Neutral Citation Number: [2023] EWHC 1459 (Ch)

Case No: BL-2018-002691
BL-2023-000277

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

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

Date: 16/06/2023

Before :

MR JUSTICE MILES
and
MASTER KAYE

- -

Between :

BL-2018-002691

VNESHPROMBANK LLC	**Claimant**
- and -	
GEORGY IVANOVICH BEDZHAMOV	**First Defendant**

And between:

BL-2023-000277

LYUBOV KIREEVA	
(as bankruptcy trustee of Georgy Bedzhamov)	**Applicant**
- and -	
GEORGY IVANOVICH BEDZHAMOV	**Respondent**

- -

Stephen Davies KC (instructed by **DCQ Legal Ltd**) for the **Trustee**
Justin Fenwick KC & Mark Cullen (instructed by **Greenberg Traurig LLP**) for the **First Defendant/Respondent**

Hearing date: 25 May 2023

- -

APPROVED JUDGMENT

This judgment was handed down remotely at 10:30am on 16 June 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives

Mr Justice Miles :

Introduction

1. Mr Bedzhamov has applied by notice dated 31 March 2023 for permission to sell his interest in a property at 17 Belgrave Square and 17 Belgrave Square Mews, London, SW1X 8PG (**the Property**).

2. The Property is subject to a worldwide freezing order (**WFO**) made in claim no BL-2018-002691 (**the Bank Proceedings**) on 27 March 2019. In that case the claimant is Vneshprombank LLC (**VPB**), a Russian bank in bankruptcy.

3. The application is for the approval of the sale as a variation to the WFO for the purpose of enabling him to pay outstanding and future legal expenses and some living expenses. This is not the first such application, but is part of a process. Mr Bedzhamov was granted permission in principle to sell the Property by an order of Falk J dated 9 June 2022 (**the June 2022 Order**), which gave effect to her judgment reported at [2022] EWHC 1166 (Ch) (**the May 2022 judgment**). That followed a hearing over two days in April 2022.

4. VPB has not opposed the sale at any stage. It has recently indicated that it is neutral. It was not represented at the hearing.

5. Mr Bedzhamov is bankrupt under an order made in Russia in 2018. Ms Kireeva (**the Trustee**) was appointed as his trustee in bankruptcy. She has brought recognition proceedings in these courts. She opposes the sale of the Property.

6. The Trustee is not a party to the Bank Proceedings. So, though the application is for a variation of the WFO made in the Bank Proceedings, the present contest over the sale is between Mr Bedzhamov and the Trustee.

7. I heard the application with Master Kaye who is jointly responsible for the case management of this case. This judgment represents our joint views. I thank counsel for their helpful and interesting submissions.

Facts

Events up to April 2022

8. The history up to April 2022 was summarised by Falk J in the May 2022 judgment, from which I borrow here.

9. The Bank proceedings were commenced in 2018. It relates to what VPB alleges is a massive fraud carried out by Mr Bedzhamov along with his sister Larisa Markus, who was President of VPB.

10. VPB was declared bankrupt on 14 March 2016, and a Russian state corporation, the Deposit Insurance Agency (**DIA**), was appointed to act as its liquidator.

11. Mr Bedzhamov resists the claim, and denies his participation in any fraud.

12. Before the claim was brought there were bankruptcy proceedings against Mr Bedzhamov in Russia. The details are set out in a judgment of Snowden J in the recognition proceedings, *Kireeva v Bedzhamov* [2021] EWHC 2281 (Ch).

13. The Russian bankruptcy proceedings culminated in the appointment on 2 July 2018 of the Trustee, for the purpose of realising and liquidating Mr Bedzhamov's assets (**the Bankruptcy Order**). The Trustee says that the Bankruptcy Order vested all of Bedzhamov's worldwide assets in her automatically under Russian law.

14. Though VPB is the majority creditor in Mr Bedzhamov's bankruptcy, its own petition, founded on a claim for unjust enrichment of around £40m, was not the basis on which Mr Bedzhamov was declared bankrupt. The successful petitioning creditor was another bank, VTB 24 Bank (**VTB 24**).

15. VPB's claim in the bankruptcy is small compared to the c.£1.34bn that it has claimed in the Bank Proceedings and which is subject to the WFO.

16. VPB's evidence in support of its original application for the WFO 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 WFO was granted.

17. In the event the Trustee took no steps in this jurisdiction until 19 February 2021, when she applied for common law recognition (**the Recognition Application**) in proceedings under case reference BR-2021-000044 (**the Recognition Proceedings**).

18. The Recognition Proceedings were brought with funding from A1 LLC (**A1**), which is the same entity as is funding VPB in the Bank Proceedings, very shortly after VPB was notified of Mr Bedzhamov's intention to seek approval to sell the Property to fund his legal costs and living expenses.

19. On 5 March 2021 Falk J made an order varying the terms of the WFO to permit a sale of the Property for not less than £35m with a view to enabling the proceeds to be used to fund legal and living expenses in accordance with the terms of the WFO. By the same order Falk J allowed Mr Bedzhamov to grant a charge over the Property in favour of his former solicitors, Mishcon de Reya (**MdR**), for outstanding legal fees (see further below).

20. The Trustee, which was represented at the hearing at which the 5 March 2021 order was made but had not at that time seen the evidence on the application, was given liberty to apply to set aside that order. The Trustee so applied on 16 March 2021. The Trustee's position was that she is entitled to all of Mr Bedzhamov's assets, including funds that would otherwise be spent in accordance with the WFO.

21. Falk J ordered expedition of both the Recognition Application and the Trustee's Set Aside Application.

22. Snowden J heard both applications. His judgment was handed down on 13 August 2021.

23. He recognised the Bankruptcy Order as regards Mr Bedzhamov's movable property but dismissed the Set Aside Application and refused assistance in relation to the Property, on the basis that under common law principles a foreign bankruptcy order did not vest

immovables in the trustee in bankruptcy and that at common law (as opposed to statute) there was no power to make an order vesting immovables in a foreign trustee or otherwise confer possession or control on such a trustee.

24. Both the Trustee and Mr Bedzhamov appealed. Mr Bedzhamov contended that Snowden J was wrong to dismiss his contention that VTB 24's petition was based on a fraudulent claim. The Trustee contended that Snowden J had wrongly concluded that the court could not appoint a receiver over immovables sited here by way of assistance of a foreign bankruptcy.

25. By an order dated 20 September 2021 the Bank Proceedings were stayed pending resolution of the appeals, a stay which remains in place.

26. In the meantime (having raised the issue at the consequentials hearing before Snowden J on 25 August 2021), the Trustee made a further application in the Bankruptcy Proceedings on 13 September 2021 seeking a declaration that, on sale of the Property, the net proceeds of sale would be movables and thus vest automatically in the Trustee (**the Proceeds Application**).

27. That application has also been stayed pending resolution of the appeals.

28. In the Court of Appeal ([2022] EWCA Civ 35) Mr Bedzhamov's appeal against recognition was allowed and the Recognition Application was remitted to the High Court to determine Mr Bedzhamov's allegation that VTB 24's petition debt was vitiated by fraud. The Trustee's appeal for assistance in respect of the Property was unsuccessful.

29. At the time of the hearing before Falk J in April 2022 the Trustee had sought permission to appeal from the Supreme Court in respect of her request for assistance in respect of the Property and the remittal application was still to be heard. The Trustee suggested to the Supreme Court that its decision on permission to appeal could await the outcome of the remittal hearing.

30. As at April 2022 Mr Bedzhamov owed MdR for outstanding fees. £5m of that is secured by the first charge on the Property granted pursuant to the order of 5 March 2021 to enable that firm to continue acting pending a sale of the Property, which at that time was hoped would occur within a relatively short time frame. Following a move of the relevant legal team from MdR to Greenberg Traurig, the latter firm had by April 2022 run up fees and disbursements in excess of £500,000. Falk J noted that significant further sums would be required to prepare for the remittal hearing. The figures were considered at the hearing in connection with an application for security for costs in respect of the remittal. In summary, Mr Bedzhamov sought security in respect of a total of around £1m and was granted security in respect of £458,824.00 plus VAT of £91,764.80, including previously incurred costs of £60,000 plus VAT.

31. The position of Mr Bedzhamov's legal team in April 2022 was that they would not be able to continue to represent him if his funding position was not resolved urgently.

32. The charge granted in favour of MdR gave that firm priority over an existing registered charge in favour of an entity called Clement Glory Limited (**CGL**) which (at that date) secured a debt of around £38m. The 5 March 2021 order was made on the basis that

CGL had agreed to cap its charge at £30m and agreed to the grant of the charge in favour of MdR in priority to its own.

33. Falk J recorded in the May 2022 Judgment that the position of the Trustee and VPB was that the CGL debt and charge were a sham, and/or (what appeared to be the primary allegation) that Mr Bedzhamov is in fact the beneficial owner of CGL. The Trustee had sought to bring a claim against CGL to make good its sham allegation, and to join VPB to it. By April 2022 the initial proceedings against CGL had been dismissed as a result of the refusal of Master Kaye to extend time to serve the claim form, but the Trustee had stated her intention to reissue the claim.

