Neutral Citation Number: [2022] EWHC 1047 (Ch)

Claim No. BR-2021-000044

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)
AND INSOLVENCY AND COMPANIES LIST (CHD)

The Rolls Building
7 Rolls Buildings
London
EC4A 1NL

Date: Thursday, 28th April 2022

Before:

MRS JUSTICE FALK

- -

Between:

LYUBOV KIREEVA
(as bankruptcy trustee of Georgy Bedzhamov) **Applicant**

- and -

GEORGY BEDZHAMOV

Respondent

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- -

MR STEPHEN DAVIES QC and **MR WILLIAM WILLSON** (instructed by **DCQ Legal**) appeared on behalf of the **Applicant.**

MR JUSTIN FENWICK QC and **MR MARK CULLEN** (instructed by **Greenberg Traurig LLP**) appeared on behalf of the **Respondent.**

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Approved Judgment

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MRS JUSTICE FALK:

1. This is an application by the respondent, Mr Bedzhamov, for security for his costs of and occasioned by the remittal by the Court of Appeal of the application of his Russian trustee in bankruptcy, the applicant Ms Kireeva (the "Trustee"), for recognition in this jurisdiction (the "Recognition Application").

2. The remittal was made under an order dated 21 January 2022, by which the Court of Appeal set aside an order made by Snowden J on 25 August 2021 that the Trustee should be recognised. The issues remitted by the Court of Appeal's order were as follows:

    i) whether a guarantee in favour of VTB 24 dated 23 October 2015, a judgment debt in respect of which was the basis of the successful bankruptcy petition, was a forgery;

    ii) whether the order of the Arbitrazh Court on the petition of VTB 24, dated 20 September 2017 (the "VTB 24 Bankruptcy Judgment"), was procured by the fraud of VTB 24; and

    iii) whether recognition of Mr Bedzhamov's Russian bankruptcy should be denied on the basis that the VTB 24 Bankruptcy Judgment was procured by the fraud of VTB 24.

3. There is no dispute that one of the threshold conditions for security for costs is satisfied, namely, that the Trustee is resident out of the jurisdiction and is not resident in a State bound by the 2005 Hague Convention (see CPR 25.13(2)(a)). The issues are whether the court is satisfied, having regard to all the circumstances of the case, that it is just to make an order (CPR 25.13(1)(a)) and, if so, the quantum. Both are in dispute. This is my decision on whether security should be ordered in principle.

4. Mr Bedzhamov's position can be summarised as follows. Mr Fenwick submitted that there is no prospect of Mr Bedzhamov having a fair opportunity to enforce an English judgment in Russia or even obtaining a fair hearing, and that the obstacles have only increased following the invasion of Ukraine and the resulting sanctions. Reference was made to a Russian Supreme Court judgment, *Ural Transport* (*A60-36897/2020 Ural Transport Machinery Construction Company JSC (UralTransMash) v. Pojazdy Szynowe PESA Bydgoszcz Spylka Akcyjna (PESA)*), that it is said has held that the Russian court should have exclusive jurisdiction over a dispute involving a sanctioned Russian individual or entity, which Mr Bedzhamov says this case does or may do. As to the merits, this was said to be not the occasion to examine them.

5. Mr Davies, for the Trustee, submitted that no security should be ordered. Whilst the court has power to order security against a trustee in bankruptcy, it will only do so where the case is "exceptional" (see *Re Li Shu Chung* [2021] 11 WLUK 462 at [26]). The context in that case was the CBIR but the same principle applied at common law (see, for example, *Cowell v Taylor* [1885] 31 (Ch Div) 34).

6. Mr Davies had identified no reported case of security being ordered against a trustee in bankruptcy for the benefit of the bankrupt. The Trustee is not sanctioned and neither is

her litigation funder A1 LLC. It is denied on behalf of the Trustee that A1 is controlled by sanctioned individuals.

7. As to fair trial, Mr Davies submitted that the evidence relied on was wanting, and at most what was appropriate was an order that reflected the additional costs and delay of enforcing in Russia. Further, the merits were relevant and Mr Bedzhamov's case had a high probability of failure.

