Neutral Citation Number: **[2019] EWHC 305 (Comm)**

Case No: CL-2016-000494

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

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 15th February 2019

Before :

Mr Justice Andrew Baker

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Between :

Avonwick Holdings Limited	**Claimant**
- and -	
(1) Azitio Holdings Limited (2) Dargamo Holdings Limited (3) Oleg Mkrtchan (4) Sergiy Taruta	**Defendants**
- and -	
(1) Vitali Gaiduk (2) Roselink Limited (3) Prandicle Limited (4) Olena Gaiduk (5) Gastly Holdings Limited and 15 others	**Third Parties**

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Neil Calver QC and Ben Woolgar (instructed by **Quinn Emanuel Urquhart & Sullivan LLP**) for the **Claimant and First, Second and Fourth Third Parties**
David Wolfson QC and Henry Hoskins (instructed by **Covington & Burling LLP**) for the **First and Third Defendants and Fifth Third Party**
Nathan Pillow QC, Louise Hutton and Anton Dudnikov (instructed by **Hogan Lovells International LLP**) for the **Second and Fourth Defendants**
Stephen Smith QC and Peter Ratcliffe (instructed by **Baker & McKenzie LLP**) for the **Third Third Party**

Hearing dates: 12th, 15th February 2019

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APPROVED JUDGMENT

MR JUSTICE ANDREW BAKER Friday, 15th February 2019

Introduction

1. These proceedings arise out of business dealings of and between three Ukrainian businessman, Messrs Gaiduk, Taruta and Mkrtchan, and resulting transactions involving corporate entities of theirs. For the purposes of my judgment today, it will almost always not be necessary to distinguish between the gentleman themselves and their various corporate entities and I shall simply refer to the gentlemen themselves as representing all of their litigation camps, if I can put it that way. In the case of Mr Gaiduk, that includes also his wife, who is one of the co-defendants to cross-claims brought by Mr Taruta.
2. One particular aspects of the proceedings involves a fourth businessman, Mr Dubyna. Unlike Messrs Gaiduk, Taruta and Mkrtchan (or for that matter Mrs Gaiduk), Mr Dubyna himself is not party to the proceedings. Prandicle Limited, a corporate vehicle of Mr Dubyna's, is, however. In 2012, Prandicle bought from Roselink Limited, a Gaiduk vehicle, a 24.5% share of NET, a Ukrainian company that owns the Hyatt Hotel in Kiev. Mr Taruta says that the sale to Prandicle infringed rights of his so as to give rise to proprietary or restitutionary claims relating to the shareholding in NET or its value. That shareholding is said to have a value in the tens of millions of US dollars. Whether the claim relating to it has that full value or some fraction thereof does not matter for today's purposes.
3. The primary claim in the proceedings, however, is for something in excess of US$1 billion. That claim arises because Mr Gaiduk alleges against Mr Mkrtchan fraudulent misrepresentations made orally to induce, as Mr Gaiduk says, a transaction involving all three of Messrs Gaiduk, Taruta and Mkrtchan in relation to the ownership of a share in a Ukrainian metals business called Industrial Union of Donbass.

4. It is common ground in the proceedings that the meeting at which the alleged misrepresentations are said to have been made took place and that Mr Taruta attended, but only by telephone and only briefly such that he would not himself be a direct witness to whether the representations were made on that occasion. However, Mr Gaiduk's case includes that, because of the way in which the misrepresentations were delivered, as alleged, including in the light of what it is said Mr Taruta said whilst on the phone at the start of the meeting as to Mr Mkrtchan's position at the meeting, the representations were made for and on behalf of Mr Taruta and not only by and on behalf of Mr Mkrtchan himself.

5. The essence of the claim and hence its asserted value is that whereas the transaction that resulted involved the sale of Mr Gaiduk's stake in Industrial Union of Donbass for US$$950 million, that stake was, to use the jargon, immediately 'flipped' for a price of US$2.71 billion, generating an instant profit in excess of $1 billion. The alleged misrepresentations concern what it is said Mr Mkrtchan may have told Mr Gaiduk in relation to the price being achieved or to be achieved for the stake once sold.

6. There are also in the proceedings cross-claims, as I have mentioned already, brought by Mr Taruta. The essential basis of those cross-claims is a contention by Mr Taruta that certain broader discussions or negotiations between the three of them, Messrs Gaiduk, Taruta and Mkrtchan, resulted in binding obligations as to the division between them or transfer as between them of a range of hitherto joint investments or projects. There are, in that regard, as I understand it, memoranda of understanding between the three gentlemen and a major issue will be whether those were intended to be binding contracts or merely gentlemen's agreements not intended to be binding but setting out a framework for a possible future set of binding arrangements.