34. At the hearing of the Recognition Application and Set Aside Application before Snowden J it was confirmed, following a question from the judge, that VPB would remit any sums it might recover in the Bank Proceedings to the Trustee. This is discussed in Snowden J's judgment at [99]-[102], where the judge also commented that that position must have been accepted by A1.

35. VPB chose not to participate in the April 2022 hearing and made no written submissions. Falk J therefore regarded it as not objecting to the variation of the WFO that Mr Bedzhamov sought. VPB has not suggested that Falk J was wrong to reach that conclusion.

36. Mr Bedzhamov's interest in the Property comprises a short lease expiring on 20 September 2034 and an unassignable contractual right to a 129 year lease upon completion of development works in accordance with a specification agreed with the landlord, Grosvenor Estates (**GE**). It had previously been Mr Bedzhamov's intention to develop the Property himself, but he has so far been unable to do so as a result of the WFO. He has however obtained planning permission and listed building consent.

37. At the date of the order of 5 March 2021, Mr Bedzhamov had reached an in principle agreement for the sale of the Property to a Saudi Arabian purchaser. That sale fell through in May 2021. Mr Bedzhamov blamed this on the Trustee's actions. Further attempts to obtain the Trustee's consent to a sale during July and August 2021 also failed.

38. The window permitted by the order of 5 March 2021 for selling or charging the property expired on 5 September 2021.

39. The Trustee registered two unilateral notices against the Property at the Land Registry. The first was lodged in March 2021 in connection with the Set Aside Application. The second was lodged in August 2021, after Snowden J's judgment dismissing the Set Aside Application was handed down, in respect of the Trustee's claim against CGL. The first was removed following the Court of Appeal decision, and Master Kaye ordered the removal of the second when she refused to extend time.

40. The evidence of Mr Bedzhamov's solicitor, Mr Shobbrook, for the April 2022 hearing was that Mr Bedzhamov's estate agents have confirmed that the unilateral notices acted as a "commercially insurmountable barrier" to sale, at least without a very significant discount, unless removed prior to exchange.

41. Falk J concluded in the May 2022 judgment that she had no reason to doubt what Mr Shobbrook said in this respect. She also said in the judgment that the court would expect no further unilateral notice to be lodged, whether in connection with a claim against CGL or otherwise, that could frustrate the transaction.

42. The order of 20 September 2021 staying the Bank Proceedings permitted Mr Bedzhamov to continue to market the property for sale at a price generating net proceeds of not less than £35m (with provision for Mr Bedzhamov to apply to the court for sanction of any sale, and for the proceeds to be held in MdR's client account pending further order). The order also provided for the Trustee and her appointed valuer to have access to the Property to ascertain its value, and she was given until 8 October 2021 to object to the £35m figure. No objection was received at that time. The Trustee indeed confirmed at the April 2022 hearing that she did not object to a sale on the open market for at least £35m.

43. Falk J recorded in the May 2022 judgment that one of the difficulties with marketing the Property or raising funds against it has been the unusual nature of Mr Bedzhamov's interest in it. The agreement for the long lease is not assignable on its terms. She explained that an approach was therefore made to the freeholder, GE, seeking its agreement to accelerate the grant of the longer lease, such that that lease could be sold. GE initially agreed to this in principle but the proposal was not consented to by the Trustee, who was not prepared to agree to the expenditure of legal fees on it. Mr Shobbrook's evidence was that further difficulties have been caused by a reaction in respect of Russians with property in London following the invasion of Ukraine in February 2022, both in marketing the property and in an indication from GE that it would not be willing to grant the proposed lease at this time. Although there were a number of third parties interested in providing funding for the development, all the proposals that Mr Bedzhamov had been considering at that stage had been contingent on the grant of the longer lease.

44. The hearing of Mr Bedzhamov's application took place before Falk J in April 2022.

The May 2022 judgment

45. In the May 2022 judgment Falk J described the proposal that was before her in April 2022 (**the 2022 Proposal**).

46. Mr Bedzhamov had negotiated a deal with a third-party property development company, which would purchase and develop the Property through a special purpose vehicle. The SPV would be funded by a third-party lender, and there would be a target price of between £75m and £85m on sale of the developed property. The 2022 Proposal was set out in brief heads of terms. The key elements were:

    (i) an agreed sale price of £35m;

    (ii) CGL would reduce its charge to £23m (representing a further £7m reduction below the restriction to £30m proposed at the time of the 5 March 2021 order), and that charge would remain in place;

    (iii) £12m (representing the difference between the agreed price of £35m and the CGL charge of £23m) would be paid in cash upfront. This sum would be applied

as to £5m to discharge outstanding fees of MdR (satisfying its charge), and a minimum of £5 million to Greenberg Traurig's client account to be held and utilised subject to the terms of the WFO, along with the balance remaining after paying around £1.2m to the developer for its fees and in respect of the fees and disbursements that the developer had incurred to third parties;

(iv) as well as funding the £12m, the third-party lender would fund the SPV to undertake construction and development work, at an estimated cost of around £18m (excluding interest, which would be rolled up);

(v) upon sale of the developed property the proceeds would be distributed as follows:

a) repayment to the senior lender in the amount of around £30m plus interest estimated at around £7m;

b) discharge of CGL's £23m charge;

c) the balance to be split 80:20 between Mr Bedzhamov and the developer, subject to a minimum of £2m to the developer. At the minimum target price of £75m the profit was estimated at £15m, of which Mr Bedzhamov would receive £12m (to be shared with CGL – see below); and

(vi) Mr Bedzhamov would have a right of first refusal to acquire the Property.

47. Falk J recorded in her judgment that the reduction in CGL's charge was said to reflect its commercial assessment that the current value of the Property would not allow it to redeem its charge (the short lease having an estimated value of only around £6m), but by way of compensation it was to receive a 5% return on the £23m for the life of the project and would also receive £7m from Mr Bedzhamov's share of the development profit.

48. Falk J observed that the Trustee would prefer to see a sale at £35m than the implementation of a development arrangement that is forecast to net substantially more for Mr Bedzhamov. Falk J said that this was because of what from the Trustee's perspective was, in this particular context, the fortuitous happenstance of the CGL charge over the Property. Essentially, the Trustee was seeking to benefit from the fact that whilst she claims all that CGL itself claims, Mr Bedzhamov does not because his position is that he does not own CGL and that the charge granted in its favour is valid. As a result he had no access to those funds to meet his legal and living expenses. From the Trustee's perspective anything that accrues to CGL was therefore effectively ring-fenced from the provisions of the WFO that continue to permit Mr Bedzhamov to pay reasonable legal and living expenses (paragraph 30).

49. The Property was in material disrepair. Delays to its development or sale would raise material difficulties not only as a result of the reducing unexpired term of Mr Bedzhamov's short lease, but also because of the risk of forfeiture for non-repair and, perhaps most immediately, because planning permission would lapse on 13 December 2022 if work had not been commenced and an infrastructure levy payment had not been made (paragraph 30).

50. The Trustee did not like the Proposal, but (aside from what may happen to the proceeds) that was because of (a) the loss of priority for CGL associated with the reduction of the charge to £23m from the previously contemplated minimum of £30m; and (b) suspicions about Mr Bedzhamov's continued involvement. The Trustee had adduced no evidence about the price that could currently be achieved in the open market, but it could reasonably be inferred that she has not been advised that £35m was an undervalue (paragraph 31).

51. At paragraph 33 Falk J said, "I have concluded that the right approach is to indicate that, in principle, and subject to it being satisfied about the detailed terms of the transaction and the identity of the participants, the court would be prepared to entertain and approve a transaction with a third-party lender and developer along the lines of the Proposal (I deal separately below with the application of the proceeds). That appears to be the best, and indeed only, option on the table for maximising value overall, in circumstances of relative urgency, and where there appears to me to be a real risk that substantial value would otherwise be lost irretrievably."

52. Falk J held that the Trustee's concerns about the continued involvement of Mr Bedzhamov ought to be capable of being addressed by a proper understanding of the identity and credentials of the developer and lender. In particular, it was highly unlikely that a genuine third-party lender risking a considerable amount of its own funds would be prepared to countenance doing so in a way that would permit Mr Bedzhamov to frustrate the development, in the unlikely event that he wished to do so (paragraph 34).

53. At paragraphs 36 to 54 Falk J considered the court's approach to the application. The Trustee argued that the court should apply the approach taken in a series of cases reviewed and summarised in *Kea Investments Ltd v Watson* [2020] EWHC 472 (Ch), concerning orders made to protect assets over which a proprietary claim was made. Mr Bedzhamov noted that there was no application by the Trustee for a proprietary order. Having considered the rival arguments the judge concluded (at paragraph 54) that she should follow the approach taken in *Kea* at [22], namely (omitting internal citations):

> "(1) Since the basis of the proprietary claim is that the particular asset in question is said to belong to the claimant, the question is not whether the defendant should be able to use his own assets, but whether he should be permitted to use assets which may turn out to be the claimant's. There is therefore no presumption in favour of his being able to do so.
>
> (2) There are four questions which fall to be answered. The first is whether the claimant has an arguable proprietary claim to the money.
>
> (3) The second is whether the defendant has arguable grounds for claiming the money himself: "No man has a right to use somebody else's money, for the purpose of defending himself against legal proceedings."
>
> (4) The third is whether the defendant has shown that he has no other funds available to him for this purpose.
>
> (5) But even if the defendant gets over this hurdle then the Court has a discretion. [The court has to make a]: 'careful and anxious judgment … as to whether the injustice of permitting the use of the funds held by the defendant is outweighed by

> the possible injustice to the defendant if he is denied the opportunity of advancing what may, in course, turn out to be a successful defence.'"

