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Case No: BL 2020 000485

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

Royal Courts of Justice
The Rolls Building
Fetter Lane
London
EC4A 1NL

Date: 26 September 2024

Before :

HHJ JOHNS KC
Sitting as a Judge of the High Court

- -

Between :

ANDREY ROGACHEV

Claimant

- and -

MIKHAIL GORYAINOV

Defendant

- -

MR PAUL McGRATH KC, MR JAMES SHIRLEY, and MS MAYA CHILAEVA (instructed by **Michelmores LLP**) for the **Claimant**

MR TIM AKKOUH KC and MR SEBASTIAN MELLAB (instructed by **Candey Limited**) for the **Defendant**

- -

Hearing dates: 25-28 June, 1-5 & 8-9 July 2024

APPROVED JUDGMENT

This judgment is handed down by email to the parties' representatives and release to The National Archives at 2 pm on Thursday 26 September 2024

HHJ JOHNS KC:

Introduction

1. This is a dispute about what balancing payment is due on the termination of a joint venture. The venture related to Moscow retail sites and was between the Claimant, Mr Andrey Rogachev, and the Defendant, Mr Mikhail Goryainov. The trial has been in the nature of an account. And involves three main questions. One, what did each party put in. Two, what has each taken out. And three, what is the value of the sites retained by each of them. Mr Rogachev's case as to the product of that accounting exercise is that a balancing payment of around US$28m is due to him. Mr Goryainov says that the payment should be in the other direction, namely from Mr Rogachev, in a sum of around US$16m.

2. The context means that not even the first two questions can be answered with the degree of certainty which might be expected in some other business environments. At least on the evidence in this case and in this sector, business in Moscow is not conducted with the transparency which might be expected elsewhere. But decisions on the questions must be reached.

3. I will give some very brief background and refer to the witness evidence before turning to make those decisions on the detailed issues arising under the three main questions.

Background

4. The joint venture emerged in around 2014, though a formal joint venture shareholders agreement was not signed until 2015. It was established on a 50-50 basis; Mr Rogachev and Mr Goryainov to share costs, profits, and ownership

equally. Mr Rogachev had had great success in Russian retail. Mr Goryainov had made money in the acquisition and development of Russian real estate through his Gremm Group. Six markets came into the joint venture. 177 Volgogradskiy Prospect, known as **V177**, originally acquired for Mr Goryainov on his own account but which came into the joint venture on contribution being made to its costs by Mr Rogachev, and held by Pygmalion LLC. Usachevskiy Market at 26 Usacheva Ulitsa, known as **U26**, held by Bastion LLC. Koptevskiy Market at 24 Koptevskaya Ulitsa, known as **K24**, held by Koptevskiy Rynok LLC. Kashirsky Market at 25B Kashirskoye Shosse, known as **K25**, held by Avest LLC. Severniy Market at 30 Lyotchika Babushkina, known as **LB30**, held by Severniy Rynok LLC. These were the markets in focus at trial; the sixth joint venture market, being Maryinskiy Passage, known as L102, having been closed in around October 2015.

5. A management company, M1 Management Company LLC (**M1**), was established in July 2014 to manage the joint venture markets. There were plans for the joint venture to be on a large scale and enduring. The shareholders agreement referred, at clause 5.4, to a non-binding intention on the part of the two sides to each invest up to US$100m.

6. But the joint venture turned out to be short-lived. By around the summer of 2015, Mr Goryainov requested and Mr Rogachev agreed that it be terminated.

7. There were separation discussions. One product of that was a register of investments dated 12 October 2015 (**the Register**) signed for each of the two men. That was followed by a document put together with the help of a Mr Buzdalin as an intermediary and referred to at trial as the Buzdalin agreement.

But none of these documents were treated as binding at trial. Nor was the shareholders agreement regarded as providing the answer to the proper result on termination. That is dated 26 June 2015.

8. What has been agreed is that, post-termination, Mr Rogachev will own K24, K25 and LB30, and Mr Goryainov will own V177 and U26; a large part of V177 being subject to a lease in favour of the supermarket chain Lenta. And that what balancing payment is due, and in which direction, is to be determined by the court undertaking an account involving the three main questions already identified.

Witnesses

9. Both the main protagonists, Mr Rogachev and Mr Goryainov, gave evidence. Both of them strayed often from answering the questions. With the result that counsel sometimes intervened to bring the answer to a close. Not inappropriately. I had to do the same on occasion, where what was being said showed no sign of returning to, or sometimes even coming to, the question.

10. Mr Bukin was the only other witness giving oral evidence for Mr Goryainov. He is a director in the Gremm Group and a person on whom Mr Goryainov relied heavily and in whom he placed great trust. He signed the Register for Mr Goryainov. Unsatisfactorily, on one of the principal issues, being the arrangements for the purchase of V177, Mr Goryainov kept saying in answer to questions in cross-examination that those questions should be asked of Mr Bukin as Mr Bukin structured the deal, whereas it was dealt with in Mr Goryainov's witness statement, not Mr Bukin's. It became plain, however, that this represented the reality, rather than being question avoidance. It was indeed Mr Bukin who had a grasp of the detail of the deal.

11. A witness statement of Mr Buzdalin went in as hearsay.

12. Three witnesses were called for Mr Rogachev in addition to Mr Rogachev. They were Mr Vidyayev (who has long worked for Mr Rogachev), Mr Romanov (formerly a lawyer for Mr Goryainov, having been CEO of the Gremm Group), and Mr Sinitsyn (finance director at M1 and the person who signed the Register for Mr Rogachev).

13. All the witnesses of fact gave their oral evidence in Russian with the help of an interpreter.

14. There was permission for expert evidence on both forensic accounting and valuation. Mr Rogachev relied on Mr Knyazev for both areas of expertise. Mr Goryainov relied on experts from the Fidem Research Group (**FRG**), calling Mr Nefediev of FRG in relation to forensic accounting and Ms Maydanik for valuation. I had the benefit of a joint statement of the experts dated 19 March 2024 in addition to their reports, and heard oral evidence from each of them in English.

Decisions on the issues

15. I begin my consideration of the issues by thanking the legal teams on both sides for the very considerable help they gave me. Both sides had representation of the very highest calibre. Their cooperation, and the clarity and appropriate economy with which they handled the issues, has made my task significantly easier than it would otherwise have been.

16. The agreed approach was that I would determine the detailed issues presented at trial but without seeking to fix a final figure for the balancing payment. Rather,

the parties would go away and, with the benefit of the decisions on those issues, seek to calculate and agree the payment. Any disagreements would be the subject of a consequential hearing, involving the experts if necessary.

What did each party put in?

17. The most valuable issue arising under the first question, what did each party put in, was the cost to Mr Goryainov of acquiring V177.

18. On 11 November 2014 Mr Rogachev contributed the sum of US$10.953m to this cost by way of a loan made by one of his companies, Gerthing Ltd, to one of Mr Goryainov's, Shannon Finance Limited. It was common ground this was an example of what became referred to in the trial as technical loans; namely, loans in form only. A form used to disguise what was in truth a straight payment. This particular payment was made on the basis that Mr Goryainov had paid twice that sum in relation to the acquisition of V177 so this represented Mr Rogachev's 50 percent contribution in order to bring V177 within the joint venture. Mr Goryainov maintained at trial that the true cost was indeed around US$22m (US$ 21,906,340), as set out in the Register.

19. Mr Rogachev's case at trial was that Mr Goryainov in fact paid little more in total in relation to the acquisition than he got from Mr Rogachev. The expert evidence of Mr Knyazev for Mr Rogachev was that he was satisfied only of Mr Goryainov having paid US$0.286m above that figure of US$10.953m.

20. That the true costs relating to V177 were indeed around US$22m was a proposition tested skilfully and thoroughly in cross-examination by Mr McGrath KC. My clear conclusion, having heard the evidence, was that it passed that test.