7. As a result of those cross-claims, in one form or other seeking to enforce what Mr Taruta will say was the enforceable benefit of those arrangements, there are then further pleaded by Mr Gaiduk

by way of defences or partial defences of set-off what he would say are entitlements of his arising under the memoranda of understanding if, contrary to his primary case, they did generate binding obligations.

The Application

8. Mr Gaiduk now applies to adjourn the seven-week trial in these proceedings presently fixed for October/November 2019. The application notice dated 16 November 2018 was limited to seeking an adjournment of the trial until "*the first available date after 29 April 2020*". It is agreed all round, and I can confirm from the court's perspective, that in practice that would mean a trial in June/July 2020.

9. In the course of argument, Mr Calver QC on behalf of Mr Gaiduk extended the proposal to adjourn to encompass alternative cases of adjourning to either the autumn of 2020 or, as a final alternative and at the outside, even January/February 2021. In my judgment, there is no prejudice to any other party in considering those alternative possibilities. To the extent required, I grant permission to Mr Gaiduk to have the application notice treated as amended accordingly.

10. Mr Mkrtchan supports the application and is content to contemplate any re-fixture window up to and including January/February 2021, as now contemplated by the application, but either asserts or concedes that nothing later than that ought fairly to be contemplated.

11. Mr Taruta and Prandicle for their part oppose any adjournment.

The Grounds

12. There are two grounds upon which adjournment is sought. The first ground is Mr Mkrtchan's continued pre-trial detention in Russia in relation to current criminal charges against him. The second ground is a claim that the matter will not be ready for trial in October 2019 irrespective of Mr Mkrtchan's personal position.

Mr Mkrtchan's Detention

13. The starting point for the application to adjourn founded upon Mr Mkrtchan's detention and its consequences is the obvious desirability, objectively and all things being equal, of having, at trial, Mr Mkrtchan's evidence as a factual witness. Mr Calver QC attractively summarised the gist of the point by saying that without him, the English trial would be like Hamlet without the prince. That said, it is right to note at the outset that there is significant force in the submission by Mr Pillow QC on behalf of Mr Taruta that this is an application by the wrong applicant. Contrary to the submission now advanced by Mr Calver QC on behalf of Mr Gaiduk, it being, on the face of things, a necessary or at any event expected submission for Mr Gaiduk to make as applicant for adjournment, namely that Mr Mkrtchan's absence from trial as a witness would be prejudicial to Mr Gaiduk, in my judgment Mr Mkrtchan's absence as a witness will not cause any significant prejudice to Mr Gaiduk or the prosecution of his case or the advancing of his interests at trial.

14. Of course, Mr Mkrtchan ardently supports the application for an adjournment and the court, in those circumstances, is bound to step back and review the objective justice of the matter from the perspective of all parties and the court and/or litigants before the court. The fact, therefore, that Mr Pillow QC correctly described this as an application by the wrong applicant does not seem to me in itself to be a ground upon which to reject the application.

15. Also by way of preliminary observation, I would say this. The application has been heard and considered in public. This judgment is being given in public. There was some discussion during argument of the fact that if, as at one point Mr Wolfson QC for Mr Mkrtchan submitted, there might have been other things that might have been said on behalf of Mr Mkrtchan, either by way of evidence or by way of submissions on the application, that it would be prejudicial to him to ventilate in public in circumstances where they might relate to the ongoing criminal process against him in Russia, the solution to Mr Mkrtchan in that regard was to raise that with the court,

explaining the problem, and the court, if persuaded there was a real problem in that regard, would readily have accommodated it by entertaining either the entire application or particular parts of the application in private. All that said, I am nonetheless extremely conscious of sensitivity to Mr Mkrtchan's current position as a defendant or accused in a serious criminal charge in Russia. There could be real danger, were I to descend into great detail or indeed any significant detail into certain of the aspects of the matter discussed during argument concerning the criminal process in Russia, of appearing to be expressing views as to the merits of the criminal charge against Mr Mkrtchan or his possible defences to it.

