Neutral Citation Number: [2022] EWCA Civ 854

Appeal No: CA-2022-000182
Case No: BL-2018-002691
First Appeal Reference: CH-2021-000111

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST
MRS JUSTICE FALK

Royal Courts of Justice, Strand
London WC2A 2LL

Date: 24/06/2022

**Before:**

**SIR GEOFFREY VOS, MASTER OF THE ROLLS**
**LADY JUSTICE ASPLIN**
and
**LORD JUSTICE NUGEE**

**B E T W E E N**

**VNESHPROMBANK LLC**

**Claimant/Respondent**

**and**

**GEORGY IVANOVICH BEDZHAMOV**
**First Defendant/Appellant**

**Justin Fenwick QC** and **Mark Cullen** (instructed by **Greenberg Traurig LLP**) for the **First Defendant/ Appellant** ( "Mr Bedzhamov")
**Alan Gourgey QC** (instructed by **Keystone Law**) for the **Claimant/Respondent** ("Vneshprombank")

Hearing date: 14 June 2022

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# JUDGMENT

**Sir Geoffrey Vos, Master of the Rolls**:

Introduction

1. Confusingly, this case concerns **both** relief from sanctions imposed under the Civil Procedure Rules **and** international sanctions imposed on Russian entities as a result of the conflict in Ukraine. There is unfortunately no meaningful synonym for either term. The reader should, therefore, be astute to recognise that the word "sanctions" is used in both contexts throughout this judgment.

2. Mr Bedzhamov, the first defendant, has appealed the decision of Mrs Justice Falk (the judge) to grant Vneshprombank, an insolvent Russian bank, relief from sanctions in respect of its compliance with a consent order of 26 January 2021 (the January order) as amended by another consent order of 17 February 2021 (the February order) (together the consent orders).

3. The consent orders allowed (but did not require) Vneshprombank to replace the sum of over £4 million that it had paid into court by way of security for Mr Bedzhamov's costs of the action with an on-demand bank guarantee "substantially in the terms" set out in the schedules to the consent orders.

4. Mr Bedzhamov complained that the bank guarantee due to be provided by Vneshprombank on 19 February 2021 (the guarantee): (i) was provided some two hours later than the consent orders required (and an online register of signatories even later), (ii) included some additional wording beyond that in the schedules to the consent orders indicating that it had been provided at the request of Credit Suisse AG (Credit Suisse) and under a counter-guarantee issued by Credit Suisse (the Credit Suisse wording), and (iii) most importantly, was accompanied by a covering advisory note saying that Standard Chartered Bank (Standard Chartered) "is not liable if it, or any other person, fails or delays to perform the transaction or discloses information as a result of actual or potential breach of … [international] sanctions" (the advisory note).

5. Master Kaye originally held that the advisory note meant that Vneshprombank had not provided a guarantee "substantially in the terms" scheduled to the February order. She held that it was a variation and a dilution of the guarantee. Accordingly, in effect, Master Kaye declined to allow Vneshprombank to replace the money in court with the guarantee provided.

6. The judge reversed Master Kaye's order holding that the advisory note had no legal effect on the extent of Standard Chartered's liability under the guarantee and allowing Vneshprombank to substitute the guarantee for the money in court as security for Mr Bedzhamov's costs of the claim.

7. Mr Bedzhamov submitted that the judge should not have decided the legal effect of the advisory note in the absence of Standard Chartered and other relevant parties. She ought to have focused on the proper interpretation of the consent orders rather than the guarantee and the advisory note, and upheld Master Kaye's order refusing relief from sanctions. In effect, Mr Justin Fenwick QC, leading counsel for Mr Bedzhamov, argued that Vneshprombank had not complied with the consent orders, because Mr Bedzhamov did not get what he bargained for, which was an unconditional guarantee.

