Neutral Citation Number: [2019] EWHC 645 (Comm)

Case No: CL-2018-000498

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
COMMERCIAL COURT (QBD)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/03/2019

Before :

THE HONOURABLE MRS JUSTICE CARR

- -

Between :

Alexander Tugushev

Claimant

- and -

(1) Vitaly Orlov
(2) Magnus Roth
(3) Andrey Petrik

Defendants

- -
- -

Ms Helen Davies QC, Mr Richard Slade QC and Mr Richard Blakeley (instructed by **Peters & Peters LLP**) for the **Claimant**
Mr Christopher Pymont QC, Mr George Hayman QC, Mr Benjamin John and Mr James Kinman (instructed by **Macfarlanes LLP**) for the **First Defendant**

Hearing dates: 29, 30, 31 January and 6 February 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 CARR

Mrs Justice Carr :

Outline of Contents

This judgment is structured as follows:

A. Introduction

1. This litigation involves a bitter and high-profile battle between two Russian businessmen, the Claimant, Alexander Tugushev ("Mr Tugushev"), and the First Defendant, Vitaly Orlov ("Mr Orlov"), alongside two of Mr Orlov's associates, the Second and Third Defendants, Magnus Roth ("Mr Roth") and Andrei Petrik ("Mr Petrik") respectively, in relation to the Norebo Group.

2. The Norebo Group is a corporate group which operates an international fishing business largely under Russian state fishing quotas. It harvests, processes and distributes around 400,000 metric tonnes of fish every year and is worth an estimated US$1.5 billion. It includes the group of companies currently owned and controlled by JSC Norebo Holding ("Norebo Holding"), a Russian company, together with the group of companies currently owned and controlled by Three Towns Capital Limited ("TTC"), a Hong Kong company.

3. Mr Tugushev claims that he co-founded the Norebo Group with Mr Orlov and Mr Roth and, under a Joint Venture Agreement made orally in 1997 ("the JVA") and put into writing in 1998 ("the 1998 Agreement"), is the owner of a one-third interest accordingly. He contends that he has been the victim of a complex and sophisticated conspiracy by Mr Orlov and Mr Roth to misappropriate and/or deny the existence of his interest in the Norebo Group ("the Norebo Group conspiracy claim"). He has also been the victim of the misappropriation of his direct shareholding in CJSC Almor Atlantika ("AA"), a Russian company, as a result of a conspiracy between Mr Orlov, Mr Roth and Mr Petrik ("the AA conspiracy claim"). He brings claims in contract and conspiracy for damages, declaratory relief and an account. His claims are valued in excess of US$350 million.

4. Mr Tugushev alleges very serious dishonest conduct by Mr Orlov, including the orchestration of false proceedings in Russia designed to shut out any claims by Mr Tugushev in England, the use of forged powers of attorney and other forged documents, including statements purportedly from Mr Tugushev. The features relied on by Mr Tugushev bear the hallmarks of the well-known practice of "corporate raiding" in Russia.

5. Mr Orlov strenuously denies any wrongdoing. Mr Tugushev has contrived "tortured" claims in conspiracy so as to gain advantages in terms of English jurisdiction and concomitant interim freezing relief. They represent a "naked attempt" to squeeze claims which have nothing to do with the jurisdiction through the gateways in CPR Practice Direction 6B ("the Practice Direction"). Whilst Mr Tugushev did once have a share in AA, a company which subsequently became a comparatively small part of the Norebo Group, he relinquished that share in 2003 to embark on a misjudged and short-lived career as a corrupt government official (as the Deputy Chairman of the Russian State Committee for Fisheries), a position he lost in 2004 following his arrest, conviction and incarceration for fraud. Since his release from prison, Mr Tugushev has attempted to re-establish for himself a role and economic interest in what Mr Orlov and Mr Roth have built independently into a very substantial business. Having failed in this attempt through legitimate means, Mr Tugushev has now resorted to extortion in the form of these proceedings, together with co-ordinated criminal proceedings in Russia commenced at the same time. This is "corporate raiding" on the part of Mr Tugushev.

6. On 23 July 2018 Mr Tugushev applied without notice for worldwide freezing relief against Mr Orlov in the sum of US$350million and for permission to serve out of the jurisdiction on Mr Orlov. Bryan J granted both applications, making a worldwide freezing order ("the WFO"), which Mr Tugushev seeks to continue.

7. Mr Orlov now challenges both the orders made by Bryan J ("the jurisdiction challenge"; "the WFO challenge"). As for the jurisdiction challenge, Mr Orlov contends that he is not domiciled in England, but instead lives and works in Russia. Further, this is an almost entirely Russian dispute, between Russians, relating to the ownership and operation of Russian companies in Russia, governed by Russian law and under concurrent investigation by the Russian authorities. The dispute should be resolved in the Russian courts which are the most suitable forum. There is no proper basis for inferring that any alleged conspiracy was "hatched" in London. Mr Orlov is not a necessary or proper party to a claim against Mr Petrik which does not contain a real issue which it is reasonable for the English court to try. As for the WFO challenge, in addition to a lack of jurisdiction, Mr Orlov contends that Mr Tugushev cannot demonstrate any sufficient risk of dissipation in relation to Mr Orlov's assets. In any event, on both applications before Bryan J, Mr Tugushev breached his duties of full and frank disclosure and fair presentation such that the court should discharge both orders for this reason alone.

8. The applications have generated a depressingly vast amount of material. By way of example, on 18 January 2019 Mr Orlov served 19 witness statements and five further expert reports. The costs on the applications on each side already run into many millions of pounds. Mr Tugushev's costs of the applications up to the conclusion of the first three days of the hearing are estimated at £1.118million, Mr Orlov's at "in the region of £4million".

9. It is therefore necessary to remind oneself of the warnings in *Spiliada Maritime Corporation v Cansulex Ltd* [1987] AC 460 ("*The Spiliada"*) (at 465G – H) where Lord Templeman hoped that future submissions on the merits of trial in England and trial abroad would be measured "*in hours and not days*". The position is very far removed from that contemplated by Lord Neuberger in *VTB Capital v Nutriek International Corpn* [2013] UKSC 5; [2013] 2 AC 336:

> "82. The first point is that hearings concerning the issue of appropriate forum should not involve masses of documents, long witness statements, detailed analysis of the issues, and long argument. It is self-defeating if, in order to determine whether an action should proceed to trial in this jurisdiction, the parties prepare for and conduct a hearing which approaches the putative trial itself, in terms of effort, time and cost. There is also a real danger that, if the hearing is an expensive and time-consuming exercise, it will be used by a richer party to wear down a poorer party, or by a party with a weak case to prevent, or at least to discourage, a party with a strong case from enforcing its rights.
>
> 83. Quite apart from this, it is simply disproportionate for parties to incur costs, often running to hundreds of thousands of pounds each, and to spend many days in court, on such a

> hearing. The essentially relevant factors should, in the main at any rate, be capable of being identified relatively simply and, in many respects, un-controversially. There is little point in going into much detail: when determining such applications, the court can only form preliminary views on most of the relevant legal issues and cannot be anything like certain about which issues and what evidence will eventuate if the matter proceeds to trial."

10. As Flaux J said in *Erste Group Bank AG v JSC* "*VMZ RED OCTOBER*" [2013] EWHC 2926 (Comm) (at [11]) (*"Red October"*), although Lord Neuberger's deprecation of the proliferation of documentation was in the context of the determination of appropriate forum, his observations are obviously equally applicable to other aspects of jurisdictional challenges.

11. Perhaps as a result of the extent of the arguments raised and the mass of documentation produced, it was apparent at least by the end of the first day of the hearing that the three days allocated for the hearing of the applications would be insufficient. After discussion and with the parties' agreement, I proceeded to hear the jurisdiction challenge alone at this stage (with the exception of that part of Mr Orlov's jurisdiction challenge based on breaches of the duty of full and frank disclosure and fair presentation). That part of the jurisdiction challenge and the WFO challenge would fall to be considered (so far as relevant) at a further hearing in the event that Mr Orlov's jurisdiction challenge were otherwise to fail.

12. It has not proved necessary (nor, for the reasons set out above, do I consider it appropriate) for the purposes of this judgment to rehearse the full detail of the evidence or to address every one of the copious submissions (often legal), comments and innuendo contained in what should have been witness statements of fact and no more. This is not a case where the parties can be said to have been guilty of adopting the art of understatement. Rather I have focussed on the main arguments and material as pressed upon me by the parties in their written skeletons and oral arguments in particular. The skeleton arguments, annexes and additional notes provided during (and indeed after) the hearing alone run to well over 200 (often dense) pages of submission (with in excess of 500 footnotes). It is fair to say that no stone has been left unturned on either side.

13. Finally, by way of introduction, for the sake of completeness and because it reveals the temperature level between the parties, I should add that there are two further applications by Mr Tugushev: first, to domesticate the WFO in the Russian Federation and secondly, to commit Mr Orlov for alleged breaches of the WFO (which latter application Mr Orlov seeks to strike out). It is agreed that these applications should be dealt with as consequential matters upon this judgment, again so far as relevant.

B. English procedural background

14. Related proceedings have taken place in a number of jurisdictions, including Russia (both civil and criminal), Norway, Hong Kong, the Isle of Man and Guernsey. I refer to these as necessary in due course; here I set out a brief history of the English proceedings.

15. Mr Tugushev's application for the WFO and permission to serve out was granted by Bryan J on 23 July 2018. Mr Tugushev issued the Claim Form on 24 July 2018 and purported to serve the Claim Form and Particulars of Claim on Mr Orlov, alongside the WFO, on the same day. He did so by email and on Macfarlanes LLP, as permitted by the order of Bryan J. On the same day, Mr Tugushev applied for, and obtained, freezing relief in Hong Kong.

16. Bryan J ordered Mr Orlov to provide asset disclosure. By order of 30 July 2018 Teare J established a confidentiality ring ("the confidentiality ring") to address Mr Orlov's concerns over potential misuse of sensitive information in that disclosure. On 6 August 2018 Mr Orlov also applied to vary his disclosure obligations on the basis of his right to claim privilege against self-incrimination ("PSI").

17. On 14 August 2018 Mr Tugushev launched an urgent application for an order requiring Mr Orlov to disclose all documents relating to a "certain transaction" entered into by Mr Orlov. This was dismissed by Males J (as he then was) on 24 August 2018. Mr Tugushev also applied without notice for permission to enforce the WFO in the Isle of Man and Guernsey. That application was granted by HHJ Waksman QC (as he then was) on 14 August 2018. Mr Tugushev proceeded to obtain freezing orders in those jurisdictions.

18. On 16 November 2018 Mr Orlov's PSI application was determined by Mr Richard Salter QC (sitting as a Judge of the High Court) who held that Mr Orlov had not waived any claim to PSI or any other grounds for objecting to the use of information in the confidentiality ring.

19. On 26 October 2018 Mr Orlov applied for disclosure of the identity of Mr Tugushev's funder(s) in order that Mr Orlov could make an application for security for costs directly against the funder(s). On 30 November 2018 Mr Orlov applied for security for costs. These two applications were heard by Mr Peter MacDonald Eggers QC (sitting as a Judge of the High Court) on 7 and 14 December 2018. Mr Tugushev was ordered to pay £1,500,000 by way of security for Mr Orlov's costs with an order that, if those sums were not paid into Court when due, Mr Tugushev would be obliged to reveal the identity of his funder(s).

20. Mr Petrik served his Defence on 23 November 2018, to which Mr Tugushev served a Reply on 9 January 2019.

21. Mr Roth has served an acknowledgment of service disputing jurisdiction. He has an agreed extension of time until 1 May 2019 to bring a jurisdiction challenge, although such challenge is conditional upon the success of Mr Orlov's jurisdiction challenge. Mr Roth's position has been complicated by an undertaking given by him to Mr Orlov in April 2016 ("the Deed of Undertaking"). The Deed of Undertaking was executed in the context of a "Framework Agreement" under which Mr Orlov purchased Mr Roth's shares in Norebo Holding for some US$201million. As part of that agreement Mr Roth undertook to Mr Orlov:

> "…not to support, encourage, incite or assist [Mr Tugushev] (or any of his Connected Persons) to assert, institute or continue any claim or action of any kind whatsoever against [Mr Orlov]…in or by way of legal proceedings (whether civil or

> criminal or their equivalent) or otherwise… save that [Mr Roth] shall not be in breach… where he takes any action required: (1) by Applicable Law or the terms of any order, decision or judgment of any Authority or court of competent jurisdiction with which, in each case, [Mr Roth] is bound to comply or (2) in proceedings in any court, arbitration or any other proceedings in which [Mr Roth] is involved, including (without limitation) as (co-)defendant, to the extent necessary only to defend his legitimate interests and rights…"

22. In response to enquiries from Mr Roth's solicitors, Mr Orlov's position (communicated through his solicitors) has been that the Deed of Undertaking prohibits Mr Roth from accepting the jurisdiction of the English courts. Mr Tugushev submits that, left to his own devices and free from interference from Mr Orlov, Mr Roth would submit to the jurisdiction of the English court; there would otherwise have been little point in asking Mr Orlov's solicitors whether to do so would be deemed a breach of the Deed of Undertaking.

C. The statements of case

23. As will become apparent below, Mr Orlov places some significance on Mr Tugushev's pleaded case against all three Defendants.

24. Mr Tugushev pleads, in summary, that:

    i) In 1997 Mr Tugushev, Mr Orlov and Mr Roth entered into the JVA under which they would jointly operate a fishing and fish distribution business, in which they would each take a one-third share. To this end, in 1997, a company - Ocean Trawlers AS ("Ocean Trawlers") - was established in Norway. In 1998 the JVA was recorded in a document signed by all three parties in Norway - the 1998 Agreement;

    ii) The business came to be owned and operated by the Norebo Group which has a current value of in excess of US$1.5 billion. Mr Tugushev performed the management role of the business, Mr Orlov acted as its CEO, Mr Roth was responsible for distributing the profits amongst the three parties and dealing with the tax implications, and Mr Petrik was responsible for managing the offshore companies, which he managed out of the UK, and for administering dividends payable by the Norebo Group;

    iii) In 2001 the Russian operational companies in the Norebo Group were merged under the umbrella of one holding company, AA, incorporated in St Petersburg. Mr Tugushev, Mr Orlov and Mr Roth agreed that AA would be owned in equal shares by them, held in large part through various companies and nominees. Mr Tugushev owned 25.38% directly and 8.9% through nominees;

    iv) On 22 September 2003 Mr Tugushev was appointed Deputy Chairman of the State Fisheries Committee of the Russian Federation, as a result of which he stepped down from his management role. But he retained his shareholding and interest in the Norebo Group;

v) In June 2004 Mr Tugushev was arrested and sentenced to six years' imprisonment for fraud. He denies the charges and believes them to have been politically motivated. He was released on 2 December 2009;

vi) Following his release from prison, Mr Orlov and Mr Roth explained to him that the Norebo Group had been restructured. A company named TTC had been incorporated in Hong Kong and was intended to become the holding company for the entire Norebo Group; subsequently, due to a change in Russian legislation regarding foreign ownership of Russian fisheries' assets, five Russian holding companies were set up in 2007. In 2011 a company named Laxagone Investment Limited ("Laxagone") was incorporated in Hong Kong;

vii) On a date or dates unknown to Mr Tugushev but believed to be between 12 December 2002 and 15 June 2011, Mr Orlov, Mr Petrik and Mr Roth entered into a combination or understanding with each other with an intention to cause financial loss to Mr Tugushev by the use of unlawful means and/or had the common intention to effect an unlawful act or purpose, namely the misappropriation of Mr Tugushev's shareholding in AA: and as a consequence such loss and damage was in fact caused to Mr Tugushev ("the AA conspiracy"). In particular, on 3 July 2003, Mr Tugushev's shares in AA were transferred to CJSC Norebo Invest ("Norebo Invest") without his knowledge or consent. It is to be inferred that the combination or understanding underlying the AA conspiracy was entered into in England;

viii) On a date or dates unknown to Mr Tugushev but believed to be at a meeting in London between 14 and 16 September 2015, Mr Orlov and Mr Roth entered into a combination or understanding with each other with an intention to cause financial loss to Mr Tugushev by the use of unlawful means and/or had the common intention to effect an unlawful act or purpose, and as a consequence such loss and damage was in fact caused to Mr Tugushev. The unlawful means and/or unlawful act or purpose consisted of the misappropriation and/or denial of Mr Tugushev's one-third interest in the Norebo Group ("the Norebo Group conspiracy"). Immediately following a meeting in London which took place between 14 and 16 September 2015, Mr Orlov and Mr Roth denied Mr Tugushev's interest in the Norebo Group and ceased payment of dividends to him;

ix) As part of the conspiracy to deprive Mr Tugushev of his interest in the Norebo Group, civil proceedings and criminal investigations were commenced by Mr Orlov (or on his instructions). These included:

a) civil proceedings purportedly (but not in fact) commenced by Mr Tugushev against Mr Orlov in the Koptevskiy District Court of the City of Moscow and of which Mr Tugushev had no knowledge at the time ("the Koptevskiy Proceedings");

b) criminal investigations instigated by a false complaint filed by Mr Orlov requesting that the Main Investigative Directorate of the Investigative Committee for the City of Moscow investigate spurious allegations against Mr Tugushev of extortion; and

c) criminal investigations instigated by a false complaint against Mr Tugushev filed by Mr Orlov with the police department for the Southern Circuit of the City of Moscow in connection with separate allegations of extortion which resulted in Mr Tugushev's arrest.

25. Mr Tugushev claims the following remedies:

i) Damages from Mr Orlov, Mr Petrik and Mr Roth on a joint and several basis reflecting the value of his shareholding in AA as at the date of its misappropriation;

ii) Damages from Mr Orlov and Mr Roth on a joint and several basis reflecting the value of his one-third share of the Norebo Group;

iii) A declaration that he owns a one-third share of the Norebo Group and an order requiring the Defendants to disclose the identity of all of the companies comprising the Norebo Group;

iv) An account of the dividends which ought to have been but were not paid by the Norebo Group to Mr Tugushev between October 2005 and the present.

26. Mr Orlov has self-evidently not served a defence, given his jurisdictional objection. However, he sets out his position in the skeleton argument served on his behalf in the jurisdiction challenge, as follows:

i) Although Mr Orlov, Mr Roth and Mr Tugushev did some business together between 1997 and 2001, it was only with the incorporation of AA in 2001 that they became co-investors in a single business;

ii) In 2003, Mr Tugushev was appointed Deputy Chairman of the State Fisheries Committee of the Russian Federation. Mr Tugushev purchased his office and intended to earn his money back by using it to harvest bribes. Due to federal controls on public employees actively participating in commercial activities, Mr Tugushev had to relinquish any managerial role in AA on taking office and sold his shares in AA to Norebo Invest;

iii) In 2004, Mr Tugushev was convicted of fraud and sentenced to six years' imprisonment. During his incarceration, what became the Norebo Group's business grew considerably and the way it was structured developed. For a time, it was held by TTC; however, legislative changes in Russia required Russian strategic businesses like the Norebo Group to be owned by Russian companies and nationals, with the result that, in 2007 or 2008, the Russian elements of the business (which constituted the bulk of its value) were sold at market price by TTC to Norebo Holding;

iv) Despite Mr Tugushev's wrongdoing, Mr Orlov and Mr Roth felt under a moral obligation to support him. Accordingly, during Mr Tugushev's incarceration, Mr Orlov supported his wife and children and, following his release in 2009, Mr Orlov gave him a consultancy role within the Norebo Group, remunerating him in part through the grant of preference shares in Laxagone, a shareholder in TTC. They discussed the possibility of Mr Tugushev buying his way back

into the business; however, the reputational risk of him becoming part owner of the Norebo Group was too great. Tensions grew between Mr Orlov and Mr Tugushev as the latter made increasingly forceful demands to be readmitted as owner. In the end, Mr Orlov decided to cut ties with Mr Tugushev, after making one final attempt to settle any moral obligation to him (and to stop Mr Tugushev's threats) by offering him $60 million in October 2015;

v) Mr Orlov had little to do with the Koptevskiy Proceedings, which were dealt with by his lawyer, Mr Golubev, but he believed them to be a genuine claim by Mr Tugushev;

vi) Mr Tugushev enlisted the help of others to place improper pressure on Mr Orlov, including by making veiled threats and procuring searches of the Norebo Group's offices in Murmansk and the home of its CFO for the purpose of obtaining documents. In 2016 Mr Tugushev made a complaint in Russia against Mr Orlov which resulted in the commencement of a criminal case.

He also asserts that the AA conspiracy claim is time-barred, whether governed by Russian or English law.

27. Mr Petrik is only a defendant to the AA conspiracy claim. In essence his pleaded position is as follows:

i) In contrast to Mr Orlov and Mr Roth, Mr Petrik is and has always been a mere employee of the Norebo Group. He has no knowledge of whatever business arrangements there may have been between Mr Tugushev, Mr Orlov and Mr Roth;

ii) He is unable to admit or deny whether any conspiracy against Mr Tugushev existed, but, if there was any such conspiracy, he was not a party to it;

iii) Mr Petrik considers that he is being sued as an anchor defendant so as to establish the English Court's jurisdiction over the other Defendants, as he is the only Defendant domiciled in England;

iv) The claim against him is unfounded. Mr Petrik had no responsibility for managing companies in the Norebo Group or administering dividends. His role has always been to sell fish and fish products. He was only ever a nominee shareholder in Norebo Invest, with no involvement in or knowledge of the underlying activities of the company, in particular, no responsibility for or knowledge of Norebo Invest's acquisition of shares in AA;

v) The claim is deficiently pleaded in that it does not plead that Mr Petrik acted in a dishonest manner;

vi) The claims are advanced under English law, whereas the proper governing law of non-contractual claims against Mr Petrik is Russian law;

vii) The AA conspiracy claim is necessarily an alternative cause of action given Mr Tugushev's claim for a declaration that he owns a one-third interest in the

Norebo Group and that, by the Norebo Group conspiracy, this interest was misappropriated by Mr Orlov and Mr Roth;

viii) The claim against Mr Petrik is time-barred, whether governed by Russian or English law.

28. Mr Tugushev in his Reply states in summary:

i) Mr Petrik was not a mid-level seller of fish, but an important and senior figure within the Norebo Group. Mr Petrik has held directorships of Norebo Group companies, including Ocean Trawlers, and is currently one of three Vice Presidents of Norebo Europe Limited ("Norebo Europe");

ii) Mr Petrik was Mr Orlov's nominee shareholder in Norebo Invest. He signed share sale agreements to effect both the sale of Norebo Invest shares to himself (as nominee) from Norebo AS and onward to a Luxembourg holding company. Both agreements were executed in London and contained English law and jurisdiction clauses;

iii) At the time Norebo Invest purported to acquire the AA shares in 2003, Mr Petrik was a 99% shareholder in Norebo Invest;

iv) Through his work at Ocean Trawlers, Mr Petrik knew that Mr Tugushev, Mr Orlov and Mr Roth had agreed to pool their resources and share everything equally in one-third shares. Ocean Trawlers was the vehicle through which the joint venture was initially carried out. For the same reasons, Mr Petrik knew of the setting up of AA and the role and business of Norebo Invest and its place in the group structure.

29. Mr Roth's substantive position on the claims against him is unknown.

D. The evidence

30. The following factual evidence has been served:

i) For Mr Tugushev: one affidavit and three witness statements from Mr Tugushev; one affidavit from Alisa Tugushev, his daughter; one affidavit from Alexander Konkov, Mr Tugushev's former Russian lawyer; an affidavit and witness statement from Carlo Narboni, a private investigator; an affidavit and witness statement from Keith Oliver and two affidavits and three witness statements from Jason Woodland, Mr Tugushev's English solicitors; a witness statement from Daria Konstantinova, Mr Tugushev's Russian criminal lawyer; a witness statement from Vladimir Balakin, a Russian criminal lawyer and previous employee of the Norebo Group; a witness statement from a Russian investigator;

ii) For Mr Orlov: six witness statements from James Popperwell, Mr Orlov's English solicitor; one affidavit and three witness statements from Mr Orlov; a witness statement from Mr Petrik; six witness statements from "Lawyer 1", one of Mr Orlov's Russian lawyers, and another from Ildar Mustafin, another of Mr Orlov's Russian lawyers; a witness statement from Vyacheslav Sturzu,

the chief executive officer of JSC Norebo Ru; witness statements from Galina Kushkova and Olga Bayeva, concierges at Kapitana Burkova Street 32, Building 1, Murmansk; a witness statement from Viktor Shkorov, the caretaker at Kapitana Burkova Street 32, Building 1, Murmansk; witness statements from Andrey Vigdergauz, Dmitry Kuznetsov and Vladimir Semenov, neighbours of Mr Orlov at his datcha; a witness statement from Sergey Dubkov, an office manager at Maritime Advisory Bureau Limited; a witness statement from Aleksander Zubko, director of the Murmansk Regional Olympic Reserve Sports School; a witness statement from Denis Petrov, a security guard at Norebo Group offices; a witness statement from Andrey Fomichev, a security guard for Mr Orlov's datcha; a witness statement from Alexander Pavlov, a director of ski club "Barentsport"; a witness statement from Erik Mansfeld, a director of Norebo Overseas Hong Kong Limited; a witness statement from Larisa Shumova ("Ms Shumova"), Mr Orlov's partner; a witness statement from Dmitry Romanovsky, an accountant at Ocean Trawlers; a witness statement from Tatjana Orlova, Mr Orlov's former wife.

