Neutral Citation Number: [2022] EWHC 609 (Ch)

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL
Date: 18 March 2022

Before :

DEPUTY MASTER TEVERSON

IN THE ESTATE OF VLADIMIR ALEKSEYEVICH SCHERBAKOV DECEASED

PT-2018-000247

Between :

(1) BRIGITA MORINA
(2) LUCA ALEXI MORINA
(a child acting by his litigation friend, Brigita Morina)
(3) MATEO NATHANAEL MORINA
(a child acting by his litigation friend, Brigita Morina)
Claimants

- and -

(1) ELENA NIKOLAYEVNA SCHERBAKOVA
(2) OLGA VLADIMIROVNA SCHERBAKOVA
(3) ALEXANDER SCHERBAKOV
(4) OLIVYA DARIA MORINA
(a child acting by her litigation friend, Elena Buchen)
(5) CHAN SHEE KHOW
(6) WILLIAM JEREMY GORDON
(acting as Joint Administrator Pending Suit of the Estate of Vladimir Alekseyevich Scherbakov, Deceased
(7) CATHERINE MAIREAD McALEAVEY

(acting as Joint Administrator Pending Suit of the Estate of Vladimir Alekseyevich Scherbakov, Deceased

Defendants

PT-2019-00932

BETWEEN

BRIGITA MORINA **Claimant**

-and-

(1) CATHERINE MAIREAD McALEAVEY
(2) WILLIAM JEREMY GORDON
(acting as Joint Administrators Pending Suit of the Estate of Vladimir Alekseyevich Scherbakov, Deceased
(3) ELENA NIKOLAYEVNA SCHERBAKOVA
(4) OLGA VLADIMIROVNA SCHERBAKOVA
(5) ALEXANDER SCHERBAKOV

Defendants

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ELSPETH TALBOT RICE QC, BENJAMIN FAULKNER and SPARSH GARG (instructed by **QUINN EMANUEL LLP**) for the **Claimants**
DAKIS HAGEN QC, JAMES BRIGHTWELL and EMMA HARGREAVES (instructed by **EDWIN COE LLP**) for the **Adult Children**
WILLIAM EAST instructed by **MICHELMORES LLP** for **Olivya Morina**
OLIVER JONES instructed by **FARRER & CO LLP** for **the Joint Administrators.**

Hearing dates: 7, 8 and 9 February 2022

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Approved Judgment

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DEPUTY MASTER TEVERSON

This is the approved judgment, deemed to have been handed down at 10.30am on 18 March 2022, and is to be treated as authentic.

DEPUTY MASTER TEVERSON :

1. These two claims were listed before me on 7, 8 and 9 February 2022 for a first case management conference. I shall refer to claim PT-2018-000247 as "the Probate claim" and to claim PT-2019-000932 as "the KPHL claim". The two claims were ordered by Master Shuman on 22 December 2020 to be case managed and tried together.

2. The claims relate to the estate of Vladimir Alekseyevich Scherbakov, deceased ("Vladimir"), a Russian businessman who died in Belgium on 10 June 2017. Vladimir was around the time of his death the subject of a criminal investigation in Russia. He moved to Belgium from England on 12 January 2016.

3. The First to Third Claimants in the Probate claim are Brigita Morina ("Brigita"), Luca Alexi Morina ("Luca") and Mateo Nathanael Morina ("Mateo"). Brigita's case is that she and Vladimir became a couple in November 2010. Brigita says they met in June 2009. Her son Mateo was born on 28 October 2009. Mateo is Brigita's son by a previous relationship. Vladimir and Brigita had two children together: Luca born on 27 January 2014 and Olivya born on 3 March 2016.

4. The First Defendant in the Probate claim is Elena Nikolayevna Scherbakova ("Elena"). Elena is the former wife of Vladimir. They were married in Russia on 19 July 1989. There is a dispute as to whether their marriage was dissolved in Russia in 1991 or, as Elena claims, in Belgium in 2015-2016.

5. Elena has since 29 March 2021 been detained in Russia. Her English solicitors, Cooke, Young Keidan have since then only been able to contact Elena indirectly through her Russian advocates.

6. The Second and Third Defendants to the Probate claim, Olga Vladimirovna Scherbakova and Alexander Scherbakov, are the adult children of the marriage of Vladimir and Elena ("the Adult Children").

7. In the Probate claim, Brigita, for herself and as the litigation friend of Luca and Mateo, asks the court to order that probate be granted in solemn form of a will dated 28 October 2015 ("the English Will"), or a copy thereof. The English Will states that it affects all Vladimir's estate whatsoever and wheresoever situated except property situated in Russia subject to his Russian Will dated October 15 2014. The original of the English Will was not located following Vladimir's death. It is not in the possession of any of the parties to the Probate claim.

8. Olivya is the Fourth Defendant to the Probate claim. She is not a beneficiary under the English Will having been born after it was made. Olivya is separately represented in the Probate claim by her litigation friend Elena Buchen.

9. The Fifth Defendant to the Probate claim is Chan Shee Khow ("Mr Chan"). Mr Chan was a business associate of Vladimir. He is named as co-executor along with Brigita under the English Will. Mr Chan has indicated that he does not intend to defend the Probate claim and that he does not wish to act as an executor under the English Will.