54. At paragraph 55 Falk J concluded that the Trustee had an arguable proprietary claim and that Mr Bedzhamov also had grounds for claiming the money himself.

55. At paragraph 57 Falk J concluded that Mr Bedzhamov had satisfied her of the requirement of showing that he had no other funds available to meet the costs and living expense liabilities.

56. At paragraphs 63ff she turned to the court's discretionary balance of the potential injustice to the Trustee and Mr Bedzhamov of allowing or not allowing the sale to take place.

57. At paragraph 64 she said that she was deciding the matter as an issue of principle, subject to the court's consideration of the detail of the sale process in due course.

58. At paragraph 66 she expressed her overall conclusion that it would be unjust not to allow Mr Bedzhamov to spend at least some proceeds from a disposal of the Property in accordance with the terms of the WFO, that is, a reasonable sum on legal advice and representation, and on living expenses within the limits set by the WFO. She explained that she had taken into account a number of factors.

59. The first factor (paragraphs 67ff) concerned the timing and circumstances of the Trustee's invention.

    (i) She noted that the court had granted the WFO having been led to understand that the prospects of the Trustee seeking recognition appeared "very low indeed", and apparently on the basis that it was Mr Bedzhamov's assets that were being protected from dissipation, rather than assets held by the Trustee. Mr Bedzhamov and his advisers then spent approaching two years working on the understanding that he would be able, subject to permission from the court, to use his assets to finance his living expenses and fund his defence. This was in circumstances where Snowden J found that the Trustee was aware of the Bank Proceedings in March 2019, and further that she or her advisers received a copy of Mr Bedzhamov's asset disclosure letter in March 2020. She concluded that if Arnold J had understood that the Trustee was likely to seek recognition, it would clearly have been a relevant factor in determining whether to grant the WFO, and if so on what terms (paragraph 67).

    (ii) The Trustee's intervention in February 2021, in the form of the Recognition Application, came very shortly after VPB was notified of Mr Bedzhamov's intention to sell the Property to fund his living and legal expenses. It is clear from the Trustee's own evidence that her intervention was possible only because of A1's willingness to fund it (paragraph 68).

    (iii) Falk J concluded that the Trustee's intervention was funded by A1 with a view to denying access to assets that Mr Bedzhamov (and through him his legal advisers) might otherwise reasonably have expected to have available for reasonable legal and living expenses under the WFO. She could see no other rational explanation. She concluded that the fact that his applications to do so

have not been actively opposed by VPB – also funded by A1 – in the ordinary course of the Bank Proceedings underlined that it was considered that such opposition would not prove fruitful and that that was unsurprising (paragraph 70).

60. The second factor was the conduct and resolution of the Recognition Application (paragraphs 71ff). Falk J explained that this had taken some time and concluded that the Trustee's interventions had resulted in the sale contemplated at the time of her order of 5 March 2021 being lost.

61. The third factor was the Trustee's position in the Bank Proceedings and the question of interim relief (paragraphs 74ff).

(i) Falk J explained that by the time of the Trustee's intervention Mr Bedzhamov had already spent two years and very substantial funds defending a claim which the Trustee was now saying she would prefer not to have been brought (paragraph 75).

(ii) Falk J said that any prejudice to the Trustee would to a substantial extent be attributable to her own delay (paragraph 76).

(iii) The Trustee was seeking to benefit from the WFO by resisting an application to vary it, in circumstances where she had not sought any interim relief in the Recognition Proceedings. The effect of success on her part would be akin to the grant of a form of proprietary injunction in her favour. However, she had at no stage prior to the Recognition Application sought any such relief, and even now did not do so in terms. If she had, the question whether any cross-undertaking should be given would have been raised and addressed (paragraph 77).

62. The fourth factor was the Trustee's approach to the Property (paragraph 78). Falk J concluded that there had been an apparent lack of constructive engagement by the Trustee in respect of the Property with a view to ensuring that value was maximised and preserved.

63. The fifth factor was that this was not a standard proprietary claim (paragraphs 79ff). The Trustee is claiming all of Mr Bedzhamov's assets including after-acquired property so this is not a case where Mr Bedzhamov could even theoretically identify other assets which the Trustee is not claiming.

64. Falk J then considered the various categories and periods of legal expenses (paragraphs 81ff) and gave provisional rulings about them.

65. At paragraphs 97ff she addressed MdR's charge and the position of CGL. She pointed out at paragraph 201 that the priority conferred by MdR's charge was only relevant to the extent that MdR actually received payment of its fees. At paragraph 103 she noted that at the date of the hearing the Trustee had no extant claim against CGL and that it had not sought interim relief, so that it would not be right to proceed on the basis that she had established an arguable proprietary claim in respect of CGL.

66. At paragraph 117 Falk J said this:

"In conclusion:

a) In principle, and subject to it being satisfied about the detailed terms of the transaction and the identity of the participants, the court would be prepared to entertain and approve a transaction with a third-party lender and developer along the lines of the Proposal.

b) The better approach at this stage, having regard in particular to the extant Proceeds Application, is to proceed on the basis that the Trustee would have an arguable proprietary claim to the proceeds of sale of the Property.

c) Subject to further evidence confirming the non-availability of other resources, reasonable sums in respect of legal advice and representation, and in respect of living expenses to the extent permitted by the WFO, may be spent from the proceeds of sale, insofar as they were incurred in the period up to the Trustee's intervention or relate to the legal expenses of the remittal. In other respects a more granular approach should be adopted."

Order of 9 June 2022

67. The May 2022 judgment was embodied in the order of 9 June 2022. The order recorded that VPB had chosen not to participate in the hearing and that it was not objecting to Mr Bedzhamov's application.

68. The order provided materially as follows:

"1. Mr Bedzhamov has permission in principle to enter into a transaction with a third-party property development company to sell and develop the Property, along the lines of the proposal described in the [May 2022] Judgment, subject to the court being satisfied as to the detailed terms of the transaction and the identity of the participants.

2. Subject to further evidence confirming the non-availability of other resources to fund Mr Bedzhamov's legal fees and living expenses (including in relation to the position of Villa Nicolini, as well as other potential sources of funds for legal fees or living expenses) Mr Bedzhamov has permission in principle to spend the following sums derived from the proceeds of sale and development of the Property:

a. reasonable sums in respect of legal advice and representation, at least insofar as those costs were incurred in the period up to the date of the Recognition Application or relate to the remitted Recognition Application;

b. reasonable sums in respect of other legal costs, such sums to be determined using a more granular approach (as described in the [May 2022] Judgment);

c. sums in respect of living expenses to the extent permitted by the WFO, at least insofar as they were incurred prior to the date of the Recognition Application, with a more granular approach to be considered thereafter;

and all such sums shall be determined by the court, if not agreed."

Order of 9 November 2022

69. Falk J heard the trial of the remitted Recognition Application (**the Remittal**) in October 2022.

70. By her order of 9 November 2022 Falk J dismissed Mr Bedzhamov's allegations that VTB 24 had obtained his bankruptcy by fraud. She ordered that the Russian bankruptcy order of 2 July 2018 and the appointment of the Trustee should be recognised at common law. Mr Bedzhamov was ordered to pay the costs of the Remittal and the Recognition Application on the standard basis and to make interim payments of £325,000 on account of such costs "within 14 days of the sale of [the Property], save that if there is no such sale by 4 January 2023, the matter should be restored for further directions".

Judgment and Order of 14 February 2023

71. The sale of the Property did not take place by 4 January 2023.

72. By application of 8 December 2022 the Trustee sought an order for the payment of the interim payments within seven days. Mr Bedzhamov made a cross application for an extension of the time in which the sale was to take place.

73. A hearing took place on 14 February 2023 before Falk LJ (as she had then become) and Master Kaye. The judgment of that date records that Mr Bedzhamov's evidence was that if he were not given more time to make the interim payment it was likely that he would be unable to continue to be represented in the Bank Proceedings. At paragraph 10 Falk LJ explained that Mr Bedzhamov was still attempting to put together a proposal for a sale and that it had evolved since that described in the 20 May 2022 judgment. Mr Bedzhamov's position was that he was confident that a sale could be achieved with a longstop date of 30 April 2023.

74. Falk LJ recorded (at paragraph 12) that the Trustee had obtained permission to appeal to the Supreme Court in respect of the Property and that the appeal was due to be heard in November 2023. She also noted that the Trustee had, with VPB as co-claimant, issued a further claim against CGL, claiming that its charge is a sham and that Mr Bedzhamov is the real beneficial owner of CGL. The Trustee had also applied to join CGL to the recognition proceedings.

75. The Trustee argued that there had been no real progress with the sale and that the position concerning it remained vague and uncertain; and that the April 2023 target was over-optimistic.

