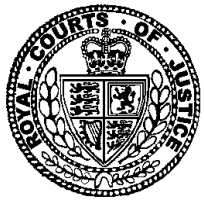

Neutral Citation Number: [2017] EWHC 2906 (Comm)

Case No: CL-2009-000212 and CL-2011-000510

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
COMMERCIAL COURT (QBD)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/11/2017

Before :

SIR ROSS CRANSTON

- -

Between :

JSC BTA BANK	**Claimant / Applicant**
- and -	
MUKHTAR ABLYAZOV	**1st Defendant**
- and –	
(1) SALIM SHALABAYEV	**Respondents**
(2) BENSBOUROGH TRADING INC	

- - - - - - - - - - -- - - - - - - - - - - - - - - - - -

Stephen Smith QC (instructed by **Hogan Lovells International LLP**) for the **Claimant / Applicant**
James Sheehan (instructed by **Cripps LLP**) for the **First Respondent**

Hearing dates: 3-5 October 2017

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

SIR ROSS CRANSTON

Sir Ross Cranston :

I Introduction

1. This is a trial directed by the Court of Appeal in an order dated 7 October 2016. The issue is the beneficial ownership of a flat in the St John's Wood area of London known as 17 Alberts Court, Palgrave Gardens ('Alberts Court') and of the shares in its registered proprietor, the second respondent, Bensbourogh Trading Inc ('Bensbourogh'). The first respondent, Mr Salim Shalabayev ('Mr Shalabayev'), is the sole shareholder in Bensbourogh, which has never held other property. His wife is Mrs Shiray Shalabayeva.

2. The claimant, JSC BTA Bank ('the Bank'), is a Kazakhstan bank. The first defendant, Mr Mukhtar Ablyazov ('Mr Ablyazov'), is the former chairman of the Bank. The Bank has pursued him for what are said to be misappropriated funds whilst he was chairman, totalling some US$ 5 billion. Mr Ablyazov is Mr Shalabayev's brother-in-law, being married to his sister, Alma. Mr Shalabayev has an older brother, Mr Syrym Shalabayev ('Syrym'), whose wife is Aigul. The brothers are close: they spoke to each other during the course of the trial and Mr Shalabayev's evidence at the hearing was that he trusted his brother more than anyone else.

3. The Bank's case is that Bensbourogh and Alberts Court are beneficially owned by Mr Ablyazov, and it seeks a final charging order over Alberts Court as a means of enforcing judgments entered in its favour against him in November 2012, amounting to over £1 billion. The Bank has the burden of establishing Mr Ablyazov's beneficial ownership.

4. Mr Shalabayev's case is that he is the legal and beneficial owner of Bensbourogh and the ultimate beneficial owner of Alberts Court. In other words, the formal position in relation to the property is the true position.

II PREVIOUS PROCEEDINGS
An outline of previous proceedings

5. This trial has a lengthy procedural background. There is no need for a detailed account of that background in light of Popplewell J's helpful account in *JSC BTA Bank v Ablyazov* [2014] EWHC 2788 (Comm); [2014] 2 C.L.C. 263, [4]-[39]. However, some history is necessary so that references later in this judgment to previous proceedings, and the documents and evidence adduced in them, are more easily understood.

6. The procedural background begins in August 2009, when the Bank commenced proceedings in the Commercial Court against Mr Ablyazov and others alleging the misappropriation to which reference has already been made. Mr Shalabayev was not a party to those proceedings. The Bank obtained a freezing order against Mr Ablyazov, which became an unlimited worldwide freezing order in November 2009. In February 2010 the Bank sought a receivership order in respect of Mr Ablyazov's assets, which was granted by Teare J in August 2010. Mr Ablyazov appealed that order without success. The order has been amended over the following years.

7. In the course of the proceedings against him, Mr Ablyazov explained in his third witness statement in April 2010 how he held his assets:

> "'229. ... the bulk of my assets are held through nominee arrangements. …
>
> 237. The typical way this operates is as follows: an asset (for example a piece of real estate) is recorded as being owned by a company situated in an offshore jurisdiction, for example, Cyprus. That company's shares are owned by a further company or companies located in one or more other jurisdictions, for example, the Cayman Islands and the Seychelles. The shares in those companies are in turn registered in the name of an individual in whom I repose my trust and confidence, Mr X, and with whom I have a mere oral agreement.
>
> 238. That means that, if the Kazakhstan Government instructs someone to follow the 'paper trail' underlying the assets, that trail will, hopefully, never reach me. Indeed, if all goes according to plan the chain of nominee companies will provide sufficient protection (particularly in jurisdictions where there is no requirement to disclose shareholder identity) so that the trail will not even reach Mr X. Even if it does, though, there can be no connection established between myself and Mr X because our agreement is often a purely verbal one, and Mr X is loyal to me."

8. As Popplewell J noted in *JSC BTA Bank v Ablyazov* [2014] EWHC 2788 (Comm); [2014] 2 C.L.C. 263, it subsequently emerged that one of his main nominees for such purposes was Mr Syrym Shalabayev, through whom Mr Ablyazov held beneficial interests in a very large number of companies whose existence and assets he wished to conceal from the Bank and the court: at [13].

9. In May 2011, the Bank sought to commit Mr Ablyazov to prison for contempt of court for failing to disclose his assets in breach of court orders ('the Committal Hearing'). Mr Shalabayev was not a party to the committal application. However, at the trial in November and December 2011 he gave evidence, along with Mr Ablyazov and his brother, Syrym. Mr Shalabayev was cross-examined over the course of two days, including as to the true ownership of Bensbourogh and Alberts Court. In the course of that evidence he said that he was the true owner. He also said that he did not own any other companies outside Kazakhstan, apart from Bensbourogh.

10. Teare J held to the criminal standard of proof that Mr Ablyazov was guilty of contempt of court: [2012] EWHC 237 (Comm). In the course of his judgment, he found in particular that Mr Ablyazov did not mention the central role played in the administration of his assets by Mr Alexander Udovenko and by Mr Syrym Shalabayev: [79],[179]–[184]. Teare J upheld most of Bank's allegations, including that Mr Ablyazov was the ultimate beneficial owner of a number of properties in London, not Mr Syrym Shalabayev, as both Mr Ablyazov and Syrym himself claimed. One is a large house on The Bishop's Avenue, Hampstead, known as Carlton

House, purchased for £15.5m ([147], [238]), another an estate in Surrey, known as Oaklands Park, purchased for £18.15m: [158], [239]. Teare J also held that a company, Sunstone Ventures Ltd ('Sunstone') was administered by Mr Syrym Shalabayev for Mr Ablyazov ([129]–[132]), and that Mr Ablyazov was the beneficial owner of another company, FM Company Ltd ('FM Company'): [191], [242].

11. Teare J also held that Mr Ablyazov was the beneficial owner of Alberts Court: [2012] EWHC 237 (Comm), [165]-[173], [240]. However, he found that that was not the case with another flat in the same development, 79 Elizabeth Court ('Elizabeth Court'): [159]-[164].

12. Mr Ablyazov appealed the committal order but the Court of Appeal dismissed the appeal: [2012] EWCA Civ 1411; [2013] 1 WLR 1331. Rix LJ (with whom on this aspect Toulson and Maurice Kay LJJ agreed) said:

> "[82] I would again conclude that the judge's reasons for his conclusions are compelling. I have again considered the written submissions carefully, but cannot find in them any reason for doubting the judge's analysis. No error of law is relied upon. There is again an attempt completely to reargue the trial, down to the smallest details. I would come to the same conclusions as the judge myself, and be sure of them, although that is not the test. I do not consider that the conclusions are in any way unsafe."

13. Rix LJ said this of Sunstone and FM Company:

> "[87]…As to Sunstone, Mr Ablyazov accepted in evidence that Sunstone held his interest in TechStroy Alyans for his benefit. It is true that Syrym Shalabayev said he was the beneficial owner of Sunstone: however in circumstances where Syrym was disbelieved in relation to the source of the proceeds paid by Sunstone for Carlton House (which Syrym said came from the proceeds of his uranium business but which the judge found came from the proceeds of Mr Ablyazov's uranium business), the compelling inference is that Sunstone was indeed Mr Ablyazov's company…
>
> [91]…it is submitted that the judge ought not to have rejected the evidence that FM was Syrym's and not Mr Ablyazov's company, nor the evidence that Bergtrans and Carsonway were Mr Kossayev's and not Mr Ablyazov's companies. A comparison of this list of challenges with the judge's findings and analysis set out earlier in this judgment demonstrates how much this appeal is simply an attempt to reargue each of the judge's assessments of the oral and written testimony and the documents (or absence of documents) at trial.