10. Within the Probate claim, there is an issue as to where Vladimir was domiciled at the date of his death and as to which law governs the succession to his estate outside Russia.

Elena and the Adult Children claim that Vladimir died domiciled in Belgium and that Vladimir was permanently resident in Belgium at the date of his death. Their case is that Belgium law is the applicable law which governs the succession to moveables as the law of Vladimir's domicile at death. Alternatively, they contend that, if contrary to their case, Vladimir did not acquire a domicile of choice in Belgium and died domiciled in Russia, Belgium was his last place of residence for the purposes of the Russian law of succession. Brigita, by amendment, claims that Vladimir died domiciled in Russia and that under Russian law of succession the applicable law is the law of Vladimir's permanent or predominant residence which she says was in England. Brigita maintains that English law governs succession to Vladimir's moveable estate.

11. The Claim Form in the Probate claim was issued on 28 March 2018. On 11 December 2018 Catherine Mairead McAleavey and William Jeremy Gordon ("the Administrators") solicitors and partners in Farrer & Co LLP were appointed to act as administrators pending suit of Vladimir's English Estate. On 28 February 2019 they were appointed interim administrators of the BVI estate. They were joined to the Probate claim as co-claimants by order dated 7 November 2019.

12. At the CMC I heard an application on behalf of the First to Third Claimants to remove the Administrators as parties to the Probate claim. For the reasons given by me in an oral judgment on 8 February 2022, I directed that the Administrators should cease to be co-claimants in the Probate claim but instead should be added as the Sixth and Seventh Defendants to the Probate claim.

13. The KPHL claim was issued on 14 November 2019. Brigita is the sole Claimant in the KPHL claim. Brigita seeks a declaration that she is the absolute beneficial owner of the issued shares in Key Platinum Holdings Limited ("KPHL"). KPHL is a company registered in the BVI. It was incorporated in the BVI on 23 October 2013. The Administrators are the First and Second Defendants to the KPHL claim. Elena is the Third Defendant. The Adult Children are the Fourth and Fifth Defendants. The KPHL claim is being defended on behalf of Vladimir's estate by the Adult Children. This has made it unnecessary for the Administrators to seek directions from the court as to whether or not they should defend the KPHL claim on behalf of the estate.

14. Vladimir's estate is a very large multi-jurisdictional estate involving a number of corporate structures. The Administrators circulated to the parties in June 2021 a list of 105 companies which had been subject to their investigations or about which they had received information or documents in relation to Vladimir's estate.

15. On 9 February 2022 I made a CMC Directions Order. This recorded the orders and directions made in the course of the CMC. It recorded the issues on which I reserved judgment. This is my reserved judgment on those issues. They are:-

16. (i)Issues 1 to 4 of the Disclosure Review Document ("the DRD");

(ii)Issues 15,16 and 17 of the DRD;

(iii)the scope of the disclosure to be provided by the Administrators in relation to issues 15, 16 and 17, if ordered, and in relation to issues 18-34;

(iv)whether permission should be granted for expert evidence from Russian law experts on whether a Russian Certificate of Divorce dated 30 April 1991 was valid or invalid and/or has effect or no effect.

17. The first three issues relate to disclosure. I have before me as item 4 in the main CMC bundle a single Joint DRD. Section 1A contains a list of 34 Issues for Disclosure. Alongside each Issue for Disclosure are columns headed *"Issue Agreed?"* and *"Proposed model of Extended Disclosure (A-E)"* to be completed by the Claimants and the Defendants. Issues 1 to 14 inclusive are Issues for Disclosure which relate to the Probate Claim. Issues 15 to 34 are Issues for Disclosure in the KPHL claim.

18. **Issues 1 and 2 of the DRD.** Issues 1-4 in the DRD are headed "Vladimir's relationship with ES". ES refers to Elena. Issue 1 is framed as two questions:-

"When did Vladimir and [Elena] divorce?"

"Was the 1991 Divorce Certificate valid and effective?"

19. Issue 2 is also framed as two questions:-

"What assets were transferred to [Elena] as a result of the 2015 Divorce Settlement?

"Were these assets validly transferred to her?"

20. In the statements of case in the Probate claim there is an issue raised as to whether prior to a Belgian divorce agreement dated 10 November 2015, Vladimir and Elena were divorced in Russia ("the Russian Divorce") on 23 October 1990 and registered by a divorce certificate dated 30 April 1991 ("the 1991 Divorce Certificate"). Brigita claims that Vladimir and Elena were divorced in Russia on 30 April 1991. Elena claims that the 1991 Divorce Certificate was invalid and of no effect. She avers that she was not served with or given notice of the divorce proceedings and that the divorce proceedings were heard in her absence and without her consent.