31. Some of this material is subject to the confidentiality ring. For the avoidance of doubt, nothing in this judgment is intended to lift any such confidentiality.

32. The following expert evidence has also been served:

    i) For Mr Tugushev: on Russian law and/or practice: two reports from Professor William Bowring; two reports from Alexander Vaneev; one report from Valeria Alferova; one report from Eduard Nalimov; one report from Elvira Mannapova. Additionally, a forensic report on IT has been served from Alex Seigle-Morris, on handwriting from Fiona Marsh;

    ii) For Mr Orlov: on Russian law and/or practice: three reports from Dr Alexander Sayelyev, two reports from Professor Alexander Grinenko; three reports from Professor William Simons; two reports from Evgeny Khokhlov; three reports from Professor Peter Maggs. Additionally, a report on valuation has been served from Doug Hall, an accountant at Smith & Williamson, and on handwriting from Ludmila Sysoeva.

33. No permission had been sought or granted for any of this expert evidence to be served. Much of it was not necessary, for the purpose of the jurisdiction application at least.

E. Jurisdictional route map

34. In relation to his claim against Mr Orlov, Mr Tugushev relies upon four jurisdictional bases:

    i) that Mr Orlov is domiciled in England, giving rise to an absolute right to serve out of the jurisdiction under Article 4 of Regulation (EU) 1215/2012 of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), 20 December 2012, OJ : 351/1 ("the Recast Regulation");

ii) alternatively, that Mr Orlov's usual residence is in England permitting service within the jurisdiction at common law under CPR r.6.9;

iii) alternatively, that the court should grant permission to serve out of the jurisdiction:

a) in respect of the conspiracy claims under the tort gateway contained within paragraph 3.1(9) of the Practice Direction;

b) alternatively, in respect of the AA conspiracy claim under the necessary or proper party gateway contained within paragraph 3.1(3) of the Practice Direction.

35. Mr Petrik is domiciled in England and has been served as of right under Article 4 of the Recast Regulation.

36. Mr Roth is elderly and not in good health. He is domiciled in Switzerland and has stated through his solicitors that, in the event that he challenges jurisdiction, his position will be that proceedings should take place in Switzerland (and not Russia). As set out above, Mr Roth's position on jurisdiction must be seen in the context of Mr Orlov's position on the Deed of Undertaking.

The applicable rules

37. Under the Recast Regulation, a person domiciled in a Member State may be sued in the courts of that Member State:

> "Article 4
>
> 1. Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality be sued in the Courts of that Member State.
>
> 2. Persons who are not nationals of the Member State in which they are domiciled shall be governed by the rules of jurisdiction applicable to nationals of that Member State."
>
> "Article 6
>
> 1. If the defendant is not domiciled in a Member State, the jurisdiction of the courts of each Member State shall, subject to Article 18(1), Article 21(2) and Articles 24 and 25, be determined by the law of that Member State. …"
>
> "Article 62
>
> 1. In order to determine whether a party is domiciled in the Member State whose courts are seised of a matter, the court shall apply its internal law. …"

38. If it is established that a defendant is domiciled in England, service out of the jurisdiction is permitted as of right (CPR r.6.33).

39. Service within the jurisdiction is also permitted at the defendant's usual residence under CPR r.6.9:

> "(1) This rule applies where –
>
> (a) rule 6.5(1) (personal service);
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> (b) rule 6.7 (service of claim form on solicitor or European Lawyer); and
>
> (c) rule 6.8 (defendant gives address at which the defendant may be served),
>
> do not apply and the claimant does not wish to effect personal service under rule 6.5(2).
>
> (2) Subject to paragraphs (3) to (6), the claim form must be served on the defendant at the place shown in the following table.
>
> (For service out of the jurisdiction see rules 6.40 to 6.47.)

Nature of defendant to be served	Place of service
1. Individual	Usual or last known residence.

> …"

40. A claimant may also serve the claim form out of the jurisdiction in certain circumstances with the permission of the court. CPR r.6.36 provides that:

> "In any proceedings to which rule 6.32 or 6.33 does not apply, the claimant may serve a claim form out of the jurisdiction with

> the permission of the court if any of the grounds set out in paragraph 3.1 of Practice Direction 6B apply."

41. The conditions for an application for permission are set out in CPR r.6.37:

> "(1) An application for permission under rule 6.36 must set out –
>
> (a) which ground in paragraph 3.1 of Practice Direction 6B is relied on;
>
> (b) that the claimant believes that the claim has a reasonable prospect of success; and
>
> (c) the defendant's address or, if not known, in what place the defendant is, or is likely, to be found.
>
> (2) Where the application is made in respect of a claim referred to in paragraph 3.1(3) of Practice Direction 6B, the application must also state the grounds on which the claimant believes that there is between the claimant and the defendant a real issue which it is reasonable for the court to try.
>
> (3) The court will not give permission unless satisfied that England and Wales is the proper place in which to bring the claim.…"

42. Mr Tugushev relies upon two of the grounds, or "gateways", in paragraph 3.1 of the Practice Direction:

i) The "necessary or proper party gateway" under paragraph 3.1(3):

> "(3) A claim is made against a person ('the defendant') on whom the claim form has been or will be served (otherwise than in reliance on this paragraph) and –
>
> (a) there is between the claimant and the defendant a real issue which it is reasonable for the court to try; and
>
> (b) the claimant wishes to serve the claim form on another person who is a necessary or proper party to that claim."

43. The "tort gateway" under paragraph 3.1(9):

> "(9) A claim is made in tort where –
>
> (a) damage was sustained, or will be sustained, within the jurisdiction; or
>
> (b) damage which has been or will be sustained results from an act committed, or likely to be committed, within the jurisdiction."

Domicile and usual residence

44. Mr Tugushev submits that Mr Orlov is domiciled in England. If Mr Tugushev succeeds in showing a good arguable case that Mr Orlov was domiciled in England, the English Court has jurisdiction under Article 4 of the Recast Regulation to hear all of the claims against Mr Orlov. No issue of *forum conveniens* arises (Case C-281/02 *Owusu v Jackson and others*).

45. If Mr Orlov is not domiciled in England or any other Member State, jurisdiction will fall to be determined under the common law by virtue of Article 6 of the Recast Regulation. Mr Tugushev submits that, under the common law, jurisdiction can be founded by serving Mr Orlov within the jurisdiction at his usual residence under CPR r.6.9 (see e.g. *Shulman v (I) Kolomoisky and (2) Bogulyubov* [2018] EWHC 160 (Ch) at [80]; Civil Jurisdiction and Judgments, 6th Ed, Briggs at [4.02]–[4.03], [4.16]; and *Al Jaber v Al Ibrahim* [2016] EWHC 1989 (Comm)). It is for Mr Tugushev to show a good arguable case that Mr Orlov is usually resident in England. It would then be open to Mr Orlov to seek a stay on the basis of *forum non conveniens*.

46. The time for determination of Mr Orlov's domicile or usual residence is the date of issue of the claim form, namely 24 July 2018.

Permission to serve out – Practice Direction gateways

47. If Mr Tugushev fails to establish jurisdiction on the basis of domicile or usual residence, he seeks permission to serve out of the jurisdiction under CPR r.6.36, relying on two of the gateways in paragraph 3.1 of the Practice Direction – paragraph 3.1(9) (the tort gateway) and paragraph 3.1(3) (the necessary and proper party gateway). Mr Tugushev accepts that he would only be able to use these gateways to pursue the claims he brings in tort against Mr Orlov, and not his contractual claim.

48. To obtain permission to serve out, Mr Tugushev must prove that the following conditions are satisfied (under CPR r.6.37):

    i) That there is a serious issue to be tried on the merits of Mr Tugushev's claims against Mr Orlov. Mr Orlov accepts that there is a serious issue to be tried in relation to the Norebo Group conspiracy. In relation to the AA conspiracy claims, he submits that there is no serious issue to be tried on the basis that he has a "knock-out" limitation defence;

    ii) That there is a good arguable case that one of the gateways in the Practice Direction is satisfied;

    iii) That England is the proper place to bring the claim, that is to say that it is clearly and distinctly the appropriate forum to try the claim.

The tort gateway

49. The tort gateway applies where damage has been or will be sustained from an act committed, or likely to be committed, within the jurisdiction (see paragraph 3.1(9)(b) of the Practice Direction). Mr Tugushev submits that he has a good arguable case that the AA conspiracy and Norebo Group conspiracy were "hatched" in England with the

result that the gateway is satisfied. He submits that this gateway is available for his damages claims and his claim for an account, alongside the disclosure order he seeks which he says is ancillary to his damages claim.

50. The following questions arise:

    i) Were the AA conspiracy and Norebo Group conspiracy hatched in England?

    ii) Is it sufficient for the tort gateway to apply that the conspiracy was hatched in England or is something more required? Mr Orlov submits that the making of the conspiratorial agreement is insufficient. The gateway requires that there is a substantial and efficacious act resulting in damage sufficient to establish links between Mr Orlov and his alleged conduct which would justify his being brought to this jurisdiction to answer claims (relying upon *Metall und Rohstoff A.G. v Donaldson Lufkin & Jenrette Inc.* [1990] 1 QB 391 ("*Metall und Rohstoff*"), at 437). The mere agreement does not meet this test;

    iii) Are the AA conspiracy and Norebo Group conspiracy claims governed by Russian law? If so, would they be classified by Russian law as contract claims such that the tort gateway is not available? Mr Orlov submits that the proper law of the torts is Russian law under which a claim in tort would not be available, with the result that the tort gateway is again unavailable.

51. If Mr Tugushev succeeds in showing a good arguable case that the gateway is available, he must still show that England is clearly and distinctly the most appropriate place to bring the claim.

The necessary or proper party gateway

52. The necessary or proper party gateway applies where one defendant is sued in England and another person (upon whom the claimant wishes to serve the claim form) is a necessary or proper party to that claim. Mr Tugushev submits that Mr Orlov is a necessary or proper party to the AA conspiracy claim against Mr Petrik. Mr Tugushev accepts that this gateway could only be used for the AA conspiracy claim.

53. Mr Tugushev must show that there is a good arguable case that the gateway is available. The following questions arise:

    i) Has the claim form been served on Mr Petrik otherwise than in reliance on the necessary or proper party gateway? This is undisputed. The parties accept that Mr Petrik has been served as of right under Article 4 of the Recast Regulation;

    ii) Is there a serious issue to be tried on the merits against Mr Petrik? Mr Orlov submits that the limitation defence upon which he relies in defence of Mr Tugushev's claim on the AA conspiracy against him applies equally to Mr Tugushev's claim on the AA conspiracy against Mr Petrik. He also submits that the pleadings and inferences relied upon against Mr Petrik are inadequate;

    iii) Does Mr Tugushev have a good arguable case that it is reasonable for the court to try his claim against Mr Petrik?

iv) Does Mr Tugushev have a good arguable case that Mr Orlov is a necessary or proper party to that claim?

54. Again, even if Mr Tugushev succeeds in showing a good arguable case that the necessary or proper party gateway is available, permission to serve out will only be granted if he can show that England is the proper forum in which to bring the claims against Mr Orlov.

Forum conveniens

55. The question of *forum conveniens* will be relevant unless it is established that Mr Orlov is domiciled in England with the result that Article 4 of the Recast Regulation applies. Under the Practice Direction gateways, it will be for Mr Tugushev to show that England is clearly and distinctly the appropriate forum to try the claim.

F. Good arguable case

56. The standard to be applied to the application of the jurisdictional gateways is that of a good arguable case. The meaning of "good arguable case" has been the subject of recent judicial consideration at the highest levels: see *Brownlie v Four Seasons Holdings Inc* [2017] UKSC 80; [2018] 1 WLR 192 ("*Brownlie"*) at [7], endorsed in *Goldman Sachs International v Novo Banco SA* [2018] UKSC 34 at [9] and *Kaefer Aislamientos SA de CV v AMS Drilling Mexico SA de CV and others* [2019] EWCA Civ 10 ("*Kaefer*") at [71]. Lord Sumption in *Brownlie* at [7] described it as a "serviceable test, provided that it is correctly understood". He reformulated its effect thus:

> "…What is meant is (i) that the claimant must supply a plausible evidential basis for the application of a relevant jurisdictional gateway ["limb 1"]; (ii) that if there is an issue of fact about it, or some other reason for doubting whether it applies, the court must take a view on the material available if it can reliably do so ["limb 2"]; but (iii) the nature of the issue and the limitations of the material available at the interlocutory stage may be such that no reliable assessment can be made, in which case there is a good arguable case for the application of the gateway if there is a plausible (albeit contested) evidential basis for it ["limb 3"]."

57. Waller LJ in *Canada Trust Co v Stolzenberg (no 2)* [1998] 1 WLR 547 had interpreted "good arguable case" as meaning having "much" the better of the argument. Lord Sumption (again at [7] in *Brownlie*) and Green LJ in *Kaefer* (at [77]) disapproved that notion, Lord Sumption commenting that it suggested "a superior standard of conviction that is both uncertain and unwarranted in this context".

58. As Gross LJ pointed out in *Aspen Underwriting Ltd and others v Credit Europe Bank NV* [2018] EWCA Civ 2590 at [31], Baroness Hale in *Brownlie* at [33] emphasised that everything said about jurisdiction in *Brownlie* was *obiter dicta.* She added, however, that the correct test is "a good arguable case" and glosses should be avoided. She did not read Lord Sumption's explication as "glossing the test". Gross LJ too (at [34]) emphasised that the test remained that of a "good arguable case".

59. The position has been considered further in *Kaefer*. There, at [119], Nigel Davis LJ described himself as being in "something of a fog as to the difference between an "explication" and a "gloss"". Green LJ at [59] commented that a test "intended to be straightforward has become befuddled by "glosses, glosses upon glosses", "explications" and "reformulations"." He considered the analysis in *Brownlie* and *Goldman Sachs* at [60] to [71], identifying *inter alia* the competing conceptual differences between the parties by reference to an absolute and a relative test: an absolute test being one where a claimant need only surmount a specified evidential threshold; a relative test involving the court in looking to the merits to see whose arguments are the stronger. He then turned (at [72] to [80]) "to make sense of the new, reformulated test", in summary as follows:

    i) The reference to "a plausible evidential basis" in limb 1 is a reference to an evidential basis showing that the claimant has the better of the argument;

    ii) Limb 2 is an instruction to the court to overcome evidential difficulties and arrive at a conclusion if it reliably can. Not every evidential lacuna or dispute is material or cannot be overcome. Judicial common sense and pragmatism should be applied, not least because the exercise is intended to be one conducted with due despatch and without hearing oral evidence;

    iii) Limb 3 arises when the court finds itself simply unable to form a decided conclusion on the evidence before it and is therefore unable to say who has the better argument. It would be unfair for the claim to jurisdiction to fail since, on fuller analysis, it might turn out that the claimant did have the better of the argument. The solution encapsulated in limb 3 moves away from a relative test and, in its place, introduces a test combining good arguable case and plausibility of evidence. This is a more flexible test which is not necessarily conditional upon relative merits.

60. I respectfully too would wish to emphasise that it is important not to overcomplicate what should be a straightforward test to be applied sensibly to the particular facts and issues arising in each individual case. Whatever perorations there may be along the way, the ultimate test remains one of "good arguable case". To this end a court may apply the yardstick of "having the better of the argument" which, as Nigel Davis LJ commented at [119] in *Kaefer*, confers "a desirable degree of flexibility in the evaluation of the court". The test is to be understood by reference to the new, reformulated three-limb test identified in *Brownlie*.

61. In simple terms, and alongside any relevant additional jurisdictional hurdles, it is for Mr Tugushev to show that he has a good arguable case on jurisdiction by having the better of the argument on the material available and within the confines of an interlocutory exercise, as catered for by the three-limb test in *Brownlie*. References below to a good arguable case should be understood in this vein.

G. The substance of the AA and Norebo Group conspiracy disputes

62. Alongside Mr Tugushev's contractual claim to be a party to the JVA and entitled to a declaration that he is entitled to a one third interest in the Norebo Group and an account of dividends, Mr Tugushev claims that the Defendants have conspired to use

dishonest means to misappropriate or deny his shares in the joint venture. He relies on both the AA conspiracy and the Norebo Group conspiracy.

63. Mr Orlov concedes that Mr Tugushev raises a good arguable case (and that there are serious issues to be tried) on both the AA and the Norebo Group conspiracy claims against Mr Orlov, subject to a potential limitation defence to the AA conspiracy claim. It is not therefore necessary to set out the full detail of the claims. But some consideration of the substance and detail of the disputes is relevant to broader (and also specific) issues that arise under the jurisdiction challenge.

Mr Tugushev's interest in the Norebo Group

64. Mr Tugushev's case is that in 1997 he, Mr Orlov and Mr Roth entered into the JVA under which everything within it and its gains would be shared equally between them. At this time, Ocean Trawlers was incorporated in Norway to be the profit centre for the joint venture. Mr Orlov and Mr Roth explained to Mr Tugushev that his one third share would be held by a third party on his behalf; Mr Tugushev did not want to become a registered shareholder in a foreign company due to his Russian residency. The JVA was put into writing and signed in 1998 in Norway. Mr Tugushev does not have the 1998 Agreement (or any copy); rather it is in the control of Mr Orlov and forms the subject of the proceedings in Norway.

65. Mr Tugushev says that, until mid-2015, Mr Orlov and Mr Roth openly acknowledged that he had a one third interest in the Norebo Group and was entitled to dividends accordingly. Despite discovering – as he did in 2011 - that he had no formal shareholding in any of the Norebo Group companies, from 2005 to July 2015 he received significant dividends in excess of $30.9 million.

66. At the end of 2010, arrangements were made for Mr Tugushev's daughter, Alisa, to become a 33% shareholder in five Russian companies, including Norebo Holding. A Ms Semenyuta, who worked in Maritime Consulting Bureau (a Norebo-owned service provider), sent Mr Tugushev application forms for Alisa's share registration. The share transfers were cleared by the Russian Federal Antimonopoly Service. Ultimately, however, Alisa was not registered as a shareholder. Mr Tugushev says that efforts were also made as part of the reorganisation to create a "conduit" by which Mr Tugushev could be paid 33% of the dividends arising from the Hong Kong element of the Norebo Group, held by TTC. To this end, in November 2011, Laxagone was incorporated as the vehicle through which Mr Tugushev would receive the dividends.

67. By a shareholders' agreement of 24 April 2015, Mr Orlov and Mr Roth invited a new investor, Foreson International Limited ("Foreson"), a company used by Mr Tugushev, to become a preferential shareholder of Laxagone. By these means Mr Tugushev received significant dividends between 2012 and 2015 from Laxagone and $2.5million via Foreson. After June 2015, no more dividends were paid. In December 2015, Laxagone declared the preference shares to be "redeemed" or "bought back" and its shares in TTC were transferred back to Mr Orlov and Mr Roth on 12 April 2016.

68. Mr Tugushev says that in May 2015 Mr Orlov orally offered him US$100 million to settle his claims to an interest in the Norebo Group and, on 30 October 2015, made

him a written settlement offer of US$60 million in exchange for Mr Tugushev giving an "acknowledgment" that he had "freely disposed" of his shares in AA and any other Norebo Group companies. He notes that in November 2017 Mr Orlov denied to the Moscow police that after 2003 he either did offer or could have offered Mr Tugushev US$60 million for his shares in the business.

The AA conspiracy

69. Mr Tugushev's case (as developed before me) is that there was a raid on his shares in AA at some point between 2003 and 2009, and probably by 2007. In 2001, when AA was incorporated, he believed that his shareholding in the Russian fishing companies would be transferred to AA. He and his nominees would in return take a 34% shareholding in AA, and any additional Russian companies created in the Norebo Group after that date would be under the ultimate ownership of AA. However, Mr Tugushev discovered in 2011 that he did not hold any shares in AA when he was sent a corporate structure chart by Ms Savina (the Norebo Group's lawyer) showing that 100% of the AA shares were owned by Norebo Holding. Mr Tugushev's evidence is that he was not concerned by this at the time, given that the Norebo Group was in the midst of a reorganisation, part of which involved registering his daughter Alisa (as his nominee) as a one-third shareholder in Norebo Holding. Further, Mr Orlov and Mr Roth continued to reassure him that his rights would be recognised. However, in 2016, Mr Orlov and Mr Roth started to deny that he had any interest in the Norebo Group. It was at this point that Mr Tugushev discovered he had lost his AA shares through forgery and fake transfer agreements, including a purported transfer to a company owned (as to 99%) by Mr Petrik.

70. Mr Tugushev says that it also appears that not all of his shares in the Russian fishing companies were transferred to AA. Documents uncovered in the course of a Russian criminal investigation in 2016 suggest that in 2002 14,510 AA shares were returned to the AA Treasury on the purported (and wrongful) basis that they had not been paid up; in January 2003, 85 of his shares were transferred to a Mr Kuznetsov; and 75 of his shares were transferred to a Mrs Alexseeva. Further, purportedly on 3 July 2003, the 14,510 shares and Mr Tugushev's shares in AA were transferred to Norebo Invest and later to Norebo Holding (via Premium Utilities SA). Mr Tugushev's case is that, insofar as any of these transfers are said to have involved him, they are fabrications; they also show that Mr Tugushev's ownership of any shares in AA was superseded.

71. Mr Tugushev submits that there is strong evidence of fraud surrounding the purported transfers. This includes evidence from a handwriting expert to the effect that Mr Tugushev's signature on the purported share transfer to Mr Kuznetsov was traced; and that Ms Alexseeva and Mr Kuznetsov have been uncooperative in the Russian investigation - Ms Alexseeva refusing to give a sample of her handwriting and Mr Kuznetsov claiming PSI. Mr Tugushev also says that the alleged agreement transferring his shares to Norebo Invest is a forgery, again supported by expert handwriting evidence. Mr Tugushev points to Mr Orlov's failure to produce the 1998 Agreement and to the fact that Mr Orlov has given inconsistent versions of events about the terms of the sale. Further, Mr Tugushev says that there is evidence that copies of the AA share register journal, share sale and purchase agreements and transfer forms covering the period 2002-2005 have emerged, despite evidence from the Norebo Group's lawyer (Ms Savina) that they were destroyed; that the AA share register journal appears to have been written up by the same person at one time; that

Mr Tenenbaum (who handled all corporate and legal issues relating to the joint fishing business between 2001 and 2005) was not aware of the return of the 14,510 shares or the transfer of the 20,318 shares owned by Mr Tugushev to Norebo Invest; and that in late 2004, Mr Orlov and Mr Romanovsky (his cousin) asked a lawyer, Mr Balakin, to arrange for Mr Tugushev (who was then in prison) to sign backdated agreements for the sale of his shares in AA, which Mr Tugushev refused to sign.

72. As already indicated, Mr Orlov's case is that there was no AA conspiracy: Mr Tugushev simply sold his stake in AA to pursue a career in government. He says that Mr Tugushev's case on the AA conspiracy is inconsistent with the share sale agreement; the statement made by Mr Tugushev to a Russian bailiff in 2012 that "*I have no shares in [AA]*…"; his statement to the Russian Investigative Committee in March 2016 that, in 2003, the shares in companies including AA were "*re-registered nominally to other individuals (nominee holders)*"; the statement of one of his lawyers, Mr Begun, to the Russian Investigative Committee in April 2016 that "*since 1998 he has been a shareholder of Karat Group, however, at some point in time, when he was employed as a civil servant, he ceased to be the owner of shares and lost the relevant rights*"; and his statement in pleadings in the proceedings in Norway that "*Orlov and Roth managed Tugushev's shares on behalf of Tugushev, while he worked in the public sector*" and that "*Tugushev's stake was placed in trust with Orlov and Roth*".

The Norebo Group conspiracy

73. Mr Tugushev alleges that the Norebo Group conspiracy was entered into in September 2015 between Mr Orlov and Mr Roth and was an attempt, by use of forgery and deceit, to destroy any claim which Mr Tugushev had under the JVA, as well as to breach their contractual obligations to him, including by refusing to pay him any further dividends. Their methods included the bringing of the fake Koptevskiy Proceedings and inciting the Russian criminal proceedings against him.

The Koptevskiy Proceedings

74. The Koptevskiy proceedings were commenced on 24 November 2015 apparently by Mr Tugushev. However, he says that this was sham litigation instigated by Mr Orlov as a dishonest means of attempting to obstruct and destroy his claims under the JVA. They formed part of the implementation of the Norebo Group conspiracy. Mr Tugushev says that he knew nothing about these proceedings until November 2016 when his lawyers chanced upon a reference to them on the internet.

75. Mr Tugushev says that the power of attorney apparently signed by him on 20 November 2015 in Cyprus and under which a lawyer, Mr Dryndin, purportedly acted for him, was forged. Numerous forensic points are made, by way of example only, that Mr Orlov had invited Mr Tugushev to Cyprus on 15 November 2015, but Mr Tugushev did not go. Moreover, the power of attorney under which Mr Orlov's lawyer, Mr Golubev, acted is dated 19 November 2015 and so pre-dates the commencement of the proceedings. Further, when Mr Golubev (who is currently in prison in Russia on unconnected charges) was arrested by the Moscow police in March 2018, he was found to have in his possession the original power of attorney and witness statement allegedly signed by Mr Tugushev and drafts of his purported statements of case in the proceedings. The wording of the powers of attorney of Mr

Golubev and Mr Dryndin is near identical. Mr Dryndin exhibited emails to Mr Tugushev from Mr Orlov's email accounts rather than from Mr Tugushev's email accounts.