> [92] However, in my judgment, this goes nowhere. It is impossible for this court to gainsay the judge's rejection of the credibility (both overall and on this subject-matter) of Syrym Shalabayev and Mr Ablyazov…there was not the slightest documentary evidence to support the account which Mr Ablyazov gave of how the large-scale transactions between FM and Ablyazov companies were generated by Syrym's wealth."

14. As to Mr Ablyazov, Rix LJ said:

> "[106] Mr Ablyazov's contempts have been multiple, persistent and protracted, have embraced the offences of non-disclosure, lying in cross-examination and dealing with assets, and have been supported by the suborning of false testimony and the forging of documents."

15. Maurice Kay LJ agreed:

> " [202] It is difficult to imagine a party to commercial litigation who has acted with more cynicism, opportunism and deviousness towards court orders than Mr Ablyazov."

16. Following the Committal Hearing, the Bank applied successfully to debar Mr Ablyazov from defending its claims on the basis of non-compliance with an unless order requiring him to surrender to custody and give further disclosure of his assets. Judgment was entered against Mr Ablyazov for approximately £1 billion on 23 December 2012. On the back of that order, the Bank obtained an interim charging order over property, including Alberts Court. There was to be a final charging order hearing on 17 May 2013.

Immediate background to the present hearing

17. Mr Shalabayev applied to intervene at the final charging order hearing regarding Mr Ablyazov's assets on the basis that he was the true, ultimate owner of Alberts Court. Teare J held on 17 May 2013 that Mr Shalabayev's intervention amounted to a collateral attack on the previous findings at the Committal Hearing. He refused to postpone the hearing and made a final charging order: *Shalabayev v JSC BTA Bank* [2013] EWHC 1836 (Comm).

18. On 18 October 2013 Eder J imposed a sentence of imprisonment on Mr Shalabayev for contempt of court in the course of the Ablyazov litigation.

19. In *JSC BTA Bank v Ablyazov* [2014] EWHC 455 (Comm) Teare J reconsidered Mr Ablyazov's beneficial ownership of the shares in the immediate owner of Elizabeth Court, Rocklane Properties Ltd ("Rocklane"), in the light of new material. Teare J held:

> "16 In my judgment the Bank's case is now compelling. It is now plain that Mr. Terenov was no more than a nominee for Mr. Ablyazov, just as Mr. Udovenko, Syrym Shalabeyev and Salim Shalabayev had been before him. The suggestion that the

> shares in Rocklane Properties had been purchased by Syrym Shalabayev can now be seen to be untrue…"

20. Of the evidence given by the brothers Shalabayev, he said:

> "17 The evidence given by the brothers Shalabayev at the committal hearing with regard to Rocklane Properties and the flat was untrue and must have been known by them to be untrue."

21. Mr Shalabayev successfully appealed the dismissal of his application to intervene in relation to the charging order: *JSC BTA Bank v Ablyazov (No 15)* [2016] EWCA Civ 987; [2017] 1 WLR 603. In her judgment, with which Jackson and King LJJ agreed, Gloster LJ stated that Teare J did not have available to him the later evidence produced by Mr Shalabayev in relation to the purchase of Alberts Court and the respective roles of his brother, Syrym, and himself: [49]. Moreover,

> "there was indeed evidence before the court that Mr Shalabayev had realised substantial amounts as a result of the sale of his interest in Bektas Group LLP, that, for perhaps understandable reasons, he wished to leave Kazakhskan and invest the proceeds of his investment elsewhere, that Mr Syrym Shalabayev had considerable experience of real estate investment in England, that Mr Shalabayev decided to rely on the former's experience and involvement to purchase the property and that transfers of funds had been made by Mr Shalabayev to his brother, Mr Syrym Shalabayev…It may be that the absence of the type of documentary materials now exhibited to Mr Shalabayev's ninth witness statement, which have recently been obtained from the conveyancing file of the solicitors who acted on the transaction, was a significant factor, but it also seems to me that the judge's conclusions in relation to the property were also significantly informed by his overall adverse views in relation to the general dishonesty and lack of credibility of Mr Ablyazov and also that of Mr Shalabayev. However, that did not mean that in relation to the particular issue of ownership of the property Mr Shalabayev was not telling the truth. If the story in relation to the dealings between the two Shalabayev brothers were indeed correct, it would not have been surprising that there was little contemporaneous documentary evidence to support the position."

22. Gloster LJ then held at paragraph [51]:

> "It is for a judge (other than Teare J) properly to evaluate the entirety of the evidence in its correct chronological framework in circumstances where the onus of proof is on the Bank to establish its case. It is for a judge of first instance, not for this court, to determine what the totality of the evidence shows and, in particular, whether the 2015 evidence indeed supports Mr Shalabayev's case – as, at least at first sight, it appears to me to

> do. That analysis cannot properly be carried out on an appeal by reference to transcripts of the contempt proceedings and conclusions reached by Teare J in those proceedings, where the canvas of the matters at issue was so much broader and the focus of the proceedings was not who owned the property."

23. In accordance with that direction I considered the available documents and the evidence of two witnesses. For the Bank, there was the evidence of Mr Christopher Hardman, a partner at Hogan Lovells, who was the Bank's principal witness at the committal hearing. For Mr Shalabayev, Mr Sheehan said that he did not wish to cross examine Mr Hardman. Instead, he made written submissions about Mr Hardman's statement.

24. Mr Shalabayev gave evidence via a link from Warsaw over the course of a day and a half; as I said, he is subject to a sentence for contempt of court should he enter the jurisdiction. Unfortunately, for a significant period of his evidence, the picture was frozen. But with the consent of the parties, I decided that his cross-examination could continue with the sound alone. That evidence was translated by a Russian interpreter in the court in London. I have taken into account the consequent difficulties he faced in giving evidence. I have also taken into account his explanations for the absence of relevant documents to back up parts of his account, that he has moved countries and cannot recall passwords for all the email addresses he has used. I note that in Warsaw Mr Shalabayev was in the company of a solicitor from the Bank's London solicitors, who assisted him to find documents in the bundles.

Admissibility of findings in previous proceedings

25. The admissibility of findings from some of the earlier proceedings was challenged by Mr Sheehan on behalf of Mr Shalabayev. The issue arose in particular as regards the source of funding for the purchase of Alberts Court, through Sunstone and FM Company, and Teare J's findings as to Mr Ablyazov's ownership of these companies. Mr Sheehan based his objection to the admissibility of these findings on the long established rule in *Hollington v F Hewthorn & Co* [1943] KB 587, that findings made in earlier court decisions are inadmissible since they represent no more than the opinion of the judge in the earlier case.

26. There can be no objection to reliance on the evidence referred to in earlier judgments, such as the contents of documents or the evidence of witnesses. In fact in this case the witness statements and affidavits, hearing transcripts and underlying documents from previous trials were available, so that recourse to the previous judgments for this purpose was largely unnecessary. Nor can there be objection in my view to a second category of case, where the court takes into account, in a like manner as it would any other factual evidence, statements of fact in earlier judgments, giving them such weight as it thinks fit.

27. Both possibilities were recognised in *Rogers v Hoyle* [2015] QB 265, which concerned the admissibility in a negligence action of a report on the accident by the Department of Transport's Air Accident Investigation Branch. At first instance, after a

careful consideration of the rule in *Hollington v F Hewthorn & Co*, Leggatt J held that the report was admissible. In the course of his judgment, he observed:

> "[105] It does not follow that there would be no advantage in a rule which treats findings of an earlier civil court as admissible in later proceedings. The problem of deciding how much weight should be given to such a finding only arises if evidence is adduced at the trial of the later proceedings to contradict it."

On appeal, Christopher Clarke LJ (with whom Arden and Treacy LJJ agreed) upheld Leggatt J on the admissibility of the report. He held:

> "[39] As the judge rightly recognised the foundation on which the rule [in *Hollington v F Hewthorn & Co*] must now rest is that findings of fact made by another decision maker are not to be admitted in a subsequent trial because the decision at that trial is to be made by the judge appointed to hear it ("the trial judge"), and not another. The trial judge must decide the case for himself on the evidence that he receives, and in the light of the submissions on that evidence made to him. To admit evidence of the findings of fact of another person, however distinguished, and however thorough and competent his examination of the issues may have been, risks the decision being made, at least in part, on evidence other than that which the trial judge has heard…
>
> [40] In essence, as the judge rightly said, the foundation of the rule must now be the preservation of the fairness of a trial in which the decision is entrusted to the trial judge alone…
>
> [48]…The [air accident] report is not a bare finding such as one of carelessness or ownership of a painting. The statements of fact contained in the report, eg as to the position of the wreckage or the reported observations of the eye witnesses, are evidence which the trial judge can take into account in like manner as he would any other factual evidence, giving to it such weight as he thinks fit."