21. The Adult Children deny that Elena and Vladimir were divorced in 1991. Alexander was born in Singapore in 1998. They plead that their parents were divorced in Belgium by virtue of the agreement dated 10 November 2015 and that this agreement was approved by the Brussels Court on 12 May 2016 and finalised on 14 June 2016. They further plead that they will rely at trial on official documents which post-date the alleged 1991 divorce and reflect the fact that Elena and Vladimir remained married until they were divorced in Belgium. The documents are stated to include Vladimir's Russian passport and a copy marriage certificate. They also refer to and rely on a marriage contract which they say their parents entered into on 14 December 2011. They plead that these documents and the divorce proceedings in Belgium reflect the fact that Elena and Vladimir remained married until they were divorced in Belgium.

22. In the Probate claim, the issues for trial are:-

(i)whether the English Will was duly executed. The Claimants are put to proof on this issue by Elena and the Adult Children;

(ii)whether it is to be presumed from the fact that no party has produced the original of the English Will that the English Will was destroyed by Vladimir with the intention of revoking it;

(iii)Vladimir's domicile at the date of the alleged revocation by him of the English Will and at the date of his death;

(iv)Vladimir's place of permanent or habitual residence (for the purposes of Russian and Belgium law) at those dates.

23. In relation to the second of these issues, it is pleaded by the Adult Children that the original of the English Will not having been found, it is presumed to have been destroyed by Vladimir with the intention of revoking it. It is pleaded that the English Will (as well as an earlier will dated 15 October 2014 referred to as "the First English Will") was made pending the Belgian divorce proceedings. It is pleaded that the First English Will and the English Will (together "the English Wills") were potential protective measures against the risk of Vladimir dying before the finalisation of the divorce. It is averred that once the divorce was approved by the Brussels Court and its subsequent finalisation on 14 June 2016, this potential consideration no longer applied.

24. In her Reply and Defence to Counterclaim, Brigita pleads that the Belgium Divorce *"was a false divorce, as (at least) [Vladimir] must have known, [Vladimir] and Elena having already divorced in Russia in 1991."*

25. Paragraph 7.3 of Practice Direction 51U-Disclosure Pilot for the Business and Property Courts (updated 16 November 2021) provides:-

*"**7.3** The List of Issues for Disclosure should be as short and concise as possible. "Issues for Disclosure" means for the purposes of disclosure only those key issues in dispute, which the parties consider will need to be determined by the court with some reference to contemporaneous documents in order for there to be a fair resolution of the proceedings. It does not extend to every issue which is disputed in the statements of case by denial or non-admission. For the purposes of producing a List of Issues for Disclosure the parties should consider what matters are common ground but should only include the key issues in dispute in the list".*

26. Paragraph 7.3 makes clear that it is not every issue which is disputed in the statements of case by denial or non-admission that is to be treated as an Issue for Disclosure. It is only those key issues in dispute which the parties consider will need to be determined by the court with some reference to contemporaneous documents in order for there to be a fair resolution of the proceedings. In order to determine the issues in the Probate claim, it is not necessary for the English court to decide whether the Russian Divorce or the 1991 Divorce Certificate were valid or whether the Russian Divorce and the 1991 Divorce Certificate should be recognised as a foreign divorce decree.

27. Under English law, recognition of a foreign divorce decree is governed by Part II of the Family Law Act 1986. Section 51 sets out a number of grounds on which recognition may be refused. These include whether the divorce was obtained without such steps having been taken as should reasonably have been taken to give notice of the proceedings to a party to the marriage or whether the divorce was obtained without a party to the marriage being given a reasonable opportunity to take part in the

proceedings. These issues are detached in time factually by around 25 years from the date of the English Will whose validity is being propounded by Brigita.

28. Issue 1 is framed in a way that would require disclosure to be given going back to 1990 and 1991. The issue is not whether the 1991 Divorce was valid but from the time of the marriage contract onwards what rights, if any, Vladimir thought that Elena had as to his assets. That is framed as Issue 3. In the KPHL claim, there is an issue as to whether Vladimir transferred legal title to the entire share capital of KPHL to Brigita on 17 September 2015 in order either to keep the shares out of reach of the Russian State or out of reach of Elena in the light of her alleged entitlements during the 2015 Belgian divorce. The issue relates to Vladimir's motivations at the time of the share transfer. It does not in my view require the validity of the Russian Divorce to be determined.

29. The first question in Issue 2 seeks disclosure in relation to what assets were transferred to Elena as part of the 2015 Divorce Settlement. The second question asks were these assets validly transferred to Elena. Brigita's case is that the 2011 marriage contract and the divorce agreement dated 10 November 2015 were either invalid or of no effect on the ground of irreconcilability with the Russian Divorce. Brigita claims that any assets transferred were therefore not validly transferred to Elena and belong to Vladimir's estate. This seeks to raise the validity of the marriage contract entered into between Vladimir and Elena on 14 December 2011 and of the Belgian divorce agreement. That in turn raises the validity of the 1991 Divorce certificate and its recognition as a foreign divorce decree. It is unnecessary for the English court in the Probate claim to determine that issue. Issues 1 and 2 should be removed as Issues for disclosure.

30. Issue 3 is:-

"What rights, if any, did Vladimir (between 14 December 2011 and his death) think Elena had to his assets?"

