



Neutral Citation Number: [2022] EWHC 2667 (Comm)

Case No: CL-2016-000831

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
KING'S BENCH DIVISION
COMMERCIAL COURT

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

Date: 25/10/2022

Before :

MR JUSTICE PICKEN

Between :

(1) VERLOX INTERNATIONAL LTD
(2) IGOR SYCHEV

Claimant

- and -

(1) IGOR ANTOSHIN
(2) PARMAS CORPORATION
(3) AVEC LIMITED
(4) PJSC PHOSAGRO
(5) ANDREY GRIGORYEVICH GURYEV

Defendant

The First Claimant was not represented.

Mr Igor Sychev on his own behalf.

Mr Michael Swainston KC and **Mr Richard Eschwege** (instructed by **Simmons & Simmons LLP**) for the First Defendant.

Mr Anton Dudnikov (instructed by **PCB Byrne LLP**) for the Fourth Defendant.

Hearing date: 11 October 2022.
Judgment provided in draft: 17 October 2022.

Approved Judgment

This judgment was handed down remotely at 09.45am on 25 October 2022 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE PICKEN

Mr Justice Picken:

Introduction

1. This is an application by the First and Fourth Defendants for security for costs in respect of their respective jurisdiction challenges, and an application by the Claimants for an amendment to the Claim Form. As will become apparent and in line with what I indicated to the parties at the close of the hearing, this judgment does not, in the event, address the security for costs applications. It focuses, instead, on the amendment application and the consequences of that application not succeeding.

Background

2. These proceedings were issued in late December 2016. The First Claimant ('Verlox') claimed against the First Defendant ('Mr Antoshin'), the Fourth Defendant ('PhosAgro') and the Fifth Defendant ('Mr Guryev') in respect of an alleged oral agreement (the 'Share Agreement'), made on or around 16 May 2011 and governed by Russian law.
3. Verlox is a Belize shell company with no apparent assets of its own. It is controlled entirely by the Second Claimant ('Mr Sychev'), who is its sole director.
4. From 2002 until 2013 Mr Sychev was employed by entities affiliated with PhosAgro, which is a large phosphate-based fertilizer producer. From August 2003 he was head of the tax department at PhosAgro's subsidiary, RBC PhosAgro LLC ('RBC'), which provided services to companies in the PhosAgro group.
5. The First Defendant, Mr Antoshin, is a Russian national. When the events giving rise to the claims occurred, he was at different times connected to the PhosAgro companies. Mr Antoshin currently owns a 6.3% shareholding in PhosAgro.
6. At its core, these proceedings concern remuneration in respect of work which Mr Sychev allegedly carried out beyond what was in his employment contract with PhosAgro. Mr Sychev argues, in particular, that he provided additional services by undertaking and assisting with the defence of contentious tax claims made against PhosAgro companies. In exchange, he alleges, he entered into a Share Agreement which was to pay him US\$13 million and give him a 1% shareholding in PhosAgro.
7. The Share Agreement is said to have been concluded orally by Mr Sychev and Mr Antoshin in a Moscow restaurant in May 2011. Mr Antoshin, PhosAgro, and Mr Guryev are each said to be parties to the alleged Share Agreement.
8. Mr Sychev originally asserted an entitlement to US\$4.013 million, which is alleged to be the unpaid balance out of the US\$13 million total and the value of 1% of the shares in PhosAgro. As described below, he assigned this claim to Verlox. Verlox also claimed declarations against the Second and Third Claimants that certain loan agreements between the Second and Third Defendants and Verlox were invalid because they represented part performance of the alleged Share Agreement. Those loan agreements referred to "*UK law*".

The amendment application

9. The Claim Form named Mr Sychev as the Second Claimant. Verlox had acquired its right to sue from Mr Sychev by an assignment executed in 2016. That assignment allowed Verlox to engage the Court's jurisdiction through the 'necessary or proper party' gateway in CPR PD 6B 3.1(3), as will be outlined in more detail below.

