Claim No: CL-2018-000498

Neutral Citation Number: [2021] EWHC 1514 (Comm)

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

7 Rolls Building
Fetter Lane
London EC4A 1NL

Friday, 28 May 2021

BEFORE:

MR JUSTICE BUTCHER

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BETWEEN:

ALEXANDER TUGUSHEV

Claimant

-and-

(1) VITALY ORLOV
(2) MAGNUS ROTH
(3) ANDREY PETRIK

Defendants

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MR RICHARD SLADE QC and MR RICHARD BLAKELEY (instructed by Peters & Peters LLP) appeared on behalf of the Claimant
MR CHRISTOPHER PYMONT QC, **MR BENJAMIN JOHN and MR JAMES KINMAN** (instructed by Macfarlanes LLP) appeared on behalf of the First Defendant.
THE SECOND DEFENDANT did not appear and was not represented
MR PHILIP HINKS (instructed by PCB Byrne LLP) appeared on behalf of the Third Defendant
MR JAMES POTTS (instructed by Keystones Law) appeared on behalf of the non-party applicants.

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JUDGMENT
(As Approved)

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Friday, 28 May 2021

(15.21)

JUDGMENT

1. MR JUSTICE BUTCHER: This is an application by the First Defendant, or Mr Orlov, to be relieved from having to give disclosure of what has been called the “red list” of documents, at least for the time being. I will explain in due course the significance of saying "at least for the time being".

2. The crux of Mr Orlov's application is his argument that he might be committing a criminal offence in Russia if he gives disclosure of documents on what has now been called that red list: namely, documents and data which have been seized by the Russian criminal Investigator in the proceedings to which I will refer.

The background

3. The Claimant claims in this action to recover from the First and Second Defendants in contract, and against the First to Third Defendants in the tort of conspiracy, in respect of what he contends are breaches of his rights under a tripartite joint venture agreement. This agreement was made, on the Claimant's case, orally and reduced to writing in 1997 and subsequently. The Claimant contends that under that joint venture agreement the he agreed with the First Defendant and with the Second Defendant to combine resources to co-found and co-operate a jointly owned international fishing business; and that that became the business which is today operated worldwide by the Norebo Group, and is estimated to be worth some USD 1.5 billion.

4. The Claimant brings the present claim to realise what he says were his interests in the assets of that joint venture, and he seeks an order that such assets be transferred to him, or damages in lieu. The Claimant also contends that he was a victim of a conspiracy between the First and Second Defendants which sought to misappropriate or deny the existence of his interests in the Norebo Group. He also says that he has been the victim of the misappropriation of his shareholding in a Russian company, CJSC Almor Atlantika, as a result of the conspiracy between the First, Second and Third Defendants. He has made a claim in conspiracy, for declaratory relief as to his rights in the Norebo Group and for an account in respect of dividends which he says ought to have been paid to him but were not paid to him by the Norebo Group.

5. The Second Defendant admitted various parts of the Claimant's claim in contract. As I will say in a moment, there has recently been a settlement between the Claimant and the Second Defendant.

6. The First Defendant denies all the Claimant's claims. He alleges that he and the Second Defendant were business partners but he says that the Claimant was only a supplier to them. He accepts that he, the Claimant and the Second Defendant jointly owned Almor Atlantika but not as part of the joint venture. He alleges that any joint venture agreement fails as a matter of the applicable law. He also contends that the Claimant left Almor Atlantika in 2003 when he took up public office. If that is wrong, as I understand it, he claims that the Claimant committed a repudiatory breach of the joint

venture agreement in 2004 when the Claimant was jailed, having been convicted of fraud.

7. As for the conspiracy claims, the First Defendant denies the allegations. It appears that, in addition to his Defence, the First Defendant has put in a considerable amount of evidence in the context of his ultimately unsuccessful application to challenge the court's jurisdiction as well as his ultimately successful application to set aside and oppose the continuation of a worldwide freezing order which was obtained by the Claimant on 23 July 2018.

