Neutral Citation Number: [2019] EWHC 1705 (Fam)

Case No: FD13D05340

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 03/07/2019

Before:

THE HONOURABLE MRS JUSTICE KNOWLES DBE

- -

Between:

TATIANA AKHMEDOVA	**Applicant**
- and -	
(1) FARKHAD TEIMUR OGLY AKHMEDOV	**Respondents**
(2) WOODBLADE LIMITED	
(3) COTOR INVESTMENT SA	
(4) QUBO 1 ESTABLISHMENT	
(5) QUBO 2 ESTABLISHMENT	
(6) STRAIGHT ESTABLISHMENT	
(7) AVENGER ASSETS CORPORATION	

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Mr Tim Penny QC and Henry Clayton (instructed by **PCB Litigation**) for the Applicant.
The Respondents did not appear and were not represented

Hearing date: 26 March 2019

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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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THE HONOURABLE MRS JUSTICE KNOWLES DBE

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Mrs Justice Knowles:

Introduction

1. This was an urgent application within matrimonial proceedings for further injunctive relief (comprising both mandatory and prohibitory orders) against and relating to the Sixth Respondent ("Straight"), a Liechtenstein establishment. These proceedings were previously heard by Haddon-Cave J (as he then was), sitting in the Family Division. He gave several reported judgments in respect of which the Respondents remain in breach. In summary, the Applicant, Ms Akhmedova, is the former wife of the First Respondent, Mr Akhmedov. By a judgment dated 15 December 2016 and an order dated 20 December 2016, Ms Akhmedova was awarded an amount equal in value to £453,576,152 ("the Award") by this court pursuant to her application for financial remedies following the breakdown of her marriage to Mr Akhmedov. Save in respect of a very small proportion (around £5 million or so), the said award remains outstanding in its entirety and thus Mr Akhmedov is in breach of the court's order dated 20 December 2016. On 21 March 2018 Haddon-Cave J made, amongst other orders, a freezing order against Straight up to the sum of US$487,278,000 ("the Straight Order"). This application sought to extend the injunctive relief against Straight.

2. Straight is the current registered owner of a vessel known as the Luna ("the Vessel") which is worth in the region of €250 million and which has been in Dubai at all material times. It is believed to be the only one of Mr Akhmedov's assets against which there will be any enforcement in the near future. By paragraph 1 of the Straight Order, Straight was declared by this court to be Mr Akhmedov's alter ego and, by paragraph 9 of that order, Straight was ordered to transfer the Vessel to Ms Akhmedova. However, and in breach of the Straight Order and in contempt of court, Mr Akhmedov and Straight failed either to transfer the Vessel to Ms Akhmedova or to pay her the monetary equivalent set out in that Order.

3. This application by Ms Akhmedova sought (a) extended *in personam* injunctive relief against Straight and (b) to name the *de facto* directors of Straight in the accompanying penal notice so that it was absolutely clear that, if Straight directed, caused or permitted the Vessel to leave the port of Dubai, this court would have the power to deal with them by committing them to prison for contempt of court. In making this application, Ms Akhmedova and her legal team recognised that it was unlikely that the injunctive order sought would be either recognised or enforceable in Dubai (where the Vessel is located) or in Liechtenstein (where Straight is incorporated and the *de facto* directors appeared to be domiciled). It was, however, submitted that the orders sought had real practical utility as the *de facto* directors were Liechtenstein-based lawyers and business people with reputations to protect who would not wish to be the subject of committal proceedings in the English court.

4. This application came before me in the urgent applications list. Unusually there was time for me to read and hear argument that day though I had no time to give a judgment. At the conclusion of the hearing and having taken time to reflect, I indicated that I would grant the order sought and hand down a judgment at a later date, probably in April 2019. Unhappily, by reason of serious illness which necessitated a very lengthy leave of absence from work, I have been unable to hand

down judgment until today. My order dated 26 March 2019 provided that time for permission to appeal would run from 21 days after I handed down my judgment.

5. I am grateful to Mr Penny QC and Mr Clayton for their comprehensive written and oral submissions.

6. As the brief summary in paragraphs 1-3 indicates, the circumstances of this case are both factually and legally complex. I propose to set out in a little more detail the background pertinent to an understanding of how and why this application came to be made. I will then consider matters pertaining to the service of this application on the Respondents as I was invited to treat this application as on notice application on the basis that service was sought to be abridged due to urgency. I then consider the merits of the injunctive relief sought before determining whether and in what form a penal notice should be attached to the order for injunctive relief.