Instead, Mr Bedzhamov received a guarantee, which, even if it was substantially in the terms scheduled to the February order, was overlaid by uncertainty and the potential for litigation created by the advisory note. Standard Chartered's eminent legal advisers would not have insisted on the advisory note if they did not think it would assist them in refusing payment in the event of international sanctions being imposed on Russian entities.

8. Mr Bedzhamov also sought to admit further evidence of events since the hearing before Falk J concerning international sanctions actually imposed on Russian entities including those allegedly associated with the liquidation and management of Vneshprombank. On 8 June 2022, Mr Bedzhamov issued an application notice before Falk J as the assigned judge seeking, whatever the outcome of this appeal, to vary the consent orders, in the light of the recently imposed international sanctions, so as to require Standard Chartered to confirm that it would comply with the guarantee notwithstanding the advisory note and the current position.

9. Vneshprombank supported the judge's ruling. It argued in essence that delivery of the guarantee constituted compliance with the consent orders as the judge had held at [82]. Moreover, the advisory note had no legal effect on the extent of Standard Chartered's liability under the guarantee as the judge held at [66]. That was an end of the matter.

10. I can say at once that it does not seem to me to be relevant for the court hearing this appeal to admit evidence as to events that post-date the provision of the guarantee that is in issue before it. Actual events after the delivery of the guarantee on 19 February 2021 cannot inform the question of whether or not that delivery was in compliance with the consent orders. Whilst subsequent events might conceivably be relevant to the grant of relief from sanctions under the third part of the test in *Denton v. T H White Ltd* [2014] EWCA Civ 906, [2014] 1 WLR 3296, it is well known that international sanctions have been imposed on Russian entities arising from the conflict in Ukraine. This court could not anyway make a first instance determination of how those international sanctions affect the ownership or management of Vneshprombank. That would have to be done by the first instance court able to decide any questions of disputed fact on the evidence.

11. As to the substance, I have concluded that this appeal should be dismissed. I will explain why I think that the judge was broadly correct in her conclusions by dealing with matters in the following order: (i) the essential factual background, (ii) whether the advisory note meant that the guarantee was not "substantially in the terms" set out in the schedules to the consent orders, or was not "provided" in accordance with [5] of the January order as varied by the February order, (iii) whether the judge was wrong to decide the legal effect of the advisory note in the absence of Standard Chartered and other interested parties, (iv) whether by virtue of the breach of an implied term of the consent orders or otherwise, Vneshprombank had failed to provide the unconditional guarantee that Mr Bedzhamov had bargained for, and had provided instead a guarantee overlaid by uncertainty and the potential for litigation, and (v) whether the judge was right to grant Vneshprombank relief from sanctions.

The essential factual background

12. I have taken the summary of the relevant facts in this section substantially from [5]-[19] in the judge's judgment, but have added reference to some relevant correspondence to which we were taken during the hearing.

13. The underlying dispute between the parties relates to what Vneshprombank alleges is a massive fraud carried out by Mr Bedzhamov and his sister, who was President of Vneshprombank. Vneshprombank was declared bankrupt in 2016. Mr Bedzhamov resists the claim and denies participation in any fraud. A 40-day trial of the action was listed to start in January 2022. The proceedings were, however, stayed on 20 September 2021 pending resolution of an appeal against Snowden J's order recognising Mr Bedzhamov's Russian bankruptcy trustee. Whilst the terms of that stay do not affect this appeal, it is worth noting that in *Kireeva v. Bedzhamov* [2022] EWCA Civ 35 on 22 January 2022, the Court of Appeal allowed the appeal and remitted the trustee's application to the High Court.

