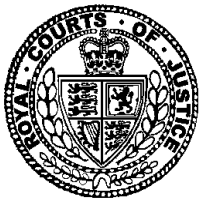

Neutral Citation Number: [2019] EWCA Civ 1992

Case No: A3/2019/1937 & A3/2019/2400

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)
His Honour Judge Jarman QC (Sitting as a Judge of the High Court)
[2019] EWHC 1906 (Ch)
and
Mr Justice Arnold
(5th September 2019)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/11/2019

Before:

SIR GEOFFREY VOS, CHANCELLOR OF THE HIGH COURT
LORD JUSTICE NEWEY
and
LORD JUSTICE MALES

- -

Between:

VNESHPROMBANK LLC (a company registered and in liquidation in the Russian Federation)	**Respondent**
- and -	
1) GEORGY IVANOVICH BEDZHAMOV	**Appellant**
2) UNIFLEET TECHNOLOGY LIMITED	
3) PERSONS UNKNOWN (being the legal or natural persons through and/or to which the proceeds of the fraud have been transferred)	
4) BASEL PROPERTIES LIMITED	

- -
- -

Justin Fenwick QC and **Andrew Trotter** (instructed by **Mishcon de Reya LLP**) for the **Appellant**
Romie Tager QC, Phillip Kremen and **Simon McLoughlin** (instructed by **Keystone Law**) for the **Respondent**

Hearing date: 30th October 2019

- -

Approved Judgment

Lord Justice Males :

Introduction

1. A freezing order against an individual defendant will invariably provide that it "does not prohibit the Respondent from spending £x a week towards his [or her] ordinary living expenses". But some defendants have living expenses which by any normal standards are quite extraordinary.

2. Georgy Bedzhamov is one such. He is currently permitted to spend £80,000 per month on his living expenses, but contends on this appeal that this figure should be increased to £310,000 per month and that he should in addition be permitted to pay a substantial advance on the rent of a luxury flat in Mayfair. Mr Bedzhamov (who is the first defendant in this action and the appellant on this appeal) maintains that the money which he wishes to spend is his money as there is no proprietary claim against him and he should therefore be free to spend it as he wishes; that expenditure on this lavish scale is necessary to enable him to maintain the standard of living which he enjoyed before the imposition of the freezing order; and that to compel him to reduce that standard of living would be contrary to the principles which govern the making of such orders. He accepts that as his available liquid assets are reduced by such expenditure, and if he is unable to obtain new sources of income, a time may come when he will be forced to reduce his level of spending, but says that this should be his decision and is not something which should be forced upon him by the court now.

3. HHJ Jarman QC accepted that it is unjust for a defendant to have to reduce his lifestyle because of a freezing order, at any rate in the case of a non-proprietary claim, and that this principle applies equally when the defendant's lifestyle is lavish rather than modest. He held that the focus of enquiry needs to be upon what the defendant has been accustomed to spend by way of living expenses before the imposition of the freezing order. But he also held that it was necessary to assess whether the defendant would have continued to incur such expenses if the freezing order had not been made. He found that Mr Bedzhamov's current level of spending on living expenses was unsustainable having regard to his available liquid assets, the absence of an income and of any immediate prospect of an income, and his overall financial position. In the light of those matters, he arrived at a figure of £80,000 per month for living expenses, which figure includes rent.

4. The immediate consequence of the judge's figure was that Mr Bedzhamov and his family were unable to continue to live in either of the two properties, in London and Monaco, in which they had been living before the making of the freezing order.

5. Mr Justin Fenwick QC for Mr Bedzhamov contends that the judge was right to say that a defendant should not have to reduce his lifestyle because of a freezing order, but that he did not properly apply this principle. Instead of speculating about what a defendant would have done in the absence of a freezing order or would do in the future, a judge should simply determine as a question of fact what the defendant's living expenses were before the making of the freezing order. That is what the defendant should be permitted to spend. Whether he chooses to do so is a matter for him.

6. Mr Romie Tager QC for Vneshprombank LLC ("VPB"), the claimant in this action and the respondent to the appeal, contends that the relevant question is what the defendant's

ordinary living expenses will be after the making of the freezing order. He submits that although in many cases past expenditure may be the best evidence of this, that is not so in the present case where Mr Bedzhamov's financial circumstances have deteriorated dramatically, he has no income and no prospect of obtaining one, and his only available source of liquid assets is being rapidly depleted, in particular by the legal costs which are being and will have to be spent to defend himself in this action. In circumstances where Mr Bedzhamov acknowledged in his evidence that he would have to reduce his living expenses but gave no evidence of how he proposed to do so, the judge was entitled to do the best he could in arriving at a figure for living expenses which took account of the way in which a rational person in Mr Bedzhamov's position would act.

7. Accordingly we have to consider what the court's approach to the "ordinary living expenses" exception in a freezing order should be. We are concerned in this case with a pre-judgment freezing order. Different considerations may apply to a freezing order granted, or which remains in place, after judgment. I say nothing about that situation.

8. There is a further issue whether Mr Bedzhamov should be permitted to use the monies which are frozen to discharge what he contends are certain debts owed by him to third parties.

Background

9. VPB is a Russian bank now in liquidation. Its President and the head of its Management Board was Larisa Markus, Mr Bedzhamov's sister. VPB claims that although Mr Bedzhamov was not a director of VPB and held no formal position with it, together with his sister he exercised *de facto* control until December 2015.

10. On 18th December 2015 the Bank of Russia appointed provisional administrators over VPB and on 14th March 2016 VPB was declared bankrupt. The State Corporation "Deposit Insurance Agency" was appointed to act as its liquidator.

11. It is VPB's case in this action that it was the victim of a substantial fraud committed by Mr Bedzhamov and his sister which came to light after the appointment of the liquidator. In outline, VPB says that there were four categories of wrongdoing, in each of which Mr Bedzhamov was complicit. These were (1) causing VPB to enter into purported loan agreements with actual customers of the bank of which those customers were ignorant, enabling the funds thus advanced to be misappropriated, (2) diverting funds from accounts held by genuine customers of the bank, (3) causing VPB to enter into loan agreements with shell companies which never had any prospect of repaying the funds advanced, and (4) making fictitious credits to accounts of companies controlled by the conspirators which were then used to discharge genuine debts owed by them to VPB or third parties.

12. VPB estimates that as a result of this fraud it has suffered losses in excess of the rouble equivalent of £1.34 billion and that Mr Bedzhamov has benefited personally from the fraud in a sum of at least the rouble equivalent of about £35.4 million.

13. Ms Markus was the subject of criminal proceedings in Russia. She pleaded guilty and on 12th May 2017 was sentenced to imprisonment for nine years for fraud and embezzlement although this was subsequently reduced.

14. In this action VPB claims damages in the sum of £1.34 billion or equivalent from Mr Bedzhamov under various provisions of Russian law. There is, however, no proprietary claim against him.

