Neutral Citation Number: **[2020] EWHC 1779 (Comm)**

Case No: CL-2016-000095

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Rolls Building
7 Rolls Buildings, Fetter Lane
London, EC4A 1NL

Date: Friday, 5th June 2020
Start Time: 15:34 Finish Time: 15:50

Before:

MRS JUSTICE COCKERILL

- -

Between:

NATIONAL BANK TRUST	**Claimant**
(a company incorporated in Russia)	
- and -	
ILYA YUROV (1)	**Defendants**
SERGEY BELYAEV (2)	
NIKOLAY FETISOV (3)	
NATALIYA YUROVA (4)	
IRINA BELYAEVA (5)	
ELENA PISCHULINA (6)	

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MR DAVID DAVIES (instructed by **Steptoe & Johnson LLP**) for the **Claimant**
MR MAX DAVIDSON (instructed by **Gresham Legal**) for the **Fifth Defendant**

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APPROVED JUDGMENT

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MRS JUSTICE COCKERILL :

1. This is an application for a Charging Order arising out of the judgment of Mr Justice Bryan handed down in January of this year following a nine-week trial between the parties that took place in October/November 2018 (the "Judgment"). It primarily concerns the question of how a fund of bonds bought by husband and wife co-owning in unequal parts has been eroded by spending predominantly referable to the husband.

Factual Background

2. The relevant features of the Judgment are not contentious. The first three Defendants (the "Shareholders") were the former majority owners and board directors of the Claimant bank to whom I shall refer as the Bank. The Bank collapsed in December 2014 and had to be bailed out by the Russian Deposit Insurance Agency to the tune of US$1 billion so as to protect the thousands of ordinary Russians who had deposited their savings with it. The First and Third Defendants left Russia after the Bank's collapse and moved to England, which is why proceedings took place here. The Second Defendant, Mr Belyaev, currently lives in the United States. The Fifth Defendant, Mrs Belyaeva is Mr Belyaev's wife.

3. As Mr Justice Bryan found, whilst in control of the Bank, the Shareholders had caused it to enter into a series of dishonest transactions over many years which involved a combination of (i) lending money to offshore shell entities, which they secretly owned and controlled behind a façade of so-called "nominee UBOs", for the purposes of deliberately misstating the Bank's accounts to deceive the regulator, the Central Bank of Russia (the "CBR"), and (ii) providing finance for their own business projects without disclosing their beneficial ownership of the borrowing companies. The manipulation of the Bank's accounts was ultimately in the nature of a Ponzi scheme, requiring more and more cash (from depositors) to conceal the Bank's financial position.

4. Whilst this was happening, the Shareholders were handsomely remunerated by way of salary and bonus received from the Bank amounting to $73 million between them between 2006 and December 2014. In addition, the Shareholders received some US$68 million into their Swiss Bank accounts in connection with a successful business venture funded with the Bank's money.

5. The present application concerns only the Second and Fifth Defendants nd the account below focuses on the relevant facts so far as they are concerned.

6. The Judgment finds that Mr Belyaev was jointly and severally liable to the Bank for damages in respect of the dishonest transactions, which he had tried to disassociate himself from at trial. The Judge found that Mr Belyaev was "*not an honest witness and did not give honest answers to the Court*". There are numerous findings that Mr Belyaev lied to the Court about important matters.

7. The trial also considered claims made by the Bank in relation to assets transferred by the Shareholders to their wives in what the Bank claimed were attempts at "judgment-proofing". These findings are key to the application before me. The Judge found that:

i) In October 2014 (just two months before the Bank collapsed), Mr Belyaev transferred £5 million to his wife which was remitted to an account in the UK.

ii) Prior to transferring that money, Mr and Mrs Belyaev were each (as a matter of Russian law) 50% owners of the £5 million.

iii) These funds were deposited with a company called Vestra Wealth (the "Vestra Account") and used to purchase UK Government Bonds. At trial, Mr Belyaev claimed that this £5 million was a gift to his wife intended to facilitate her acquiring a UK investor visa. Mrs Belyaeva's evidence was consistent with this case.

iv) However, the only contemporaneous document produced, a "*memorandum of deed of gift*" referred to a much smaller gift of £1.2 million. The Judge rejected the Belyaevs' evidence that a much larger gift had been intended but only partly documented.

v) The Judge therefore found that:

a) The documented sum of £1.2 million had been genuinely gifted by Mr Belyaev to his wife;

b) Mr Belyaev had however retained the beneficial interest in 50% of the balance of £3.8 million, i.e. £1.9 million, and that sum had been held by Mrs Belyaeva on resulting trust for her husband.