8. As I have already mentioned, it appears that on 19 May 2021 the claims brought by the Claimant against the Second Defendant were settled on terms which are, at least for the moment, confidential. The Second Defendant, however, remains a party because he pursues Part 20 claims against the First Defendant, claims which Mr Pymont QC for the First Defendant says are inadequately particularised.

Procedural matters

9. The proceedings were commenced in July 2018. The parties appear to have been principally occupied with the jurisdiction challenge and with the application to set aside the worldwide freezing order until July 2019. On 15 October 2019 one of the First Defendant's Russian lawyers, a Mr Stadnik, made a criminal complaint on behalf of the First Defendant alleging fraud by the Claimant. The complaint alleges that the Claimant undertook various criminal acts aimed at the fraudulent extortion of Mr Orlov's property. There are allegations that the Claimant procured confidential information from the Norebo companies and there is an allegation which, as I read it, is one of criminal defamation.

10. That criminal complaint was made with the Murmansk Regional Office of the Ministry of Internal Affairs. The Claimant contends that it is to be inferred that it was brought in Murmansk because the First Defendant is a highly influential character there. I cannot take any view in relation to that point on the evidence available on this application, but that is the Claimant's surmise.

11. On 31 October 2019 a criminal case was opened by the Head of the Investigations Department of the Murmansk Office of the Ministry of Internal Affairs. That case has been called the “670 case”.

12. On 20 December 2019 the First Defendant served his Defence in these proceedings.

13. On 10 April 2020, in the context of the 670 case in Murmansk, the First Defendant signed an acknowledgement of non-disclosure. It applied to “preliminary investigation data” and under it the First Defendant acknowledged, amongst other things – but importantly – that "I do not have the right to disclose preliminary investigation data that have become known to me in connection with my participation in this criminal case."

14. On 18 to 20 May 2020, a three-day CMC was held in this case before Jacobs J. At that CMC I understand that the Claimant originally sought an order that disclosure should

be given in October 2020. The First Defendant sought a later date and also sought a split trial with liability only being decided in 2022. As to those, the First Defendant's application for a split trial was refused. The court accepted the First Defendant's submissions that disclosure should be given later than the date which was sought by the Claimant and should be given by 5 February 2021. That date was, as I understand it, fixed in order to take into account considerations regarding the impact of Covid 19 and also having regard to the extent of the disclosure exercise which would have to be undertaken. The other key directions which were given by the court were that: witness statements should be exchanged by 11 June 2021; that responsive witness statements should be exchanged by 30 July 2021; that experts' reports in, as I understand it, four disciplines should be served on 8 October 2021 with supplemental reports by 17 December 2021; that there should be a PTR on 24 January 2022; and that a 16-week trial should commence on 21 March 2022.

15. On 18 January 2021 the First Defendant sought an extension of six weeks to give disclosure, citing the impact of the pandemic and the scale of the disclosure exercise. That request for a further extension was thus made close to the deadline for the giving of disclosure of 5 February 2021. The parties agreed a three-week extension of the time for the giving of disclosure until 26 February 2021, though the First and Second Defendants apparently indicated that they considered that that extension would be inadequate.

16. On 26 January 2021 a Russian Investigator called Safonik seized material in the 670 case. What happened was that at around midday on that date Investigator Safonik entered the offices of Norebo and seized servers and data storage devices installed there, for the purpose of finding and seizing documents that might be used to substantiate the facts in case 670. Precisely what prompted that action is unclear. The Claimant infers that the seizure and its timing was the result of improper coordination between Mr Orlov's team and the Russian Investigator. The First Defendant infers that it was the result of a letter written by Peters & Peters on behalf of the Claimant to the Murmansk Ministry of Internal Affairs office on 18 January 2021, which letter, the First Defendant says, demonstrated a knowledge of the documents on the file for case 670. I cannot, on this application, resolve the question of which, if either, of these inferences is correct.