10. On 17 July 2022 Verlox re-assigned the claim back to Mr Sychev. This second assignment was executed in a deed between Verlox and Mr Sychev. Recital (K) of that deed stated:

"[...] Verlox International Limited (Assignor) has agreed to assign to Igor Sychev (the Assignee) all its rights, title, interest and benefit in and to contractual arrangements referred to in the Deed of Assignment dated 25 December 2016[...] in particular, but not limited to (i) any and all rights vested in Verlox International Limited under the Deed of assignment dated 25 December 2016 and (ii) all causes of action and rights of action vested in Verlox International Limited arising under, in respect of, or in connection with such rights on the terms of this deed with effect from the date of this Deed."

11. Clause 1.1 of this second assignment stated:

"The Assignor assigns to the Assignee for good and valuable consideration of GBP 1 with effect from the Effective Date all his rights, title, interest, and benefit in and to the contractual arrangements relating to the Share Agreement (in the context of the court case CL-2016-000831), in particular, but not limited to, (i) any and all rights vested in Verlox International Limited under the Share Agreement and (ii) all causes of action and rights of action vested in the Verlox International Limited arising under, in respect of, or in connection with such rights."

12. Shortly afterwards, on 20 July 2022, the Claimants issued an application to amend the Particulars of Claim so as to change the reference to Verlox making the claim to Mr Sychev doing so instead in line with the 17 July 2022 re-assignment. This application was then amended on 2 August 2022. The application requested that:

"The Claim Form and Particulars of Claim be amended (under CPR 17.1(2)(b)) or (alternatively) the Second Claimant shall substitute for the First Claimant in the claim against the First, Fourth, and Fifth Defendants (under CPR 19.2(4))".

Procedural background

13. There have been several different hearings during the course of these proceedings.

Leave to serve out

14. On 23 June 2017, the Claimants (then represented by Fieldfisher LLP) applied for permission to serve out, and for an extension of time to effect service.

15. An ex parte hearing in front of Teare J took place on 29 June 2017. In respect of the alleged Share Agreement claim, Verlox relied on CPR PD 6B para. 3.1(3), which provides:

“(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.”

16. Teare J expressed certain reservations regarding the connection of the matter with England, describing the connection with this jurisdiction as “*tenuous*”. He nonetheless granted permission to serve out and an extension of time for service until 30 June 2018.
17. This was followed by a period of protracted delays, the reasons for which are not material. Suffice to say that, after being granted a series of further extensions, the Claim Form was ultimately served on Mr Antoshin, Mr Guryev and PhosAgro in late December 2020.

Jurisdiction challenges and security for costs

18. On 16 April 2021, Mr Antoshin lodged a jurisdiction application, challenging the jurisdiction of the English Court. PhosAgro and Mr Guryev also lodged jurisdiction challenges.
19. These jurisdiction applications have been listed for 4 days, beginning on 27 March 2023.
20. In June and July 2021, Mr Antoshin and PhosAgro (as well as Mr Guryev) applied for security for costs in respect of their jurisdiction challenges.
21. Those security for costs applications were originally listed to be heard on 25 July 2022.

Directions hearings

22. It was against this background that a directions hearing took place before Jacobs J on 8 October 2021, at which Mr Sychev sought to represent Verlox.
23. Jacobs J decided at that hearing to allow Mr Sychev to represent Verlox’s interests at that hearing only.
24. I should mention in this context that, in the course of these proceedings, Mr Sychev has engaged four different firms of solicitors, all of which have now come off the record. Mr Sychev has accused his most recent representatives, Candey LLP (as well as their predecessors, Signature Litigation LLP) of taking bribes from, and colluding with, the Defendants.
25. Jacobs J was not prepared, however, to grant permission to represent Verlox at future hearings. Instead, he gave the Claimants permission to apply pursuant to CPR 39.6 at least 6 weeks prior to any hearing for which permission was to be sought.
26. An application of that nature was refused on 27 May 2022 at a hearing which took place before Mr Adrian Beltrami KC, sitting as a Deputy High Court Judge.