28. Where Mr Sheehan for Mr Shalabayev drew the line was a third category, if the Bank sought to rely on findings of fact in the previous judgments in proceedings to which Mr Shalabayev was not a party, as evidence of the facts found. That was in direct conflict with what Christopher Clarke LJ had said in *Rogers v Hoyle*, who had based the rule on fairness. In his submission Eder J would have gone too far in accepting counsel's argument to that effect in *Otkritie International v Gersamia* [2015] EWHC 821 (Comm), [23] - that if a judge in a later case concludes that the matters of primary fact recorded in an earlier judgment justify the conclusions reached in that judgment, he or she was entitled to reach the same conclusion – if 'matters of primary fact' were taken to mean findings of fact. The phrase had to be interpreted to mean the factual evidence recorded in the previous case, to which reference could be made.

29. The rule in *Hollington v F Hewthorn & Co* turns on fairness. That accords with the Overriding Objective of the CPR of dealing with cases justly and at proportionate cost. In relation to the earlier findings about the ownership of Sunstone and FM Company, there is no unfairness to Mr Shalabayev in my accepting them in this case, even if they fall into the third category of case above. The findings were made after hearing the evidence of Mr Ablyazov and Syrym, which I did not hear, and submissions on the issue. That evidence was that these companies were Syrym's. In this case, certainly as to Syrym, he could have been called to give evidence. He was available during the hearing but was not called. Instead findings on the matter were left to me to be made on the basis of the available documents, the very limited evidence of Mr Shalabayev (who accepted that he had nothing to do with the companies), Mr Hardman's statement and Mr Sheehan's rather short, written critique of it. In these circumstances there is no unfairness to Mr Shalabayev in my giving considerable weight to Teare J's findings on the ownership of Sunstone and FM Company. I return to the issue below.

III DOCUMENTARY CHRONOLOGY

30. In accordance with the Court of Appeal direction for this trial, what follows is a chronology based on the relevant documents. To aid understanding, matters are not dealt with in strict chronology but chronologically under particular headings. The headings are the same used in the part of this judgment which summarises the evidence of Mr Shalabayev.

The Bektas Group

31. Recently produced by Mr Shalabayev is a contract between the mayor of the Akmolinsk region in Kazakhstan and what, in his evidence, was his company, Bektas Group LLC ('Bektas'). The contract has a registration number 98 and is dated 6 June 2003. The contract provides for the extraction of stone and sand from a site in Kazakhstan in the vicinity of the new capital, Astana, to be used in its construction. There is also a certificate dated 2 May 2004, and signed by Mr Shalabayev himself, showing him to be the sole shareholder of Bektas. (The Bank accepts that the contract is genuine, but its case is that Bektas was Mr Ablyazov's company, not Mr Shalabayev's. Mr Shalabayev's case is that he sold Bektas and used the proceeds to buy Alberts Court.)

32. There is a contract of sale of the shares in Bektas dated 22 May 2007 to a subsidiary of Heidelberg Cement, a German company. The purchase price is 815.5 million tenge, some 5 million euros or US$6.5 million. The payment under the contract was to be made in two equal payments, the first shortly after completion.

33. There is a 'Bank statement on a deposit for the period from 13 March 2007 to 21 September 2007', with the Almaty branch of Temirbank, the account being in Mr Shalabayev's name. An entry of 28 May 2007, through a buyer pay in slip, is for 407,750,000 tenge. The description of that entry on the statement is that it is in payment of a contract of Mr Shalabayev's for the share in the partnership contract dated 22 May 2007. There is no record of the payment of the second instalment on the bank statement or elsewhere.

Transfer of proceeds of Bektas' sale to London

34. A bank statement records disbursements from the Temirbank account, one on 29 May 2007 of nearly 5300 million tenge. There are no documents recording the destination of the moneys withdrawn from this account. There is a bank slip showing a withdrawal from the JSC BTA Bank on 29 May 2007 of nearly 5300 million tenge, some 469,000 euros.

Incorporation of Bensbourogh

35. Bensbourogh was incorporated as a British Virgin Islands company on 6 March 2008. The background from the documents is that on 5 March 2008 a representative of Trident Trust Company BVI (Limited) ('Trident Trust') emailed a representative of Trident Corporate Services AG ('Trident AG'), based in Zollikon-Zurich, Switzerland, that 27 company names, including that of Bensbourogh and of Feldvale Trading Corp ('Feldvale'), were being reserved by the BVI registrar of corporate affairs. The next day, 6 March, Trident AG sent an email to Trident Trust instructing it to incorporate companies with those names. Later that day there was an email from Trident Trust to Trident AG stating that applications for incorporation of companies with those names, including Bensbourogh and Feldvale, had been filed with the registrar. A certificate of incorporation for Bensbourogh is dated 6 March 2008.

36. Then dated 28 April 2008 there was a fax and enclosure sent on from Trident AG to Trident Trust headed 'Bensbourogh Trading Inc, shelf company formed 6 March 2008', stating that 'the above shelf company was sold to the following NEW client' capitalisation in original. What appears to be an accompanying email between Trident AG and Trident Trust also referred to the company sale. Among other documents enclosed with the fax were the following documents:

(a) a resolution appointing three directors of Bensbourogh, dated 6 March 2008. One of these – a Mrs Irene Spoerry – is identified on the covering fax as a representative of Trident Fiduciaries (Middle East) Ltd. (Thus it would appear that the three directors were nominees);
(b) a document entitled 'Initial consent action for the board', to be effective on 28 April 2008, resolving that the first registered office of Bensbourogh was to be in the British Virgin Islands and that 50000 $ US 1 shares are to be issued to Mr Syrym Shalabayev;
(c) a share certificate for all the share capital of Bensbourogh, dated 28 April 2008, showing that the shares were held by Mr Syrym Shalabayev;
(d) a register of members, stating that Mr Syrym Shalabayev was the sole, and first, shareholder of Bensbourogh from 28 April 2008;
(e) a copy of Mr Syrym Shalabayev's passport; and
(f) a document entitled 'New Client Details', recording that Mr Syrym Shalabayev is the 'Beneficial Owner' of Bensbourogh, and stating that the purpose of the company is to hold an account with UBS, Zurich. A '[s]pecial comments' section of the sheet directs that 'invoices be sent to Mrs Margrit Mota at UBS' and identifies Mrs Aizada Koeppel as the relevant asset manager.

37. About a week later there was an email chain which begins with an email between Mr Kevin Schmidli of Trident AG and Ms Irraine Callwood of Trident BVI, copying Irene Spoerry, one of the three nominee directors of Bensbourogh. It stated:

"Dear Irraine

> Bensbourogh Trading Inc
>
> Please find attached the cancelled and new issued documents for the above mentioned. Bevor [sic] TFME [possibly Trident Fiduciaries (Middle East) Ltd] was put as director but now retroactive is the client director and shareholder…"

38. The attachments to this email included copies of the documents listed in the previous paragraph but one of this judgment, all prominently struck through 'Cancelled'.

39. As well there were the following documents (some of which Mr Salim Shalabayev put before the Court of Appeal, which directed this trial, as new evidence, but without any of the cancelled documents):

    (a) a resolution appointing Mr Shalabayev as the first director of Bensbourogh, dated 6 March 2008, and an unsigned acceptance by him of the appointment;
    (b) an unsigned, draft resolution of the directors of Bensbourogh, Mr Salim Shalabayev, to allot 50,000 shares to himself, dated 28 April 2008;
    (c) an undated share certificate of the 50,000 shares in Bensbourogh in favour of Mr Salim Shalabayev;
    (d) a register of directors, showing Mr Shalabayev as the sole director from 6 March 2008;
    (e) a register of members, showing Mr Shalabayev as the sole shareholder from 28 April 2008;
    (f) a copy of Mr Shalabayev's passport; and
    (g) a document entitled 'New Client Details', with Mr Shalabayev as the beneficial owner of Bensbourogh, with the purpose of the company stated to be to hold an account with UBS, Zurich, and recording that due diligence was received with the passport copy sent to Trident Trust on 8 May 2008.

40. Also attached was a copy of Bensbourogh's Memorandum and Articles of Association, on which the following manuscript note appeared:

> "'In this two companies were first Trident directors but we had to change it retroactive to the Bank client as BO/director/shareholder [sic], Regards, Kevin'."

Identifying and purchasing Alberts Court

41. The chronology in respect of the Alberts Court purchase involves documents disclosed by Mr Shalabayev to the Court of Appeal from the file of the solicitors, Piper Smith Watton ('PSW'). It begins with an email dated 25 April 2008 from the estate agents, theestatecompany.com, to Mr Euan Mitchell ('Mr Mitchell') of PSW. That email refers to the recently agreed sale of Alberts Court, attaches a memorandum of sale and refers to PSW's 'client', who is unnamed. A Memorandum of Sale, Subject to Contract, relating to Alberts Court, names the vendors (a couple who it is not necessary to name in this judgment), the purchaser's solicitor is PSW, the agreed price is £965,000, and there is a non-refundable amount of £5,000 to be paid. The purchaser is described as Mrs A Shalabayeva.