17. In response to a letter from the Claimant of 12 February 2021 the First Defendant stated that he would need until 19 March 2021 to give disclosure. It was not until 19 February 2021 that mention was made of issues regarding difficulties as regards the material seized by the Investigator. On 2 March 2021, the Claimant indicated that he was prepared to agree to an extension of time to give disclosure until 19 March if the First Defendant would commit to giving all of his disclosure by that date. That confirmation was not given. The Claimant was, nevertheless, prepared to agree to extend time for the First Defendant’s disclosure until 19 March 2021 on the condition that he should make any application for a further extension beyond 19 March 2021 by 12 March 2021. Again, the First Defendant did not give that confirmation.

18. On 5 March 2021 the First Defendant gave notice of a request, by way of a letter application to the court, for an unconditional extension to 19 March. As I understand it, on 15 March 2021 Andrew Baker J decided that the First Defendant's letter of 5 March was not adequate and directed that the First Defendant should make any application for

an extension of time for disclosure or other additional directions in relation to disclosure, by 4.00 pm on 17 March 2021.

19. On the day after that decision of Andrew Baker J, namely on 16 March 2021, the Claimant was charged with fraud in case 670. The Claimant says that it is to be inferred that given its timing, in light of the pending disclosure deadline and Andrew Baker J's direction, the charge was at the First Defendant's instigation. Again, I cannot decide on this application as to whether that is right.

20. On 17 March 2021 the First Defendant made an application for the deferral of disclosure and on this occasion gave details of the concerns which he had in relation to documents seized by the Investigator. That was now a request for an extension of the time to give disclosure until mid-April, with permission to apply for a further extension.

The Present Application

21. A hearing of the application had been due on 10 May 2021 but on 6 May 2021 was stood out of the list, as I understand it because the documents which should have been filed were not filed in accordance with the default Commercial Court Guide schedule in advance of the scheduled pre-reading day. So the matter now comes before me.

22. What is now sought on behalf of the First Defendant is as follows: first, that the parties should give disclosure within two clear days, subject to the First Defendant's not being required to give disclosure of or inspection of the so-called red list documents, namely those which were seized by the Investigator, and measures being put in place in response to the Keystone clients', as they have been called, concerns. (The second of these is a matter which it is likely will be dealt with by way of an agreed confidentiality regime.)

23. Secondly, that there should then be a pause in relation to disclosure until 2 July 2021 with a general liberty to apply given to all parties and an obligation on the part of the First Defendant to write fortnightly letters to the court and the other parties, updating them as to developments in Russia and any further appeals which the First Defendant intends to make.

24. Thirdly, that there should be a full day hearing set for 30 July 2021 to consider the future case management of these proceedings if matters should not have been satisfactorily resolved by then.

25. Fourthly, that the parties should file and serve any applications or evidence which they wish to make or rely on at that hearing on 2 July 2021 with any responsive evidence to be filed and served on 16 July and any reply evidence to be filed and served on 23 July 2021, and with skeleton arguments to be filed and exchanged by 28 July 2021.

26. The First Defendant says that those steps, if taken, could be put in place without imperilling the trial date. It is said by the First Defendant that the date of 30 July 2021 has been selected on the basis that that is before the last date on which Mr Orlov's remaining disclosure could sensibly be given without endangering the trial fixture. But the First Defendant acknowledges that even his current proposal would involve cutting the 15-week trial (excluding pre-reading time), down to nine and a half weeks. He

suggests that that can be done by the parties relying on written opening and closing submissions only and by reducing the time for cross-examination of witnesses and experts from eight weeks and two and a half weeks to seven and a half weeks and two weeks respectively.

27. The First Defendant says that, at the hearing on 30 July 2021, the court would make a decision as to what to do in the situation which is then apparent. He says that there would be a range of possible choices available to the court at that point, spanning a spectrum from, as the First Defendant puts it, forcing him to give disclosure irrespective of the potential for prosecution in Russia, to staying the proceedings pending the resolution of the Russian criminal investigations.

The legal principles.

28. The starting point, which is uncontentious, is that the First Defendant is currently obliged to give disclosure by paragraph 3 of the CMC order. The First Defendant was obliged to give disclosure in accordance with the models stated in the disclosure review document. As I have already outlined, that was originally to be done by 5 February 2021. There was an agreed extension until 26 February 2021, but there has been no further extension. Accordingly, the First Defendant ought to have given disclosure.