15. Mr Bedzhamov denies having had any involvement in the management or operation of VPB. He says that if VPB was the victim of a fraud, which he does not know, it was nothing to do with him and to his knowledge neither he nor any company owned or controlled by him received any benefits derived from the fraud. He acknowledges that his sister decided not to contest the charges against her, but maintains that she did so in order to obtain a reduced sentence in circumstances where she would be unlikely to obtain a fair trial. He says that the allegations against him, which include the commencement of criminal proceedings against him in Russia, are politically motivated and false.

Mr Bedzhamov's circumstances prior to the freezing order

16. Mr Bedzhamov describes himself as a businessman with (until December 2015) valuable investments in real estate, engineering, glass production, shipping and mining, and a net worth of approximately US $0.5 billion. He lived in Moscow with his partner of 20 years, Alina Zolotova, their three children (now aged 16, 11 and six) and his partner's daughter (aged 22) by her former husband. He owned the home in which they lived. The children were privately educated. The family had a luxurious lifestyle. Mr Bedzhamov collected cars, vintage wine and art, bought expensive clothes for himself and his partner, provided generous allowances to the children, took the family on frequent holidays, employed numerous staff including private security guards, and had the use of a luxury yacht and private jet. He estimates that his annual living expenses amounted to about US $2 million which was covered by the income from his various companies.

17. Mr Bedzhamov's evidence is that he left Russia in December 2015. He was in Monaco on the morning of 18th December, where his family was to join him for the Christmas holiday, when he heard that armed police had raided his Moscow office. Shortly afterwards criminal charges were laid against his sister and on 1st February 2016 similar charges were levelled against him. On 5th February 2016 the court in Moscow ordered that he should be detained pending trial. In those circumstances Mr Bedzhamov decided not to return to Russia and remained with his family in Monaco, living aboard his private yacht, Ester III, until they were able to secure the lease of an apartment. The lease was signed on 11th March 2016 and was in Ms Zolotova's name. It was for a term of six years at an annual rent of €840,000 payable quarterly in advance. There was no break clause.

18. Meanwhile, a problem with Mr Bedzhamov's heart was diagnosed and surgery was necessary. He underwent open heart surgery on 12th February 2016.

19. On or about 21st April 2016 Mr Bedzhamov was arrested by the police in Monaco and was detained pending an extradition request by the Russian authorities, initially in custody and then in hospital but under police guard. He was released on 25th April 2016 but a month later, on 27th May, was informed by the police in Monaco that they had received recent intelligence that there was an imminent threat to kidnap him. He was placed under police guard and subsequently arranged private security for himself and his family.

20. At the end of June 2016 Mr Bedzhamov travelled to London for medical treatment and, while he was here, the attempt to extradite him from Monaco was defeated and his bail conditions fell away. He decided to remain in London, in part because he felt safer, in part for medical reasons, and in part because he considered that there would be more business opportunities here. His partner and their two youngest children have remained in Monaco, living in the Monaco apartment, but have visited frequently. Neither Ms Zolotova nor the younger children have the right to reside in the United Kingdom, although they do have a secure immigration status in Monaco. Their eldest child, who has Irish nationality, joined Mr Bedzhamov in January 2017, and since then has attended an independent girls' school in London as a day pupil. His stepdaughter, who is an undergraduate at a London university, has also lived in London since about September 2015.

21. From about mid-2016, therefore, the family have been maintaining two homes, a rented apartment on Park Lane (for which the lease is also in Ms Zolotova's name) and another in Monaco. In addition Mr Bedzhamov has been paying the rent on his stepdaughter's London flat. Living separately is not a matter of choice. Ms Zolotova and the two younger children have no right of residence in this country. Mr Bedzhamov was prohibited by the freezing order from leaving the United Kingdom and was required to surrender his passport.

22. In May 2017 the Russian authorities sought Mr Bedzhamov's extradition from the United Kingdom. He was arrested by appointment and, after attending at Westminster Magistrates' Court, was released on bail. We were told by Mr Tager that one of the bail conditions was that Mr Bedzhamov did not leave the country, in which case the family's inability to live together subsisted even before the imposition of the freezing order. The extradition request led to Mr Bedzhamov making a claim for asylum here, as a result of which the extradition proceedings have been adjourned. The claim for asylum has not yet been determined.

23. In September 2017 Mr Bedzhamov was informed about a further kidnap threat against him. He employed additional private security and co-operated with the London police. It appears that the police took the threat seriously and issued an *Osman* warning. We were told that he was interviewed again by the police in April 2019 because of concerns about his safety.

24. Since leaving Russia Mr Bedzhamov has had no income, although he says that he is constantly exploring new business opportunities and that, for that purpose, he needs to maintain an expensive lifestyle in order to establish and maintain contacts amongst wealthy and powerful businesspeople. He says that this involves him spending about £20,000 per month on entertaining and £66,000 per annum on clothing for business purposes, as well as membership of an exclusive golf club for which a joining fee of more than £113,000 and annual fees of £12,000 were payable.

25. According to Mr Bedzhamov's asset disclosure given pursuant to the freezing order, all of his assets in Russia (where he has been made bankrupt) have either been frozen or stolen from him; bank accounts in Zurich of companies beneficially owned by him with balances of about CHF 5.5 million have been frozen since May 2016 and are likely to remain frozen for the foreseeable future; he has an interest in a commercial property in Belgrave Square; and substantial assets (including the shares in a company which owned a yacht worth about €8 million) have been transferred into the name of his

partner. His partner is the lessee for both the London and the Monaco apartment. Mr Bedzhamov's evidence is that assets transferred to his partner, including the proceeds of sale of some assets such as the yacht and some paintings, have been used to fund his living expenses, including the payment of rent on the London and Monaco apartments, but these assets have now been used up; he has in addition borrowed money from friends.

26. Details of how Mr Bedzhamov has funded his living expenses are set out in a witness statement dated 24th May 2019 made pursuant to an order by Falk J. In that witness statement he estimated that his ordinary living expenses in the period between 1 October 2018 and the date of the witness statement were between £50,000 and £100,000 per week, although his expenditure fluctuated because of the liquidity problems which he faced as a result of his assets being frozen. The figures estimated include the rent on the two London properties (his own and his stepdaughter's) and the Monaco apartment but not, as I understand it, expenditure on business entertaining or golf club membership. Nor do they include the cost of security as the security firm which he had previously employed refused to continue to provide security for him in April 2018 because he was not able to pay regularly and reliably.

27. Mr Bedzhamov maintains that despite his current difficulties he is still a very wealthy man, with assets worth about £86 million as at May 2019. It appears, however, that this figure includes his interest in the Belgrave Square property which is subject to a mortgage for US $35 million, and that even the accumulated interest of some US $7 million currently due on this exceeds the current value of Mr Bedzhamov's interest. While the property could be worth much more if planning permission could be obtained and the property could be developed, this would require very significant expenditure for which there is no real prospect. Neither the mortgage nor the interest liability was disclosed as part of Mr Bedzhamov's asset disclosure. This was one factor which led the judge to be very cautious about accepting his evidence. The true position appears to be that, far from him being worth £86 million, the net value of Mr Bedzhamov's available assets is much less and he appears to be close to insolvency, hoping with Mr Micawber that something will turn up.