8. I have concluded that an order for security for costs is just in all the circumstances.

9. The relevant principles were summarised by Hamblen LJ in *Danilina v Chernukhin* [2018] EWCA Civ 1802, [2019] 1 WLR 758 at [51] and [52]:

> "51. Having regard to the guidance provided by these authorities the position may be summarised as follows:
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> (1) For jurisdiction under CPR r 25.13(2)(a) to be established it is necessary to satisfy two conditions, namely that the claimant is resident (i) out of the jurisdiction and (ii) in a non-Convention state.
>
> (2) Once these jurisdictional conditions are satisfied the court has a discretion to make an order for security for costs under CPR r 25.13(1) if "it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order".
>
> (3) In order for the court to be so satisfied the court has to ensure that its discretion is being exercised in a non-discriminatory manner for the purposes of articles 6 and 14 of the Convention: see the *Bestfort* case [2017] CP Rep 9 , paras 50–51.
>
> (4) This requires "objectively justified grounds relating to obstacles to or the burden of enforcement in the context of the particular foreign claimant or country concerned": see *Nasser's* case [2002] 1 WLR 1868 , para 61 and the *Bestfort* case at para 51.
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> (5) Such grounds exist where there is a real risk of "substantial obstacles to enforcement" or of an additional burden in terms of cost or delay: see the *Bestfort* case at para 77.
>
> (6) The order for security should generally be tailored to cater for the relevant risk: see *Nasser's* case at para 64.
>
> (7) Where the risk is of non-enforcement, security should usually be ordered by reference to the costs of the proceedings: see, for example, the orders in *De Beer's* case [2003] 1 WLR 38 and the *Bestfort* case.
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> (8) Where the risk is limited to additional costs or delay, security should usually be ordered by reference to that extra burden of enforcement: see, for example, the order in *Nasser's* case.

> 52. I would add the following observations:
>
> (1) The relevant risks are of (i) non-enforcement and/or (ii) additional burdens of enforcement. A real risk of either will suffice to meet the "threshold" test.
>
> (2) Some of the authorities refer to difficulties of enforcement. Mere difficulty of enforcement in itself is not enough (save in so far as it results in additional costs and therefore an extra burden of enforcement). The relevant risk is non-enforcement, not difficulty in enforcement, and this is the risk to which the test of "substantial obstacles" is directed. The obstacles need to be sufficiently substantial to amount to a real risk of non-enforcement. Difficulties may, however, be evidence of the "substantial obstacles" required for there to be a real risk of non-enforcement.
>
> (3) Delay is mentioned as a relevant additional burden of enforcement, but it is difficult to see how this can be quantified in terms of security unless it is likely to result in some additional cost or interest burden."

10. Hamblen LJ went on to say, at [57], that because the judge in that case found there to be a real risk of non-enforcement the starting point was that the defendant was entitled to security for the entirety of his costs. He also emphasised, at [58], that the threshold test as to whether there are "substantial obstacles" to enforcement is one of real risk rather than likelihood.

11. In this case, it is clear that the Trustee has no assets in this jurisdiction against which an order for costs could be enforced. Importantly, I also find that there is a real risk of non-enforcement in Russia. In reaching that conclusion, I take into account that the Home Office has acknowledged, in the context of extradition proceedings, that if Mr Bedzhamov was returned to Russia he would be at real risk of treatment in breach of Articles 3, 5 and 6 of the ECHR. The extradition proceedings have now been stayed as an abuse of process.

12. As to sanctions, it would not be appropriate for me to make a finding of fact at this stage about the current sanctions position, and I was not asked to do so. The Trustee has not disputed what is said on Mr Bedzhamov's behalf about the recent Russian Supreme Court decision, instead relying on sanctions not being relevant. I accept that both DCQ Legal and Keystone, solicitors to the Trustee and Vneshprombank ("VPB") respectively, are alive to the position on sanctions and continue to monitor the position. What I can say, however, is that even assuming sanctions are not engaged at present, the risk of them being engaged cannot sensibly be discounted in the circumstances of a fast-developing situation, and bearing in mind the identities of those involved. In particular, VTB 24 is now part of VTB Bank, which has been sanctioned by the UK, the EU and the US. The Trustee was appointed by the Russian Deposit Insurance Agency (the "DIA"), which is also the liquidator of VPB. The DIA is a Russian state corporation that is controlled by the Central Bank of the Russian Federation, which is currently the subject of certain sanctions, albeit claimed not to be relevant to the current proceedings.

13. As regards the Trustee's funder A1, although DCQ Legal and Keystone are instructed that A1 is not controlled by persons who are sanctioned, the court is not in a position to test that. Those firms have been instructed that following a management buyout that apparently took place as recently as 22 March 2022, A1 is now legally and beneficially owned by a non-sanctioned individual. However, there is evidence suggesting that at least until that occurred, certain sanctioned individuals exercised control over it. That evidence appears not to be disputed.