76. Falk LJ decided not to make an order for the interim payment to made immediately. She referred, at paragraph 21, to paragraph 70 of the 20 May 2022 judgment where she had concluded that the Trustee's intervention was funded by A1 with a view to denying access to assets that Mr Bedzhamov (and through him his legal advisers) might otherwise reasonably have expected to have available for reasonable legal and living expenses under the WFO. She also referred to paragraph 29 of the May 2022 judgment where she had identified the key priority of seeking to ensure that Mr Bedzhamov's

estate was preserved and maximised for the benefit of whichever person(s) are properly entitled to claim the Property or its proceeds.

77. At paragraph 25 she said, "I must record that I continue to have concerns about aspects of the Trustee's approach (see the May judgment at [27] for concerns I expressed at the time). There are concerns that aspects of actions taken at least give the impression that she or those behind her might prefer to sabotage any disposal rather than allow it to proceed on terms approved by the court. It was extremely helpful that Mr Willson indicated today that the relief sought is actually not intended to cut across my earlier decision. That was not apparent to me, even though I had carefully read the written evidence and submissions; it was not apparent from the other claims and what has been said in respect of them, and if it was not apparent to me it is unlikely to be apparent to outsiders who will be or may be involved in the sales process."

78. At paragraph 26 she recorded that the allegations concerning CGL were not new and that they were dealt with in the 20 May 2022 judgment. She also noted at paragraph 27 that any possible prejudice to the Trustee was the result of the delay in the Trustee applying for recognition.

79. Falk LJ said at paragraph 30 that she was concerned that the substantive effect of ordering immediate payment could be to undermine orders of the court, including that of 9 June 2022.

80. At paragraph 32 she said that the order of 9 June 2022 contemplated that the court would have full oversight not just of approving the terms of any disposal but in relation to the proceeds. She repeated that the court's key objective must be to seek to allow a successful disposal that maximises the funds available.

81. At paragraphs 33ff Falk LJ addressed Mr Bedzhamov's argument that making a payment might breach sanctions arising from the Russia-Ukraine war. This arose from the role of A1 as funder. Mr Bedzhamov referred to evidence about a buy-out of A1 in March 2022. Falk LJ said at paragraph 35 that based on the evidence she had seen it was impossible to dispel the concern that the March transaction was not genuine, but was instead arranged to give the appearance that A1 was no longer under the control of sanctioned individuals.

82. At paragraphs 46ff Falk LJ set out her conclusions. In paragraph 46 she reiterated that if a sale were to take place the proceeds would be dealt within accordance with the order of 9 June 2023. The entire proceeds would be subject to the oversight of the court. In paragraph 48 she said that immediate enforcement of the interim payment order would risk endangering the sale and that in turn would be likely to lead to Mr Bedzhamov losing his legal representation. She noted that if the Property is sold the interim payment would come out at or near the top of the list for use of the proceeds.

83. In paragraph 49 she concluded that the matter should be restored for directions soon after 31 March 2023. She said that it would be wrong to signal that there was open ended leeway in respect of the sale. If real and substantial progress were not made with the sale by then it would indicate that the proposed transaction cannot be realistically achieved. In paragraph 50 Falk LJ emphasised that the court's key objective at the moment was to seek to enhance or maximise the prospects of a successful disposal of the Property.

84. The order of 14 February 2023 recited the Trustee's confirmation that her claims against CGL were not intended to undermine the Court's judgment of 20 May 2022 or the order of 9 June 2022 including the permission in principle granted to Mr Bedzhamov to sell and develop the Property along the lines of the proposal involving inter alia a reduction of the value of the CGL charge to the level of £23m which was described in the May 2022 judgment. The order also recited that the interim payment would come out first from any available proceeds of sale.

85. The court ordered that the Trustee's application and Mr Bedzhamov's cross application should be restored for a further hearing on the first available date after 31 March 2023.

Application of 31 March 2023

86. As already noted, Mr Bedzhamov's latest application was issued on 31 March 2023. It sought permission to sell the Property and a variation of the WFO.

Order of 21 April 2023

87. There was what turned out to be a case management hearing of the application before Falk LJ and Master Kaye on 21 April 2023. The Trustee sought an adjournment to put in further evidence. The court acceded to that request and made directions. Falk LJ indicated that the court hearing the application on the next occasion should focus primarily on whether permission should be given for the sale and development of the Property in principle as a means of preserving value, rather than the issue of use or distribution of any sale proceeds. She also said that it would be helpful for the court hearing the application to consider the counterfactual if a sale were not to occur.

Evidence for this hearing

88. The evidence for this hearing has been extensive, running to several volumes. For this application Mr Bedzhamov served the 40th to 43rd statements of Mr Shobbrook, his solicitor, the 11th statement of Mr Bedzhamov and the 3rd statement of Mr Van den Heule. Mr Van den Heule is a principal of Fenton Whelan (**FW**), who have assisted Mr Bedzhamov in putting together the proposals, including the current version. This has involved negotiations with GE. FW have also acted for Mr Bedzhamov in securing planning permission for the development of the Property.

89. The Trustee served the 16th statement of Mr Elliot, her solicitor, the 1st statement of Mr Paul Cooper and the report of Ms Henrietta Hammonds. Their role is described below.

90. In response Mr Bedzhamov served the 44th witness statement of Mr Shobbrook and the 4th witness statement of Mr Van den Heule. This led to a 2nd statement from Mr Cooper.

91. I have carefully considered this evidence and the relevant exhibits referred to by the parties.

Summary of the parties' positions and the issues

92. The parties' submissions ranged widely. I shall briefly summarise their positions before addressing their arguments in greater detail.

93. Mr Bedzhamov's position may be summarised as follows:

(i) The court ordered on 9 June 2022 that in principle a sale of this kind should proceed. That was ultimately to enable funds to be released to enable Mr Bedzhamov to conduct his defence of legal proceedings. There has been no appeal from that order. That order should be the starting point for the present hearing.

(ii) There is a realistic current proposal for the sale and development of the Property at an effective purchase price of £35m, which is along the lines of the 2022 Proposal and therefore within the scope of the June 2022 order.

(iii) The proposal has taken many months to put together. On the evidence GE as freeholder is prepared in principle to support it by agreeing a long lease in favour of the SPV, without requiring a further payment.

(iv) One of the key concerns expressed by the Trustee at the time of the May 2022 judgment was that the identity of the SPV owners and the lenders to the SPV were not known and it was possible that they were in some way connected with Mr Bedzhamov. The identity of the SPV owners (i.e. FW) and the lenders have been disclosed to the Trustee's legal team and there is no suggestion of any connection between them and Mr Bedzhamov.

(v) There is a real risk that if the current proposal is not allowed to proceed, so that no sale takes place, a valuable opportunity to realise the maximum value of Mr Bedzhamov's interest in the Property will be lost. There is first an unquantifiable risk of forfeiture for non-repair; and second there is no way of knowing whether GE might require a substantial premium before granting a long lease to anyone other than Mr Bedzhamov himself. That uncertainty, which could seriously impact the value of any disposal of the Property, would be removed by the present proposal.

(vi) If Mr Bedzhamov is unable to realise value from the Property there is a real prospect that he will be unable to continue to be represented in the proceedings. Even if the Trustee were to be successful in the Supreme Court, the issue of what assistance should be given to the Trustee will be remitted to the High Court, which will have a discretion to make an order for sums to be paid to Mr Bedzhamov for legal fees and living expenses, at least in respect of the period before any recognition order was applied for.

(vii) The application is concerned with a variation of the WFO. To the extent that the court is required to exercise a discretion it is notable that VPB (which has given a fortified cross undertaking in damages) is not opposing the order; while the Trustee, who has not offered any cross-undertaking in damages, is the party opposing the variation.

(viii) Many of the Trustee's objections concern the distribution of the proceeds of any sale. The present hearing is concerned with the principle of sale and not the distribution of the proceeds. Moreover the court should proceed on the basis of the earlier decisions of Falk J that Mr Bedzhamov was justified in principle in releasing value from the Property to meet his legal (and potentially living) expenses.

94. The Trustee's position may be summarised as follows:

(i) The order of 9 June 2022 has lapsed through the effluxion of time. Alternatively the sale now proposed is materially different from that considered by Falk J in her May 2022 judgment. It is not along the lines of that proposal and is therefore not covered by the June 2022 order. Alternatively there has been a material change of circumstances so that the court should vary or depart from the June 2022 order. For one or more of these reasons the court should approach the application afresh and with no predisposition towards a sale.

(ii) Falk J was correct in the May 2022 judgment to adopt and apply the principles concerning proprietary freezing or proprietary orders. Applying those principles, Mr Bedzhamov fails at the first hurdle as he has not established that he has any interest in the Property, since on his own evidence he has no equity. It is only because CGL, as chargee, has agreed to permit a payment to be made for the benefit of Mr Bedzhamov that he has any arguable economic interest in the Property.

(iii) To the extent that Mr Bedzhamov overcomes that hurdle, he has failed to discharge the burden of showing that he has no other realistic means of meeting his legal costs. He has not explained adequately why third parties may not be able to pay or why he is unable to pay his costs from known assets which are not currently subject to preservation orders in favour of the Trustee. The sale of the property should not be ordered because Mr Bedzhamov has not established a proper case for payment of his legal costs or living expenses.