The Background

7. Ms Akhmedova issued her petition for divorce on 24 October 2013 and applied for financial remedies on 25 October 2013. She was granted a decree nisi on 2 December 2015. The financial remedy hearing was heard by Haddon-Cave J between 28 November and 15 December 2016. Although he was not represented at that hearing, Mr Akhmedov had submitted to the jurisdiction of the English court in the financial remedy proceedings as confirmed by a letter dated 18 June 2015 from his then solicitors, Sears Tooth. Mr Akhmedov and his legal representatives participated fully in the proceedings up to and including the pre-trial review in October 2016. However, Sears Tooth came off the record in November 2016 though it only became apparent at the start of the November 2016 hearing that Mr Akhmedov would not be represented at that hearing. Neither he nor the then other Respondents – (a) Woodblade, a Cypriot registered company and the trustee of a Bermudian trust, the Akhmedov 2013 Discretionary Trust (Mr Akhmedov being the sole director of Woodblade) and (b) Cotor Investment SA, a Panamanian company which Mr Akhmedov contended was within the Trust and which was said to hold the bulk of the wealth in this case – appeared or were represented at the November 2016 hearing. Mr Akhmedov's failure to appear at the November 2016 hearing was in breach of court orders made as recently as the pre-trial review in October 2016. Haddon Cave J was satisfied that service of the proceedings and notice of the trial was properly effected on Mr Akhmedov, Woodblade and Cotor.

8. By his judgment handed down on 15 December 2016, Haddon-Cave J awarded Ms Akhmedova an amount equal in value to the total sum of £453,576,152, comprising a modern art collection worth in excess of £90,581,865, the matrimonial home worth £10,165,162 together with its contents worth £2,479,125, a motor car worth £350,000 and a cash lump sum of £350,000,000. Ms Akhmedova was also awarded her costs in the sum of £1,096,971. Following his judgment, a series of developments resulted the delivery of two further judgments from Haddon-Cave J, in consequence of which 2 further Liechtenstein entities, Qubo 1 and Qubo 2 Establishments, were joined as Fourth and Fifth Respondents to the proceedings.

9. The substantive order dated 20 December 2016 gave effect to all of Haddon Cave J's decisions. The matters in that order relevant to this application were as follows:

a. Mr Akhmedov had submitted to the jurisdiction of the English court;

b. Mr Akhmedov and the Third to Fifth Respondents were ordered to pay Ms Akhmedova a lump sum of £350,000,000. The matrimonial home, the motor car and the modern art collection were transferred to Ms Akhmedova and certain transactions made by Mr Akhmedov were set aside. All the Liechtenstein entities were found to be no more than ciphers and the alter egos of Mr Akhmedov;

c. Ms Akhmedova's claims were not to stand dismissed until there had been full compliance with the Award;

d. The Fourth and Fifth Respondents were permitted to be served at the address of their registered agent, WalPart Trust Reg. ("WalPart"), in Liechtenstein;

e. The court made a freezing order against the Respondents to prevent the disposal of the matrimonial assets in order to frustrate the Award.

10. Regrettably, since December 2016, Ms Akhmedova has been involved in litigation to enforce the Award against Mr Akhmedov in various jurisdictions with very limited success. It appears that he has done all that he can to frustrate enforcement of the Award.

11. The Vessel is the only known asset of Mr Akhmedov with any substantial value. When Ms Akhmedova learned that the Vessel was in Dubai, she applied for and obtained a freezing order and an arrest of the Vessel from the Dubai courts. Straight applied to set aside the freezing order on the basis, inter alia, that Straight was not a party to the Award. Accordingly, Ms Akhmedova applied to this court on 21 March 2018 (a) to join Straight and Avenger Assets Corporation as Respondents to the matrimonial proceedings and (b) for substantial relief and a freezing order against Straight, to include the Vessel. Avenger Assets Corporation is another entity apparently controlled by Mr Akhmedov.

12. In his reserved judgment in respect of the hearing on 21 March 2018, Haddon-Cave J stated that "*the histology of H's dealings with M.V. Luna are redolent of his elaborate and contumacious campaign to evade and frustrate the enforcement of the Judgment debt against him*" [paragraph 21]. He made the following findings at paragraphs 22 to 26:

a. In February 2014 Mr Akhmedov contracted to purchase the Vessel in his own name for €260 million and the Vessel was placed in the name of Tiffany Limited, an Isle of Man company;

b. After the marriage finally ended in December 2014 (according to Ms Akhmedova), Tiffany "sold" the Vessel to Avenger, an entity owned by Mr Akhmedov. The funds for the "purchase" came from his bank account;

c. In March 2015 Mr Akhmedov purported to assign his shares in Avenger to a Bermudan law discretionary trust. This transfer was set aside in the Award;

d. The transfer of monies to Avenger and the payment of monies to Tiffany was a deliberate mechanism by which Mr Akhmedov falsely tried to pretend that the

Vessel was notionally owned by a Panamanian company rather than an Isle of Man company where enforcement was possible;

e. During the 2016 trial, Avenger transferred the Vessel to another Panamanian entity, Stern, and on the following day, 1 December 2016, Stern transferred the Vessel to the Fifth Respondent, Qubo 2, whereupon the Vessel was re-registered as a Marshall Islands vessel (it was previously a Cayman registered vessel);

f. On 20 December 2016 the English court made a freezing order against the Fifth Respondent and on 28 December 2016 the Liechtenstein court made a freezing order against the Fifth Respondent prohibiting the disposal of the Vessel;

g. In breach of both the English and Liechtenstein freezing orders, on 8 March 2017 the Fifth Respondent transferred the Vessel to Straight which is the current title holder. Straight was simply another cipher and alter ego of Mr Akhmedov and these actions were taken on his instructions.