14. Further, Mr Bedzhamov's solicitors have pointed to an entry on the UK government sanctions website indicating the government's view that there are reasonable grounds to suspect that one of the individuals in question had transferred entities to an associate, albeit in that case an executive assistant rather than the individual named as owning A1, whilst still retaining ownership and/or control.

15. Although Mr Davies made reference in his skeleton argument to the point that security should not be ordered that would stifle a good claim, I have seen no evidence that the effect of ordering security would be to stifle the Trustee's ability to participate in the proceedings. Rather, the Trustee appears to date to have received funds from A1 for the pursuit of her claims when she has required them.

16. I accept that it is exceptional to make an order for security for costs against a trustee in bankruptcy. However, in my view, this is an exceptional case. I have already referred to the real risk that enforcement would not be possible, but that is not the only point.

17. As already indicated, the Trustee is funded by A1 on a basis which I infer must involve A1 receiving a commercial return on any recovery made, commensurate with the risks it is no doubt taking. However, no details of the funding arrangements have been provided.

18. A1 is also funding VPB in the proceedings it has brought against Mr Bedzhamov (the "Bank Proceedings"), where around £4 million of security has been provided: see *Vneshprombank v Bedzhamov* [2022] EWHC 101 (Ch) at [6]. Indeed, there is an outstanding appeal to the Court of Appeal against that decision, which relates to whether the form of security, currently cash paid into court, can be substituted by a bank guarantee.

19. I have previously explained that A1 is not a normal litigation funder. In *Vneshprombank v Bedzhamov* [2020] EWHC 2114 (Ch), a judgment on the search order granted in the Bank Proceedings, I said this at [62]:

> "A1, as has already been explained, has a role that is far from that of a normal litigation funder. It is not only funding but, at least on a day-to-day basis, controlling the conduct of the proceedings. It is individuals at A1 to whom VPB's legal team appear to turn for their instructions. A1's evident interest and unusual role is also amply demonstrated by the surveillance and advertising campaign that it has conducted…"

(The reference to a campaign was to evidence about adverts in newspapers and billboards driven around central London seeking information in relation to Mr Bedzhamov's assets in return for a reward.)

20. Mr Davies drew my attention to *Re Li Shu Chung* at [31], where the Chancellor referred to the fact that the trustee in that case had the benefit of a funding arrangement under which the funders were under an unlimited obligation to indemnify the trustee in respect of adverse costs orders, and took that into account in deciding not to order security.

21. There is no such evidence in this case. Contrary to Mr Davies's submissions, there is no assurance that A1 would be prepared to fund an adverse costs order in the event that the Trustee was not recognised. Although, as a professional officeholder, I am sure that the Trustee would not wish to default on a costs order, she cannot fund it on her own and is clearly dependent on funding from A1. Further, I do not accept Mr Davies's suggestions that A1 would provide funding because of its involvement in the Bank Proceedings or that the security that exists in those proceedings might be utilised. The first point does not cover the risk that A1 chooses to walk away from both sets of proceedings, and the second does not address the point that the security in the Bank Proceedings is in place to secure costs incurred in those proceedings.

22. There is a close connection between the Bank Proceedings and the Recognition Application. When VPB obtained a worldwide freezing order in March 2019 in the Bank Proceedings, its evidence in support of the application stated, among other things, that the prospects of the Trustee seeking recognition in England and Wales appeared "very low indeed", but that she would be informed if the freezing order was granted. The Trustee took no steps in this jurisdiction until she made the Recognition Application some two years later in February 2021. That application was made very shortly after VPB was notified of Mr Bedzhamov's intention to sell 17 Belgrave Square to fund his legal costs and living expenses. She explains that her earlier lack of action was due to an absence of funds, a difficulty that was only remedied once A1 offered funding which enabled her to make the Recognition Application.

23. Shortly thereafter, the Trustee applied to set aside my order of 5 March 2021 which had varied the terms of the freezing order to permit the sale (the "Set Aside Application"). At the hearing of the Recognition Application and Set Aside Application before Snowden J it became apparent, but only following a question from the judge, that VPB would remit any sums it recovered in the Bank Proceedings to the Trustee: see [2021] EWHC 2281 Ch at [99]-[101], where Snowden J also commented that that position must have been accepted by A1. The effect of the Trustee's actions, if successful, would of course be to prevent Mr Bedzhamov having access to sums that he would otherwise have been permitted to spend under the freezing order on his defence and on living expenses.