8. Therefore, and this is the critical factual background for this application: the position as from 2015 was that there was £5 million worth of government bonds and/or cash in the Vestra Account, and that £1.9 million of that was held by the Fifth Defendant on resulting trust for the Second Defendant. £3.1 million was legally and beneficially the property of the Fifth Defendant.

9. The Judge also found that the transfer of this £1.9 million was a transaction in fraud of creditors for the purposes of section 423 of the Insolvency Act 1986 (paragraph 1395). This arose because the Bank had pleaded claims for declarations that the Shareholders had retained the beneficial interest in assets transferred to their wives or alternatively that the transactions were in fraud of creditors and that relief should be granted under the Insolvency Act. He noted: "*In terms of the relief to be granted under section 423(2) [of the Insolvency Act] I will hear the parties after the handing down of judgment (if the same is not agreed)*".

10. On 23 January 2020 the Court made an order setting out the agreed figures which the Shareholders were bound to pay to the Bank by way of damages. The Shareholders' liability equates to about £780 million.

11. Mr Belyaev has thus far paid nothing to the Bank in respect of the Judgment. His fellow shareholders, Mr Yurov and Mr Fetisov, have declared themselves bankrupt.

12. On 27 February 2020, a hearing of consequential matters took place. The Belyaevs were represented at that hearing by leading counsel (Mr Penny QC). Mr Justice Bryan made two orders at that hearing:

9.1. First, an order dealing with various consequential matters (the "27 February 2020 Order") including an order for indemnity costs against the Shareholders, a payment on account of costs of £5 million (which has not been paid) and various declarations in relation to the asset transfers to the Shareholders' wives; and

9.2. Second, a post-judgment worldwide freezing order to which both of the Belyaevs are respondents (the "Post-Judgment WFO"). This replaced an earlier pre-judgment WFO granted in 2016 to which Mrs Belyaeva was party as a *Chabra* Defendant.

13. Prior to the hearing on 27 February 2020, Mrs Belyaeva served her Second Witness Statement dated 17 February 2020 in which she explained that, although bonds worth £5 million had originally been purchased with the funds transferred to the Vestra Account, those bonds had been sold from time to time to pay living and legal expenses from the Vestra Account and that only £1,373,233 remained on the account as at 13 February 2020. This has been referred to before me as the **"**£1.4 million Balance".

14. The £1.4 million Balance is not a cash balance. Rather, there are UK Government Bonds with a value of £1.4 million held by Vestra in what must be a custody account. The question is whether that balance is that of Mr Belyaev or Mrs Belyaeva or both.

15. Mrs Belyaeva's position, as explained in her Second Witness Statement, is that the entirety of the £1.4 million Balance belonged to her and therefore that none of it belonged to Mr Belyaev. She says this situation arises because more than double this has been spent on joint living expenses or legal expenses which are predominantly referable to Mr Belyaev, not to her.

16. The evidential basis for this is as follows:

i) The Fifth Defendant has exhibited a portfolio valuation report from Vestra Wealth showing the movements of money in the Vestra Account between 1 January 2016 and 31 December 2019

ii) According to a letter issued by LGT Vestra LLP dated 14 February 2020:

a) Between 9 March 2016 and 12 November 2019, a total of £2,792,677.81 was paid to Fried, Frank, Harris, Shriver & Jacobson (London) LLP ("Fried Frank") in respect of the Second and Fifth Defendant's legal fees. On 26 February 2016, the Claimant was informed by Fried Frank that the government bonds held in the Vestra Account would be sold from time to time to fund the legal representation of both the Second and Fifth Defendants.

b) Between 13 April 2016 and 21 January 2020, US$ 1,929,398.03 and €8,000 was paid out of the account for living and other expenses.

c) On 13 February 2020, there was £1,373.233 remaining in the Vestra Account.

iii) Mrs Belyaeva has estimated in her evidence that much less than 10% of the expenditure on legal fees paid out of the Vestra Account related to her legal advice and representation by Fried Frank. She says that only three paragraphs of a 197-page pleading related to her, and about 10 paragraphs out of 1,945 in the judgment related to the claim against her. She was cross-examined for less than 20 minutes, whereas Mr Belyaev was cross-examined for five days. She says that the fact that the legal fees had been incurred by her husbandwas recognised by the Claimant in its submissions on this application for permission to appeal, in which it said that the Second Defendant spent around £3 million on his defence.