27. Mr Beltrami KC decided that the circumstances of the case did not meet the high bar set by CPR 39.6 for allowing an individual to represent the interests of a company. He further decided that Mr Sychev had not produced sufficient or adequate evidence that he was unable to engage lawyers.
28. Mr Beltrami KC also doubted whether Mr Sychev had the ability to run the case fairly and efficiently, having noted in the hearing that he was “troubled” by the scale and gravity of the allegations that have been made and repeated throughout the litigation by Mr Sychev.
29. Subsequent to that decision, Mr Sychev accused Mr Beltrami KC of bias.

Other applications

30. The Claimants sought permission to appeal against Mr Beltrami KC’s decision on 17 June 2022.
31. That application was dismissed by Bean LJ on 20 July 2022, who described Mr Beltrami KC’s decision as “plainly correct for all the reasons he gave” and who further stated that:

“There has been plenty of time for the company to arrange for legal representation on the issue of security for costs, and it has been represented from time to time in this litigation [...] I also agree with the judge that Mr Sychev has not shown that he has the ability to conduct the case on behalf of the company fairly, efficiently, and in accordance with the overriding objective.”

32. Bean LJ added as follows:

“It is not an answer to the points made by the judge to say that Mr Sychev is a second claimant in his personal capacity. It was unclear at the time of the hearing before the judge whether in reality he had a cause of action in his own right, and even if he did that would not outweigh the other factors”

33. In a letter dated 7 September 2022, Mr Sychev accused Bean LJ effectively of colluding with the Defendants in order to dismiss his case.
34. Mr Sychev made a further application on 3 October 2022 to re-open the refusal of permission to appeal on the basis that Mr Beltrami KC had at one point in time been instructed by the solicitors for Mr Antoshin, Simmons & Simmons LLP. Bean LJ dismissed this the same day, saying this:

“There is nothing in this case which justifies the exercise of the exceptional jurisdiction under CPR 52.30 to re-open a decision refusing permission to appeal. CPR 52.30 is not an opportunity for a dissatisfied litigant to reargue the case, nor to deluge the Court of Appeal with supposedly fresh evidence[...] In so concluding I have taken into account the various submissions made by Mr Sychev up to and including his letter with the witness statement of Maris Clems of 26 September 2022.”

35. In the meantime, on 8 July 2022, the Claimants issued three contempt applications (at the same time seeking permission under CPR 81.3(5)), against Mr Riem of PCB Byrne LLP (representing PhosAgro), Mr Crosse of Simmons & Simmons LLP (representing

Mr Antoshin), and Professor Yarkov (a Russian law expert instructed on behalf of Mr Antoshin). In addition, on 22 August 2022, Mr Sychev filed an application for contempt of court against Mr Antoshin.

36. On 22 August 2022 Robin Knowles J made an order which gave directions as to the applications and agenda before the Court at the hearing listed to take place on 11 October 2022.
37. Upon receipt of that order, Mr Sychev promptly accused Robin Knowles J of bias also.