14. It was decided in December 2019 that, as a matter of principle, Vneshprombank should provide security for Mr Bedzhamov's costs. About £4 million has been paid into court in relation to security for costs, and an additional £1 million in respect of a freezing injunction cross-undertaking. Vneshprombank started asking to convert the payments into court into a bank guarantee in April 2020, and first applied to the court for Standard Chartered to be allowed to provide the guarantee on 14 October 2020. Mr Bedzhamov, who is the only active defendant, did not oppose the provision of a bank guarantee from a reputable UK bank in principle. His solicitors did, however, repeatedly ask Vneshprombank's solicitors to see an execution draft of the guarantee proposed. The request was repeatedly declined, with Vneshprombank's solicitors saying that if the executed version did not reflect the draft, it would not have complied with the order.

15. The January order was agreed the day before Vneshprombank's application was due to be heard on 27 January 2021. It provided in [1] that Vneshprombank would be permitted to provide security by way of a bank guarantee "substantially in the terms" set out in Schedule A. Schedule A included paragraph 12, reflecting a concern about the possibility of international sanctions, saying that "[t]he guarantee is irrevocable. We have considered whether any order made by the court seeking to prevent performance of the guarantee, in any jurisdiction, would cause a demand on the guarantee to be unsatisfied. We cannot envisage any such circumstances". The January order also included at [2]-[4] a mechanism whereby Mr Bedzhamov could give reasons for objecting, within short timescales, to the form of the executed guarantee once provided, and thereafter apply to the court.

16. On 12 February 2021, Vneshprombank's solicitors wrote seeking to delete paragraph 12 from the guarantee and to make other amendments at the behest of Standard Chartered. Mr Bedzhamov's solicitors agreed to the changes whilst complaining again about the absence of an execution draft of the guarantee proposed.

17. The revised agreed form of guarantee was reflected in paragraph 1 of the February order as follows:

> The [January order] shall be varied so that:

i. the form of bank guarantee shall be in the terms set out in Schedule 1 to this order and not in the terms set out in Schedule A to the [January order];

ii. Paragraph 5 [providing for a 21-day time limit from the date of the January order] shall be varied so it provides as follows:

"In the event that such guarantee and copy of the register of authorised signatures has not been provided to the First Defendant's solicitors by 12pm on 19 February 2021, the permission in paragraph 1 of this order shall cease to have effect and the form of security for costs in these proceedings shall remain as previously ordered."

iii. Paragraph 9 [allowing liberty to apply] shall be deleted.

18. The form of guarantee attached to the February order included a provision for the funds guaranteed to be paid into court rather than to the beneficiary, Mr Bedzhamov, if the relevant order so required. Master Kaye noted in her judgment that this change partially alleviated Mr Bedzhamov's concerns about the deletion of paragraph 12.

19. The signed guarantee was provided to Mr Bedzhamov's solicitors on 19 February 2021 at 1.53 pm rather than at noon, with screen shots from the online register of signatories following at 4.50 pm. This was followed on 22 February 2022 by a certified copy of a printout from the online register. The order did not expressly require provision of a certified copy, although it had also not been appreciated that the register was held online. The delay in providing the guarantee and a copy of the register are referred to as the "timing breaches".

20. The guarantee delivered was in itself broadly in the form of the schedule to the February order, but also included the Credit Suisse wording. That wording arose from the absence of a banking relationship between Standard Chartered and Vneshprombank (or more particularly VPB's litigation funder, A1, which was referred to in the guarantee as the applicant for the guarantee). Credit Suisse was, therefore, involved in the transaction both as an intermediary, as Standard Chartered's client and as counter-guarantor. It was not suggested on this appeal that the introduction of the Credit Suisse wording in itself meant that Vneshprombank had not complied with the consent orders.

21. The advisory note was addressed to Mr Bedzhamov's solicitors and headed with the guarantee reference number and provided as follows:

As requested by our customer, [Credit Suisse] please find enclosed the original above guarantee, for onward transmission to [Mr Bedzhamov's solicitors].

All parties to this transaction are advised that banks may be unable to process a transaction that involves countries, regions, entities, vessels or individuals sanctioned by the United Nations, the United States, the European Union, the United Kingdom or any other relevant government and/or regulatory authority and that such authorities may require disclosure of information.