Issue 3 will cover disclosure of the documents relied on by Elena and the Adult Children as evidencing an understanding on the part of Vladimir that Elena still had the right in Belgium to bring divorce proceedings against him. It will also cover any documents from the time of the marriage contract which cast light on whether Vladimir regarded Elena as still having rights as his spouse to his assets. Issue 3 will require Elena to disclose any adverse documents.

31. Issue 4 is framed as:-

"What was the nature of Elena and Vladimir's relationship between 2010 and his death?"

32. Issue 4 is framed to run from 2010. Brigita says that in November 2010 she and Vladimir became a couple. The Adult Children are content with Issue 4 so far as it is treated as a factual issue. It would in my view be helpful to add *"and when after 2010 did Vladimir and Elena separate?"*. The 2010 start date makes clear this issue does not raise the legal issue concerning the validity of the 1991 Divorce Certificate.

Issues 15, 16 and 17 of the DRD

33. These issues relate to the KPHL claim. Issues 15 to 18 are headed in the DRD "Background to Vladimir's business interests".

34. Issue 15 is:-

"How did Vladimir historically hold his business interests prior to the 2015 Divorce Agreement and the commencement of the Russian Investigation?"

Issue 16 is:-

"What changes were made to the shareholdings of companies, and what documents were executed relating to the ownership of the companies, within the structure of Vladimir's business interests between June 2014 and Vladimir's death and why? In particular, were these motivated by the alleged 2015 Divorce Agreement and/or by the Russian Investigation, or by some other reason?"

Issue 17 as proposed by Brigita:-

"What information did [Vladimir] continue to receive, and instructions did he continue to give, in relation to Key Platinum Holdings Ltd?"

Issue 17 as proposed by the Adult Children:-

"What information did Vladimir continue to receive, and instructions did he continue to give, in relation to companies he had apparently divested himself of?"

35. Brigita's case as to the beneficial ownership of KPHL is set out in paragraphs 23 to 29 of the Re-Amended Particulars of Claim. In paragraph 24, a series of documents and transfers is pleaded. These include:-

(i)a Declaration of Trust dated 8 January 2015 ("the 2015 Declaration") by which Mr Chan declared that he held the Shares on trust for Brigita;

(ii)a transfer by Mr Chan of the legal title to the Shares to Svitlana Afendyk ("Ms Afendyk") *"who was employed by Brigita as their trusted family housekeeper"*;

(iii)a Declaration of Trust dated 14 May 2015 (but recording that it was executed on 28 August 2015) by Ms Afendyk declaring that she held the Shares on trust for Brigita ("the May 2015 Declaration");

(iv)a transfer on or about 17 September 2015 by Ms Afendyk to Brigita of the Shares. Pursuant to that transfer Brigita was registered as the shareholder.

36. In paragraph 26, further matters are relied on in support of the alleged inference that Vladimir intended Brigita to be the beneficial owner of the Shares. Reference is made to an option granted by Ms Afendyk to Vladimir on or about 14 May 2015 and to a Power of Attorney also dated 14 May 2015 by which Ms Afendyk appointed Vladimir as her attorney. Reference is also made to two donations signed by Vladimir and Brigita each bearing the date 28 January 2014 in the sums of CHF 180m and CHF 30m, to a cancellation agreement in respect of the CHF 180m donation and to a Deed of Gift bearing the date 20 September 2015 ("the Deed of Gift"). The Deed of Gift although bearing the date 20 September 2015, is said to have been drafted in 2016 and signed by

Vladimir on a date after 23 January 2017. It is further pleaded that in about 2017 Vladimir executed a call option agreement which was backdated to 20 September 2015 ("the Call Option Agreement"). It is Brigita's case that it was of no legal effect.

37. The Adult Children plead in paragraphs 28 to 40 of their Re-Amended Defence and Counterclaim that at the same time as the documents and purported transactions relating to KPHL were taking place, Vladimir was also taking steps in relation to other companies that were part of the corporate structures holding his business interests. They say that as with KPHL, those steps involved transferring the shares into the names of trusted associates such as Ms Afendyk, Brigita and Vladimir's personal assistant, Maryia Kazlouskaya and executing documents such as call options and powers of attorney.

38. It is the Adult Children's case that the proper inference to be drawn from all the documents and transactions relied on by Brigita is that Brigita at all material times held the Shares on bare trust for Vladimir and now holds them on trust for Vladimir's estate. They deny Brigita's claim.

39. It is pleaded in paragraphs 34 and 35 of the Re-Amended Defence and Counterclaim of the Adult Children that:-

(i) in September 2014, Vladimir separated from his wife, Elena, following her discovery in early June 2014 of his extra-marital affair with Brigita;

(ii)in around November 2014, Vladimir was officially notified that he was the subject of a criminal investigation in Russia ("the Russian investigation");

(ii)on 20 February 2015, an order was issued charging Vladimir under the Russian Federation Criminal Code;

(iv)a custody order was made in Vladimir's absence on 29 May 2015 by the Tverskoy District Court in Moscow;

(v)one of the companies with which the criminal case was concerned was Maxsure Asia Limited ("MAL") a BVI company;