16. As it happens, I am not in a position to say very much about that in any event. A by-product of the failure to address more specific evidence to the court, if necessary in private, to inform the court in greater detail as to the nature and implications of the Russian criminal charges is that I am not in a position to say much about the merits of those charges. But the sensitivity remains and what matters at this stage, therefore, is to have explained why in this judgment, although I shall be expressing my higher level conclusions, I shall not necessarily articulate my detailed thinking behind some of them where that might descend into a review of some of the matters discussed in evidence concerning how the proceedings in Russia might or might not play out.
17. Mr Gaiduk's stance on the impact that Mr Mkrtchan's detention should or should not have on the trial in these proceedings has been something of a moving feast. What has been clear throughout, since Mr Mkrtchan was first detained in early February 2018, is that (1) that detention might well continue for at least 12 months and (2) if it continued for 12 months, let alone for anything longer, witness evidence from Mr Mkrtchan could not sensibly be part of an exchange of factual evidence by way of witness statement in proper time for trial in October 2019.
18. Had Mr Mkrtchan been released after 12 months, i.e. ten days ago, either after an exchange of witness statements in these proceedings or with such an exchange imminent, I am not persuaded

that an adjournment would have been required or appropriate. Of course, the normal process of this court takes it as implicit that the optimal procedure where there is to be factual witness evidence is for witness statements from the material factual witnesses to be exchanged simultaneously. That is not, however, the only fair procedure no matter what the surrounding circumstances. I have no doubt that those representing Mr Mkrtchan would have been and, indeed, were it to arise in the future, would be, in a position (at all events, they ought to be in a position) to satisfy the court, if Mr Mkrtchan became able to participate meaningfully in these proceedings as a witness, that he had not been given access to anything to which, in fairness, it would be better that he were not given access before signing a witness statement or in some other way committing to a factual account, and on that basis to find that such application as needed to be made, strictly it may be for relief against sanctions, would be an application on which, notwithstanding in some cases the difficulties of such applications these days, they were pushing at an open door.

19. In my judgment, therefore, if, as on the face of things ought to have happened under the prior orders of the court (as I shall come on to later), there had been an exchange of witness statements in this case a few months ago, and the thought was that Mr Mkrtchan might be released from pre-trial detention so as to be in a position to engage seriously with these proceedings as a witness from now, the trial in October would rightly have gone ahead and the court would have made such arrangements as might be appropriate or necessary to accommodate the late joining of the party of Mr Mkrtchan as a factual witness as distinct, of course, to his presence throughout, through his representatives, as a litigating party.

20. Against that background, this application, issued in November 2018, sought an adjournment to June 2020 (as its practical proposed effect), in reaction to confirmation that Mr Mkrtchan's detention continued. It was sought on the basis that (1) there was a real prospect, so it was said, that Mr Mkrtchan would be released from pre-trial detention in early February and (2) if then

released, (a) that would be too late for him to be sensibly a witness at a trial this autumn and (b) on the other hand, it would obviously still be in plenty of time for him to be a fully participating witness in a trial in June 2020.

21. Point (1) in that application logic has, of course, been overtaken by events. Mr Mkrtchan was not released ten days ago on the anniversary of his original detention. As it happens, I am not satisfied on the evidence and argument available on the application that there was ever a realistic prospect that he would be released on that anniversary. I have already given my reason for concluding that point (2)(a) in that application logic was also incorrect. Had Mr Mkrtchan been released ten days ago, in my judgment it would not have been necessary or appropriate to adjourn the trial this autumn.

22. The final step in the application logic, point (2)(b), is, of course, correct. Had Mr Mkrtchan been released ten days ago, on any view that would have been in plenty of time for him then to be a full participant as witness for the purposes of a trial not taking place until June 2020.

23. Given my conclusions as to points (1) and (2)(a) in the logic of the application, the application as issued would not have succeeded. Indeed, it might be thought that when, as has now occurred, Mr Mkrtchan's detention did not end on 5 February 2019 but was extended to, as it now stands, at least early May 2019, destroying the premise of the application as issued, logically the application ought to have been or would have been withdrawn. (Again, in that regard, it must be borne in mind that this is Mr Gaiduk's application, not Mr Mkrtchan's, albeit that I am presently focusing on the ground of application relating to Mr Mkrtchan's presence or absence as a factual witness at trial.)