28. The only liquid assets available to Mr Bedzhamov (or as VPB would say, the only such assets which he has disclosed) are the proceeds of sale of the shares of a company which owned a hotel in St Moritz known as the Badrutt's Palace Hotel. Those shares were sold pursuant to an order made by Morgan J on 29th April 2019 on terms that the net proceeds would be remitted to Mr Bedzhamov's solicitors, to be held within the jurisdiction and subject to the terms of the freezing order. As a result net proceeds of about €17.4 million were received by Mishcon de Reya on 13th May 2019.

29. It is from these proceeds that Mr Bedzhamov has been funding his living expenses since that date, as well as payment of his legal costs (which have been very substantial indeed, as have those of VPB). As at 5th September 2019 there remained about €14.25 million, equivalent to about £12.5 million. It is apparent that, at that rate of depletion, this fund may well be used up before this action comes to trial.

The freezing order

30. The worldwide freezing order was made *ex parte* by Arnold J on 27th March 2019 in the sum of £1.34 billion. A search and seizure order was also made as a result of which Mr Bedzhamov's papers and computers were seized.

31. The freezing order was continued by Fancourt J on the return date of 10th April. Although the deadline for Mr Bedzhamov to apply to set aside the order was extended until 17th May 2019, he did not do so. The order dealt separately with rent and other expenses. It permitted him to spend £35,000 a week on rent properly due and owing in respect of obligations arising from any lease entered into prior to the date of the order and £10,000 a week towards his ordinary living expenses, as well as a reasonable sum on legal advice and representation. By a further order dated 17th May 2019 the figure for rent was reduced to £14,750 a week, representing the rent on the Park Lane apartment. This left no scope for payment of rent on the Monaco apartment.

32. However, by a yet further order dated 10th June 2019 Mr Bedzhamov was permitted to pay £191,750, being a quarterly rent payment on the Park Lane apartment, in respect of the quarter from 1st May to 31 August 2019, from the Badrutt's Palace Hotel proceeds of sale held by his solicitors. As explained by Arnold J in his judgment [2019] EWHC 1458 (Ch), that arose because the landlord had threatened to commence possession proceedings for non-payment of rent.

33. The hearing before HHJ Jarman QC which has given rise to this appeal took place on 9th July 2019. VPB sought the removal of the exception allowing Mr Bedzhamov to pay rent on the Park Lane apartment. Mr Bedzhamov sought an increase in his spending limit on ordinary living expenses from £10,000 a week to over £165,000 plus €165,000 a month. These figures were said to include rent of about £60,000 on the Park Lane apartment, private security at a cost of £24,000 in London and €29,000 in Monaco, £20,000 for business entertainment, £5,500 for clothes for Mr Bedzhamov and €10,000 for clothes for Ms Zolotova, £2,500 for concierge services, £2,000 for barbers and toiletries, £2,500 on golf club fees and similar expenses, and pocket money of £4,000 for his stepdaughter and £2,000 for his daughter, as well as the wages of chauffeurs, cooks, nannies and housemaids in London and Monaco and frequent travel costs for his family to visit him in London. In addition he sought permission to pay various debts, some of which had been incurred before the date of the freezing order and some afterwards.

34. The judge varied the freezing order to permit Mr Bedzhamov to spend a total of £80,000 a month on ordinary living expenses including rent, plus (by agreement) a reasonable sum on uninsured medical treatment for which bills were provided. He permitted also the payment of some debts incurred up to the date of the freezing order, but in the case of other such debts was not satisfied by Mr Bedzhamov's evidence about them. He said that debts incurred after the date of the freezing order should be met out of the allowance for living expenses.

35. Permission to appeal from the judge's order was granted by Henderson LJ on 29th July 2019.

36. On the same date the landlord of the Monaco apartment served a "Payment Order" requiring payment of the rent and charges for the June quarter to be made by 6th September 2019. This led to an urgent application to Arnold J in which Mr Bedzhamov sought permission to make this payment, despite the terms of HHJ Jarman QC's order.

There was unchallenged evidence before Arnold J that failure to pay would result in the eviction of Ms Zolotova and her two sons within a few weeks, with no possibility of relief against forfeiture if the rent was paid late, and that as a judgment debtor in Monaco with a poor payment record, Ms Zolotova would have difficulty in obtaining alternative accommodation there.

37. Arnold J held that this was a circumstance which had not been canvassed before HHJ Jarman QC and permitted the payment to be made. We have before us an application by VPB for permission to appeal from this decision.

38. Meanwhile the lease on the London apartment where Mr Bedzhamov had been living for the last three years expired in August 2019. He negotiated an extension, but that was subject to payment of six months' rent and other payments in advance. Apparently the landlord insisted on these payments because some of Mr Bedzhamov's previous payments of rent had been late. However, because of the limited living expenses permitted by the freezing order, Mr Bedzhamov was unable to make these payments and, as a result, he and his 16-year-old daughter have had to leave the apartment. We are told that they have been living temporarily with a friend, but would like to take a lease on a comparable apartment in the same prime location. However, given Mr Bedzhamov's history of rent arrears, it is likely that a substantial rent deposit, together with a payment in advance of up to six months' rent, would be required in order to obtain comparable accommodation. The evidence of Mr Bedzhamov's solicitor, based on enquiries of estate agents who deal with similar properties, is that rent on a comparable apartment would now be of the order of between £16,000 and £20,000 per week, an increase from the £14,750 per week which Mr Bedzhamov was paying.

The judgment

39. One issue before the judge was whether the living expenses which Mr Bedzhamov would be permitted to spend had to be reasonable. VPB submitted that they did, and that the court should impose a spending cap which would result in rational and prudent expenditure on the part of Mr Bedzhamov. The judge did not accept this submission. He held that the correct approach was to focus on what the defendant had in fact been spending before the grant of the freezing order:

> "25. In my judgment, there is a distinction [between living expenses and legal fees] in that the focus of ordinary living expenses is upon what historically a person has been accustomed to spend by way of living expenses, whereas the legal fees exception focusses not upon what a person has been historically accustomed to spend but upon what is reasonable for such a person to spend on legal fees on an ongoing basis. The guiding principle to be derived from the authorities in my judgment is that it is unjust for persons to have to reduce their lifestyle because of a freezing order in a non-proprietary claim where the fund in question belongs to such persons.
>
> 26. There is no indication in the authorities that such a principle should be applied differently where the lifestyle is lavish rather than modest, and in my judgment the focus in either case should be upon what the ordinary living expenses are. That is not to say

> that any inquiry as to whether claimed expenses are excessive is illegitimate, as that inquiry may inform the question of whether such expenses are ordinary."

40. The judge qualified this statement, however, by saying at [27] that it was necessary to consider what would have happened to Mr Bedzhamov's lifestyle "now and in the future even if the [freezing order] had not been made" and that in view of Mr Bedzhamov's changed circumstances after leaving Russia "it is likely that his lifestyle and that of his family would have been further curtailed even without the [freezing order]." The issue of principle which arises on this appeal is whether this approach is correct.