24. The Trustee is therefore seeking to claim or claw back sums that would otherwise be paid in accordance with the terms of a freezing order granted in proceedings which are at least now being conducted for the benefit of the Trustee. Whilst Mr Davies submitted that the Trustee would have preferred that the Bank Proceedings had not been brought, because of the depletion of the estate as a result of the costs incurred, in my view that cannot assist her. I would also observe that that comment appears in any event to be somewhat at odds with Snowden J's observation ([2021] EWHC 2281 at [78]) that the Trustee had suggested she would have supported the Bank Proceedings if funds had been available.

25. The fact is that the Bank Proceedings have been brought, and indeed by what is said to be the majority creditor in the bankruptcy estate. The Trustee was notified of the

freezing order when it was granted, and did not in fact seek to intervene at any time before 2021. She also in fact seeks to benefit from the freezing order by resisting an application to vary it, in circumstances where she has not sought other interim relief.

26. Mr Davies relies on the absence of precedent for ordering security for the benefit of a bankrupt against his own trustee in bankruptcy, and the failure by Mr Bedzhamov to co-operate with the Trustee. But in my view these points risk prejudging the outcome of the Recognition Application. The current position is that Snowden J's order granting recognition has been set aside and the Trustee has also not succeeded in obtaining the relief she seeks in respect of 17 Belgrave Square, both at first instance and in the Court of Appeal. Her application to the Supreme Court for permission to appeal has not been determined. Mr Bedzhamov's case, which has also not yet been determined, is that his Russian personal bankruptcy is an instrument of fraud.

27. As to the merits, it was made clear in *Danilina v Chernukhin* at [69]-[70] that the parties should not attempt to go into the merits of the case "unless it can be clearly demonstrated one way or another that there is a high degree of probability of success or failure", in this case that Mr Bedzhamov's case has a high degree of probability of failure.

28. In my view, that has not been clearly demonstrated. The Trustee has produced a witness statement from an ex-employee of VTB 24, who describes attending VPB's office on 23rd October 2015 to obtain signatures on documents including, she says, Mr Bedzhamov's signature both on the disputed guarantee and on other documents, notably mortgage documents in circumstances where Mr Bedzhamov has previously accepted granting a mortgage. Taken at face value, that appears to be strong evidence. However, (a) it has not been tested, and there are also unanswered questions about the source and indeed availability of the documents relied on; (b) it is denied by Mr Bedzhamov, whose evidence, as the Court of Appeal has made clear, should not be discounted without cross-examination; and (c) the court is told that Mr Bedzhamov will adduce expert evidence that it is "at least improbable" that the signatures on the relevant documents were his. Whilst "high degree of probability" is not the same as a factual finding against Mr Bedzhamov on the forgery issue, I am satisfied that this is not a case where it is appropriate to go into the merits at this stage.

29. I also note that *Re Li Shu Chung*, the case relied on by Mr Davies, was a case where recognition was sought under the CBIR. Whilst I accept that the principle of exceptionality has also been applied at common law, the concerns expressed in that case by the Chancellor at [29] and [30] about opening the floodgates and potentially giving a green light to the disruption of the CBIR recognition process, a process designed to promote the efficiency of cross-border insolvencies, do not necessarily arise in the same way where recognition is sought at common law.

30. I further note that the decision of Rose J in *Re Dalnyaya Step LLC* [2017] 1 WLR 4264, to which the Chancellor referred at [27]-[29] of his decision, but to which I was not referred until I raised it, was another case under the CBIR. In that case Rose J did order security against a Russian trustee for the benefit of managers of a unit trust, in circumstances where she had concluded that enforcement in Russia was a practical impossibility. In contrast, in *Re Li Shu Chung* there was no real risk of non-enforcement against the Hong Kong insolvency professionals (see that judgment at [31]).

31. As to the position at common law, *Cowell v Taylor* is authority for the proposition that the court's practice is that security will not be required from an (English) trustee in bankruptcy who is impecunious. It does not address the risk of non-enforcement. The same point applies to other cases relied on by Mr Davies where security was not ordered against a liquidator or other representative (namely, *Re Strand Wood* [1904] 2 Ch 1; *Rainbow v Kittoe* [1916] 1 Ch 313; and *Wu v Hellard* (unreported, His Honour Judge Dight, 24th November 2013)).