42. Dated the same day, 25 April, is a letter from Anna Poshtvar of Ashbury & Bloom, estate agents, to Mr Mitchell of PSW, enclosing a cheque of £5000 as a non-refundable deposit in respect of the purchase of Alberts Court. Ashbury & Bloom were used as the agents in the purchase of Carlton House and Oaklands Park.

43. In the disclosed documents there is an undated, manuscript attendance note. It is the first document in the run of documents disclosed by Mr Shalabayev from the PSW files as a single document, which runs in chronological order, the immediately following document being a formal attendance note dated 28 April 2008. The manuscript note reads: 'Syrym new one BVI Alex s(g?)et up 1 unit'.

44. The formal attendance note, dated 28 April 2008, begins '[Mr Mitchell] discussing file with Syrim [sic] Shalabayev'. The note's header states the client as being 'Phase One Limited'. (That is not a company with which Mr Shalabayev has claimed any association.) The attendance note includes the following:

> "You [i.e. Syrym] are going to set up a company which will be a wholly owned subsidiary of Phase One Limited to purchase this property. EM confirming that money laundering documentation needed for the new company and confirmation of the details to be renewed for Phase One. The documentation is slightly out of date. You confirm that the money will be coming from UBS on behalf of either company. You will also arrange for the cheque to be redrawn in the name of Piper Smith Watton."

45. The attendance note continues with Mr Mitchell's discussions with someone else, presumably in the firm, about money laundering, and that he would 'obtain details of the company to the level of beneficiary.' There is then mention of money laundering as regards Marshall Islands' companies and that they were previously on the Financial Action Task Force black list. The Bank's evidence, which I accept, is that Phase One Limited was very likely incorporated in the Marshall Islands.

46. The following day, 29 April 2008, is the date on a PSW client account receipt for £5000 with the client as Phase One Limited, and the 'payee/payer' being Mr Syrim Shalabaev (sic). The same day PSW wrote to the sellers' licensed conveyancers, Home Owners Conveyancers Ltd ('HOC'), confirming their instruction, with HOC responding later that day enclosing a copy of a lock-out agreement and requesting that payment of £5,000 be made by PSW's client in accordance with that agreement.

47. An email from Mr Mitchell to Mr Syrym Shalabayev on 2 May attaches the lockout agreement for Phase One Limited, describes the effect of it, and requests that if the company is happy to proceed could he email his authority for PSW to sign as agents on its behalf. There is then an email from Mr Syrym Shalabayev to Mr Mitchell: 'Could you please act on my behalf and sign the attached contract. Thanks, Syrym.' There is also a handwritten note: 'Had a telephone call with Syrym, who says sign, and a telephone call with [HOC] for exchange.'

48. The lock-out agreement dated 2 May 2008 was between Phase One and the vendors. On 2 May 2008 there is a transfer of £5,000 to PSW from a company called Meditec

Industries Limited. £5,000 was paid out to HOC. (In earlier proceedings Syrym claimed Meditec as one of his companies.) A letter that day from PSW to HOC reads:

> "Please note our client has not yet decided the precise entity with which it is intended to purchase the property we therefore require that it be agreed that the contract for the purchase of the property can exchange either in the name of Phase One Limited or a nominee."

49. On 9 May 2008, HOC sent to PSW draft contract papers and a property information form regarding Alberts Court, asking that PSW do not raise inquiries about structure and condition since it was assumed that PSW's client would employ a surveyor. In a 'seller's property questionnaire', a 'seller's leasehold information form' and a 'fixtures & fittings questionnaire', the vendors of Alberts Court set out in the usual way details of the property and what was to be sold with it.

50. In an email of 13 May 2008, Anna Poshtvar inquired of Mr Mitchell of PSW, copying in Mr Syrym Shalabayev, about progress on the sale.

51. The following day, 14 May, Mr Mitchell wrote to Mr Syrym Shalabayev at Elizabeth Court, attaching a copy of the lease to Alberts Court. The same day he inquired of the HOC property lawyer, amongst other things, whether work had been done on the central heating system or boiler of Alberts Court since 2002. HOC replied on 15 May.

52. A fortnight later, on 30 May 2008, Mr Mitchell emailed Mr Syrym Shalabayev as to whether Bensbourough or Feldvale Trading Corp was to be the purchaser of Alberts Court. He informed HOC that his client had still to decide who was to be the purchaser.

53. On 3 June 2008 PSW informed HOC that the purchaser was to be Bensbourogh and the contract was to be amended. That day Mr Mitchell wrote to Mr Syrym Shalabayev attaching a retainer letter in connection with the purchase of the property, for signing by the directors. He added: 'I would also be grateful if you could arrange for your brother to provide me with a recent utility bill showing his correspondence address, and also the next time he is in London I would prefer if he could attend our offices so that I can take a certified copy of his passport personally.' There is a retainer letter, but unsigned, and a report on title, sent to the directors of Bensbourogh care of Elizabeth Court.

54. HOC inquired of PSW as to progress on 5 June and there is a PSW note: 'Telephone call with Syrym.' The deposit paid on exchange, which occurred on 6 June 2008, of £91,500, was paid by Sunstone from a Swiss account. (The Bank's case is that this was an Ablyazov company; Mr Shalabayev's case is that was his brother's.)

55. Completion was to be by 27 June 2008. On 11 June Mr Mitchell wrote to Mr Syrym Shalabayev with the stamp duty/land tax form and the transfer deed, asking that he have his brother sign them. A file note of the same date records a telephone call to Syrym asking whether, on behalf of Salim, he could confirm that exchange was authorised. Mr Shalabayev signed the form in three places, although not where he should have.

56. There is a credit advice dated 18 June 2008 from UBS in Zurich to Bensbourogh recording a bookkeeping entry date of 17 June 2008 and the description that by order of FM Company US$2 million has been paid into Bensbourogh's account. There is then a bank advice to PSW, dated 26 June 2008, of a payment to it for £906,513.83 from the Bensbourogh account with UBS in Zurich. On completion PSW informed Syrym of completion.

From purchase to planned sale of Alberts Court

57. There is a draft tenancy agreement between Bensbourogh and Mr Shalabayev to begin on 2 July 2009. However, a third party tenant, who does not need to be named in this judgment, entered a tenancy agreement with Bensbourogh on 29 June 2009. That third party remained a number of years. There is a series of documents prepared by Ashbury & Bloom which show the rent payments made from June 2009 to May 2012. These were addressed to Bensbourogh at an address in the Virgin Islands, and show rent of £3,358 a month, from which Ashbury & Bloom deducted taxation of about 20 percent. Payments were made into Bensbourogh's UBS account.

58. Then in March and April 2011 there are emails betweeen Mr Shalabayev and Mr Mitchell of PSW about the sale of Alberts Court. In them PSW stated that if the sale was to be by a sale of shares in the company, Mr Shalabayev, as shareholder, would be the client.

59. Alberts Court has been under the control of court appointed receivers since April 2011.

IV MR SHALABAYEV'S EVIDENCE

The Bektas Group

60. In his 10th witness statement, Mr Shalabayev explained that he was able to purchase Alberts Court as a result of the profits made from the sale of his interest in Bektas. The background he gave in the witness statement was that, while working in the logistics department of the Zhezkazganredmet Republican State Enterprise ('RGP'), a state enterprise involved in rare earth metals, he developed relationships with geologists and started to study the industry of the extraction and processing of minerals.

61. After he left that enterprise in 2001, he noticed the lack of building stone for the country's new capital, Astana, and immediately started to search for a suitable deposit in its vicinity. He found the geological data for this region and discovered a rock deposit north-west of Astana. In 2003 he employed a geological company to conduct a geological survey of the region. The results provided in the geological report turned out to be rather promising.

62. In 2002 (sic) he used contacts with various officials and his company, the Bektas Group, signed contract No 98 with the regional administration for the exploration and extraction of building sand and stone. Having signed the contract for the Tastak deposit, he built a factory to crush the stone over the next two years, with funds either in his or Bektas' name from Caspian Bank, Temirbank, BTA Bank i.e. the major Kazakh banks and from his brother, Syrym, mainly interest free.

63. Mr Shalabayev's account in his witness statement was that the business eventually began operations in 2004 and was a success, with demand for the stone exceeding supply. Kazakhstan's Railways offered US$1.5 million for the business, which he rejected, as he did an offer of US$2 million in cash from local construction companies. Finally a German company, Heidelberg Cement, offered €5 million, and since this was at a time when the company was still repaying its creditors he agreed to sell and a contract was signed.