The hearing before me

38. As I have indicated, the hearing before the Court on 11 October 2022 was primarily intended to deal with the security for costs applications and the amendment application.
39. As a result of my pre-reading, I indicated to the parties at the start of the hearing that I was minded to adjourn the amendment application and focus solely on the applications for security for costs. However, having considered Mr Swainston KC and Mr Dudnikov's submissions, I was ultimately persuaded that the amendment application needed to be addressed ahead of the security for costs applications; indeed, that the security for costs applications do not, on analysis and in the light of the conclusion which I have reached in relation to the amendment application, fall to be determined.
40. I explain why in what follows, after first setting out some further background.
41. On 17 July 2022 Mr Sychev notified the Defendants of the second assignment, from Verlox back to Mr Sychev. This was in a letter sent to Simmons & Simmons LLP and PCB Byrne LLP (as well as Brown Rudnick LLP, solicitors acting for another of the Defendants), in which Mr Sychev expressly stated that Verlox no longer had any claim under the Share Agreement. That letter read as follows:
 - “1. I hereby notify you that Verlox assigned to me personally the rights of claim under the Share Agreement by the Deed of Assignment dated 17 July 2022 or (alternatively) by the Deed dated 17 July 2022 of termination of the Deed of Assignment dated 25 December 2016. I attach the relevant documents.
 2. Thus, since now Verlox International Limited has no claims against the First, Fourth and Fifth Defendants under the Share Agreement.
 3. The reasons for the assignment are described in the Deeds dated 17 July 2022 ...”
42. It was shortly afterwards, on 20 July 2022, that, as previously noted, the Claimants issued their amendment application. That application was put in these terms:

“13. Since the claim for invalidation of the Loan Agreements has actually already been settled, the previous assignment of the rights under the Share Agreement from me to Verlox (to prove the invalidity of the Loan Agreements and to prove that payments under them were partial payments under the Share Agreement) has already lost relevance. Therefore, on 17 July, the rights of claim under the Share Agreement were returned by signing the relevant documents from Verlox to me -

the original party to the Share Agreement, about which the remaining Defendants (Russian) were notified on the same day (Exhibit, pages 7-21).

14. *The changes made to the Claim Form and Particulars of Claim reflect these changes, namely that I (instead of Verlox) became the plaintiff in the claim for the Share Agreement.”*

Mr Sychev’s position (in summary)

43. Mr Sychev has relied upon substantial written submissions. It is important to state that I have read those submissions in their entirety. In addition, during the hearing he was given ample time to expand on his position and respond to the arguments put by counsel for the First and Fourth Defendants. Again, I listened to all that he had to say.
44. Here I attempt to summarise Mr Sychev’s key arguments regarding the amendment application.
45. Mr Sychev’s application was made under CPR 17 and CPR 19, each of which provide that parties can be added to claims under certain circumstances.
46. CPR 17 concerns the circumstances in which a party amends a statement of case in respect of its existing claim. Mr Sychev seeks to amend to substitute himself for Verlox as the party making the claim under the alleged Share Agreement. CPR 19.2(2) to 19.2(4) provide that the Court may order a person to be added as a new party if it is ‘desirable’ to add the new party.
47. Mr Sychev sought to explain the necessity of the first assignment to Verlox. The statement made by Mr Lewis of Fieldfisher LLP (the solicitors then acting for both of the Claimants) on 22 June 2017 in support of the application for leave to serve out, outlined the arguments for the original assignment. Mr Lewis’ position was that “*the assignment was necessary for the proper administration of justice*”.
48. This was because Mr Sychev could not establish English jurisdiction in respect of any claim under the Share Agreement but for the involvement of Verlox.
49. Jurisdiction, therefore, was established under the ‘necessary or proper party’ gateway under PD 6B, paragraph 3.1(3). This was jurisdiction, however, which was established for Verlox, rather than Mr Sychev.
50. In fact, Mr Lewis’ statement expressly recognised that the assignment to Verlox was merely a device for the obtaining of jurisdiction. He said this, in particular, at paragraph 38:

“On 25 December 2016, Mr. Sychev assigned his rights under the Share Agreement and any rights or causes of action arising in connection with it to Verlox. The assignment was necessary for the proper administration of justice. There is a serious issue to be tried between Verlox and Parmas and Avec in relation to the Loan Agreement and Verlox’s success turns on proving liabilities of Mr. Antoshin and/or PhosAgro and/or Guryev under the Share Agreement. It is, therefore, necessary to determine the claims under the Share Agreement at the same time as determining the claims in relation to the Loan Agreements. The proper place for determination of the

Loan Agreements is England (see below), and the claim under the Share Agreement should be determined in the same proceedings in England. The assignment was necessary to bring Mr. Antoshin and/or PhosAgro and/or Guryev within the ‘necessary and proper party’ gateway for service out of the jurisdiction, so that all claims which are inextricably related, could be resolved in the same proceedings in the same jurisdiction.”