13. Thus, on 21 March 2018, the court made the following declarations in the Straight order, namely that:

a. Straight was the alter ego of Mr Akhmedov, alternatively his privy, and through Mr Akhmedov, it has submitted to the court's jurisdiction;

b. Straight was Mr Akhmedov's nominee and the assets held (and previously held) in the name of Straight belonged beneficially to Mr Akhmedov;

c. The Vessel was held by Straight absolutely for Mr Akhmedov;

d. With immediate effect Ms Akhmedova was the legal and beneficial owner of the Vessel;

e. The Seventh Respondent, Avenger Assets Corporation, was the alter ego of Mr Akhmedov, alternatively his privy, and through Mr Akhmedov, it too had submitted to the court's jurisdiction;

f. Avenger Assets Corporation was Mr Akhmedov's nominee and the assets held (and previously held) in the name of Avenger Assets Corporation belonged beneficially to Mr Akhmedov.

14. The court also ordered in relation to Straight that:

a. The corporate veil was pierced;

b. The Vessel was transferred into Ms Akhmedova's name and Straight and Mr Akhmedov were to effect all necessary steps and formalities for the proper vesting of the Vessel in and the transfer of title to Ms Akhmedova;

c. In the event that a transfer of title to Ms Akhmedova was not effected within 7 days, Straight was ordered to pay $487,278,000 to Ms Akhmedova;

d. Straight was jointly and severally liable for the payment of the lump sum to Ms Akhmedov ordered on 20 December 2016.

15. Paragraph 16 of the Straight order also granted Ms Akhmedova injunctive relief against Straight in the following terms:

> "*Until further order of the Court, [Straight] must not in any way dispose of, deal with or diminish the value of any of its assets, whether by sale, charge or otherwise, and whether they are in or outside of this jurisdiction, up to the sum of $487,278,000. This prohibition includes in particular the [Vessel] …*"
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> The Court also gave permission to serve the Straight order and the Freezing order on Straight by registered post care of Counselor Trust Reg. ("Counselor") (Straight's corporate director), by email to WalPart Trust Reg. (the sole corporate director of the Fourth and Fifth Respondents who have the same five directors as Counselor) and the Liechtenstein law firm Walch and Schurti (four of the five individual directors of Counselor being lawyers at Walch and Schurti, namely Dr Andreas Ignas Schurti, Dr Ernst Joseph Walch, Dr Barbara Johanna Martina Walch and Dr Moritz Rolf Blasy).

Recent Developments

16. There have been material developments in the Dubai courts since the March 2018 English court orders.

17. Ms Akhmedova sought the enforcement and recognition of the English court orders and obtained freezing orders. In response, Mr Akhmedov filed jurisdictional challenges and in May 2018 he applied for a declaration that the court of the Dubai International Finance Centre (DIFC) did not have jurisdiction over the dispute. In the same month, Straight's appeal on personal jurisdiction was allowed but the freezing order remained in place pending an application to join Straight to the substantive proceedings before the DIFC. On 11 July 2018 the Joint Judicial Committee of Dubai decided that the Dubai Court of First Instance rather than the DIFC had jurisdiction over Ms Akhmedova's application for recognition. On 12 July 2018 the Dubai Court of First Instance granted an arrest over the Vessel pending the substantive decision on Ms Akhmedova's application.

18. By a decision dated 12 November 2018, the Dubai Court of First Instance declined to recognise the English orders and judgments. Ms Akhmedova appealed and it appears that a decision on her pending appeal will be handed down on 27 March 2019. If Ms Akhmedova is unsuccessful in her appeal, Straight may well be able to remove the Vessel from Dubai on 28 March 2019 (which is understood to be the earliest date on which the arrest could be lifted). It is unclear whether Ms Akhmedova could obtain a stay pending a further appeal. If the Vessel is removed from Dubai, it may become practically impossible to enforce her ownership.

19. However, if Ms Akhmedova loses the Dubai proceedings, that is not the end of her attempt to enforce the English Award and other orders. She has begun proceedings in the Marshall Islands to re-register the Vessel in her own name. It is understood that Straight is contesting those proceedings. If she is successful in those proceedings and the Vessel remains in Dubai, it is believed by her legal representatives that Ms Akhmedova will be able to take control of the Vessel in Dubai. However, if the Vessel is removed from Dubai to a third party jurisdiction, it is unclear whether Ms Akhmedova would be able to exercise her ownership rights.