41. I shall examine later what the judge had to say about some of the items of expenditure which Mr Bedzhamov was seeking to incur, but the judge's approach was to determine an overall figure and leave it to Mr Bedzhamov to decide how to spend within that figure. The judge noted that the figure of £80,000 which he selected "equates to almost half his claimed income prior to 2015, and in my judgment that is the appropriate figure given his dramatic change of circumstances".

42. So far as the debts which Mr Bedzhamov had incurred were concerned, the judge permitted repayment of some but not all debts.

Submissions on appeal

43. On appeal Mr Fenwick for Mr Bedzhamov submitted in outline that the judge had stated the correct principle for determining what a defendant should be permitted to spend by way of living expenses, but had then misapplied it by introducing the qualification that it was necessary to consider what would have happened if the freezing order had not been made. In particular, the effect of his judgment was to require Mr Bedzhamov and his family to vacate the homes in which they had been living since well before the grant of the order. The judge's approach was further vitiated by two errors. First, he found that the family's standard of living had reduced as they left Russia in 2015, without regard to the fact that their cost of living outside Russia (and separately in London and Monaco) had increased. Second, he found that Mr Bedzhamov now has "relatively modest assets and has generated no income since 2015", which was irreconcilable with the evidence of his wealth.

44. Mr Tager for VPB sought to uphold the judge's order. He submitted that the principle stated by the judge at [25] and [26] had to be modified in its application when there had been a dramatic deterioration in a defendant's financial resources, such that his former lifestyle could not be funded for any significant length of time without his declared liquid assets becoming exhausted and when it would be imprudent to the point of folly for the defendant to spend money on the same scale as he had previously done. Developing this submission, he said that (as the judge had held) the relevant question was what the defendant would have spent by way of ordinary living expenses if the freezing order had not been made and (ultimately) that the question was what the defendant would in fact spend after the making of the freezing order; while in most cases a defendant's previous spending on living expenses would be the best evidence of this, that would not be so in a case where the defendant's assets were such that he would not be able to maintain spending at his previous level.

45. Mr Tager emphasised in addition that the judge had not accepted Mr Bedzhamov's evidence about the living expenses which he had incurred and would continue to incur and submitted that the veracity of his disclosure of assets had to be doubted.

Living expenses – the authorities

46. Provision has been made to permit payment of the ordinary living expenses of individual defendants since the earliest days of what was then the *Mareva* injunction, but this has given rise to relatively little case law.

47. An early case was *P.C.W. (Underwriting Agencies) Ltd v Dixon* [1983] 2 Lloyd's Rep 197, where the order made *ex parte* permitted the defendant to spend up to £100 a week on "reasonable living expenses". The defendant contended, however, that he needed ten times this amount, a total of £1,000 a week (£750 a week for himself and his family which included the cost of his children's education and £250 to pay for nursing treatment for his mother). In addition he needed to pay substantial sums to the Inland Revenue and others. Lloyd J approached the question as a matter of principle:

> "What should be the correct approach for the court to take in these circumstances? The first reported case in which a similar question was considered is *Iraqi Ministry of Defence v Arcepey Shipping Co Ltd (The Angel Bell)* [1981] 1 QB 65. In that case Mr Justice Robert Goff held that it was consistent with the policy underlying the *Mareva* jurisdiction that the defendant should be allowed to pay his debts as they fall due. The purpose of the jurisdiction is not to secure priority for the plaintiff; still less, I would add, to punish the defendant for his alleged misdeeds. The sole purpose or justification for the *Mareva* order is to prevent the plaintiffs being cheated out of the proceeds of their action, should it be successful, by the defendant either transferring his assets abroad or dissipating his assets within the jurisdiction: see *Z v A-Z* [1982] QB 558 *per* Lord Denning and *per* Lord Justice Kerr.
>
> I am not going to attempt to define in this case what is meant by dissipating assets within the jurisdiction or where the line is to be drawn; but wherever the line is to be drawn this defendant is well within it. It could not possibly be said that he is dissipating his assets by living as he has always lived and paying bills such as he has always incurred. I say nothing about the cost of defending himself in these proceedings. The *Mareva* jurisdiction was never intended to prevent expenditure such as this or to produce consequences such as would inevitably follow if this *ex parte* order is upheld."

48. Lloyd J went on to observe that the defendant was known to be a wealthy man with a considerable salary, so that the figure of £100 per week was wholly unrealistic if he was to maintain his standard of living. This caused him "to wonder whether the real purpose in putting forward so low a figure and in failing or refusing to agree any increase was to exert pressure on the defendant to settle the action", which would have been an abuse:

> "They must have known that if the figure of £100 a week was maintained it could only result in the defendant's capitulation."

49. That, no doubt, was largely because of the impact which the order would have had on the defendant's family.

50. So far, Lloyd J's comments were directed to a case where the claimant did not assert a proprietary claim over the defendant's assets. As an alternative, however, the claimant did seek to introduce such a claim. Lloyd J had "grave doubts" about that, but in the end it made no difference:

> "But even if I could regard the whole of the defendant's assets as a trust fund, I would be quite unwilling to uphold the *ex parte* order in the present case on that basis. All injunctions are, of course, in the end discretionary. I would regard it as unjust in the present case if the defendant were compelled to reduce his standard of living, to give up his flat or to take his children away from school, in order to secure what is as yet only a claim by the plaintiffs. I would regard it as even more unjust that he should be prevented from defending himself properly (for that is what it would amount to), merely because the plaintiffs say that in doing so he is using somebody else's money.
>
> …
>
> In my view justice and convenience require in the present case that the defendant should be allowed the means of defending himself, even if it could be said that the plaintiffs had laid claim to the whole of his assets as a trust fund. Similarly justice and convenience require that he should be able to pay his ordinary bills and continue to live as he has been accustomed to live heretofore. So whether the case is put on the basis of the *Mareva* jurisdiction or the so-called wider jurisdiction to trace in equity I reach the same conclusion."

51. This case is valuable because it shows that the living expenses exception must be applied in the light of the purpose of the freezing order jurisdiction; that the jurisdiction is not intended to prevent a defendant from living as he has always lived and paying bills such as he has always incurred; that "reasonable" living expenses refer simply to the expenses which the defendant has in fact been incurring as part of his normal way of life and do not require the court to make an assessment whether they are "objectively" reasonable; that it is "unjust" for a defendant to be compelled to reduce his standard of living when there is, as yet, only a claim against him; and that the court must be alert to prevent the abuse of such orders as a means of exerting illegitimate pressure on a defendant.