I find that the total costs relating to acquisition were as stated in the Register. My reasons for that conclusion are these.

21. First, one of Mr Rogachev's own witnesses, and being a man involved for Mr Goryainov in the acquisition of V177, gave evidence that the costs were at that level. Mr Romanov was a lawyer working for Mr Goryainov at that time. His witness statement included this:

"*33. V177 was purchased before the partnership between Mr Goryainov and Mr Rogachev, somewhere in the summer and autumn of 2013. As part of that transaction, two legal entities had to be acquired, because, as far as I remember, one of them owned the main area, and the second owned several additional small facilities, or it had the right to lease land, something like that.*

34. The structure of the transaction price was as follows: one part was paid for shares and equity stake of companies, and the other part was paid as repayment of a loan that was issued to one of the two companies that own the facility. As far as I remember, the total price of the transaction, including all the costs that Gremm Group subsequently incurred, was approximately USD 22-23 million."

22. Second, there was also evidence from the vendor side of the transaction, albeit hearsay, supporting a deal at that level. This was a notarised statement of Mr Kurbanov, taken in 2021, in which he says that the agreed price was "*760 million rubles, which at that time (March 2014) was equivalent to 21,000,000 US dollars*".

23. Third, that the deal included a sum to repay the borrowing of one of the vendor companies, Rolvent LLC, on top of a payment for the shares, was a shared feature

of their statements. It appeared in Mr Romanov's statement at [34], quoted above. Mr Kurbanov stated that "*the transaction price would consist of the following components: repayment of debts of the proprietor companies (loans, current debts), redemption of our shares in the proprietor companies with Derkach S.A. using a non-cash form of payment and payment of cash to me and Derkach S.A. through bank cells.*" He then went on to give details of each of those components.

24. Fourth, that the deal contained both elements was supported by the documents. There were agreements relating to the purchase of shares; a preliminary agreement and a sale agreement. But also a supplemental agreement dated 20 March 2014 which referred to the borrowing of Rolvent LLC from Sberbank secured by mortgage at clause 1.1.11: "*financial obligation to JSC Sberbank (OGRN 1027700132195) to repay funds received under loan agreement No. 4857 dated 17 August 2012, amounting as of the date of signing this Supplementary Agreement to two hundred twenty-three million four hundred fifteen thousand ninety-four (223,415,094) roubles and 27 kopecks*." And a loan agreement also dated 20 March 2014 between Moskvoretskiy Rynok LLC and Rolvent LLC in the sum of RUB 240m which even spelled out in clause 2 how that sum was to be applied. "*The amount of RUB 223,415,094.27 (two hundred and twenty-three million four hundred and fifteen thousand ninety-four and 27/100) to repay the debt to OJSC Sberbank (PSRN 1027700132195) under Credit Agreement No. 4857 dated 17.08.2012*", and "*The amount of RUB 16,305,906.00 (sixteen million three hundred and five thousand nine hundred and six) to pay off other obligations of the Borrower*".

25. Fifth, the overall figure of RUB 760m had its own documentary support. There was a resolution dated 3 March 2014 by Mr Goryainov as sole member of Feniks for the purchase of V177 and that "*The total transaction amount for the sale (transfer) of 100% stake of the authorised capital of LLC Rolvent and the sale of 100% of shares OJSC Moskvich-Servis should not exceed seven hundred sixty million roubles 00 kopecks (RUB 760,000,000.00)*."

26. Sixth, Mr Romanov, now a witness for Mr Rogachev, made clear in his oral evidence that, at the time V177 was being brought into the joint venture when he was working for Mr Goryainov, he was honestly and in good faith trying to establish what the expenses incurred in the acquisition of V177 were. That was supported by emails of October 2014. The product of that exercise was a detailed breakdown which accords with the later Register. Mr McGrath suggested in closing submissions that the true price may have been hidden from Mr Romanov by Mr Goryainov. But I consider that improbable. Mr Romanov was involved in the transaction. He later investigated the true costs. The detail of the deal was anyway the province of Mr Bukin, not Mr Goryainov. And this suggested lack of openness by Mr Goryainov did not fit with another suggestion about Mr Romanov, which was that when he switched sides to Mr Rogachev he took with him, and told Mr Rogachev of, the secret difficulties of Mr Goryainov's developments. There are also all the other factors which indicate US$ 22m was indeed the true price.

27. Seventh, on the evidence and as I find, Mr Rogachev's team checked the true purchase price of V177 with the vendor. That was the evidence of Mr Goryainov by his second witness statement at [27]. It fits with Mr Rogachev's suspicions, as

well as the size of the sum he was being asked to contribute; which was a substantial one, being over US$10m. And Mr Rogachev was non-committal about this in his oral evidence, saying only that he could neither confirm nor deny it.

28. Specifically in relation to cash in the sum of US$2.9m said to form part of the purchase price according to the Register, the following further points support its payment.

29. Eighth, such cash payments are, on the evidence – in particular the evidence of Mr Rogachev and Mr Rogachev's own expert Mr Knyazev – a frequent feature of real estate transactions in Moscow. Mr Rogachev told me in his oral evidence it happened relatively often that the purchase price stated in the agreement was considerably less than the price in fact paid, with the true price being paid partly in cash. Mr Knyazev told me transactions are often carried out in cash, with the purchase price as stated in the documents being considerably less than the price actually agreed. That reflected the experts' joint statement, which recorded that "*Mr Knyazev agrees that it is a common business practice in Russia that the acquisition of properties in commercial real estate could be in a cash form*."

30. Ninth, this cash payment was identified as part of Mr Romanov's detailed exercise conducted in October 2014 of establishing all the payments made in relation to the acquisition of V177. The detailed breakdown produced described a sum of US$2.9m as having gone "*to peresvet deposit box for transaction*".

31. Tenth, such a cash payment was also one of the details provided by the statement of Mr Kurbanov. Referring to 20 March 2014, he stated, "*On the same day, funds in the total amount of 104,980,000 rubles were deposited in bank cells in the Peresvet Bank in the name of S.A. Derkach.*" While the currency he refers to is

different, the sum is an equivalent one, and the difference may be explained by the context; this being a Russian notarized document where the local currency could be expected to be used to express the sum.

32. As to the other cash payments totalling US$727,390, there are these further points which have helped me reach my conclusion that they were indeed paid on Mr Goryainov's behalf towards the acquisition of V177.

33. Eleventh, the principal payments are of US$300,000 and US$200,000 said to be for commission. And, on Mr Rogachev's own evidence, such commissions are common (Mr Rogachev telling me they occur frequently, and Mr Knyazev saying they happened often). I would add that no one suggested the level of these payments was unlikely for a transaction of this scale.

34. Twelfth, these two commission payments featured in emails of October 2014 exchanged as part of Mr Romanov's exercise conducted in October 2014 to establish the payments made in relation to the acquisition of V177. It is thus plain that particular attention was paid to these sums.

35. Thirteenth, all these further cash payments, including those of US$300,000 and US$200,000 were detailed in the breakdown produced as part of Mr Romanov's overall exercise conducted in October 2014.

36. Finally, it is also of relevance, in my judgment, that there was a measure of agreement as to the sums forming part of the purchase price of V177 by virtue of them being included in the Register. This was a document signed and stamped for Mr Rogachev, which was the product of detailed negotiations and investigations (Mr Rogachev said there were six iterations of it), and described

by Mr Rogachev himself as comprehensive and agreed. While neither side has treated it as binding, to suggest – as Mr Rogachev sought to at one point in his oral evidence – that it was just "*a list of payments which required substantiation*" is to understate its significance. It was not in the nature of an entirely provisional document. It can be added that some items, including some of the V177 payments, were even the subject of further queries, resulting in another breakdown in October 2015, and without the overall purchase price of V177 being rejected for Mr Rogachev.