29. The position though is that the First Defendant applies for relief from the obligation to give disclosure of at least part of what would otherwise be the subject of his obligation to do so by reason of his contention that disclosure is illegal under a foreign law and would carry with it a risk of his prosecution in Russia.

30. Both sides referred me for the principles applicable in determining such an objection to the case of *Bank Mellat v Her Majesty's Treasury* [2019] EWCA (Civ) 449. At the outset of his judgment in that case Gross LJ said this:

> "[1] The English Court welcomes litigants from all parts of the world. Gratifyingly, it enjoys a much prized reputation for fairness. There is no "home ground" advantage; it matters not whether the litigants are domestic, foreign, governmental or private. All are treated the same.
>
> [2] For all litigants, the procedure in this Court is governed by the *lex fori* – English law. That is the norm internationally, as a matter of the conflict of laws. Disclosure and the inspection of documents form a part of the law of procedure governed by the *lex fori*. On occasions, a tension can arise between the English law requirement for the inspection of documents and the provisions of foreign law in the home country of the litigant.
>
> [3] Where such a tension arises, it is for the Court to balance the conflicting considerations: the constraints of foreign law on the one hand, and the need for the documents in question to

ensure a fair disposal of the action in this jurisdiction, on the other. That balance is struck by a Judge sitting at first instance, making discretionary, case management decisions. As is well-established, this Court will only interfere if the Judge has erred in law or principle or has (in effect) reached a wholly untenable factual conclusion."

31. Gross LJ thereafter proceeded to conduct an examination of the authorities relevant to this area of law and practice and at paragraph 63 he pulled the threads together, as he put it, and gave a sequence of principles which guide the court's exercise of the relevant discretion. He said:

"[63] Pulling the threads together for present purposes:

i) In respect of litigation in this jurisdiction, this Court (i.e., the English Court) has jurisdiction to order production and inspection of documents, regardless of the fact that compliance with the order would or might entail a breach of foreign criminal law in the "home" country of the party the subject of the order.

ii) Orders for production and inspection are matters of procedural law, governed by the *lex fori*, here English law. Local rules apply; foreign law cannot be permitted to override this Court's ability to conduct proceedings here in accordance with English procedures and law.

iii) Whether or not to make such an order is a matter for the discretion of this Court. An order will not lightly be made where compliance would entail a party to English litigation breaching its own (i.e., foreign) criminal law, not least with considerations of comity in mind (discussed in *Dicey, Morris and Collins, op cit,* at paras. 1-008 and following). This Court is not, however, in any sense precluded from doing so.

iv) When exercising its discretion, this Court will take account of the real – in the sense of the actual – risk of prosecution in the foreign state. A balancing exercise must be conducted, on the one hand weighing the actual risk of prosecution in the foreign state and, on the other hand, the importance of the documents of which inspection is ordered to the fair disposal of the English proceedings. The existence of an actual risk of prosecution in the foreign state is not determinative of the balancing exercise but is a factor of which this Court would be very mindful.

v) Should inspection be ordered, this Court can fashion the order to reduce or minimise the concerns under the foreign law, for example, by imposing confidentiality restrictions in respect of the documents inspected.

> vi) Where an order for inspection is made by this Court in such circumstances, considerations of comity may not unreasonably be expected to influence the foreign state in deciding whether or not to prosecute the foreign national for compliance with the order of this Court. Comity cuts both ways."

32. The matters which may be said to be of particular relevance to the present case, arising from the consideration given by the Court of Appeal to the area in *Bank Mellat*, can be said fairly to include the following. First, that the relevant question is as to the risk of prosecution. It is not as to the risk of a sanction being imposed, but the question is one as to the actual risk of prosecution and not merely the question of whether the conduct which is relevant discloses a breach of foreign criminal law.

33. Secondly, I consider that the statement in *Matthews and Malek* which is cited by Gross LJ at paragraph 62 of *Bank Mellat* is helpful, and that it is ordinarily the case that it will need to be shown that the foreign law does not contain an exception for legal proceedings and that it is not just a text, or an empty vessel, but is regularly enforced so that the threat to the party is real.