52. One of the issues in *T.D.K. Tape Distributor (U.K.) Ltd v Videochoice Ltd* [1986] 1 WLR 141 was whether the expenditure of money on the defence of criminal proceedings was an ordinary living expense within the exception. It was held that it was not. In the course of his judgment Skinner J said:

> "Ordinary living expenses, in my judgment, mean ordinary, recurrent expenses involved in maintaining the subject of the injunction in the style of life to which he is reasonably accustomed. It does not include exceptional expenses like (an example given by Mr Jacob) the purchase of a Rolls Royce or the equivalent in legal terms of the private employment of a Queen's Counsel to defend you against a serious criminal charge. That is not an ordinary living expense …"

53. In *Kea Corporation v Parrot Corporation Ltd* (Court of Appeal, 24th September 1986) Woolf LJ stated what he described as a *prima facie* principle as follows:

> "… a person who is subject to a *Mareva* injunction still remains the owner of the property which is subject to that injunction and normally entitled to use that property for his reasonable expenses of living in this country, including, if he is subject to proceedings in this country, meeting the cost of those proceedings."

54. I should refer also to what was said about the purpose of a living expenses provision by Neuberger J in *In re Cantor Index Ltd v Lister* [2002] CP Rep 25:

> "The purpose of this part … is enable the defendant to live his private and social life in a reasonable way, no doubt taking into account his previous lifestyle, despite the making of the freezing order."

55. The *P.C.W.* and *T.D.K.* cases were cited by Hamblen J in *Travel Holidays v Hajj Charter* [2013] EWHC 4334 (Comm). Hamblen J then said at [7]:

> "The authorities, therefore, show that the court is concerned to identify what the standard of living was to which the freezing order defendant was reasonably accustomed prior to the grant of freezing order relief."

Other relevant principles

56. Before considering what conclusions can be drawn from these authorities, it is relevant to notice two further points which appear from the cases on freezing orders.

57. The first is concerned with business expenses. As is clear from numerous statements of principle, a freezing order is not intended to provide a claimant with security for its claim but only to prevent the dissipation of assets outside of the ordinary course of business in a way which would render any future judgment unenforceable. While the disposal of assets outside of the ordinary course of business is prohibited as being contrary to the interests of justice, payments in the ordinary course of business are permitted even if the consequence will be that the defendant's assets are completely depleted before the claimant is able to obtain its judgment. This has been clear since the decision of Robert Goff J in *The Angel Bell* [1981] 1 QB 65. Moreover, so long as the payment is made in good faith, the court does not enquire as to whether it is made in order to discharge a legal obligation or whether it represents good or bad business on

the defendant's part. Thus in *Halifax Plc v Chandler* [2001] EWCA Civ 1750 Clarke LJ said at [18]:

> "In cases of what may be called ordinary business expenses the court does not usually consider whether the business venture is reasonable, or indeed whether particular business expenses are reasonable. Nor does it balance the defendant's case that he should be permitted to spend such monies against the strength of the claimant's case, or indeed take into consideration the fact that any money spent by the defendants will not be available to the claimant if it obtains judgment. As I see it, that is because the purpose of a freezing injunction is not to interfere with the defendant's ordinary business or his ordinary way of life."

58. Clarke LJ added that this is so even if the practical effect of permitting such expenditure is to render the freezing order of no practical value.

59. The fact that a proposed business expense seems obviously imprudent or that it will exhaust a defendant's available funds, leaving him nothing to live on, may be evidence that the expense is not made in good faith. But if it is made in good faith, a freezing order will not prohibit it. That provides some support for saying that a similar approach should be adopted in the case of living expenses. As Clarke LJ said, the purpose of the order is not to interfere with the defendant's ordinary way of life. It is therefore necessary to focus on what was the defendant's ordinary way of life, which does not require the court to consider whether it is reasonable for the defendant to continue living in the same way as he did before.

60. The second point is that judges are entitled in an appropriate case to have a "very healthy scepticism" about unsupported assertions made by a freezing order defendant, as Sir John Donaldson MR noted in *Campbell Mussels v Thompson* (1985) 135 NLJ 1012, not least as the grant of a freezing order means that the court has already concluded that there is at least a risk that the defendant is someone liable to dissipate assets outside the ordinary course of business.

61. Christopher Clarke J made the same point in *Compagnie Noga d'Importation et d'Exportation SA v Australian & New Zealand Banking Group* [2006] EWHC 602 (Comm) at [9(vi)]:

> "Because the court has already been satisfied of a risk of dissipation judges are entitled, on an application to vary, to have a healthy scepticism about assertions made by the applicant particularly where the applicant, or those to whom his evidence or contentions relate, have been less than frank in dealing with the court or the claimant."

62. The context for these observations has usually been scepticism about whether the defendant has truthfully disclosed all of his assets, but the point is general.

Living expenses – discussion

63. While there are some statements in the cases which refer to "reasonable" living expenses or to the standard of living to which the defendant was "reasonably accustomed", in none of the cases was it suggested that this involved anything more than consideration of whether the expense was of a nature and amount which was ordinarily incurred by the defendant in the past. It was not suggested, let alone held, that the expenses had also to be reasonable in some objective sense determined by the court, nor was there any consideration of what, if any, standard might have to be applied to any such assessment. That is not surprising. An expense which may be reasonable or even modest for the multi-millionaire may be hopelessly out of reach even for moderately wealthy defendants.

64. I come now to the question of principle arising on this appeal, which is whether, in setting a figure for living expenses, a judge should simply determine as a question of fact what the defendant's living expenses were before the making of the freezing order; or whether an assessment is required of what the defendant's ordinary living expenses will be after the making of the freezing order, in which the level of expenditure in the past is merely evidence.

65. These are very different exercises. What the defendant was accustomed to spend before the order was made is a question of past fact. In the event of a dispute the court will be able to consider the evidence of the defendant's actual expenditure and standard of living, exercising where appropriate a healthy scepticism about assertions for which there is no sound evidential foundation. Substantial items, such as mortgage or rental payments, school fees, staff wages and so forth should be capable of being proved by reliable documentary evidence. If such evidence is lacking, the assertions will or may lack credibility. Lesser items, such as food and clothing, utilities, leisure activities and the like should be susceptible to a reasonable estimate in the light of the evidence as to the defendant's general lifestyle. It should therefore be possible to reach a conclusion in which the court can have a reasonable degree of confidence.

66. What the defendant will spend after the order is made is a different kind of question in which past expenditure is only a starting point. Rather than being a question of past fact, it requires a prediction about the future – a future, moreover, in which the pressures of the litigation and the need to incur (possibly substantial) legal fees to defend the claim may very well lead the defendant to behave differently from how he has behaved in the past. Some defendants may be tempted to spend more than they would otherwise have done on the ground that, if they are going to lose the action, they may as well spend their money now, even though this would be a form of illegitimate dissipation of assets. Others may cut down on living expenses in order to conserve resources to fund the defence of the litigation. A defendant's approach may be affected by his appetite for risk; or by the attitude of his partner and family members.

67. In my judgment principle, authority and practicality point the same way. A defendant should be permitted to spend by way of ordinary living expenses in accordance with his actual past standard of living. It is unnecessary and undesirable to go further. Future changes in expenditure necessary to maintain that standard which result from the ordinary exigencies of family life can be dealt with by variation of the order as and when necessary.