> [Standard Chartered] is not liable if it, or any other person, fails or delays to perform the transaction or discloses information as a result of actual or potential breach of such sanctions.

22. The advisory note also said that it was "a computer generated advice that [required] no signature". Mr Bedzhamov's solicitors were not pre-warned about the Credit Suisse wording, the advisory note or the timing delays.

23. On receipt of the guarantee and related documentation, Mr Bedzhamov's solicitors asserted that Vneshprombank was in breach of the Consent Orders. Following an enquiry, Standard Chartered indicated that it was not prepared to remove or alter the advisory note. Its position, according to an email sent to Credit Suisse on 22 February 2021, was as follows:

> With refence to the sentence on Sanctions, please note that this is standard sanctions wording that goes into every guarantee we issue. It means that if, during the lifetime of the guarantee it turns out that sanctions are relevant due to sanctioned countries, regions, parties, vessels or individuals, we are unlikely to be in a position to pay under the guarantee if there is a claim. That should be the same for all banks – we would not and cannot be expected to breach Sanctions.

24. Vneshprombank applied to the court on 24 February 2021 for relief from sanctions and for a further variation of the January order.

25. Standard Chartered was subsequently asked what assurances could be provided to Mr Bedzhamov that, should sanctions become relevant, Standard Chartered would honour the terms of the guarantee, and in particular the provision for payment into court, in the light of the advisory note. Standard Chartered responded on 1 April 2021 as follows:

> [Standard Chartered] is required to adhere to applicable sanctions laws at all times. If a beneficiary of any guarantee issued by [Standard Chartered] becomes the subject of sanctions, Standard Chartered will take appropriate action as required by relevant sanctions laws at such point in time. As such [Standard Chartered] is unable to provide any prior assurances in that regard.

Issue 1: Did the advisory note mean that the guarantee was not "substantially in the terms" set out in Schedule 1 to the February consent order or was not "provided" in accordance with [5] of the January order as varied by the February order?

26. The point here turns on whether the advisory note had any legal effect on the guarantee provided by Standard Chartered. The judge held at [50]-[69] that the Master had been wrong to conclude that the advisory note was an integral part of the guarantee [69]. She decided at [50] and [66] that the advisory note did not affect the terms of the guarantee and that it had no legal effect on the extent of Standard Chartered's liability under the guarantee. In reaching those decisions, the judge accepted that the advisory note was admissible as relevant evidence in interpreting the guarantee [61] and cited the leading authorities on contractual interpretation: *Rainy*

*Sky v. Kookmin Bank* [2011] 1 WLR 2900, *Arnold v. Britton* [2015] AC 1619 and *Wood v. Capita Insurance Services Limited* [2017] UKSC 24.

27. Mr Fenwick accepted that he had not appealed these decisions of the judge. Instead he argued that he had to show that the advisory note formed part of the documentation sent by Standard Chartered and "purported to or appeared to qualify the obligations of the guarantor beyond that which was required by law under any sanctions legislation".

28. As Mr Alan Gourgey QC, counsel for Vneshprombank submitted, however, the judge did not agree with the Master when she had said that the advisory note was an integral part of the guarantee and a dilution of it. Instead, the judge decided that the advisory note did not affect the terms of the guarantee and had no legal effect on Standard Chartered's liability under it. In those circumstances, Mr Gourgey says that the matter is quite simple. What was provided was a guarantee substantially in the form agreed. The consent orders were complied with.

