Neutral Citation Number: [2025] EWHC 890 (Ch)

Case No: BL-2022-002111

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

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

Date: 11/04/2025

Before :

MR JUSTICE MILES
sitting with MASTER KAYE

- -

Between :

(1) LYUBOV ANDREEVNA KIREEVA
(as bankruptcy trustee of Georgy Ivanovich Bedzhamov)
(2) VNESHPROMBANK LLC

Claimants

- and -

(1) CLEMENT GLORY LIMITED

(2) EDWARD GOLODNITSKY

(3) MAXIM GOLODNITSKY

Defendants

- -
- -

Stefan Ramel and Jack Brett (instructed by **Steptoe International (UK) LLP**) for the **Claimants**
Adam Baradon KC and Rowena Page (instructed by **Gresham Legal**) for the **Defendants**

Hearing dates: 19, 20, 21 February 2025

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Approved Judgment

This judgment was handed down remotely at 10.30am on 11 April 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Mr Justice Miles :

Introduction

1. This is a judgment to which Master Kaye has contributed. At the hearing we announced our decision that there was no serious issue to be tried in respect of the claimants' only remaining claims. The existing order permitting service of the claim form out of the jurisdiction was therefore to be set aside and the proceedings were to be dismissed. These are our reasons for that decision.

2. The claimants accepted that if we concluded that there was no serious issue to be tried in respect of the trust claim the entire claim would fall away in light of the events that had occurred since it was issued.

3. The hearing had been listed for three days but it became clear after the first day that if the parties were to advance all of their arguments on all of the issues and applications advanced by them that the hearing would take substantially longer than that.

4. The identification of a narrow potentially determinative issue that could be addressed within the time allocated for the hearing was consistent with the overriding objective and good case management. We directed the parties should focus their submissions to the core question of whether there was a serious issue to be tried in relation to the trust claim, it being accepted that in light of the events that had occurred since the claim was issued the other parts of the claim could no longer be pursued.

5. We made this case management direction to give effect to the overriding objective to deal with cases justly efficiently and proportionately including as to costs and in particular under our powers under CPR 3.1(2)(p).

6. There are certain documents which the defendants say were wrongly obtained in a search order to which they were not parties. These have been referred to in the papers as the embargoed documents. We heard incomplete submissions about them. Having determined the central issue against the claimants such that the claim would fall away we decided that it would be inconsistent with the overriding objective to hear the rest of the embargoed documents arguments.

Factual background

7. This claim is part of a wider dispute between the claimants in these proceedings and Mr Georgy Bedzhamov ("GB") both in this jurisdiction and others. A summary of the background to those wider disputes and some of the factual issues for the purposes of this judgment are set out below. A fuller explanation of the background and history of the disputes can be found in the judgments of Falk J (as she then was) at [2022] EWHC 1166 (Ch) and [2022] EWHC 2676 (Ch), Snowden J (as he then was) at [2021] EWHC 2281(Ch), the Court of Appeal at [2022] EWCA Civ 35 and the Supreme Court at [2024] UKSC 39, and at [2023] EWHC 348 (Ch).

8. The second claimant is a Russian bank ("VPB" or "the Bank"). Following the appointment of provisional administrators on 18 December 2015 the Bank was declared bankrupt by the Moscow Arbitrazh Court on 14 March 2016. The Deposit Insurance

Agency ("the DIA"), a Russian State corporation, was appointed to act as its receiver and liquidator under Russian law.

9. VPB alleges that GB together with his sister, Larisa Markus, who had been the President of VPB, perpetrated a massive fraud against it. The Bank says that GB was the de facto controller of VPB and used that position to perpetrate the alleged fraud. It seeks substantial damages, US$1.34bn, for the losses it says resulted from the fraud and further damages for causing VPB's bankruptcy. GB resists that claim and denies his participation in the alleged fraud. That dispute is the subject of proceedings issued by the Bank against GB in this jurisdiction in December 2018, BL-2018-002691 ("the Bank proceedings"). VPB obtained a worldwide freezing order ("the WFO") and search orders on 27 March 2019.

10. The third defendant, Maxim Golodnitksy ("MG"), and his company Berkeley Square Investment Partners Limited ("BSIP") are third parties/intervenors to the Bank proceedings for the purposes of the search order but are not defendants to them.

11. GB has been living in England since about 2015 and has been domiciled in this jurisdiction since 2017. In 2014 he had purchased a short lease of 17 Belgrave Square and Belgrave Square Mews, London, SW1X 8PG ("17BS"). He was registered as leasehold proprietor on 28 January 2015. His acquisition of 17BS included a personal agreement with the Grosvenor Estate, as freeholder, for a lease extension subject to conditions relating to the development of 17BS.

12. GB was and remains the subject of criminal and civil proceedings in Russia in connection with the alleged fraud. He (and others said to be connected to him) are also the subject of proceedings in various jurisdictions arising out of the alleged fraud and/or as a consequence of those criminal and civil proceedings in Russia.

13. The Khamovniki District Court entered judgment against GB in the amount of RUB 3.368 billion on 16 August 2016, being approximately £40m ("the unjust enrichment judgment"). GB appears to have exhausted all avenues of appeal but maintains that the unjust enrichment judgment was obtained improperly and by fraud.

14. Separately, another Russian bank, VTB 24, pursued GB in respect of a personal guarantee he had given on 23 October 2015 to support a loan facility given to his sister on the same date in the sum of RUB 320,441 million (approx. £5m.) VTB 24 obtained a judgment against GB on the personal guarantee on 22 December 2016 from the Meshanskiy District Court ("the VTB judgment"). GB had maintained that the personal guarantee was a forgery. However, following a trial in the Recognition proceedings (see below) in *Kireeva v Bedzhamov* [2022] EWHC 2676 (Ch), Falk J concluded that the personal guarantee was not a forgery and that the VTB judgment was not procured by fraud on the part of VTB 24.

15. Based on the unjust enrichment judgment and the VTB judgment, VPB and VTB 24 separately initiated bankruptcy proceedings against GB in Russia in 2017. Bankruptcy proceedings in Russia have two stages with the second stage resulting in the appointment of the equivalent of a trustee in bankruptcy.