(vi)between around 30 December 2009 and 5 December 2014, MAL owned 50% of Smartronic Projects Pte Ltd ("SPPL") a company incorporated in Singapore. According to statements made by Mr Chan at a meeting on 16 January 2018 between Mr Chan and lawyers representing the Adult Children, SPPL was a very profitable company in the business of manufacturing electronic devices and chips;

(vii)in the period following his separation from Elena and his becoming aware of the Russian investigation, Vladimir, or those acting on his instructions, *"effected numerous changes to the legal/registered shareholders of assets within the corporate structure holding his business interests (including but not limited to KPHL)"*;

(viii)the shares in MAL were transferred from Aquarius Intertrade Limited to Brigita on 22 September 2014 and thereafter from Brigita to Ms Afendyk on 30 September 2014;

(ix)MAL's shareholding in SPPL was transferred to KPHL on 5 December 2014;

(x)MAL was liquidated on 26 January 2015;

(xi)KPHL became the new holding company for *"certain of the entities which Vladimir (it is to be inferred) believed to be a subject and/or target of the Russian investigation"*.

40. In paragraph 37, it is pleaded that:-

"In addition to restructuring the legal shareholdings, Vladimir and/or those acting on his instructions also created and/or executed numerous and often contradictory documents relating to the ownership and control of companies within the corporate structure (including but not limited to KPHL)"

41. In paragraph 39, it is pleaded that *"the share transfers effected, and any documents relating to ownership executed by or on the instructions of Vladimir during this period (including in respect of KPHL and the Shares) were designed and intended by him to mask and obscure and/or obstruct or deter the pursuit of such ownership interests either:*

(1)so as to shield the companies from claims by Elena arising from their separation and divorce and/or

(2) so as to shield [Vladimir] and the companies from the Russian investigation."

42. The Adult Children counterclaim for declarations that:-

"(a)the issued shares in KPHL were held by their registered holders as nominees for Vladimir up to his death and for his Estate thereafter;

(b)[Brigita] holds the issued shares in KPHL for the benefit of Vladimir's Estate".

43. In relation to Issues 15, 16 and 17, Elspeth Talbot Rice QC, leading counsel for Brigita, submitted that matters relating to companies other than KPHL are irrelevant to the court's determination of Brigita's beneficial ownership of the Shares in KPHL. She drew attention to the fact that on 9 June 2021 Farrer & Co, the solicitors acting for the Administrators, provided a list of 105 companies which had been the subject of the Administrators' investigations and/or about which they had received information or documents. A further spreadsheet referring to 91 companies, 29 of which had not been on the original spreadsheet, was provided by the Administrators on 31 January 2022. She submitted that it is unnecessary and wholly disproportionate for the court to investigate and make findings in relation to dealings in or with well over a hundred other companies in order to determine whether the KPHL Shares were transferred beneficially to Brigita or not. She submitted it is therefore unnecessary and wholly disproportionate for there to be disclosure relating to those other companies.

44. Mrs Talbot-Rice took as her starting point Practice Direction 51U paragraph 7.3. She submitted that disclosure must be limited to (i) documents which are both relevant and important and (ii) what is reasonable and proportionate. She referred to *McParland & Partners Ltd v Whitehead* [2020] Bus LR 699 where at paragraph 46 Sir Geoffrey Vos C, said:-

"Issues for disclosure are issues to which undisclosed documentation in the hands of one or more of the parties is likely to be relevant and important for the fair resolution

of the claim. That is why paragraph 7.3 of PD51U provides that issues for disclosure are "only those key issues in dispute, which the parties need to be determined by the court with some reference to contemporaneous documents in order for there to be a fair resolution of the proceeding"".

45. She submitted that similar fact evidence is, or at least can be, inadmissible. She referred to the two-stage test for similar fact evidence set out by Lord Bingham in *O'Brien v Chief Constable of South Wales* [2005] 2 AC 534 at [3]-[6]:-

(1)Is the proposed evidence potentially probative of an issue to be determined at trial?

(2)Even if potentially probative, should the court, as a matter of proper case management, refuse to admit the evidence on the grounds (amongst others) that

(i)it will distort the trial by causing the court and the parties to place undue focus on issues that are collateral or peripheral to the actual issue to be determined; and/or

(ii)it would disproportionately increase the time, cost and personal resources of the parties in addressing such evidence.

46. In *O'Brien*, the claimant sought to support his allegations by adducing evidence to show that the same police officers had used the same or similar methods in two earlier cases. Lord Bingham said that the strength of the argument in favour or against admission depends always on the judge's assessment of the potential significance of the evidence, assuming it to be true, in the context of the case as a whole. The House of Lords upheld the decision of the lower courts to admit the evidence.

47. Lord Brooke LJ giving the judgment of the court in *J P Morgan Chase v Springwell Navigation Corporation* [2005] EWCA 1602 at [67]-[69] said:-

"There is a two-stage test: (i)Is the proposed evidence potentially probative of one or more issues in the current litigation? If it is, it will be legally admissible. (ii)If it is legally admissible, are there good grounds why a court should decline to admit it in the exercise of its case management powers? Lord Bingham suggested at paragraph 6 three matters that might affect the way in which a judge exercised his/her discretion in this regard:

(i)That the new evidence will distort the trial and distract the attention of the decision-maker by focussing attention on issues that are collateral to the issues to be decided;

(ii)That it will be necessary to weigh the potential probative value of the evidence against its potential for causing unfair prejudice;

(ii)That consideration must be given to the burden which its admission would lay on the resisting party."