Service of this Application on the Respondents

20. Rule 18.8 of the Family Procedure Rules 2010 ["the FPR"] concerns the service of a copy of an application notice where an application is made during the course of existing proceedings as is the case here. Rule 18.8(1)(b)(ii) provides that, subject to the provisions of rule 2.4 (which does not apply in this case), a copy of an application notice must be served in accordance with the provisions of Part 6 at least 7 days before the court is to deal with the application. By virtue of rule 18.8(4), if an application notice is served but the period of notice is shorter than the period required by the FPR or a practice direction, the court may direct that, in the circumstances of the case, sufficient notice has been given to the Respondents and then hear the application.

21. Ms Akhmedova contended before me that she did everything she could to bring this application to the attention of all the interested parties and invited me to abridge the time for service to 21 March 2019. That submission was supported by an affidavit and exhibits describing:

    a. The steps taken on 20 March 2019 to serve the unissued application notice dated 20 March 2019, the draft order and the affidavit in support of the application on Straight's lawyers in the United States of America and in Dubai;

    b. The steps taken on 21 March 2019 to serve the sealed application notice (sealed on 21 March 2019), the draft order and the affidavit in support on Straight's lawyers in the United States of America and in Dubai;

    c. The steps taken on 21 March 2019 to send this material to Straight, Counselor and each of the Counselor Directors by way of notification;

    d. The steps taken on 21 March 2019 to notify Straight, Counselor and each of the Counselor directors of the hearing date and time allocated by the court;

    e. The steps taken on 22 March 2019 to seek confirmation from Straight, Counselor and each of the Counselor directors as whether they were instructing English solicitors, whether they intended to serve evidence in response to the application, and the identity of counsel instructed;

    f. And the steps taken on 25 March 2019 to urgently seek a response to the questions asked on 22 March 2019.

22. Abridgement of the time for service is an important matter which requires justification if a fair hearing is not to be compromised. I thus describe the steps which Ms Akhmedova's legal representatives took to bring this matter to the attention of Straight and the interested parties.

23. On 20 March 2019 the unissued notice of application, the draft order, the affidavit in support and a covering letter was emailed at 5.39pm to Straight's lawyer instructed in the United States, Derek Adler of Hughes, Hubbard and Reed LLP. Mr Adler replied to that email at 5.57pm saying that his firm did not click on attachments from unexpected senders and asking for further information. Ms Akhmedova's solicitors replied to Mr Adler's email at 6.48pm and included the body of the covering letter in

the email to provide more information as had been requested. The application material was also emailed at 5.30pm to Straight's lawyers instructed in Dubai, Hassan Arab of Al Tamimi and Company. The following day the sealed application notice was emailed to Mr Adler at 12.04pm and to Mr Arab at 11.49am.

24. On 21 March 2019 by way of notification, Ms Akhmedova's solicitors emailed a copy of the application documents to Straight (at 4.17pm) and Counselor (at 4.18pm). This material was sent to:

    a. The email address on Walch and Schurti's website;

    b. To a previous email address for Walch and Schurti used in these proceedings;

    c. To an email address for Counselor given to Ms Akhmedova's solicitors by her counsel in Liechtenstein;

    d. To an email address for WalPart which appears on WalPart's website;

    e. And to five individualised email addresses for the Counselor directors (also provided by Ms Akhmedova's Liechtenstein lawyers). Those directors were Andreas Schurti, Urs Hanselmann, Ernst Walch, Barbara Walch; and Moritz Blasy.

    The email addresses at a-d above were the generalised email addresses. After sending all these emails, Ms Akhmedova's lawyers received "bounce back" emails from the email address on Walch and Schurti's website and from Urs Hanselmann.

25. Further, each of the Counselor directors were emailed a copy of the application documents on 21 March 2019, these being sent to their individualised email addresses as well as to the four generalised email addresses. Once more, "bounce back" emails were received from the email address on Walch and Schurti's website and from Urs Hanselmann.

26. The hearing date, time and location were emailed on 21 March 2019 to Straight's United States lawyers and to its Dubai lawyers, to Straight and Counselor as set out in paragraph 24 above, and to the Counselor Directors. "Bounce back" emails were received from Walch and Schurti and Urs Hanselmann as previously described.

27. Having received no response to any of the emails sent save for Mr Adler's email sent at 5.57pm on 20 March 2019, Ms Akhmedova's solicitors emailed Straight (including the American and Dubai lawyers), Counselor and the Counselor directors as to whether they were instructing English solicitors and if so the identity of their solicitors; whether and if so when, they intended to serve any evidence in response to the application; and whether counsel had been instructed so that skeleton arguments could be exchanged. A response was requested by 25 March 2019. "Bounce back" emails were received as described above. No replies were received in response and so on 25 March 2019 Ms Akhmedova's solicitors sent follow up emails seeking urgent responses to their questions. Once more," bounce back" emails were received as described above. No replies to these emails were received by the time this matter came before me for hearing.