16. VPB filed its petition based on the unjust enrichment judgment on 17 January 2017. The petition was accepted and there was an initial hearing on 22 March 2017 which

was then adjourned to 7 June 2017. VTB 24 filed its petition in reliance on the VTB judgment on 13 April 2017 which was also accepted.

17. On 25 April 2017 the first defendant to these proceedings, Clement Glory Limited ("CGL"), was incorporated in the British Virgin Islands. The second defendant, Edward Golodnitsky ("EG"), who lives in Israel, is the sole director and registered shareholder of CGL.

18. On 7 June 2017 the Arbitrazh Court determined that since the unjust enrichment judgment was under appeal it was "unreasonable" and did not have the necessary legal effect to found a bankruptcy order. VPB and VTB 24 appealed the 7 June 2017 decision. On 17 July 2017 that appeal and consideration of VTB 24's petition were adjourned to 20 September 2017.

19. The claimants allege in these proceedings that despite the decision of the Arbitrazh Court to adjourn the determination to 20 September 2017, the pending appeal was not a substantial ground for opposing the VPB bankruptcy petition. Instead they allege that it was designed to provide time for GB to take steps to deal with his assets prior to any bankruptcy order being made in a way that attempted to put those assets beyond the reach of his creditors including VPB.

20. GB's appeal against the unjust enrichment judgment was dismissed on 30 July 2017.

21. Between July 2017 and September 2017 GB entered into various arrangements which the claimants seek to challenge by this claim. There are unresolved issues about whether reference to some of those arrangements wrongly refers to documents which are said to still fall within the confidentiality orders made in the Bank proceedings (i.e. the embargoed documents). They are therefore referred to compendiously in this judgment as "the Arrangements" where appropriate. It is not necessary for the purposes of resolving the issues we have outlined above to spell out the details of the Arrangements in greater detail.

22. The claimants allege in broad terms that under the Arrangements EG constituted himself a bare trustee of the shares in CGL for GB.

23. As part of the Arrangements, on 31 August 2017 GB granted an "all monies" legal charge over 17BS to CGL ("the CGL charge"). The CGL charge included an exclusive English jurisdiction clause. The CGL charge was witnessed by MG who gave his address as 49 Berkeley Square, London W1, the office of BSIP.

24. GB contends that the CGL charge derives from a Settlement Agreement between GB and CGL entered into on 31 August 2017 and a loan Facility Agreement also entered into between GB and CGL on 31 August 2017.

25. GB contends that the charge secured a sum of in excess of US$35m at the time. In 2022 GB confirmed that the sum secured by the charge was then in excess of £38m.

26. The claimants allege that the Arrangements were all designed to place GB's assets beyond the reach of his then current and future creditors or were otherwise designed to prejudice the interests of such persons.

27. They specifically challenge the validity of the CGL charge.

28. On 18 September 2017 the CGL charge was registered against the title of 17BS.

29. On 20 September 2017 the Moscow City Arbitrazh Court accepted VTB 24's petition as reasonable. A bankruptcy order was made against GB and he entered the first stage of bankruptcy. A financial administrator was appointed by the court to supervise a debt restructuring process in respect of GB's debts and creditors.

30. GB's subsequent appeal against the validity of the underlying VTB 24 judgment and the order made on 20 September 2017 within the VTB 24 petition were rejected by the Ninth Commercial Appeal Court on 8 December 2017. Following the dismissal of GB's appeals, the unjust enrichment judgment was accepted as a claim in GB's bankruptcy on 31 January 2018 and thus formed one of the debts in the debt restructuring process.

31. On 17 June 2018 a meeting of creditors resolved to petition for GB's bankruptcy to move to the second stage of the bankruptcy process. The petition was heard in the Arbitrazh Court on 2 July 2018.

32. The first claimant is a Russian insolvency practitioner and Arbitrazh manager based in Moscow. She was appointed as GB's receiver, the equivalent to a trustee in bankruptcy, on 2 July 2018 ("the Trustee") to realise and liquidate his assets to satisfy the claims of his creditors.

33. In December 2018 VPB commenced the Bank proceedings and subsequently obtained the WFO and search orders from Arnold J. The application was supported by an affidavit from Mr Steven Philippsohn dated 21 March 2019. Arnold J was told that as matters stood, the prospect of Ms Kireeva seeking the recognition of GB's bankruptcy in this jurisdiction was very low.

34. A1 LLC ("A1") is a Russian litigation funder which funded the Bank proceedings on behalf of the DIA/VPB from the outset including providing the financial fortification for the WFO/search orders in 2019. Many issues have been raised about the role and status of A1 over the course of the wider disputes with issues about sanctions having taken up a considerable amount of court time already: see for example Falk J at [2021] EWHC 1360 (Ch) and Cockerill J at [2024] EWHC 1048 (Ch).

35. In about March 2024 A1 ceased to be the litigation funder in the Bank proceedings and another Russian funder, Cezar Consulting ("Cezar"), took over responsibility for funding the Bank proceedings for the DIA/VPB.

36. In 2020 difficulties arose in relation to the conduct and progress of the search orders. Orders were made by Falk J putting in place protocols for the progress of the search and use of documents located as a consequence of it, particularly those obtained from searching MG and BSIP's premises. This included enhanced confidentiality undertakings from those who had access to some of the documents subject to the search orders. Eventually Falk J put the entire search order process on hold by her order dated 25 May 2021. This is the background to some of the documents being embargoed as explained earlier.

37. The Bank proceedings proceeded and were case managed to trial with disclosure taking place in 2021. A 40 day trial was listed to commence in January 2022.

38. The Trustee did not seek to intervene in nor take any part in the Bank proceedings until March 2021.

39. However, VPB did make an application to join CGL to the Bank proceedings in September 2019. This application was subsequently withdrawn in 2020. By that application VPB proposed to allege that the CGL charge was a sham and of no legal effect and sought an order to rectify the title of 17BS to remove the CGL charge.