51. Mr Sychev did not seek before me to suggest that jurisdiction was obtained on any other basis. His stance, on the contrary, as set out in his twenty-fifth witness statement, was that “*jurisdiction is determined (fixed) on the date of filing a claim*”.
52. Secondly, Mr Sychev contended that the authorities cited by the First and Fourth Defendants are inapplicable because of the “*unique, unusual, [and] extraordinary*” circumstances of the case.
53. Thirdly, Mr Sychev went on in the same twenty-fifth witness statement to suggest that the First and Fourth Defendants had accepted jurisdiction at many points during the case. Thus, he argued that they had chosen to proceed in the English court system, as well as acknowledging Verlox as a claimant.
54. Mr Sychev’s broader argument, fourthly, was that if the assignment were rejected, he would be denied access to justice.

The First and Fourth Defendants’ position (in summary)

55. Mr Swainston KC and Mr Dudnikov submitted, on behalf of the First and Fourth Defendants respectively, that the amendment application should be refused on the grounds that it amounted to an abuse of process.
56. This submission was foreshadowed, in the case of Mr Antoshin, by Mr Crosse, a partner in Simmons & Simmons, solicitors for Mr Antoshin, in his witness statement dated 9 September 2022. Mr Crosse invited the Court to dismiss the amendment application on the grounds that the proposed amendment was an abuse of process. As Mr Crosse put it at paragraphs 15 to 19:

“15. The Claim Form was issued on 29 December 2016. Four days earlier, on 25 December 2016, Mr Sychev assigned the claim under the alleged Share Agreement to his Belize company, Verlox (the First Assignment). As I will explain, the sole reason for doing so was to try to construct artificial English jurisdiction.

- 16. More particularly, without this First Assignment, Mr Sychev would have had no basis at all for attempting to found English jurisdiction, or for adding Defendants 1, 4 and 5 as necessary and proper parties. Verlox was only able to pursue the issues in relation to its assigned claim under the alleged Share Agreement on the basis of CPR 6BPD.3 para. 3.1 [...]*
- 18. It will be a matter for legal argument how far it was open to Mr Sychev to attempt to construct jurisdiction in this way. However, I respectfully suggest that it is obvious now that by the proposed amendment Mr Sychev is purporting to reverse the only basis on which jurisdiction was originally obtained on behalf of Verlox*

- namely, the First Assignment to Verlox, and Verlox's involvement in loans that Mr Sychev said were related to the alleged Share Agreement.

19. *It is appropriate to note that because of the First Assignment, Mr Sychev had no substantive claim of his own when the Claimants obtained permission to serve the proceedings out of the jurisdiction. He is named on the Claim Form as a Claimant, but his claim is expressed to be contingent, in case the First Assignment was for any reason ineffective. No defect has been suggested, so that only Verlox had a purported claim [...]*".
57. This argument was echoed by counsel in written submissions, and during the hearing. In short, Mr Swainston KC and Mr Dudnikov submitted that it was not appropriate that Mr Sychev should have used Verlox to establish jurisdiction, only then to re-adopt the claim through an assignment.
58. As Mr Crosse emphasised in his witness statement, Mr Sychev had no substantive claim of his own when Teare J gave Verlox permission to serve proceedings outside of the jurisdiction.
59. As for Verlox, the submission advanced by Mr Swainston KC and Mr Dudnikov was that the position having been adopted that the claim was no longer with Verlox, it was no longer appropriate that Verlox should be a claimant in the litigation.