76. Mr Orlov's position is that the Koptevskiy proceedings were dealt with by Mr Golubev and he had very little to do with them, albeit that he believed them to be a genuine claim. He says that Mr Tugushev's allegation that Mr Orlov brought the proceedings makes very little sense, as the judgment of the Koptevskiy court which was favourable to Mr Orlov was appealed and the appeal was allowed.

The Loukhi Proceedings

77. A further set of proceedings was issued in the Loukhi District Court in the Karelia Region of Russia by a Mr Berdnikov against Mr Orlov and Mr Roth (the "Loukhi Proceedings"). The proceedings were brought under an alleged sale-purchase agreement dated 23 April 2014 and a guarantee dated 24 April 2014. Mr Orlov's position is that the alleged sale purchase agreement and guarantee agreement are sham documents. Shortly after the proceedings were started, Mr Kuroptev, the lawyer for Mr Berdnikov, was interviewed by the police. Mr Kuroptev informed the police that Mr Tugushev had instructed him to institute the proceedings.

78. Mr Tugushev submits that the Loukhi proceedings were also part of the conspiracy against him by Mr Orlov and Mr Roth, designed to bring about his arrest and imprisonment. He says that he was travelling at the time when he is alleged to have signed Mr Kuroptev's terms of business; the contact details used by Mr Kuroptev for him are not correct; Mr Kuroptev's power of attorney is in near-identical terms (including a typographical error on the word "complaint") to those used in the Koptevskiy Proceedings and to the power of attorney granted by Laxagone in 2016 to its legal representatives for actions against Mr Tugushev to recover dividends paid.

Extortion complaint

79. On 17 August 2016, Mr Orlov filed a complaint with the Moscow police department alleging that he had received telephone calls from someone, later identified as a Mr Dzhamaldaev, acting on Mr Tugushev's behalf and making extortion threats. This led to Mr Tugushev's arrest by the Moscow police on 27 December 2016.

80. Mr Tugushev says that there had never been any link or contact between Mr Tugushev and Mr Dzhamaldaev who had in fact been acting at the instigation of Mr Orlov. Mr Orlov was attempting to disrupt Mr Tugushev's efforts in 2016 to correct the sham Koptevskiy proceedings and to obtain disclosure in Norway. In due course the Moscow police found that Mr Tugushev was not implicated in Mr Dzhamaldaev's actions.

Mr Orlov's allegations

81. Mr Orlov says that it is Mr Tugushev who has enlisted the help of others to place improper pressure on Mr Orlov. He gives four examples of this alleged behaviour:

    i) At a series of meetings in November 2015, individuals representing Mr Tugushev told Mr Orlov's lawyers that Mr Tugushev had the backing of two

well-known individuals with publicised connections to violent criminality and made threats to the effect that Mr Orlov would face reprisals if he did not comply with Mr Tugushev's demands;

ii) In December 2015, shortly after Mr Orlov lodged a criminal complaint in respect of these complaints, 30 policemen from the Murmansk Directorate of the Ministry of Internal Affairs, together with armoured support, searched the Norebo Group's offices in Murmansk and the home of its chief financial officer. Mr Orlov believes that these searches were procured by Mr Tugushev as a means of obtaining documents relating to his claim;

iii) The Loukhi Proceedings were fake proceedings brought at the instigation of Mr Tugushev;

iv) In early 2016, Mr Orlov received threatening phone calls demanding that he resolve the issue with Mr Tugushev. The Russian police arrested a Mr Dzhamaldaev who admitted to making the calls at the instigation of Mr Tugushev.

Russian Criminal Proceedings against Mr Orlov

82. Mr Orlov also complains of two criminal complaints made by Mr Tugushev against Mr Orlov in Russia, one on 18 January 2016 (which he notes is the same day on which the appeal was lodged in the Koptevskiy Proceedings) and another in December 2016. Both complaints were premised on the allegation that Mr Orlov had unlawfully obtained Mr Tugushev's stake in Norebo Holding and the second also included an allegation that Mr Orlov had concocted the Koptevskiy proceedings.

83. The December 2016 complaint was dismissed on 16 March 2017 and, after the annulment of the dismissal on 21 March 2017, was dismissed a second time in May 2018.

84. Mr Orlov says that the January 2016 complaint was investigated for over two and a half years, during which time the Murmansk police made over ten orders refusing to initiate criminal proceedings; after the transfer of the complaint to Moscow, the Moscow police made three orders refusing to commence a criminal case. Nevertheless, criminal proceedings were commenced on 25 July 2018, just two days after Mr Tugushev made his without notice applications in these proceedings. Mr Orlov says that "tellingly", the criminal proceedings are being carried on against "persons unknown", which he says is a common ploy used by certain criminal investigators in Russia to deprive the accused of his rights as a suspect. Mr Orlov says that, as part of these proceedings, the Norebo Group and related persons have been subjected to several extremely heavy-handed police raids between 26 and 28 September 2018, in which large quantities of documents were harvested and which are now being deployed by Mr Tugushev in these proceedings.

H. Limitation defence to the AA conspiracy claim

85. As indicated above, on the substantive merits Mr Orlov concedes that the AA conspiracy claim raises a serious issue to be tried and that Mr Tugushev has a good

arguable case but all subject to what he contends is a "knock-out" blow on the ground of limitation.

86. It is convenient to consider the limitation argument this stage. I do so both by reference to the question of whether or not the AA conspiracy claim raises a serious issue to be tried (which is what is relevant for jurisdictional purposes) and, so as to avoid the potential need for repetition later, also by reference to whether or not Mr Tugushev has demonstrated a good arguable case that the AA conspiracy claim is not time-barred (which is what is relevant to the WFO challenge).

87. The question of limitation has been argued under both Russian and English law, since Mr Orlov contends that under either regime the AA conspiracy claim is time barred. Likewise, I do not consider it necessary to determine the proper law of the AA conspiracy claim for present purposes. For the reasons set out below, I have concluded that Mr Tugushev has a good arguable case that the AA conspiracy claim is not time-barred under both English and Russian law (and that a serious issue is raised).

English law

88. Under English law, it is common ground that the relevant limitation period is six years under s.2 of the Limitation Act 1980. The running of this period may however be postponed in cases of fraud, concealment or mistake as set out in s.32 of the Limitation Act 1980, in relevant part:

> "32(1) Subject to subsection (3) below, where in the case of any action for which a period of limitation is prescribed by this Act, either –
>
> (a) the action is based upon the fraud of the defendant; or
>
> (b) any fact relevant to the plaintiff's right of action has been deliberately concealed from him by the defendant; or
>
> (c) the action is for relief from the consequences of a mistake;
>
> The period of limitation shall not begin to run until the plaintiff has discovered the fraud, concealment or mistake (as the case may be) or could with reasonable diligence have discovered it. …"

The parties' respective positions

89. For Mr Orlov it is submitted that time started to run on 15 July 2011 as this was the date on which, on his own case, Mr Tugushev learned that he no longer had a shareholding in AA. It was on this date that Mr Tugushev was sent a corporate structure chart by Ms Savina (the lawyer for the Norebo Group) showing that Norebo Holding held 100% of the shares in AA. Mr Tugushev therefore knew at that point in time both that his shares in AA had been transferred into Norebo Holding's hands without his consent (as, on Mr Tugushev's case, he had not signed any share transfer agreement) and that Mr Roth and Mr Orlov had taken the benefit of them via Norebo

Holding (in which they were the shareholders). On this basis, the AA conspiracy claim, issued in July 2018, is statute-barred.

90. Mr Tugushev says that all he knew by 15 July 2011 was that he was no longer a direct shareholder in AA. He says that:

> "…This did not cause me any alarm. The process to register Alisa (as my nominee) as a one-third shareholder in CJSC Norebo Holding (and other holding companies) had already been initiated. The charts were therefore in line with Ms Savina's email of 11 February 2011 and with our discussions at the time. I had no cause for concern, and I was reassured by Mr Orlov that everything was going according to plan."

91. Ms Savina's email of 11 February 2011 set out that Mr Orlov would sell 33 shares to Alisa. In essence, Mr Tugushev's case is that he thought that his direct shareholding in AA would be replaced with an indirect shareholding via his daughter's share in Norebo Holding and that it was only later, once he had obtained copies of the allegedly forged agreement for the transfer of his shares and two agreements signed by Mr Petrik dealing with the shares in Norebo Invest, that he was in possession of information to suggest that there was a fraudulent conspiracy in relation to his AA shares.

92. For Mr Orlov it is said that this does not reflect the AA conspiracy claim as pleaded, which is for damages equal to the value of the shares in AA at the date of their misappropriation on the basis they were transferred away from Mr Tugushev without his consent. It is no answer for Mr Tugushev to say that he was not concerned that his AA shares had been taken without his consent or that he can show that he was misled into acquiescing in the misappropriation and only discovered the fraud later. Reliance was placed on *Ezekiel v Lehrer* [2002] EWCA Civ 16 ("*Ezekiel v Lehrer*") where solicitors had registered a charge in breach of their instructions not to do so. Mr Ezekiel was informed of this at the time, but was persuaded that this was in accordance with his instructions. He then remembered five years later that those had not been his instructions. The question in that case was whether one is "to be treated as having knowledge of a fact which one has forgotten about 11 weeks later and does not remember again until some five years after that?" ([2]). The Court held that the answer is "yes". Jonathan Parker LJ explained at [46]:

> "Were it otherwise, the effect of section 32(1)(b) in affording a claimant a full six-year period of limitation would indeed be absurd, in that it would be open to a claimant who was initially aware of all the facts relevant to his cause of action but who was subsequently persuaded that his recollection of one of those facts was faulty, to establish that, either on that occasion or at some time thereafter before the date on which he "rediscovered" the truth (or could reasonably have done so), that fact was concealed from him, with the consequence that he would have a full period of six years from that date in which to bring his action. In my judgment, section 32(1)(b) cannot have been intended to produce such an absurd result."

93. Thus it is argued that time began to run in July 2011. The deliberate concealment, said to be the misappropriation of the shares, cannot be said to have been concealed from him thereafter: it came to an end.

Analysis

94. Under s.32 of the Limitation Act 1980, where a fact relevant to a claimant's right of action has been deliberately concealed from him by the defendant, the period of limitation does not begin to run until the claimant has discovered (or could with reasonable diligence have discovered) that concealment. As Ward LJ explained in *Ezekiel v Lehrer* at [28]:

> "An analysis of section 32(1)(b) requires the court to establish first what facts are relevant to the plaintiff's cause of action and then to establish that any one of them has been deliberately concealed from the plaintiff by the defendant."

95. It is therefore necessary to consider what facts are relevant to Mr Tugushev's cause of action in conspiracy. One necessary factual ingredient of the cause of action in conspiracy is an intention to injure (although the intention required may take a variety of forms: see *JSC BTA Bank v Khrapunov* [2018] UKSC 19 ("*Khrapunov*"), at [8]-[9]).

96. Mr Tugushev has a good arguable case that, although he discovered on 15 July 2011 that his shareholding in AA had been transferred, he did not know, and had no reason to believe at that point in time, that Mr Orlov, Mr Roth or Mr Petrik intended to harm him by reason of the transfer away of his direct shareholding in AA. Mr Tugushev believed, and indeed was being told, that he would shortly be given a one-third indirect interest in AA through his daughter, Alisa, being registered as a shareholder in Norebo Holding. Mr Tugushev might have questioned how his shares in AA had come to be transferred to Norebo Holding without his formal signature on any documentation; however, Mr Tugushev states that he "looked at the share registration process as a "back office" paperwork matter". Even if it were accepted that he should have questioned the process more than he did, there is plausible evidence that he believed, and had reason to believe, that he would retain an interest in AA through the reorganisation.

97. He thus has a good arguable case that that intention to injure was being deliberately concealed from him by Mr Orlov, something which he did not discover (and could not with reasonable diligence have discovered) until after July 2012 (ie six years before the commencement of proceedings).

98. Analysed in this way, the principle in *Ezekiel v Lehrer* does not assist. It is not a case of Mr Tugushev knowing and forgetting the relevant fact, or knowing the relevant fact and later discovering foul play. It was suggested for Mr Orlov that the relevant intention to injure is the intention to misappropriate his shares at which point he was deprived of his legal title and "left at the mercy" of Mr Orlov and Mr Roth. On this basis, again, Mr Tugushev had knowledge in July 2011. I consider, however, that there is at least a good arguable case that this characterisation of the intent to injure is incorrect and unduly limited. Mr Tugushev had been informed that the transfer of his shares was part of the reorganisation of the Norebo Group. If, on his case, everyone

had acted in good faith, he would have retained his interest, albeit indirectly. Not only had Mr Tugushev been informed of this by Mr Orlov, but he had been told in emails from Ms Savina, the lawyer for the Norebo Group, (in particular by the email of 11 February 2011), that this was part of a reorganisation that would involve his daughter becoming a shareholder, consistent with the application in late 2010 to the Russian Anti-Monopolist Federation Committee for permission to transfer the shareholding to his daughter.

99. I conclude, therefore, that Mr Tugushev has a good arguable case that he did not know the facts relevant to a key element of his claim on the AA conspiracy – namely intention to injure – until after July 2012. Prior to 2015 continuing steps were being taken to register his daughter as a shareholder, Laxagone and Foreson were set up to pay him dividends, and (as I consider below), Mr Roth and Mr Orlov continued to reassure him of his interest in the Norebo Group.

Russian law

100. The relevant Russian law experts – Professor Maggs (instructed by Mr Orlov) and Mr Vaneev (instructed by Mr Tugushev) - are agreed that, under Russian law, the applicable limitation period for the AA conspiracy claim is three years, pursuant to Article 196 of the Russian Civil Code. It is also common ground that time starts running from the date determined in accordance with Article 200 of the Russian Civil Code (as amended). This provides, so far as relevant:

> "Article 200. Start of the Running of the Time Period of Limitation of Actions
>
> 1. Unless otherwise established by a statute, the running of the period of limitation of actions shall begin from the day when a person knew or should have known of the violation of his right and of the person that was the proper defendant for a suit for the protection of this right. …"

101. Beyond this, it appears, at least on the face of it, that there is no agreement between the experts, at least not as to how the law would be applied to the facts – something which is any event for the court and not the experts. There appears to be a difference between the experts as to when there will have been a violation of right and when the claimant will have knowledge of such violation. But both experts have been led in their approach to the question of limitation by their respective understanding of the facts (as presented to them by the parties' respective instructing lawyers), rather than by principle. It is therefore sometimes difficult to determine from their evidence whether their differences arise from genuine differences on points of law or merely differences as to how the law would be applied to the facts.

102. Professor Maggs states that "[a]ssuming that Mr Tugushev had a right to continue owning approximately a one-third interest in [AA]", he would have knowledge of the violation of his right upon receiving the structure charts on 15 July 2011. He would also have known of Mr Orlov and Mr Roth's involvement at that point. In respect of Mr Petrik, time would have started to run if he "knew or should have known" of Mr Petrik's alleged role in the tort at that time, and therefore time would start to run at the

point at which Mr Tugushev had that knowledge or if a reasonable inquiry would have revealed Mr Petrik's alleged involvement.

103. Mr Vaneev's view is that the violation of Mr Tugushev's rights did not occur upon his losing his direct shareholding in AA, but only when he stopped receiving dividends in July 2015. Further, he only became aware of this violation on 30 September 2015 when he was informed by Mr Brun-Lie (a Norwegian lawyer that acts on behalf of Mr Orlov and Mr Roth) who Mr Orlov and Mr Roth took the view that he was no longer entitled to dividends. On Mr Vaneev's view, therefore, time starts running at the earliest in July 2015. He states that "as adverse consequences for Mr Tugushev associated with actions of the Defendants first appeared in July 2015, there has been no violation of Mr Tugushev's rights before that time".

104. I take first the difference between the experts as to what constitutes a violation of rights in this context. Mr Vaneev's evidence is that:

> "The limitation period shall not start to run from the moment when the actions, which subsequently led to a violation of the rights of the potential claimant, were committed, but shall start to run from the moment when such a violation occurred".

He cites three authorities in support of this and goes on to say that:

> "Russian courts divide the moment of committing actions that subsequently resulted in a violation of the right, and the moment of the violation itself (i.e. appearance of adverse consequences for a potential claimant)."

105. Professor Maggs in reply states that:

> "Mr Vaneev confuses the point at which the violation occurs with the possibility of delay in the wronged party becoming aware of that fact. In the present case, Mr Tugushev, while a shareholder in AA, had the right to be listed in the records of shareholders of AA, and also the various rights that he had as a shareholder in AA under the relevant company legislation and the Charter of AA. The right to be listed was violated and the other rights were lost the moment his shares were no longer listed in the relevant shareholder records. If this was done without his permission, then his rights were violated the moment the shares were no longer listed in his name".

He goes on to say that Mr Tugushev's right to recovery in the present case arose "the moment the shares were no longer listed in Mr Tugushev's name he had a right (assuming that he did not consent to it) to go to court to have his name restored to the list of shareholders."

106. I consider, however, that this may be to misread Mr Vaneev's evidence. Indeed, it is not clear to me that the two experts have a different understanding of the underlying principles of law. Professor Maggs considered the three cases cited by Mr Vaneev and states that: "[a]ll three cases involve situations in which plaintiff's right arose at a date

later than defendant's wrongdoing." Mr Vaneev cited them as support for the proposition that:

> "the limitation period shall not start to run from the moment when the actions, which subsequently led to a violation of the rights of the potential claimant, were committed, but shall start to run from the moment when such a violation occurred."

The first two cases at least appear to distinguish the point at which the claimant's cause of action arises from the actions of the defendant which led to this point.

107. The difference between the two experts seems to be in how they apply those principles to the facts. To the extent that their opinions on this are relevant, Professor Maggs considers that the transfer of Mr Tugushev's shareholding in AA constitutes the violation of his right, whereas Mr Vaneev considers that this is the action leading to a violation of his right which is comprised in the later denial of dividends. It is possible that the experts have understood the underlying claim differently, Professor Maggs having focused narrowly on the appropriation of Mr Tugushev's legal shareholding in AA being the actionable wrong and Mr Vaneev having focused more broadly on the denial of Mr Tugushev's right to an interest in AA.

108. I do consider, however, that Mr Tugushev has the better of the argument that, whenever the violation occurred, he did not know (and should not have known) of the violation of his right until 2015. Professor Maggs' position is that Mr Tugushev's knowledge of the transfer of his shareholding on 15 July 2011 constitutes knowledge of the violation of his right. He does not, however, cite any authority or provide any analysis as to what, in Russian law, constitutes sufficient knowledge of the violation of one's right. By contrast, Mr Vaneev cites the Supreme Court of the Russian Federation in the Ruling No. 310-3Cl7-13555 dated January 29, 2018, which states that:

> "The moments of receipt by the claimant (applicant) of information about certain actions of the defendant and about the violation of his rights by these actions may not coincide. With such a discrepancy, the limitation of actions shall be calculated from the day when the claimant (applicant) is aware of the negative consequences for him caused by the behaviour of the offender."

109. Mr Vaneev also expressly considers Mr Tugushev's evidence that he believed in 2011 that there was nothing wrong with the transfer of his AA shares to Norebo Holding as it was simply due to a reorganisation and that it was only on 30 September 2015 that he found out that Mr Orlov and Mr Roth denied him a right to shares in the Norebo Group and any obligation to pay dividends. Professor Maggs simply states that these matters "do not have any effect on my opinion" without further explanation.

110. I therefore prefer Mr Vaneev's evidence as the more reliable (given the authorities cited and his fuller consideration of the evidence). I conclude that Mr Tugushev has the better of the limitation argument that, applying Russian law, the limitation period did not start running at the time of his discovery in 2011 of the transfer of his shares

in AA but only when he discovered the negative consequences to him of that transfer in September 2015 (less than three years before the commencement of proceedings).

111. For these reasons, on the material and arguments put before me on these applications, I consider that the AA conspiracy claim raises a serious issue to be tried and Mr Tugushev has a good arguable case on the merits, even taking into account a limitation defence. If jurisdiction is established, it will of course be open to Mr Orlov to pursue his limitation defence fully in these proceedings in due course.

I. Domicile and usual residence

112. It is common ground that if Mr Tugushev can show a good arguable case that Mr Orlov is domiciled in England, the claims can proceed against him as of right under Article 4 of the Recast Regulation. Under Article 62 of the Recast Regulation, the question of domicile is determined by the application of English law. Under English law, domicile is defined in paragraph 9 of Schedule 1 of the Civil Jurisdiction and Judgments Order 2001 ("CJJO 2001"):

> "(2) An individual is domiciled in the United Kingdom if and only if—
>
> (a) he is resident in the United Kingdom; and
>
> (b) the nature and circumstances of his residence indicate that he has a substantial connection with the United Kingdom."

113. It is also common ground that, even if Mr Orlov is domiciled in Russia, the court nonetheless could have jurisdiction over the claims against him under common law principles, jurisdiction being founded by service upon him at his usual residence under CPR r.6.9. This would confer jurisdiction subject to the court's discretion to decline to exercise jurisdiction upon Mr Orlov showing that England is clearly or distinctly not the appropriate forum. Mr Pymont QC for Mr Orlov accepted that there was no material difference between the meaning of residence under Article 4 of the Recast Regulation and "usual residence" in CPR r.6.9.

114. In relation to the question of domicile, Mr Pymont for Mr Orlov also realistically conceded that, on the facts of this case, were Mr Tugushev to succeed in establishing that Mr Orlov is resident in England, the "substantial connection" test in paragraph 9(2)(b) of the CJJO 2001 would also be satisfied. Therefore, if residence is established, it follows that Mr Orlov is domiciled in England and the claims against him can proceed as of right. It is therefore unnecessary to consider the common law jurisdiction under CPR r.6.9 as, for present purposes, there is no material distinction between the two paths. The only issue is residence.

115. Mr Tugushev's case in this regard is that, whilst Mr Orlov has a home (and a datcha) in Murmansk, he also resides at The Tower, One St George's Wharf, London SW8. There he owns a very large apartment on the 39th floor with 360 degree panoramic views of London ("the Wharf flat"):

i) The Wharf flat is where Mr Orlov always stays when he comes to England. It is kept for his sole use, and is his largest and most valuable property

worldwide. The council tax and utility bills for the property are in his and/or Ms Shumova's name. After the WFO was imposed on him, he pre-paid the ground rent and service charge for the apartment under the auspices of "ordinary living expenses" within the meaning of the WFO;

ii) Mr Orlov stayed in the Wharf flat for 64/65 nights in 2017 and 28 nights in the first half of 2018. He made 14 trips to England in 2017 and 7 trips in 2018, ranging in duration from 1 night to 15 nights. The pattern of his stays was not that of brief overnight stays or flying visits;

iii) Mr Orlov's visits were dictated by both business and family reasons. Mr Orlov did visit the Norebo Group office in Maidenhead ("the Maidenhead office") and attend meetings in England from time to time. However, this was not his sole purpose for visiting. Of the 21 trips made to England over the relevant period, there is only supporting evidence indicating that he travelled to the Maidenhead office during business hours for 8 of them. Further, 18 of these trips spanned a full weekend;

iv) Mr Orlov has strong family connections with England due to the presence here of his four sons, in particular with the youngest two (aged 16 and 13) in full-time English education. His trips were sometimes arranged around seeing his children, for example on their birthdays. He would see them whenever he could. The pattern of his visits shows that the months when he does not come to London at all are those where his younger sons are able to travel to see him in the school holidays;

v) Ms Shumova travelled with Mr Orlov nearly every time he visited England over the relevant period, indicating that his visits were not purely for business purposes;

vi) In November 2015, Ms Shumova obtained indefinite leave to remain ("ILR") in the UK. This undermines Mr Orlov's evidence that he and Ms Shumova had permanently relocated to Russia in 2014. Ms Shumova entered the UK with Mr Orlov on 19 occasions between January 2017 and July 2018 on the basis of her ILR. On each occasion she would be entering (at least ostensibly) for the purpose of settlement, namely to take up ordinary residence within the jurisdiction. Mr Orlov's use of a business visa to enter the UK is not inconsistent with him having a residence here.

The law on residence

116. "Residence" is an ordinary English word and should be given its ordinary meaning (*Cherney v Deripaska* [2007] EWHC 965 (Comm) ("*Cherney v Deripaska"*), at [19]; *Bestolov v Povarenkin* [2017] EWHC 1968 (Comm) (*"Bestolov"*), at [36]).

117. In *Levene v Commissioners of Inland Revenue* [1928] AC 217 ("*Levene*") (in the context of assessing residence for tax purposes), Viscount Cave LC defined "residence" as follows (at 222-3):

> "My Lords, the word "reside" is a familiar English word and is defined in the Oxford English Dictionary as meaning "to dwell

> permanently or for a considerable time, to have one's settled or usual abode, to live in or at a particular place."… In most cases there is no difficulty in determining where a man has his settled or usual abode, and if that is ascertained he is not the less resident there because from time to time he leaves it for the purpose of business or pleasure… Similarly a person who has his home abroad and visits the United Kingdom from time to time for temporary purposes without setting up an establishment in this country is not considered to be resident here…But a man may reside in more than one place. Just as a man may have two homes – one in London and the other in the country – so he may have a home abroad and a home in the United Kingdom, and in that case he is held to reside in both places and to be chargeable with tax in this country."