40. GB remained subject to the WFO. By late 2020 he said that he had run out of resources to fund his defence of the Bank proceedings and his ongoing living expenses. On 6 January 2021 GB notified VPB that he intended to seek a variation of the WFO to enable him to sell 17BS for £35m to fund his defence and to provide living expenses. CGL agreed that it would subordinate its charge to the extent of £5m for the purpose of providing GB with funding for his defence and living expenses if the sale proceeded.

41. On 19 February 2021 the Trustee applied to the Insolvency and Companies Court for common law recognition in this jurisdiction and ancillary orders (BR-2021-000044; later, BL-2023-000277) ("the Recognition Application").

42. The Trustee was represented by DCQ solicitors and in particular by Mr Patrick Elliot from January 2021 until September 2024. The Trustee was funded by A1 in relation to all the claims she had issued connected to GB and his assets in this jurisdiction until about March 2024 after which Cezar took on the role of funder.

43. On 22 February 2021 GB issued an application to seek a variation of the WFO to approve/enable the sale of 17BS which was heard by Falk J on 5 March 2021. The Trustee sought to intervene in the Bank proceedings and to oppose the application. Falk J nonetheless made an order varying the WFO to permit the sale of 17BS for £35m on terms which included the subordination of the CGL charge which was then valued at £38m such that a £5m priority charge would be registered in favour of GB's lawyers. She gave the Trustee the right to intervene and to apply to seek to set aside the charge.

44. On 16 March 2021 the Trustee issued an application in the Bank Proceedings to set aside Falk J's 5 March 2021 order ("the Set Aside Application").

45. There are disputes between the Trustee, VPB and GB (and other parties to the wider litigation) about when, why and how she came to seek common law recognition in this jurisdiction in early 2021 and how she was or is to be funded. Those issues may at some stage need to be determined.

46. Snowden J heard the Recognition Application and the Set Aside Application in April 2021. He handed down judgment on 13 August 2021 ([2021] EWHC 2281 (Ch)) concluding at [276] to [278]:

> "Disposal

> 276. For the reasons that I have given, I will make an order recognising the Bankruptcy Order and the appointment of the Trustee in Russia.
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> 277. I will, however, dismiss the remainder of the Recognition Application insofar as it seeks further assistance in relation to the Belgrave Square Property.
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> 278. It must also follow from the fact that the Trustee is not entitled to any assistance in seeking to take control of the Belgrave Square Property that there is no reason to set aside the March Order. I will therefore dismiss the Set-Aside Application."

47. Snowden J's Recognition Order provided as follows:

> "Recognition Application
>
> 1. The bankruptcy order made against Mr Bedzhamov by the Moscow Arbitrazh Court on 2 July 2018 (the "Bankruptcy Order") and the appointment of the Trustee by the Moscow Arbitrazh Court on 2 July 2018 (the "Trustee Appointment") shall be recognised at common law (together, the "Recognition Order").
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> 2. Insofar as any application is to be made by the Trustee in relation to the movable assets of Mr Bedzhamov located in England (the "Movables Application"), such application shall be made to Mrs Justice Falk.
>
> 3. Insofar as assistance is sought in relation to the immovable assets of Mr Bedzhamov located in England, the Recognition Application is dismissed (the "Immovables Order")."

48. While the Trustee had therefore been recognised at common law, she had not otherwise been given assistance in relation to immovable property which would include 17BS and she would have to make an application in relation to movable property. GB appealed the Trustee's recognition ("the Recognition Appeal"). The Trustee appealed the refusal to provide assistance in relation to immovable property and the dismissal of the Set Aside application (the "Immovables Appeal" and the "Set Aside Appeal"). The appeals were expedited and heard by the Court of Appeal in November 2021.

49. On 3 September 2021 the Trustee issued an application for a declaration and vesting of GB's "contemporaneous" and after acquired movable property ("the Movables Application"). On 13 September 2021, the Trustee issued an application seeking a declaration that upon the sale of 17BS the net proceeds of sale would vest in the Trustee subject to any prior secured rights (the CGL charge) without prejudice to the Trustee's rights to challenge such security and on the basis that it was not inconsistent with or a breach of the Immovables Rule ("the Proceeds Application").

50. On 20 September 2021 the Bank Proceedings were stayed generally pending the determination of the appeals. The trial was vacated.

51. On 2 November 2021 the parties agreed by consent that the Proceeds and Movables Applications would also be stayed pending determination of the appeals.

52. On 21 January 2022 the Court of Appeal remitted the Recognition Application to Falk J for further consideration at a trial to enable GB to be cross-examined about his contention that the VTB 24 guarantee (and consequently the VTB judgment) had been obtained by fraud ("the Remittal").

53. In the meantime, on 23 August 2021, the Trustee had issued a claim against CGL ("the first CGL claim"). The first CGL claim alleged that the Arrangements entered into by GB in August 2017, including the CGL charge, were for the purpose of putting his interest in 17BS beyond the reach of his then current and future creditors or otherwise to prejudice the interests of such persons. The claim was advanced on the basis that GB's entry into the CGL charge was either a sham and of no legal effect or constituted a transaction defrauding creditors under section 423(1) of the Insolvency Act 1986. The Trustee alleged that GB controlled CGL through his close associates and used the CGL charge to create the false appearance that he had no realisable interest in 17BS or that he had entered into the CGL charge for no consideration or for a significantly lower consideration than that provided by GB.

54. On 25 October 2021 the Trustee sought to join VPB as a claimant to the first CGL claim.

55. Thereafter and despite the general stay of the Bank proceedings VPB made an application for permission to use information and documents obtained either through disclosure and/or the search order including those of MG/BSIP in support of the first CGL claim. The court directed that consideration of the collateral use application should be deferred until after determination of the appeals.

56. No particulars of claim were filed in the first CGL claim and no application for permission to serve out of the jurisdiction was made. On 21 February 2022 the Trustee sought an extension of time for a further 6 months to serve the claim form. This application was refused in a ruling dated 21 April 2022.

57. On 23 February 2022 the Trustee applied to the Supreme Court for permission to appeal the Court of Appeal's order so far as it related to GB's immovable property.

58. On 10 March 2022 Falk J gave directions in relation to both the Remittal hearing and for further orders sought in relation to 17BS. She continued the stay in the Bank proceedings and the Proceeds and Movables Applications until after the determination of the Remittal.