29. In my judgment, the central question is indeed, as Mr Fenwick's skeleton argument at [48] accepted, the proper interpretation of the consent orders. Those orders provided in [1] and [5] of the January order as amended (i) that Vneshprombank was to provide a guarantee substantially in the terms set out in the schedule to the February order, and (ii) that the permission to provide such a guarantee in place of the money in court ceased in the event that such guarantee had not been provided by 12pm on 19 February 2021. The judge's grant of relief from sanctions in respect of the delay was not appealed. So, the only question was whether Vneshprombank provided a guarantee substantially in the terms set out in the schedule to the February order, as the judge recognised at [45]. The judge's decision that the advisory note did not affect the terms of the guarantee and had no legal effect on Standard Chartered's liability under it, meant that Vneshprombank had, interpreting the consent orders objectively, provided the guarantees contemplated by them, notwithstanding the advisory note (as the judge decided at [82]).

30. In these circumstances, even if the advisory note formed part of the documentation sent by Standard Chartered (which it obviously did) and even if it purported impermissibly to qualify Standard Chartered's obligations (which it may have done), those matters cannot overhaul the judge's decision that the advisory note had no legal effect on Standard Chartered's liability. It follows that, unless Mr Bedzhamov can make headway under issue 3 (as to which, see [36]-[50] below), the guarantee was substantially in the terms in the February order.

31. In reaching this conclusion, I have taken into account that Performance Bonds are to be interpreted strictly. At [53] and [55], the judge correctly relied on article 12 of the 2010 revision of the ICC Uniform Rules for Demand Guarantees, ICC publication 758, which she held spelled out the four corners rule to the effect that the parties must look to the guarantee itself rather than beyond it (see also [16-013] in Andrews and Millett on the Law of Guarantees, 7th edition, 2015).

<u>Issue 2: Was the judge wrong to decide the legal effect of the advisory note in the absence of Standard Chartered and other interested parties?</u>

32. This point was the first of Mr Bedzhamov's grounds of appeal. In the event, it did not much feature in the oral argument. The judge made clear at [80] that her conclusion

on the legal significance of the advisory note did not bind Standard Chartered, and noted that it seemed likely that Standard Chartered might have a different view, bearing in mind that it had been unwilling to withdraw the advisory note when challenged.

33. In my judgment, the judge had no choice but to decide the legal effect of the advisory note whether or not other interested parties were there to make submissions. She was deciding whether Vneshprombnak had or had not complied with the permission it had been given by the consent orders. She could not refuse to decide the legal effect of the advisory note, which underlay the question of the compliance with the consent orders, as between the parties just because Standard Chartered might later argue (as she acknowledged at [89] it might) that she was wrong.

34. Mr Fenwick relied in oral argument on the fact that the advisory note purported to affect Standard Chartered's liability if it or: "any other person, fails or delays to perform the transaction … as a result of actual or potential breach of such sanctions". This made it all the more inappropriate to decide the effect of the guarantee without such "other persons" being present. In my view, however, even though it is plainly very important to Mr Bedzhamov that Standard Chartered is bound by the guarantee, the central question before the judge was not about the ultimate liability under the guarantee, which might turn on unpredictable future events. The judge was deciding, as she herself said, whether Vneshprombank had complied with the consent orders such that they were to be permitted to replace the money in court with the guarantee.

35. I have no doubt that the judge was right to proceed as she did in the absence of both Standard Chartered and the other parties to the transaction.

<u>Issue 3: Should the judge have decided that, by virtue of the breach of an implied term of the consent orders or otherwise, Vneshprombank had failed to provide the unconditional guarantee that Mr Bedzhamov had bargained for, and had provided instead a guarantee overlaid by uncertainty and the potential for litigation?</u>

36. As the oral argument demonstrated, this was really the central issue in the case. I put this issue, as formulated above, to Mr Fenwick, who accepted that it encapsulated his argument, but put the matter on the basis of either an implied term or the proper interpretation of the consent orders. It was included, in effect, in [3]-[4] of the Grounds of Appeal. Mr Bedzhamov had agreed to accept a standard form UK bank guarantee, which would in all likelihood be honoured, without any reasonable challenge to its immediate enforcement; he had not agreed to accept a guarantee accompanied by an advisory note, which Standard Chartered included in every guarantee it issued, stating that it was not liable if "it, or any other person, failed or delayed to perform the transaction as a result of the actual or potential breach of sanctions". The judge had accepted at [80] that (a) Standard Chartered appeared to be saying that it might not perform the guarantee in certain circumstances, (ii) it was precisely those circumstances that Mr Bedzhamov had been concerned about, and (iii) Mr Bedzhamov had at least some reason to complain that the guarantee as provided was not what he had anticipated. In those circumstances, the judge was wrong to find that Mr Bedzhamov had in fact been provided with the guarantee contemplated by the consent orders.