64. 'The payment to me for Bektas was made in two tranches', he stated, the first fifty percent tranche of 407,750,000 Tenge (the equivalent of €2.5 million) paid into his account with Temirbank on 28 May 2007. (This is not in dispute.) On his account the remaining tranche was paid in August 2007. On his account he then transferred the funds to accounts he held with several other banks to spread the risk and to avoid concentrating a large sum in one account.

65. Mr Shalabayev elaborated on his account of the establishment and success of Bektas in the course of cross-examination. His geological knowledge was because he grew up on a quarry, he saw how people worked there, he spent all his holidays there, and his father was an expert (although on further cross-examination, in motor cycles). After studying economics at university he worked at KEGOC, an energy company (of which Mr Ablyazov was chairman), and then at RGP (at a time when Mr Ablyazov had become the Minister of Energy, Industry and Trade). At RGP he had overseen the extraction and production process. He had spotted the stone deposit in the country, rather than as in his witness statement gathering the geological data for the region. Although the geological study he commissioned comprised a number of volumes, he could not remember the name of the company or his contact there.

66. For the first time Mr Shalabayev revealed in cross-examination that there were three other partners in Bektas. His explanation for not mentioning his partners previously was that he was worried about them. Just what they did and what interest they had remained unclear after questioning.

67. Mr Shalabayev insisted that he received the second tranche from the Bektas sale, despite the absence of any evidence from the Temirbank account, where the first tranche was recorded as having been paid. After rather lengthy questioning he stated that the second tranche could have been used in the payment of tax, the repayment of loans from banks and friends, and the payment of his partners.

> "Q. So it's entirely possible that the reason why we're not seeing a receipt by you of the second instalment is because the second instalment was used to pay off all the obligations I have just described.
> A. Perhaps that is possible. Yes, possible."

68. Mr Shalabayev could not explain the various disbursements of the first tranche from the Temirbank account, the Temirbank statement which was available in evidence showing that it was disbursed in a number of different ways.

Transfer of proceeds of Bektas' sale to London

69. In his 10th witness statement, Mr Shalabayev explained that soon after he sold his interest in Bektas Group, he and his wife thought about investing the proceeds and decided on a property in London. He was concerned about the safety of both himself and his money in Kazakhstan, many businessmen from Kazakhstan were acquiring properties in London, he considered it a safe place to invest money, and his brother Syrym had already purchased property in London and had the right contacts and industry knowledge. He began discussing this with his brother.

70. To pay for Alberts Court, funds had to be transferred to London. At that time, Mr Shalabayev said in his witness statement, it was virtually impossible to transfer money from Kazakhstan abroad because of very strict exchange control, so he suggested that he could lend Syrym money in Kazakhstan, who would repay the loan to Mr Shalabayev's foreign bank account. In total, he transferred the equivalent of US$2,300,000 to Syrym in Kazakhstan.

71. As regards the mechanics of the transfer, he 'recalled taking out money from the bank in cash on at least two occasions, each time in multiple instalments…', the first time the total amount being approximately US$1.5 million. He could only locate one receipt. He had withdrawn in cash 469,050.00 euros from his account in Kazakhstan at BankTuranAlem. He recalled that he gave Syrym money in cash at home, in early 2008, because they both lived in the same building. Syrym had since returned the money to him through payments into accounts belonging to him or his company held with European banks. One of the tranches was a US$2,000,000 payment into Bensbourogh's account for the purchase of Alberts Court.

72. In cross-examination Mr Shalabayev could not explain why his brother, Mr Syrym Shalabayev, would want cash in Kazakhstan when he had been residing with his family in London for several years. 'I don't know for what purpose he wanted it', he said. However, he offered considerable embellishment in cross-examination of how he transferred to his brother in Kazakhstan the equivalent of US$2,300,000 in cash so his brother would make the equivalent amount available to him abroad. What he did was to withdraw cash from banks in different parts of Kazakhstan (he later confirmed they were hundreds of kilometres apart), which he accumulated in a rucksack in a cupboard in his bedroom in Almaty. When he had accumulated $1.5m or $1.6m, Syrym came and collected the rucksack. Something similar happened with the balance of $700k or $800k, accumulated in a different rucksack in his bedroom cupboard and given to Syrym some weeks later.

73. He was asked how a withdrawal in euros, shown on the bank slip dated 29 May 2007, became on his account, a transfer to his brother in US dollars. His explanation was as follows:

> "A. I can remember that the euros, I exchanged euros for dollars. That I can remember well.
> Q. Well, that's not what you say here, is it?
> A. I can remember very well that I exchanged euros for dollars.
> Q. Right, so let me see if I understand what you are now saying. You withdrew 469,050 euros from BTA Bank and, you say, you then exchanged them for dollars.
> A. Yes, correct. Okay, I can remember it.

Q. So where did you --
A. At that time the bank did not have sufficient cash in dollars, so I got it out in euros.
Q. Where did you change it into dollars?
A. I changed it in Temirbank.
Q. So you took 469,050 euros from the bank BTA, and went to Temirbank and changed it into dollars, did you?
A. I can remember it very well.
Q. How did you carry 469,050 euros from one bank to another?
A. In a bag.
Q. What, a carrier bag?
A. I can't remember exactly.
Q. And you just happened -- then what happened? When you got to Temirbank did you just get the cash out on the counter and say, 'Please change it into dollars'?
A. I got it in cash, dollars, immediately.
Q. Just over the counter?
A. In the bank.
Q. You see, if, if you had been wanting to take out dollars, then what you would have done, I suggest to you, is not walk around Almaty with a bag full of euros, but you would have asked BTA Bank to transfer the equivalent in dollars to your account with Temirbank.
A. It was more convenient to take it in cash. That's what I wanted to do.
Q. We say, Mr Shalabayev, that your account makes no sense.
A. I can understand. You have less transactions. It was more convenient to do it that way."

Incorporation of Bensbourogh

74. In his 10th witness statement Mr Salim Shalabayev explained that, knowing that once he had found a property he would have to move quickly, he began putting in place the necessary structure for acquiring one. A special purpose vehicle would enable him to maintain a low profile and the ability to exit the investment by selling the company instead of the property, thus minimising his tax exposure to stamp duty. He was introduced to a manager at UBS, Zurich. The bank provided a list of shelf companies and he chose the one from the list with the name Bensbourogh Trading Inc, which was 'incorporated specifically for the purpose of acquiring a property on my behalf.' At the outset of his evidence in chief, Mr Shalabayev said, as regards this, that he went to the bank to open the account and he chose two companies, without taking note of their history and origins. At that time he did not understand such matters.

75. He continued in his witness statement that he visited the UBS office in Zurich to sign the incorporation documents and open a bank account for Bensbourogh. UBS had

suggested that he use Trident Trust Company BVI for incorporation and further corporate services, and he did so. The witness statement continues:

> "36. It took some time to finalise the registration and incorporation of Bensbourogh. Whilst the company's incorporation date, and the date on which I was appointed director, was 6 March 2008, I did not officially own the shares until 28 April 2008 when the share certificate was issued.
>
> 37. I also established another company with UBS – I cannot remember whether this was done at the same time as Bensbourogh or a different time. The name of the company was Feldvale."

76. In cross-examination, Mr Shalabayev accepted that, contrary to his statement, it was possible that Bensbourogh had already been incorporated, and that in May he did not know if it had been decided that it was to be the purchaser of Alberts Court. As to Bensbourough's UBS account he could not remember when and how he travelled to Switzerland to open it. At some point he had been in Switzerland at the wedding of Mr Ablyazov's son. Feldvale he bought for other real estate projects, the purchase of another flat, a small flat, in London. When asked about his evidence at previous hearings that he owned no other companies outside Kazakhstan, he said that by 2011 when he had given that evidence, he no longer 'maintained' Feldvale. In any event, he said, a company with no assets was not really a company.

77. In re-examination Mr Shalabayev denied knowing about the March/April 2008 documents about Bensbourogh, which Trident later cancelled, and which he did not include in the Court of Appeal bundle leading to the present hearing. He denied Mr Smith's calculation that he lacked the money to make further investments through Feldvale.

Identifying and purchasing Alberts Court

78. In his 10th witness statement, Mr Shalabayev says that while he was still in Kazakhstan he started looking for suitable properties in London using online Russian property websites. 'I later engaged Anna Poshtvar of Ashbury & Bloom, who were expert property finders'. She was introduced to him by Syrym, who also introduced him to PSW, solicitors Syrym had used for his business activities. Syrym was also searching and emailed descriptions of possible flats. He discussed some of these on the telephone with Syrym. Syrym's wife, Aigul Shalabayeva, agreed to help.