59. On 20 May 2022 Falk J gave permission for the sale of 17BS on terms as set out in her judgment at [2022] EWHC 1166 (Ch) which were recorded in an order dated 9 June 2022. Under the proposal which Falk J approved, CGL agreed to subordinate its charged debt save for £23m (but not to reduce the debt itself).

60. The Remittal trial took place in October 2022. In her judgment of 27 October 2022 ([2022] EWHC 2676 (Ch)) Falk J found against GB on his allegations that the VTB 24 guarantee was a forgery.

61. On 9 November 2022 she recognised the Trustee at common law. Falk J directed that the Movables Application and the Proceeds Application remain stayed pending the determination of the Trustee's application for permission to the Supreme Court and if permission was granted until the determination of the substantive appeal.

62. The Supreme Court granted the Trustee permission to appeal on 21 December 2022. The appeal was listed for hearing in November 2023.

63. The present claim, BL-2022-002111, ("the second CGL claim") was issued on 19 December 2022. The claimants were both the Trustee and VPB. The defendants were CGL, EG and MG. MG was and is domiciled in England.

64. The amended claim form is dated 4 January 2023 and stated, "Particulars of Claim attached". The particulars of claim ("POC") were undated and unsigned. There are procedural defects with both the amended claim form and the POC.

65. By the claim, the claimants sought declarations in respect of the beneficial ownership of either/or CGL itself, 17BS and/or its proceeds. Paragraphs 30 (a) to 30(d) of the POC sought a declaration that GB was the beneficial owner of CGL and/or EG was his nominee and held the sole share of CGL on trust for him and/or that MG was GB's nominee acting on his instructions in relation to the day to day management of the affairs of CGL and/or CGL held its assets on trust for GB and that the CGL charge was void.

66. Paragraph 31 set out the claimants' claim that the CGL charge itself and the Arrangements were all created to give the false appearance that GB had no realisable interest in 17BS/its proceeds and/or were designed to deceive his creditors.

67. Paragraphs 32 and 33 set out the claim under section 423 that the CGL charge, the Settlement Agreement and the Facility Agreement were transactions defrauding creditors inferring GB's purpose from the chronology and the nature of the various arrangements and asserting that the claimants are victims within the meaning of section 423(5) of those transactions individually or together.

68. In the prayer, the relief sought by the claimants included declarations that (i) GB was the ultimate owner and controller of CGL; (ii) EG was GB's nominee and held the share in CGL as trustee for him and/or (iii) that that MG was a nominee of GB and acted on GB's instructions regarding the management of CGL; and (iv) consequently that CGL held its assets on trust for GB and that the CGL Charge was void. They also sought other relief focussed on the sham and section 423 claims.

69. The claim was accompanied by an application for permission to serve out of the jurisdiction in the BVI and Israel. The application was supported by Mr Elliot's first witness statement in the second CGL claim. Mr Elliot's evidence explained that the basis of the second CGL claim was the same as the first CGL claim. He explained at [69] that the claim proceeded on the basis that the CGL charge, the Settlement Agreement and the Facility Agreement were entered into shortly before GB's

bankruptcy for the purpose of putting GB's interest in 17BS beyond the reach of his creditors or otherwise prejudicing their interests and claims. Consequently, the claim was advanced as one in sham and/or as a transaction defrauding creditors.

70. In order to obtain permission to serve out of the jurisdiction the claimants had to satisfy the court that, in relation to the defendants, there was a serious issue to be tried on the merits of the claim; that there was a good arguable case that the claims for which permission to serve out was sought fell within one or more of the jurisdictional gateways in Practice Direction 6B; that England is clearly or distinctly the appropriate forum for the trial of the dispute; and that in all the circumstances the court ought to exercise its discretion to permit service out of the jurisdiction.

71. The claimants relied on the following gateways in PD6B: (a) paragraph 3.1(11) on the basis that the property (17BS) was wholly and principally within the jurisdiction; (b) paragraph 3.1(6) on the basis that relevant contract(s) (i.e. the CGL charge) were made within the jurisdiction and governed by English law; (c) paragraph 3.1(20) on the basis that a claim under section 423 is recognised to fall within this gateway as a claim under an enactment that allows proceedings to be brought. The claimants did not advance any other jurisdiction gateways to support the application for permission to serve out of the jurisdiction. In particular they did not advance or seek permission to serve out of the jurisdiction based on any trust claim.

72. An order granting permission to serve out of the jurisdiction was made on paper on 4 January 2023. The defendants acknowledged service. CGL and EG indicated an intention to challenge the jurisdiction.

73. By the recitals to an order dated 14 February 2023, the Trustee confirmed that the relief sought in the second CGL claim and the Trustee's recently issued application to join MG and CGL as parties to the Recognition Application were not intended to undermine the judgment of 20 May 2022 or the 9 June 2022 order. The 9 June 2022 order had granted GB in principle permission to sell and develop 17BS including a reduction in the value of the CGL charge.

74. On 25 April 2023 CGL and EG issued an application to challenge jurisdiction and in the same application MG sought either to strike out the claim against him or sought summary judgment. The applications were originally listed to be heard in October 2023, then relisted in July 2024, and were finally heard in February 2025.

75. The basis for the defendants' challenge to the jurisdiction was that the order was irregular and that there was no serious issue to be tried. The defendants argued that the second CGL claim did not fall within any of gateways relied on and that there had been material non-disclosure. The defendants contended that the claim was in any event an abuse of process including because the claimants had wrongly made use of documents obtained in the Bank proceedings (i.e. the embargoed documents). The alleged collateral use of embargoed documents included documents said to fall within the enhanced confidentiality regime put in place by Falk J in respect of the search orders. They further said there was no proper claim against MG. In addition they raised issues of champerty and maintenance focussed on A1's funding of the Trustee. They also highlighted what they said were procedural defects with the claim as advanced.