28. It was submitted that, by reason of the above steps, the interested parties would have understood the purpose of this application and would have been able to instruct legal representatives in order to respond to it. That, however, was not the end of the matter since Ms Akhmedova sought an order, validating both the steps taken to serve the application (which included service by email) and declaring that such service on 21 March 2019 constituted good service on Straight. She was concerned that Straight might seek to argue that service by email would constitute a criminal offence in Liechtenstein and thus would not be good service. I observe that, out of an abundance of caution, the material sent to Straight and its directors in Liechtenstein was expressed to be by way of "*notification*" rather than by way of service.

29. Rule 6.1(b) of the Rules provides that the Part 6 rules about service apply except where the court directs otherwise. Rule 6.19(1) states prospectively that "*where it appears to the court that there is a good reason to authorise service by a method or at a place not otherwise permitted by this Part, the court may direct that service is effected by an alternative method or at an alternative place*". Its counterpart in respect of what might be called retrospective service is found in rule 6.19(2) which states that "*on an application under this rule, the court may direct that steps already taken to bring the application form to the attention of the respondent by an alternative method or at an alternative place is good service*." Rule 6.43 contains general provisions in respect of service outside of the jurisdiction including:

"(3) Where the applicant wishes to serve an application form, or other document on a respondent out of the United Kingdom, it may be served by any method –

Provided by rule 6.44 (service in accordance with the Service Regulation);

Rule 6.45 (service through foreign governments, judicial authorities and British Consular authorities); or

permitted by the law of the country in which it is to be served."

Rule 6.44 further provides that nothing in paragraph 3 "*or in any court order authorises or requires any person to do anything which is contrary to the law of the country where the application form or other document is to be served*".

30. Service outside of the jurisdiction by an alternative method was considered by the Court of Appeal in Wilmot v Maughan [2017] EWCA Civ 1668 where it was argued that service by email was defective because of the mandatory provisions of the Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters 1965. The Court of Appeal rejected that submission, holding that the court had power by reason of rule 6.1(b) of the FPR to order service outside of the jurisdiction by an alternative method [paragraph 110]. Rule 6.43(4) was a permissive order which clearly contemplated that an order might be made in respect of service and which provided for an alternative method of service [paragraph 114]. In paragraph 117 Moylan LJ held that:

"… however, it would be surprising, and, in my view, inconsistent with FPR 2010, r 6.43(4), if the FPR 2010 were interpreted so as to preclude the court having the power to order service out of the jurisdiction by alternative methods. This would create a severe restriction on the court's powers which would be likely to cause

severe injustice in many cases. It would also be in contrast to the position under the CPR and without any suggested reason for there being this difference."

31. I am thus satisfied that I have the jurisdiction to make the order sought by Ms Akhmedova. It is clear that her legal representatives did all they could to bring the application material to the attention of Straight and the interested parties. There was ample time for Straight and those parties to take legal advice and to respond had they wished to do so. I make an order that the steps taken on 21 March 2019 to serve the application on Straight by emailing the lawyers in both the United States of America and in Dubai constituted good service and that sufficient notice had been given of the hearing. I also dispensed with service on the First to Fifth Respondents and the Seventh Respondent.

32. The effect of this order was that this application could be properly treated as an application on full notice. Hence, Ms Akhmedova's legal representatives were not bound by the obligations of full and frank disclosure as would have been the case if this had been a without notice hearing.

Injunctive Relief: The Merits

33. By way of introduction, the court has the jurisdiction to grant injunctive relief pursuant to (a) section 37 of the Senior Courts Act 1981 if it considers it is just and convenient to do so; (b) section 37 of the Matrimonial Causes Act 1973 (on the basis that Straight was Mr Akhmedov's alter ego); and (c) by FPR rule 20.2.

34. In this case, Haddon-Cave J satisfied himself at the hearing on 21 March 2018 that it was just and convenient to grant injunctions against Straight. It was plain that Straight was in breach of the court's previous orders and was in contempt of court by reason of that breach.

35. In the draft order submitted to me, Ms Akhmedova applied for extensions of the injunctive relief against Straight as follows:

    a. An injunction restraining Straight from permitting any voyage or movement of the Vessel, and, in particular, from permitting the removal of the Vessel from the port of Dubai. The injunction also restrained Straight from selling, renting, giving away, lending, otherwise transferring, exchanging, pledging, encumbering or making any property-like and/or use-like dispositions or otherwise doing anything which could frustrate or complicate the execution of the right to transfer the Vessel to Ms Akhmedova;

    b. Mandatory injunctions ensuring that the negative injunctions set out above (and also contained in the Straight Order) came to the attention of all relevant third parties and were complied with by all interested parties;

    c. An injunction which further particularised the order against Straight not to damage or destroy the Vessel or take any other action which might reduce its value.