(iv) There is a real risk of prejudice to the Trustee. If any proceeds of a sale are paid out they will be lost to the bankruptcy estate. On the other hand if no sale takes place now and the Trustee succeeds in obtaining the assistance of the court through the appointment of a court appointed receiver (a **CAR**), the receiver will be able to seek to sell the Property to a developer.

(v) The Trustee has made a claim that Mr Bedzhamov is the ultimate beneficial owner of CGL or that the CGL charge is a sham so, if those claims succeed, any amounts payable to CGL will end up with the Trustee. The Trustee will therefore be prejudiced by any arrangement under which CGL effectively postpones its charge and allows Mr Bedzhamov or his lawyers any part of the proceeds of sale.

(vi) The Trustee's valuation evidence values the undeveloped Property (on the assumption of a right to a long lease) at £35m. A CAR could realistically anticipate being able to realise that amount. The risks of the value of a sale being lost or diminished if the current proposal does not proceed are speculative or overstated.

(vii) The Trustee's valuation evidence values the Property if developed in accordance with Mr Bedzhamov's proposals at £76.5m. At that level CGL would only barely recover the £23m it is apparently prepared to subordinate to the other claims. There is a real chance that the amount recovered would be less than that and that CGL would not even recover the £23m it had agreed to postpone.

(viii) The application is not brought in good faith because there is proper reason to think that Mr Bedzhamov is associated with CGL. Indeed there is reason for saying that he controls CGL. He has not properly explained the association. The effect of the application is to postpone the interests of CGL and, to the extent the Trustee has a prospective interest in CGL, to prejudice the interests of the Trustee.

(ix) A sale now would frustrate the appeal to the Supreme Court.

(x) There is no sufficient urgency justifying a sale before the completion of that appeal.

95. These rival positions give rise to the following principal issues:

(i) Has the 9 June 2022 order lapsed?

(ii) Is the current proposal for the sale of the Property along the lines as that considered in the May 2022 judgment?

(iii) Has there been a material change of circumstances justifying a variation of or a departure from the order of 9 June 2022?

(iv) What conclusions can be drawn from the evidence about valuation and the counterfactual of the sale not proceeding?

(v) In the light of the history and material now before the court should the court now approve the proposed sale and development of the Property in the exercise of its discretion?

(i) Has the 9 June 2022 order lapsed?

96. Counsel for the Trustee submitted that the order of 9 June 2022 had lapsed through effluxion of time. He pointed out that Mr Bedzhamov had made a new application in March 2023 which did not refer to the 9 June 2022 order. He said that it was to be regarded as a fresh application, which should be dealt with entirely on its own merits and with no regard to the earlier orders.

97. I am unable to accept this submission. To start with, the order gave permission in principle to a sale on the lines of the 2022 proposal. It did not contain a time limit. It was also implicit in the order that Mr Bedzhamov would have to come back to court with a more fully developed proposal and with further evidence.

98. The submission is also inconsistent with the subsequent procedural history. The orders of 9 November 2022 and 14 February 2023 both assumed that the order of 9 June 2022 was effective and binding – see in particular paragraph 30 of the 14 February judgment.

99. Indeed the recital to the 14 February 2023 order recorded that the Trustee was not seeking to do anything inconsistent with that order. So the Trustee cannot properly say that the 9 June 2022 order had lapsed by 14 February 2023. But she did not suggest at the present hearing that anything further had happened since then (other perhaps than the issue of the new application in March 2023 – as to which see below) to cause the order to lapse.

100. I do not think there is anything in the point that Mr Bedzhamov issued a separate application. That was always going to be necessary given the in principle nature of the 9 June 2022 order. Moreover the evidence served in support of the application showed that Mr Bedzhamov was asserting that the up-dated proposal was along the lines of the 2022 Proposal, albeit with some adjustments. Nobody reading the evidence could reasonably suppose that Mr Bedzhamov was inviting the court to consider the matter as a blank canvas. Far from it.

(ii) Is the current proposal for the sale of the Property along the lines of that considered in the May 2022 judgment?

101. Paragraph 1 of the 9 June 2022 order gave Mr Bedzhamov permission in principle to enter a transaction to sell and develop the Property "along the lines of the proposal described in the May 2022 judgment, subject to the court being satisfied as to the detailed terms of the transaction and the identity of the participants." The order did not require that any sale proposal be identical with the 2022 Proposal. It appears to me that the question is to be approached by asking whether there are any material changes which mean that the reasoning contained the May 2022 judgment is no longer properly applicable.

102. There are some similarities and some differences between the 2022 Proposal and the current one.

103. These are addressed in Mr Van den Heule's 3rd witness statement. According to his evidence:

(i) The effective acquisition price remains £35m.

(ii) The purchaser is an SPV, to be owned and incorporated by FW.

(iii) CGL will still agree to reduce its charge over the Property to £23m (which will remain registered ranking behind the lenders' charges).

(iv) Mr Bedzhamov will still receive £12m. Mr Bedzhamov's proposal is that, subject to the court's further approval, this is to be applied to discharge the MdR charge for £5m and to pay FW's fees and disbursements, with the remaining amount of approximately £5.5m being transferred to Greenberg Traurig's client account to be held and utilised in accordance with the terms of the WFO.

(v) There has been an increase in the expected amount of FW's fees (to some £1.5m plus VAT). The evidence states that this reflects additional work conducted by FW and disbursements incurred over the last year, including to secure the planning permission and to negotiate GE's agreement to accelerate the grant of the long lease of the Property so that it will be granted to the buyer on completion.

(vi) As with the 2022 Proposal the third party lenders will fund the initial £12m. They will also fund the SPV to undertake the construction and development work. There is a change from the 2022 proposal, in that the finance is now intended to be provided in two layers – by senior and mezzanine lenders.

(vii) The interest rates payable on the finance have increased. This is the result of interest rate movements over the last year. The total financing cost has increased from about £37m under the 2022 Proposal to about £51m under the current proposal.

(viii) On the sale of the Property, under the current proposal the sale proceeds will be distributed to repay the lenders, discharge the CGL charge with the remaining profit being split between CGL and FW 80:20. That represents a change from the 2022 Proposal under which Mr Bedzhamov had a right of first refusal before the Property was sold and Mr Bedzhamov was to be entitled to 80% of the profit share, though CGL was going to receive £7m from Mr Bedzhamov's share of the development profit (in return for having reduced the value of its charge).

104. The main differences between the 2022 Proposal and the current proposal are therefore (a) that the fees of FW have increased; (b) funding costs have increased from some £37m to some £51m; (c) there is to be mezzanine as well as senior finance; and (d) Mr Bedzhamov is no longer involved in the deal after the sale of his interest in the Property.

105. The Trustee submitted that the current proposal was not along the lines of the 2022 Proposal.

106. The Trustee argued first that the anticipated economic outcomes were materially different. She emphasised that the financing costs have increased from some £37m to some £51m and that the difference will effectively be lost – potentially by the Trustee if she succeeds in her claims.

107. It is correct to say that the expected outcome is less favourable for CGL – indeed for any party interested in the Property. However this is because, first, the increase in fees (particularly those of FW) and, second, the increase in the costs of finance. As to the fees of FW, the evidence shows that they have carried out further work in securing the planning permission certificates and in negotiating the terms of the deal with GE. The court is not being asked on this application to determine whether the amount of the fees being claimed should be paid to FW. However I do not think that the fact that the fees have increased amounts to a material change from the 2022 Proposal.

108. Nor do the increased financing costs materially change the nature of the proposed sale and development. The increased costs reflect a significant increase in interest periods in the market since April 2022. The Bank of England base rate increased from 0.75% to 4.25% in the relevant period.

109. Nor do I consider that the new profit sharing arrangement amounts to a material change. The evidence shows that after the May 2022 Judgment, GE indicated that it was not comfortable with a transaction that saw Mr Bedzhamov retain any interest in future profits from the development. Any profits are now to be split between FW and CGL, with CGL agreeing its share of the profit will be held to the order of the Court pending further order. In my view this does not change the nature or terms of the proposal in a material respect. Under the existing arrangement the first £7m of any profit share received by Mr Bedzhamov was payable to CGL in any event. On the anticipated outcomes under the current proposals (ie with £51m of debt funding) it is most unlikely that any amount greater than £7m would have been received by Mr Bedzhamov as a profit share even if he had retained his 80% entitlement. In any event, the Trustee's case

is that she would prefer as much of the proceeds as possible to go to CGL since she claims that Mr Bedzhamov is the true owner of CGL.

110. The Trustee also said that there was a structural change in that CGL was now going to have to enter a deed of postponement, subordinating its charge to the security of the senior and mezzanine lenders. The Trustee says that this is a material change from the earlier proposals. I am unable to accept this. It was clear from the May 2022 judgment that the debts owed to the then proposed lender were to be repaid in priority to the claims of CGL. The deed of priority now anticipated is just a mechanism for subordinating CGL's claims. The split of the funding into senior and mezzanine tranches is not a change of substance either.