Principle

68. That follows, in my judgment, from the well established principles which apply to freezing orders which, so far as relevant, I would summarise as follows:

(1) The purpose of the freezing order jurisdiction is not to provide a claimant with security but to prevent a defendant from taking steps outside the ordinary course which will have the effect of rendering any judgment unenforceable; subject to this, a defendant should be entitled to do as he wishes with his own money. Just as the court will not inquire whether a proposed business expenditure is reasonable or prudent, so long as it is made in good faith, nor is it the business of the court to tell a defendant who has funds available that he cannot spend them on his ordinary living expenses in same way as he has genuinely been accustomed to do before the making of the order.

(2) A defendant who has only limited funds available, such that he will or may be unable to sustain his previous level of expenditure on living expenses, will have some hard decisions to make as to how and when to reduce his spending. But these are decisions for the defendant and not for the court.

(3) It is particularly important to ensure that a freezing order does not operate oppressively. The consequences for a defendant against whom an order is made are often severe and can be crippling. That is one reason why the claimant's undertaking in damages is so critical. An order which has the immediate effect of preventing a defendant from spending what he has been accustomed to spend on what are for him his ordinary living expenses creates a particularly acute danger of oppression, not least because of the effect it may have not only on the defendant himself but on members of his family for whom he is responsible.

(4) Conversely, the court must be alert to the danger that a defendant will seek to maximise the amount which he is permitted to spend, for example to ensure that as much as possible is kept out of the claimant's hands in the event that a judgment is ultimately obtained, and will therefore exaggerate what he has been spending on living expenses. That would be a form of dissipation of assets which it is appropriate to prevent.

(5) That danger can be avoided, however, by the exercise of a healthy scepticism about a defendant's assertions as to the nature and amount of his pre-freezing order expenditure. When appropriate, the court will require convincing support for such assertions. The more extravagant the expenditure, particularly if it appears reckless when seen in the light of the resources available to a defendant, the more sceptical the court is entitled to be. That applies with even greater force if there is reason to doubt the veracity of the defendant's asset disclosure or if his credibility is otherwise open to question, but this should not be viewed as a justification for embarking on extensive investigation of the merits of the underlying dispute or other issues of credibility which can only be resolved at trial. The questions remain questions of fact: what has the defendant been accustomed to spend and what was his actual past standard of living?

(6) It may also be appropriate, particularly in a case where there are serious doubts about a defendant's ability to continue to spend money on his living expenses at the same rate as he has been doing in the past, to "ring fence" significant items of expenditure so as to ensure that, while the defendant is permitted to incur them if

he wishes, he cannot spend the money on something else, at any rate without further permission from the court.

Authority

69. As can be seen, the cases to which I have referred are consistent in holding that the ordinary living expenses exception is intended to allow the defendant to maintain his pre-freezing order standard of living. There is no suggestion in any of them that it is necessary or appropriate to make a prediction whether he will continue to incur the same level of expenditure or that the court's approach should be different if there is reason to doubt whether it will be feasible for him to do so. So to hold would therefore be to introduce a novel test which in my judgment would not be justified.

Practicality

70. As explained above, to make an assessment of what the defendant's ordinary living expenses will be in the future is a different kind of exercise from determining what they were before the making of the freezing order. It would introduce, in my judgment, potential complexities which are not well suited to the practical circumstances in which applications for freezing orders and to vary such orders tend to be made. At the *ex parte* stage the applicant will have to propose to the judge a figure for ordinary living expenses which reflects what is known or can reasonably be ascertained about the defendant's actual lifestyle, but it would not be sensible or practicable to expect the claimant or the court to speculate about what the defendant's expenses will be in the future as the action progresses. If the defendant wishes to say that the figure ordered is too low, an application to vary can be made, perhaps at short notice, in which the court can consider the evidence about the defendant's actual past expenditure. But unnecessary complexity (and therefore cost and delay) is introduced if it is necessary also to reach conclusions about what future expenditure is likely to be. That would require the court to consider such matters as how the defendant's expenditure on living expenses may be affected by the future course of the action, the extent to which available funds may be consumed by legal fees, and what business ventures the defendant may have or claim to have in prospect. The result would be that what should be a straightforward application will become a battle of assertion and counter-assertion about what are necessarily uncertain future events. All this would have to be dealt with at an interlocutory stage on evidence which is necessarily incomplete and untested.

71. I conclude, therefore, that the judge was in error in saying that it was necessary to consider what would have happened to Mr Bedzhamov's lifestyle in the absence of the freezing order. The correct approach would have been to allow a figure for ordinary living expenses which would enable Mr Bedzhamov to maintain his previous standard of living.

Application of the principles

72. In the circumstances of this case it is convenient in applying what I have held to be the correct approach to consider separately the issue of rent payments, children's education, security and other general living expenses. Before doing so I should say, however, that I do not accept Mr Fenwick's general criticisms of the judge's approach. First, the judge was careful to distinguish between the family's living expenses before and after they left Russia in December 2015 and, in assessing past expenditure, he focused correctly

on the latter period. Second, I do not accept that the judge was wrong to say that Mr Bedzhamov now has "relatively modest assets", so long as proper emphasis is given to the word "relatively"; he was entirely right to say that since 2015 Mr Bedzhamov has generated no new income. Moreover, while it would have been an error to select as an appropriate amount for living expenses a figure which equated to about half of Mr Bedzhamov's income before 2015, I accept Mr Tager's submission that this was not why the judge made that comment; rather he did so merely to give some context to the figure of £80,000 which he selected as the appropriate figure.

Rent

73. Whether or not it was financially imprudent for Mr Bedzhamov to organise his life in this way, there can be no doubt that before the imposition of the freezing order he and his family were living in two very expensive properties, one in London and the other in Monaco, and (at least after receipt of payment for the Badrutt's Palace Hotel shares) that he had the funds with which to pay the rent on these properties, at any rate for the time being. Although both the leases were in his partner's name, I see no reason to doubt that the funds with which the rental payments were always intended to be made were ultimately provided by Mr Bedzhamov. The apartment in Monaco was taken on a six-year lease, with no break clause, at an annual rent of €840,000 (equivalent to €70,000 a month). The rent for the apartment on Park Lane was equivalent to £14,750 a week or £59,000 a month. The lease was due to expire on 31st August 2019 but it appears that this could and would have been extended and, in any event, unless Mr Bedzhamov was required to reduce his standard of living, something comparable would have been payable on an alternative property. Thus Mr Bedzhamov's expenditure on rent alone, even leaving aside the rent payable on his stepdaughter's flat, was of the order of £120,000 a month.

74. The judge dealt with the rent on the Park Lane property by saying that it was unlikely that rent at this level would continue to be sustainable in circumstances where "the defendant now has relatively modest assets and has generated no income since 2015". But the fact is that by the date of the hearing before the judge, Mr Bedzhamov had already negotiated an extension on the lease which indicated that he intended to continue to live at the property for the time being. The judge did not say anything to suggest that it was likely that the lease of the Monaco apartment would or could be surrendered in the foreseeable future. It is not clear what he envisaged would happen so far as a home for Ms Zolotova and the two youngest children was concerned.