79. Then according to his 10th witness statement Syrym sent him details of Alberts Court, which fitted his criteria. Since he was in Kazakhstan at the time, he never viewed it but it seemed the most suitable. Syrym resided in the same block and other flats in the block were owned by businessmen from Kazakhstan. Having decided on the property, he asked Syrym to deal with the purchase formalities, including instructing PSW. It took him a while to decide which company he should use to purchase the property so in the meanwhile Syrym used his existing companies for intermediate steps, such as Phase One to sign the exclusivity agreement on 2 May 2008. On 3 June the identity of the buyer as Bensbourogh was decided. The initial 10% deposit was paid on 10 June 2008 by Syrym's company, Sunstone Ventures, possibly because not all the

paperwork for setting up Bensbourogh and its bank account had been completed by then.

> "46…Also, as this would have been the first payment, I did not know what documentation the bank might request (PSI, invoices etc) before making the payment. So rather than taking the risk of the payment not going through and losing the Property, we decided that it would be better if Syrym paid the deposit directly from one of his companies to PSW. That is why the deposit was paid using Syrym's company. This also gave me the additional benefit of a little extra time before having to decide what structure I should use to acquire the property. "

80. Under the terms of the agreement he had with Syrym, he continued, on 17 June Syrym transferred US$2 million from FM Company into Bensbourogh's US dollar account with UBS. From these the purchase price was paid on his instructions on completion of the purchase of Alberts Court on 26 June 2008. Over the following months, Syrym continued to liaise with PSW on various legal and property issues, where he needed help, such as payment of ground rent.

81. In cross-examination Mr Shalabayev was asked why he did not visit to view the flat before or soon after it was purchased, when it would consume the greater part of his wealth and would be a home for him and his family. He accepted that he did not see the flat until October 2008. At first he suggested that it could take several months for him to obtain a visa for the UK, although he later accepted that it did not take that long. He said that he trusted his brother and that Syrym sent him material relevant to flats and Alberts Court by email. He had not asked Syrym to search for these emails.

82. In his answers Mr Shalabayev did not recall seeing any of the information such as the sellers' details about Alberts Court. He did not know why his name was not mentioned in any of the correspondence with the estate agents, Ashbury & Bloom, and the solicitors, PSW, relating to the Alberts Court purchase. As to engaging Anna Poshtvar at the estate agents he had denied in evidence at the committal hearing that he knew anyone by that name. At the outset of his evidence he explained that he knew her only as Anya, a familiar form of address for someone called Anna.

83. As for payment of the deposit for the flat, which came from Sunstone Ventures, as far as he knew the company belonged to his brother, not Mr Ablyazov.

> "Q… Sunstone Ventures was a company which was owned by Mr Ablyazov. Do you disagree with that?
>
> A. I don't agree, because this company belongs to Syrym.
>
> Q. And your basis for saying…
>
> A. It is according to Syrym's own words. He told me.
>
> Q. Yes, your basis for saying that is what Syrym, you say, has told you.

A. Yes . We had a conversation."

84. Syrym also told him that FM Company Limited, the source for the payment on completion, was his company and not owned by Mr Ablyazov.

> "Q. FM Company Limited was owned by Mr Ablyazov, wasn't it?
>
> A. You may think so, you may assume that, but I don't think so.
>
> Q. Could you tell me why you don't think that?
>
> A. Because as far as I know Syrym said it was his company.
>
> Q. This is something that Syrym told you orally, is it?
>
> A. Yes, he said so.
>
> Q. Now, if Syrym did tell you that, and we don't accept that he did, but if he did, it wasn't true and you know it wasn't true. That's correct, isn't it?
>
> A. I believe my brother more than anybody else."

85. Payment of the purchase price for Alberts Court left US$200,000 in Bensbourogh's Swiss account. Mr Shalabayev explained that he later transferred that to the bank account of another of his companies, Faster & Faster. That was in December 2011. The reason he gave was as follows:

"Q. And why, if you are right, did you leave $200,000 sitting in an account in Switzerland, at a time when you weren't working in England for three years?
A. I was preparing then for other business projects.
Q. What projects?
A. I have already said, in Germany.
Q. In Germany?
A. Yes.
Q. You were preparing for a business project in Germany?
A. I had intentions.
Q. What business project were you preparing for in Germany?
A. It would be connected to gastronomy.
Q. How would it be connected to gastronomy?
A. I was offered a network of fast food cafes.
Q. In Germany?
A. For Kazakh traditional food as fast food, a chain of cafes.
Q. Who made you this offer?
A. Nobody did. I had the idea…."

86. He was also asked about Faster & Faster. His replies were as follows:

> "Q. Now, until yesterday you had never claimed any interest in a company called Faster & Faster Limited, had you?
> A. Could you repeat that?
> Q. Yesterday was the first time you have said in any of the court proceedings that Faster & Faster Limited was your company.
> A. I wasn't asked it yesterday.
> Q. And I suggest to you that what you said yesterday and what you have said today about Faster & Faster being your company is not true, is it?
> A. It's my company. It was.
> Q. And the reason why you are telling this lie is because you have read in Mr Hardman's affidavit -- sorry, witness statement that Bensbourogh's surplus money ended up with Faster & Faster Limited. That is why you have made this story up, isn't it?...
> A. -- I have never read Mr Hardman's evidence…
>
> Q. Did it [Faster & Faster] have a bank account?
> A. Yes, it had a bank account.
> Q. Where was the bank account?
> A. In a bank, but I can't remember which one.
> Q. Can you remember which country the bank was in?
> A. (Answer uninterpreted) Cyprus.
> A. In Cyprus….
> Q. Faster & Faster Limited was incorporated in the Seychelles, wasn't it?
> A. I can't remember exactly now…
>
> Q. You were the signatory on the bank account?
> A. Yes, me…
>
> Q. Have you produced any bank statements for Faster & Faster?
> A. No.
> Q. Do you have any bank statements for Faster & Faster?
> A. No, I don't have them."

From purchase to planned sale of Alberts Court

87. In his 10th witness statement Mr Shalabayev states that he stayed in Alberts Court only occasionally between October and November 2008. Around October 2008 he invited 'my driver', Tom Egan, to live at Alberts Court because he wanted to improve his English. Mr Egan moved in with his pregnant wife. Mr Shalabayev left England around November 2008, and when he returned around January 2009, he generally stayed at Alberts Court. However, he began to feel a little uncomfortable because Mr

Egan was still there with his wife. So he soon decided to move. He then lived with his brother, Syrym, at Elizabeth Court. Mr Egan moved out of Alberts Court around April 2009, and so he decided to rent out Alberts Court on a formal basis. He had thought of renting it to himself but the date to begin of 2 July 2009 on the draft tenancy agreement between Bensbourogh and him was a typographical error and it would have begun in June.

88. Mr Shalabayev was cross-examined about his statement that Mr Egan was 'his' driver. He accepted that he was not his personal driver although he sometimes drove his family.

> "A. He was a good acquaintance. He was either Ablyazov or somebody else's driver."

89. He was also asked why he should live in Elizabeth Court with Syrym and his family; there was the lack of space there for the two families.

> "Q. When you were all living at Elizabeth Court there must have been four adults and three children living there.
> A. Yes, yes. Very often both families were staying there together.
> Q. And it is, as I understand it, a three-bedroomed flat.
> A. Yes.
> Q. So when 17 Alberts Court became vacant, when Tom Egan left, if you had been the owner of 17 Alberts Court, rather than living in Elizabeth Court and having to share that with Syrym and his family, you would have moved into 17 Alberts Court; but that didn't happen, did it?
> A. I cannot really remember the exact time but it was after that. However, sometimes I might have spent the night. We didn't always come from Carlton [House]. We were not always, all of us, there together…"

90. He was questioned as well about the draft tenancy agreement between Bensbourogh and himself.

> "Q. But the fact that there was a contemplation that you would be a tenant of 17 Alberts Court suggests that you weren't the owner of 17 Alberts Court or the company which owned it.
> A. That's not true.
> Q. What is the sense in you agreeing to pay rent to your own company?
> A. I have already explained this several times. This was for the purpose of optimisation.
> Q. Optimise --

> A. To rent the flat from the company. It was for tax benefit. It was for the purpose of tax optimisation…
> Q. Did you ever make any income tax returns in the UK whilst you lived here?
> A. I cannot remember.'
> Q. You didn't, did you?
> A. I may not have."

91. With the assistance of Ashbury & Bloom, Will Bartlett and Syrym, he said, a tenant was found for Alberts Court. The rent he paid at Elizabeth Court, £4,116 a month, was greater than what he earned from the rent at Albert's Court. There was cross-examination as to why in his statement he asserted that it made commercial sense to rent out Alberts Court when the rent received from the tenant was less than what he was paying for Elizabeth Court.

> "A. It's understandable. I left 79, I was in the flat Elizabeth Court and I rented that flat and I paid for it; and it's understandable that I had to pay, although it is my brother's flat. But I did it in order not to have to pay tax. And secondly, that money was still going to my company..."