111. I am unable to accept the Trustee's overarching submission that the anticipated overall outcome shows that the current proposal is not along the lines of the 2022 Proposal. It appears to me that the differences arise from changes in the expected fees and financing costs and that these do not represent material variations. The proposed sale is along the same lines; what differs is the anticipated economic outcome of the sale process.

112. For these reasons, while there are some differences I conclude that the current proposal is along the lines of the 2022 Proposal.

(iii) Has there been a material change of circumstances justifying a variation of or a departure from the order of 9 June 2022?

113. The Trustee argued in the alternative that there has been a material change of circumstances justifying a variation of or departure from the order of 9 June 2022.

114. The Trustee has not applied to vary or discharge the order. She contended that a formal application was not required and relied on the decision of Nugee J in *Kea Investments Ltd v Watson* [2020] EWHC 472 (Ch). That case had a long and complicated procedural history. Simplifying a little, the claimant, C, had obtained judgment against the defendant, D. C then brought claims against two third parties, R, contending that they held assets as nominees for D and that a receiver should be appointed over those assets by way of equitable execution of the judgment debt owed by D. C obtained interim freezing orders against R. There was a brief argument at that stage in the proceedings about whether the orders should give R the right to pay their legal costs. The judge decided that the claims were not proprietary in nature and allowed the payment of the legal costs, applying the usual principles for freezing orders. Later C made an application for the freezing order to be varied to extend to certain further assets held in the name of R. R made an application for a variation of the original order to allow certain specified assets to be used for their legal costs.

115. There were therefore cross-applications. These raised a common question, namely, whether R should be permitted to spend certain specific assets on legal costs – and this raised the issue whether the court should apply principles applicable to *Mareva* orders on the one hand or to proprietary injunctions on the other. R contended that the judge had decided this legal issue at the original hearing and that it was not open to C to seek to re-open it.

116. The judge decided that the question whether C could re-argue this issue depended on the principles derived from *Chanel v Woolworth* [1981] 1 WLR 485 and later cases:

namely whether there had been a significant change in circumstances or the party had become aware of facts which he could not reasonably have known, or found out, in time for the earlier hearing. The judge then applied these principles to the applications by C and R. He concluded that C had failed to show that there had been a material change in circumstances justifying a variation to the original freezing orders. As to the application by R, to permit R to use certain specific assets for the payment of its legal expenses, the judge concluded that it was R which was asking to disturb the existing regime provided for in the original freezing order and that it was therefore for R to show that there had been a material change of circumstances justifying such a variation. If R was able to do this, there was nothing to prevent C from arguing, as a respondent to the application, that the principles for proprietary claims should apply (contrary to the decision underlying the court's original freezing order).

117. I do not consider that *Kea* establishes that it is generally open to a party in the position of the Trustee in the present case to invite the court to ignore or act in a way contrary to its earlier orders in the absence of an application by that party to vary or discharge the earlier order. It shows only that where an order has been made in favour of a party (A) and the respondent (R) seeks a variation of it, it may (depending on the specific facts) be open to A to re-open issues which were decided against A on the earlier occasion. That is not this case. Here Mr Bedzhamov is seeking a further order giving effect to an existing order of the court and is not seeking to vary or discharge it. The Trustee is effectively inviting the court to disregard the earlier order. I am not persuaded that the Trustee can do so without applying to discharge or vary the earlier order. However for the reasons given below I do not need to decide this issue now and will proceed to consider whether there has been a relevant material change of circumstances.

118. I turn to the Trustee's submissions that there has been a material change in circumstances justifying a departure from the 9 June 2022 order.

119. The Trustee argued first that the permission contained in the 9 June 2022 order has lapsed. She said to start with that it has lapsed through mere effluxion of time. I have already rejected this argument. The Trustee argued next that after June 2022 Mr Bedzhamov sought to sell the Property in a straight sale to third parties. I do not consider that that has the effect of bringing the 9 June 2022 order to an end. There is no inconsistency in Mr Bedzhamov having sought different modes of sale.

120. The Trustee next argued that Mr Bedzhamov failed to produce contractual documents to implement the April 2022 approval despite informing the court that it would do so. Again this is not a material change in circumstances which undermines the 9 June 2022 order: it is no more than a repetition of the argument based on the passage of time.

121. The Trustee submitted next that the Trustee's legal claims had changed in four respects.

122. First, she has obtained permission to appeal to the Supreme Court and is preparing for a hearing in November 2023. However Falk J took account of this factor in the May 2022 judgment (see paragraph 10). Indeed the pending application for permission to appeal was one of the reasons advanced by the Trustee for persuading Falk J that she apply the principles concerning proprietary injunctions (see paragraph 36).

123. Second, the Trustee contends that she has now been recognised, as a result of the judgment on the Remittal. This is not a relevant change. Falk J proceeded on the

precautionary basis (which was favourable to the Trustee) that the principles for proprietary claims should be followed.

124. Third, the Trustee says that the recognition of her position after the Remittal order means that the Proceeds Application has now been made whole. This is essentially a repetition of the same point. Falk J was fully aware of the Proceeds Application at the time of the May 2022 judgment.

125. Fourth, the Trustee emphasised that she now has extant proceedings against CGL in respect of the charge. I do not consider this is a material change. The new CGL proceedings would not have affected Falk J's decision to apply the principles applicable to proprietary claims - a decision which was favourable to the Trustee. Moreover the judge was aware that the Trustee was claiming that CGL was ultimately owned by Mr Bedzhamov (see eg paragraph 101). While the judge noted at paragraph 103 that at the date of hearing there was no extant claim, I do not consider that the existence of such a claim would have made any material difference to her decision in May 2022.

126. The Trustee's next submission was that the current proposals are very different from those considered in the May 2022 judgment. She emphasises in particular that the costs of funding have increased from some £37m to some £51m. I have already addressed this submission above when considering whether the current proposals are along the lines of the earlier ones. I am not persuaded that the changes in the proposals amount to a material change of circumstances so as to justify a departure from the earlier order. There have been changes in the fees and funding costs, for the reasons explained earlier. Most significantly the financing costs have increased in line with changes in interest rates and the need for some mezzanine funding.

127. For these reasons I have concluded that there has been no material change of circumstances justifying a departure from the order of 9 June 2022.

128. The Trustee effectively invited the court to address the March 2023 application afresh and as if there had been no earlier decision of the court approving a sale of the Property in principle. Mr Bedzhamov said that the March 2023 application was seeking to give effect to the 9 June 2022 order. The exercise for the court at this hearing was to determine whether the current proposal was along the lines of the 2022 proposal and, if so, whether there are any reasons of detail why the sale should not go ahead.

129. In the light of the answers to issues (i) to (iii) above, I prefer the submissions of Mr Bedzhamov on this question. The court should uphold and give effect to its earlier order of 9 June 2022. The Trustee has not persuaded me to disregard or vary that order on grounds of changes in the circumstances, and I have also decided that the present proposals fall within the scope of paragraph 1 of that order. In my judgment the court on the present application should seek to give effect to the 9 June 2022 order and incline towards granting permission unless, on considering the up-to-date evidence and the detailed terms of the proposal, there are now reasons for refusing permission.

(iv) What conclusions can be drawn from the evidence about valuation, and the counterfactual of the sale not proceeding?

130. It is helpful to consider these parts of the evidence under a separate heading before turning the remainder of the evidence.

131. The question of valuation has two aspects: how much might be realised for the Property undeveloped; and the likely value of the Property if developed in accordance with the current proposals.

132. The Trustee has served a report from an expert surveyor, Ms Hammonds, which addresses both issues. The Trustee also relies on evidence from Mr Cooper, an experienced insolvency practitioner, about the steps a CAR would take to sell the Property. Mr Bedzhamov relies on evidence from Mr Van den Heule of FW and on informal indications of value provided by estate agents including Savills and Mr Bailey of Knight Frank (**KF**).

133. Starting with the value of the Property in its undeveloped state, the Trustee relies on the evidence of Mr Cooper and Ms Hammonds.

134. Mr Cooper says in his first statement that if he were to be appointed as a CAR over the Property he would seek to market it to potential developers using an experienced firm of agents such as KF. A CAR would be able to sell to a developer. Mr Cooper says that he has been assisted by Mr Bailey of KF, who has previously been involved in attempts to sell the Property. Mr Cooper accepts that GE would need to be involved in any sale, but says (having spoken to Mr Bailey) that FW does not have as special or unique position with GE as they make out. He says that FW is one of numerous businesses operating in this part of the market. He says that he does not think that there is a probable risk of forfeiture of the existing lease. He says that with the assistance of experts like KF a more favourable outcome than the current proposal may be capable of being achieved. This suggests that Mr Cooper, with the support of Mr Bailey, was saying that a return greater than £35m might be possible.

135. This evidence must be treated with some caution. Mr Van den Heule contacted Mr Bailey who produced some emails he had sent to Mr Cooper concerning the contents of the witness statement. Only a selection of the emails has been provided and the Trustee has not provided the full chain – relying on a generalised and unexplained claim of privilege in respect of emails between Mr Cooper and Mr Bailey.