37. It was submitted for Mr Rogachev that the loan to Rolvent LLC was something entirely separate from the purchase, but that it is part and parcel of the purchase is, in my judgment, underlined by the timing. It took place on the same day. Mr McGrath sought to cast doubt on this forming part of the purchase price of V177 by pointing out that the payment which appeared on the Register against the date 4 March 2014 was in fact made on 20 March 2014. But that both were made on 20 March 2014 supports both being part of the purchase price. That the loan was part and parcel of the purchase is underlined too, in my judgment, by the obvious commercial point that what Mr Goryainov wanted, and obtained, was V177 unencumbered. V177 was later transferred to Pygmalion without encumbrances. Further, I am entirely satisfied this was another technical loan. That is despite there being post-purchase documents in which it was recorded as a debt, and one which, oddly, ended up showing it as a debt of Feniks. No assets of Rolvent from which a genuine loan could possibly be repaid could be identified. Its only assets were being acquired for Mr Goryainov. And the technical loan seems to be an oft-employed device. Mr Rogachev's own "loan" from Gerthing to Shannon in relation to V177 provides an example.

38. Mr McGrath pointed to some inconsistencies in various statements as to how the overall sum was made up, and paid. Mr Bukin's witness statement for example referred to most of the price being paid in cash. A further example is that the statement of Mr Kurbanov referred to a different company of Mr Goryainov as advancing funds. That was just one of the inaccuracies or oddities in Mr Kurbanov's statement revealed by Mr McGrath passing a fine-toothed comb through it. I do not ignore the points of which these are just two examples, but even if such oddities are difficult to explain, they do not begin to support a conclusion that only around US$11m was paid for V177 given the whole sea of evidence.

39. I should add that, while Mr Rogachev seemed to suggest in his evidence that the statement of Mr Kurbanov had been bought by Mr Goryainov, very properly no such suggestion was put to Mr Goryainov in cross-examination; there being no proper basis for it.

40. Mr McGrath also pointed to a lack of documentary support for a payment of the sum of US$2.9m in cash. No bank statement showing a withdrawal of such a sum. No receipt. But the absence of such documents does not point with any strength against the conclusion I have reached that such a sum was paid given all the other features of the evidence. Further, at least the notion that a supporting bank statement might be expected appeared somewhat unrealistic on the evidence. Mr Nefediev gave evidence of the likely difficulty of reconstructing, from a set of multiple bank transactions, events as to how cash had been put in hand.

41. Mr McGrath also highlighted the fact that, overall, the total cost of V177 was made up, according to the Register, of some 30 payments by some 7 payors. That

is, I consider, a reason for approaching the proposition that they all go to make up the overall cost with some care. But taking that care, and for the reasons I have given, I am satisfied they together represent the true cost of V177. It is also, as I have already said, of some significance that Mr Rogachev and his team, familiar with the Moscow business environment, were likewise persuaded of that when the Register was signed for Mr Rogachev.

42. Finally on the acquisition cost of V177, some new points were made in reply by Mr Shirley for Mr Rogachev. Whether or not that was procedurally proper, the points do not cause me to doubt that the proper conclusion is indeed that the acquisition cost of V177 is, or is to be regarded as, around US$22m. He pointed to clause 2.4.5 of the preliminary sale agreement as being contrary to the idea that a sum was paid for both the shares and by way of extinguishing Rolvent's borrowing. But clause 2.4.5 is a somewhat complex provision, and that the deal as in fact transacted involved both those elements (whatever clause 2.4.5 says) is shown by the other features of the evidence I have already referred to. He suggested that the true cost of V177 was lower in US dollars because of shifts in the exchange rate in the period over which payments were being made towards V177 by Mr Goryainov. But this is not some new factor revealed by the experts at trial. Such fluctuations would have been plain to the parties when Mr Rogachev came to make his contribution and when the parties were later agreeing the Register. Given that, and in the absence of cross-examination on this topic, I see insufficient warrant to adopt some different approach on the taking of the account between the parties.

43. I consider next a sum referred to as the Aminievskoye payment. This was a payment into the joint venture of US$2.995m by Mr Rogachev. Mr Goryainov's case on this was that this payment was returned, albeit in the lower sum of US$1.714m as a result of currency fluctuations; the payment having been converted to rubles in the meantime.

44. This is not an easy question of fact to decide. I have concluded, on the evidence, that the sum was not in fact returned. That is largely because there was an acceptance by Mr Bukin, for Mr Goryainov, shortly after the preparation of the Register, that this sum had not been returned. By an email dated 27 October 2015 to Mr Sinitsyn, Mr Bukin checked his understanding of an earlier reconciliation, which was that the "*$1.7 was refunded*". Mr Sinitsyn replied the next day that Mr Bukin was wrong. "*You're wrong, no money has been refunded … I suggest you find out where the money … went*". That night, Mr Bukin responded that the sum was US$1.714m and that "*we are also prepared to accept it*". In accordance with that acceptance, Mr Goryainov then agreed to pay that sum as part of an agreement reached at the Ararat restaurant and later reflected in the Buzdalin agreement.

45. If the sum had already been paid, that agreement is an odd one. Mr Rogachev might be expected in that circumstance to have pressed for the exchange rate loss to be made up. But not to be paid this sum again. Still less for Mr Goryainov to accept that. I was not persuaded the acceptance and subsequent agreement were the result of pressure placed on Mr Goryainov. That is not at all the tone of the emails of 27 and 28 October. And pressure such that Mr Goryainov would agree to almost anything, such as pay again a sum he had already paid, does not fit with

the Register; a document now relied on by Mr Goryainov as accurate and in which Mr Rogachev accepted all Mr Goryainov's expenditure on V177 for example. Further, many of the events relied upon by Mr Akkouh KC in submissions as evidencing the suggested pressure lay at some distance in time from the acceptance and agreement in relation to the Aminievskoye payment. The more dramatic events were an attempted takeover of K25 on 12 December 2015, a visit or raid at the Gremm Group Christmas party later that month, more takeover (or attempted takeover) events on 17 January 2016, and even the obtaining of a worldwide freezing order (later discharged) in these proceedings. There is also the point that, during those later events, Mr Goryainov was anyway able to engage a Mr Krotov to keep the balance of power between the two former joint venturers. I have not found it necessary to arrive at conclusions about these later events, some of the evidence in relation to which was confusing. What I am satisfied about is that the acceptance and agreement in relation to the return of the Aminievskoye payment was not the product of any pressure. Rather, it points to that repayment not yet having been made.

46. I consider the documents bearing on this question do not point, at least not with any strength, to a different conclusion. A document apparently tracing the fate of this payment ends with the withdrawal by a Mr Kalachev of US$1.714m, but he is a person associated with Mr Goryainov, so this document does not show the transfer of the sum to Mr Rogachev's side. Then there is the January 2015 reconciliation. This also refers to the sum of US$1.714m but is somewhat ambiguous, at least when the figures at the bottom are considered, as to whether the sum has been received by Mr Rogachev. One of the figures, being US$24m-odd, does not reflect any return of the sum of US$1.714m. And the reconciliation

is, of course, only part of the material and is to be read with the later exchange about the sum in the 27 and 28 October emails.

47. Given my finding that this sum of US$1.714m was not returned, having been withdrawn by Mr Kalachev, it follows that it must be treated as a drawing by Mr Goryainov.

48. There is then a dispute to resolve about payments totalling US$670,000 made to a Mr Kalachev, being a representative of Mr Goryainov. They appear on the Register as contributions by Mr Rogachev to the joint venture in respect of K25. It is common ground that Mr Rogachev is to be credited for the contributions. The dispute is as to whether the payments should also be regarded as a drawing by Mr Goryainov. The submission for Mr Rogachev was that they should be so regarded, there being insufficient evidence of the sums having been used for joint venture business. It is my judgment, however, that these payments are not to be treated as having been taken out by Mr Goryainov. Mr Goryainov's evidence was that such a total sum, in fact a little more than that, was spent on an agent as part of the acquisition of K25 – see his first witness statement at [87]. It follows from my conclusion on the true cost of V177 that this is a witness I regard as having told me the truth about that most valuable area of dispute. This use of the sum also fits with the timing of the payments, coming as they do between the date of the deposit for K25 and the registration of title following purchase. Further, Mr Rogachev's staff must have been somewhat satisfied of a need for these contributions in order to make them; the payments being made direct to Mr Kalachev by Mr Rogachev's company, Gerthing. Mr Rogachev rather agreed with that under cross-examination. Finally, Mr Romanov agreed in cross-

examination that no one was trying to cheat anyone else in connection with the acquisition of K25.