118. In *Dubai Bank Ltd v Abbas* [1997] ILPr 308 ("*Abbas*"), Saville LJ cited *Levene* as the appropriate authority for assessing residence in the jurisdiction context (at [10]-[11]):

> "[10]… On the basis of *Levene* it seems to me that a person is resident for the purposes of section 41(3) in a particular part of the United Kingdom if that part is for him a settled or usual place of abode.
>
> [11] A settled or usual place of abode of course connotes some degree of permanence or continuity. In his judgment Potter J said that section 41(6) suggested that the threshold for residence under the 1982 Act was low. With respect, I do not find any such suggestion in this sub-section. It is true that the sub-section provides a rebuttable presumption of "substantial connection" if the residence has lasted for the last three months or more, but it provides no guidance on the question whether or not the person has become resident. Depending on the circumstances of the particular case time may or may not play an important part in determining residence. For example, a person who comes to this country to retire and who buys a house for that purpose and moves into it, selling all his foreign possessions and cutting all his foreign ties, would to my mind be likely to be held to have become immediately resident here. In other cases it may be necessary to look at how long the person concerned has been here and to balance that factor with his connections abroad. Since the answer to the question depends on the circumstances of each case, I did not find the other authorities cited to us of any real assistance."

119. In *Varsani v Relfo Ltd* [2010] EWCA Civ 560 ("*Varsani v Relfo*"), the Court of Appeal considered the question of residence in circumstances where the defendant claimed to be domiciled in Kenya (the location of his business) but came to stay for four to eight weeks a year at a London address where his wife, children, parents and sister lived. Etherton LJ stated (at [27]-[29]):

> "27. Whether a defendant's use of a property characterises it as his or her "residence", that is to say the defendant can fairly be described as residing there, is a question of fact and degree…. In the present case, the Edgware house is owned by the defendant and his wife, and is the place where his wife, children, mother, father and sister permanently live. It is the place which the defendant has affirmed in court proceedings is not only his "residence" but his "home". While such affirmation is not conclusive, it is plainly highly material. The defendant visits that home every year to see his family, staying for not inconsiderable periods of time, as and when his work in Kenya permits him to do so. It is, in an obvious and very real sense, his "family home". Taking those facts together, it seems to me quite impossible to contend that the defendant does not reside at the Edgware house at all…….
>
> 28. The deputy judge was also entitled, and indeed correct, to conclude that the Edgware house was the defendant's "usual" residence for the purposes of CPR r 6.9. As I have said, Mr Jacob conceded that it is possible to have more than one "usual" residence. That is also borne out by the distinction between "usual residence" and "principal" place of business and "principal" office in CPR r 6.9 which, contrary to Mr Jacob's submission, I consider the deputy judge was right to take into account.
>
> 29. I do not accept Mr Jacob's submission that, in determining whether a residence is a "usual" residence within CPR r 6.9, the test to be applied is essentially one of merely comparing the duration of periods of occupation, taking little account of the nature or "quality" of use of the premises, and ignoring altogether that the premises are occupied permanently by the defendant's family and that the premises can fairly be described as the family home. Mr Jacob's suggested approach is too narrow and artificial. I agree with Mr Peter Shaw, counsel for Relfo, that the critical test is the defendant's pattern of life. In *Levene v Inland Revenue Comrs* [1928] AC 217 the House of Lords considered whether the taxpayer was "ordinarily resident" for the purposes of income tax. …"

120. A useful summary of the relevant principles is set out in *Bestolov* at [44]:

> "44……..(1) It is possible for a defendant to reside in more than one jurisdiction at the same time.
>
> (2) It is possible for England to be a jurisdiction in which a defendant resides even if it is not his principal place of residence (ie even if he spends most of the year in another jurisdiction).

> (3) A person will be resident in England if England is for him a settled or usual place of abode. A settled or usual place of abode connotes some degree of permanence or continuity.
>
> (4) Residence is not to be judged according to a "numbers game" and it is appropriate to address the quality and nature of a defendant's visits to the jurisdiction.
>
> (5) Whether a defendant's use of a property characterises it as his or her "residence", that is to say the defendant can fairly be described as residing there, is a question of fact and degree.
>
> (6) In deciding whether a defendant is resident here, regard should be had to any settled pattern of the defendant's life in terms of his presence in England and the reasons for the same.
>
> (7) If a defendant visits a property in England on a regular basis for not inconsiderable periods of time, where his wife and children live, in order to see his wife and children (including where the centre of the defendant's relationship with his children is England), such property has the potential to be regarded as the family home or his home when in England, which itself is evidence which may go towards supporting the conclusion that England is for him a settled or usual place of abode, and that he is resident in England, albeit that ultimately it is a question of fact and degree whether he is resident here or not, having regard to all the facts of the case including any discernible settled pattern of the defendant's life or as it has also been put according to the way in which a man's life is usually ordered."

121. There are many examples of the application of these principles. Examples of cases where residence was not found include *High Tech International v Deripaska* [2006] EWHC 3276 (QB) ("*High Tech v Deripaska*"); *Cherney v Deripaska*; and *OJSC Oil Company Yugraneft v Abramovich and others* [2008] EWHC 2613 (Comm) ("*Yugraneft*"). Examples going the other way include *Foote Cone & Belding Reklim Hizmatlerei v Theron* [2006] EWHC 1585 ("*Foote Cone*"); and *Bestolov*.

122. Although it can be helpful to be taken through the facts of individual cases on an illustrative basis, ultimately the conclusion in each case depends on its own facts, a perhaps obvious point emphasised in numerous authorities (see for example *Cherney v Deripaska*, Langley J at [17] and *Shulman v Kolomoisky and another* [2018] EWHC 160 (Ch), Barling J at [29]).

123. Ms Davies QC for Mr Tugushev relied on *R v Barnet LBC, Ex parte Shah* [1983] 2 AC 309 (*"Shah")*, an authority referred to by Langley J in *Cherney v Deripaska*. In the context of student appeals against local authorities' refusals to grant awards under the Education Acts 1962 and 1980 the House of Lords adopted the approach taken in *Levene* as to the meaning of "ordinary residence" (at 340F-342B). At 343G-H Lord Scarman stated:

> "Unless, therefore, it can be shown that the statutory framework or the legal context in which the words are used requires a different meaning, I unhesitatingly subscribe to the view that "ordinarily resident" refers to a man's abode in a particular place or country which he has adopted voluntarily and for settled purposes as part of the regular order of his life for the time being, whether of short or of long duration."

And at 344C-D:

> "And there must be a degree of settled purpose. The purpose may be one; or there may be several. It may be specific or general. All that the law requires is that there is a settled purpose. This is not to say that the "propositus" intends to stay where he is indefinitely; indeed his purpose, while settled, may be for a limited period. Education, business or profession, employment, health, family, or merely love of the place spring to mind as common reasons for a choice of regular abode. And there may well be many others. All that is necessary is that the purpose of living where one does has a sufficient degree of continuity to be properly described as settled.
>
> The legal advantage of adopting the natural and ordinary meaning, as accepted by the House of Lords in 1928 and recognised by Lord Denning M.R. in this case, is that it results in the proof of ordinary residence, which is ultimately a question of fact, depending more upon the evidence of matters susceptible of objective proof than upon evidence as to state of mind. Templeman L.J. emphasised in the Court of Appeal the need for a simple test for local education authorities to apply: and I agree with him. The ordinary and natural meaning of the words supplies one. For if there be proved a regular, habitual mode of life in a particular place, the continuity of which has persisted despite temporary absences, ordinary residence is established provided only it is adopted voluntarily and for a settled purpose."

124. Lord Scarman (at 348G) rejected the submission (recorded at 345A) that "ordinarily resident" denotes the place where the student "has his home permanently or indefinitely, i.e. his permanent base or centre adopted for general purposes, e.g. family or career. This is the "real home test": it necessarily means that a person has at any one time only one ordinary residence, viz. his "real home"." He also stated (at 347H to 348B):

> "My Lords, the basic error of law in the judgments below was the failure by all the judges, save Lord Denning M.R., to appreciate the authoritative guidance by this House in *Levene v. Inland Revenue Commissioners* [1928] A.C. 217 and *Inland Revenue Commissioners v. Lysaght* [1928] A.C. 234 as to the natural and ordinary meaning of the words "ordinarily resident." They attached too much importance to the particular

> purpose of the residence; and too little to the evidence of a regular mode of life adopted voluntarily and for a settled purpose, whatever it be, whether study, business, work or pleasure. In so doing, they were influenced by their own view of policy and by the immigration status of the students."

Lord Scarman concluded (at 349C) that the relevant question for local authorities to ask is:

> "…has the applicant shown that he has habitually and normally resided in the United Kingdom from choice and for a settled purpose throughout the prescribed period, apart from temporary or occasional absences?"

125. Ms Davies submits that the search for residence thus looks for an abode that is part of the individual's regular order of life for the time being, for a settled purpose, whether of short or long duration. It matters not what that settled purpose is. It is not necessary for Mr Orlov to have a family home in the jurisdiction in order to be resident here, although the existence of a family home may readily demonstrate a settled purpose. I agree in broad terms with these observations. The existence of a family home (or the absence of a family home for someone with immediate family) in the jurisdiction clearly may be a relevant factor. Whilst *Shah* is another helpful illustration of the "ordinary residence" test explored and applied on its facts, I do not consider that *Shah* materially for present purposes adds to or detracts from the principles already identified above.

126. Ultimately, the question of residence is all about the facts, to which I now turn, assessing the position as at the date of issue of the claim form on 24 July 2018.

The facts on residence

The evidence for Mr Orlov

127. Mr Orlov has mounted a full-scale evidential response to Mr Tugushev's suggestion that he is to be treated as domiciled or resident in England. In overview, his case is that, although he had previously been resident in England, he relocated to Russia permanently in 2014 with his current partner, Ms Shumova, where his home has been ever since. At this point, he almost totally severed his personal links with England and set up home in Murmansk. By 2014 (i) the centre of his relationship with his children was no longer in England, (ii) he wanted to settle down with Ms Shumova in Murmansk, and (iii) his business interests were centred on Russia. It was also in 2014 that Mr Orlov's divorce from Mrs Orlova (who resides in England) was finalised. Mr Orlov says that the centre of his life is in Russia and his presence in England is now only intermittent and fleeting.

128. In more detail, Mr Orlov was born, brought up and educated in Murmansk, where he worked until 1996. At this point he relocated to work in Scandsea's office in Norway with his then wife, Mrs Orlova (whom he married in 1988), and their four children (Nikita, born in 1989; Veniamin, born in 1995, and two younger boys born in 2002 and 2005). They lived in Norway until late 2005 during which time Mr Orlov was registered as a Norwegian resident with the Russian consulate, paid tax in Norway

and worked under a Norwegian work permit. Mr Orlov was granted Norwegian citizenship in early 2005, his then wife and children having been granted it the previous year.

129. In late 2005, Mr Orlov and his family relocated to England, where they purchased a house in Weybridge (called "Waldenhurst"). Mr Orlov accepts that, between 2005 and 2007, he was resident in England and that his family home was at Waldenhurst. In 2007, Mr Orlov's marriage broke down and, after their separation, Waldenhurst was transferred into Mrs Orlova's name.

130. Mr Orlov says that, between 2007 and 2014, his living arrangements were "*fluid*" and he had no permanent home, although he maintained a "*limited but significant connection*" with England. Mr Orlov has given a lengthy account of his movements in this period. He was often based in Hong Kong (and was tax resident there), but would come back to Waldenhurst and stay in a spare room until 2009 when he bought a flat in Fulham (the "Fulham flat") as a place to see his sons. Mr Orlov says that he planned to sell the Fulham flat and thus put it on the market in mid-2016. However, it did not sell and is now occupied by Mr Orlov's second son, Veniamin.

131. In 2012, he put down a deposit on the Wharf flat. Mr Orlov's evidence is that, although the flat was bought in the short-term as somewhere large enough for him to spend time with his sons (and as a replacement for the Fulham flat), he saw it as a long-term investment. Further, by the time of completion (due to long delays in the building) in July 2014, the original short-term purpose was superseded for two reasons: first, he and Ms Shumova had decided to relocate to Murmansk; secondly, his sons were growing older and leaving home or starting boarding school. It was therefore no longer necessary for him to have a base near their family home and the quality time he spent with his sons, since 2014, became focused on the holiday periods. Mr Orlov says that he considered abandoning the purchase of the Wharf flat in 2014, but that this would have been an expensive choice (given the non-refundable deposit) and he considered that it remained a good investment.

132. Mr Orlov says that, as well as the Wharf flat being an investment property, he treats it as a private hotel, staying there, rather than in a hotel, when he is in England. He says that it is convenient and has good facilities, for example laundry and meeting rooms. However, he says that it is not his family home. Although he keeps some personal belongings there, like suits and toiletries, he does not keep any other personal possessions there. Mr Orlov also emphasises that he does not have a car or driver in England, does not know any of his neighbours or have any good friends there, is not a member of any clubs, is not involved with any charities or societies and is not registered with a GP or dentist in England.

133. Mr Orlov's evidence is that his home is in Murmansk, where he divides his time between two properties. The first is a flat in Burkova Street (purchased in 2009, with completion in November 2010), which was not bought with the intention of moving back to Russia but which Mr Orlov says he and Ms Shumova made their full-time home in 2014. The second is a datcha just outside the city (purchased in 2016). He says that, since 2014, his social, personal, cultural and family life has all been based in Russia. Ms Shumova lives there (although usually travels with him when he is away from Russia). His mother lives in St Petersburg and three cousins live in Murmansk. Members of Ms Shumova's family also live in nearby Monchegorsk. Mr

Orlov and Ms Shumova both have close friends in Murmansk. Mr Orlov emphasises his love of the outdoors and pursuits such as cross-country skiing, snowmobiling and walking his dog who lives in Murmansk. He refutes Mr Tugushev's suggestion that his home in Murmansk is a "Potemkin village". He describes the renovations carried out on the Burkova Street flat and the datcha, his enjoyment of the polar climate, his participation in festivals, parties and celebrations in Murmansk, his involvement in the community and activities such as skiing, fishing, hiking and mushroom picking. He also speaks of the importance to him of relocating to Russia for business reasons, in particular, for the development of the Norebo Group.

134. He says that, despite the Wharf flat being the most financially valuable of his properties, his Murmansk properties are substantially more valuable to him on a personal level due to his quality of life there and the effort that he and Ms Shumova have put into making them their homes. In summary, he states that "Ultimately, I cannot live the life I want to lead from St George's Wharf. It is on the other side of the world from the centre of operations of my business. In London, there would be no skiing after work, no snow, no fishing, no walking in the forest, no Armstrong [the dog], I would be back to breaking my tongue every day on a foreign language. I chose to live in England many years ago, when I thought that was the best option for the family unit of which I was then a part. It was the right choice then. It would not be the right choice now."

135. Mr Orlov emphasises that he spent far more time in Russia than in England in 2017 and 2018 (before service), holds a Russian passport, and is tax resident in Russia. By contrast, he enters the UK on a 5-year C-type Business Visa, which he obtained in August 2015. Mr Orlov says that, since relocating to Russia in 2014, the purpose of all his trips to England has been business and that this dictates the frequency and duration of his trips. The business purpose is usually to visit and oversee the operation of the Maidenhead office. He says that he tries to make sure he is at the Maidenhead office every 1-2 months and also attends the biannual sales meetings. He also occasionally comes for other business commitments and sometimes meets with English lawyers and barristers. Whilst on visits to England, he still manages matters in Russia remotely, for example by attending his usual meetings by Skype.

136. He says that, although he comes to England for business and works every day, if he is in London over the weekend, he tries to see his sons "when he can". He is usually able to see at least one of them in addition to seeing Nikita, his eldest son, who works in the Maidenhead office. He says that the chance to have dinner with them is a nice benefit of coming to England, although it is not always possible to see them. His trips are often arranged relatively last minute, his children have their own commitments and his trips are often short and busy.

137. Mr Orlov says that, although his four sons live in England, England is not the centre of his relationship with them. Rather, he tends to see them on holidays for extended periods of time in Gran Canaria, the Alps (where they spend Catholic Christmas each year), and in Murmansk (where they spend Russian New Year and Russian Christmas). He says that "the quality and quantity of the time we spend together in England is nothing like what we have in the holiday periods. They have their own lives and commitments. They have exams and tutoring and sporting activities. I am in work mode. It is snatched dinners and telephone calls between meetings; as time and commitments allow. There is no time for proper intimate conversations. We are never

all of us together. It is valuable – all the time I spend with my sons is valuable. But, it is what it is. It is limited. It is not a shared life in England. We have not had that for a very long time."

138. Nikita supports his father. He works for Norebo Europe and is based in England, working at the office in Maidenhead. His evidence is that Mr Orlov permanently relocated to Russia in 2014. He says that, since he moved back to Russia, his father's visits to the UK have always been related to work, that they have typically been short (between 1 and 3 days) and his schedule is always full. He visits the Maidenhead office, and has a range of other meetings and calls scheduled concerning the Russian side of the business. Nikita says that Mr Orlov is very good about "trying to squeeze us in if he can" and, if he is in the UK over a weekend, one or more of Nikita and his brothers will get a chance to see him for a quick dinner one evening (although he often needs to go back and work afterwards). He says that often they do not manage to see him or get to talk as either he or they are too busy. In terms of the Wharf flat, Nikita says that, in the first couple of years after Mr Orlov bought the flat, his younger brothers used to visit if they had a spare evening, but they are now increasingly busy and are less interested in spending time in the flat as there is not much there for teenagers to do. He says that the Wharf flat feels "fairly sterile" and "a bit like a show home" and that "everything looks perfect, but things don't actually really work when you try to use them." He says that it is not, to his knowledge, somewhere where Mr Orlov spends time relaxing or socialising and not somewhere that he or his brothers spend much time. Nikita says that the most important time that he and his brothers spend with Mr Orlov is on holiday, skiing in Austria or France, in Gran Canaria, or in Russia. Nikita sets out in detail the activities that he and his brothers pursue whilst on holiday in Murmansk, the relatives they visit and how much they enjoy spending time there. He says that it is "nonsense" to say that Mr Orlov lives in England.

139. Ms Shumova also gave evidence to the effect that her and Mr Orlov's home is in Murmansk, not London. That is where their homes are, their dog and their friends and families. She says that she enjoys travelling to London (and elsewhere) with Mr Orlov when she can, but that they no longer live there and that she has no interest in spending extended time there. She gives evidence about what they do in Murmansk and why she enjoys living there, for example their familial connections, the activities available and their quality of life there. She also speaks of the design and extensive refurbishment of both the Burkova Street apartment and the datcha.

140. Mr Orlov also adduced evidence from a number of other witnesses, including friends, neighbours, colleagues and employees:

    i) Mr Andrey Stanislavovich Vigdergauz, who is a neighbour of Mr Orlov at his datcha, states that Mr Orlov and Ms Shumova live in the house full time and that Mr Orlov is an active member of the community;

    ii) Mr Aleksandr Anatolievich Zubko, the director of the Murmansk Regional Olympic Reserve Sports School, speaks of Mr Orlov's commitment (financial and otherwise) to the school;

    iii) Mr Dmitry Anatolyevich Kuznetsov who lives near to Mr Orlov's datcha, gives evidence that, since 2016, Mr Orlov and Ms Shumova have lived in the datcha full time and about Mr Orlov's contribution to community life;

iv) Mr Denis Alexandrovich Petrov, a security guard at the Norebo office in Murmansk (employed there since April 2017), gives evidence that Mr Orlov is in the office almost every day, except when he is travelling, and that he does not remember him being away longer than two or three weeks at a time;

v) Ms Olga Egorovna Bayeva, a concierge in the Burkova Street apartment block, states that she saw Mr Orlov and Ms Shumova more often in the period 2014-2016, sometimes with Mr Orlov's sons, although they appeared less in 2016 and their driver informed her that they had moved to live in their country house. She sees them more often since they began (in 2016) to do work on their apartment for the second time;

vi) Mr Vladimir Semenov, another neighbour of Mr Orlov at his datcha, states that Mr Orlov and Ms Shumova live in their house full time and that, although Mr Orlov travels at times, he cannot remember him being away for excessively long periods. He also describes visits by Mr Orlov's sons and the active part taken by Mr Orlov in the community;

vii) Mr Andrey Fomichev, a security guard in the estate comprising Mr Orlov's datcha, states that Mr Orlov lives in his datcha full time;

viii) Mr Alexander Leonidovich Pavlov, the director of a ski club who lives near Mr Orlov's datcha, states that Mr Orlov and Ms Shumova have lived at their datcha full time since the summer of 2016, describes the activities they do together and that Mr Orlov's sons visit several times a year;

ix) Mr Erik Gunnar Mansfeld, a businessman and director of Norebo Overseas Hong Kong Limited, states that Mr Orlov lives in Murmansk and gives examples of visiting him there.

141. At this stage I should record Mr Orlov's complaint that he has had to meet a constantly moving target on the question of residence. This is true to an extent. Mr Tugushev's case as originally framed was undoubtedly overstated. Various investigations on his behalf have led to nowhere. Aspects of Mr Tugushev's case have fallen away as Mr Orlov's evidence has developed. But the fact that Mr Tugushev has had to adapt his position in order to accommodate fresh material from Mr Orlov as it emerged is not surprising. Mr Orlov holds the evidential cards on residence. The submission for Mr Orlov that Mr Tugushev must put forward "positive evidence" in order to succeed overstates the position. Mr Tugushev must show a good arguable case which can at least partly be done through inference.

Analysis

142. Despite the volume of material produced by Mr Orlov, I am quite satisfied that Mr Tugushev has established a good arguable case that Mr Orlov was domiciled in England on 24 July 2018. Mr Orlov may feel that his heart now lies in Murmansk; Mr Tugushev no longer seems to dispute that Mr Orlov and Ms Shumova spend substantial time at the two properties in Murmansk. However, as set out above, it is possible for Mr Orlov to reside in England even if it is not his principal place of residence (see for example *Bestolov* at [44(2)]).

143. Mr Orlov's evidence must be assessed fairly in the round against all of the material available and bearing in mind that he is accused of being a dishonest liar, just as he alleges Mr Tugushev to be. As recently as January 2019 Mr Orlov was found to have misled the Isle of Man courts by withholding the fact of certain payments. He appears (wrongly) to have denied to the Moscow police in November 2017 that he ever made an offer of US$60million to Mr Tugushev (as referred to in paragraph 68 above). There is scope for criticising Mr Tugushev as well: he accepts that he has made, on his case, inaccurate statements to bailiffs in 2012. He was also of course imprisoned for dishonesty, albeit he alleges wrongfully.

144. I have taken the following features into account in reaching my conclusion that there is a good arguable case that Mr Orlov has a residence in England.

Number of days and nights spent in England

145. Both parties analysed the number of days and nights spent in England by Mr Orlov in the 18 months prior to the issue of the claim form on 24 July 2018 to broadly similar effect. I did not find the parties' competing comparisons of the figures with those in other cases particularly helpful (for example by reference to the (shorter) average length of visits by Mr Deripaska in *Cherney v Deripaska* or Mr Abramovich in *Yugraneft* or the (greater) number of days spent Mr Abramovich in England each year). The numbers are only part of the picture.

146. By reference to Mr Tugushev's schedules which were the more sophisticated, the information can be summarised as follows:

Year	**Number of visits to England**	**Total days in England**	**Total nights in England**	**Shortest stay (nights)**	**Longest stay (nights)**	**Average length of stay (in nights)**	**Weekends (full or most) spent in England**
2017	14	56	64/65	1	15	4.5	11
2018 (to July)	7	25.5	28	2	6	4	7

147. There is no question but that Mr Orlov spends the majority of his time in Russia. But, as the authorities show, that is not determinative or necessarily inconsistent with having a residence here. Residence cannot be determined simply by counting the number of days spent in any one place. The numbers need to be considered alongside the nature and quality of the visits in question. Pattern and regularity of visit is also relevant. Mr Orlov made trips to England every month in 2017 except January and December. In the relevant part of 2018, he came to England every month bar February and July.

Mr Orlov's property portfolio

148. Mr Orlov owns a number of properties around the world, including two in England: the Wharf flat and the Fulham flat. Residence cannot be inferred from the mere fact of ownership of properties; however, it is again a relevant factor to consider.

149. The Fulham flat, as described above, was bought in 2009 as a base for spending quality time with his sons after his separation from his ex-wife. It is valued at £4.5 million and is thus more valuable than any of Mr Orlov's non-English properties.

150. But it is the Wharf flat upon which Mr Tugushev relies as Mr Orlov's residence. The flat is in Mr Orlov's name and Mr Orlov and Ms Shumova stay there whenever they visit England. It is also held for their sole use when they are abroad.

151. The Wharf flat was purchased for £13 million. Whether or not this represents a large proportion of Mr Orlov's wealth, it is both the most valuable and substantial of Mr Orlov's properties worldwide. Mr Tugushev estimates its square footage at over 8000 square foot. None of Mr Orlov's properties abroad come close, either in terms of size or value. Outside Russia (where he owns the Burkova Street flat, the datcha and a plot of land next to it, and a flat in St Petersburg) and England, he owns property in Gran Canaria (two villas valued at €3 million each).