48. Mrs Talbot-Rice submitted that what was done, or not done, in relation to 134, or any other, companies was not potentially probative of the issue in the KPHL claim. Reference was made to *Sharp v GEA Farm Technologies (UK) Ltd* [2022] EWHC 64 (Ch) in which the claimant sought to rely on complaints made by other farmers relating

to an automatic milking system sold and installed by the Defendant. The Deputy Master did not regard the fact that complaints had been made by other farmers to the Defendant in relation to the milking system as being potentially probative.

49. Secondly, it was submitted that it could not be said that the evidence relating to these other companies was likely to be reasonably conclusive *"of the collateral fact"* that such dealings in relation to those companies were designed to hide Vladimir's true ownership of one or more of them from Elena or the Russian authorities. Thirdly, it was submitted that dealings not involving Brigita might have been carried out for numerous different business reasons. A transfer of an asset to Brigita, as Vladimir's long term partner and the mother of his minor children fell into a different category. Fourthly, it was submitted it would be entirely disproportionate and would wholly distort the focus of the trial if the Judge had to hold a series of complex mini-trials in order to determine whether these dealings were dishonest pretences. In support of the fourth submission, I was referred to *Christoforou v Christoforou* [2015] EWHC 1196 (Ch) in which the claimant sought a declaration that he was the beneficial owner of a property claiming a common intention among family members. The Defendants sought to allege that the claim to the property was an episode in a series of attempts by the claimant and others to harass and deprive another family member of his assets. The claimant applied to strike out paragraphs in the Amended Defence ("the Contested Passages"). The judge considered that addressing the allegations in the Contested Passages would add significantly to the length of the trial and make it likely that the trial date would have to be vacated. I was also referred to *Claverton Holdings Ltd v Barclays Bank* [2015] EWHC 3603 a specific disclosure application seeking disclosure of documents relating to other allegations of mis-selling swaps involving the same two employees of Barclays Bank as in the claim. The application was refused. Counsel for the applicant in that case sought to persuade the judge that the documents could be used to refer in cross examination to the nature and extent of the allegations without calling evidence to support the allegations. The judge said such evidence would be of little probative value if evidence was not called to support the allegation.

50. On behalf of the Adult Children, it was submitted by Mr Dakis Hagen QC that the matters referred to in the Re-Amended Defence in connection with companies other than KPHL were not similar fact allegations but allegations of primary fact. It was submitted that what took place in relation to KPHL was part and parcel of a scheme or re-organisation designed to obscure ownership of assets.

51. Mr Hagen QC referred to a letter dated 31 January 2022, written by Farrer & Co LLP on behalf of the Interim Administrators which referred to:-

> *"the variety of corporate structures, company and nominee arrangements which [Vladimir] used during his lifetime to hold his assets; the widespread nature of his assets and business interests across a number of jurisdictions; and what the Interim Administrators understand was [Vladimir's] modus operandi of obscuring his ownership of assets, particularly in the face of criminal investigation by the Russian state"*. (emphasis added).

52. Mr Hagen QC submitted that KPHL was at the time a central item in a scheme of reorganisation. He said that this was part of a global reorganisation by Vladimir of his affairs.

53. I accept Mr Hagen QC's submission that the pleaded case of the Adult Children is that the share transfers effected by Vladimir during 2014 and 2015 were part of a single plan by Vladimir to shield himself and the companies from claims by Elena and from the Russian investigation. The pleading if made out goes beyond pleading that this was characteristic conduct of Vladimir.

54. Alternatively, if it is similar fact evidence, in whole or in part, it is very closely linked to the transactions involving the shares in KPHL. I regard transactions concerning the shares in other companies at or around the same time as potentially probative. There is a striking similarity in the timing and type of documentation executed in respect of KPHL and in respect of a number of other companies. For example, on 14 May 2015, the same day as in respect of KPHL, Vladimir executed a power of attorney and a call option in respect of First Digital Pte Ltd, a Singapore company. On the same day, Maryia Kazlouskaya, Vladimir's personal assistant, executed a power of attorney and call option agreement in favour of Vladimir in respect of the shares in Central Alliance Group Limited, a BVI company. It cannot in my view in those circumstances be right for the court to look at the KPHL documentation in isolation from all activity relating to the shares in other companies at or around the same time.

55. I do not accept the second or third submissions made on behalf of the Claimants. The court is entitled to look and see if what happened in relation to the shares in KPHL was part of a wider pattern of behaviour. The evidence called about the transactions and documents in KPHL and other companies may be overlapping.

56. At the time of preparation of the Claimants' skeleton argument, it appeared that extended disclosure was being sought in relation to all the spreadsheet companies. By letter dated 4 February 2022, Edwin Coe LLP, the solicitors for the Adult Children, stated that their clients would limit the Model C requests for issues 15 and 16 to 12 named companies including KPHL. All but two of those companies were said to be specifically identified in the Re-Amended Defence and Counterclaim of the Adult Children.