34. Thirdly, that what the court will be conducting is a balancing exercise which weighs the actual risk of prosecution against the importance of the documents to the fair disposal of the English proceedings; that an actual risk of prosecution is not of itself determinative of the balancing exercise, although it has to be taken into account. I consider that in that exercise the smaller or less significant the risk which the court considers that there is, even if it surmounts the threshold of being a "real risk", the less weight it will be given in the balance.

35. Fourthly, the court can fashion the order to reduce the concerns as to prosecution under the foreign law.

36. Fifthly that comity cuts both ways and the English courts can expect foreign states to take into account the fact that if disclosure is given in contravention of their domestic law it was in compliance with an English court order.

37. Sixthly, that a party is entitled to attack as well as defend and to see its opponents' documents.

38. Seventhly, that the court is entitled to conclude in an appropriate case that the needs of the litigant and the litigation for the production of the documents should trump the concerns as to the foreign law.

<u>The risk of prosecution</u>.

39. I start by considering the risk of prosecution of the First Defendant. The Claimant accepts that it is not something which can be entirely discounted and I accept that it cannot be said, on the evidence, that there is no risk of prosecution of the First

Defendant. However, in my judgment the risk has not been shown to be significant or substantial.

40. The starting point for this assessment is that it does appear to be common ground that the signed acknowledgement of non-disclosure in the 670 case forms the basis for the commission of an offence under Article 310 of the Criminal Code of the Russian Federation, because it is the material referred to in that which Mr Orlov has been warned that it is impermissible for him to disclose; and it is a violation of the acknowledgement which is the procedural basis for criminal liability.

41. The acknowledgement on its face appears clearly only to prohibit the First Defendant from disclosing preliminary investigation data that have become known to him in connection with his participation in that criminal case. That, as the Claimant submits, also appears to be consistent with the general rule, for which they quote from Dr Shatikhina's report - Dr Shatikhina being the First Defendant's expert - that "the information that a person had before the commission of an offence is not data of the preliminary investigation, under the criminal proceedings in which he is participating (whether as victim or suspect)."

42. The documents which are on the First Defendant's "red list" do not appear to meet the description of documents or information that have become known to the First Defendant in connection with his participation in the criminal case. They are instead, as I understand it, pre-existing documents and data which were known to the First Defendant regardless of the existence of case 670, or the investigation of it.

43. There are at least two arguments which have been put against that by Dr Shatikhina . One of those is that the Russian investigator has not narrowed down which data constitute preliminary investigation data and thus everything on the servers constitutes such data. As to that, it does seem to me that that does not take adequately into account the wording of the acknowledgement. Furthermore, it would give rise to a striking situation whereby anything which was on the servers could not be revealed even though that restriction produced both extensive and pointless restrictions on the ability of an alleged victim, such as the First Defendant in this case, to use his own material.

44. The other argument of Dr Shatikhina is that the First Defendant only became aware of the fact that such information constitutes preliminary investigation data in connection with his participation in the criminal case. It may well be right that the fact that information has been seized forms part of the preliminary investigation data and should not be disclosed, but it is not sought by the Claimant, and it will not be ordered by me, that the First Defendant must give disclosure of what information has been seized. On any view, the fact that the First Defendant only knew what could be characterised as preliminary investigation data because he was involved in the criminal case does not lead to the conclusion that there must be a prohibition against disclosure of all the content of the investigation data even if they were known before the criminal investigation.

45. Secondly, I accept that the evidence which has been presented indicates that the offence under Russian law would require that the disclosure should cause harm or the threat of harm for it to be prosecuted, as the Claimant's expert witness, Ms Alferova, says at paragraph 13 of her second expert report. It does appear to me that the evidence does

not indicate that there would be significant harm. No evidence in relation to harm is actually given by Mr Popperwell, and Dr Shatikhina accepts that it is necessary to prove the nature and extent of harm caused by the offence.