36. Ms Akhmedova contended that the developments since the Straight injunctive order on 21 March 2018 satisfied the test for the grant of injunctive relief, namely that:

a. There was a more than real risk that, unless full and comprehensive injunctions were made by the English court which effectively prevented the Vessel from leaving the port of Dubai, Mr Akhmedov and Straight would procure that event to happen. The consequence of this could be that they put the Vessel beyond the reach of Ms Akhmedova even if she were to be successful in the Marshall Islands proceedings;

b. And it was just and convenient for the court to make orders which tried to ensure that the Vessel was not put beyond the reach of Ms Akhmedova.

37. Further, despite the terms of paragraph 16 of the Straight Order, Mr Penny QC submitted that it was conceivable that Straight may contend that moving the Vessel from Dubai would not amount to a "*disposal of, dealing with or diminishing of the value*" of the Vessel such that this would not be a breach of the Straight Order. He invited me to make further orders which made it clear beyond any scope for argument that Straight should not move the Vessel from Dubai.

38. Despite this being an application on notice but in the absence of Straight and any legal representatives instructed on their behalf, Ms Akhmedova's legal representatives had quite properly submitted in writing a list of points which might be made as to whether the order (together with the penal notices sought) would be effective (on the basis that if it were not effective it should not be made). In summary these included the following:

a. The order sought was unnecessary because the Straight Order already prohibited Straight from dealing with the Vessel in the way feared by Ms Akhmedova;

b. If there were to be a breach of the existing Straight Order, then those assisting might be liable to imprisonment for contempt, and that would include any alleged de facto directors involved in the breach of the Order. Thus, the order sought (together with a penal notice warning the alleged de facto directors) added nothing;

c. The order sought would not be enforceable either in Dubai where the Vessel was presently located or in Liechtenstein where Straight, its de jure director and its de facto directors were located;

d. A committal order against the de facto directors would not be enforceable in Liechtenstein;

e. An order naming the Counselor directors, on the basis that they were de facto directors, was inconsistent with this Court's earlier findings that (a) Straight was Mr Akhmedov's alter ego and (b) Straight's corporate veil was pierced. Thus, the Counselor directors could not be said to have control over Straight and/or be its de facto directors because this Court had previously found that Mr Akhmedov was the person in control of Straight.

39. To address these issues, Mr Penny QC submitted that the order sought contained prohibitions against certain conduct that went beyond the terms of the freezing order and, in any event, it removed any ambiguity even if the order itself did not go beyond the terms of the original Straight Order. Further, and in my view significantly, the

order sought required the taking of mandatory steps to ensure the Vessel was protected and thus added to and was different from the existing Straight Order.

40. Mr Penny QC told me that Straight, together with Mr Akhmedov, had taken the position that Mr Akhmedov had no control over Straight and that Straight was independently controlled by Counselor. This proposition had been advanced in the Marshall Islands proceedings though the papers in those proceedings were sealed and could not be provided to me. If this is so, it would, in my view, be wholly inconsistent with the representations made in other jurisdictions for Straight and Mr Akhmedov to argue that Mr Akhmedov controlled Straight.

41. Straight is a party to the proceedings and should not, in my judgment, be able to avoid compliance with orders of the court by simply refusing either to engage with the proceedings or to obey this court's orders. In those circumstances, this court should take whatever steps it could to make its earlier orders effective.

42. I was told that, on 1 March 2019 in Liechtenstein, Ms Akhmedova obtained injunctive relief on a without notice basis against Straight. Mr Penny QC gave me an informal translation of the order made which is in similar terms to that which Ms Akhmedova invited this Court to make. The Liechtenstein order required Ms Akhmedova to provide security of CHF 5 million before it could be served. Though this requirement is the subject of a without notice appeal by Ms Akhmedova, it might well be argued that she should provide such security in order to obtain relief in the very jurisdiction where Straight and its officers were based or that she should at least wait until the appeal was resolved before applying to this court. Mr Penny QC informed me that Ms Akhmedova had insufficient funds to provide such security and her litigation funder was not currently prepared to offer it either. Her financial situation was as a direct result of Straight and its alter ego, Mr Akhmedov, refusing to comply with this court's earlier orders. Given that, I am persuaded, notwithstanding the existence of the Liechtenstein injunctive order, that Ms Akhmedova had good reason to make this application and was not merely "jurisdiction shopping". In any event, it seems to me that waiting for the outcome of the appeal in Liechtenstein was not a sensible option as the Vessel may have long departed from Dubai by the time the appeal was resolved (estimated by Mr Penny QC to be a few weeks hence). Furthermore, in the event Ms Akhmedova's appeal in Liechtenstein succeeds, Straight and its officers can apply to the courts if any inconsistency between the order made by this court and the order made by the court in Liechtenstein emerges. The mere possibility of any inconsistency is insufficient in my view to deny Ms Akhmedova the relief she seeks from this court.