152. Moreover, by contrast with other Russian defendants who have been sued in this jurisdiction, and despite his huge wealth, Mr Orlov appears to have chosen to concentrate his property ownership on where he spends most of his time: Russia, England and Gran Canaria. He does not own property anywhere else, even though he does visit the Alps, Belgium and Hong Kong, for example.

Mr Orlov's children

153. Mr Orlov's four children still live in England (as does Mrs Orlova, but that is not directly relevant for present purposes). His eldest son, Nikita (aged 29) lives in Maidenhead and works in the Maidenhead office; Veniamin (aged 23) is currently residing at the Fulham flat; the two younger boys live with Mrs Orlov and attend school in England.

154. Although Mr Orlov spends the most quality time with his sons outside England, it is clear that he also spends time with his children in England. On his own evidence, he sees them when he can for dinners in London and Maidenhead, and in both 2017 and 2018 he arranged his trips to London so as to be there for the younger boys' birthdays.

Purpose of Mr Orlov's visits and their nature and quality

155. As the authorities show, residence cannot be established simply by counting the number of days spent in the jurisdiction, or by mere ownership of property. It is important to consider the purpose of Mr Orlov's visits and the nature and quality of the time spent by him in England. Mr Tugushev disputes Mr Orlov's evidence that his visits are dictated by business and that he sees and uses the Wharf flat as a hotel. His case is that the visits are dual-purpose, driven by both business and family interests. The flat is a residence for him, together with his partner, Ms Shumova, where they exclusively stay when in the jurisdiction, and where his children visit and stay.

156. It is relevant that the utility bills (including for broadband service) for the Wharf flat are in the names of Mr Orlov and/or Ms Shumova and that Mr Orlov pays for a TV licence at the flat. Whilst the payment of council tax may simply reflect Mr Orlov's ownership of the Wharf flat, payment of other household bills is more relevant. Mr Orlov also has an English mobile telephone number.

157. Perhaps of more significance is the fact that, after Mr Orlov was served with the WFO, he made payments (on 25 July 2018 and 26 July 2018) out of his Isle of Man bank account to cover his service charge and ground rent liabilities in respect of the Wharf flat (and the Fulham flat) until 2020. These payments totalled £135,275 and were not due at the time. It was not disputed on behalf of Mr Orlov that these were pre-paid. For Mr Orlov it was suggested that these payments do not suggest that Mr Orlov is resident in the Wharf flat, but were simply necessary to secure Mr Orlov's investment. It is not clear why this would be so. But in any event, it is not the explanation that Mr Orlov gave in the proceedings in the Isle of Man. When seeking a variation of the Isle of Man freezing order, Mr Orlov's solicitors included the service charges payable on the Wharf flat and Fulham flat as "ordinary living expenses" or "ordinary recurrent payments involved in maintaining our client and his family in the style of life to which they are reasonably accustomed". This indicates that the Wharf flat was very much part of Mr Orlov's ordinary life – it was where he was ordinarily living. It was necessary for him to maintain it financially in order for him to maintain his (and his family's) lifestyle.

158. The evidence shows that Mr Orlov spent 11 full (or near-full) weekends in London in 2017 and seven in 2018. He often arrived in London either late on a Friday evening or early on a Saturday morning. This pattern of travel is not consistent with his visits being aimed solely at specific business meetings or events in England. Mr Pymont submitted that the explanation was that Mr Orlov works every single day, wherever he is in the world. The journey between Russia and England is not insignificant and the timing of any journey will depend on available flights and departure or landing slots; Mr Orlov's business itinerary is not always fixed in advance and might be subject to change; Mr Orlov has not been able to construct a complete record of his travel itineraries; Mr Orlov may have wished to spend some weekends in London so as to be installed in the Wharf flat in good time to conduct his regular early Monday morning conference calls there and that other weekends were transit stops to pick up or drop off his sons. Further detail was suggested in submission, though not evidence, as to how Mr Orlov might have spent particular weekends, and why he might not have wanted to make mid-week trips.

159. There was a lively debate between the parties as to how often Mr Orlov visited the Maidenhead office. Mr Orlov's evidence that he would invariably go to the Maidenhead office whenever in England was disputed by Mr Tugushev. The only evidence produced in support – taxi receipts – did not bear out the frequency of visit asserted. There is a good arguable case that Mr Orlov would not have travelled by train to Maidenhead from Paddington and that Mr Orlov has overstated the position. Mr Tugushev can contend that, on the basis of the taxi receipts and other evidence of specific meetings, the evidence demonstrates specific business events on only 11 out of 56 days in 2017, and 3 ½ out of 25 ½ days in 2018.

160. The fact is that Mr Orlov has adduced very little specific evidence of how he spent his weekends in London in 2017 and the first half of 2018, beyond that he stayed at the

Wharf flat and was always there for business. The nature and quality of his time in London was always likely to be a line of enquiry, as the authorities make clear.

161. What is established is that whenever Mr Orlov was in London, Ms Shumova was nearly always with him. In 2017, Ms Shumova accompanied Mr Orlov on all but one stay in England. In 2018, Ms Shumova again accompanied Mr Orlov on all but one stay (when Mr Orlov travelled from London to Brussels and back again, with Ms Shumova remaining behind in London). This does not suggest that London was all work for Mr Orlov.

162. Further, the only months when Mr Orlov did not come to the UK are those when he saw one or more of his children outside the UK. For example, in December 2017, all of his sons were with him in Austria; in January 2017, two of his sons were with him over New Year; in February 2018, Dennis spent half-term in Murmansk; and in July 2018, one of the younger boys spent the first week of his summer holiday in Russia. Mr Orlov likes to be in Murmansk in December, January and February (for budgets and good skiing), but the pattern is still there. Nor is the force of the point undermined by examples of Mr Orlov also visiting England notwithstanding the fact that he had recently seen one or more of his sons on holiday.

163. It is indeed undisputed that Mr Orlov arranged his stays in London to coincide with the birthdays of his two youngest children. For example, on a trip to England from 26 April 2018 to 1 May 2018, Mr Orlov visited the Maidenhead office on Monday 30 April 2018, he then spent the day of 1 May 2018 with one of his younger sons for his birthday, and then left on the morning of 2 May 2018 for Gran Canaria. Similarly, on a visit from 8-12 June 2018, Mr Orlov arrived from Hong Kong on 8 June and spent the afternoon with the other of his younger sons for his birthday. He then spent the weekend at the Wharf flat and held Skype meetings on Monday 11 June before flying back to Murmansk. He does not suggest that he had any other meetings or commitments that required him to be in England that weekend.

164. There is thus at least a good arguable case that Mr Orlov (quite naturally) arranged his visits to see his children (as well as for business) and that both business and family dictated the timing and duration of his trips to England.

165. To the extent that comparison is helpful, this distinguishes the facts of this case with those of *Yugraneft*, for example, where Mr Abramovich's visits in the relevant period were almost exclusively related to his attendance at football matches. In *High-Tech v Deripaska* Mr Deripaska's visits were described as "flying visits, almost always for business purposes and as merely ancillary to the conduct of his Russian businesses". By contrast, there is a good arguable case that Mr Orlov's visits to England were for mixed business and family purposes. He was nearly always accompanied by his partner, Ms Shumova. His visits also followed a regular pattern of one or two visits nearly every month.

Visas

166. Although the immigration status of Mr Orlov and that of Ms Shumova is in no way to be treated as decisive, it may give rise to facts relevant to the question of residence (see *Shah* at 346C).

167. Neither Mr Orlov or Ms Shumova volunteered any evidence as to Ms Shumova's immigration status until Mr Tugushev queried it in his responsive second witness statement. In reply they revealed that in November 2015, Ms Shumova obtained indefinite leave to remain in the UK ("ILR"). To obtain ILR, she was required to meet certain criteria, including making an investment of £750,000 in the UK, having at least £1 million under her control in the UK and having spent the "specified continuous period" of five years lawfully in the UK, with absences of no more than 180 days in any 12 calendar months during that five-year period (see the Immigration Rules, Appendix A, Table 9B).

168. With ILR she is now able to remain in the UK for an indefinite period provided that she can satisfy the immigration officer at the time of entry that she is entering for the purposes of settlement. That means in essence entering in order to take up ordinary residence within the jurisdiction (see *Foote Cone* at [19]). Paragraph 18 of the Immigration Rules sets out the conditions for ILR holders re-entering the UK to "resume their residence". Amongst other things (including no more than a two year absence), there is a requirement that the ILR holder "now seeks admission for the purpose of settlement." "Settled" is defined at paragraph 6 of the Immigration Rules and s. 33 of the Immigration Act 1971. These make it clear that the definition includes ordinary residence in the UK.

169. Thus, on each occasion when Ms Shumova re-entered the UK, she at least represented that she was seeking admission "for the purpose of settlement", settlement connoting ordinary residence in the UK.

170. Mr Orlov suggests that Ms Shumova used her ILR simply as a travel visa. Mr Orlov's evidence is that, having already obtained an investment visa, Ms Shumova had the opportunity to "upgrade" it into a permanent right to remain in the UK, which would give her the right to enter freely with him. She therefore ensured that she spent the requisite time in the UK to build up an entitlement to qualify (180 days per year for five years). He said that, by the time they made the decision to relocate to Russia in 2014, this process was well-advanced and therefore Ms Shumova decided to see the process through and continued to meet the 180-day threshold each year until her application in October 2015. His evidence is that, since Ms Shumova was granted ILR "the only requirement to maintain that status is for her to visit the United Kingdom once every two years." Ms Shumova confirms this account in her own statement and states that: "Vitaly and I are very close and I am very glad to have the ability to travel with him when I can: whether he is travelling within Russia, to the United Kingdom or to any country to which I am able to obtain a visa with my Russian passport. Since I was granted the right to travel freely to the UK, I now only need to visit the UK once every two years to maintain that right."

171. Mr Pymont submitted that neither Ms Shumova nor Mr Orlov thus understood that, as a matter of law, Ms Shumova's use of the ILR required her to indicate an intention to settle in the UK. If Ms Shumova had acted outside the limits of her visa, there may be problems with her visa, but this could not affect the question of her residence, still less that of Mr Orlov. He submitted that it is necessary to consider the substantive position of the time they spent in England. After obtaining her ILR in 2015, the days spent by Ms Shumova in the UK dropped off considerably. In 2015, she spent between 147 and 164 days in the UK, whereas in 2016 she spent 36 to 52 days in the UK and in 2017 she spent 49 days and in 2018 she spent even less. He submitted this

shows that, once she obtained ILR, she did not use it for more than episodic visits which tallied with Mr Orlov's movements.

172. I do not consider that this evidence can be so easily explained away. First, on any view it indicates a clear intention on the part of Ms Shumova (and by implication Mr Orlov) to maintain strong and permanent residential ties with England both before and after November 2015. Ms Shumova's application form for the ILR has not been produced by Mr Orlov or Ms Shumova, but on her own case she knew that she was applying for a permanent right to remain in the UK. This strongly undermines Mr Orlov's position that after 2014 he, with Ms Shumova, essentially turned their backs on London and the UK for anything other than short business visits, leaving the jurisdiction to make their only home in Russia.

173. Mr Tugushev can argue that Ms Shumova (and by implication) Mr Orlov understood the ILR regime. There is no reason to think that Mr Orlov was unaware of Ms Shumova's application and ILR status: he leads on the issue in the evidence on the jurisdiction challenge. The rules for re-entry are clearly explained in standard Home Office guidance sent to successful applicants for ILR ("the guidance"). (Mr Tugushev's solicitors wrote to Mr Orlov's solicitors on 25 January 2019 asking for confirmation of whether or not Ms Shumova received this guidance but no reply was received.) Ms Shumova speaks English fluently and made her witness statement in English. Assuming that Ms Shumova was sent the guidance, she would therefore have been able to understand its full implications, even without the assistance of any advisers likely to have been on hand. The guidances states under the heading "What happens if I leave the UK?" that:

> "If you leave the United Kingdom, you will normally be re-admitted for settlement as a returning resident provided that:
>
> - you did not receive assistance from public funds towards the cost of leaving this country;
> - you had indefinite leave to enter or remain here when you last left;
> - you have not been away for longer than 2 years; and
> - <u>you are returning for the purpose of settlement</u>.
>
> <u>In order to be considered as settled here you will have to be able to show that you are habitually and normally resident in this country, and that any absences have been of a temporary or occasional nature</u>.
>
> <u>You will not be re-admitted as a returning resident if you are resident overseas and only return here for short periods</u>." (emphasis added)

174. Additionally, the biometric ILR card that Ms Shumova would have received and used at each time of entry into the UK states very clearly that it is a "SETTLEMENT" type of "**RESIDENCE PERMIT"**:

175. Ms Shumova would have used this card to re-enter the UK ever since November 2015 and on the 19 separate occasions that she did in the period January 2017-July 2018. Mr Orlov travelled with her on most, if not all, of these occasions.

176. In any event, given their status and wealth, there is every reason to think that Mr Orlov and Ms Shumova would have had the benefit of sophisticated lawyers' advice on the visa application process and implications of different visa options. Mr Tugushev can reasonably infer that Mr Orlov and Ms Shumova were fully advised on and understood the Immigration Rules. They do not say otherwise. It is clear from Mr Orlov's own evidence that they had a clear understanding of the requirements for Ms Shumova to obtain ILR, including the need to invest at least £750,000 in assets in the UK, maintain investments of £1 million in her sole control and spend 180 days per year for five years in the UK. It is hard to believe that they would not have also received advice on the proper and permissible usage of the ILR.

177. Mr Tugushev can therefore argue that Ms Shumova's use of the ILR represented the true position - at least in so far as residence in (as opposed to absences from) the UK was concerned - namely that she was re-entering the UK for the purpose of ordinary residence (in the Wharf flat). But even if Ms Shumova was misusing the ILR in some way because of misunderstanding or otherwise, on any view her use of the ILR in all the circumstances demonstrates a closer and more permanent connection with England for both herself and Mr Orlov than either she or Mr Orlov have been prepared to admit. Mr Orlov cannot simply distance himself from Ms Shumova's application for and use of her ILR: they live together and travel together. Their intentions and arrangements on an issue such as their residence are likely to overlap, if not coincide.

178. Mr Orlov entered the UK on a Type C business visa (which may be a factor weighing against residence: see for example *Yugraneft*, at [461]). His visa application was supported by letters from Ocean Trawlers which stated that he required the visa for business purposes, specifically to attend meetings at the Maidenhead office. But the terms of such a visa do not prohibit him from having a home here, simply from having his main home here. There is no maximum number of days for which a visitor under such a visa may enter. It is perfectly open to him under the Immigration Rules to have an ordinary residence in the UK.

179. To approach the evidence on Mr Orlov and Ms Shumova's immigration status in this way is not to fall into the error of law identified in *Shah* (at 347H). It is not to rely on their (past or present) immigration status as such, or to be unduly influenced by it. Rather the evidence throws up relevant facts which form part of the overall evidential picture and informs the question of whether or not Mr Tugushev has a good arguable case that that Mr Orlov was resident in England in July 2018.

Residence and tax

180. Mr Orlov is tax resident in Russia, which again may be a factor pointing against his residence here (see *Yugraneft* at [461] where Christopher Clarke J (as then was) commented that being resident for jurisdiction but not tax purposes was a distinction to be avoided if possible).

181. Whilst determining an individual's tax residence is a largely mechanistic exercise of counting the number of days in a country, the authorities make it clear that determining someone's residence for jurisdiction purposes is a far more nuanced exercise. There have been a number of cases where the court has concluded that the relevant individual is resident in England without being tax resident here or having spent the requisite number of days here to alert HMRC to his/her presence. In *Bestolov* it was noted (at [46]) that:

> "In the above circumstances, and whilst it is clear that Mr Povarenkin was resident and tax domiciled in Russia at all material times, the authorities recognise it is possible for a defendant to reside in more than one jurisdiction at the same time, and England may be a jurisdiction in which Mr Povarenkin resides even if it is not his principal place of residence. This is just such a case."

182. Mr Orlov is also registered as resident in Russia, with a Russian address, and has been since 20 June 2014. However, as Christopher Clarke J (as then was) said in *Yugraneft* at [476]: "[t]he registered address is a formality which may bear very little relationship to a person's real residence".

Conclusion on residence

183. Despite the fact that there are pockets of contested evidence, I am able reliably to conclude that Mr Tugushev has a good arguable case that Mr Orlov was resident in England as at 24 July 2018. England is a settled and usual place of abode for Mr Orlov. His residence at the Wharf flat had a degree of permanence and continuity; he resided there for settled purposes: for business and/or to see his children. I do so having regard to the factors identified above, and in particular the following:

i) Mr Orlov consistently spent substantial periods of time in England for a settled purpose, namely for the dual purpose of business and seeing his family. He was nearly always accompanied on his trips to England by Ms Shumova and some of his trips were organised to coincide with his sons' birthdays;

ii) His visits to England followed a regular and settled pattern, coming to London generally once or twice a month, with exceptions at Christmas and in the summer;

iii) Mr Orlov's use of the Wharf flat does not suggest that it was merely a private hotel where he stayed for fleeting visits, but where he regularly stayed, often for weekends, with Ms Shumova, and where he was occasionally visited by family. In 2018 he viewed the cost of maintaining the Wharf flat as one of his "ordinary living expenses";

iv) Ms Shumova's application for and use of her ILR as from November 2015 indicate a strong and permanent residential presence in England on both her part and that of Mr Orlov. Mr Orlov's business visa status does not prohibit him from having a usual residence in England.

184. I therefore consider it possible reliably to conclude not only that limb 1 as identified in *Brownlie* and *Kaefer* is made out but that Mr Tugushev also has the better of the argument under limb 2 - without needing to fill every evidential lacuna or resolve every dispute (for example as to whether Mr Orlov kept any of his personal possessions in the Wharf flat, how often he visited the Maidenhead office or precisely what he spent his weekends in London doing). If I am wrong to reach this conclusion on limb 2, then limb 3 will in any event be made out: I would consider that Mr Tugushev has a plausible evidential (albeit contested) case that Mr Orlov resides in England on the evidence.

185. Overall, I consider that Mr Tugushev has a good arguable case that Mr Orlov is resident (and so domiciled) in the jurisdiction.

Abuse of process

186. It was faintly suggested for Mr Orlov (in writing only) that, in the light of the position adopted by Mr Tugushev and/or findings in proceedings in Norway in 2017 ("the Norwegian proceedings"), it might be an abuse of process for him now to advance a case that Mr Orlov was domiciled in London. I can dispose of the point shortly.

187. The Norwegian proceedings concerned applications by Mr Tugushev against Mr Orlov, Mr Roth, Mr Klock and Mr Brun-Lie for certain documents, including the 1998 Agreement. Mr Tugushev's original petition referred to Mr Orlov as "a Russian citizen and resident in Murmansk". He later asserted that Mr Orlov was domiciled in England. (Mr Tugushev says that he gave Mr Orlov's official residence in Murmansk first; in his second statement he set out where he believed Mr Orlov actually lived, which was in England.) For the purpose of the Norwegian proceedings on jurisdiction, the Oslo County Court concluded, on the basis of the material before it, that Mr Orlov was domiciled in Russia, not England.

188. It is common ground that no issue estoppel arises technically, since the date of domicile under consideration in the Norwegian proceedings was different to the one relevant here. Nor is there anything abusive in Mr Tugushev now contending that Mr Orlov is resident here. The finding in the Norwegian proceedings was made on very limited evidence, namely Mr Orlov's application for cancellation of Norwegian citizenship, his registration as a Russian citizen and payment of tax in Russia and his

passport. The issue of Mr Orlov's domicile only arose in the context of a dispute as to whether or not Mr Orlov was domiciled in a state subject to the Lugano Convention which the court in fact found Mr Tugushev could not rely on at all. It was therefore an incidental finding at most. Thirdly, a statement that Mr Orlov had a domicile in Russia is not inconsistent with Mr Orlov also having a residence in England.

189. There is thus no basis for an issue estoppel as identified in *Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd* [2013] UKSC 46 (at [20]) nor are there grounds for an abuse of process argument (again as identified in *Virgin Atlantic Airways Ltd* (at [24])).

190. There is therefore no bar to my conclusion that Mr Tugushev has a good arguable case that Mr Orlov is domiciled in England having full effect.

191. This is a complete answer to the jurisdiction challenge and it is not strictly necessary to consider the alternative jurisdictional bases advanced. Tempting though it is to conclude now what is already a long judgment, in deference to the full arguments advanced, I proceed to consider the alternative jurisdictional bases relied upon by Mr Tugushev nevertheless.

Tort gateway on both the AA and Norebo Group conspiracies

192. In respect of both the AA and Norebo Group conspiracy claims, Mr Tugushev relies on the fact that the conspiratorial agreements were made in London so as to engage the tort gateway. It is for him to show a good arguable case that there is jurisdiction under the tort gateway.

193. Mr Orlov denies that Mr Tugushev has a good arguable case that any conspiratorial agreement (if any exists, which he denies) was made in London. But even if Mr Tugushev did, Mr Orlov raises two threshold objections to reliance by Mr Tugushev on the tort gateway:

    i) First, on the facts alleged by Mr Tugushev, Russian law applies to the conspiracy claims and under Russian law there is no available claim in tort in respect of either conspiracy. Thus the tort gateway does not assist him;

    ii) Secondly, the torts alleged do not have a sufficient connection to the jurisdiction, even assuming that they were hatched here, so as to fit through the tort gateway.

Russian law

194. The first objection raises two issues: first, what is the proper law of the conspiracy claims; and secondly, if the proper law is Russian law, whether a claim in tort could be sustained.

195. As to the first question, whether or not Russian law applies to the conspiracy claims is hotly contested. Mr Orlov says it does; Mr Tugushev says that it does not and that English law is the proper law. On the basis of the materials advanced to date, I consider that this complex point is arguable either way. I am prepared to proceed for

present purposes on the basis that Mr Orlov has the better of the argument that Russian law applies.

196. There would appear to be no direct authority on the question of whether a tort claim fits through the gateway is to be determined by reference to the proper law of the alleged tort. However, support for the proposition that it is so to be determined can be found in a number of authorities and textbooks (see for example Briggs on *Private International Law in English Courts (2014)*, at [4.453], citing *Metall und Rohstoff*). It is also a position consistent with the position in contract (see for example *Dicey and Morris and Collins on the Conflict of Laws* ("*Dicey*") at [11-203] citing *Vitkovice Horni A Hunti Tezirstvo v Korner* [1951] AC 869).

197. Again I proceed for present purposes in Mr Orlov's favour on the basis that the question is to be determined by reference to the proper law of the tort (and that that law is Russian).

Evidence of Russian law

198. Mr Orlov's submission is that, under Russian law, a claimant cannot bring a claim in tort to the extent that he has an overlapping claim in contract. For this proposition, Mr Orlov relies upon the following evidence of Professor Maggs:

> "76. There might be four possible theories of liability under Russian law that could arise under the language of paragraph 44 [of the Particulars of Claim]: (1) breach of contract, (2) tort under Article 1064 of the Civil Code, (3) unjust enrichment under Articles 1102ff of the Civil Code or (4) recovery of property from another's wrongful possession under Article 301 of the Civil Code.
>
> 77. Generally in Russian law under the rule against competition of claims (which is a sub-rule of the rule that the particular governs the general) if a party to a valid contract has a claim for breach of contract, then the claim must be brought under the contract and may not be brought under other theories that might apply. Accordingly, in Russian law, any claim in contract against Mr Orlov and/or Mr Roth would eliminate all other causes of action against those two defendants with respect to acts constituting a breach of contract."

199. Mr Pymont submitted that Mr Tugushev's primary case is that Mr Orlov has breached the JVA by failing to recognise Mr Tugushev's right to dividends and his one third interest in the group. As a result, his case in breach of contract would give him full relief. The allegation of conspiracy is effectively an allegation of deliberate and intentional breach of contract. Professor Maggs' evidence therefore shows that Mr Tugushev's tort claims would be unavailable under Russian law.

200. However, Professor Maggs' evidence is less than satisfactory. He cites no authorities, statutes or texts in support of the principle identified. Importantly, Professor Maggs does not explain the scope of the principle or the nature of any exceptions to what he himself identifies only as a general rule. Without any explanation of the rationale

behind "the rule against competition of claims" and its scope, it is impossible for the court to determine whether or how the principle would apply to the facts of the case. It is also not clear how, under Russian law, claims should be classified as claims "in breach of contract".

201. These inadequacies may well be explained by the fact that whether or not Russian law would preclude claims in tort being advanced was not actually put as a question to Professor Maggs for him to consider. The passage relied upon by Mr Orlov appears in that section of his report which addresses the Russian law limitation periods applicable to the AA conspiracy claim. The point is not made expressly in relation to the Norebo Group conspiracy claim at all.

202. None of Mr Tugushev's Russian law experts address the point, seemingly since the argument now being raised for Mr Orlov was not recognised. Ms Davies suggested that there are (and sought to produce) Russian law materials casting considerable doubt on the existence of the alleged principle. However, without expert evidence, this cannot avail Mr Tugushev.