57. The two companies not identified in the Re-Amended Defence and Counterclaim are Fast Track Development Ltd ("FTDL") and FutureRoad Tech Pte Ltd ("FRL"). A spreadsheet provided by the Administrators to the parties on 31 January 2022 states that Mr Chan asserts beneficial ownership of the shares in FTDL and FRL. It records that the shares in FTDL were transferred from Ms Kazlouskaya to Mr Chan on 30 August 2016 and that on 5 December 2019 100% of FTDL shares were transferred from FRL to Mr Chan. Both Mr Chan and Ms Kazlouskaya are said to have already been identified in the Re-Amended Defence and Counterclaim as persons involved in the restructuring of Vladimir's assets in the period material to the KPHL claim.

58. As at 4 February 2022, it remained the position of the Adult Children that the Administrators should be required to give Model D disclosure (with narrative documents) on issues 15 to 17 without that disclosure being limited to the 12 companies. In the course of his submissions on 9 February 2022, Mr Hagen QC informed me that the Adult Children were prepared to limit the extended disclosure sought on issues 15 to 17 against all parties including the Administrators to the 12 companies named in the letter of 4 February 2022.

59. A balance has to be struck between the need to allow the court to view the transactions relating to the shares in KPHL in the context of a wider reorganisation by Vladimir on the one hand and a complete investigation into each of the companies being investigated by the Administrators on the other. I consider that balance is reasonably struck by limiting disclosure under issues 15, 16 and 17 to the 12 companies including KPHL named in the letter of 4 February 2022. The KPHL claim is a substantial claim in value. The trial is estimated to be around 60 days in length. I do not accept Mrs Talbot-Rice's fallback submission that the list should be further reduced. She submitted that Topmax Worldwide Ltd ("Topmax") was not a relevant company. Topmax is however referred to in paragraph 24(b) of Brigita's Re-Amended Particulars of Claim as part of the circumstances in which Brigita came to hold the shares in KPHL. I accept there is no reference in the pleadings to companies (5) and (8) but the placing of shares in the name of Mr Chan is potentially probative.

60. The Adult Children propose Model D disclosure for the Interim Administrators and Model C for the other parties. The scope of the reorganisation carried out by Vladimir or on his instructions between June 2014 and his death is a core issue in the KPHL claim. In my view, Model D narrow search-based disclosure is appropriate as between all parties on issues 15, 16 and 17. I agree with Mrs Talbot-Rice that the Model C requests are too widely framed but not with her conclusion that no disclosure should be ordered under issues 15 to 17. The date range for Issue 17 should be the same as for Issues 15 and 16.

The scope of the disclosure obligations of the Administrators

61. In relation to issues 1 to 14, the parties have agreed that the Administrators should provide disclosure only of those documents which have not been provided to or by them to another party. In relation to issues 15 to 34, the Adult Children are concerned that documents will not be disclosed that should be. They are concerned that documents may *"fall between the cracks"* especially as three previous firms of solicitors have represented the Claimants prior to their current solicitors. They submit that in relation to issues 15 to 17 disclosure should be given by the Administrators without regard to the provenance of documents or whether they have been provided to or by another party.

62. The Adult Children say there is another important consideration. They say that the natural defendants to the KPHL claim are the Administrators. The claim is a claim that the shares in KPHL are not an estate asset. They argue that the Administrators are subject to no impediment or restriction concerning the documents they hold and that if they were taking the lead in defending the KPHL claim the documents would be available to the court. The Adult Children say they should be placed in the same position as the Administrators would be if they were responsible for defending the claim.

63. Edwin Coe LLP in a letter dated 25 January 2022 sent to all parties stated that the Adult Children would consider agreeing to disclosure by the Administrators on issues 18 to 34 being limited to only those documents which have not been provided to them by another party subject to assurances that Quinn Emanuel, the Claimants' current solicitors, has been provided with full and complete files from all three predecessor firms. They also sought an assurance the Administrators would be subject to an ongoing duty to disclose documents in their possession which they consider to be relevant but which they are aware have not been disclosed by another party.

64. By letter dated 6 February 2022 Quinn Emanuel said that the Adult Children already had their assurance that Stewarts (the immediate predecessor firm) had told Quinn Emanuel they had provided to Quinn Emanuel everything which had been provided to them. They said the request for further assurances misunderstood disclosure obligations. They said their clients were obliged to search for and disclose such documents within their control that fell within the extended disclosure orders made by the court.

65. In an email sent to all parties on 16 June 2021 Elizabeth Sainsbury of Farrer & Co stated that if they were ordered to disclose documents and correspondence from the parties, as well as third parties, concerning issues 15 to 34, this would be a much more time-intensive exercise. She said this would more than double the Administrators' costs of the disclosure exercise. She pointed out that the parties have their own disclosure obligations. She said that if after the parties had given disclosure, one party considered there were gaps in the disclosure of another party, it would be open to that party to make specific requests of the Administrators or to apply for an order against the disclosing party under PD51U paragraphs 17 or 18.