24. Instead, however, Mr Gaiduk has sought to finesse the application, if that is the right verb to use for such a substantial change of position, from an application founded upon and said to be justified by Mr Mkrtchan's being released ten days ago (or the prospect thereof) to an application founded upon and said to be justified by Mr Mkrtchan's having not been released ten

days ago. Now it is said the October 2019 trial would be unfair to Mr Mkrtchan because he is still in detention today, when previously it was said that it would be unfair to him if not in detention today (because the timetable to trial would then be too tight for him, a proposition to which I would not have acceded).

25. This is not the first *volte face* performed by Mr Gaiduk in this case as regards specifically the question of adjournment and Mr Mkrtchan's detention. The trial listing as it stands for October/November 2019 is the consequence of an adjournment of the original trial listing which was for now, February 2019. That adjournment was granted at the initial instance of Mr Taruta, although ultimately without resistance from any party as to whether there should be some adjournment, at a third CMC before Picken J in April 2018.

26. By that point, Mr Mkrtchan was in detention. By that point, the actual and possible future consequences of that detention and its prospective possible length were all, as it seems to me, known to the parties and ventilated before the court. It may be that for the hearing before me this week those matters have been explored in fuller detail than they had been before the hearing in front of Picken J, but the broad substance of Mr Mkrtchan's position, the difficulties it created for his English legal team to have any sensible access to him to proof him as a witness, and its prospective length and future consequences were all in the air and understood. In those circumstances, whilst Mr Gaiduk ultimately did not resist the granting of an adjournment, he advocated firmly and successfully for the adjournment to be until October 2019 and no later, notwithstanding, amongst other things, the position of Mr Taruta and Prandicle that if there were to be an adjournment and it was to October 2019, they would need to instruct fresh leading counsel, whereas if there had to be an adjournment and it could be until just three months later, January 2020, that disadvantage to them would not arise.

27. As part of his firm submission, effectively accepted by the court, Mr Gaiduk's position, in witness evidence on his behalf and in submission, was that any trial later than October 2019

would be unfair to him. In making that submission, it was both well contemplated and indeed expressly envisaged that, given the potential consequences of Mr Mkrtchan's detention, it might or might not be that he (Mr Mkrtchan) would be at a trial in October 2019 as a witness. Thus, for example, and in conclusion in the skeleton argument on this aspect before Picken J, Mr Calver QC submitted as follows:

"*Ultimately, the Gaiduk Parties have been driven to conclude that the third course [i.e. adjourning and re-fixing for October 2019] should be adopted (subject to the court's approval) on the basis that (i) it means that the October 2019 trial date can be secured now before it is lost, (ii) it means any further prolongation of Mr Mkrtchan's detention beyond 5 July 2018 will not entail the loss of the trial date, and (iii) it will spare the expense and distraction of preparing for and attending a specific hearing to debate the details and consequence of Mr Mkrtchan's detention.*"

28. The particular context in which that third advantage of adjourning and re-fixing for October 2019 was articulated was that Mr Mkrtchan's detention was a relatively recent development, detailed evidence as to its impact and consequences had arrived quite late in the day, and as a result Mr Gaiduk had identified as at least one of the other potential alternatives, an adjournment simply of the CMC and the question of adjournment of the trial, for a further, fuller hearing.

29. It is not easy to see how the application now made is not precisely an application advocating that a further prolongation of Mr Mkrtchan's detention beyond 5 July 2018 is now to entail the loss of the trial date. It is equally not easy to see why the one-day argument this week has not been precisely the distraction for the parties at no doubt very significant expense of a specific hearing to debate the details and consequences of Mr Mkrtchan's detention.

30. Against that history, I am not satisfied that there has been a material change of circumstance, as compared to those considered and taken into account by the court when deciding in April 2018, in effect, that the trial was to be adjourned to October 2019 and no later. It is not entirely clear

to me that in those circumstances, Mr Gaiduk (or for that matter Mr Mkrtchan) should be entitled now to ask the court to revisit that decision at all, but let me for now consider *de bene esse* the substance of the application as it is now advanced.