76. Since then the claimants have issued five applications and the defendants have issued one additional application all of which were related and listed to be heard at the same time:

    i) the claimants' application dated 21 September 2023 to amend the claim form and POC to address the procedural defects identified in the 25 April 2023 application;

    ii) the claimants' application dated 16 October 2023 for the collateral use of the embargoed documents or for disclosure of the embargoed documents within the second CGL claim;

    iii) the claimants' application dated 16 October 2023 for relief from sanctions for procedural errors in relation to the amended claim form and POC;

    iv) the claimants' application dated 16 October 2023 to rely on late evidence;

    v) the defendants' application dated 23 May 2023 for permission and retrospective permission to provide copies of various witness statements provided in these proceedings to MG's solicitors in the Bank proceedings; and

    vi) the claimants' application dated 7 February 2025 by which the claimants sought permission to amend the claim form and particulars of claim. The amendments were said to arise from the decision of the Supreme Court (see below).

77. In addition to Mr Elliot's first witness statement, the claimants rely on four additional witness statements from Mr Elliot dated respectively 20 July 2023, 13 October 2023, 16 October 2023, and 12 December 2023. They further rely on two witness statements from Ms Anya Bloom made within the second CGL claim dated 14 September 2023 and 16 October 2023.

78. In September 2024 the claimants changed legal representation and are now represented by Steptoe. Mr Neil Dooley of Steptoe provided one witness statement dated 18 October 2024.

79. The defendants rely on five witness statements from Mr Smeetesh Kakkad, a partner at Gresham Legal, dated respectively 25 April 2023, 22 September 2023, 24 November 2023, 23 August 2024 and 1 November 2024.

80. The exhibits to the witness statements ran to over 1800 pages and the main bundle for the hearing alone ran to 2360 pages. There was a significant quantity of material before the court by way of evidence.

81. Before turning to the applications it is helpful to bring the chronology up to date.

82. In respect of the sale of 17BS on 16 June 2023 by a judgment ([2023] EWHC 1459 (Ch)) and in the accompanying order sealed on 19 July 2023 GB was given further permission to progress the sale of 17BS on terms.

83. By a further order dated 21 June 2024 the court authorised the sale of 17BS on terms which included the subordination of the CGL charge.

84. Completion subsequently took place on 4 October 2024.

85. The parties agreed the position in relation to the distribution of the proceeds of sale which was recorded in an order dated 5 November 2024.

86. On 21 and 22 November 2023 the Supreme Court heard the Trustee's Immovables Appeal. Judgment was given on 20 November 2024 at [2024] UKSC 39. The Court dismissed the appeal and held that GB's ownership of his English immovable property (i.e. 17BS) was not affected by the Russian bankruptcy. The Court summarised the question they had to consider as:

> "2. The issue on this appeal is the effect, if any, under English common law of the immovables rule on the claim of a trustee in bankruptcy or similar representative appointed in foreign bankruptcy proceedings to immovable property situated in England and owned by the debtor."

87. Importantly for the Proceeds Application and some aspects of the Movables Application the Court confirmed that:

> "91. …in the case of a foreign bankruptcy, the status of property located in this country as movable or immovable is determined as at the date of the bankruptcy order, that being the order from which, under the foreign bankruptcy law, the trustee's title to or interest in the property derives. The proceeds of a subsequent sale of the Property remain subject to the immovables rule and so will not be assets within the bankrupt estate.
>
> "98.… The expression "rents and profits" is apt to cover a wide range of income. It may be that, with the benefit of full information, some such income would properly be characterised as movable property, although we are far from satisfied that this is correct. We are, however, unable to see how that could be correct as regards, for example, the right to receive rent payable under a lease. Viewed from the perspective of both lessor and lessee, a lease of land is immovable property and the right to receive rent is one of the incidents of that immovable property. In our judgment, it would not in a case such as the present be open to the court to appoint a receiver of the rents and profits of land within the jurisdiction, with the exception of such identified rents and profits, if any, as were properly characterised as movable property and were received pursuant to rights existing as assets at the date of the foreign bankruptcy. "

88. Having reviewed the history of the Immovables rule, and the position in relation to common law recognition, they held:

> "[101] …the common law does not at present enable the English courts to provide assistance to a foreign trustee in bankruptcy by appointing a receiver with a power of sale over immovable property.

> "[103] We consider that any further modification of the immovables rule so as to enable courts in this jurisdiction to assist a foreign trustee in bankruptcy by appointing a receiver with a power of sale over immovable property here must be a matter for Parliament and not for the courts. It would not involve an incremental development of the common law but a substantial departure from the existing law and the principles of public policy to which it gives effect. In particular, the considerations of national sovereignty which underpin the immovables rule require that such a development should have the approval of Parliament.
>
> [111] Under the immovables rule, as a matter of English common law, the trustee in bankruptcy has no interest in or right to the bankrupt's immovable property in this jurisdiction. It is for Parliament and not the courts to determine whether and, if so, under what conditions there should be further development beyond those already made by legislation."

89. The Trustee and VPB recognised that the Supreme Court decision might require them to amend the second CGL claim. On 13 December 2024 the claimants confirmed that the Trustee accepted that she had no claim in respect of 17BS or the proceeds of sale of it.

90. She explained, as regards CGL, that she intended to rely on the claim that GB was the beneficial owner of CGL and that EG held the sole share on trust for him as his nominee. The Trustee confirmed that save for the proposed amendments that would be provided in January 2025 she did not intend to rely on any further evidence only written and oral submissions.

91. The defendants responded on 20 December 2024 highlighting that given that the claimants could no longer rely on 17BS to found jurisdiction they could no longer rely on the primary jurisdictional gateway PB6B 3.1(11) relied on in the application for service out and queried how either the Trustee or VPB were able to rely on either 3.1(6) or (20).

92. The claimants did not respond substantively or with any proposed amendments until 7 February 2025 when they issued their application to amend. The covering letter explained that they now intended to rely on new jurisdictional gateways to resist CGL and EG's challenge to the jurisdiction. The Trustee indicated that she intended to rely on jurisdictional gateways 12A and/or 12C relating to trusts. She further sought still sought to rely on gateways 6 and 4A(c).