Discussion

60. Verlox and Mr Sychev sought to amend the Claim Form pursuant to CPR 17.1(2)(b). However, this rule does not apply to circumstances where a statement of case has been served. This is made clear by CPR 17.1(3), which states that if the amendment is to remove, add, or substitute a party, then the application must be made pursuant to CPR 19.4.
61. Mr Sychev also relied on CPR 19.2(4), asking to be substituted for Verlox as claimant for the claim under the alleged Share Agreement.
62. CPR 19.2(2) to 19.2(4) provide that the Court may order a person to be added as a new party if it is "*desirable*" to add the new party. As Mr Swainston KC and Mr Dudnikov pointed out, however, CPR 19.2(3) goes on to provide that "*the Court may order any person to cease to be a party if it is not desirable for that person to be a party to the proceedings*" (underline added).
63. As previously observed, Mr Swainston KC and Mr Dudnikov submitted that the amendment application should be refused on the basis that Mr Sychev ought not to be permitted to maintain proceedings for which jurisdiction was established by a different claimant (Verlox) on a basis which was (and remains) unavailable to Mr Sychev.
64. In doing so, Mr Swainston KC and Mr Dudnikov relied on two authorities. In the first, *NML Capital Ltd v Republic of Argentina* [2011] 2 AC 495, Lord Phillips had this to say at [77]:

"There are a number of authorities which follow the approach of Lord Esher in suggesting that there is, in principle, no objection to amending a pleading which has

been served out of the jurisdiction unless the effect will be to add a claim in respect of which leave could not, or would not, have been given to serve out [...] While amending to add a cause of action is not the same as amending to substitute one, in either case the amendment involves subjecting the overseas party to a claim other than the one that he entered an appearance to meet, and similar principles should apply in each case.”

65. That passage is directly applicable in this case. To repeat, Mr Sychev (through Mr Lewis) acknowledged that the assignment of the claim to Verlox in 2016 was in order to allow his claim to be advanced in this jurisdiction in circumstances where that claim could not be advanced in his own name because jurisdiction could not be established. It is common ground, indeed, that Mr Sychev could not (and would not) have had jurisdiction in this matter without the intervention of Verlox, because the PD 6B gateway would not have been satisfied.
66. In short, if the Court were now to permit Mr Sychev to pursue the Share Agreement claim, after the re-assignment which took place in July 2022, the Court would be permitting Mr Sychev to achieve the very thing which he would not have been able to do when the proceedings were commenced, namely to bring a claim which, but for the original assignment in 2016, would not have been actionable in this jurisdiction.
67. In *NML* Lord Phillips referred to *Donohue v Armco Inc* [2002] 1 Lloyd’s Rep 425. In that case, Mr Donohue was the claimant. A number of parties hoping to be added as co-claimants applied to be joined under CPR Part 19. None of the potential co-claimants had any cause of action which would entitle the Court to give permission to serve proceedings out of the jurisdiction. They nonetheless submitted that CPR Part 19 was unconstrained by the rules on service out: [18]. That submission was rejected, Lord Bingham explaining at [21] as follows:
- “... The jurisdiction of the English court is territorial. A party resident abroad may be subjected to the jurisdiction of the court to the extent (and only to the extent) that statute or rules made under statute permit. It would emasculate that salutary rule if such a party, properly served with notice of a claim falling within RSC Order 11, CPR r 1 or r 6.20 were then to be exposed to claims falling outside the relevant rule. In exercising its discretion to give leave to serve out of the jurisdiction the court will have regard to the substance of a claimant’s complaint and not permit jurisdiction to be obtained by a mere device ... It would be wrong in principle to allow these PCCs to use Mr Donohue’s action as a Trojan horse in which to enter the proceedings when they could have shown no possible ground for doing so in their own right.”*
68. The image of the Trojan horse properly articulates the commonsense basis of this rule. A claimant cannot manoeuvre itself into jurisdiction by using a holding company as a vehicle, and then abandon that vehicle by assigning the claim away again. Put differently, jurisdiction is not akin to some transferrable ticket, which can be obtained by one party and then handed to another.
69. It is clear, in this case, that it is not desirable for Mr Sychev to continue as a party under CPR 19.2(3). Verlox was given leave to serve out under the ‘necessary or proper party’ gateway and was, therefore, the only claimant able to establish jurisdiction. Mr Sychev cannot now obtain that jurisdiction through a re-assignment of the claim. This is evident from both the authorities, and as a matter of discretion since, to repeat, the sole purpose

of Mr Sychev's original assignment to Verlox was to enable the claim to fit into the 'necessary or proper party' gateway.