75. The judge's order, which limited monthly expenditure to £80,000 on living expenses including rent, made it impossible for the family to continue to live in their existing homes and made it almost certain that not one but both of these homes would have to be vacated. In my judgment this was wrong in principle. Save possibly in very exceptional circumstances which do not include this case, the court should not make an order which prevents a defendant who has the funds with which to discharge his proven existing commitments from doing so and which will cause him or members of his family for whom he is responsible to lose their homes.

76. I am concerned by the position which VPB adopted at the hearing before Arnold J on 5th September 2019. That position was that, for somewhat technical procedural reasons, Mr Bedzhamov should not be permitted to pay the rent demanded by the Monaco landlord's Payment Order, even though the consequence would be that his partner and

two young children would be evicted from their home of three years, would face great difficulties in finding alternative accommodation in Monaco, and because of their immigration status had no right to join Mr Bedzhamov in London. That looks to me suspiciously like oppression.

77. I would therefore vary the order so as to provide that Mr Bedzhamov is entitled to use the funds held by his solicitors to discharge rental payments due under the existing lease on the Monaco apartment. It is too late to enable Mr Bedzhamov to continue to live in the Park Lane apartment in which he lived for the last three years, but I accept that if he is to obtain equivalent accommodation, he is likely on the evidence before us to have to pay a deposit equivalent to six to eight weeks' rent together with six months' rent in advance. I would vary the order to enable him to do so. For this purpose I would take a figure of £18,000 per week, the mid-point of the approximate range identified by Mr Bedzhamov's solicitor.

78. I emphasise four points. First, these are leases entered into well before the making of the freezing order, the existence of which is not disputed. Second, the need for a deposit and advance on rent for a new London apartment has arisen solely because, at VPB's urging, the figure set for living expenses in the freezing order was wrong in principle. It is therefore necessary to put Mr Bedzhamov in the position in which he would have been if the figure had been set at a proper level. Third, because the funds which will be used to pay the rent are held by Mr Bedzhamov's solicitors, there will be no question of the funds being used for any other purpose, and the order should be drawn in a way which makes this clear. Fourth, the order will provide that Mr Bedzhamov is permitted to spend up to the appropriate amount in order to pay the rent. It will not require him to do so and will not permit him to use the funds in question for any other purpose in the event that he or his family do move to cheaper accommodation. Undoubtedly, unless his circumstances change dramatically for the better, Mr Bedzhamov will have to make some significant reductions in his living expenses before long. If he does not, he will be bankrupt. But when and how to make these changes is for him to decide.

79. I would not, however, make a separate order permitting payment of the rent on Mr Bedzhamov's stepdaughter's flat. The evidence about that is much less clear. If Mr Bedzhamov wishes to continue to make these payments, he must do so from the amount which will be permitted for general living expenses.

Children's education

80. The same reasoning as applies to the rent on the Monaco and Park Lane apartments applies also to the cost of private education for Mr Bedzhamov's three children. There is no doubt that all three were being educated privately, his daughter in London and his sons in Monaco, before the making of the freezing order. The school fees were an existing commitment, readily susceptible of proof. Mr Bedzhamov should therefore be permitted to continue to pay these fees from the funds held by his solicitors for so long as the children continue to attend their current schools.

Security

81. The judge found that the cost of private security did not form part of Mr Bedzhamov's ordinary living expenses, on the basis that the threats against him had been made some two years ago and that he had in fact been employing no private security for nearly 12

months before the freezing order was made. I would accept that, for most people, the cost of private security is not an ordinary living expense, but for Mr Bedzhamov it was, at any rate until April 2018 when (because his funds were frozen) the private security firm which he had employed refused to continue to work for him.

82. In my judgment it is not for the court to assess whether an individual has a need for such security, at any rate in a case such as the present where security was employed in the past, there is evidence of apparently credible threats against him, an *Osman* warning has been issued, and in fact Mr Bedzhamov was interviewed by the police in this connection as recently as April 2019.

83. I am aware of the possibility that some individuals, including some in the circles in which Mr Bedzhamov seeks to move, may regard the employment of private security guards as having more to do with status and prestige than with any genuine concern about security. It is impossible to say with any certainty whether that is so in the case of Mr Bedzhamov, but I do not think that it is right for the court to say that an individual with his history who has the funds to pay for such security cannot be allowed to do so. I would treat these expenses, therefore, in the same way as rent and school fees.

Other living expenses

84. Leaving aside the three specific items with which I have dealt, I see no error in the judge's broad approach, which was to treat Mr Bedzhamov's evidence with considerable scepticism. In my judgment that approach was justified, having regard to Mr Bedzhamov's claim to be worth some £86 million, a figure largely based upon his interest in the Belgrave Square property and his prospect of generating substantial profits from its development, without disclosing that the property was mortgaged pursuant to a short-term loan of US $35 million and without identifying any realistic prospect of obtaining funds to achieve the development. That aside, despite his claim to be spending tens (or even hundreds) of thousands of pounds to be able to mix with wealthy and influential businesspeople with a view to generating future deals, Mr Bedzhamov was unable to identify any actual or prospective deal since his departure from Russia in December 2015. Moreover, in the absence of solid evidence to support his assertions, some of Mr Bedzhamov's claims as to his pre-freezing order expenses were frankly incredible, especially for a man who had finite and rapidly reducing funds available to him and who claimed to see the need to reduce his expenses, but gave no details of how he proposed to do so.

85. In these circumstances, and with the exception of the three items to which I have referred, the judge had very little reliable evidence as to the level of pre-freezing order living expenses. As he said, he was not required to accept Mr Bedzhamov's assertions at face value. He therefore had no real alternative but to do his best to select what he regarded as an appropriate figure.

86. I consider that we must take the same approach, making a suitable adjustment to take account of the fact that permission will be given for the rent, school fees and security expenditure which, on the judge's approach, were to come out of the figure of £80,000 per month. Adopting that approach, I would permit further expenditure of up to £40,000 on general living expenses.

Other undisclosed assets

87. A theme of Mr Tager's submissions for VPB was that, if Mr Bedzhamov was indeed spending at the rate at which he claimed, he must have further undisclosed assets hidden away. That is a claim commonly made by claimants in freezing order cases, for understandable reasons, and may sometimes have force. If it were so, it would be wrong to allow the frozen funds to be depleted by the payment of extravagant living expenses, while hidden funds remain available to Mr Bedzhamov.

88. In the present case, however, while the possibility cannot be excluded, there is no evidence to support that claim, and the fact that Mr Bedzhamov's papers and computers have been seized, but no evidence of hidden assets has come to light, makes it relatively unlikely. Accordingly I would put no weight on this possibility in determining an appropriate figure for living expenses.

Payment of debts

89. One of the issues before the judge, distinct from but related to the issue of living expenses, was whether Mr Bedzhamov should be permitted to pay from the frozen funds various debts which he had accumulated. The judge permitted payment of some of these debts, in particular credit card debts incurred before the date of the freezing order, but refused permission in other cases. Mr Fenwick submitted that the judge was wrong to do so.