92. He was also questioned about why the rental payments in respect of the occupation of Elizabeth Court were paid by Ashbury & Bloom to Bensbourogh. The explanation was that this was by agreement with Syrym, who had no bank account for Rocklane, the company which owned Elizabeth Court.

93. In late 2010 he and his family decided to move to Latvia. At that point the opportunity to live in London in the future became less likely so he decided to sell Alberts Court. He instructed Ashbury & Bloom to find a buyer and PSW to undertake the conveyancing. Mr Shalabayev was asked why he intended to sell the flat in 2011 when it was bought as an investment but denied that it was Mr Ablyazov's decision.

V THE BANK'S CASE IN OUTLINE

94. The Bank's case in outline was that Mr Ablyazov, not Mr Shalabayev, is the true beneficial owner of Bensbourogh and Alberts Court. This was based primarily on Mr Shalabayev's evidence being unbelievable on all key issues. Like all the other English properties administered by Mr Shalabayev's brother, Syrym, Alberts Court and many other assets besides belonged to Mr Ablyazov.

95. As background the Bank highlighted the evidence of Mr Ablyazov himself, quoted earlier in the judgment. The Bank submitted that that evidence meant that the court could not be confident that any valuable property held by any of Mr Ablyazov's family members or close associates was not beneficially owned by Mr Ablyazov: just because a family member or associate was listed as the legal owner, or its beneficial owner, or claimed to be such, was no indication that the asset does not actually belong to Mr Ablyazov.

96. Mr Syrym Shalabayev was one of Mr Ablyazov's closest lieutenants, instrumental in the acquisition of the English properties in which Mr Ablyazov and his family lived such as Carlton House, and at times the ultimate beneficial owner of dozens of companies owned by Mr Ablyazov, including Sunstone, which provided a significant part of the purchase price of Alberts Court. The reality was that Mr Salim Shalabayev – like his brother Syrym – had been one of Mr Ablyazov's men for many years. On the Bank's case, Bektas was in all likelihood Mr Ablyazov's company, with Mr Shalabayev as a nominee to keep an eye on it, and there was no link between the first transfer of the Bektas sale proceeds and the purchase money for Alberts Court.

97. The Bank then attacked Mr Shalabayev's evidence given during the hearing as false and fanciful. There was a remarkable lack of documentation, which should have been available as corroboration if Mr Shalabayev's evidence was true. A feature of Mr Shalabayev's cross examination, the Bank submitted, was how often he said that documents would exist to support his case, which he could obtain, but he had not done so despite having years to locate and disclose them. The same with his references to witnesses, but none were called.

VI MR SHALABAYEV'S CASE IN OUTLINE

98. Mr Shalabayev's case is said to be straightforward. He sold Bektas in 2007 and decided to invest the proceeds in a property in London. To that end, Alberts Court was identified in early 2008. His brother, Syrym, assisted him with the process in circumstances where he was still living in Kazakhstan at the time. This included liaising with the conveyancing solicitors, PSW, as well as helping with the process of incorporating and establishing Bensbourogh as the corporate vehicle through which he acquired Alberts Court. Shortly afterwards, he moved to London, and spent some time living in his flat. The flat was rented out to a private tenant in April 2009, and so he moved to Elizabeth Court, owned by Syrym. In early 2011, he left London and moved with his family to Latvia. At that point, he decided to sell Alberts Court, and took steps to do so.

99. Mr Shalabayev does not dispute that Mr Ablyazov held assets through nominees acting for him. Nor does he dispute that he has, on limited and isolated occasions, agreed to assist his brother in holding assets for others, although not for Mr Ablyazov. He also accepted that he did not initially tell the truth to the court at the committal trial in December 2011 when asked about his contact with his brother Syrym. He did so in order to protect his brother. He further accepted that he was held to be in contempt of court. Again, the reasons for that, as explained when giving evidence on previous occasions, were centred on his concerns for his safety and that of his family. All of these matters significantly post-dated the process by which he acquired Alberts Court through Bensbourogh. Nothing in them was inconsistent with his claim that he is the true owner of Alberts Court. Indeed, none of it had any proper bearing on the credibility of his claim to ownership.

100. As to his credibility, his case was that he was a truthful and cooperative witness. He answered the questions put to him, and did not give speeches. There were practical problems in his giving evidence via a video-link that did not function properly, via an interpreter who was situated on the other side of the link from him. He elaborated on matters set out in his witness statement in a way which is part and parcel of the process of giving oral evidence, but did not embellish his written evidence. Though

challenged on almost every aspect of his evidence, his answers remained consistent on all major points.

101. Mr Shalabayev's contention was that the Bank's case suffered from a number of logical fallacies which made it unlikely that Mr Ablyazov would have acquired Alberts Court through Mr Shalabayev as a nominee. Mr Ablyazov was by early 2008 the ultimate beneficial owner of very expensive properties, Carlton House, Oaklands Park, and Elizabeth Court, so why should he want or need the comparatively modest Alberts Court? There is no suggestion that he ever lived there, or indeed ever set foot in the property. It could not have been for his driver, Mr Egan, since it was soon rented out, and any suggestion that this was Mr Ablyazov branching out into the London buy-to-let market was fanciful, when on the Bank's own case by this time Mr Ablyazov was doing everything he could to conceal his assets from it given the litigation which he knew was coming against him in London.

102. Further, contrary to the Bank's case, the corporate ownership structure for Alberts Court did not match the way Mr Ablyazov owned his assets. The structure was an unremarkable use of a holding company to acquire a property, not Mr Ablyazov's chain of companies incorporated in different jurisdictions and the use of a nominee (not like Mr Shalabayev, a brother in law) who could not be traced back to him.

103. By contrast, Mr Shalabayev's own case was inherently likely. His evidence of his ownership and sale of Bektas was compelling, and there was no evidence to contradict his account. The coincidence of timing of the sale of Bektas and his decision to move to London and purchase a property there was unlikely to be a simple coincidence. The purchase completed a matter of months before he first came to spend time in London, including at Alberts Court, in October 2008. His unchallenged evidence that, in late 2010, he decided to leave London and move with his family to Latvia provided a logical explanation for the proposed sale in March 2011.

VII DISCUSSION

104. At first blush Mr Shalabayev's account that he decided to purchase Alberts Court through the sale proceeds of his company, Bektas, and its quarry near Astana seemed plausible. Shadows were cast over it, however, when he was pressed in cross-examination about his discovery and expertise in mining. What could have been a story of his use of the expertise acquired at RGP, and that of others, became for the first time an account of his acquiring the requisite knowledge to discover the stone deposit, and exploit it, through growing up and playing as a child near a quarry in his home town in Kazakhstan. In as much as at some point he engaged geological consultants to prepare a multi-volume survey, it was perhaps surprising that he could not remember their name or the person he dealt with there.

105. Then there were the three partners in Bektas, never before mentioned, and the uncertainties about how much they were entitled to on its sale. What dangers would there have been, at the very least, with earlier mention of their existence, without naming them?

106. The Bektas part of the story did not improve when there remained uncertainty about what happened to the second tranche of its sale price. There was no evidence about its receipt on the bank statement, which did show the first transfer of the Bektas sale

price coming into the account. All Mr Shalabayev could offer, after considerable questioning, was that it was possible that it went to paying loans, taxes and his partners. I conclude that Mr Shalabayev did not receive the second tranche.

107. As to the first tranche of Tenge 407.75m, some $3.35m, which was undoubtedly paid into his account with Temirbank on 28 May 2007, Mr Shalabayev was remarkably vague in explaining its disbursement, as recorded in various debits in the bank statement. The crucial issue was how, in the absence of bank records, this first tranche could have ended up as payments to PSW in London of almost $2m in 2008. In my view there was no link and the account Mr Shalabayev gave - that he gave his brother $2.3m in cash in Kazakhstan, with Syrym agreeing to make the equivalent amount available to him in London - was untrue.

108. First, there was no corroboration that Kazakhstan had capital controls at the time, preventing Mr Shalabayev taking his money out of the country, which was his explanation for the arrangements. Secondly, although he and his brother are still close – they spoke to each other during the trial - he could give no explanation why Syrym would want to have cash in Kazakhstan when he resided with his family in London.

109. Thirdly, there were no bank records to support Mr Shalabayev's account of withdrawing $2.3m in Kazakhstan in cash to hand over to Syrym. Unexplained was why the transfer should be done in this way, in particular the account of withdrawing dollars from banks in different parts of the country, gathering it in two rucksacks and then handing these over to Syrym. Unexplained, that was implausible, but Mr Shalabayev's account became fanciful when he was pressed on the one withdrawal for which there was a record, of the euros on 31 January 2008, and the inconsistency with his statement, that he had withdrawn dollars. In cross-examination he suddenly had a clear recollection that the bank did not have sufficient dollars that day, so he withdrew 469,050 in euros and took them in a bag to another bank, which converted them into dollars.