32. The Trustee also complains about delay in seeking security, and says that the remittal was only necessary due to defaults in preparation for and the conduct of Mr Bedzhamov's case before Snowden J.

33. I have concluded that these points do not justify the refusal of security. As to delay, it is true that security was only applied for in February 2022, well after the hearing before Snowden J in April 2021. However, the issue was raised very shortly after the Court of Appeal handed down its judgment, and the application was issued promptly after it became apparent that the Trustee would proceed with the remittal and would not agree to grant security in respect of it.

34. Quite apart from the fact that the Trustee's complaint of delay sits somewhat uneasily with the fact that the Trustee herself took around two years to become involved in a dispute that she now says she would prefer not to have been pursued, I am also not persuaded that any delay has materially prejudiced the Trustee. I reach that conclusion on the basis that Mr Bedzhamov will be provided with the security only for the costs of the remittal and other relief being sought by the Trustee now at first instance, as opposed to other previously incurred costs. I will return to this.

35. I do not consider that it would be fair to proceed on the basis that Mr Bedzhamov should have issued an application for security prior to the expedited hearing before Snowden J. Thereafter, there has been limited material activity in this court in the bankruptcy proceedings until the remittal was made. The costs associated with the remittal, involving disclosure and issues of disputed fact, are on any basis expected to be material and to involve significant disbursements in the form of translation costs in particular, such that the issue of security in respect of them could fairly be seen as more pressing.

36. The second point about alleged defaults is allied to this. The Trustee's position is that Mr Bedzhamov did not initially advance a case based on forgery of the guarantee, and only raised it just before the last day of the hearing when Snowden J made clear that the centrally important debt was the VTB 24 debt based on the guarantee, which was the basis of the successful bankruptcy petition. However, I accept that the application before Snowden J was listed on an expedited basis, and that Mr Bedzhamov's position was explained to the court, namely, that the Trustee's application should be dismissed on a preliminary basis such that funds could be raised from 17 Belgrave Square without delay; but if that was not accepted, a full trial with cross-examination and fact-finding would be required. That would obviously have not been possible in the context of an expedited application with the timing that was being discussed with me in advance of the hearing before Snowden J.

37. Further, there was evidence before the court from Mr Bedzhamov's Russian lawyer, Mr Belchich, in a witness statement dated 23 March 2021, making clear that Mr Bedzhamov's position that he had not signed the guarantee had been put to the Russian

court as early as 20th September 2017. Indeed, I note from Snowden J's judgment, at [18], that it was raised with the Russian court in 2016, when the judgment debt was obtained. The forgery allegation and Mr Belchich's evidence were picked up in Mr Davies's skeleton argument for the hearing before Snowden J. What was missing at that stage was an allegation, or at least an explicit allegation, that forgery was a bar to recognition (see Snowden J's judgment at [158]).

38. I do not consider that this is a sufficient reason to deny security for costs. It relates to the way in which the case was initially put to Snowden J. Although Mr Davies submits that the consequence of raising the point late is that there is now to be an unnecessary second hearing, I do not think that follows. The expedited hearing allowed points of principle to be determined, which if they had been determined in Mr Bedzhamov's favour would have avoided the need for a fact-finding trial. The important context was the need for expedition, of which I was well aware when making directions for the hearing before Snowden J, associated with the planned sale of 17 Belgrave Square.

39. Mr Davies effectively submitted that it would be unfair to award security for costs in relation to an issue that was raised very late in the day during the hearing before Snowden J, and which the Trustee could not have foreseen. While the Trustee might not have foreseen that the point would be relied upon – although her advisers were clearly aware of the factual dispute, as already indicated – that does not mean that security is inappropriate now that the point has been raised and the Court of Appeal has concluded that evidence in respect of it should be tested. The Trustee is not saying, for example, that if she had known about the forgery allegation she would not have proceeded with her application. On the contrary, she clearly would have done so and is clearly confident that her case on it will succeed.

40. In conclusion, I am satisfied that an order for security for Mr Bedzhamov's costs of the remittal should be granted and that, consistently with *Danilina v Chernukhin*, this should cover the entirety of his costs, rather than costs attributable to additional cost and delay or a proportion of the costs. However, the security should be confined to the costs of the remittal, meaning costs in that connection at first instance. That does mean that not all incurred costs will be covered; in particular, costs reserved by the Court of Appeal and time spent considering the Court of Appeal's judgment. As already indicated, in reaching that conclusion, I have taken into account the timing of the application for security.

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