203. The court is therefore not armed with the necessary materials to reach any sensible view on the merits of the proposition relied upon by Mr Orlov. I do not accept in these circumstances that I can or should conclude that Mr Orlov has the better of the argument (or that Mr Tugushev does not). I consider that the proper approach is that stated in *Dicey*, at Rule 25 (citing *Bumper Development Corp v Commissioner of Police of the Metropolis* [1991] 1 WLR 1362, at 1369 (CA)):

> "(1) In any case to which foreign law applies, that law must be pleaded and proved as a fact to the satisfaction of the judge by expert evidence or sometimes by certain other means.
>
> (2) In the absence of satisfactory evidence of foreign law, the court will apply English law to such a case."

204. Here the evidence of Russian law is unsatisfactory and there is an important evidential void (as to the scope of the principle identified). The court must presume that Russian law is the same as English law, under which there is no barrier to Mr Tugushev bringing his claim in tort. On this basis Mr Tugushev has a good arguable case that his tort claims are actionable, whether Russian or English law applies.

Substantial and efficacious act

205. Mr Tugushev relies upon the conspiracies being "hatched" in England as the "act committed…within the jurisdiction" from which the relevant damage has resulted. For Mr Orlov it is submitted that the requirements of the tort gateway will not be satisfied even if the conspiracies were hatched in England. He submits that more than simply an agreement to undertake some substantial and efficacious act which causes the damage is required. Under the alleged conspiracies, the substantial and efficacious acts were the stripping of Mr Tugushev of his shares under the AA conspiracy and the refusal to recognise his rights under the Norebo Group conspiracy. These events happened in Russia, or at least not in England.

206. Reliance is placed on *Metall und Rohstoff* where Slade LJ stated (at 437C-G):

> "As the rule now stands it is plain that jurisdiction may be assumed only where (a) the claim is founded on a tort and either (b) the damage was sustained within the jurisdiction or (c) the damage resulted from an act committed within the jurisdiction. …
>
> Condition (c) prompts the inquiry: what if damage has resulted from acts committed partly within and partly without the jurisdiction? This will often be the case where a series of acts, regarded by English law as tortious, are committed in an international context. It would not, we think, make sense to require all the acts to have been committed within the jurisdiction, because again there might be no single jurisdiction where that would be so. But it would certainly contravene the spirit, and also we think the letter, of the rule if jurisdiction were assumed on the strength of some relatively minor or insignificant act having been committed here, perhaps fortuitously. In our view condition (c) requires the court to look at the tort alleged in a common sense way and ask whether damage has resulted from substantial and efficacious acts committed within the jurisdiction (whether or not other substantial and efficacious acts have been committed elsewhere): if the answer is yes, leave may (but of course need not) be given. But the defendants are, we think, right to insist that the acts to be considered must be those of the putative defendant, because the question at issue is whether the links between him and the English forum are such as to justify his being brought here to answer the plaintiffs' claim."

207. There is no dispute that what is required is a "substantial and efficacious act" resulting in damage. The dispute is whether a conspiratorial argument can qualify as such an act.

208. Mr Tugushev relies on *Khrapunov*: the hatching of a conspiracy amounts to a substantial and efficacious act resulting in damage, even if there may be other substantial and efficacious acts committed elsewhere. *Khrapunov* was concerned with the application of Article 5(3) of the Lugano Convention, worded differently to the tort gateway and founding jurisdiction in the "place where the harmful event occurred or may occur" (wording which is substantially identical to the wording of the equivalent gateway in Article 7 of the Recast Regulation). The Supreme Court held that the conspiratorial agreement (in England) was the "harmful event". Lord Sumption and Lord Lloyd-Jones (with whose judgment the rest of the Court agreed) stated at [9]:

> "Conspiracy is both a crime, now of limited ambit, and a tort. The essence of the crime is the agreement or understanding that the parties will act unlawfully, whether or not it is implemented. The overt acts done pursuant to it are relevant, if at all, only as evidence of the agreement or understanding. It is sometimes suggested that the position in tort is different. Lord Diplock, for example, thought that "the tort, unlike the crime,

> consists not of agreement but of concerted action taken pursuant to agreement": *Lonrho Ltd v Shell Petroleum Co Ltd (No 2)* [1982] AC 173, 188. This is true in the obvious sense that a tortious conspiracy, like most other tortious acts, must have caused loss to the claimant, or the cause of action will be incomplete. It follows that a conspiracy must necessarily have been acted on. But there is no more to it than that. The critical point is that the tort of conspiracy is not simply a particular form of joint tortfeasance. In the first place, once it is established that a conspiracy has caused loss, it is actionable as a distinct tort. Secondly, it is clear that it is not a form of secondary liability, but a primary liability. This point had been made by Lord Wright in *Crofter Hand Woven Harris Tweed Co Ltd v Veitch* [1942] AC 435, 462: "the plaintiff's right is that he should not be damnified by a conspiracy to injure him, and it is in the fact of the conspiracy that the unlawfulness resides." It was reaffirmed by the House of Lords in *Revenue and Customs Comrs v Total Network SL* [2008] AC 1174, paras 102 (Lord Walker), 116 (Lord Mance), 225 (Lord Neuberger of Abbotsbury). Third, the fact of combination may alter the legal character and consequences of the overt acts. In particular, it may give rise to liability which would not attach to the overt acts in the absence of combination. This latter feature of the tort was what led Lord Wright in Crofter, loc cit, to say that it was "in the fact of the conspiracy that the unlawfulness resides." He was speaking of a lawful means conspiracy, but as Lord Hope of Craighead pointed out in *Revenue and Customs Comrs v Total Network SL* at para 44, the same applies to an unlawful means conspiracy, at any rate where the means used, while not predominantly intended to injure the claimant, were directed against him. There is clearly much force in his observation at para 41 that if a lawful means conspiracy is actionable on proof of a predominant intention to injure, "harm caused by a conspiracy where the means used were unlawful would seem no less in need of a remedy".

209. As indicated, the Supreme Court was considering the jurisdiction under Article 5(3) of the Lugano Convention. The words "harmful event" in Article 5(3) have been interpreted by the CJEU as covering both (a) the place where the damage occurred and (b) the place of the event giving rise to the damage (see *Khrapunov* at [28]). Under the tort gateway, the damage sustained must result "from an act committed, or likely to be committed within the jurisdiction".

210. For Mr Orlov it was submitted that *Khrapunov* cannot assist. A conspiratorial agreement cannot be described as a "substantial and efficacious act" as opposed to a "harmful event which sets the tort in motion". In *Lonrho v Shell Petroleum Co. Ltd* [1982] AC 173 ("*Lonrho v Shell")* Lord Diplock observed (at 188F) that:

> "Regarded as a civil tort, however, conspiracy is a highly anomalous cause of action. The gist of the cause of action is

> damage to the plaintiff; so long as it remains unexecuted the agreement, which alone constitutes the crime of conspiracy, causes no damage; it is only acts done in execution of the agreement that are capable of doing that. So the tort, unlike the crime, consists not of agreement but of concerted action taken pursuant to agreement."

211. I have reached the conclusion that Mr Tugushev has a good arguable case that a conspiratorial agreement is sufficient to amount to a "substantial and efficacious act" for the purpose of the tort gateway, applying the reasoning in *Khrapunov*:

i) There is little on their face to separate the two concepts: damage resulting from an act (the tort gateway) versus a harmful event (interpreted as an event giving rise to damage) (the Lugano Convention);

ii) Although (at [32]) the Supreme Court in *Khrapunov* stated that it is necessary to interpret the "place where the harmful event occurred" autonomously, Lord Sumption and Lord Lloyd-Jones made clear that "the requirement of an autonomous interpretation does not mean that the component elements of the cause of action in domestic law are irrelevant. On the contrary they have a vital role in defining the legally relevant conduct and thus identifying the acts which fall to be located for the purposes of article 5(3). In particular, whether an event is harmful is determined by national law.";

iii) Although the Supreme Court noted that the jurisprudence of the CJEU focuses on the act of "setting the tort in motion", Lord Sumption and Lord Lloyd-Jones commented (at [38]) that "the Court of Justice emphasises the relevant harmful event which sets the tort in motion, thereby providing a greater degree of certainty in the application of the Convention. This gives effect to an important policy of the Brussels/Lugano scheme, recognised in *Bier* [1978] QB 708, para 21, by promoting "a helpful connecting factor with the jurisdiction of a court particularly near to the cause of the damage". At [31] they stated that derogations in the Lugano and Brussels regimes from the general principle of suit at the place of the defendant's domicile must be "strictly interpreted" and that "these heads of special jurisdiction can be justified because they reflect a close connection between the dispute and the courts of a contracting state, other than that in which the defendant is domiciled, and thereby promote the efficient administration of justice and proper organisation of the action." Thus, even though the CJEU jurisprudence refers to the act of setting the tort in motion, the underlying policy is to recognise the act as sufficient to ground jurisdiction because it provides a helpful connecting factor. There is no reason why that policy should not apply equally when assessing jurisdiction under the tort gateway;

iv) At [41] Lord Sumption and Lord Lloyd-Jones reasoned why the place of agreement was relevant and sufficient to found jurisdiction:

> "We consider that the Court of Appeal correctly identified the place where the conspiratorial agreement was made as the place of the event which gives rise to and is at the origin of the damage. As Sales LJ explained [2017] QB 853, para 76, in

> entering into the agreement Mr Khrapunov would have encouraged and procured the commission of unlawful acts by agreeing to help Mr Ablyazov to carry the scheme into effect. Thereafter, Mr Khrapunov's alleged dealing with assets the subject of the freezing and receivership orders would have been undertaken pursuant to and in implementation of that agreement, whether or not he was acting on instructions from Mr Ablyazov. The making of the agreement in England should, in our view, be regarded as the harmful event which set the tort in motion."

By parity of reasoning, a conspiratorial agreement can be seen as a (substantial and efficacious) act from which damage results;

v) The Supreme Court in *Khrapunov* (at [9]) directly addressed the statement of Lord Diplock in *Lonrho v Shell* (at 188F). *Lonrho v Shell* was not a case dealing with the tort gateway, or indeed jurisdiction at all. For the tort of conspiracy to be completed, there must be damage – "true in the obvious sense". But just as the tort is incomplete without damage, so it is incomplete without a conspiratorial agreement: as Lord Diplock said, it consists of concerted agreement "taken pursuant to agreement".

212. That the tort gateway under the Practice Direction should be no narrower than that under the Brussels and Lugano regimes is also clearly supported by the historical development of the tort gateway as considered by Baroness Hale and Lord Wilson in *Brownlie*. Baroness Hale, at [50] to [51], considered that the rules in the CPR, despite their different wording, were introduced with the intention of encompassing cases covered by the Brussels Convention:

> "50. Indeed, I see no reason to think that those who framed the RSC and CPR intended them precisely to mirror the interpretation later given to the Brussels Convention. The language used in the Rules, although no doubt intended to widen the gateway so as to encompass the cases covered by the Brussels Convention, is quite different from the language of the Convention. The Dumez and Marinari decisions came afterwards, to restrict the scope of the language used in the Convention, but they do not override the language of the Rules in non-EU cases. They are of no help in construing Rules which have remained in essentially the same language ever since. If the Rules Committee had wanted to assimilate the Rules after the decisions in Booth and Cooley, they could easily have done so, and now more easily, as the gateways are contained in a Practice Direction rather than a Rule.
>
> 51. It is also necessary to bear in mind the difference between the two schemes. The European scheme deliberately eschews any discretion in favour of clear and certain rules, in the context of a scheme which governs, not only jurisdiction, but also recognition and enforcement of the resulting judgments. No doubt that is why the Court of Justice was anxious to restrict

> the scope of the Bier decision by drawing the direct/indirect distinction. That is not a feature of the English scheme, which retains the "valuable safety valve" of discretion, a discretion which need not be limited to the Spiliada principles, but can concentrate on the real question, which is "the proper place for the resolution of the dispute" (as Professor Briggs puts it)."

213. Lord Wilson suggested to similar effect, at [60]-[61], that the gateways in the Practice Direction should be no narrower (although may be wider) than the rules under the Brussels regime:

> "60. It has therefore been necessary for our procedural rules in respect of service of claims outside England (and, which will go without saying, also Wales) to be wide enough to permit service in circumstances in which the recast Regulation and its predecessors have allocated jurisdiction to English courts to determine a claim against a person domiciled elsewhere in the EU. In 1978 the Court of Justice in Luxembourg determined the Bier case, cited and explained in para 29 above, which disclosed a rare situation in which an allegedly unlawful physical act in one member state caused direct physical damage only in a second member state. The court's construction of the location of the "harmful event" in what was then article 5(3) of the 1968 Convention, namely that it had occurred in the second state as well as the first and that it was for the claimant to choose in which of them to bring his claim, therefore required an amendment, which came into force in 1987, to what was then RSC Ord 11, r 1(1)(f). The rule then began to provide for service out of the jurisdiction if, among other things, "the damage was sustained... within" England as well as if it "resulted from an act committed" here.
>
> 61. Our procedural rules for such service have therefore needed to be wide enough to enable us to comply with our duties under EU law. But it does not follow that, even if the natural construction of our rules indicates a wider gateway to service out of the jurisdiction in the case of a claim unconstrained by EU rules of jurisdiction, construction of them should be narrowed to the size of the gateway set by the EU rules, as interpreted by the Court of Justice."

214. Whilst the Supreme Court in *Brownlie* was concerned with the other limb of the domestic tort gateway (through paragraph 3.1(9)(a) of the Practice Direction), its observations about the historical relationship between the two regimes can be said to apply more generally. As Baroness Hale remarked, it makes sense as a matter of policy that the CPR gateways are not drawn more tightly than those under the Brussels/Lugano regimes.

215. I am therefore persuaded that Mr Tugushev has a good arguable case that the making of a conspiratorial agreement is sufficient to amount to a substantial and efficacious act justifying the defendant being brought here to answer the claim, and may

constitute an act committed within the jurisdiction from which damage has been or will be sustained for the purpose of the tort gateway.

Tort gateway: AA conspiracy claim

216. As set out above, I am satisfied that the AA conspiracy claim raises a serious issue to be tried. Mr Orlov does not have an outright limitation defence. That leads to the question of whether or not there is a good arguable case that the agreement forming the AA conspiracy was hatched in London.

217. Given that Mr Orlov denies the very existence of any conspiracy, there is an inevitable air of unreality in any positive case from him as to where it might (or might not) have taken place. However, he is clearly entitled to suggest that there is no good arguable case that the AA conspiracy was hatched in England.

218. The pleaded claim is that the AA conspiracy was entered into between Mr Orlov, Mr Petrik and Mr Roth "on a date or dates unknown to Mr Tugushev but believed to be between 12 December 2002 and 15 June 2011" and that "[i]t is to be inferred that the AA conspiracy was hatched in London, where Mr Petrik lived from at least 2001 (and in particular when the misappropriation of the share transfers took place) and where Mr Orlov lived from at least 2005, and in circumstances where much of the business of the Norebo Group was conducted and administered from England.". In submission, Ms Davies refined Mr Tugushev's case on timing to suggest that the AA conspiracy was, in all likelihood, entered into by 2007.

219. Mr Tugushev's case relies heavily on Mr Petrik's alleged involvement in the AA conspiracy, in particular by reference to the fact that he executed two share sale agreements in London that are said to form part of the misappropriation of Mr Tugushev's shares. The first agreement, purportedly dated 12 October 2002 ("the 2002 Petrik agreement"), is an agreement whereby Mr Petrik acquired an interest in Norebo Invest. The second, purportedly dated 22 December 2003 ("the 2003 Petrik agreement"), is an agreement whereby Mr Petrik sold his shares in Norebo Invest to a Luxembourg Company called Premium Utility Investment SA. These documents are said to be a key part of the chain of transactions whereby Mr Tugushev's shares were passed to Mr Orlov and Mr Roth - Mr Tugushev's shares in AA having been transferred to Norebo Invest whilst it was owned by Mr Petrik, and Norebo Invest having been acquired by Norebo Holding (owned by Mr Roth and Mr Orlov) in 2011.

220. Mr Orlov does not accept that there is a proper basis for inferring that Mr Petrik was part of the AA conspiracy, nor that there is a proper basis for saying that any relevant steps were taken in England in the nine-year period during which it is pleaded the AA conspiracy was hatched. Mr Pymont submitted that there is no reason why Mr Petrik would have known that Norebo Invest had acquired any shares in AA. He was a shareholder of Norebo Invest at the time of the transfer of Mr Tugushev's shares to that company; however, he did not play a pivotal role within the Norebo Group, was acting as a nominee shareholder in Norebo Invest on Mr Orlov's instructions and was not a director. There was no reason as a mere shareholder of Norebo Invest for him to have known anything about Norebo Invest's assets. Mr Petrik did what he was told, signed what he was asked to sign, and had no idea that Norebo Invest acquired AA until he was served with these proceedings. Even if Mr Petrik knew that Norebo Invest had acquired Mr Tugushev's shares in AA, there would be no reason for him to

think that there was anything untoward about this. Mr Tugushev himself said he did not think there was anything untoward about Norebo Holding having 100% of the shares in AA when he was told of this in 2011. Mr Petrik believed that Mr Tugushev was divesting himself of an interest in the shares in order to take up his role in the Fisheries Committee.

221. However, there is material to suggest that Mr Petrik was not a mere mid-level fish salesman. Mr Petrik has held directorships in the Norebo Group companies, including as director of Ocean Trawlers; he is currently one of three Vice Presidents of Norebo Europe; he is a close friend of Mr Orlov. Mr Tugushev also gives evidence that Mr Petrik was responsible for administering dividends payable by the Norebo Group and was responsible for (or involved in) record-keeping regarding the dividends paid to Mr Tugushev, Mr Orlov and Mr Roth (although this is disputed). Further, Mr Tenenbaum, chief corporate lawyer at Karat, stated in an interview with the Murmansk police (albeit not under oath or caution) that Mr Petrik was present at a meeting of the directors of the Norebo Group companies held near Murmansk in October 2001 in which Mr Tenenbaum explained the plan for the creation of a single holding company (which became AA) whose capital would be owned equally by Mr Orlov, Mr Tugushev and Mr Roth.

222. I consider, therefore, that Mr Tugushev does have a good arguable case that Mr Petrik was involved in the alleged AA conspiracy. Mr Tugushev has a good arguable case that Mr Petrik would have known (from the meeting in Murmansk or his work at Ocean Trawlers) that Mr Orlov, Mr Tugushev and Mr Roth had agreed to share everything equally; it can be argued that the fact that Mr Orlov was asking Mr Petrik to become the nominee of Norebo Invest to which the AA shares were being transferred - in particular where this was the only occasion on which Mr Petrik became a nominee on Mr Orlov's behalf - would have signalled to him that something untoward was happening. It is also to be noted that at the time of Norebo Invest's acquisition of the AA shares, Mr Petrik was in fact its 99% shareholder.

223. As for the location of the conspiracy, it was submitted for Mr Orlov that there is no basis for saying that the conspiracy was hatched in England between 2002 and 2011. If it was hatched at all, this was most likely in 2003 at the time of the transfer of Mr Tugushev's shares to Norebo Invest, and at a time when Mr Orlov was based in Norway. There is also no reason to speculate that anything happened in England, in particular as Mr Roth was not located in England, Mr Orlov was not based in England after 2007 and the Maidenhead office, although an important sales office, has no group administration functions. There is evidence from Mr Romanovsky, Mr Orlov's cousin who worked in a variety of roles in Norebo Group companies, that the agreement transferring Mr Tugushev's shares in AA to Norebo Invest was executed in Russia and that is where he had signed it on behalf of Norebo Invest.

224. The pleaded basis of the AA conspiracy does not assert that the misappropriation occurred in 2003. Mr Tugushev submits that it is unclear when the share transfers were actually effected and suggests that this agreement, alongside the two signed by Mr Petrik, may have been backdated (relying on the evidence of Mr Balakin to the effect that he was asked in 2004 to obtain Mr Tugushev's backdated signature on the agreements for the sale of his shares in AA).

225. Mr Tugushev's position on location again relies on the 2002 and 2003 Petrik agreements. They are both headed "City of London" and contain English (or Great Britain) law and jurisdiction clauses. There is evidence showing that the 2003 Petrik agreement was faxed from Marine Services (a company based in England) to a fax number in Murmansk in August 2005. The 2002 Petrik agreement was also signed by Mr Roth. Although Mr Petrik originally stated that he signed paperwork relating to the shares in Russia, in his Defence he states that he cannot recall exactly which documents he signed in Russia.

226. There is a good arguable case that the 2002 and 2003 Petrik agreements were backdated. There was no reason for Mr Petrik to have acquired an interest in Norebo Invest in 2002. Mr Tugushev did not take up public office until September 2003 which is when, on Mr Orlov's case, he needed to sell his AA shares. The fax header transmitting the 2003 Petrik agreement shows a date of August 2005. At this time Mr Orlov was staying occasionally with Mr Petrik in his house in Maidenhead. Ms Davies suggested that the agreement transferring Mr Tugushev's shares in AA to Norebo Invest was also executed in England alongside the other transfers at around this time.

227. Whilst Mr Tugushev's case relies in large measure (and unsurprisingly) on inference, I consider that Mr Tugushev has established a good arguable case that the AA conspiracy was hatched in England. Mr Orlov (of necessity) cannot provide evidence of an alternative location. Many of the points are impossible to resolve now; however, I consider Mr Tugushev to have a plausible (albeit contested) evidential basis for suggesting that the conspiratorial agreement on the AA conspiracy was made in England.

Tort gateway: the Norebo Group conspiracy claim

228. I turn next to the question of whether Mr Tugushev has a good arguable case that the Norebo Group conspiracy was hatched in England.

229. Mr Tugushev's case is that the conspiracy was hatched during a meeting in London between Mr Orlov and Mr Roth between 14 and 16 September 2015. Mr Orlov accepts that he met Mr Roth in England at that time, but contends that it makes no sense for the conspiracy to have been hatched then, in the context of Mr Tugushev's broader case: first, it is artificial to separate the Norebo Group conspiracy from the AA conspiracy and that the "real pleading" is that there was a misappropriation of Mr Tugushev's shares in AA in 2003; secondly, on Mr Tugushev's case, Mr Orlov and Mr Roth were taking action to deprive him of his share in the Norebo Group, and had begun openly to deny his interest in the group, substantially earlier than September 2015.

230. As to the first point, the Norebo Group conspiracy can be said to be separate from the AA conspiracy. Mr Tugushev's case is that he was deprived of his legal ownership of the AA shares at some point prior to 2007 or 2008, but that Mr Orlov and Mr Roth nonetheless continued to assure him that he had an interest in the Norebo Group and continued to pay him dividends accordingly, through to 2015. His complaint under the Norebo Group conspiracy is premised on the denial of his broader interest in the group – specifically by reference to his receipt of dividends. There is evidence to support Mr Tugushev's case that his interest in the Norebo Group was recognised by

Mr Orlov and Mr Roth until mid-2015 (even though he was no longer a shareholder in AA), including the following:

i) In a petition presented by Mr Roth to the Hong Kong High Court in December 2017 (commencing proceedings against Mr Orlov and TTC), Mr Roth recorded that, as of November 2007, "all of the shares in Norebo were legally owned by Mr Orlov, who held: (1) 1/3 of the shares legally and beneficially for himself; (2) 1/3 of the shares on behalf of Mr Roth; and (3) 1/3 of the shares on behalf of a third-party investor" (who can be presumed to have been Mr Tugushev);

ii) In June 2012, Mr Tugushev, Mr Orlov and Mr Roth entered into an agreement delegating substantial day-to-day control over the Norebo Group to Mr Orlov. Mr Tugushev retained a copy of a draft of the agreement which he says was executed in materially identical terms. The agreement acknowledges, in paragraph 1 that "[t]he Parties have directly and/or indirectly together full ownership control over a group of Russian fishing companies…". Mr Roth expressly confirmed in a telephone call with Mr Tugushev in April 2015, that in his view "there is no doubt about that this agreement is still valid";

iii) In a number of conversations between Mr Roth and Mr Tugushev from 2014 through to May 2015, Mr Roth expressly acknowledged Mr Tugushev's one third interest in the Norebo Group, saying for example that "without the doubt that we keep our promise that you have the benefit out of this. There is no doubt. There is no formal link. You get your benefit, you get your third. But there is no paper ownership on it." And "when we take the dividends, you get one third of the dividends. If we sell the company, you get one third of the company";

iv) Mr Orlov also expressly acknowledged Mr Tugushev's interest in conversations in 2014-2015, saying, for example that they have "a third each" and that "my position is that you receive 1/3 of the dividends";

v) A structure was set up by which Mr Tugushev could, and did, receive dividends, namely the incorporation of Laxagone in 2011 and Foreson in 2015.

231. Many of the examples relied on for Mr Orlov on the question of timing (for example a meeting between Mr Tugushev, Mr Roth and Mr Orlov on 23 May 2014) related to Mr Tugushev's legal shareholding being denied, as opposed to his wider interest in the Norebo Group as a whole - which is the focus here.