136. The emails which have been produced show the following:

(i) As to the possible price, Mr Bailey says he "certainly wouldn't want to suggest we can achieve circa 35m, not least the seller has already tried for a couple of years to achieve around this level, without success, and the market is not where it was when purchased. By my initial calculations it is more likely a sale could achieve either side of circa £30m (this is clearly a figure provided for marketing purposes and not to be relied on as any form of valuation)."

(ii) As to the position of FW, Mr Bailey says, "[m]y recommendation remains that FW are likely the best placed at the current time to execute, subject to confirmation of their funding. Even if FW are not ultimately in a unique position, you could say they are right now. So I would support the FW route, within a reasonable timescale."

137. The disclosure of these emails led Mr Cooper to serve a second witness statement. He accepts that FW is in the driving seat for any deal to be concluded with GE, that it "has the edge over any alternatives with regard to GE," and that FW has the edge at the

moment and that it is best placed to execute a deal". He maintains however that the FW proposal is not "the only game in town". He accepts that he has not suggested that KF could achieve a sale of £35m or any specific price. He says at paragraph 16 that the consent of GE is required and agrees that if FW's plans were disrupted this might not encourage GE. But he says that GE is a commercial business seeking a commercial solution and that it will do a commercial deal.

138. Mr Cooper also makes a comment about timing. He rejects the idea – stated in Mr Bedzhamov's evidence - that it might take 18 months before a CAR could be appointed. He says that in his experience the court can appoint a receiver far more rapidly. This suggests that Mr Cooper has been asked to assume that a CAR would be appointed at once – but this ignores the period of time which is likely to elapse before any such appointment could realistically be made.

139. Ms Hammonds is a chartered surveyor. She has provided a valuation report based on the concept of Market Value: ie, the estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and seller in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion. She explains that she is not an estate agent and that she is not personally active in the market; she has what she calls an "ivory tower" position.

140. She values the Property in its undeveloped state at £35m. This is based on two methods - an assessment of comparables and a residual valuation. It is on the assumption that a purchaser would receive a long lease from GE on completion of the development. Ms Hammonds does not assess the risk of GE refusing to agree to the purchaser having a long lease. She says:

> "5.1.1 The above valuations require various assumptions: certainty regarding the lease term, certainty regarding landlord consent, etc. These are false certainties, but are necessary to produce a meaningful valuation.
>
> 5.1.2 However they miss certain key features of the factual situation. These are impossible to value as there is no reference point – they are unique to the Property and the background."

141. As to the value of the Property as developed, using a comparable method and making various evaluative adjustments, Ms Hammond arrives at a value of £76.5m.

142. Mr Bedzhamov has not served any evidence from a valuer. However Mr Van den Heule has made some comments about value. Mr Bedzhamov's case is that the value of £76.5m is pessimistic and that the Property is likely to have a developed value closer to £85m.

143. Ms Hammond also comments on the risk of forfeiture. She says that she believes that Mr Bedzhamov is in material breach of the repairing covenants of the existing lease; that relief from forfeiture is a legal matter; and that in her own dealings with GE (on other matters) she cannot recall forfeiture ever being mentioned. She also says that she does not know how or why she would have been involved in a forfeiture matter with GE.

144. As to the possibility of GE doing a deal with another party Ms Hammonds says that she has spoken to Mr Crighton of GE who has said that because of the length of time for the negotiations thus far, Mr Crighton and FW are both anxious to avoid wasted effort. While FW remain in the picture, GE will not discuss with other parties. However Mr Crighton did not rule out the same deal being available to another party in the future.

145. As I have explained, Mr Bedzhamov relies on evidence from Mr Van den Heule and on the emails from Mr Bailey.

146. In the light of the evidence taken as whole I have reached the following conclusions (which are necessarily provisional given the nature of the hearing).

147. First, it is unlikely that a CAR could be appointed within the next 12 months. The appeal to the Supreme Court is listed for late November 2023. It is likely that judgment will not be given for some months. It was common ground that if the Trustee succeeds in the appeal there would have to be a further hearing at first instance to decide on whether the court should exercise its discretion in her favour in relation to the appointment of a receiver.

148. Second, the value of Mr Bedzhamov's interests in the Property depends critically on whether GE is prepared to agree that any purchaser will be entitled to a long lease (whether at once or on completion of the development). It is common ground that the Agreement for Lease is not assignable. Moreover it is only exercisable by Mr Bedzhamov on completion of the development. There is no prospect of Mr Bedzhamov himself developing the Property. Absent consent from GE, the only interest of Mr Bedzhamov is in the stub of the existing lease.

149. Third, on the evidence GE is prepared in principle to grant a long lease to the SPV if the proposed sale is permitted.

150. Fourth, it is unclear that GE would be prepared to agree to the grant of long lease to another developer under a fresh sale proposal. GE's current willingness to give consent must be seen in the context of (a) Mr Bedzhamov having the benefit of the Agreement for Lease, for which he paid a very substantial premium to GE, and Mr Bedzhamov supporting the sale to the SPV and (b) the prolonged negotiations between FW and GE, which have all been conducted against the background of the Agreement for Lease – FW effectively promoting the development on behalf of Mr Bedzhamov. Mr Bailey (on whom Mr Cooper has relied) has explained that even if FW are not ultimately in a unique position, they are in a special position at the moment. Mr Cooper has accepted that FW have the edge and are likely to be the best placed currently to execute.

151. Mr Cooper explains that GE are a commercial business looking to make commercial returns. As already explained, Mr Bedzhamov paid a very large premium for the Agreement for Lease. The proposed deal with FW can be seen as a way of carrying out the development set out in the Supplemental Deed, and therefore as a way of giving effect to the commercial deal struck with Mr Bedzhamov and for which he paid a substantial amount to GE. FW has been involved in discussing the development with GE throughout and the proposed sale to the FW-owned SPV can be seen as part of those continuing discussions. It seems to me that there is a real possibility that, if faced with a different deal with another developer (in more than 12 months time), GE would consider that it was in a new negotiation and would seek a substantial payment as the

price of its consent. GE would essentially be seeking a slice of the economic cake. Were that to happen the premium payable to GE would have to be deducted from the value that would accrue to Mr Bedzhamov (or any CAR). The risks of GE requiring an additional premium cannot be precisely assessed but, as Ms Hammonds says, there is uncertainty as to whether it will agree a further lease in favour of a purchaser.

152. It is impossible to know to the amount of any such premium. Ms Hammond agrees that the extent of this risk is incapable of quantification as there is no yardstick. It seems to me that the court should proceed on the basis that the risk is a real and substantial one and that any premium would be substantial.

153. Fifth, the undeveloped Property (assuming the grant of a long lease) may be worth in the region of £35m. However there is a real possibility that it is worth less than that. Mr Bailey, who knows the Property and the market well, suggests that it is more likely a sale could achieve either side of £30m. He does not suggest that it is likely to achieve as much as £35m. There is therefore a real risk that on a sale by CGL it would achieve less than £35m (even assuming that GE is prepared to grant a long lease without extracting a substantial premium).

154. Sixth, there is a range of possible values of the Property once developed. I shall proceed on the basis that Ms Hammond is correct in valuing it at £76.5m. On that basis CGL will receive the £23m it has agreed to postpone to Mr Bedzhamov and the lenders, but not much more.

155. Seventh, it appears to me that there is some risk of GE seeking to forfeit the existing lease. It is hard to assess the extent of this risk. It is common ground that Mr Bedzhamov is in breach of the repairing covenants in the lease. I do not think that Ms Hammond's evidence about the chances of forfeiture is of much weight given the limitations of her experience. The Trustee says that the risk must be low given that GE has not sought to forfeit to date. But that is against the background of the continuing negotiations with FW and the prospect of a sale taking place. It is possible that if negotiations with FW are brought to an end and there is no prospect of another sale for (say) another year, GE's patience may run thin. The Trustee says that it will be open to Mr Bedzhamov or CGL to apply for relief from forfeiture. But in order to do that they will have to undertake to put right any defaults and pay any outstanding costs and relief will not necessarily be granted. It is also relevant here that Mr Bedzhamov is subject to the WFO and there may well be issues about his ability to pay for repairs and costs. Moreover if relief were to be granted in favour of CGL rather than Mr Bedzhamov, that would do nothing to preserve value since the Agreement for Lease (which is not assignable – and in which the bulk of the value resides) would remain with Mr Bedzhamov.

156. Eighth, for these various reasons, there is a substantial risk that if the current sale proposal does not go ahead there will be a serious loss of value for Mr Bedzhamov - and his estate, whoever may turn out to be entitled to it.

(v) In the light of the history and material now before the court should the court now approve the proposed sale and development of the Property?

157. To recap, the 9 June 2022 order, which approved the principle of the sale of the Property to an SPV, remains effective and the current proposals fall within the scope of that

order. I have also concluded, as did Falk J in May 2022, that there is a substantial risk that if the current proposal does not proceed there will be a serious loss of value.

158. One of the main concerns raised by the Trustee at the hearing in April 2022 concerned the identity of the SPV and the lenders – it was suggested that they may be associated with Mr Bedzhamov. Their identity has been disclosed to the Trustee's legal team and there has been no suggestion that they are associated with Mr Bedzhamov.

159. The Trustee nonetheless opposes the sale and contends that the Property should remain preserved by the freezing order. I have already addressed and rejected a number of the Trustee's objections.