17. The Bank has indicated that its claim was limited to 38% of the £1.4 million Balance on the basis that:

i) As the Judge had found, £1.9 million of the original £5 million belonged to Mr Belyaev (being 50% of the £3.8 million that was not required for the UK investor visa);

ii) £1.9 million is 38% of £5 million; and

iii) It followed that the Bank's claim was limited to 38% of the £1.4 million Balance or about £532,000 (the balance being owned by Mrs Belyaeva).

18. The matter was not decided at the consequential hearing for logistical reasons recorded at paragraphs 27-29 of his Consequential Judgment:

> "27. I consider that this gives rise to an issue of principle on which the parties are not in agreement, that has developed somewhat during the course of argument, and which has not been fully argued before me today, including arguments that are said to arise in relation to the alternative claim under Section 423 of the Insolvency Act 1986, with some matters only being ventilated in reply (and further submissions in relation to such reply).
>
> 28. I do not consider that it would be appropriate to make any binding ruling at this time in relation to the second aspect of relief that is sought. I consider the appropriate time to consider and determine any such matter is in the context of any enforcement action in relation to the monies that are in the Vestra Wealth Management account. If and when it becomes necessary to determine the issue of principle between the parties in the context of enforcement, I can see the sense (so far as that proves to be practicable) of any associated hearing being before me given my knowledge of the background to the matter, albeit that ultimately it is a discrete issue capable of being determined by any judge.
>
> 29. Accordingly, I will order that if, in due course, there is enforcement action taken in relation to the Vestra Wealth Management account, then so far as practicable, it will be listed

> before me. Otherwise, like enforcement against any other asset, it will be dealt with by whichever judge it comes before."

19. The Order dated 27 February 2020 provided in relevant part as follows:

> "6. The Fifth Defendant held £1.9 million of the £5 million of UK Government Bonds deposited in her account with Vestra Wealth Management (the "Vestra Account") on resulting trust for the Second Defendant and the Fifth Defendant was the beneficial owner of the remaining £3.1 million of bonds in the Vestra account.
>
> 7. The Claimant having accepted that its claim to enforce against the bonds and/or funds in the Vestra account is limited to 38% of the bonds and/or funds currently held in that account ("the 38%"), the Fifth Defendant is the legal and beneficial owner of 62% of the bonds and/or funds currently held in the Vestra account ("the 62%") and, for the avoidance of doubt, nothing contained in this Order or the Post-Judgment WFO shall interfere with or otherwise affect the Fifth Defendant's ownership of or ability to deal with the 62%.
>
> 8. The issues of (i) whether the 38% (or any part thereof) is held on trust for the Second Defendant and (ii) what if any relief should be granted under sections 423-425 of the Insolvency Act 1986 in respect of the 38% (or any part thereof), are to be determined in any future enforcement proceedings with respect to the Vestra Account, with the matter to be listed before Mr Justice Bryan (if available)."

20. In order to preserve the position pending resolution of the dispute in relation to the 38%, paragraph 9 of the Post-Judgment WFO made it clear that Mrs Belyaeva was not to dispose of, deal with or diminish the value of the 38% until further order.

21. It was agreed that the Fifth Defendant was the legal and beneficial owner of 62% of the money remaining in the Vestra Account as at 27 February 2020. That money has now been removed from the Vestra Account by the Fifth Defendant. Therefore, ownership of the 38% of the money remaining on 27 February 2020 (approximately £500,000, the Remaining Balance) is disputed.

22. All three Shareholders have since sought permission to appeal from the Court of Appeal. These applications have yet to be determined. But no stay of execution has been sought or obtained and the Judgment remains enforceable in the ordinary way.

The Applications

23. On 13 March 2020, the Bank applied for a Charging Order in respect of the entirety of the 38%. On 17 March 2020, Master Davison granted an Interim Charging Order.

24. On 14 April 2020, following service of the Fifth Defendant's Third Witness Statement, the Claimant's solicitors emailed the Fifth Defendant requesting disclosure of (i) a copy

of the letter of engagement from Fried Frank to the Second and Fifth Defendants; and (ii) copies of all bills issued by Fried Frank saying:

> "Fried Frank's engagement letter will no doubt explain the basis of their fees and who is responsible for them. It appears to be your position that you are only responsible for 10% or so of their fees, but there are no documents to support this. Thus, the Bank will be asking the Court to infer – absent disclosure - that you and your husband were jointly and severally liable for the costs that were incurred."