93. The 7 February 2025 application did not rely on any additional evidence but simply attached the proposed re-amended claim form and amended POC. The proposed amendments sought to remove VPB as a claimant. In light of the Supreme Court's decision the entirety of the sham claim and the section 423 claim were to be deleted. This left the only cause of action advanced in the POC as that contained in paragraph 30 as follows:

> "Causes of Action

> 30. The Trustee seeks the following declaratory relief, that, subject to the rights of the Trustee:
>
> a. GB is the beneficial owner of Clement Glory; and/or
>
> b. EG is the nominee of GB and holds the sole share of Clement Glory on trust for GB; and/or
>
> c. MG is the nominee of GB and acts upon the instructions of GB in relation to the day-to-day management of the affairs of Clement Glory."

94. The prayer included the following claims:

> "2. A declaration that, subject to the rights of the Trustee, GB is or alternatively that he was at the date of the Bankruptcy Order the ultimate owner and controller of Clement Glory.
>
> 3. A declaration that, subject to the rights of the Trustee, EG is the nominee of GB and holds the sole share of Clement Glory on trust for the Trustee.
>
> …
>
> 7. Further or alternatively, a declaration that, subject to the rights of the Trustee, MG is the nominee of GB and acts upon the instructions of GB in relation to the day-to-day management of the affairs of Clement Glory…"

95. The defendants sought further explanations about the basis on which the claimants sought to advance the new gateways and/or what the position was in relation to VPB.

96. On 11 February 2025 the claimants explained that their intention was that VPB would remain a party until after the determination of the applications and that if the court were to permit the second CGL claim to continue they would then discontinue the claim advanced by VPB. This was difficult to follow and did not appear to be a maintainable position.

97. The claimants' solicitors further explained that the trust claim in respect of the share in CGL was the sole claim advanced. They argued that it arose from the same closely connected facts to the sham and section 423 claims originally pursued enabling them to rely on gateway 4A(c). For those purposes they said they relied on the circumstances in which the CGL charge came to be entered into and what they described as the uncommercial dealings with the CGL charge. Additionally they contended that it was to be inferred from these various factors that the trust was created in England and subject to English law, bringing it within gateway 12.

98. It was not, however, until skeletons were exchanged that the defendants or the court had any real insight into the basis on which the claimants now sought to resist the jurisdiction challenge.

99. The jurisdiction challenge, strike out and the numerous other applications were heard over three days from 19 February to 21 February 2025. The period of time over which the applications had been pending and the changes to the underlying facts relied on including the sale of 17BS and the Supreme Court decision in October and November 2024, coupled with the late amendment application had left the claim and applications in a state of some disarray. Indeed up to the start of the hearing it was unclear whether the hearing would or could be effective given the late amendment application.

100. The hearing commenced with the defendants' application in relation to the embargoed documents. It became clear that this was going to be a long and complex application. At the start of the second day of the hearing we indicated that it appeared to us that there was potentially a dispositive issue of principle, concerning the territorial scope of the recognition order. We therefore invited submissions on this point. As already explained we decided that the point was indeed dispositive and we now turn to our reasons for that conclusion.

The positions of the parties

101. We have explained above how the claims advanced have been modified in response to the decision of the Supreme Court on the immovables issues. The current claims are now only advanced by the Trustee (rather than the Bank). They are summarised at [93] to [94] above.

102. The Bank agreed that under the amended pleadings it had no extant claims. The Trustee accepts that her only remaining claims are those in the proposed amended pleadings. The defendants agreed that the court should address the application on the basis of the proposed amended case.

103. Ms Page argued this part of the case for the defendants. She submitted in outline as follows:

a. The Trustee alleges that the shares in CGL are held on trust for her by EG. She pleads the recognition order as the basis of her title or authority to claim.

b. As a matter of law the recognition order can only have given her the right in this court (or, in the eyes of this court, recognise her as having the right) to claim ownership over or title to GB's movable property within the jurisdiction.

c. The claim for declarations that the Trustee was and is the beneficial owner of the shares in CGL is a claim in respect of movable property sited outside the jurisdiction. The shares themselves are sited in the BVI; and a claim for a beneficial interest under a trust is treated as sited in the same place as the underlying property.

d. The claims against CGL and EG therefore relate only to movable property outside the jurisdiction and they cannot be pursued in the English courts in reliance on the recognition orders. The Trustee has no authority or standing in the English courts to claim foreign movables. It follows that there is no serious issue to be tried in these courts underlying the claim for a declaration of ownership.

e. It is therefore unnecessary to address the separate question whether there is a good arguable case that the trust claims would fall within one or more of the jurisdictional gateways.

f. The claim against MG is (and is accepted by the Trustee to be) wholly ancillary to the trust claims against D1 and EG and stands or falls within them.

104. The Bank accepted that it had no continuing claims and that the only remaining claimant was therefore the Trustee.

105. The Trustee submitted in outline as follows:

a. She accepted that under the recognition orders the Trustee's title or authority to claim is limited to GB's movable property located within the jurisdiction.

b. She did not contend that the claims against EG as a trustee for GB had a different location than that of the shares in CGL, the trust property.

c. There is however a serious issue to be tried that the shares in CGL (and therefore the trust claims over them) are sited in England. This is because the company was entitled under its articles to maintain a share register outside the BVI and there is sufficient evidence of connections between the company and England to raise at least a serious issue that there is a share register here. GB, MG and EG had deliberately set up CGL in a secretive way and had failed to answer basic questions about the ownership of CGL.

d. Accordingly there is a serious issue to be tried in relation to the trust claims.

e. She accepted that if the trust claims cannot be maintained against D1 and EG the claims against MG must fail as being merely ancillary.

Discussion and conclusions

106. Though it turned out not to be controversial, we start with the consequences of recognition in this jurisdiction of a foreign bankruptcy trustee. The principles were considered by Snowden J in his judgment of 13 August 2021 ([2021] EWHC 2281 (Ch)) from paragraph 186 onwards.

107. At paragraph 188 he cited a passage from the 15th edition of Dicey, Morris and Collins on the Conflict of Laws ("Dicey"). In the 16th edition the relevant passage is at Rule 208, which states that "an assignment of a bankrupt's property to the representative of his creditors under the bankruptcy law of any other foreign country whose courts have jurisdiction over him … is, or operates as, an assignment of the movables of the bankrupt situate in England."