37. Mr Fenwick also argued that it was significant that Standard Chartered, which is a major bank advised by the best lawyers, had refused to withdraw the advisory note. They obviously thought it would have some effect. Mr Bedzhamov would obviously not have accepted the advisory note if he had been told of it in advance. The possibility of a clause of this kind was what his solicitors had been trying to protect him against by asking repeatedly for the execution draft.

38. I accept that, seen from Mr Bedzhamov's point of view, these seem powerful arguments. One might ask rhetorically, what else could Mr Bedzhamov's solicitors have done to avoid the unfortunate situation that has now, perhaps predictably, occurred?

39. When these arguments were raised, I asked the parties to research the question of terms being implied into consent orders over the lunch adjournment. They referred to [5-42] of Foskett on Compromise, 9th edition, 2021, which says:

> In addition to problems caused by imprecise or ambiguous drafting, parties may omit to include in their agreement a term which is necessary to render it effectual or complete. In these circumstances the court will be prepared to imply such term or terms as may be necessary to render the agreement effective or complete in the manner in which the parties are presumed to have intended. The court cannot, however, rewrite the parties' agreement, a principle sometimes overlooked by those contending for the existence of an implied term.

40. Mr Gourgey submitted that there was a principle that all the terms of the agreement had to be included in a consent order, and that the court would not imply terms that had not been expressly agreed. In my view, however, consent orders should not be treated any differently from other contracts as regards interpretation (as Foskett says at [5-36]) or as regards implied terms (as Foskett says at [5-42] citing the standard authorities, namely *The Moorcock* (1889) 14 PD 64, *Liverpool City Council v. Irwin* [1977] A.C. 239, *Marks & Spencer Plc v. BNP Paribas Securities Services Trust Co (Jersey) Ltd* [2016] AC 742, and *Ali v. Petroleum Company of Trinidad and Tobago* [2017] UKPC 2 at [7] (*Ali*)).

41. The first question then is whether the consent orders should be interpreted as meaning that Vneshprombank could only be taken as having provided a guarantee in substantially the same terms as the schedule if Mr Bedzhamov got what he bargained for, namely a guarantee that was not overlaid by uncertainty and the potential for litigation.

42. The problem with this approach is that there is no language in the consent orders that allows for such an interpretation. The language used in [1] and [5] of the January order as amended is unambiguous. The parties have not included in their agreement any provision beyond the requirement for the guarantee to be provided in a particular form. They could have done so, but they did not. It is not, I think, profitable to speculate on what might have been said. The fact is that nothing was said. In those circumstances, unless the advisory note varied the terms of the guarantee, it seems to me inevitable that Vneshprombank would be held to have complied with the permission it was given by the consent orders to replace the money in court with the guarantee. The judge held that the advisory note had no legal effect on the guarantee. So, the conclusion she reached followed, as she held. This approach is, in my view,

mandated by the well-known authorities on contractual interpretation that the judge cited.

43. The second question is whether the court should imply a term into the consent order to the effect that Vneshprombank could only be taken as having provided a guarantee in substantially the same terms as the schedule if Mr Bedzhamov got what he bargained for, namely a guarantee that was not overlaied by uncertainty and the potential for litigation. I suggested to Mr Gourgey in argument that another way of putting it might be an implied term that the unconditional nature of the guarantee would not be vitiated by language creating the risk of litigation. Mr Gourgey responded that such a term neither went without saying nor was it necessary to make the consent orders work.