25. In her Fourth Witness Statement the Fifth Defendant disclosed the requested documents and explained as follows:

i) Her involvement in the litigation and her potential financial exposure was very limited. She was only ever liable to Fried Frank for work done in respect of the worldwide freezing order and her defence of the limited claim against her.

ii) Fried Frank only ever issued one letter of engagement in relation to the Fifth Defendant, and that concerned her representation for the worldwide freezing order. There was no separate letter of instruction relating to the substantive claim, although the Fifth Defendant instructed Fried Frank to represent her.

iii) All invoices issued by Fried Frank were marked for the attention of the Second Defendant. The case file name on all the invoices was "*RE: Representation of respondents to a worldwide freezing order*". Although the Fifth Defendant was named at the top of the invoices along with the Second Defendant, the invoices were only ever sent to the Second Defendant, and were never sent to the Fifth Defendant.

iv) The Fifth Defendant considers she was named on the invoices not because she was liable for them, but because Fried Frank never updated its case file name. The invoices related overwhelmingly to the legal defence of the Second Defendant, and not to work done on behalf of the Fifth Defendant.

v) The Fifth Defendant authorised payment of Fried Frank's legal fees from the Vestra Account at the request of the Second Defendant.

vi) The Fifth Defendant considers that she was not liable to Fried Frank for the fees invoiced insofar as they related to the legal expenses of the Second Defendant. It would not have made sense for the Fifth Defendant to agree to be liable for USD 2.8 million in fees when the case against her was extremely limited in scope, complexity and value.

vii) The Second Defendant requested that the Fifth Defendant pay Fried Frank's fees from the money held in the Vestra Account as no other money was readily available to him or the Fifth Defendant.

viii) The Fifth Defendant considers that the £1.9 million which she held on trust for the Second Defendant was exhausted by payment of the Second Defendant's legal fees and living expenses, paid at his request.

ix) There was a clear understanding that any money in the Vestra Account found to belong to the Second Defendant would be spent first, before any of the Fifth Defendant's money was spent, and that the Second Defendant would repay any of the legal expenses and living costs paid by the Fifth Defendant. That was because the litigation was the Second Defendant's litigation, and his matter to resolve.

26. On 22 May 2020, the Bank supplied to Mrs Belyaeva (i) a note summarising the legal arguments that the Bank intended to advance at this hearing in relation to the 38% and (ii) a draft order setting out the alternative orders that the Bank intended to see and has sought before me. This was done in circumstances where Fried Frank had come off the record.

27. On 25 May 2020, Mrs Belyaeva herself issued an application to vary the Post-Judgment WFO by removing paragraph 9 (which froze the 38%) and to discharge the Post-Judgment WFO against her generally. The premise of this application is of course that she is the sole beneficial owner of the 38%.

28. Accordingly, the closely interlinked issues considered at this hearing were the following:

i) First, whether the 38% belongs beneficially to Mr Belyaev or Mrs Belyaeva;

ii) Second, whether relief should be granted under the Insolvency Act in respect of the 38%;

iii) Third, whether the interim charging order granted on 17 March 2020 should be made final; and

iv) Fourth, whether the Post-Judgment WFO should be varied and discharged as against Mrs Belyaeva.

Issue 1: Beneficial Ownership of The 38%

29. The situation as described above is that monies belonging in equity partly to Mr Belyaev and partly to his wife were used to purchase bonds held as a single unsegregated pool. In particular 38% of the initial funding belonged to Mr Belyaev and 62% to his wife. The pool of bonds has now been depleted and the question is: "*who is the beneficial owner of what remains?*"

30. The Bank submits that that question can only be answered by applying the rules of tracing in equity (which themselves reflect English property law). In *Foskett v. McKeown* [2001] 1 AC 102, Lord Millett famously said that tracing is "*neither a claim nor a remedy. It is merely the process by which the claimant demonstrates what has happened to his property, identifies its proceeds and the persons who have handled or received them, and justifies his claim that the proceeds can properly be regarded as representing his property*".