46. It is the case that Dr Shatikhina gives evidence that the investigator has the discretion to set the boundaries of the "investigative secret" and also gives evidence that the prosecutor has no discretion other than to prosecute if there are any signs of a crime. In relation to that, however, it seems to me that the Claimant has once again a strong point that the Investigator has set the boundaries by way of the terms of the acknowledgement. In addition, there is at the very least a significant issue as to whether Dr Shatikhina is right to say that a prosecutor has no discretion or whether the position is rather that a prosecutor must make an assessment based on the nature of the material, the timing and circumstances of its disclosure, and the effect of its disclosure on the investigation and the legitimate interests of the participants in the criminal proceedings in deciding whether to prosecute. The latter appears to be an approach consonant with the decisions of the Constitutional Court of the Russian Federation of 6 October 2015 (No. 2444-0) and of 28 January 2016.

47. Finally under this heading, in any event, Dr Shatikhina accepts that it would be necessary to show the nature and extent of the harm caused by the offence and without that there would be no signs of a crime, and here, as I said, it is not made out that there would be harm caused by the offence. Mr Pymont frankly accepted that the documents and statements from the Russian authorities in relation to case 670, whilst hinting or talking of adverse consequences, do not specify what such consequences might be and it is not apparent.

48. Thirdly, the parties' experts have neither of them adduced evidence of a prosecution under Article 310 where the information disclosed was information which was known to the disclosing party through the conduct of business operations, as it appears would be the case here.

49. While Dr Shatikhina has given evidence that there is no convenient or extant database on which such prosecutions would be recorded, I nevertheless consider that it is material that neither expert has pointed to such a prosecution. In any event it seems to me that on this point it is the First Defendant who would bear the burden of showing the reality of the risk of prosecution, and an absence of evidence of any prosecution under Article 310 in the circumstances which I have mentioned counts against him.

50. The fourth point which I have to consider because Mr Pymont emphasised it in his submissions, is that the First Defendant has sought permission from the Russian authorities to disclose the preliminary investigation documents and is pursuing an appeal against the various refusals. The Claimant says about those various steps that there have been slapdash and uncommitted at best, and I think he would also say in fact set up to fail at worst.

51. I do not think that I can form a view in relation to that dispute on this application, but it does seem to me that the following points can be said with confidence. First, that none of the petitions up until one lodged, as I understand it, yesterday and which is at present undetermined, has taken the points that the acknowledgement does not cover matters already known to the First Defendant, and that the disclosure process in England need

not reveal what was seized. Secondly, that there has been no statement to the Russian authorities or courts that all, or if not all at least the vast majority, of the documents in question are already in the hands of the First Defendant's solicitors in England and are effectively, as I understand it, ready to be disclosed. Thirdly, that none of the dismissals of the First Defendant's petitions and appeals has suggested that the First Defendant would be prosecuted for disclosing copies of documents which are on the servers but which did not come into his possession as a result of the criminal prosecution, and nor do they express an opinion as to whether copies of such documents held elsewhere would constitute preliminary investigation data within the terms of the acknowledgement.

52. In consequence, in my judgment, the steps which have been taken by the First Defendant do not significantly add to or alter the position as it appears from the terms of the acknowledgement and the Russian law as testified to in the expert evidence which has been put in on this application.

The Balancing Exercise

53. I therefore turn to the exercise of the relevant discretion in this case. I bear in mind that the exercise on which I am embarked is an important and serious one. If there is a risk of prosecution by reason of compliance with an order of the court here, that is not something which this court will lightly impose on a party without very serious consideration. I have accordingly given it serious consideration. I have concluded that the balance comes down in this case firmly in favour or ordering disclosure to be made and to be made now.

54. I start by returning to the point which I have already considered, which is that in my view there is no real threat of prosecution, and in any event, even if it can be said that there is a "real" threat, I do not consider it a substantial or significant threat.

55. The second point is that it is not in doubt, and Mr Pymont frankly accepted that there is no doubt, that the material on the "red list" is necessary for the fair trial of these proceedings. The email data on the "red list" is from custodians of apparently central relevance including the First Defendant himself. They include not just Norebo company emails from the First Defendant but also documents stored on Mr Orlov's personal devices and the email data from Mr Orlov's email account vo@sdmail.ru. The Investigator has also apparently seized all the financial and business documentation of the Norebo Group from 1994 to present. That business documentation is likely to be highly material in determining whether or not the Claimant had the role in the business which he says he had.