49. There is also one point of disagreement to tackle on the cost of the acquisition of U26. The underlying documents relating to the acquisition include two payment orders in the sum of RUB 7.5m. The earlier one is not stamped. It is argued for Mr Rogachev that this represents an attempted payment which failed, and was then carried out successfully by the later payment order, so that the sum of RUB 7.5m should be deducted from FRG's opinion as to the cost of U26 to arrive at the true figure. The answer to whether the disputed payment order was effective cannot be found in the Register as that contains only a global US dollar figure for the cost of U26 which, given the fluctuating exchange rates, does not reveal whether it includes or excludes that payment order.

50. I have decided there is to be no deduction so as to remove from the cost of U26 this payment order. That is for two reasons. First, there was no disagreement between the forensic accounting experts as to the cost of U26. Both Mr Nefediev and Mr Knyazev put it at US$8m with US$4m being contributed by each side. That is clear from the tables in an appendix to the second report of Mr Knyazev. Second, insofar as it is relevant, I was not convinced that the disputed payment order was ineffective, and on balance find it was effective. Two points. One, the absence of a stamp does not denote ineffectiveness. Mr Nefediev explained that such payment orders are sometimes approved electronically, then there is no stamp. The absence of a stamp here did not therefore cause him concern or to change his mind that this payment order was effective. He told me, of the two payment orders, "*it seems like both transactions were made*". He was a careful

witness, ready to accept points put to him where appropriate. I accept his evidence on this. Two, there was no clear identification of a reason why the payment order would have failed to go through.

51. There was also a suggestion for Mr Rogachev that the cost of U26 should be regarded as other than US$8m having regard to exchange rates. But that reflected neither the agreement of the experts (to which I have already referred) nor the agreement of the parties, albeit non-binding, in the Register. In my judgment, on taking the account, it would not now be right to depart from that common approach in relation to U26.

52. Next is some money which, as both sides expressed it, got stuck on, or in, Rontek. This was not approached as a question of the correct trust, or other legal, analysis. Rather, it was left to me to decide, given the substance of the arrangements, whether this loss should be borne by Mr Goryainov alone (as was argued for Mr Rogachev) or should be treated instead as a loss to the joint venture (as was argued for Mr Goryainov). The substance of what happened was this. The sum of US$875,289 (according to the figure in the Register) was contributed by Mr Rogachev. This was another technical loan. It went to Rontek LLC, a concern of Mr Goryainov, but was undoubtedly used for joint venture purposes, namely to underbid on K24 and LB30 at auction (as part of those sites being acquired by other entities for the joint venture). Following the underbids, this auction deposit money was returned to Rontek LLC and paid into its bank, SB Bank LLC. But it got stuck there and was ultimately lost as the bank went into liquidation. A scheme to recover it notwithstanding the liquidation using an inter-company transaction was unsuccessful.

53. I consider the substance of the arrangements means that this money is to be regarded as a loss to the joint venture rather than to Mr Goryainov personally. First, while Rontek LLC was an entity associated with Mr Goryainov, it was acting as part of the joint venture in dealing with this money. The underbid was joint venture business using joint venture money paid in by Mr Rogachev. Second, it was no part of the substance of these arrangements that the money would, after the underbids, somehow be Mr Goryainov's to do with what he wished. Third, Mr Rogachev's own evidence was really on the premise that, unless the money was somehow taken out of Rontek for Mr Goryainov's own benefit, this was a loss of the joint venture. In that regard, he told me when asked about this money, "*Where did this money go from Rontek? This is our main question … I repeatedly requested a report confirming where this amount of money went to from Rontek and because it was not received, we have all basis to assume that this amount was stolen*".

54. Finally, before coming to the question of capital expenditure, there was a dispute about a series of relatively small payments appearing in the Register and listed in Appendix 6 to the skeleton argument for Mr Goryainov. These were accompanied by relatively detailed descriptions in the Register which pointed to the expenditure being for the fitting out of offices. The case for Mr Goryainov was that these items represented expenditure on new offices of M1 and so were for joint venture purposes. It was pointed out for Mr Rogachev that Mr Goryainov's Gremm Group occupied offices in the same building so that this expenditure was, or may have been, for Mr Goryainov's benefit instead. In my judgment, had that been the case, it is unlikely Mr Sinitsyn (who could be expected to be familiar with the offices of M1) would have accepted them for the purposes of the

Register. I therefore find these were indeed payments for the benefit of the joint venture.

55. I turn now to capital expenditure and start with the dispute as to Mr Rogachev's capital expenditure. His case as to what had been spent on capital expenditure relied on a document referred to as the register of fixed assets. This was a table with 1610 rows, the first 666 of which were said to show sums paid by way of bank transfer representing capital expenditure, with all the subsequent rows showing cash capital expenditure.

56. Mr Knyazev, by his reports and the joint statement, allowed as capital expenditure all the sums entered in the register of fixed assets. That included, for cash items, according to Mr McGrath in closing, around US$3.15m.

57. As I understood it, FRG considered this register unreliable and rejected all entries showing cash expenditure. Only entries supported by bank statements should be allowed. That was reflected in Mr Goryainov's case as set out in the skeleton argument for trial: "*C should only be given credit for CapEX-relevant bank transactions*". However, I thought it unlikely that, in this business environment, there was in fact no cash capital expenditure. After all, cash was undoubtedly spent on acquisition costs and operating expenditure. Mr Nefediev, called as a forensic accounting expert by Mr Goryainov, agreed in cross examination that cash payments on capital expenditure were "*commonplace*".

58. My assessment is that cash was spent on capital expenditure, but that the register of fixed assets is not a good guide to how much.

59. The register is not the product of automatically extracting the accounting data entered in accounts 50 and 51 and the cash registers. It seemed to be a document created by human decision from that material. Most obviously, the description of an item appearing in account 50/the cash registers (being the records of cash transactions), and which would have been entered at around the time of the relevant expenditure, often did not make it into the register. A different description has instead been used. The particular examples focussed on at trial were entries in account 50/the cash registers with the description "*payment of dividends*" which had been given different descriptions in the register.

60. I consider that the best guide to what cash was in fact spent on capital expenditure would be to take any items appearing in account 50/the cash registers whose description points to them being capital expenditure. Those descriptions were given at or near the time the expenditure was incurred and, according to the evidence of FRG, there is a corresponding cash slip for each of them. While those slips lack some of the formality FRG required, there was no suggestion they were created for the purposes of this litigation. Their sheer number – I was told there are thousands of them – points to them being a contemporary record of sorts which supports the entries in account 50/the cash registers.

61. Mr Akkouh offered for FRG to carry out that item-by-item exercise (or to the extent it has already been done, at least report on the results) following closing submissions in order for me to have regard to the results when preparing judgment. But I indicated that, if my judgment was that such an exercise was the answer to this issue, fairness required that Mr Rogachev's side and expert be given the opportunity to take part in or comment on it. I therefore invite counsel

to agree that process. If the agreed process results in any disagreement as to cash capital expenditure, including because of any ambiguity in the descriptions of items, such can be resolved as part of the consequential hearing.