110. I found Mr Shalabayev's account of Bensbourogh deeply troubling, not least because it was the half-truths he told about it which were important in the Court of Appeal ordering this trial. In his statement Bensbourogh was incorporated specifically for the purpose of acquiring property on his behalf and he was appointed as director on 6 March 2008. The documents he placed before the Court of Appeal lent support to this. In fact it is now clear that this is untrue. Bensbourogh was incorporated on 6 March 2008 by Trident Trust Company in the BVI as one of a number of shelf companies, and neither Mr Shalabayev nor Syrym had any involvement. It was only at the end of April 2008 that Syrym acquired the company and over a week later in May before Mr Shalabayev became involved following the unorthodox 'cancellation' of the earlier corporate documents by Trident.

111. Further, Bensbourogh was not employed when the exclusivity agreement was entered for Alberts Court on 2 May, with Mr Shalabayev's only explanation being that, according to Syrym, there was an unspecified 'problem' in using it. Indeed, as late as 30 May PSW were unsure whether the purchaser would be Bensbourogh or Feldvale.

112. Mr Shalabayev sought to explain PSW's mention of Feldvale on the basis that it was also his company to pursue other business projects in London. I found his evidence on this unconvincingly vague, and unsupported by objective evidence (as opposed to

speculation) that he had the necessary assets. His attempt to reconcile his denial in earlier proceedings that he had any companies, other than Bensbourogh, outside Kazakhstan was specious. In my judgement, Bensbourogh was never acquired for the purchase of Alberts Court, and certainly not by Mr Shalabayev. It if had been there would have been no reason for Bensbourogh not to be there and for Mr Shalabayev not to have been the shareholder from the outset.

113. Only on 3 June 2008 was PSW told that Bensbourogh and Mr Shalabayev would be the purchaser of Alberts Court. PSW then asked Syrym to have his brother provide documents for due diligence purposes. Admittedly from this point, PSW saw Mr Shalabayev as the beneficial owner of Alberts Court and Syrym as acting on his behalf. In my judgement, this tells nothing about the ultimate beneficial owner of the property. The fact is that, until then, Syrym was orchestrating the purchase. Mr Shalabayev had no involvement.

114. As to the identification and purchase of Alberts Court, on its face leaving matters to Syrym, and through him, the London estate agents, Ashbury & Bloom, and the solicitors, PSW, is plausible, as is the idea of buying it sight unseen. What undermined the account in my judgment were the details, especially the embellishment Mr Shalabayev gave in cross examination to some of these matters. First, there was the suggestion, soon abandoned, that it would have taken several months for him to obtain a UK visa to visit himself to see the property. Then there was the absence of any documentary evidence of contact between Syrym and him about flats to purchase, in particular Alberts Court. The explanation that he had changed computers, moved countries and forgotten passwords only goes so far. Thirdly, there was the passage in his statement that he engaged Anna Poshtvar of Ashbury & Bloom to help him find a suitable property, and the explanation he then gave about knowing her as Anya when he had denied knowing her in earlier proceedings. Fourthly, there was the fact that, for a number of months, and until the last minute, Ashbury & Bloom and PSW had no knowledge of Mr Shalabayev's involvement in the purchase. In themselves, none of these are major points but cumulatively they are part of a larger picture of an untruthful account.

115. Equally unconvincing was Mr Shalabayev's story about the source of payment for Alberts Court. The deposit of £91,500 was provided by Sunstone, Mr Shalabayev's reason in his statement being that it gave him a little extra time before having to decide what structure he should use to acquire the property. But that does not square with his account of Bensbourogh being acquired in March as the purchase vehicle, or even more significantly with Bensbourogh having being identified to PSW by Syrym as the purchaser more than a week earlier.

116. Putting to one side the surprising lack of documentation regarding Bensbourogh's UBS Swiss account, in particular about Mr Shalabayev's control of it as the sole shareholder of the company, there were the difficulties with the source - FM Company Limited - for the £900,000 used on completion of purchase. All Mr Shalabayev could say was that Syrym told him that it was his, not Mr Ablyazov's company. In light overall of his untruthful account, I simply do not accept that it was Mr Shalabayev's money which bought Alberts Court.

117. There is support for this conclusion in the draft tenancy agreement between Bensbourogh and Mr Shalabayev himself, which was to begin in early July 2009.

Why should Mr Shalabayev enter into a tenancy agreement with his own company which owned the flat if, in fact, he was the ultimate beneficial owner? I was unimpressed with his attempt to explain the tax advantages when, in the passage of cross examination quoted earlier, it is clear there was never a possibility of his paying UK tax. (That is quite apart from the accuracy of his explanation of the tax position.) Equally unimpressive were Mr Shalabayev's assertions that it was commercially sensible to pay a higher rent for him and his family to stay with Syrym and his family at Elizabeth Court than he was receiving from the person who rented Alberts Court from June 2009.

118. Mr Shalabayev's account of occasionally staying at Albert's Court, even if true, does not support his ownership of the flat. The periods were short. In earlier proceedings he said that when he returned to the UK in January 2009, he stayed at Carlton House and after that at Elizabeth Court with both his and Syrym's family. Even on his account the periods spent in Albert's Court in 2008 with the Egans were few. They had been there when he first arrived in the UK in October 2008.

119. The problems in Mr Shalabayev's account were compounded when he sought to explain what transpired with the remaining balance of some $200,000 in Bensbourogh's UBS Swiss account. Totally unconvincing was the account which emerged in cross-examination, that the money might have been for Kazakh fast food cafes in Germany. Equally unconvincing was Mr Shalabayev's explanation of where the money went three years later when it was paid out to an account in the name of Faster & Faster Ltd. I simply do not believe that Faster & Faster was his company when he knew so little about it. The cross-examination, some of which is quoted earlier in the judgment, exposed the falsity of this claim. I accept the Bank's submission that if he did not enjoy the balance left in Bensbourogh's account, that strongly suggests that he was not Bensbourogh's owner and was not entitled to the other $1.8m which was used for the purchase of Alberts Court.

120. Overall, the Bank has persuaded me, to the appropriate standard, that Mr Shalabayev is not the ultimate beneficial owner of Alberts Court.

121. The issue then becomes: who is the ultimate beneficial owner of the property. The Bank's case is that Mr Shalabayev is the nominee for Mr Ablyazov. I do not find that case illogical, as Mr Shalabayev contended. Mr Ablyazov may have needed a smaller property for members of his entourage. Certainly, his driver, Mr Egan was there with his wife for a substantial period. It is not for me to speculate why Mr Ablyazov, or Syrym acting on his behalf, rented out Alberts Court from mid-2009, but it may simply have been surplus to requirements when Mr Egan moved out. The particular structure used may not fit exactly the pattern Mr Ablyazov described, and quoted earlier in this judgment, but there was nothing unusual in his property being in someone else's name, who could be identified as close to him: after all, Syrym acted as Mr Ablyazov's nominee for many of his assets.

122. As to the evidence of Mr Ablyazov's involvement, the key is the purchase moneys for Albert Court coming from Sunstone and FM Company. All Mr Shalabayev could say in cross-examination was that Syrym told him that they were his companies. Even if Syrym had told him that, Mr Hardman reiterates for this hearing the convincing analysis of the documents he offered previously. That was accepted, as regards Sunstone and FM Company by Teare J in the committal proceedings having heard the

denials of Syrym and Mr Abalazov. For the reasons already given I attach considerable weight to these findings.

123. But I do not need to rely on Teare J's findings, even though backed by Rix LJ on appeal. That is because before me Mr Sheehan for Mr Shalabayev sought to undermine Mr Hardman's analysis very largely by invoking evidence given by Mr Ablyazov and Syrym at those proceedings. This simply will not do. I have already explained that Mr Ablyazov and Syrym were disbelieved when they gave evidence. As I have also already said Mr Shalabayev could have called both to give evidence before me. Certainly Syrym was available, because as I have noted he spoke to Mr Shalabayev during the trial. In the absence of that evidence, it is not possible for Mr Shalabayev to recycle discredited evidence to make a case now. There is no unfairness to Mr Shalabayev. Mr Hardman's analysis stands and so I find that the monies to purchase Alberts Court were Mr Ablyazov's.

VIII CONCLUSION

124. Consequently, I find for the Bank (1) that Mr Shalabayev is not the ultimate beneficial owner of Alberts Court and Bensbourogh Trading (2) that these are assets beneficially owned by Mukhtar Ablyazov. I intend to make a declaration to this effect and to direct the receivers to transfer both assets as the Bank directs, in partial satisfaction of the judgments it has obtained against Mr Ablyazov.