the Court to construe the 2017 trust agreement and requesting rescission or the cancellation of the deed by which the Fisher Island property was transferred to the trustee of the 2020 trust. Instead, to advance their personal interests, they chose to "go large" and frame the dispute as a global one in which the activity in Florida was but one component."
105. There was a debate between the English solicitors for the claimants and the Kazakovs as to whether or not it is "very likely" that the Florida court will determine the partnership issue and whether or not the substantive issues in those proceedings will be determined in short order. I cannot resolve that debate and will proceed on the basis that the current state of play in Florida remains uncertain. There remains a distinct possibility that, in part as a result of the way that the claimants have chosen to make their case in Florida, the partnership issue will fall for determination in Florida and there is a material possibility that it will be resolved there before it is determined in England. In any event, I accept the submission made on behalf of the Kazakovs that the court should ask itself how it is legitimate for the claimants to expand the Florida proceedings to make allegations in wide-ranging terms relating to the partnership, while at the same

time arguing that it is vexatious and oppressive for the Kazakovs to make the Bankruptcy Application on the basis that England is the main global jurisdiction for resolution of that self-same issue.

106. At the end of his submissions, Mr Davies addressed the issue of balance of convenience. He said that this required to be considered before a final decision on the application for an injunction, if the court were to be satisfied that the Bankruptcy Application is vexatious and oppressive. He said that the point does not arise if the claimants lose on their vexation arguments, but that it does if they win. For present purposes I am content to proceed on the basis that this is the correct analysis, although I can see that the point which he then went on to make is equally capable of being relevant to the arguments on vexation.
107. The point he made was based on Professor's Asoskov's evidence that the consequences of the Bankruptcy Application being withdrawn, whether pursuant to an anti-suit injunction or otherwise would adversely affect Mr Kazakov's entitlement to make another such application in the future. He expressed the opinion, based on a decision of the Russian Supreme Arbitrazh Court, that, if a petitioner withdraws his bankruptcy application, he cannot bring it again, although he can participate in a future bankruptcy procedure if another creditor initiates the process.
108. This is said by the Kazakovs to be an important consideration on the balance of justice. If an order made by this court to withdraw proceedings is "with prejudice" in the sense identified by Professor Asoskov, there can be no question of making an order to hold the ring. It would be final relief with stark consequences, which the court should only countenance if it was clear that the anti-suit injunction sought was obviously justified.
109. Ms London disagreed with the manner in which Professor Asoskov's conclusion was expressed because it omitted an important qualification. She said that the principle only applied where the creditor seeks to file a further bankruptcy application on the same grounds. In her view, it followed that, if grounds for a later bankruptcy application differ from the grounds on which the withdrawn application was based, a creditor should not be precluded from filing a new application in respect of the same debtor. She said that one important context in which the qualified principle was applied was where a later bankruptcy application was based on a judgment debt, which itself was based on non-fulfilment of obligations under a loan agreement which itself was the source of the judgment debt. In that situation, the Supreme Court rejected an argument that the later bankruptcy proceedings should be terminated.
110. I am not satisfied that Ms London's evidence has the consequence in the present case that Mr Kazakov would be able to seek relief on a future bankruptcy application once judgment has been obtained in these English proceedings. In the current English proceedings, a declaration is sought in relation to the partnership issue, but as matters stand there will be no determination of any figure due under the April 2020 Agreement. It follows that the underlying debt on which Mr Kazakov relies in the Bankruptcy Application will not be determined as an English judgment debt, and it therefore remains the case that it is at least arguable that he would not be able to proceed with a further bankruptcy application in Russia. On one view this would be an odd result, but it is one to which the expert evidence points as being a possibility. I therefore agree with Mr Davies' submission that this is a factor that would count against the grant of

anti-suit injunctive relief, even if the court were to conclude that the Bankruptcy Application was vexatious.

Conclusion

111. Pulling the threads together, while it is certainly the case that the Bankruptcy Application is a parallel proceeding in the sense that it relies on an important issue of fact which is common to these proceedings, that factor is of less significance in circumstances in which, objectively, the purpose of the proceedings is the quite separate one of obtaining a bankruptcy appointment. It does not seek declaratory relief in a form which could properly be described as a mirror of these English proceedings. This reduces the significance of the fact that the natural forum for resolution of the global dispute, including resolution of the partnership issue in that context, is England.
112. Furthermore, for the reasons I have given, the true nature of what is being sought in Russia makes it analogous to a single forum case, and it is no answer to this point that a claim under CPR part 20 seeking personal relief, whether for an account or for payment of the debt in the form of the minimum amount payable on the taking of the account, could be commenced against Mr Bourlakov's estate in these English proceedings. That is not the substantive relief which is sought in Russia, and may in any event run into difficulties on the basis that it would be subject to the Monegasque exclusive jurisdiction clause.
113. It is also relevant that, in light of the undertaking offered by Mr Kazakov, the risk of an issue estoppel arising that might affect the proper determination of the partnership issues in England as its natural form has been minimised. I also consider that the fact that there is already global litigation in many other jurisdictions outside England, which have been commenced by a number of different parties, some of which (most particularly the Florida proceedings) raise the partnership issue on the application of the claimants, counts against a conclusion that the Bankruptcy Application is vexatious or oppressive.
114. I am also not satisfied that the claimants have established a case of subjective vexation. While Mr Kazakov's case as to why he commenced the Bankruptcy Application may not stand up to close scrutiny in due course, I cannot dismiss it as incredible. I also accept that his claim in Russia, although difficult when looked at through English eyes, cannot properly be stigmatised as hopeless. Likewise I do not accept that the claimants have established a case that the appointment of a bankruptcy administrator on the application of Mr Kazakov would itself be vexatious by reason of the steps that such an administrator would take in accordance with his duties under Russian law.
115. In my judgment, for all these reasons, the claimants have not established that the Bankruptcy Application is vexatious or oppressive. I will therefore refuse the application for the injunction sought.
116. Finally I should make clear by way of postscript that, although I was informed that there was a dispute between the claimants and the Kazakovs as to the way in which certain confidential information was obtained by the claimants, which will be considered by the court in due course, that did not feature in the arguments I heard. It was not relied

on by the Kazakovs in their opposition to this application and I have not therefore taken into account any part of what I have read about the circumstances when reaching my conclusions on the present application.