62. I emphasise that I am not permitting a rerun of the trial on this issue, during which Mr Rogachev relied on the descriptions in the register of fixed assets and where it was later suggested (on instructions, but without evidence) that some of the descriptions in account 50/the cash registers did not correspond to the true purpose of the expenditure. The exercise will be one of looking at the contemporaneous descriptions in account 50/the cash registers and taking them at face value.

63. Turning to the capital expenditure of Mr Goryainov, this was taken by FRG from a spreadsheet extracted from the accounting records, but without the element of human decision present in Mr Rogachev's register of fixed assets. This extraction was an automatic one. Further, FRG conducted a sampling exercise so as to test the entries in the spreadsheet against underlying documents. Mr Knyazev did not conduct a like test or tackle the suggested expenditure item-by-item at all. Instead, he suggested a different conclusion by criticising FRG's sampling approach and getting his figures for capital expenditure on V177 and U26 from elsewhere. For V177, instead of the RUB 325m appearing in the accounts and underlying renovation contract documents, he substituted the sum of RUB 100m provided as compensation to be paid by Lenta under its lease of V177. For U26, he substituted, for the sums appearing in the accounting records, an estimated annual depreciation charge.

64. I have reached the clear conclusion that the sum spent by Mr Goryainov on capital expenditure is that arrived at by FRG.

65. As to Mr Knyazev's criticism of the sampling approach, this criticism was, in my judgment, unjustified. He said it was judgmental sampling and that meant no conclusion could be drawn in relation to the wider population. But judgmental sampling, meaning a process in which the expert makes decisions on the selection of samples, is an entirely legitimate one. As was seen from an International Standard on Auditing document dealing with sampling which I was taken to. And the very point of sampling is to draw some conclusions about the wider population; another point reflected in the International Standard on Auditing document.

66. On V177, the figure of RUB 100m in the Lenta lease is plainly not, in my judgment, to be preferred over the figure of RUB 325m in the accounting records and the underlying contract documents as showing what was in fact spent on works to V177.

67. The figure in the Lenta lease can be expected to represent a commercial bargain as to the sum payable on termination rather than a precise assessment as to the sum in fact spent by way of capital expenditure. That is underlined by the figure being a round one, RUB 100m, and being the same figure as, under the same lease, is payable to Lenta by the lessor in the event termination is the fault of the lessor. Further, that commercial bargain can be expected to be made in the light not of the total capital expenditure on the site by the lessor, but rather the expenditure on items which were specific to Lenta or which the lessor would not otherwise retain any or much benefit from on termination. In short, the figure in

the Lenta lease cannot be expected to give much guidance at all on the actual overall capital expenditure.

68. By contrast, the detailed accounting records, supported by contract documents, should give that actual expenditure. I am satisfied that they do so here. Mr McGrath sought to cast doubt on those documents, including by highlighting the absence of any variations to the contract price and the lack of interim acts of acceptance. But the contract refers to the works in great detail, and was with a third party nominated by Lenta, namely Norma. Mr Nefediev, who I consider acted with care and independence, was plainly untroubled with the features emphasised by Mr McGrath. Further, while Mr Knyazev said that construction contracts can be a means of taking cash out of a project, he also made clear he was not suggesting that for this contract. There is also the point that a great deal of work appears to have been done. The condition of V177 in 2016 looks, from the available photographs, to be near derelict. Yet further, there are other documents referring to works under the contract which have been disclosed and examined by FRG. Finally, Mr Knyazev was unable to help with the value and volume of work in fact done. He told me on more than one occasion that that was outside his expertise, and would be for a surveyor or engineer.

69. On U26, I consider there is no need to resort to annual depreciation charges as a proxy for actual capital expenditure. There are detailed accounting records of such expenditure which have not been shown to be unreliable. And, again, there is the point that a great deal of work has been done. The photographs of U26 show a transformation of this site over the years, including a new façade, balconies, and a mezzanine trading floor; all of which have contributed to this now being, as Mr

Knyazev himself told me, one of Moscow's major attractions. Mr McGrath sought to undermine the stated expenditure in the case of U26 by focussing on two underlying documents. One was a loan agreement between Mr Goryainov's mother and Happiness 2020 LLC. The other was a notarised statement of a Mr Marchenko detailing sums he had received as a contractor. But they do not undermine the accounting records in the sense of being inconsistent with them. On the contrary, they are documents giving further support for such expenditure. As to the loan agreement, this case is replete with examples of technical loans. Given the accounting records, I find this is another. It is also to be noted that there has indeed been a Happiness restaurant created in U26. Mr Nefediev has visited it. As to the statement of Mr Marchenko, these were cash transactions and it is inherently unlikely a contractor would say in a formal document that he received very significant sums if he did not. While other examples of capital expenditure which were said to lack supporting documents were cited by Mr McGrath in closing, I give these little weight given they were not raised in cross-examination.

70. The skeleton argument for Mr Rogachev invited the court to disallow apparent capital expenditure on the basis that "*D's spending was so misguided that it defies categorisation as JV expenditure*". I struggled with this as a matter of legal analysis given that my task was to determine what was in fact spent and that no issue as to the reasonableness of expenditure had been identified for determination. I raised my puzzlement with Mr McGrath in opening and closing. From his answers, I do not understand any further argument to be being made in addition to those I have already dealt with above.

71. There is, though, one further point to decide in relation to capital expenditure. It is whether a cost of borrowing incurred by Mr Goryainov, namely loan interest, to raise funds for capital expenditure, can itself be counted as part of the capital expenditure. This was not an easy question. Again, it was treated as not being a matter of legal analysis, but something of an open question for me to decide. I have decided that the loan interest should form part of Mr Goryainov's capital expenditure for the purposes of this account. As I understood the expert evidence for Mr Rogachev, it was that such loan interest would normally itself be allowable as capital expenditure; Mr Knyazev agreeing that in cross-examination. That being so, I consider the question becomes whether there was any agreement to exclude it here. There was no such agreement. The highest it was put for Mr Rogachev was that the original business plan for the joint venture was to launch several markets before seeking bank financing. But that did not, as I see it, amount to an agreement that any costs of borrowing in fact incurred were to be excluded. Further, the original business plan was no longer in point at the time the relevant costs of borrowing were incurred. This was after the joint venture had come to an end and the two men were running their separate markets while negotiating a balancing payment.

What has each party taken out?

72. I turn to the second main question: what has each party taken out? The way the parties have approached this question includes treating as drawings the profits made at each of the markets, with each party regarded as having benefited to the extent of the profits made during the period the market was in the relevant party's control.

73. A key element in determining profit is, of course, revenue. There was a significant dispute as to the revenue from Mr Rogachev's markets, being K24, K25 and LB30. I start with that issue.

74. One might expect it to be possible to calculate revenue by totting up the sums received as shown in the accounting records for Mr Rogachev's markets. Those accounting records included both an account for bank transfers, account 51, and an account for cash, account 50. However, my assessment on the evidence is that that simple exercise does not reveal the true revenue at these markets. One, rent rolls are important documents for running a market. They show the expected income unit-by-unit month-by-month. And are adjusted monthly so as to track actual income closely. Rent rolls have been disclosed for Mr Rogachev's markets only for 2016 and 2017. That is despite Mr Rogachev telling me that rent rolls were produced for the entire period to 2023. He even said that they definitely have them. Mr Nefediev of FRG conducted the exercise of comparing the 2017 rent rolls with the revenue as shown in the accounting records. That exercise showed a very significant divergence. The income which the rent rolls would lead one to expect to find was far greater than actually appeared in the accounting records. The rent rolls pointed to around 50 percent more income for each of the three markets. The most likely explanation for that and the failure to disclose later rent rolls (or equivalent documents) is, and I find, that much of the income has been undeclared cash. Two, there was an acknowledgment in the evidence of Mr Rogachev's own expert, Mr Knyazev, that some of the income at these markets was unrecorded cash. He said, "*In the ideal world, all transactions should be recorded in the official accounting system. We are not in ideal world in this matter, unfortunately*". Three, only one tenant register showing rental rates was

disclosed for Mr Rogachev. That too showed a divergence from recorded income, albeit a lesser divergence at around 9 percent.