108. At paragraph 189 Snowden J cited a passage from Fletcher, The Law of Insolvency at [29-057],

> "In the case of movables, English law has for well over two centuries maintained the principle that any of the bankrupt's movable assets which are situate within the jurisdiction of the

> English court automatically vest in the foreign trustee in bankruptcy (or equivalent) from the moment of adjudication."

109. Snowden J went on to refer to a number of cases which supported the proposition set out in these texts.

110. At paragraph 194 he said:

> "These basic principles were not in dispute between the parties and the consequences of recognition for moveable property therefore appears to be common ground: if and to the extent Mr Bedzhamov has any moveable property situated in England, the consequence of granting recognition to the Trustee will be automatically to recognise that she is the owner of, and entitled to, Mr Bedzhamov's moveable property in England. The dispute between the parties did not, however, concern movable property. It concerned immovable property (and in particular the Belgrave Square Property). It is to that matter that I now turn."

111. As explained above, he held that the rule did not apply to immovable property. His decision was upheld by the Court of Appeal and the Supreme Court.

112. It follows that the recognition by the English court of the Trustee's ownership of and title to the property covered by the Russian bankruptcy order is limited to movable property within England and Wales. As already noted, this was not disputed by the Trustee.

113. The next question is the location or situs of the claimed assets.

114. Questions of situs are governed by the lex fori because all concepts signifying connecting factors must be interpreted by reference to that system: see Dicey at [23-024]. The same passage goes on to state,

> "However, foreign law is not always irrelevant since the rules of the lex fori may require a reference to it. For example, the English rule is that shares in a company are situate where they can be effectively dealt with as between the owner and the company; and in the case of a foreign company the place of effective transfer can be determined only in accordance with the law of the company's country of incorporation."

115. In the present case the Trustee alleges that the shares in CGL are held by EG on trust for her. She claims a beneficial interest in the shares.

116. Dicey at [23-046] states (materially) that

> "The location of an interest under a trust is dependent on whether, under the law governing the trust, the beneficiary has a beneficial interest in the trust property or whether under that law he has merely a right of resort to a court in order to compel the trustees to discharge the task imposed upon them. If the

> beneficiary is given a beneficial interest in the trust property then his or her interest under the trust is located in the country where the trust property is situated."

117. There was no dispute about these principles. Though the skeletons identified an issue about the law governing the alleged trust, it was common ground at the hearing that the trust alleged in this case is one where the beneficiary has a beneficial interest in the trust property. That must be right: the pleaded case is that EG holds the shares in CGL on trust for the Trustee.

118. It follows that the claim against EG as a trustee is (for conflict purposes) a chose in action located in the same place as that of the trust property, the shares in CGL.

119. The next issue is the location of the shares in CGL.

120. Dicey at [23-042] identifies the principles for determining the location of shares in companies, drawn from *Macmillan Inc v Bishopsgate Investment Trust Plc (No. 3)* [1995] EWCA Civ 55, [1996] 1 WLR 387, and *Akers v Samba Financial Group* [2017] UKSC 6, [2017] AC 424, as follows:

> "… shares are situate in the country, where under the law of the country in which the company was incorporated, they can be effectively dealt with as between the owner for the time being and the company. The law of the place of incorporation of the company decides how shares may be transferred. If they may only be transferred by registration on a particular register, they will be regarded as situate at the place where the register is kept. If they are transferable on more than one register, they will be situate in the place of the register on which they would be dealt with in the ordinary course of affairs by the registered owner for the time being."

121. The Trustee submitted that this statement of principle was correct. She submitted that the shares in CGL were located wherever dealings in them by EG would be registered. We return to the state of the pleadings and evidence about this in a moment.

122. However we should first consider the defendants' submission that the court should conclude that the shares in CGL were located in the BVI by reason of BVI legislation discussed in the decision of the Privy Council in *Al Thani v Al Thani* [2024] UKPC 35, on appeal from the Courts of the BVI. This was a succession dispute. The deceased was domiciled in Qatar. The question was whether some shares in BVI companies owned by the deceased were to be treated as immovable property by reason of BVI companies legislation. The Privy Council decided that the legislation did not treat shares in BVI companies as immovable for conflict of laws purposes. However the defendants in the present case relied on it for the submission that the case sets out a definitive statement of the legal principles governing the location of shares in BVI companies.

123. The relevant provision of the legislation was s. 245 of the Business Companies Act 2004 which provides:

> "For purposes of determining matters relating to title and jurisdiction but not for purposes of taxation, the situs of the ownership of shares, debt obligations or other securities of a company is in the Virgin Islands."

124. At paragraph 39 Lord Hodge, giving the advice of the Board, addressed the common law principles, unaffected by the statute. He referred to *Macmillan* as the modern leading case on determining the situs of shares. At paragraph 42 he set out the contents of Dicey [23-042] (cited above).

125. At paragraphs 44 to 45 Lord Hodge explained that the purpose of s. 245 of the 2004 Act was to remove the potential for uncertainty as to the lex situs of a BVI company's shares. At paragraph 45 he said this:

> "Under the 2004 Act, but for section 245, there would remain the potential for uncertainty as to the lex situs of the company's shares. The 2004 Act requires a company to keep a register of members, but does not specify where that register is to be located (section 41); it may be overseas and the company may change the location of that register. The company may opt, but is not required, to file a copy of its register of members with the Registrar of Companies for registration (section 43A). A company must have a registered office in the BVI (section 90). It must also have a registered agent in the BVI (section 91) and must keep at the registered agent's office, among other records, either its register of members or a copy of that register (section 96(1)(b)). If the company keeps only a copy of the register of members at its agent's office, the company must notify the registered agent within 15 days of the date of any change of that register. As a transfer of shares takes effect when the name of the transferee is entered in the register of members (section 54(8)) the location of that principal register of members is the place at which shares can effectively be dealt with as between the transferee and the company. Section 245, by providing for the situs of the shares, makes it unnecessary for the court to enquire where the principal register of members was located at the time of the transfer."