31. Here, whilst the Bank itself has no proprietary claim, it submits that the process of tracing provides the only legal technique by which the Court can assess who has the

beneficial ownership of the 38%, i.e. what part of the remaining bonds represent Mr Belyaev's original 38% share.

32. It submits that the present case is in fact straightforward because:

i) There was one initial lump sum contribution of £5 million into the Vestra Account (as opposed to a series of contributions from different sources over time);

ii) It has already been determined that 38% of that lump sum contribution belonged in equity to Mr Belyaev and that the remaining 62% belonged to his wife;

iii) That £5 million was used to purchase an unsegregated pool of bonds;

iv) A large number of the bonds have been sold from time to time to raise cash and the cash has then been paid out of the account but there are none-the-less a substantial number of bonds remaining. Those remaining bonds represent the traceable proceeds of the initial £5 million cash contribution.

33. In such circumstances, it contends that the right analysis is that when the £5 million was paid into the Vestra Account, Mr Belyaev and Mrs Belyaeva were tenants in common as to 38% and 62% of the chose in action in relation to that account (i.e. the right to sue Vestra for the balance of the account); When that £5 million was used to purchase UK Government Bonds, Mr Belyaev became the beneficial owner of 38% of the bonds (as the Court has already declared at paragraph 6 of the 27 February 2020 Order.

34. It submits, relying on *The Law of Personal Property*, Bridge et al (2nd Ed) at paras. 16-016 to 16-024, that it is quite clear as a matter of English property law that when fungibles, such as money or bonds, are mixed together, the co-owners are tenants in common as to their respective shares. There was no segregation of the bonds with the effect that when bonds were sold to raise case, the bonds were depleted in proportion to the Belyaevs' respective interest in them (e.g. if 100 bonds were sold, 38 of those belonged in equity to Mr Belyaev and 62 belonged to Mrs Belyaev). In short, as the pool of bonds was depleted, the Belyaevs continued to own what remained in the same 38%/62% proportion. It follows that Mr Belyaev is the beneficial owner of the 38%.

35. Mrs Belyaeva submits that:

i) There is no logic or legal principle behind these arguments. She submits that a resulting trust creates a bare trust, and the beneficiary is absolutely entitled to the trust property: Snell's Equity 34th Ed., paragraph 21-022.

ii) The trustee of a trust for a beneficiary absolutely entitled has a duty to transfer the property to or at the direction of the beneficiary, assuming that the beneficiary is of full age and capacity and so able to give a valid direction and receipt, that the property is capable of transfer by the trustee in the manner directed, and that the trustee has no unsatisfied right of indemnity against the trust property: Lewin on Trusts, 20th Ed., paragraph 1-037.

iii) That is unaffected by the fact that a fund may be a mixed fund.

36. So Mrs Belyaeva says that the Fifth Defendant was a resulting (bare) trustee in respect of £1.9 million held in the Vestra Account, held for the beneficiary, the Second Defendant, who was of full age and capacity and able to give a valid direction in relation to the trust property. The Second Defendant directed the Fifth Defendant to use the money in the Vestra Account (which the Claimant had claimed was the Second Defendant's money) to pay Fried Frank's legal fees, and to pay for his 50% share of their living expenses. The trust property (as retrospectively found), namely the £1.9 million of government bonds and/or money in the Vestra Account, was capable of transfer by the Fifth Defendant in the manner directed and was so transferred.

Discussion

37. Having reviewed the facts and the parties' submissions, in the end I do not think it matters much which approach one takes to the main issue, because the result is the same. So far as the tracing analysis advanced for the Bank is concerned, I can see that this is, to some extent, experimental thinking. However, I see no reason of principle why the fact that the Claimant has no proprietary interest should be a bar to tracing in circumstances where what is in issue is not tracing assets to which the Claimant claims to be beneficially entitled, but rather the question of how much of the Second Defendant's property remains in a particular account.

38. Nor can I see, in principle, why the evidential tool of tracing should not be available outside circumstances where there is a wrongdoing trustee. I appreciate that the authorities tend to assume the existence of a wrongdoing trustee. I can appreciate that there may be argument about this, but there seems to be no authority suggesting that it cannot or why not. I am not however persuaded that tracing is necessarily definitive as to the result, and I do not think that was suggested; because tracing itself creates what one might say are rebuttable presumptions. So in *Re Hallett's Estate*, though that was not a principle relied on before me, the presumption is that a trustee in breach of trust spends his money first.