75. Faced with this situation, FRG has used market rates, arrived at by adjusting comparables, as a proxy for actual revenue. It is right to acknowledge that is an exercise which carries with it a degree of uncertainty. There is room for a range of opinion as to the market rates for these sites, given the adjustments which need to be made from comparables; particularly as this is not an easy comparable exercise, as I established with Ms Maydanik, the expert valuer called by Mr Goryainov. Further, it is impossible to say quite how closely the actual income matches the product of FRG's endeavour.

76. But, in my judgment, that endeavour does provide the best guide to the actual revenue. One, the recorded income figures are unreliable as already explained. Two, there are insufficient rent rolls or tenant registers to arrive at a proper assessment of actual income using those as a guide. As already noted, rent rolls have only been disclosed for a small part of the period, and only one tenant register is available; that relating to one part only of one of the markets. Three, there was an acceptance by Mr Knyazev that where accounting records are unreliable, a comparables analysis is a sensible approach. Four, the uncertainty in the comparables approach can be overstated. Valuers are used to adjusting between properties, and are likely to arrive at somewhat similar, not wildly different, conclusions. Five, reflecting that last point, Mr Knyazev made only a few criticisms of FRG's carrying out of the exercise. Those were as to gross leasable area, use of a vacancy rate, and a seasonal adjustment. Further, those areas of disagreement have largely disappeared. Insofar as there was any

remaining dispute about the seasonal adjustment, given FRG's careful approach overall it is my judgment that their treatment of this factor is to be preferred. Six, having heard from Ms Maydanik, it became clear to me that the approach in this case has been a careful one undertaken by a very experienced and impressive valuer. She is based in Moscow, has very significant experience of valuation in Moscow, much of it concerned with real estate, and some of it in retail and for the purposes of transactions or planned transactions. Her opinions in this case were plainly anchored in the property market. And she was able to defend her assessments under the well-aimed fire of Mr McGrath. Seven, the product of her work is largely within the range of divergence revealed by the few relevant documents we do have. In that regard, her use of market rates as a proxy for actual income produced a divergence often of around twenty, thirty or forty-something percent between actual income and what is declared in the accounts for Mr Rogachev's markets. It will be remembered that the limited rent rolls available and the sole disclosed tenant register together pointed to a divergence of between 9 and around 50 percent.

77. FRG's exercise involved taking rates from 2023 and then backdating those to give rates for earlier years using the consumer price index. While I wondered about whether that was the appropriate index, no criticism of its use was made by Mr Knyazev and so there is no real reason in the end to doubt it.

78. The experts' assessments of the revenue from Mr Goryainov's markets, being V177 and U26, gave rise to two areas of disagreement.

79. First, while Mr Knyazev made a deduction for depreciation costs in relation to both markets, FRG did not. It is my judgment that a deduction should not be made

for depreciation costs. In the accounting exercise, allowance has been made, as already described, for ongoing capital expenditure. To allow a deduction for depreciation seems to me likely to result in double counting the costs of renewal. And that such a deduction does lead to double counting was the view of FRG which makes sense and I accept (see FRG's second report at [4.10]). Further, as I prefer FRG's model overall, which is a cash basis model, what I understood to be the foundation for Mr Knyazev's treatment of depreciation, namely his use of an accruals model, falls away.

80. Second, in arriving at the net revenue for V177, FRG removed from deductible operating expenses the costs of valuations carried out in the summer of 2016. In my judgment, they are right to do so. These are not, on the evidence, operating expenses. The explanation of Mr Bukin, given at [127] and [129] of his witness statement, of these valuations makes clear that they were commissioned not for the purposes of running V177 but as part of the negotiations between Mr Goryainov and Mr Rogachev for the termination of the joint venture.

81. The other side of the profitability coin is operating expenses.

82. A major dispute within that topic for Mr Rogachev's markets was items in the accounting records labelled "*settlement of issues and claims*". These amounted to around US$3.1m and were discounted entirely by FRG. These were sums which, as Mr Knyazev put it, needed to be paid to get things done. Mr Nefediev called such payments, a little euphemistically, "*facilitation payments*". My impression is that both experts were in truth referring to bribes.

83. I have decided that a sum reflecting these items is to be allowed, but not at the level claimed. As to allowing a sum, Mr Nefediev's evidence did not entirely

disagree with Mr Knyazev's in that it included saying that such payments are made from time to time. But the level claimed for these items relied on a startling increase in such payments after 2015. In that regard, whereas the figure for 2015 was US$55,000-odd, by 2022 it had risen nearly ten times to over US$540,000. I am not convinced that stated increase reflects a real rise in these payments. First, no reason was offered in evidence for such an increase. Second, Mr Nefediev (whose evidence I regarded as generally reliable) emphasised that facilitation payments tended to be rather limited in the context of commercial real estate. Third, their level here gives rise to an alternative explanation, as Mr Nefediev said. The items could be used for taking money out of the business. Doing the best I can on the evidence, I have decided to allow a sum which reflects, for other years, the 2015 rate of such payments, being say US$55,000. While Mr Akkouh, seeking a lower figure (were I to allow anything under this head of expense), pointed out that more than just three markets were then being managed by M1, the figures do speak of some rise which might counteract a reduction in the number of markets. And this is no exact science. It is a necessarily broad-brush exercise, and one involving (in the context of this litigation) relatively modest sums.

84. Another area of dispute in relation to Mr Rogachev's markets was management costs. Mr Knyazev's approach was to take the apparent actual management costs. FRG's was to substitute the market benchmark for such costs, being 5 percent of revenue. It is my judgment that FRG's approach on this is to be preferred. Having listened carefully to the evidence, I have arrived at the view that the stated management costs for Mr Rogachev's markets did not match the likely actual costs so that, as with revenue, it was best to use a proxy to arrive at the likely

actual expenditure. Six factors led to my distrust of the stated figures. First, the sheer scale of the management costs. They were in the region of 20 to 30 percent of revenue. Second, that scale was particularly improbable in circumstances where there was a cull of M1 staff from 2015. Mr Rogachev's estimate, given in his oral evidence, was that 30 percent of the staff were cut. Third, the level of payments for staff appearing in the accounting ledger could not be tallied with the payroll spreadsheet in the trial bundle. Fourth, it became plain from answers to Mr Akkouh's skilful cross-examination that M1 employees were working on business other than K24, K25 and LB30. For example, Mr Sinitsyn referred to working on Verny supermarket projects. And Mr Rogachev did not deny the staff worked on Verny business; instead saying they were free to choose. Fifth, the amounts actually being billed by M1 in respect of those markets, as revealed by M1's sales figures, were very much lower than the claimed management costs. Mr Knyazev's spreadsheet for M1's figures showed sales reducing very significantly after 2015. Sixth, as with the "*settlement of issues and claims*" items, the sheer level gives rise to a further alternative explanation, as Mr Nefediev again told me. This is another technique sometimes used for taking money out of the business.

85. FRG very fairly applied the same proxy to arrive at the actual management costs for Mr Goryainov's markets, and I did not understand Mr McGrath to be pressing for any different approach on those markets (in the event the proxy was applied to Mr Rogachev's markets). In my judgment, profits and therefore drawings are to be assessed on the basis of management costs at a level of 5 percent of revenue.

86. FRG, by their first report, excluded other costs amounting to US$350,000 from the apparent operating expenditure for K24 and LB30. These exclusions were challenged by Mr Knyazev, and in closing submissions by Mr McGrath, but as I understood it from Mr Akkouh's closing submissions these exclusions were not anyway maintained by FRG in their second report.

87. There were substantial disputes as to the operating expenditure in relation to both V177 and U26. I have found it convenient to deal with those disputes under the third main question, being valuation.