56. The "red list" documents apparently number some 10,000 which I am told is not quite but something like half of the entirety of the First Defendant's disclosure.

57. Thirdly, it seems clear that many of the most material documents in the case are under the First Defendant's control and they may not be within the Claimant's control because, as he says on his case, he was improperly ousted from involvement in the Norebo companies.

58. Fourthly, what is involved here is not an application that documents should be redacted. Instead the First Defendant seeks, at least at the moment, to withhold the "red list"

documents entirely. That would require a stronger justification than a redaction of otherwise disclosed documents.

59. Fifthly, I consider that it is right that the court can take, and I make it clear that it will take, the following steps to mitigate the risk to the First Defendant: first, it can specify that it is only copies of documents and data on the "red list" which should be disclosed. Secondly, the disclosure is to be made by the First Defendant's solicitors who have those copies in London. Thirdly, the Claimant is not to be told which documents were seized. Fourthly, I state, as I consider to be the case, that disclosure is necessary in order to permit a fair trial in accordance with Article 6 of the European Convention on Human Rights, and, indeed, also to enable the First Defendant to defend the case against him so as to protect what he says are his property rights.

60. The sixth matter is that I do take into account that this is a case, for which Mr Pymont could cite no parallel, where the foreign proceedings in relation to which the First Defendant says he is at risk, are ones which were initiated by him. True, as Mr Pymont says, they have been taken over, as it were, by the prosecution authorities in Russia; nevertheless, they are proceedings which he initiated and of which he is the alleged victim. In addition, this case has the unusual feature that the First Defendant signed the acknowledgement in case 670 in the knowledge that he would have to give disclosure in these proceedings. It is not a case in which the restriction under which the First Defendant says he is predates the requirement to give disclosure.

61. Seventhly, I consider that it is important that that disclosure should take place now. This is a matter of considerable importance given that it was Mr Pymont's submission on behalf of the First Defendant that we have not reached the "crunch point", and that what should happen is that there should be a further period to see whether these documents can be produced with the agreement of the prosecuting authorities in Russia.

62. I consider that I have to proceed on the basis that there is a very real possibility that if the matter were, as it were, deferred in the way that Mr Pymont suggests is appropriate, the parties will be back before the court on 30 July 2021 in no significantly different position from that in which they are now. If in fact progress is made and consent is forthcoming, so much the better for Mr Orlov; but it seems to me that it is certainly on the cards, as Mr Slade QC said, that no significant progress will have been made. By the end of July the trial date would, in my judgement, be seriously endangered. Witness statements are currently due to be exchanged on 11 June 2021. If witness statements are to be exchanged by that date or any date like that, it is imperative that disclosure should be given now.

63. Furthermore, even the First Defendant's solicitor accepts that if the matter proceeds as he suggests, what would almost certainly happen, even on his suggestion, is that the 16 week trial set down to start on 21 March would be replaced by a nine and a half week trial with no opening or closing submissions or with closings taking place in Michaelmas 2022. However, this is a unilateral suggestion of a significant alteration to a substantial trial, the estimate for which was arrived at and set after a consideration of the matter by the court at a three day CMC in 2020. It appears to me that Mr Slade is right to say that unless it is effectively now to be accepted that the trial will not take place on the scheduled date the nettle has to be grasped. The present circumstances are not ones which I consider should endanger the trial date in the manner I have described.

64. Eighth, I consider that it would not be fair for the Claimant, and the Second Defendant to the extent to which he remains involved, to have to give all their disclosure now while the First Defendant gives only half of his. The case is one where there should be mutual disclosure, as was envisaged by the order of the court and by the parties up to this point at which this issue arose.

65. For those reasons, in my judgment the balance comes down firmly in favour of the First Defendant giving disclosure. I will hear further submissions as to the precise timing but it will be obvious from what I have already said that I consider that it should be in short order.

(16.22)