43. Finally, Mr Penny QC submitted that it might be said that Ms Akhmedova would not prevail in her claim in the Marshall Islands and therefore that she would never be able to enforce in Dubai if the Dubai Court of Appeal decision on 27 March 2019 went against her. Against that, Ms Akhmedova would say that she was the one seeking summary judgment in the Marshall Islands so there must be a reasonable prospect that she would succeed there. Further, she anticipated making a cassation appeal in Dubai (which might also be successful) and she might also seek a delivery up order from this Court backed with a penal notice to ensure compliance. She was also taking steps to persuade the relevant authorities not to allow the Vessel to depart from Dubai pending judgment in the Marshall Islands but there is no certainty about the outcome of these representations. If the arrest of the Vessel was lifted by the Dubai court, there was no

legal impediment preventing its departure absent the order sought from this court. All of these matters, in my view, serve to reinforce rather than undermine the application made by Ms Akhmedova.

44. Standing back and looking at matters in the round, I am satisfied that it is just and convenient to make the orders sought even though Straight and Mr Akhmedov have a history of breaching this court's orders. The order will be enforceable here against Straight, an entity which has previously been found to have submitted to the jurisdiction. Additionally, these orders should provide a serious incentive to the Counselor directors to ensure Counselor and Straight act in compliance with what is required of them.

Penal Notices

45. No rules of court require a penal notice to identify every individual against whom committal proceedings could be brought. FPR rule 37.4(3) provides that a committal order against a company or other corporation may be made against any director or other officer of the company or corporation:

"*If the person referred to in paragraph (1) [in a judgment or order endorsed with a penal notice] is a company or other corporation, the committal order may be made against any director or other officer of that company or corporation.*"

The reference to "*any director or other officer*" in the in the Civil Procedure Rules' ["CPR"] equivalent of FPR rule 37(4(3) [CPR rule 81.4(3)] includes de iure and de facto directors (see, for example, paragraph 5 of the decision of Leggatt J in Touton Far East v Shri Mahal Ltd [2017] EWHC 621 (Comm)) but does not include shadow directors (see paragraphs 53-72 of the decision of Moulder J in Integral Petroleum SA v Petrogat FZE [2018] EWHC 2686 (Comm) and paragraph 68 in particular). I regard it as axiomatic that the same approach should be taken to the interpretation of the identical words in FPR rule 37.4(3).

46. FPR rule 37.9 provides that a judgment or order may not be enforced under FPR rule 37.4 (orders for committal) unless it contains a penal notice. Practice Direction 37A 1.1 provides for a form of words to be used in a penal notice but it is clear from the proviso "*or in words to substantially the same effect*" in both paragraphs 1.1 and 1.2 that the requirements are not fixed. As the commentary on page 2037 of The Family Court Practice 2018 notes, it has long been recognised that the form of penal notice prescribed by rules of court is not rigid and may be adapted to the facts of a particular case so long as it is clear and substantially accords with the standard wording given that a clear penal notice is an essential prerequisite to enforcement. The White Book Vol. 1 (2018) commentary at paragraph 81.9.2 (p.2308) deals with the requirements of a penal notice in the other divisions of the High Court and recommends specific wording in the case of a corporate respondent, which includes naming the directors or officers. In the interests of fairness and clarity, I have adopted the approach to naming directors and/or officers set out in the White Book to the penal notices made within these proceedings which are governed by the FPR.

47. The existing penal notice in the Straight Order already applies to Counselor as the sole de iure director of Straight. It is self-evident that, if I were to make the order sought, it would be appropriate for Counselor to be named in the penal notice.

48. Is it appropriate to name the de iure directors of Counselor in the penal notice on the basis that they are the de facto directors of Straight? Moulder J held in Integral Petroleum that, even in respect of companies incorporated outside the jurisdiction of England and Wales, English law rules of attribution should be applied to the analysis of whether a person is a de facto director of a company for the purpose of deciding whether or not a committal application could be made against such a person [see paragraphs 56-72 and paragraph 72 in particular]. In JSC Bank of Moscow v JFC Group Holding (Re Kekhman) [2012] EWHC 2915 Eder J held that the question of whether an individual is a de facto director *"…has to be approached on the basis as to whether or not the claimant has a good arguable case, having regard to all the circumstances and having regard to the nature of the order the court should scrutinise the facts with particular care and have regard to all the evidence before the court.*" [paragraph 17]. In that case Mr Kekhman's name remained on the penal notice, the court refusing his application to have reference to him in that notice removed.