232. Undoubtedly there was considerable activity between Mr Tugushev, Mr Orlov and Mr Roth in the months surrounding September 2015. Nevertheless, I consider that Mr Tugushev has a good arguable case that the alleged Norebo Group conspiracy was hatched when Mr Orlov and Mr Roth met in London between 14 and 16 September 2015:

i) as set out above, there were numerous conversations in 2014 and the first half of 2015 where Mr Orlov and Mr Roth had expressly recognised Mr Tugushev's entitlement to a third of the interest in (and dividends from) the Norebo Group, despite him no longer having a shareholding;

ii) In July 2015, the position changed when Mr Roth refused to approve payment of dividends from Laxagone to Mr Tugushev without Mr Orlov's written consent. Mr Pymont submits this shows that, on Mr Tugushev's own case, the conspiratorial agreement must have occurred before September 2015, pointing also to Mr Tugushev's evidence in the Norwegian proceedings that "[t]he conflict between parties occurred in August 2015 after Roth refused to approve payment of dividends from Laxagone without Orlov's written consent." However, there is evidence suggesting that, although Mr Roth was blocking payments at this time, Mr Orlov was continuing to reassure Mr Tugushev that his dividends would be paid, which can be said to be inconsistent with the existence of any conspiratorial agreement at that stage. Indeed, Mr Tugushev recorded a Skype call with Mr Klock (an employee of Norebo Group and director of Laxagone) who told him that dividends were blocked because the relationship between Mr Roth and Mr Orlov had worsened and he was in the middle of it. There could have been a number of reasons why Mr Roth was not prepared to continue to authorise payment of the dividends to Mr Tugushev. Mr Tugushev also recorded a meeting with Mr Orlov on 26 August 2015, where Mr Orlov explained that Mr Roth was "behaving strangely" in blocking the dividend payments. In Mr Tugushev's meeting with Mr Brun-Lie on 2 September 2015, Mr Brun-Lie also expressed that he didn't think that "there is any doubt that [Mr Tugushev] has, er call it the moral… right to get his part of the values as such" and that he thought Mr Orlov's position was "that yes, he is willing to give values… corresponding to one third" to Mr Tugushev;

iii) Most significantly in the present context, in the meeting of 26 August 2015 with Mr Tugushev, Mr Orlov suggested that the dividend issue would be discussed in his September meeting with Mr Roth. He referred to the fact that Mr Roth "is coming for a meeting in September" and later on said that "it appears that in September we'll have a talk about going out, we'll discuss the three quarters, and I'll say don't sign. That is, my position is that I only sign the distribution of dividends into the three [directions]. Before now, we've always had distribution into three directions…". He affirmed later that "my position is that we have to separate, but until we have found a solution and still on the way to such separation, my position is that you receive 1/3 of the dividends…". Much later in the conversation, he referred again to the forthcoming meeting, saying "I hope there'll be a meeting in September. Look, Nick [Brun-Lie] is planning to hold the meeting or two days, he and Magnus [Roth], they must be writing the agenda now. And talk about that aspect." Similarly, on 1 September 2015, Mr Orlov and Mr Tugushev had a Skype call (also recorded by Mr Tugushev) in which Mr Tugushev wished to discuss his forthcoming meeting with Mr Brun Lie in relation to the dividends issue. Mr Orlov expresses the view that "I think the situation will clear up". Mr Tugushev understood that the issue would be discussed at the meeting in London. He said that "I think nothing will change before your meeting in London, everything depends on results of your talk in London, because you have the main meeting in London."

233. So much for the period before 14 September 2015. There is then evidence to suggest that attitudes to Mr Tugushev's entitlement to dividends had changed very shortly

after the September meeting. In an email to Mr Konkov (copied to Mr Tugushev) on 30 September 2015 Mr Brun-Lie stated:

> "- I have discussed AT's position I [sic] relation to dividend with [Mr Orlov] and [Mr Roth] and they do not consider the arrangement as an obligation to pay dividends but only a mechanism for distribution of dividends.
>
> - With respect to shares VO does not recognise that AM [sic] has a legal right to any of his shares but that he will stand by his previous commitments to compensate AT adequately. A formal transfer of shares can therefore not take place."

234. This appears to evidence a change of position, at least on Mr Orlov's part, in terms of Mr Tugushev's entitlement to dividends. There is a good arguable case, especially given Mr Orlov's clear indication on 26 August 2015 that the matter would be discussed with Mr Roth at their September meeting, i) that the matter was discussed and ii) that the alleged conspiratorial agreement was made then. Mr Orlov was recorded by Mr Brun-Lie as recognising "his previous commitments to compensate AT adequately", followed by a formal offer of $60 million in exchange for a general release by Mr Tugushev of his claims (which Mr Tugushev rejected). There was, nevertheless, a change in Mr Orlov's position in relation to dividends, a focal point of Mr Tugushev's case on the Norebo Group conspiracy.

235. That there was such a change of heart on Mr Orlov's part is also suggested by his defence to the (allegedly false) Koptevskiy Proceedings commenced on 24 November 2015. Mr Orlov stated that he "did not pledge to divide the profits of the companies he owned between Magnus Roth and Tugushev A.I.".

236. Mr Pymont raised a number of further points to suggest that a September date for the conspiratorial agreement was inconsistent with Mr Tugushev's case advanced elsewhere:

i) in the Norwegian proceedings Mr Tugushev asserted that he had a potential claim against Mr Roth, Mr Brun-Lie and Mr Klock for conspiring with Mr Orlov "to misguide Tugushev in order to keep him from formalizing ownership of the shares";

ii) Mr Tugushev started to record the talks that he had with Mr Orlov and Mr Roth as early as February 2014, as he felt he could no longer rely upon them. However, Mr Tugushev explains in his evidence that he did this because Mr Orlov had indicated in December 2013 that he was considering a break up of the company and he felt that he would be completely unprotected in those circumstances. He states that, at that time, he had no reason to believe they were conspiring to deprive him of his rights;

iii) There is correspondence between Mr Tugushev and Mr Roth on 21 September 2015 and 9 October 2015 said to suggest that Mr Roth did not want to get involved in the issue of Mr Tugushev's dividends and had no interest in conspiring to deprive Mr Tugushev of his share, since Mr Orlov was going to buy Mr Roth out. However, this point goes more to the question of whether Mr

Tugushev has a good arguable case as to the existence of a conspiracy at all (which Mr Orlov has accepted), and not to the time or place of its being hatched;

iv) Mr Tugushev's stated in his second witness statement that "until then [30 September 2015] both of them [Mr Orlov and Mr Roth] were leading me down the garden path". Thus it is said that any plan to injure him must have been hatched before September 2015. I consider that this is to rest too much on the particular wording used by Mr Tugushev in what can be seen as a loose (and unnecessary) forensic comment. It does not necessarily suggest that the Norebo Group conspiracy was hatched prior to 14 to 16 September 2015.

237. At what is necessarily a high level, and whilst recognising again the many (currently unresolved) factual disputes between the parties, I consider that Mr Tugushev does have a good arguable case that the alleged Norebo Group conspiracy was hatched between Mr Orlov and Mr Roth at a meeting in London in September 2015. The evidence suggests that Mr Orlov changed his attitude to Mr Tugushev's entitlement to dividends between the end of August and late September 2015 and that the question of the dividends was on the agenda for the September meeting.

The necessary or proper party gateway: the AA conspiracy claim

238. In the alternative, Mr Tugushev relies upon the necessary or proper party gateway (in paragraph 3.1(3) of the Practice Direction) to establish jurisdiction over Mr Orlov in respect of the AA conspiracy claim, on the basis that Mr Orlov is a necessary or proper party to the equivalent tort claim against Mr Petrik.

239. As set out above, the necessary or proper party gateway applies where:

> "(3) A claim is made against a person ('the defendant') on whom the claim form has been or will be served (otherwise than in reliance on this paragraph) and –
>
> (a) there is between the claimant and the defendant a real issue which it is reasonable for the court to try; and
>
> (b) the claimant wishes to serve the claim form on another person who is a necessary or proper party to that claim."

240. Mr Petrik is "the defendant" in this case; it is common ground that the claim form has been served on him as of right. There are therefore two outstanding issues: first whether there is between Mr Tugushev and Mr Petrik a real issue which it is reasonable for the court to try (paragraph 3.1(3)(a)) and secondly whether Mr Orlov is a necessary or proper party to that claim (paragraph 3.1(3)(b)). It is on the first issue that there has been most dispute.

241. Within paragraph 3.1(3)(a) are two sub-issues: (i) whether there is a real issue between Mr Tugushev and Mr Petrik and (ii) whether it is reasonable for the English court to try that issue.

242. As to the first sub-issue, whether there is a real issue between Mr Tugushev and Mr Petrik, this is to be determined by reference to whether or not the claim against Mr Petrik is "bound to fail" (see *AK Investment CJSC v Kyrgyz Mobile Tel* [2011] UKPC 7 ("*AK Investment*") at [80] and [82]).

243. Mr Orlov submits that there is no real issue to be tried between Mr Tugushev and Mr Petrik on the basis that the claim is time-barred against Mr Petrik and that there is no evidence of his involvement in the AA conspiracy. Both points have already been resolved against Mr Orlov either expressly or inferentially, as set out above. Mr Orlov's submissions as to limitation in respect of Mr Petrik are the same as those in respect of Mr Orlov, which I have rejected. Indeed, Mr Petrik's limitation defence would appear to be weaker than that of Mr Orlov, in that the structure charts sent to Mr Tugushev in 2011 did not reveal that Mr Petrik had had any involvement in the transfers of the AA shares. I have also considered above Mr Petrik's alleged involvement in the AA conspiracy in the context of considering whether Mr Tugushev has a good arguable case that the AA conspiracy was hatched in London. There is a good arguable case that Mr Petrik was involved. I therefore consider that there is a real issue to be tried between Mr Tugushev and Mr Petrik.

244. The second sub-issue is whether it is reasonable for the English court to try that issue. Guidance can be found in *Erste Group Bank AG, London Branch v JSC 'VMZ Red October'* [2015] EWCA Civ 379, [2015] 1 C.L.C. 706 ("*Erste Bank*") at [37]-[50]. At [38] the Court of Appeal analysed the approach to the necessary or proper party gateway:

> "38. Thus a claimant has to demonstrate that both threshold requirements are met. At the first stage under paragraph 3.1(3)(a), the court has to examine the nature of the claim which arises against the anchor defendants in isolation; that is to say on the assumption that there will be no additional joinder of the foreign defendants. The court has to be satisfied that not only is there 'a real issue' between the claimant and the anchor defendants, but also that it is an issue 'which it is reasonable for the court to try'. These requirements are underlined by CPR 6.37(2) which provides that the application must also state the grounds on which the claimant believes that there is between the claimant and the defendant a real issue which it is reasonable for the court to try. Only at the second stage does the court go on to consider whether the foreign party is 'a necessary or proper party to that claim'."

245. The Court of Appeal went on at [48] to say:

> "48. In our judgment the issue for determination under paragraph 3.1(3)(a) in the present case, as we have identified in the first sentence of the previous paragraph, is a much more finely nuanced, soft-edged, question than the stark questions which the judge seems to have posed and decided. We emphasise in this context the use of the word 'try'. <u>The question is directed not at whether it is reasonable or proper from the perspective of the particular claimant to issue or bring</u>

> proceedings, but rather whether it is reasonable for the English court to 'try the issue', whether in summary judgment proceedings or otherwise. Indeed the wording of paragraph 3.1(3)(a) departs from the more subjective formulation of the principle articulated by Morton J in *Ellinger v Guinness, Mahon & Co* [1939] 4 All ER 16, 22 and referred to by Lord Collins in paragraph 65 of *AK Investment* – namely 'a real issue between the plaintiff and that party which the plaintiff may reasonably ask the court to try'." (emphasis added)

246. It is therefore necessary to ask whether, considering Mr Tugushev's claim against Mr Petrik in isolation, it would be reasonable for the English court to try that claim.

247. Mr Orlov submits that it would not be reasonable for the English court to try such a claim. Mr Tugushev has nothing to gain from litigation against Mr Petrik alone; Mr Petrik is being sued as an anchor defendant so as to obtain a jurisdictional advantage. Mr Petrik is not a man of substantial means, and almost no allegations are made against Mr Petrik in the Particulars of Claim. Where the only substantial benefit which a claimant obtains from suing an anchor defendant is a jurisdictional advantage, the claim is one which it is not reasonable for the court to try (because the claimant has nothing to gain from the claim against the anchor defendant when viewed in isolation).

248. However, the fact that a claim against a defendant is motivated in order to obtain a jurisdictional advantage, does not in itself mean that the necessary or proper party gateway is unavailable, as confirmed by the Privy Council in *AK Investment* at [76] and [79]:

> "76. First, the mere fact that D1 is sued only for the purpose of bringing in D2 is not fatal to the application for permission to serve D2 out of the jurisdiction: *The Brabo* [1949] AC 326 , 338–339, per Lord Porter; *Derby & Co Ltd v Larsson* [1976] 1 WLR 202 , 203, per Viscount Dilhorne."
>
> …
>
> 79. The better view, therefore, is that the fact that D1 is sued only for the purpose of brining in the foreign defendants is a factor in the exercise of the discretion and not an element in the question whether the action is "properly brought" against D1, provided that there is a viable claim against D1."

249. The Court of Appeal in *Erste Bank* also said at [43]:

> "43. It was obvious from the evidence that the commercial (and indeed only) driver behind the Bank's issue of proceedings in England against D1 and D2 was to enable a claim to be brought against D3 and D5 and to attempt to execute against their assets, whether in Russia or elsewhere. However we do not consider that in the present case it is necessary or appropriate for this court to revisit the question whether the fact that a

> claimant's motive in bringing proceedings against the anchor defendants was only for the purposes of enabling a claim to be brought against the foreign defendants is a factor which is relevant to the question whether the threshold criteria under paragraph 3.1(3) of PD6B have been satisfied. To do so would involve reconsideration of this court's decision in *Multinational Gas and Petrochemical Co v Multinational Gas and Petrochemical Services Ltd* [1983] Ch 258 and the various authorities there cited. That would be a task for the Supreme Court. Accordingly, even if we have reservations on this point, we must accept for the purposes of this case the Board's conclusion, as expressed in paragraph 79 in *AK Investment*, that the fact that the anchor defendant is sued only for the purpose of bringing in the foreign defendants is not an element in deciding the question whether the gateway requirements of paragraph 3.1(3)(a) or (b) have been satisfied. That factor is only for consideration under the wider discretionary head of Issue 4."

250. In *Gunn v Diaz* [2017] EWHC 157 (QB) Andrews J stated at [99]-[100]:

> "99. As to the second limb of sub-paragraph 3(a), the judgment in *Erste Group Bank* makes it clear at [78] [vii] that it may not be reasonable for the English Court to try a claim even if it plainly has jurisdiction over that claim (in that case, because of an exclusive jurisdiction clause in the contracts; in the present case, because Sixt is deemed to have accepted that it does). The court will have to consider, among other matters, if there is any utility in its trying the claims against the anchor defendant. If the claimant has nothing to gain from a trial of those issues here, even a trial to the stage of obtaining summary judgment (other than using the claim against the anchor defendant as a vehicle for bringing in the target defendant) the second limb will not be satisfied. That was the basis on which, on the facts, the claimant in *Erste Group Bank* failed on this limb of the gateway.
>
> 100. In the present case, as in *Erste Group Bank*, there would be no particular advantage for the claimants to be gained from this court trying any legal issues arising as between the claimants and Sixt that may still require determination, especially as those issues would all have to be resolved by reference to Costa Rican law. There is no evidence, for example, that Sixt has any assets outside Costa Rica against which an English judgment could be executed. In any event Sixt is undoubtedly solvent and is likely to be able to pay any damages awarded against it."

251. In *PJSC Commercial Bank Privatbank v Kolomoisky* [2018] EWHC 3308 (Ch) ("*Kolomoisky*") [170]-[175] Fancourt J considered the application of the necessary or proper party gateway at [170] – [175]:

> "171. As to satisfaction of the gateway for service out of the jurisdiction, it is well- established in the context of forum conveniens cases that a claim may properly be brought against anchor defendants even if the sole motive for doing so is to establish jurisdiction against foreign defendants: see *Altimo Holdings and Investments Ltd v Kyrgyz Mobile Tel Ltd* [2011] UKPC 7; [2012] 1WLR 1804 at [76] to [79]. The motive for bringing the proceedings is merely a factor in the exercise of discretion. However, as things stand, it cannot be said that there is between the Bank and the English Defendants a real issue that it is reasonable for the court to try. Given the motive for bringing the claim against them, it is doubtful whether the claim will ever proceed in the absence of a claim against the First and Second Defendants. Moreover, the claim against the English Defendants is stayed. If the appropriateness of that stay is ever revisited, the claim against the BVI Defendants could be reviewed at the same time.
>
> …
>
> 174. In my judgment, it therefore cannot be said that England is forum conveniens for a claim against the BVI Defendants at this time. The theoretical possibility of a claim against insubstantial defendants being pursued in England should not be allowed to distort the analysis: see *Microsoft Mobile Oy v Sony Europe* [2018] 1All ER (Comm) 419 at [197] – [198]. On the facts of this case, given the motive for suing the English Defendants at all, the claim against them is a factor of very little weight."

252. In all of the circumstances of this case, I consider that it is reasonable for the English court to try Mr Tugushev's claim against Mr Petrik:

i) It is by no means clear that Mr Petrik was sued solely as an anchor defendant so as to found jurisdiction against Mr Orlov. I have found that Mr Tugushev has a good arguable case that Mr Petrik played a substantial role in the AA conspiracy. Mr Tugushev's evidence is that at the time of bringing these proceedings (and now) he believed Mr Orlov to be resident and domiciled in London;

ii) It cannot be said that there is no utility (beyond jurisdictional advantage) in bringing a claim against Mr Petrik. Although Mr Petrik states that "[u]nlike me, the first and second defendants would appear to be men of substantial means", there is no reason to suppose that Mr Tugushev would not be able to obtain any relief from him or that he does not have assets in England – he has at least the house in Maidenhead in which he lives;

iii) If only Mr Petrik were sued in the jurisdiction, it would be a claim which Mr Tugushev would be entitled to pursue under the CPR; there would be no basis for the court preventing that claim from going forward to trial. This is different, for example, to the position in *Kolomoisky*, where the claims against

the anchor defendant were stayed; in *Gunn v Diaz*, where permission should not have been granted to serve the anchor defendants in the first place; and in *Erste Bank* where the claimant had submitted the claims to Russian proceedings;

iv) Indeed, Mr Tugushev indicated through Ms Davies that, whatever the outcome of the jurisdictional challenge by Mr Orlov, he will pursue his claim in this jurisdiction against Mr Petrik.

253. The final question is whether Mr Orlov is a necessary or proper party to Mr Tugushev's claim against Mr Petrik, which again I answer in the affirmative. The AA conspiracy claims against Mr Petrik and Mr Orlov are inextricably bound up, arise from the same facts and require a common inquiry. Mr Orlov and Mr Petrik are sued as joint and several tortfeasors for the same loss and it is appropriate to have one trial of the issues against them both. Ultimately, the question is "answered by asking "supposing both parties had been within the jurisdiction would they both have been proper parties to the action?"…D2 will be a proper party if the claims against D1 and D2 involve one investigation." (see *AK Investment* at [87]). It is clear to me that, had both Mr Orlov and Mr Petrik been within the jurisdiction (as of course I have in fact found them to have been), they would both have been proper parties to a single investigation.

Appropriate forum

254. As with the two gateways addressed above, the question of forum only arises if I am wrong in my conclusion that Mr Orlov is resident, and therefore domiciled, in England. If so, the final stage of permission to serve out is for Mr Tugushev to establish that England is clearly and distinctly the most appropriate forum for the trial of the action.

Competing arguments

255. There have been very substantial submissions on both sides in relation to the question of forum. I propose to summarise the competing arguments on both sides, although without descending into the full detail in which these points were argued.

256. Mr Tugushev submits that England is clearly and distinctly the most appropriate forum:

i) The parties have substantial connections to England. These include Mr Orlov's family and business connections and his assets within the jurisdiction; and Mr Petrik's English domicile and British citizenship. He notes also Mr Roth's lack of connections to Russia;

ii) The claims have factual connections to England, for example the hatching of the conspiracies within the jurisdiction and the existence of the Maidenhead office. Although jurisdictions other than England - such as Russia, Hong Kong and Norway – are connected, due to the location of Norebo Group business interests or actions taken pursuant to the conspiracies, the case concerns a multi-party conspiracy to misappropriate interests in an international corporate

group. Using connecting factors to search for a natural home for the litigation is unlikely to produce a determinative answer;

iii) English law applies to the claims; however, even if Russian law applied, only a few issues of law arise in the dispute. This would not be a strong connecting factor;

iv) Mr Tugushev would continue proceedings against Mr Petrik and Mr Roth in England in any event. Mr Petrik is sued as of right and Mr Roth is sued under Article 5(3) and/or Article 6(1) of the Lugano Convention. There is no scope for the application of *forum conveniens* principles to their cases. If the English court were to decline to exercise jurisdiction over Mr Orlov, the result would be multiple proceedings with the associated risk of inconsistent outcomes, increased cost and practical difficulties;

v) Mr Tugushev and Mr Roth both allege that the Russian courts and Russian legal system are open to abuse and manipulation. In light of the history of false proceedings against him and his recent arrest and detention at the behest of Mr Orlov, Mr Tugushev has very real and substantive concerns that he will not receive a fair trial in Russia. Mr Tugushev relies on (i) his previous criminal conviction; (ii) Mr Orlov's powerful position in Murmansk (where it is common ground that any civil claim would have to be brought) and (iii) the recent publicity generated against Mr Tugushev by a TV company called Arctic TV in which it has been suggested that Mr Tugushev is a spy for MI6;

vi) Practical points such as the nationality and location of witnesses and documents do not take matters further and would arise in any event because of proceedings against Mr Petrik and Mr Roth. Further, although there will be Russian witnesses and documents, the key witnesses include British nationals, dual British/Russian nationals living in the UK or EU, Norwegian nationals and Hong Kong nationals. Many of the key documents are already in English or have been translated. As regards the parties, Mr Orlov is used to being in London, Mr Petrik lives in England, Mr Roth refuses to go to Russia and Mr Tugushev has a UK entry visa.

257. Mr Orlov submits that England is not clearly or distinctly the most appropriate forum:

i) The essence of the dispute relates to relationships and businesses which are intrinsically Russian. The alleged agreements relate to a Russian fishing business (in respect of which Russian ownership is of strategic importance to the Russian Federation), the Norebo Group derives the right to harvest fish from the Russian government and the majority of its profit centres and assets are in Russia. Mr Tugushev and Mr Orlov generally worked in Russia and that was the location of their relationship, which had almost no meaningful connection (over 25 years) with England. The Maidenhead office is not significant in the grand scheme of the operation and management of the Norebo Group (which is done from Russia) and AA never had any kind of presence in England;

ii) The questions at the heart of the case relate to the ownership of shares in, and investments in, foreign companies which are overwhelmingly Russian. The

key issues are whether it was agreed that Mr Tugushev would own a third of the shares in (overwhelmingly) Russian companies; whether he sold shares, in Russia, in a Russian company (AA) in 2003, or whether his shareholding in that Russian company was removed from the share register in Russia without his consent; what was really going on in a series of restructurings of, and the running of, the Norebo Group in subsequent years and whether – by various steps all said to have been taken (or not taken, in respect of his registration as a shareholder) in Russia – Mr Tugushev has been deprived of his alleged shareholding in the Norebo Group;

iii) The wrongdoing alleged has almost nothing to do with England. Even if the hatching of the conspiracies occurred in England, the alleged overt acts (such as the deprivation of shares in AA and the Koptevskiy proceedings) took place in Russia; and the damage (the deprivation of shares in AA and the financial impact on Mr Tugushev) was felt in Russia, as this is where he is domiciled;

iv) It is not relevant that Mr Petrik can be sued in England as of right. Were it otherwise, there would never be any question of forum in a case where the necessary or proper party gateway has been used. The point is even clearer as Mr Petrik has been sued as an anchor defendant and is not a key player. The meat of the dispute is between Mr Orlov and Mr Tugushev who are both Russian and resident in Russia. To allow Mr Orlov to be sued here because of Mr Petrik would be to allow the tail to wag the dog. It is not at all clear that Mr Tugushev will be able to maintain English proceedings against Mr Roth, nor is it appropriate that the question be addressed in Mr Roth's absence. Further, Mr Roth is elderly and ill;

v) It is open to doubt whether, even if Mr Tugushev could maintain proceedings against Mr Petrik and Mr Roth in this jurisdiction, he would actually do so. By contrast, it is open to Mr Tugushev to sue them in Russia alongside Mr Orlov;

vi) There is already a multiplicity of proceedings in different jurisdictions. These include concurrent criminal proceedings against Mr Orlov in Russia which were instigated by Mr Tugushev and concern the same subject-matter. It would be unfair to require Mr Orlov to litigate the same allegations in two different jurisdictions simultaneously, especially as he may be ordered to make compensatory payments to Mr Tugushev within the Russian criminal proceedings and because there is a risk of inconsistency of judgments. Further, only the Russian courts could get to the bottom of the Koptevskiy proceedings, especially as Mr Golubev is imprisoned there. In addition, Russia is the only forum in which all of the issues could be heard as, even if Mr Tugushev could bring his tort claims here, he would need to bring his contract claim in Russia;

vii) Russian courts regard themselves as having exclusive jurisdiction over all of the issues presently in dispute. Therefore, an English judgment could not be enforced in Russia; yet the majority of Mr Orlov's assets are located there;

viii) Russian law governs the conspiracy claims;

ix) The overwhelming majority of relevant witnesses in this case are likely to be situated in Russia and speak Russian as their primary or only language. The

vast majority of documentary evidence is likely to be in Russia and in Russian, whereas none is in England. The only example given of documentary evidence outside Russia is in Norway. Proceedings in England would likely be substantially less convenient and more expensive than proceedings in Russia, given the need for Russian and English lawyers, translations, potential disputes over translation, witness travel, and the need for substantial expert reports on Russian law issues;

x) It is hopeless for Mr Tugushev to contend that substantial justice would not be done in Russia because Mr Tugushev would not get a fair trial on his claim.