39. It is hence that the route of analysis does not matter, because it follows that evidence of what the parties actually intended can rebut the presumptions.

40. However, despite the clarity and skill with which the points were advanced on behalf of Mrs Belyaeva by Mr Davidson, I do not accept that the evidence adduced is sufficient to rebut the presumptions created by the tracing analysis. Further, in any event, even absent the tracing analysis, that evidence is at odds with, and does not rebut, what was actually the primary position of the Defendants at the time.

41. I will deal with the latter point first. The question of intention can only relate to the intentions at the time the payments were made and at the time at which the bonds were actually sold to raise cash to pay these legal and living expenses. Mrs Belyaeva's own position was - and she must be taken to have believed at that time - that she was the beneficial owner of all of the bonds and that she was therefore using her own property to raise funds to pay joint legal and living expenses.

42. In short, looked at as at the time when the payments were made, the parties themselves did not consider that there was a resulting trust in Mr Belyaev's favour and Mrs Belyaeva did consider that she intended to make a gift of what she believed were her funds (subject to any agreement for repayment later). That was the primary position;

and that is a situation which might be said to be entirely harmonious with the fact that she is Mr Belyaeva's wife and she at that point believed him to have gifted her with this substantial sum of money to enable her to get an investor visa.

43. It therefore cannot be said that at the time at which the bonds were sold there was a primary intention to dip disproportionately into Mr Belyaev's share of the bonds. That is also consistent with the documents and I will return to the documents later.

44. Mrs Belyaeva says that this argument ignores the fact that she knew that the Claimant claimed that the money was the Second Defendant's money and therefore knew that there was a possibility that she was in fact spending the Second Defendant's money, as has now turned out to be the case.

45. I do not see this, in and of itself, as making any difference. Mrs Belyaeva may have known that - but on her case, that is not what she believed. The result would be that as a matter of analysis, Mrs Belyaeva had, as a primary intention, an intention to pay out of her own money; and what would follow from that was that the starting point would be that none of Mr Belyaev's money was eroded by the payments. However, the Claimant did not pursue this argument before Mr Justice Bryan or today, and seeks to recover no more than the percentage of the sum which remains frozen, such percentage being consistent with the tracing analysis.

46. Mrs Belyaeva also tried to persuade me that this approach was repugnant, saying that it would set a precedent where by an innocent resulting trustee, holding a mixture of trust money and her own money, would be held to be liable for payments made at the request of, and for the benefit of the beneficiary, in proportion to the amount of money she held in the bank account. She says that is self-evidently not a fair, logical or principled result.

47. However, that does in my judgment properly reflect the analysis (and overstates the evidence). It is not the mixture which leads to the result. The mixture of funds gets one so far. It is the intention of the trustee which moves the result one way or the other. It cannot be unfair, unprincipled or illogical to say that a trustee who wittingly primarily intends to make a gift of property should be held to have succeeded in doing so, unless she can somehow shift or displace that intention. Similarly, the point at paragraph 34 of the skeleton as regards payments using the money takes the matter no further.

48. But even if this were not the case, I would hold that the presumption created, either by tracing or by the question of primary intention, whichever route one follows, is not on the facts rebutted by the evidence now adduced on behalf of Mrs Belyaeva. There are, it seems to me, all sorts of problems with that evidence.

49. For example, there is no evidence of the requests and the account of them by Mrs Belyaeva is sketchy in the extreme. Mr Davidson, in submissions, says it makes sense that the requests would have been made by him, but that is manifestly not evidence and Mrs Belyaeva has had ample opportunity to address this. There are problems with the fact that the evidence that it was clear that Mr Belyaeva's money was to be spent first is a very late-emerging construct and it is again in the very broadest of terms, unsupported by any particulars. Mr Davidson again submits that it makes sense that such an agreement would exist, but again that is not evidence. The evidence relied on is barely better, in evidential terms, than his submission that it makes sense that an

agreement would exist. There is no evidence from Mr Belyaev or from any third party whose evidence might be given a degree of weight as to that understanding, just as there was no such evidence as to the requests.

50. The supposed understanding is unsupported by any documents. It is also an understanding which is difficult to harmonise with the understanding which was, it is common ground, Mrs Belyaeva's actual understanding at the time, namely that the entire fund was hers; and that disjunction and how the understanding now relied on sits together with that is not explained.