49. The test as to whether or not a person is a de facto director is set out in HMRC v Holland (In re Paycheck Services) [2010] UKSC 51. The majority in the Supreme Court were clear that the question as to whether a person is a de facto director of a company is very much one of fact and degree, there being no single decisive test. All the circumstances must be taken into account. In paragraph 94 Lord Collins suggested the test was *"…whether Mr Holland was part of the corporate governing structure of the composite companies and whether he assumed a role in those companies which imposed on him the fiduciary duties of a director…*". Thus, though this will be but one relevant factor, it is not enough for Ms Akhmedova to rely on the fact that the interested parties are directors of Counselor and then that Counselor is the sole director of Straight. Leggatt J asked himself in Touton whether the individual was the person having primary control over the company [paragraph 6] and held that "*a de facto director for this purpose means someone who has assumed the status and function of a director so as to make himself responsible as if he were one*" [paragraph 13]. I note that Touton was cited with approval in Integral.

50. What does this mean for current purposes? I am satisfied that, in deciding whether the directors of Counselor should be named in the penal notice, I need only ask myself whether there is a good arguable case that they are de facto directors. I do not need to reach a concluded finding unless and until those individuals seek to have this issue tried and determined by the English court.

51. Based on the material in the bundle, there was, in my view, a good arguable case that each of the Counselor directors, and certainly Dr Schurti, was a de facto director of Straight. The following matters were pertinent:

    a. All of the Counselor Directors had individual signature rights in respect of Counselor and each of them alone could validly and bindingly act for and on behalf of Counselor. The affidavit of Ms Akhmedova's solicitor stated that the above was understood to be the case from Ms Akhmedova's Liechtenstein lawyers. In fact, inspection of the company search undertaken in Liechtenstein on behalf of Ms Akhmedova revealed that all five Counselor directors named in company documents relating to Counselor Trust Reg. dated 3 August 2017 – Dr Andreas Schurti, Urs Hanselmann, Dr Ernst Walch, Dr Barbara Walch and Dr Rolf Blasy – had sole signatory authority over Counselor ["Einzelunterschrift"]

(Bundle page 377). That document plainly strengthened Ms Akhmedova's case. All these individuals thus had the capacity to individually bind Straight (through its sole director Counselor) and so could be said to be part of the corporate governance structure of Straight.

b. Four of these five individuals (excluding Urs Hanselmann) were partners at the Liechtenstein law firm Walch and Schurti. Walch and Schurti was instructed by Mr Akhmedov in relation to the transfer of his valuable asset known as The Modern Art collection. At his instigation, this was transferred from the Third Respondent to the Fourth and Fifth Respondents as part of Mr Akhmedov's attempt to avoid his liabilities and frustrate enforcement of the Award. I remind myself that the Fourth and Fifth Respondents have been found to be ciphers and alter egos of Mr Akhmedov.

c. Walch and Schurti represented the Fourth and Fifth Respondents in the Liechtenstein proceedings.

d. Dr Andreas Schurti's activities listed below evidence the fact that he was part of the corporate governance structure of Straight:

i) He signed the Articles of Association of Straight on behalf of Counselor (bundle page 11)];

ii) He signed a special power of attorney for Straight in Liechtenstein in 2017 on behalf of Counselor regarding the ownership of the Vessel and its registration in the Marshall Islands (bundle page 119);

iii) He was listed as a person vested under the law with management of Straight on Straight's registration in the Marshall Islands (bundle page 120);

iv) He had sworn an affidavit on behalf of Straight in the Dubai proceedings wherein he deposed that the relevant matters were within his knowledge (bundle page 120);

v) He had written letters on behalf of Counselor and Straight to Ms Akhmedova's English and Liechtenstein lawyers in relation to the Dubai and Marshall Islands proceedings (bundle pages 127-129 and pages 133-134).

e. All the Counselor directors were also directors of WalPart, the entity which established the Fourth and Fifth Respondents (see 51b above for relevant comment). Documents at bundle pages 374-375 disclosed that all had sole signatory rights in respect of WalPart which mirrors the situation in respect of Counselor.

52. Further, I accept Mr Penny QC's submission that, if the Counselor directors do not have effective control over Straight, it is difficult to see who does. One or more of them are the only natural persons at the end of the line with the ability to control Counselor and Straight.

53. Having found for present purposes that each of these individuals is a de facto director of Straight, I have also concluded that it is appropriate that they all be named in the

penal notice and thus be on proper notice of the possible consequences of failure to comply if they cause (or continue to cause) Straight to act in breach of this court's order.

54. The FPR does not require a de facto director to be served with the proceedings. Thus, there is no impediment to the orders sought that the Counselor directors are foreign directors or officers of a foreign company. If they are de facto directors of Straight a committal application can be served on them out of the jurisdiction.

55. My order makes provisions for service of the order and the accompanying penal notice together with the abridgement of time for service. The latter was essential given the urgency of the application and, in particular, the risk that Straight could apply to lift the arrest of the Vessel in Dubai on 28 March 2019. I also declare that the provisions for service constitute good service in furtherance of my case management power at FPR rule 4(1)(o), namely taking any step or making any other order for the purpose of managing the case and furthering the overriding objective.

Conclusion

56. That is my decision.

Signed: Mrs Justice Knowles Date: 3.07.19