31. What is now said, with which I agree, is that there is now no prospect of Mr Mkrtchan being able to participate as a witness in an exchange of witness statements in proper time for a trial in October 2019. It is said that there is a real prospect of Mr Mkrtchan being no longer in pre-trial detention by the time of that trial fixture here because the criminal charge against him in Russia may be dropped between now and then, following the completion of the current stage in the process under which he and his Russian defence lawyer are exercising their opportunity to review the criminal file compiled for the case against him and the public prosecutor must then review the matter. Were that to happen, the same question of managing the fairness of the process to the other parties would arise as I mentioned in the context of a putative release of Mr Mkrtchan ten days ago, had it happened. For equivalent reasons, I am not satisfied that were Mr Mkrtchan, between now and trial, to be released from pre-trial detention, as it is said may be a real possibility, it would be appropriate to adjourn the trial as opposed to manage the fairness of the process to other parties in such a way as to ensure that the trial still took place and Mr Mkrtchan was indeed then a witness at that trial.
32. Without being in a position formally to bind the hands of any future judge, I anticipate that so long as proper care were taken by those representing Mr Mkrtchan so as to satisfy the court that there was indeed fairness to the other parties, then (as I put it earlier) Mr Mkrtchan would find himself pushing at an open door when seeking relief from sanctions so as to be able to be called as a witness at trial.
33. The question of adjournment, therefore, as it seems to me, is only live at all for the opposing prospect, that is to say against the possibility that the criminal charge against Mr Mkrtchan is not

dropped at the end of this present review process. That, on the evidence, seems to me most likely to occur (if it does) this summer.

34. In that case, on the evidence, it appears there could be either of two possible outcomes. The primary possibility is that, the charge not having been dropped, Mr Mkrtchan then must stand trial. Although the evidence has touched to some extent upon the possibility of obtaining some form of witness evidence in writing from Mr Mkrtchan even though he faced or had commenced a criminal trial in Russia, in my judgment that as a possibility seems entirely speculative. Being realistic, as it seems to me, if come this summer or thereabouts Mr Mkrtchan is to face a criminal trial in Russia, there is no sensible prospect of having witness evidence from him at the trial here in October.

35. The second possible outcome if the charge is not dropped is that the public prosecutor in Russia causes the matter to be referred back to the investigating committee, whose investigations have extended over the initial pre-trial detention period and have been the cause of the pre-trial detention. On the evidence, it does appear that in that case (were it to arise) Mr Mkrtchan may be entitled to be released, at least temporarily, pending that further investigative process by the committee. In my judgment, however, I have not been put in a position to regard the possibility of that occurring at all as other than speculative. To the contrary, indeed, as it seems to me, as best I can judge it on the evidence, the nature and extent of the criminal investigation into Mr Mkrtchan's position makes the possibility of a call for yet further investigation highly unlikely, but rather, the position is one of two realistic and starkly opposite possibilities, of the charges being dropped or Mr Mkrtchan having to face trial.

36. The result of all of that analysis is that the real question is whether the court should adjourn for so long as to ensure that a re-fixed trial here will occur after any criminal trial in Russia. In practice, as it seems to me and on the evidence on this application, that means adjourning until January 2021.

37. What, then, are the matters to weigh in the balance? It seems to me they are the following:-

38. If the is adjourned, there will be:

a. a certainty of seriously frustrated legitimate expectations;

b. a certainty of extending the prejudice to Prandicle in respect of its interest in the Hyatt Hotel Kiev. In my judgment, having ownership of an important and valuable asset held under a cloud of uncertainty and challenge is itself a significant prejudice independently of whether there are, from time to time, any present or imminent plans to dispose of, deal with or raise finance against that asset. If there were any such present or imminent plans, the prejudice would just be all the greater. Whilst I accept the submission on behalf of Mr Gaiduk and Mr Mkrtchan that the evidence for Prandicle does not disclose any immediate plans in relation to realising or otherwise taking advantage of the value of the asset, there is real prejudice to Prandicle, day by day, that would be extended, therefore, by 15 months if I were to adjourn;

c. a certainty of prejudice to other litigants – those who would have been able to access the court for substantial hearings this autumn, but have had to wait for longer because of this fixture, and those who would be in a position to access the court when this trial would then take place who will be prevented from doing so;

d. a risk of appearing to undermine the authority of the court. Even if, which I have parked, the absence of any material change of circumstance since the decision of this court ten months ago does not in law prevent the application from being advanced at all, it is most unwelcome to find that, encouraged by Mr Gaiduk in particular, who now applies for the adjournment, the court has previously expressed itself of the firm view that the trial must take place in October of this year absent exceptional circumstances, and then for the court to be seen in public ten months later adjourning in the absence thereof;

e. a certainty of all the normal adverse consequences of a lengthy delay. For example, prolonged uncertainty generally for all parties, increased costs, risks of further deteriorations in the quality of evidence, potentially risks of unavailability of important individuals, be they witnesses or be they members of the legal teams, i.e. the normal features of large-scale litigation that lead to the risk that justice delayed can become justice denied;

f. finally, a real risk of achieving no substantial benefit, since, in the event, Mr Mkrtchan may be in a position to participate after all in October/November 2019, although I have to say I am not confident that is a strong prospect; or, on the other hand, he might not be in a position to participate as a witness, in effect, ever. Without descending into detail, on the evidence available to me, I have to say I judge that latter to be the most likely outcome.