51. In my judgment, the case now advanced requires an element of double-think, which is quite striking and which is not addressed. Had such a double-think course been pursued, had it occurred, one would expect it to be supported by some outward manifestation; by for example a course of dealings such as the splitting out of sums referable to Mrs Belyaeva's expenses. There are no communications with Vestra, telling Vestra anything about it. There is no direction to take funds out of Mr Belyaev's notional share of the bonds.

52. As for the legal fees aspect, the evidence on this is also far from helpful to Mrs Belyaeva. Although much attention has been addressed to the amount of work done, the question of who is liable for the legal fees is not governed by the work done, but by the retainer.

53. So far as this is concerned, the evidence, in particular the lack of any further retainer document, and the joint addressing of the invoices, which seems never to have been corrected by the Belyaevs, seems to suggest either a joint retainer, which would suggest that Mrs Belyaeva could have been sued for those fees, or at the very least a joint interest in the litigation, consistent with Mrs Belyaeva, even if not part of joint retainer, being jointly interested in funding her husband's legal fees; which of course was the primary position.

54. The evidence so far as it goes is far more consistent with what might term a joint approach. There was, effectively, so far as one can see from the bank accounts, a single fund which was used on behalf of both Mr Belyaev and Mrs Belyaeva jointly. Instructions were sent to liquidate funds and to produce cash jointly. As such, the starting point provided by the tracing analysis actually appears to be consistent with, rather than at odds with the documentation.

55. I make clear that this is not a question of disbelieving Mrs Belyaeva or considering her evidence to be untrue. It is simply a question of not accepting that the quality and inherent credibility of the evidence now advanced is sufficient to displace the presumption which is created, whether one starts from the point of view of the tracing analysis or the primary intention. So it is not a question of deciding whether the evidence is a later construct, did not exist at the time and is prompted by wishful thinking. It is rather a question of the burden being on Mrs Belyaeva and that burden not being discharged, given the very thin nature of the evidence now relied on. I do consider that before that burden could be discharged, something considerably more convincing and some further manifestation of the understanding which is at the heart of the case which is advanced would be necessary.

56. Accordingly, I conclude that the proportionate approach advocated by the bank is not only correct, but is in harmony both with fairness, common sense and the surrounding facts in this case.

Issue 2: The Insolvency Act relief

57. In the premises, the second issue, the relief under the Insolvency Act does not arise. Had it done so, I would have considered that the Bank's case on this was not one which should succeed. If I had concluded that the fund did belong solely in equity to Mrs Belyaeva, it would be illogical and unprincipled to conclude that I should grant relief under section 423/425 of the Insolvency Act. Critical to the exercise of any such power is the identification of a transaction to trigger the relevant section of the Act. Here it was initially far from clear what transaction was relied on.

58. In argument, it was clarified that this was the original transfer of the entire £1.9 million, but this to some extent begs the question of part of the money having been a genuine and valid gift to Mrs Belyaeva. While, as Mr Davies submitted, I may have jurisdiction to make an order in such a case, the basis for an order where this first step has been made in Mrs Belyaeva's favour, has to be justified; and here it seemed to me that the justification was lacking. The argument itself was not consistent with the attitude taken by the bank to the other portion of the fund.

59. So far as the attempt to suggest knowledge, so as to come within the ambit of the decision in *4Eng v Harper* [2009] EWHC 2633 (Ch), the question of knowledge was not a case pursued at trial. It is not at all clear to me that the point was considered, still less decided by the judge. Given the very serious consequences, it would not be appropriate for me at this stage to make that leap. Similarly it is not fair, absent proof of knowledge, to fix Mrs Belyaeva with knowledge of the dishonesty of the defence which Mr Belyaev advanced and which led to the increase in the length of trial, and which was relied on as a basis for making the Section 423 order.

Issue 3 – The Charging Order

60. It follows, however, from my acceptance of the Bank's primary argument that the 38 per cent is owned beneficially by Mr Belyaev and that I should accede to the application to make the charging order final. There is no evidence before the Court about any competing creditors or such like. It appears to me to be appropriate for that charging order to be made final, so as to secure the Bank's right of payment of some part of the judgment against Mr Belyaev.

Issue 4 – The WFO

61. Similarly, for the reasons which I have already set out, it follows that Mrs Belyaeva's application to vary the worldwide freezing order, which was premised on her being the beneficial owner of the 38 per cent falls likewise to be dismissed.

The judgment has been approved by the Justice.