66. An update on the scope and potential costs of any disclosure ordered from the Administrators was provided by Melody Munro of Farrer & Co to all parties by email dated 1 February 2022. She estimated that the task of reviewing upwards of 3,000 emails to which one of the parties had been copied would cost in the region of £30,000 plus VAT. She explained this would be the case whether they were required to provide disclosure without regard to the provenance of the documents for only issues 15 to 17 or on all of issues 15 to 34.

67. The correspondence reveals a high degree of mistrust on the part of the Adult Children concerning disclosure by the Claimants. The parties have agreed in relation to issues 1 to 14 to limit disclosure by the Administrators to documents received by them from third parties. At this stage, I consider that disclosure by the Administrators should also be so limited in relation to issues 15 to 34. This will save around £30,000 plus VAT and avoid all parties in the cost of receiving and reviewing what may be substantial numbers of emails and other forms of electronic material already in their possession. As pointed out by Farrer & Co LLP, it will be open to a party to apply to the court under paragraph 17 or 18 of PD51U if there are obvious gaps in the disclosure. It will not however be for the Administrators or their solicitors to review or check the disclosure provided by the parties. If necessary, the court may vary the extent of the disclosure to be provided by the Administrators.

Whether permission should be granted for expert evidence from Russian law experts on whether the 1991 Divorce Certificate is valid or invalid and/or has effect or no effect

68. On behalf of the First to Third Claimants in the Probate claim it is submitted that the court should give permission for expert evidence from Russian law experts on the validity and effect of the 1991 Divorce Certificate. In her Reply to the Claimants' Reply and Defence to Counterclaim Elena pleads that for the reasons given in her responses 5,6, 7 and 8 dated 31 January 2020 to the Claimants' RFI dated 29 November 2019, the 1991 Divorce Certificate is invalid and of no effect. In those responses, Elena avers that the purported 1991 divorce is invalid as a matter of Russian law and that in consequence under English law, the 1991 divorce cannot be recognised. In paragraph 22f of their

Reply, the Adult Children adopt paragraph 7 (intended to be paragraph 6) of Elena's Reply. In those circumstances, it is submitted Elena and the Adult Children cannot shut out disclosure and expert evidence on this issue.

69. Elena's Reply responds to paragraph 14.5 of the Claimants' Reply and Defence to Counterclaim of the Adult Children. The Claimants deny that Vladimir divorced Elena in 2015 and aver that their marriage had already been dissolved by a Russian court on 23 October 1990 and that the court's decision was registered by the Divorce Certificate on 30 April 1991. It is further stated that Elena's appeal to the Primorsky regional court dated 30 May 2019 against that divorce decision was rejected on 18 June 2019.

70. CPR Rule 35.1 provides that expert evidence shall be restricted to that which is reasonably required to resolve the proceedings. In relation to disclosure issues 1 and 2, I have concluded that the validity of the 1991 Divorce Certificate is not a key issue in dispute.

71. On behalf of the Adult Children, Mr Hagen QC accepted that the pleadings as he put it "*say what they say"*. He submitted that the court retained a discretion whether or not to permit expert evidence to be relied upon. He submitted that it was not going to assist the trial judge to hear expert evidence as to whether under Russian law the 1991 Divorce Certificate was valid or not. The relevant issue was what motivated Vladimir at the time he is alleged to have made the English Will.

72. For the reasons I have already set out in relation to disclosure issues 1 and 2, I do not consider that the validity of the 1991 Divorce Certificate is an issue that needs to be determined by the court in either the Probate claim or the KPHL claim. On the statements of case, it is a hare that the Claimants have started running. It is not surprising that Elena and the Adult Children have felt the need to respond to the assertion that the marriage of Vladimir and Elena had come to an end in 1991. The issue is in substance whether the divorce, assuming one took place in Russia as a matter of Russian law, should be recognised. That is not an issue that is necessary to resolve in either the Probate claim or the KPHL claim.

73. I do not consider expert evidence on the validity or effect of the 1991 Divorce Certificate will assist the Judge in determining any of the key issues. The 1991 Divorce Certificate is dated some 24 years prior to the English Will. It is dated some 24 years before the KPHL shares were transferred to Brigita.

74. The validity of the 1991 Divorce Certificate is not relevant to the formal validity of the English Will.

75. For those reasons, I consider that permission should be refused for expert evidence from Russian law experts on whether the 1991 Divorce Certificate is valid or invalid or has effect or no effect.

76. As the issue is raised on the statements of case, I suggest that the order should recite that the court does not consider it necessary for the court at trial to determine whether or not the marriage of Vladimir and Elena was validly dissolved in Russia in 1990 or 1991 nor, if it was, whether the Russian divorce decree would be recognised in England or Belgium.

77. This judgment will be handed down remotely without attendances required at 10.30am on 18 March 2022. I would be grateful to receive typographical corrections in one document from all parties by 2pm on Thursday 17 March. A minute of order is to be lodged by 4pm on 24 March 2022. Any consequential matters not agreed, are to be dealt with at the Further Hearing directed to be listed under paragraph 5 of the Order dated 9 February 2022.