39. If, on the other hand, the court does not adjourn, then, as it seems to me, there will be:

a. no relevant prejudice to Mr Taruta or to Prandicle;

b. no material or substantial prejudice to Mr Gaiduk. In my judgment, that is despite his more recent protestations to the contrary. As I have already indicated, I prefer his stance in April 2018, that delaying beyond autumn 2019 would be unfair to him even if that led to a trial without evidence from Mr Mkrtchan, as being a realistic and honest assessment of the matter from Mr Gaiduk's perspective;

c. a real risk, of course, of prejudice to Mr Mkrtchan, if (a) that does mean that there is no evidence from him at trial in October/November this year, but (b) there could and would have been evidence from him at a trial in January/February 2021. As I have already indicated, the chance of (a) eventuating does seem to me high, although I certainly do not rule out the existence as a real prospect, as indeed urged upon me by Mr Gaiduk and Mr Mkrtchan, of his being released because the charge against him in Russia is dropped in

time for him to participate. The prospect that (b) will be the position presently seems to me somewhat speculative, albeit I cannot say that it is not a real and substantial possibility even if I have also concluded that the most likely outcome is that Mr Mkrtchan will indeed not be in a position to participate here as a witness effectively ever (that meaning, in context, even if the trial was adjourned until January 2021, no party suggesting that it might be just to contemplate anything even later still).

40. I bear well in mind that a small chance of very major prejudice may weigh more heavily in the balance than a large chance or even a certainty of more minor prejudice, but also that it is not a quantifiable exercise in any event, as there are qualitative differences between types of prejudice. Thus, most obviously, the prejudice or possible prejudice to Mr Mkrtchan of not being able to give evidence at trial is qualitatively different to prejudice to other parties by way of increased costs. Of course, equally, in one sense, as is always the case, it is impossible to know whether it is ultimately prejudicial to Mr Mkrtchan not to give evidence at trial since one cannot know, unless he gives evidence at trial, whether such evidence would be believed.
41. Striking the balance between the various elements I have identified, I have come to the clear view that adjourning the trial as proposed creates the greater risk of injustice overall. To the extent that this application was founded upon Mr Mkrtchan's continued detention, therefore, it is dismissed.
42. It has thus not been necessary to take a final view on whether, for want of a material change of circumstance since April 2018, the application was fit to be dismissed out of hand and I prefer, therefore, not to rest the decision today on that point.

Unreadiness

43. The application to adjourn on the ground of unreadiness for trial in October comes down to whether there can still be a workable pre-trial timetable, fair to all parties, so as to achieve the present trial listing. There has been reference to certain other matters still needing to be dealt

with during the interlocutory stages of the matter, but none of them, as it seems to me, are out of the ordinary for substantial Commercial Court litigation this far ahead of trial as between very well-resourced and well-supported litigating parties. Thus, for example, reference has been made to the existence of certain ongoing issues or potential issues relating to disclosure. In that regard, that is to say other matters that have been mentioned, it is right to note also that there is still one potentially significant amendment application outstanding, due for argument in two weeks' time. That arises out of one particular set-off raised or proposed to be raised by Mr Gaiduk in response to the cross-claims by Mr Taruta. It concerns the Gdansk shipyard. As I understand it, without being seized of the detail of that application, it is to be said on behalf of Mr Taruta that whereas he has been in a position to accept the introduction of the other set-off claims within the proceedings, that particular set-off claim is not one that can fairly be accommodated within the present process. The merits or otherwise of that argument, any other arguments that may arise on that application, and the application generally, are not matters before me today. That application must stand or fall on its own merits, just as Mr Calver QC fairly accepted this application for an adjournment on case management grounds must stand or fall today, independently of what view may or may not be taken about the Gdansk shipyard amendment in two weeks' time.