70. The inappropriateness of the Claimants' manoeuvrings is underlined by a further feature which I have not yet mentioned. This is the fact that during the hearing on 11 October 2022 Mr Sychev referred, without any advance notice, to a further (as it happened, as then unexecuted) deed of assignment dated that very day.
71. On examination, it transpired that this further assignment purported to be an amendment of the 17 July 2022 deed of assignment (albeit described as being dated 16 July 2022), with paragraph (K) now describing the deed as taking effect "*from the date when (and if) the Court grants the Amendment Application*" or, in the alternative, that "*if the Court will refuse the Amendment Application, this Deed shall not take effect*".
72. It was clear that this third assignment was designed to keep Mr Sychev's claim alive: if his amendment application was rejected, Verlox would retain the claim; if not, he would be allowed to continue the matter on its behalf. The Claimants, in other words, were again engaged in manoeuvres.
73. In any event, this further assignment (and the executed version which Mr Sychev told me after the luncheon adjournment had by then come into existence) is plainly of no effect. This is because, on the Claimants' case, Verlox had already assigned its claim to Mr Sychev on 17 July 2022. Accordingly, Verlox no longer had any claim to assign.
74. It is plainly appropriate, in the circumstances, whether applying the approach described in *NML* and *Donohue* or as a matter of discretion given that the Court has a discretion whether to grant leave to amend (or both), that such leave should be denied.
75. I might add that I see no merit in the various other points which Mr Sychev raised.
76. Thus, as to the second point which he raised, the suggested uniqueness, unusualness or extraordinariness of the proceedings (even assuming the appropriateness of those descriptions) do not amount to reasons why the Court should accede to Mr Sychev's (and Verlox's) invitation to permit a claim to be maintained where there is no longer jurisdiction in respect of that claim.
77. Nor, as to Mr Sychev's third point, is there any substance in the suggestion that Mr Antoshin and PhosAgro have accepted jurisdiction since it is clear that they have done nothing of the sort, as demonstrated by the fact that they have each made a jurisdictional challenge.
78. Lastly, as to Mr Sychev's complaint that he would be denied access to justice were he not to be permitted to amend, this is not a reason to overlook the absence of jurisdiction which applies to the claim as it now stands: if there is no jurisdiction to bring a claim, then, there can be no access to justice issue.
79. This leaves Verlox's position to consider. Given that Verlox was only able to establish jurisdiction on the basis that Mr Sychev had assigned his claim to Verlox and given that Verlox is now asserting (along with Mr Sychev) that it no longer has that claim because of the re-assignment which was effected in July 2022, I am quite clear that the leave to serve out which Verlox obtained before Teare J should now be revoked.

80. It will be recalled in this respect that Mr Sychev was explicit in the letter which he sent on 17 July 2022, the day that the second assignment was concluded. He said this:

“now Verlox International Limited has no claims against the First, Fourth and Fifth Defendants under the Share Agreement”.

That was, of course, also the very basis on which the Claimants sought to amend the Particulars of Claim.

81. Under CPR 3.3(1), the Court has the power to make an order of its own initiative. CPR 3.1(7) makes it clear that this includes the power to vary or revoke an existing order. CPR 11.6(c) also specifically allows the Court to make an order declaring that the court has no jurisdiction, as well as discharging the original order granting leave to serve out which was granted on 30 June 2018.

Conclusion

82. For the reasons which I have sought to give, the Claimants' amendment application fails and the order giving Verlox leave to serve out is revoked.