126. Counsel for the defendants relied on these passages to contend that under the laws of the BVI the situs of shares is determined by the statutory provisions referred to in *Al-Thani* to be the place of incorporation (i.e. the BVI itself). She contended that where, under the law of the place of incorporation of a company, the location of its shares is determined by statute, English law (as the lex fori) should refer to and give effect to that law. She relied on the final sentence of Dicey [23-043] which states as follows:

> "The consequence is that, although shares may in certain cases be regarded as situate in some place other than that of the incorporation of the company, this attributed situs applies only by virtue of the law of the place of incorporation and may at any time be overridden or revoked by the latter."

127. That sentence came after references to a number of Canadian and English authorities on the expropriation of enemy property which held that the state in which the company is incorporated has jurisdiction to expropriate shares owned by enemy aliens, even if (in the case of shares transferable by registration) they are transferable only on a register in another country.

128. We consider that the sentence means simply that it is for the law of the country of incorporation to decide on the validity of transfers on a share register of the company held in another country. By "attributed situs" Dicey simply means the place where such a register is held. We do not consider that the passage in Dicey supports the broader proposition that English law will give effect to a rule of the law of the place of incorporation the effect of which is to identify the situs of property in that place. It appears to us that s. 245 of the 2004 Act is such a rule. It sets out a simplifying rule of BVI domestic law for identifying the situs of shares in BVI companies. It provides that under BVI law shares in BVI companies shall be treated as sited there for various purposes. It does not purport to provide (for example) that certain transfers on registers held outside the BVI are invalid.

129. We conclude that the English conflicts rule for determining the location of shares in a foreign company (including a BVI one) is that stated in the opening section of Dicey [23-042] and cited at [120] above. The location of the shares is to be determined using that rule.

130. The evidence about CGL shows that:

    a. CGL was incorporated under the 2004 Act on 25 April 2017.

    b. According to the most recent search in the evidence (dated 14 November 2022) its current Registered Agent is Harneys Corporate Services Limited ("Harneys") and the registered address is that of Harneys in Tortola. The search states that on 4 November 2021 Harneys gave notice of intention to resign as Registered Agent. On 22 December 2021 Harneys communicated their rescission of the notice of intent to resign. On 22 September 2022 there was a certificate of good standing.

    c. Under cl. 3 of the Memorandum of Association the first registered agent of the company was Harneys; the first registered office was the Tortola address of Harneys; and the company could by resolution of the shareholders or directors change the location of its registered office or registered agent.

    d. Under clause 2.7 of the Articles of Association the company is required to keep a register of members. By clauses 6.1 and 6.2 transfers of shares may be by written transfer to be sent to the company for registration; and a transfer is effective when the name of the transferee is entered on the register of members.

    e. By clause 15.1 of the Articles the company shall keep certain documents at the office of its registered agent, including the register of members or a copy of the register of members. By clause 15.2 until the directors determine otherwise by Resolution of Directors the Company shall keep the original register of members and original register of directors at the office of its registered agent.

131. Hence the position under the constitutional documents is that CGL maintained on the register of members; shares were to be transferred by registration of the register of members; and until there was a resolution of the directors it would keep the original register at the office of its registered agent. The most recent search before the court lists Harneys as the registered agent.

132. There is nothing in the Trustee's pleading or evidence alleging or even suggesting that CGL maintains a share register outside the BVI.

133. The Trustee relied on communications between Harneys and EG and MG. On 4 November 2021 Harneys sent an email addressed to EG and MG enclosing a letter which bore a residential address in London SW1. It gave notice of Harneys' intention to resign as registered agents 90 days after the date of the letter. The letter also stated that a company which does not have a registered agent in the BVI commits an offence. On 30 November 2021 Harneys sent an email to EG and MG enclosing a letter addressed to "The Board of Directors, Clement Glory Limited" at the same residential address in London SW1. This letter rescinded the resignation notice. We were also taken to a document headed "Registered Agent Intent to Resign" dated 4 November 2021 which records the email addresses of both EG and MG as addresses "of a director of the company".

134. The Trustee submitted that these documents showed that Harneys communicated with EG and MG in relation to the affairs of CGL and had sent a letter to the Board of Directors at MG's London residential address. She argued that this showed a close connection between CGL and this jurisdiction.

135. Moreover the only asset of CGL appeared to be its secured claims over 17BS.

136. Equally there was no evidence of any activities in the BVI or elsewhere.

137. The Trustee argued that there was therefore at least a serious issue to be tried that there was a register of members in this jurisdiction.

138. We are unable to accept this argument. There is no evidence at all that CGL has a share register here or, indeed, anywhere other than in the BVI. The default position under CGL's constitution is that the original register will be kept at the offices of Harneys (or any replacement registered agent). There is no evidence of any resolution of the directors changing the position. The fact that Harneys has addressed notices to an address in London does not show or suggest that CGL has opened a share register in London.

139. The contention of counsel for the Trustee that there may be a share register here was mere speculation. The Trustee was in reality driven to assert this possibility through counsel in order to seek to save her case but she has advanced no evidential basis for it. A party seeking permission to serve out of the jurisdiction has the burden of establishing that there is a serious issue to be tried. The Trustee has pleaded no facts and given no evidential basis on which the court could conclude that there is a share register of CGL within this jurisdiction. We do not consider that the fact that the defendants have declined to answer the Trustee's solicitors' questions in correspondence about the ownership of CGL can fill the evidential hole. We also note that none of the queries

addressed to CGL concerned the question whether there was a register of members in this jurisdiction.

140. For these reasons, the Trustee has not been able to establish a serious issue to be tried that the shares in CGL are located within this jurisdiction. She accepted that she needed to show this, given the territorial scope of the recognition order.

141. The application for permission to serve the trust claims out of the jurisdiction therefore fails. As the Trustee and the Bank have (by their amended application) abandoned the other claims in the claim form, service of the claim form on CGL and EG must be set aside.

142. As already explained, the Trustee accepted during the hearing that the claim against MG depends on their being a viable claim against the other defendants. For the reasons already stated there is no such claim.

Disposition

143. Service of the claim form on CGL and EG is set aside and the claim against MG is struck out.