88. Before turning to that third question, and finally in relation to the profits from the markets, there is an issue of control to resolve. Mr Goryainov's case is that V177 (from March 2015 when it was brought into the joint venture) and U26 (from purchase in June 2015) were in the control of Mr Rogachev up to November 2015 so that any profits from these markets in that period should be treated as being his. It was not clear to me that this was an issue which had much, if any, value for Mr Goryainov given that V177 was, as I understood it, loss-making for at least a significant part of the period. I should, however, decide it. My assessment is that these markets were in shared control, rather than the control of Mr Rogachev, during this period. The way this issue was approached in the factual evidence was to focus on the extent to which Mr Goryainov was involved in M1's management of the markets. My clear impression from the documents put to Mr Goryainov and his oral evidence was that he was not excluded from management in this period as suggested. Instead, he was persuaded or convinced by Mr Rogachev to agree to various courses decided upon together, attending many of the meetings. Any lack of involvement was down to him preferring to get on with the work of

the joint venture which was within his area of expertise and interest, and a wish not to be bothered by all of the numerous meetings and details focussed on by Mr Rogachev; Mr Goryainov describing meeting minutes as the main product of M1. Any losses or profits from these markets should therefore be shared equally.

89. I move to the third and final main question, namely the values of the sites retained by the two joint venturers.

What are the values of the sites?

90. The task is to determine the value of each of the sites as at the agreed valuation date of 30 June 2023. There is no dispute as to the broad method of carrying out that task. Both Ms Maydanik of FRG and Mr Knyazev adopted the income method, which involves arriving at a capital value by first assessing the net income generated by the sites.

91. But I consider it is important to bear in mind that the exercise is one ultimately of arriving at an open market value, being the sum that a willing purchaser would pay to a willing vendor as at the valuation date (that description reflecting the language of the international valuation standards adopted by both valuation experts). This means that disagreement between the experts as to how to treat some factors should be resolved by reference to what might be expected in the market, and that the expert's experience of the market may confer an advantage in assessing value.

92. It is also necessary to keep in view the fact that the sites are not all of the same nature. In that regard, U26 is in the nature of a food hall; with some food sold for consumption on site and with some being taken away. V177 is a shopping centre

with Lenta occupying a very significant area of it as an anchor tenant. K24, K25 and LB30 are farmers' markets.

93. As to the information available in the market for the purposes of valuation, both sides proceeded, in response to questions from me, on the basis that all the information available to the court at trial would also be available in the market.

94. The first difference between the experts, and one which applies across the sites, is currency. Mr Knyazev carries out his valuation process in US dollars. FRG have instead used rubles. One may not expect any difference to result. But, in practice, it seems it does, or at least may. It is therefore necessary to determine which approach is to be preferred. The answer to this issue is, I consider, clear on the expert evidence. The valuation exercise should be carried out in rubles. That answer flows from the market. Ms Maydanik told me, and I accept (given her obvious expertise and having no reason to doubt what she said on this) that the market has been a ruble market for at least the last decade. Such properties are therefore bought and sold in rubles, not US dollars. The right valuation approach is therefore in my judgment to use rubles. That follows the market reality.

95. Having dealt with that general point, I turn to consider each of the sites in turn, and start with U26.

96. U26 is one of the markets to be retained by Mr Goryainov. There is a very significant difference between the experts as to the value of U26. FRG for Mr Goryainov give an opinion that it is worth US$16.96m. Mr Knyazev for Mr Rogachev puts its worth at US$29.09m. Two principal factors account for the difference, namely the valuation inputs for operating expenditure and for management costs.

97. As to operating expenditure, FRG's approach is to deduct the operating expenditure actually incurred according to the accounts for U26 in arriving at the net income which is then used to get to capital value. Mr Knyazev instead discounts the figure for operating expenditure heavily to arrive at the net income for U26. He explained this discount as an adjustment adopted to bring the EBITDA margin for U26 to the level which represents the average for the other sites in issue, namely V177, K24, K25 and LB30.

98. In my judgment, the approach of FRG to this factor is to be preferred.

99. First, the adjustment of Mr Knyazev fails properly to recognise all the supporting material for the operating expenditure said actually to have been incurred. There is a very detailed breakdown, extracted from the accounts, of operating expenditure including that spent on cleaning, maintenance, and marketing. And FRG tested that breakdown, by sample, against underlying primary documents.

100. Second, the adjustment of Mr Knyazev ignores the obvious difference in the nature of U26, as compared with the other sites. U26 is a food hall, indeed a "*prime concept food hall*" as Mr Knyazev described it at one point in his oral evidence, and one which has become, again as Mr Knyazev told me, one of Moscow's leading attractions. Ms Maydanik knew this retail site well, and liked it. She told me not many could afford the prices there. While the cleaning and marketing expenditure is very much higher than at other sites, that is precisely what one would expect given those points. A prime concept food hall would be likely to need almost constant cleaning. And multiple and frequent marketing events would be part of establishing the site as a major attraction.

101. Third, the EBITDA margin which results from the apparent actual operating expenditure is not such as to give rise to any real basis for doubting that expenditure. It is within the range established by the other sites. In cross-examination, Mr Knyazev accepted that the profitability of U26 was "*better than K24 and roughly on par and below LB30 and below K25*".

102. As to management costs, in arriving at net income, FRG deduct 5 percent of revenue to reflect expenditure on management costs. Mr Knyazev makes no deduction at all for such costs. I did not find his reasoning for that approach easy to follow. It seemed from his oral evidence to be that each buyer would consider its own approach to management, and management costs, so that to allow a particular cost would be to "*muddy the waters*". Mr McGrath summarised it this way in his closing submissions: "*Mr Knyazev excludes them on the basis that he considers the question of relevance of management costs to be a very buyer-dependent issue*".

103. It is clear to me that, again, FRG's approach is to be preferred.

104. As this is an exercise in arriving at an open market valuation, the key issue is what, if any, allowance for management costs would be made in the market. Ms Maydanik was clear that an allowance would be made. She told me all brokers would apply an allowance of 5 percent for management costs, given virtually all buyers would. Her evidence on this, reflecting her evidence overall, was rooted in the market, and so I accept it. It is supported by the obvious consideration that some cost of managing the site can be expected, whether a buyer engages an external managing agent or runs the market themselves. Mr Knyazev's evidence was not generally rooted in the Moscow property market, reflecting his different

experience, the focus of which was forensic accounting and giving expert evidence. His CV highlighted that expertise in relation to worldwide markets and a variety of industries. Further, he was not sufficiently open-minded. This particular point seemed to me a good illustration of those things. His explanation for his approach showed rather a lack of feel for the Moscow commercial real estate market and also lacked the appropriate readiness to see the significance of the points put to him by Mr Akkouh.

105. This point, and indeed the next three, apply to all the markets. My conclusions on them therefore apply equally to each of the sites. An allowance of 5 percent of revenue should, accordingly, be made for management costs in calculating the net income from which the capital value is then derived.

106. To arrive at the capital value once income has been assessed, FRG used capitalisation rates harvested from four reputable sources specific to Moscow real estate, namely Knight Frank, Jones Lang Lasalle, Colliers, and Cushman & Wakefield. I see no reason for any different approach to be adopted. Mr Knyazev said in cross-examination that there was nothing wrong with this methodology. And his own different approach, being based in US dollars, involved choices as to exchange rates as well as the use of a US dollar inflation rate. My conclusion as to the appropriate currency in which the valuation exercise should be carried out, being rubles, points firmly against Mr Knyazev's approach.

107. There were disputes as to precisely how to tackle tax on income as well as VAT if the approach of Mr Knyazev was the right one. As I have determined that that is not the approach to be followed, rather the approach of FRG is to be adopted,

these issues do not, as I understand it, arise. That is, in part, because tax forms part of the capitalisation rate.