90. As already indicated, it is not the purpose of a freezing order to provide a claimant with security or to afford it priority over other creditors. In general, and subject to any issue about fraudulent preferences (which was not a point raised here), a defendant is free to pay his debts. As I read the judgment, however, the judge was not satisfied that the debts in question were indeed genuine debts.

91. The debts with which we are concerned fall into two categories. The first consisted of loans amounting in total to the sterling equivalent of about £960,000 which were allegedly made to Mr Bedzhamov by various friends, principally evidenced by payments into his bank account but with no supporting documentation. The judge was surprised that there was no evidence (by which I think he meant documentary evidence) to corroborate what Mr Bedzhamov said about these loans, and pointed out that such evidence as there was appeared to be contradictory. In my judgment he was entitled to take that view and to refuse permission to pay these debts from the frozen funds.

92. The second category consisted of three amounts, totalling some £134,000, which were said to represent outstanding fees payable to the exclusive golf club of which Mr Bedzhamov is a member. But the evidence about this, including in particular how much of the joining fee remains outstanding, was also somewhat confusing and in my judgment the judge was entitled to refuse permission here also. That will not prejudice the club. If the club does have a valid claim against Mr Bedzhamov (as distinct from one of his associates) for outstanding fees in respect of his membership, there is nothing to prevent it from asserting that claim.

VPB's application for permission to appeal

93. The conclusion which I have reached above in relation to rent on the Monaco apartment means that VPB's application for permission to appeal from the order of Arnold J made on 5th September 2019 is academic. That order permitted payment of quarterly rent on

the Monaco apartment which I have held ought to have been but was not permitted by the judge's order. It is therefore unnecessary to lengthen this judgment further by discussing whether the order was one which Arnold J had jurisdiction to make. An appeal would in any event serve no purpose as the payment has been made and cannot now be recalled.

Disposal

94. For these reasons I would refuse permission to appeal from the order of Arnold J and would allow the appeal from the order of HHJ Jarman QC so far as it relates to living expenses. I would set aside paragraph 1 of the latter order and, in its place, would order that Mr Bedzhamov is permitted to use the funds held by his solicitors Mishcon de Reya LLP:

1) to make payments of rent due pursuant to the lease on the Monaco apartment dated 11th March 2016;

2) to make payments of rent under a new lease of a residential property in London at a rate equivalent to not more than £18,000 per week, such payments to be made:

    a) as to the first six months' rent, in advance, if so provided in the lease;

    b) thereafter, as provided in the lease;

3) to make a rent deposit of up to £144,000 pursuant to a new lease of a residential property in London;

4) to pay the school fees of his three children for so long as they attend their current schools;

5) to pay for private security for himself and his family at a cost per month of up to £24,000 in London and €29,000 in Monaco;

6) to pay his uninsured medical expenses; and

7) to spend up to £40,000 per month on other ordinary living expenses.

95. It will be for Mishcon de Reya to satisfy themselves, before making the payments in question, that (a) the payments permitted by sub-paragraphs (1) to (3) above are due under the terms of the applicable lease, (b) an invoice for school fees has been issued to Mr Bedzhamov by the school(s) attended by his children, (c) Mr Bedzhamov has concluded a contract for the provision of private security with a firm providing such services which has issued an invoice for the services in question, and (d) Mr Bedzhamov has been invoiced for the uninsured medical expenses in question. There need be no such specific provision so far as sub-paragraph (7) is concerned.

96. I would dismiss the appeal so far as it relates to payment of Mr Bedzhamov's alleged debts.

97. I recognise that to permit payments on this scale by a man against whom there is a good arguable case of fraud and in respect of whom it has been found that there is a risk of dissipation of assets may seem, to say the least, counter-intuitive. However, as I have

sought to explain, it is necessary to do so in accordance with the established principles which govern the making of freezing orders.

Lord Justice Newey :

98. I agree.

Sir Geoffrey Vos, Chancellor of the High Court :

99. Save for the matters mentioned below, I agree with Males LJ's judgment. I am adding a few words of my own, because applications at first instance concerning living expenses under a Worldwide Freezing Order ("WFO") are so common, and appeals in such cases are so infrequent.

100. I would first wish to emphasise the fourth and fifth statements of principle suggested by Males LJ at paragraph 68 of his judgment. In a case of this kind, there is a real possibility that a defendant will seek to exaggerate his existing standard of living and his ordinary living expenses prior to the WFO, in order to obtain an order that allows him, in effect, to dissipate his assets prior to judgment. Indeed, in this case, the judge found at paragraph 31 that the defendant's attempt to conceal his identity from an officer of the court was a serious matter that caused him to be cautious about accepting his evidence at face value.

101. As Males LJ has said, when a defendant's credibility is open to doubt, the more extravagant the expenditure for which permission is sought, the more sceptical the court is entitled to be. This principle seems to me to apply with special force in this case. In my judgment, the expenditure that the defendant has sought to validate on this appeal is at such a level of extravagance that the greatest possible caution is required.

102. I would also wish to emphasise that, it is in cases like this, where the court's scepticism and caution are more than justified, that it may be peculiarly appropriate to make an order ring-fencing certain significant expenses. But that course will not always be enough to discourage dissipation. The court must also be astute to the possibility than an exceptionally wealthy defendant might wish to spend just in order to prevent the claimants enforcing any future judgment. Having said that, however, I endorse Males LJ's application of his stated principles to the rental of the Monaco property and another property in London.

103. My disagreement is only as to two specific details of the order Males LJ proposes.

104. I find myself unable to agree that the defendant should be allowed to engage security at the rate of £24,000 per month in London and €29,000 per month in Monaco. In fact, despite the undoubted existence of some threats to the defendant's life, he has not engaged security for either himself or his wife, since 12 months before the WFO was granted. First, I do not think, therefore, that it can be said that his ordinary living expenses, when the WFO was made, included such levels of security. Secondly, whilst I understand that he has said in evidence that the police expressed concerns about his security in April 2019 following the well-publicised incident concerning Sergei Skripal and his daughter, the application has not been centred on his perceived need for security. Thirdly, whilst the court must, of course, have proper regard for the defendant's article 2 rights, he did not himself regard security as his highest priority

before the WFO was granted. I think that the judge was right at paragraph 33 of his judgment to say that the large figures suggested as necessary for the security of the defendant and his family did not form part of his ordinary living expenses.

105. Males LJ has allowed a sum of £18,000 per week and a rent deposit of £144,000 for a flat in London comparable to the one previously rented in Mayfair. The rent that the defendant previously paid was at the rate of £14,750 per week. I accept that the defendant's solicitor has pointed to comparable properties available on the market for rentals between £16,000 and £20,000 per week. The court is, however, unable to evaluate whether these properties are truly comparable or not. I would not allow the defendant to pay more than he was doing before the WFO, namely £14,750 per week. Such an order would be in line with the judge's justified scepticism of the evidence adduced on his behalf. I would allow a rent deposit of 8 weeks' rent at that rate in the sum of £118,000.

106. In the light of Newey LJ's agreement with Males LJ's proposed order, the outcome will be in the terms he has proposed.