44. To be fair to Mr Calver QC again, he recognised what I have just been saying as to the surrounding matters that have been mentioned as possible difficulties with being ready for trial. As a result, in his skeleton argument he squarely took his stand on the argument that, come what may, the timetable of major elements still to be completed in the pre-trial process was now simply too tight to be workable. Thus, quoting from paragraph 32 of his skeleton:

"*In Khatoun10 [the witness statement served with the application], the Gaiduk Parties relied on a number of other arguments in support of an adjournment. The majority of those have been overtaken by events, but one essential point remains, which is that, on any view, the timetable to*

an October 2019 trial is too compressed." He then summarised what Mr Gaiduk says are the insuperable difficulties with being ready for trial in October, matters which were developed briefly orally. Forensically consistently, Mr Wolfson QC on behalf of Mr Mkrtchan expressed the same concerns and so supported an adjournment on this alternative case management basis, even if there was none on the basis of Mr Mkrtchan's ongoing detention.

45. Equally forensically consistently, Mr Pillow QC for Mr Taruta and Mr Smith QC for Prandicle resisted any adjournment on this ground, contending that the remaining eight months, or now just under, until trial are sufficient for the remaining pre-trial processes fairly to be completed, even if admittedly that is a shorter period for the completion of those stages than it had originally been intended to allow.

46. It will be appreciated that this is now a different adjournment or proposed adjournment than would have been ordered if I had ordered an adjournment by reference to the impact of Mr Mkrtchan's detention. On the application as issued, as I mentioned at the outset, only an adjournment to (in practice) June/July 2020 was sought and it was said that both roads led to that particular Rome. However, I have concluded that were there to be an adjournment by reference to the impact of Mr Mkrtchan's detention, it would have to be an adjournment until January/February 2021. On the other hand, I agree, and no party disputed, that if Mr Gaiduk's case management concerns be well-founded, they would be more than amply met by the adjournment originally proposed, i.e. by an adjournment to June/July 2020.

47. The present position is that, leaving aside any remaining issues that may need to be dealt with concerning disclosure, having already indicated that they do not strike me as matters that would require the trial to be adjourned, the case now requires an exchange of primary and, if so advised, reply factual witness statements; the exchange of experts' reports and consequent stages of expert meetings and joint memoranda, and, if required, supplemental experts' reports; a pre-trial review; and a trial.

48. As regards the exchange of primary witness statements, the history is as follows: in July 2017 at the first CMC in the case, on the basis of which the original trial listing for February 2019 came to be fixed, Picken J ordered the exchange of witness statements for May 2018; at the third CMC, to which I have referred already, at which that trial listing was adjourned to the present October/November 2019 listing, the date for witness statement exchange was changed, under Picken J's order, to October 2018; there have then been several consent orders dealing with the matter, all of which have been made by consent (by definition) but also at times when what has ultimately become this application founded upon the successive extensions of Mr Mkrtchan's detention was, at least to some extent, in the offing.

49. The first consent order, dated 7 September 2018, an order of Moulder J, put the exchange of witness statements back about a month to 16 November 2018. The day before that agreed deadline, by consent order of Teare J, it was extended to 14 December 2018. Finally, the day before that deadline, by consent order of Robin Knowles J, with this application having then been issued, the date for exchange of witness statements was put back again to be the date seven days after determination of the adjournment application, i.e. as things now stand, a week today.

50. Following an exchange of witness statements, as things presently stand, the parties have the following main milestones as ordered under previous orders: primary experts' reports for exchange on 5 April 2019, with meetings of experts thereafter by 10 May 2019 and joint memoranda between experts by 24 May 2019; supplemental experts' reports, if any, due by 28 June 2019; then finally a progress monitoring date of 8 July 2019 and a pre-trial review date of 19 July 2019. Nobody is suggesting, and I endorse their lack of suggestion, that either the progress monitoring date or the pre-trial review date should change if we are maintaining the October/November 2019 trial, but with adjustments to the other deadlines.

51. In one sense, resistance to the proposed adjournment on case management grounds is not helped by the fact that, so it seems, none of Mr Gaiduk, Mr Taruta or Prandicle has sought to be ready

for an exchange of primary witness statements when they ought to have been. Mr Mkrtchan is immune from that particular criticism because, as Mr Wolfson QC confirmed in argument, he has and will have no other factual witness for trial and was not in a position, because of his pre-trial detention, to be proofed himself for the purpose of an exchange of witness statements at the end of last year.