108. Another adjustment was made by FRG in arriving at the value of the markets to both sides, namely a discount for selling costs. As spelled out for me in closing by Mr Akkouh, this represented an assessment of the cost that would be incurred by Mr Rogachev or Mr Goryainov on a later resale of a site. Deducting it would therefore give a final figure which represented what Mr Rogachev or Mr Goryainov would in fact end up with on realising the asset. It was not obvious to me how this fitted with an open market valuation, but it was not suggested for Mr Rogachev that this was wrong in principle. That reflected Mr Knyazev's own evidence which is that some selling costs should be factored in to arrive at the true value of the markets. Further, and in the end, there was little dispute as to the appropriate rate. FRG applied a rate of 2.5 percent of projected future value (the result then being adjusted to give its very much reduced accelerated effect as at the valuation date of 30 June 2023). Mr Knyazev said in cross examination that it could be lower or higher than this. On all that evidence, I consider 2.5 percent is the right rate.

109. Both FRG and Mr Knyazev made a deduction from what would otherwise be the value of each of the sites to reflect a buyer's budget for renewal. And both used a rate of 1 percent. My understanding of the difference between them on this issue was that it concerned the sum to which that rate was to be applied. FRG applied it to revenue. Mr Knyazev applied it to acquisition and capital expenditure costs. This is another question where it seems to me the answer lies in how a buyer in the market would be likely to act. Ms Maydanik described taking 1 percent of

revenue as industry practice. Given that evidence, and her experience of the market, it is my judgment that it is 1 percent of revenue which should be used to reflect the budget for renewal in arriving at the value of each of the sites.

110. In relation to U26, Mr Knyazev cross-checked his valuation by reference to a sale transaction from 2020 involving Centralniy market. But I was not helped by this. It was clear that significant adjustments would need to be made in order to compare this transaction with a hypothetical sale of U26 (including as to location and date of transaction), but Mr Knyazev made no adjustments.

111. Turning to V177, being the other site to be retained by Mr Goryainov, there was again a substantial difference between the opinions of the experts as to value. FRG put the value of this site at US$3.12m. Mr Knyazev's view was that it was worth US$12.5m. The principal factor in that difference was whether the site was to be valued with the anchor tenant Lenta in place (as FRG said), or (as Mr Knyazev said) without Lenta. Mr Knyazev accepted his treatment of this factor had a profound effect on his valuation. His reasons for ignoring the presence of Lenta appeared from his oral evidence to be twofold: that the best use of the site was without Lenta; and that the letting to Lenta was not by agreement of the two joint venturers. As to that second point, he told me in his oral evidence, "*I look at Lenta as being something not agreed, not appropriate in the concept of the joint venture arrangements and this is the way how I value it*", and later, "*I didn't consider that Lenta is something agreed between the parties*".

112. Neither reason seems to me a warrant for ignoring the reality of the letting to Lenta. A valuation should reflect the reality unless there is an agreed disregard. No one suggested there was an agreement to disregard the letting to Lenta. FRG's

approach does reflect the reality and so, in my judgment, is to be preferred. That FRG's approach is also the right way to reflect that reality is supported by the following features of the evidence.

113. First, Ms Maydanik's clear evidence in answer to a question of mine was that a buyer would not pay a price reflecting some uplift for the possibility of getting Lenta out or raising its rent. On the contrary, a buyer might pay a premium to keep Lenta. Her experience of the property market, and her intimate knowledge of V177 (her parents live two minutes away she told me), made that evidence persuasive. And, as was characteristic of her evidence, it was well-reasoned. She pointed to the high occupancy rates at V177, being 98 percent, as showing that Lenta was an effective anchor tenant. Further, Mr Knyazev accepted in cross examination that Lenta was a big brand, going on to tell me, "*it's a very recognisable and known brand*", and agreeing that it would attract customers to the site.

114. Second, Ms Knyazev's position not only failed properly to have regard to the effectiveness of Lenta as an anchor tenant, it failed to address three other obviously significant factors. One, the obstacles to removing Lenta. Mr Knyazev agreed he did not know whether Lenta's lease could be terminated as a matter of law, and that he had not taken into account the sums for which a buyer would be liable if Lenta's lease were terminated. In that regard, the lease runs until 2030 and contains provisions for payment to Lenta on early termination (if due to the fault of the lessor) of RUB 140m. Two, whether tenants could be found for the space currently occupied by Lenta. Mr Knyazev told me instead he had assumed the space would be occupied by other tenants. But that assumption is not a safe

one. The space occupied by Lenta is large, being some 8100 sq m. Only the balance of the site, being 1500 sq m is currently occupied by other tenants, and even that requires 50 such tenants. Three, the costs of transforming and running what would be a very different site. The space occupied by Lenta would need to be converted. And then a market run from that space, probably involving managing hundreds of tenants. Mr Knyazev accepted he had not allowed for such costs, though added that he could do so.

115. Mr McGrath rightly posed the question as to how a site, on Mr Goryainov's case, purchased for US$22m, in a near derelict condition, and which has been transformed by very significant capital expenditure into a well-run shopping centre, can now be worth just US$3.12m. It is not, however in the end, a question which causes me to doubt the expert evidence of FRG. One, even the opinion of Mr Knyazev, which wrongly ignores Lenta, puts the value of V177 very much lower than its costs of acquisition and renovation. Two, Ms Maydanik had, as ever, a well-reasoned response to the question. The decrease in value was far from unexplained. It was to be accounted for by two factors, namely the weakened ruble, and a weakened property market. As to the weakened ruble, that was reflected in Mr Bukin's oral evidence. He dated the currency problems back to 2014, citing what he called the Crimea incident and the resulting sanctions against Russia. That there had been a structural change in retailing affecting at least this part of the property market also found support in other evidence. Mr Rogachev, whose business is retail, accepted that there had been a decline in the success of hypermarkets, with a corresponding rise in online retail and convenience stores; V177 having been purchased at the height of the preceding hypermarket boom. The trial bundle included a letter from Lenta dated 9 November 2021 (18 months

or so after Lenta had taken the lease dated 29 May 2020) setting out the difficulties faced by large trading formats and stating that without "*urgent drastic measures to reduce the rent*" its hypermarket was "*not economically feasible*".

116. Nor does Mr Knyazev's cross-check on value using Moskvoretskiy market cause me to doubt FRG's evidence as to the value of V177. Mr Knyazev checked his valuation of V177 by referring to a sale of this market, being a farmers' market with food court in a different part of Moscow, in 2020 or 2021. But this cross-check was not a proper comparable exercise. The exercise ignored, again, the occupation of Lenta at V177; a factor which means the other market is not at all comparable. And, as with the cross-check in relation to U26, no adjustments were made for date of transaction and location.

117. It remains to consider the value of the markets to be retained by Mr Rogachev. These are K24, K25 and LB30. It will be remembered that these are farmers' markets. As I understood the evidence and submissions, no further issues now arise for decision in order for the value of these markets to be arrived at by the experts. The principal factors affecting valuation for these markets are whether to use market revenue rates as a proxy for actual income, and whether a deduction is to be made for management costs. Those issues, and the more minor ones affecting value, have already been determined above.

Consequential hearing

118. As already noted, there will be a consequential hearing to resolve any disputes about the final balancing payment which remain once the parties have sought to agree that payment in light of the decisions in this judgment.

119. I make clear that hearing will be the occasion to address two issues not so far decided (as pointed out for Mr Goryainov in response to a draft of this judgment) and which received little attention in submissions at trial, unless those are agreed. One, the treatment of two minor payments totalling around US$38,000 appearing in the Register and not within the sums dealt with in paragraph 54 above. Two, the extent, if any, to which the register of fixed assets involves double-counting of expenditure supported by bank statements on the basis that some of it is operating, rather than capital, expenditure. In that regard, at paragraphs 57-62 above I have decided the approach to be taken to Mr Rogachev's claimed cash capital expenditure but, otherwise, simply noted FRG's position that only entries supported by bank statements should be allowed, without yet deciding whether those supported entries involve any double-counting.