160. There remain the following submissions: (a) that Mr Bedzhamov has not shown that he has any interest in the Property; (b) that Mr Bedzhamov's application has not been brought in good faith because he is connected with CGL; (c) that on a final sale CGL may not obtain even the £23m it has agreed to postpone to allow the payments to Mr Bedzhamov; (d) that Mr Bedzhamov has not established that he does not have access to other funds to pay his legal costs; (e) that to permit a sale would undermine the appeal to the Supreme Court; and (f) that there is insufficient urgency to justify a sale before the hearing of that appeal.

161. As to objection (a), the Trustee argues that under the current value of the Property at £35m, Mr Bedzhamov has no economic interest in it. There is the £5m charge in favour of MdR and a £30m charge in favour of CGL. Mr Bedzhamov therefore has failed to show that he has an arguable claim to the Property. He has therefore failed to meet one of the conditions for seeking a variation of the freezing order (which is to be seen, according to the Trustee, as supporting a proprietary claim). I do not find this persuasive. Mr Bedzhamov currently has the benefit of the lease and the Agreement for Lease. The Trustee is claiming these interests. Her claims are disputed. The fact that Mr Bedzhamov may have charged his interests under the lease does not mean that he does not have an interest. Moreover one of the consequences of the proposal is that monies will be released to Mr Bedzhamov. These will arise as a result of his interests in or in respect of the Property.

162. As to objection (b), the Trustee submits that there are strong grounds for thinking that Mr Bedzhamov is connected with CGL and that CGL is only agreeing to the postponement of its interests because it is acting on Mr Bedzhamov's directions. It appears to me that nothing has changed in this regard since the application before Falk J in April 2022. As already explained it was common ground then that the Trustee was saying that Mr Bedzhamov was the beneficial owner of CGL or that the charge was a sham. Moreover the Trustee has accepted (as recorded in the 14 February 2023 order) that she is not seeking by bringing the CGL claims to undermine the May 2022 judgment or the 9 June 2022 order.

163. Another way of putting this point is that the Trustee is seeking, by opposing the sale, to have the best of different and inconsistent worlds. She says on the one hand that CGL and Mr Bedzhamov are really the same person and that Mr Bedzhamov has not come clean. On the other hand she relies on the assertion for other purposes that CGL is separate from Mr Bedzhamov and that CGL's rights as chargee should be fully protected and preserved. Her overall position has been that everything should be done to maximise the return to CGL as she says that ultimately she will be entitled to CGL

(as property of Mr Bedzhamov). It appears to me that Falk J was making this point in paragraph 28 of her May 2022 judgment. At any rate it appears to me that the Trustee's objection is not a new point. To the extent that it was not articulated as an issue of good faith, it could and should have been raised and run before Falk J in May 2022.

164. As to objection (c), it appears to me that the court should proceed on the basis of Ms Hammond's valuation of £76.5m, even though this may be somewhat conservative. On a sale at that price, there would be sufficient to pay CGL the amount of its postponed £23m after payment of the other costs of the development. There is some force in the Trustee's argument that market conditions may change adversely and that the costs of the development may exceed the estimates. On the other hand the market may improve and the development may be brought in under budget. It is in the interests of FW to achieve that, given its profit share. There is some risk that CGL will not recover the full £23m, but equally there is a prospect that it will do better.

165. In any event, one must weigh the risk of CGL failing to recover the full £23m on the one hand against the risks of loss of value to Mr Bedzhamov and his estate in the counterfactual of the sale not going ahead now. As already explained in substance the value to Mr Bedzhamov resides in the unassignable Agreement for Lease – and in the willingness of GE to agree to an assignment or grant of a long lease without requiring a substantial premium. I have concluded that there is a real and substantial risk that if the current sale goes off there will be a hiatus of a year or so and that GE will require a premium for its consent to a different deal with another purchaser.

166. As to objection (d), the Trustee says that the question whether a sale should take place cannot be divorced from whether Mr Bedzhamov has demonstrated that he has no other assets from which the pay the costs. However it seems to me that this submission is not consistent with the case management directions given by the court previously. The present application is not concerned with the payment of any part of the proceeds to Mr Bedzhamov or his creditors. As a result of the directions given by the court on 21 April 2023 the purpose of this hearing is to determine whether a sale should take place, with all questions concerning the distribution of any proceeds to await a further hearing.

167. I would accept that if there were no other persuasive reasons for saying that the proposed sale should take place at this stage, the Trustee's objection might have more force. But as indicated by the court in April 2023 a key issue is the preservation of the value of the Property. For the reasons I have already given, there is a real and substantial risk that if the present proposal is not progressed there will be a diminution in the value of Mr Bedzhamov's interests in the Property. It seems to me that there was in April 2023 and is now a compelling reason to address the issue whether a sale should take place separately from issues concerning the distribution of the proceeds. Hence any permission for the sale to proceed should be on terms preserving the proceeds pending further order.

168. In this regard, I also take into account the factor mentioned in paragraph 77 of the May 2022 judgment: that the Trustee has not herself sought or obtained any freezing injunction and has not offered a cross-undertaking in damages.

169. Falk J saw this as relevant to the exercise of her discretion. It appears to me to be an important point. A cross-undertaking in damages is generally required as the price of obtaining an interim injunction to preserve property. This is for good reason: if a

disposal is prevented and as a result the respondent suffers loss, they have recourse to compensation.

170. Moreover the cross-undertaking is of course part of an injunction; the mere assertion of a proprietary claim does not prevent a defendant to the claim disposing of property but equally the defendant cannot claim compensation from a claimant who makes a claim in the absence of a cross-undertaking.

171. In the present case there is a freezing order but it is in favour of a party, VPB, which does not object to the variation sought by Mr Bedzhamov. If Mr Bedzhamov were to claim under the cross-undertaking, VPB would doubtless say that, given its non-opposition to the variation, it was not responsible for any loss.

172. By contrast, the Trustee, as the party which is seeking to object to the sale has not sought an injunction of her own and has not offered a cross-undertaking, despite the point being raised at the hearing. The Trustee is effectively seeking to get the benefit of an injunction without paying the usual price. There is a real prospect that if the proposed sale were to be stymied and Mr Bedzhamov suffered a loss, he would have no effective recourse, which is potentially unjust.

173. As to objection (e), I do not think that allowing the sale would render the appeal to the Supreme Court nugatory and in any event do not think this is a sound objection. First, the appeal to the Supreme Court includes the set aside application in respect of the order of 5 March 2021 pursuant to which the MdR charge was created. Second, the decision of the Supreme Court on the question of principle may well have an important bearing on the Proceeds Application. Third, there are questions of costs. Fourth, this is not a new point. It was available to the Trustee at the time of the hearing in April 2022.

174. As to objection (f), the Trustee contended that there was no real urgency or need for a sale now. She contended that the sale could await the outcome of the appeal to the Supreme Court. I have already addressed the evidence about the no-sale counterfactual above. Supposing, in the Trustee's favour, that she succeeds in her appeal, it is unlikely that there could be an application for the appointment of a CAR for a least a year from now. The existing sale proposal involving FW will have died. Any CAR would then need to identify a willing third party developer, which could take several months, and would need to engage in entirely fresh negotiations with GE. The CAR would be starting from scratch, albeit possibly with the assistance of an estate agent with knowledge of the Property. The remaining stump of the existing lease will be at least a year shorter. If the Property is left undeveloped for another year or more the Property is likely to fall into worse repair and there is the unquantifiable but material risk of forfeiture action by GE. If things pan out along these lines, there is a real and substantial chance that GE will regard any proposals requiring its consent as a new commercial negotiation for which it will seek a premium. It appears to me of significant importance that GE will no longer be dealing with the FW/Mr Bedzhamov proposal, but with an entirely new commercial deal involving a third party developer. Moreover the evidence suggests that a CAR may not be able to realise as much as £35m for the Property even assuming that GE was prepared to grant a long lease.

175. For these reasons there is a real risk that if the proposed sale does not proceed there will be a loss of value for Mr Bedzhamov and/or his estate. There is also a risk that if the proposal is further delayed for a year or so, the various parties, including the proposed

lenders will simply walk away. Importantly, a sale now will remove the uncertainty about the grant of a long lease by GE. As Ms Hammonds said, it is not possible to assess that uncertainty: but it is likely to have a substantial impact on the value of the Property.

176. Moreover it must not be forgotten that the principal reason for the application for the variation of the WFO was to enable Mr Bedzhamov to pay his legal costs in the proceedings by VPB and the Trustee. Falk J concluded that in principle he should be entitled to sell the Property in order to raise funds for such purpose. She did not of course make any order for the distribution of any proceeds and that matter has been reserved. But if the Trustee's objections were to prevail, the Property would remain frozen for at least another year and there would be no prospect of Mr Bedzhamov having resort to it for the payment of his legal fees. That outcome would to my mind frustrate the purposes of the order of 9 June 2022.

Conclusions

177. For the above reasons I have concluded that the court should vary the WFO to permit the proposed sale along the lines explained in the evidence for this application. All issues concerning the distribution of the proceeds of any such sale will be addressed at a further hearing.