44. There is no doubt that this is a hard case. Mr Bedzhamov tried, through his solicitors, to protect himself against just the eventuality which looks likely to occur. In my judgment, he did not successfully do so. I will try to explain my reasons briefly.

45. The law as to implied terms is constrained by authority. Surprisingly, perhaps, none of those authorities was initially cited to us by the parties. It is very clear, however, that the court cannot just imply terms because it would be just or desirable to do so.

46. In *Ali*, Lord Hughes summarised the current position at [7] as follows:

> It is enough to reiterate that the process of implying a term into the contract must not become the re-writing of the contract in a way which the court believes to be reasonable, or which the court prefers to the agreement which the parties have negotiated. A term is to be implied only if it is necessary to make the contract work, and this it may be if (i) it is so obvious that it goes without saying (and the parties, although they did not, ex hypothesi, apply their minds to the point, would have rounded on the notional officious bystander to say, and with one voice, "Oh, of course") and/or (ii) it is necessary to give the contract business efficacy. Usually the outcome of either approach will be the same. The concept of necessity must not be watered down. Necessity is not established by showing that the contract would be improved by the addition. The fairness or equity of a suggested implied term is an essential but not a sufficient pre-condition for inclusion.

47. An implied term along the lines suggested fails all these tests. It would re-write the consent orders. It is not actually necessary to make the consent orders work, only to make them more beneficial to Mr Bedzhamov. They are obvious in one sense, but hardly so obvious that they go without saying. They are useful to give the consent orders business efficacy, but not necessary, bearing in mind that the concept of necessity is not to be watered down. They would make the consent orders fairer, but that is not sufficient. Moreover, the consent orders are not on their face, in any sense, incomplete.

48. In these circumstances, I take the clear view that the judge was right to decide as she did. Even taking Mr Fenwick's argument at its most persuasive, it is not open to this court to interpret the consent orders as Mr Bedzhamov would wish. The consent orders did not say and cannot be properly interpreted as meaning that Vneshprombank could only be taken as having provided a guarantee in substantially the same terms as

the schedule, if the guarantee was not accompanied by a non-contractual advisory note that, on one analysis, produced uncertainty and the potential for litigation.

49. Likewise, this court would not be justified in implying a term into the consent orders to the effect that the unconditional nature of the guarantee should not be vitiated by any covering documentation, forming no part of the guarantee, but creating some uncertainty and possibly the risk of future litigation.

50. Even if this is a harsh result, it is dictated by the need for certainty in commercial contractual situations to which the authorities that the judge cited make frequent reference.

Issue 4: Was the judge right to grant Vneshprombank relief from sanctions?

51. In these circumstances, this last issue answers itself. It was not suggested to us that either the timing breaches or the Credit Suisse wording by themselves or in combination should have led the judge to refuse relief from sanctions or to deprive Vneshprombank of the right to replace the money in court with the guarantee.

Conclusions

52. For the reasons I have given, which differ from the judge only insofar as the arguments addressed to us went further than they had before her, I would dismiss this appeal.

**Lady Justice Asplin:**

53. I agree that the appeal should be dismissed for the reasons given by the Master of the Rolls. As he points out this is a harsh result. However, it is not open to this court to interpret the consent orders in the way in which Mr Fenwick suggests. The well-known rules of interpretation leave no scope to interpret the consent orders to mean that a guarantee substantially in the same terms as the schedule must mean a guarantee free of any uncertainty or the potential for litigation. Furthermore, a term cannot be implied to the effect that the guarantee should not be affected potentially by any accompanying documentation which does not form part of it but which creates the potential for uncertainty and future litigation. In addition to all the reasons set out by the Master of the Rolls, the generality and vagueness of such a term also militates against its implication.

**Lord Justice Nugee:**

54. I also agree.