Law

258. The relevant principles were set out by Lord Goff in *The Spiliada*, a summary of which was approved by Waller LJ in *Deripaska v Cherney* [2009] EWCA Civ 849 ("*Deripaska v Cherney (no 2)*") at [20] as follows:

> "(i) The burden is upon the claimant to persuade the court that England is clearly the appropriate forum for the trial of the action.
>
> (ii) The appropriate forum is that forum where the case may most suitably be tried for the interests of all the parties and the ends of justice.
>
> (iii) One must consider first what is the "natural forum"; namely that with which the action has the most real and substantial connection. Connecting factors will include not only factors concerning convenience and expense (such as the availability of witnesses), but also factors such as the law governing the relevant transaction and the places where the parties reside and respectively carry on business.
>
> (iv) In considering where the case can be tried most "suitably for the interests of all the parties and for the ends of justice" ordinary English procedural advantages such as a power to award interest, are normally irrelevant as are more generous English limitation periods where the claimant has failed to act prudently in respect of a shorter limitation period elsewhere.
>
> (v) If the court concludes at that stage that there is another forum which is apparently as suitable or more suitable than England, it will normally refuse permission to serve out, or, in the case of anti-suit injunctions on the basis of unconscionable conduct, the grant of the injunction unless there are circumstances by reason of which justice requires that permission should nevertheless be granted. In this inquiry the court will consider all the circumstances of the case, including circumstances which go beyond those taken into account when considering connecting factors with other jurisdictions. One such factor can be the fact, if established objectively by cogent

> evidence, that the claimant will not obtain justice in the foreign jurisdiction. Other factors include the absence of legal aid or the ability to obtain contribution in the foreign jurisdiction.
>
> (vi) Where a party seeks to establish the existence of a matter that will assist him in persuading the court to exercise its discretion in his favour, the evidential burden in respect of that matter will rest upon the party asserting it."

259. It is necessary to have regard to all of the circumstances of the case. Relevant connecting factors to consider include personal connections of the parties to England, factual connections which the events have with England, practical questions regarding evidence and trial, governing law, *lis pendens* or the possibility of multiple proceedings and other parties to the proceedings (see for example *Innovia Films Ltd v Frito-Lay North America Inc* [2012] EWHC 790; [2012] R.P.C. 24 per Arnold J at [41]). In *SMAY Investments Limited v Sachdev* [2003] EWHC 474 (Ch) ("*SMAY Investments*"), a case concerning a dispute over the ownership of an Indian company, Patten J stated (at [49]):

> "…I am strongly inclined to the view that issues relating to the ownership of shares in a foreign company, and to the right of a shareholder in such a company to obtain relief against a director in the name of the company, should be determined by the Courts of the place of incorporation" (emphasis added)

260. He concluded at [51] that:

> "I am therefore satisfied that India, rather than England, is clearly the natural and appropriate forum for the resolution of what is at heart a dispute about the ownership of, and investment in, an Indian company."

261. The courts will often take into account the desirability of all related claims being tried together:

i) In *Donohue v Armco Inc* [2001] UKHL 64, Lord Bingham considered whether a claimant's prima facie entitlement to sue in England should be displaced by the prospect of proceedings continuing partly in England and partly in New York. He said at [34]:

> "34. I am driven to conclude that great weight should be given to it. The Armco companies contend that they were the victims of a fraudulent conspiracy perpetrated by Donohue, Atkins, Rossi and Stinson. Determination of the truth or falsity of that allegation lies at the heart of the dispute concerning the transfer agreements and the sale and purchase agreement. It will of course be necessary for any court making that determination to consider any contemporary documentation and any undisputed evidence of what was said, done or known. But also, and crucially, it will be necessary for any such court to form a judgment on the honesty and motives of the four alleged

> conspirators. It would not seem conceivable, on the Armco case, that some of the four were guilty of the nefarious conduct alleged against them and others not. It seems to me plain that in a situation of this kind the interests of justice are best served by the submission of the whole dispute to a single tribunal which is best fitted to make a reliable, comprehensive judgment on all the matters in issue. A procedure which permitted the possibility of different conclusions by different tribunals, perhaps made on different evidence, would in my view run directly counter to the interests of justice.";

ii) Rix LJ in *Konkola Copper Mines plc v Coromin* [2006] 1 All ER (Comm) 437 (CA) stated at [27] that "…the attitude of the English courts is, if possible, to avoid fragmentation of disputes between different jurisdictions where such fragmentation raises the twin dangers of waste of resources and of inconsistent decisions.";

iii) In *JSC BTA Bank v Granton Trade Limited* [2010] EWHC 2577 (Comm), Christopher Clarke J (at [18]) also considered that England was the appropriate forum despite "the size of the connection of the case with Kazakhstan". He considered (at [17]) that the risk of fragmentation of proceedings and inconsistent judgments was "a powerful factor of having the applicants as parties to this litigation". Thus, he held that the fact that it was in the English court that all issues could be tried outweighed the substantial links with Kazakhstan. However, Christopher Clarke J did consider at [28] that a distinction should be drawn between major and minor players in the litigation:

> "28. I do not accept that the second proposition can be taken as a rule. It fails to distinguish the case in which the anchor defendant is the chief protagonist from the case where he is a minor player. A decision that permission should be granted to serve the protagonist out of the jurisdiction because the minor player is domiciled within the jurisdiction would indeed allow the tail to wag the dog. But if the anchor defendant is the protagonist a decision to allow a minor player to be served outside the jurisdiction may be entirely appropriate. That would be, to continue the metaphor, to allow the dog to wag the tail. Just as it may make little sense to have the venue determined by where the claim against the most insignificant player will be heard, so it may make little sense to have the venue where the most significant will be sued passed over in favour of another jurisdiction to whose jurisdiction a lesser player is subject. I do not mean thereby to suggest that whether or not jurisdiction should be exercised against a foreign defendant is necessarily determined by whether the anchor defendant, or the defendant sought to be joined, fits into some particular descriptive category ("major/minor"; "principal/secondary"); only that a decision as to appropriate forum must necessarily take account of the relative importance in the case of different defendants

> and particularly those against whom proceedings in England are practically bound to continue.";

iv) In *BAT Industries Plc v Windward Prospects Ltd* [2013] EWHC 4087 Field J (at [81]) considered that "looking only at the connecting factors and ignoring for the moment the issue of bifurcation of proceedings, there is a clear preponderance in favour of New York over London". However, he concluded that England was nevertheless the most appropriate forum, reasoning as follows at [82]:

> "82. Does the prospect of BAT having to bring substantially identical actions in two jurisdictions, in London against Windward and in New York against API, with the risk of inconsistent decisions, decisively tip the scales in favour of London being the appropriate forum for the claim against API? In my judgement it does. The claims brought by BAT involve very heavy and very expensive litigation and the risk of inconsistent decisions is pregnant with disaster. As I have already found, BAT acted entirely properly and reasonably in starting proceedings against Windward as well as against API and in bringing both sets of proceedings in England. As the party with considerably greater assets to meet a judgement and as the ultimate paymaster with the right to control the litigation, Windward is the main protagonist and ought to be sued in England which is manifestly the appropriate forum and where effective execution measures are available. It is also not clear on the evidence that if a claim were made against Windward in New York, the court would assert jurisdiction over the claim. No doubt it would be more convenient for API to be sued in New York, but in my view the hardship for API in being sued in London is clearly and decisively out-weighed by the hardship to BAT in not being able to sue both defendants in London.";

v) In *Lungowe v Vedanta Resources Plc* [2016] EWHC 975 (TCC) Coulson J (as he then was) (at [152] and [198]) had determined that, notwithstanding that Zambia would otherwise "obviously" be the appropriate forum, taking into account the fact that the claim against the other defendant would nevertheless proceed before the English court, England was the most appropriate place to try the claims. On appeal Simon LJ held that "in my view the judge was entitled to the view that it was inappropriate for the litigation to be conducted in parallel proceedings involving identical or virtually identical facts, witnesses and documents, in circumstances where the claim against Vedanta would in any event continue in England; and that this made England the most appropriate place to try the claims against KCM." (see [2017] EWCA Civ 1528; [2018] 1 WLR 3575 at [117]).

vi) In *Al Jaber v Al Ibrahim* [2016] EWHC 1989 (Comm), Burton J held (at [92]) that, despite other factors being in play "in addition there is a further factor which seems to me to be determinative. The trial will be continuing against the First Defendant in this jurisdiction in any event. If I granted a stay in favour of

> the Second Defendant, this would involve either (i) two trials, one in each jurisdiction or (ii) a trial only against the First Defendant, not the Second Defendant and/or (iii) the Second Defendant taking part in this court as a witness, in order to give evidence to support the First Defendant. By reference to any of these scenarios, justice in my judgment can only be done by having the claim brought by the Claimants against both Defendants in this forum, where the case against the First Defendant is to proceed."

262. The fact of proceedings in England will not always outweigh the connections to a different jurisdiction. Thus in *PrivatBank v Kolomoisky and ors* [2018] EWHC 3308 (Ch) (at [171] to [173]) Fancourt J held that the natural forum was Ukraine despite proceedings in England against other defendants. There, however, the English proceedings had been stayed and Fancourt J considered that "it is doubtful whether the claim will ever proceed in the absence of a claim against the First and Second Defendants". Similarly, Christopher Clarke J in *Yugraneft* stated at [490] that "Owusu mandates that any claim, if valid, against Millhouse [the anchor defendant in that case] must be determined here. But that is not a ground for bringing in a defendant if England is an inappropriate forum. It is obvious to me that the primary reason for suing Millhouse, with minimal net assets, is to provide the anchor on which to tether a claim against Mr Abramovich. Had it been relevant I would have loosed the chain".

263. The court may therefore determine that England is not the most appropriate forum notwithstanding the continuation or threatened continuation of proceedings against the anchor defendant, for example on the basis that the defendant within the jurisdiction was only a minor player:

i) In *Pacific International Sports Clubs Ltd v Soccer Marketing International Ltd* [2009] EWHC 1839 Blackburne J stated (at [111]-[112]) that:

> "111. …It follows, therefore, that neither the doctrine of *forum non conveniens* nor the application "reflexively" of articles of the Judgments Regulation provides grounds for staying the pursuit by Pacific in this jurisdiction of its claims against SMI. Does this mean that, given Pacific's wish to pursue its claims against SMI in this jurisdiction, this court should allow Pacific to continue to pursue its claims against the other defendants in this jurisdiction notwithstanding that, as against those other defendants, application of the doctrine of *forum non conveniens*, unaffected in the case of those other defendants by the impact of the Judgments Regulation, indicates that Pacific's claims against those others should be pursued in Ukraine?
>
> 112. I am not persuaded that it does. According to the particulars of claim in this action, SMI is, like the BVI defendants, a relatively minor player in the dispute: it was no more than the means whereby Mr. Surkis held and was able to take control of Dynamo. The principal dispute is undoubtedly between Pacific on the one hand and Mr. Surkis and Mr. Zgursky on the other. To allow the fact that the doctrine of *forum non conveniens* cannot be applied to SMI to dictate where the dispute as a whole must be tried would be, in my

> view, to allow the tail to wag the dog. In particular, I see no reason why, given my conclusions in relation to the application of the doctrine of *forum non conveniens* to the other defendants, I should not stay the action against Mr. Surkis and set aside the permission order, and with it service of the claim form on the BVI defendants, leaving it to Pacific to pursue its dispute with those persons (and SMI if it wishes) in the courts of Ukraine…"

ii) In *OJSC TNK-BP Holding v Beppler & Jacobson Ltd* [2012] EWHC 3286 (Ch), Mr Andrew Sutcliffe QC, sitting as a Deputy High Court Judge, said at [313]:

> "It is necessary to consider the possibility of parallel proceedings in England and Russia. Mr. Kitchener accepts that *Owusu v. Jackson* [2005] Q.B. 801 prevents this court from declining jurisdiction over the claim against BJUK on *forum conveniens* grounds. Accordingly, if the claim against this anchor defendant is viable it may continue even if permission to sue the Applicants is refused. The result might be the existence of parallel proceedings in Russia and England. However, as Mr. Kitchener points out, if this is of concern to Holding, the solution is in its own hands. It can join BJUK as a defendant to any Russian proceedings…This is a case where it is important to have regard to Lloyd L.J.'s observation in *The Golden Mariner* [1990] 2 Lloyd's Rep. 215 at 222…The fact that Russia is the natural forum means that the claim against BJUK should not dictate the location of trial against the Applicants."

264. The authorities show that, although the court should be cautious before allowing the jurisdictional position of a minor player to dictate where the dispute as a whole must be tried, the desirability of preventing the fragmentation of proceedings can be a powerful factor which may in an appropriate case outweigh factors connecting the claim to another jurisdiction.

265. In respect of Mr Tugushev's claims that he could not obtain justice in Russia, it is for him to show that "there is a real risk that justice will not be obtained in the foreign court by reason of incompetence or lack of independence or corruption." Although "there is no rule that the English court…will not examine the question whether the foreign court or the foreign court system is corrupt or lacking in independence. The rule is that considerations of international comity will militate against any such finding in the absence of cogent evidence" (see *AK Investment* at [95] and [101]).

Analysis

266. It is necessary to have regard to all of the circumstances of the case and conduct a balancing exercise in order to decide whether England is clearly and distinctly the most appropriate forum. I do so on the assumption that I am wrong to conclude that there is a good arguable case that Mr Orlov is domiciled in England, although his connections with England in broad terms remain relevant.

267. This is a case where, self-evidently, there are valid considerations either way. Standing back from the morass on the facts of this case, however, the simple and striking feature is that Mr Tugushev has committed to (and has a right to) sue Mr Petrik in England, whatever the outcome of the jurisdiction challenge. Fragmentation of disputes leads to increased time and cost, increased demands on parties and witnesses, the risk of different *fora* proceeding on the basis of different evidence, and the key danger of inconsistent outcomes. This is a weighty factor in the present case. Mr Petrik may not be the major, but neither is he a minor, player in the AA conspiracy.

268. Whilst it is important not to pre-judge the outcome of any potential jurisdictional challenge by Mr Roth, it is also at least plausible that he could be sued in England on the basis of Article 5(3) of the Lugano Convention (with no *forum conveniens* considerations arising) or on the basis that Mr Roth would be a necessary and proper party to the AA conspiracy claim against Mr Petrik under Article 6 of the Lugano Convention.

269. Neither Mr Petrik nor Mr Roth is being sued (at least not obviously) as an anchor defendant or as a "minor player". There are only three alleged conspirators: Mr Orlov, Mr Roth and Mr Petrik. Beyond Mr Petrik, Mr Roth is a key participant in both alleged conspiracies and was a third owner of AA and of the Norebo Group more generally. He was bought out by Mr Orlov for some US$201 million in April 2016. Although Mr Petrik is sued only in relation to the AA conspiracy, it would be clearly undesirable for the AA conspiracy and Norebo Group conspiracy claims to be determined separately, given the overlapping facts and credibility issues.

270. In the context of the desirability of avoiding a multiplicity of proceedings, I bear in mind that Mr Orlov is currently subject to civil and criminal proceedings instigated by Mr Tugushev in six jurisdictions (Russia, Norway, England, Hong Kong, Isle of Man and Guernsey). As to the ongoing criminal proceedings in Russia, I have not been taken to any significant detail. It appears that the investigation was opened in July 2018 pursuant to a complaint made by Mr Tugushev in January 2016. Although Mr Tugushev has victim status in these proceedings, they are only at the investigative stage, have not yet resulted in any charge and, as matters stand, relate only to AA. Further, I have not been taken to any evidence about what Mr Tugushev's potential rights to compensation in any Russian criminal proceedings would be. As to the other ongoing proceedings, these are procedural only. The Norwegian proceedings are for disclosure (of the 1998 Agreement and documents held in a file marked "Alex"). The proceedings in Hong Kong, the Isle of Man and Guernsey are all for enforcement of the WFO and were commenced with the permission of the English court.

271. If jurisdiction is afforded here, Mr Tugushev has given an undertaking to the court, through Ms Davies, that he would not pursue his contractual claims in Russia. There would therefore be no unwelcome division of proceedings in this regard.

272. Further, for reasons set out below, I do not accept that Russia is necessarily an alternative jurisdiction where all claims could be heard. Professor Maggs has given evidence that the Russian court would accept jurisdiction over the claims against Mr Petrik and Mr Roth, which has not been disputed by Mr Tugushev. It is unclear, however, why Mr Petrik would submit to the jurisdiction of the Russian courts. As for Mr Roth, there is evidence that in March 2017 he said to Mr Tugushev's

Norwegian lawyers that he would be willing to act as a witness only outside of Russia and that "it is a condition that I do not want to have anything to do with Russia and that system". By contrast, although Mr Roth has kept available his option to challenge the jurisdiction of the English courts, as set out above in the context of the Deed of Undertaking, it appears that he has at least considered the possibility of submission here.

273. Mr Roth's apparent aversion to the Russian jurisdiction is relevant as it is Professor Maggs' evidence that Mr Roth could not be a witness within the proceedings if he was a party. Although he could provide an explanation in writing (submitted even from outside the jurisdiction) this would be given no weight unless corroborated by witness, documentary or other evidence. Thus, although it seems technically possible for Mr Roth to participate in the Russian proceedings from abroad, it does not appear to be a satisfactory solution.

274. The above features point in favour of England as being clearly and distinctly the most appropriate forum. I do not consider that the other features highlighted by the parties point clearly in one direction or another. This is a truly international dispute, involving multiple countries such as Norway, Russia, Hong Kong and England. The Norebo Group is also a multi-national business, with links to all four countries. There are clearly Russian elements; however, the JVA was entered into in Norway; Ocean Trawlers (the original profit centre of the business) was located in Norway; TTC was incorporated in Hong Kong in December 2006 as the vehicle to which to move the Ocean Trawlers companies. Although the Russian fishing companies were transferred to Norebo Holding (a Russian company) pursuant to a change in legislation prohibiting Russian fishing companies to be owned by foreign companies, TTC still carries out part of the business. In addition, Mr Tugushev received dividends from TTC and Laxagone (both Hong Kong companies) and Norebo Europe is based in the Maidenhead office. Similarly, in respect of personal connections, although Mr Tugushev has residential property in Russia, Mr Roth is domiciled in Switzerland and Mr Petrik lives in England. Mr Orlov lives for the majority of the year in Russia but still has substantial connections to (and residential property in) England.

275. Several features of the tort are Russian (for example the Koptevskiy proceedings and allegedly false criminal proceedings); nevertheless there was also wrongdoing in England and in other jurisdictions, for example the failure to pay dividends occurred in Hong Kong (the location of TTC and Laxagone). I do not consider that only the Russian court could "get to the bottom of" the Koptevskiy proceedings. The English court is equally capable of determining whether various documents are forgeries. As to the issue of Mr Golubev being in prison, there is no evidence before me that this would prevent Mr Golubev giving evidence in English proceedings, for example via video link.

276. As to governing law, I accept that "it is generally preferable, other things being equal, that a case should be tried in the country whose law applies". However, "that factor is of particular force if issues of law are likely to be important and if there is evidence of relevant differences in the legal principles or rules applicable to such issues in the two countries in contention as the appropriate forum" (see *VTB Capital plc v Nutritek International Corp and others* [2013] UKSC 5 at [46]). On the information presently available, whilst there may be some issues of law, such as limitation, the central disputes appear to be ones of fact.

277. To the extent that it is relevant, the parties are not agreed whether or not an English judgment would be enforceable in Russia. Professor Maggs states that "[s]ubject to various restrictions in Russian law detailed below, Russian courts will enforce foreign money judgments (including costs and interest) on the basis of a treaty or on the basis of comity. However, to the extent that any English court judgment related to the rights of a shareholder, participant or partner in a Russian business entity (such as a limited liability company or a joint stock company or a partnership) whether involving a declaration of rights or damages for harm to those rights, enforcement would be refused, as the Russian courts reserve exclusive jurisdiction over those types of disputes." For Mr Orlov it is said that this restriction would prevent judgment on these claims in this jurisdiction from being enforced in Russia. Mr Vaneev states that Russian case law allows recognition and enforcement of the judgments of foreign courts "on the basis of international comity and reciprocity". He gives various examples. He does not suggest that there are any exceptions.

278. I do not find Professor Maggs' evidence on this issue particularly satisfactory. The scope of the suggested exception is not clear, nor is it supported by any caselaw or commentary. Professor Maggs refers to two provisions of the Arbitrazh Procedure Code:

    i) The first, subparagraph 5 of paragraph 1 of Article 248, is said to give Russian courts exclusive jurisdiction over "disputes connected with the founding, liquidation or registration on the territory of the Russian Federation of legal persons and individual entrepreneurs and also with contesting decisions of bodies of these legal persons". First, Article 248 applies only to "cases involving foreign persons", which is not something that Professor Maggs mentions. In any event, it is not clear that the AA and Norebo Group conspiracy claims would fall under Article 248 as involving decisions by a decision-making body of the company;

    ii) The second, subparagraph 2 of Paragraph 1 of Article 225.1, is cited by Professor Maggs for the proposition that "disputes connected with the ownership of shares of stock or shares in the ownership (or founding) capital of commercial companies and partnerships are subject to consideration at the place of location of the company or partnership with respect to whose shares of stock (or ownership shares) the dispute arose." It is unclear from Professor Maggs' evidence when a dispute will be "connected with" the ownership of shares. I also note that Article 225.1 does not use this language, but instead covers disputes "involving ownership of shares and participatory interest in the charter/combined capital of business companies and partnerships…".

279. I consider that the overall thrust of Professor Maggs' evidence appears to be that the Russian courts will not enforce an English judgment concerned with the decisions of Russian companies: the tenor is that the Russian courts will not respect foreign judgments relating to Russian corporate decision-making. However, the AA and Norebo Group conspiracy claims are against Mr Orlov, Mr Roth and Mr Petrik for their alleged personal wrongdoing. (In similar vein, it does not seem to me that the conspiracy claims fall within the spirit of the principle suggested in *SMAY Investments*).

280. Standing back, and taking the evidence of Professor Maggs and Mr Vaneev together, it has not been demonstrated to my satisfaction that an English judgment on the AA and Norebo Group conspiracy claims would not be enforceable in Russia. In any event, Mr Orlov has substantial assets outside Russia, namely real estate in England and Spain worth tens of millions of pounds and shareholdings in non-Russian companies. Mr Roth and Mr Petrik also have assets outside Russia.

281. Procedural and evidential considerations do not point clearly in one direction. There are a number of potential Russian witnesses (for example Mr Grigoriev, Mr Romanenok, Mr Tsukanov, Mr Romanovsky, Mr Tenenbaum, Mr Balakin, Mr Kuznetsov, Ms Alekseeva, Ms Semenuyta, Ms Ulianenko, Ms Pronina, Mr Golubev (in prison)), but there are also potential witnesses who are resident in Norway (Mr Brun-Lie and Mr Klock), in Switzerland (Mr Roth), in Hong Kong (Mr Ling Yip), in Las Palmas (Mr Skrebnev) and in England (Mr Petrik and Mr Kosolapov). As to documents, there has been a considerable amount of translation already. The English courts are very experienced in dealing with foreign documents, witnesses and law.

282. Whilst Mr Tugushev has raised concerns (and served expert evidence) to the effect that he will be denied a fair trial in Russia, the point was not pressed in oral argument. They are not matters that I take into account.

283. Overall, balancing the relevant factors together, I consider that the English court is clearly and distinctly the most appropriate place for all of the claims to be resolved, particularly in light of the fact that:

i) Mr Petrik (and potentially Mr Roth) will be sued here in any event;

ii) Mr Roth objects to proceedings in Russia;

iii) Mr Tugushev has undertaken not to pursue his separate contractual claims as pleaded in these proceedings in Russia.

This is not a case of letting the tail wag the dog. Mr Petrik is one of three alleged conspirators in the AA conspiracy. The facts of the AA and Norebo Group conspiracy claims are very closely intertwined. It is obvious that they should be resolved together in one jurisdiction.

Conclusions

284. As Waller LJ said in *Cherney v Deripaska (No 2)* (at [6] and [7]), whilst the courts appreciate that litigants do often feel strongly about the place where cases should be tried, disputes as to forum should not become "state trials". This hearing has sometimes felt like one. However, in the result, the jurisdiction challenge fails for the simple reason that Mr Tugushev has established a good arguable case that Mr Orlov is domiciled in England, the courts of which accordingly have jurisdiction over all of his claims, both in contract and tort.

285. As identified in section A above, Mr Orlov's remaining challenges and Mr Tugushev's outstanding applications now fall to be considered at a further hearing, fixed for 12 and 13 June 2019. I conclude by repeating my gratitude to all counsel and solicitors for their very able and courteous assistance to date.