52. Save that I infer (and to an extent was told by counsel) the legal teams may have allowed themselves to be distracted by dealing with this very application, and perhaps also the amendment application for hearing in two weeks, there seems to me essentially no explanation, and certainly no excuse, for the parties other than Mr Mkrtchan having not been ready with their own witness statements for an exchange on 14 December, such exchange having then been put off until after this determination only lest the trial were now adjourned on such terms as would then have allowed for Mr Mkrtchan to join in and a decision were also then made that they should not exchange their witness statements until he was indeed able to join in.

53. That said, as things now stand, Mr Wolfson QC for Mr Mkrtchan, as I have indicated, has been quite open in saying that if there is no adjournment and there is an exchange of primary witness statements in the near future, there will be none to be exchanged from his side. Mr Gaiduk, for his part, has indicated or offered a date of 8 March for the exchange of witness statements and that is only three weeks away. Pressed by the court's dissatisfaction as to the lack of readiness for an exchange and the suggestion that Mr Taruta had been making that the exchange should be as late as 29 March, Mr Taruta, through Mr Pillow QC, has indicated willingness and ability to exchange statements by the end of this month, aligning himself therefore with the position of Prandicle.

54. Overall, in my judgment, there is no reason why the parties who are in a position to exchange witness statements should have difficulty doing so later than, to take Fridays, 1 March, and if there is to be no adjournment, subject to any further argument, that will be the order.

55. The case management adjournment question then boils down to whether, on that basis, the parties ought to be able to be ready for the trial currently listed in October 2019, or whether the remaining tasks are too extensive and the time too short for that trial still to be fairly in prospect. In my judgment, and in short, the answer is that the parties ought still to be able to be ready.
56. Subject to any observations as to any of these specific dates, although I emphasise I shall require substantial persuasion for them to be moved by any significant margin, what I have in mind is a revised pre-trial timetable as follows:-
    a. Primary witness statements by 1 March, as I have already indicated. I have noted from the papers the existence of permissions already sought and granted for witness statements in respect of the principal individuals of very substantial length. I trust that none of those witness statements will be seeking to recite for the court the story that is told by the documents. I trust that a desire for witness statements to do so, whether consciously or unconsciously, has not been part of the reason for seeking very extensively lengthy statements. I cannot and will not, without notice to the parties, revisit those orders, but I do express the provisional view that notwithstanding the very large amounts at stake, the moderately extensive range of dealings over which the pleadings roam, and the nature and seriousness of the allegations, the parties who have permission to serve very long statements should find, if they examine critically such drafts as have been prepared to date for the identification of material which represents proper, first-hand, factual witness evidence that materially adds to the narrative to be derived from the documents, that they do not need anything like the length of statements for which they have permission.
    b. All that said, and even if something of the length for which permission has been granted is served in relation to the witnesses in question, it seems to me that there should not need to be more than three weeks for the primary witness statements as exchanged to be reviewed to identify whether there is any (there may well not be any) need for additional

questions to be addressed by way of reply witness statements on the part of any of the witnesses and for such statements to be prepared and ready. Therefore, I propose an order for reply witness statements, if any, to be exchanged by Friday, 22 March.

c. Thereafter, as it seems to me, the key target in the case should be to ensure that there has been an exchange of primary experts' reports, meetings and preparation of joint memoranda before the pre-trial review. It does not seem to me necessary or indeed potentially desirable for there to be, in a case of this kind, an exchange of supplementary experts' reports, if there needs to be any, prior to the pre-trial review, as opposed to a review with the court at the pre-trial review of whether, and if so what, supplemental experts' reports are required. I say that because, by way of reminder to the parties, it is not supposed to be the norm that there are supplementary reports. There is an exchange of experts' reports followed by a meeting of the experts to narrow the issues, followed, critically, by the production by the experts without interference or involvement, by and large, of the legal teams of joint memoranda, which joint memoranda not only identify the areas of common ground and the areas in dispute, but set out, in relation to the areas of dispute, in summary the reason or reasons for the respective experts maintaining their own view. Whether and, if so, to what extent it is necessary or appropriate beyond what can be accommodated within the joint memoranda for there to be a further round of reports is, in every case, a matter to be anxiously scrutinised without any assumption that there will need to be such reply reports. If, as it happens, the deferral to a degree of what would otherwise have been the expert timetable now lends itself more naturally to the pre-trial review coming between completion of joint memoranda and service of any supplementary reports if there really needs to be any, in my judgment that is a beneficial by-product of the slightly more compressed timetable overall with which the parties must now work. Having expressed that reasoning, that should explain why in my judgment

the appropriate deadline for exchange of primary reports is a little later than had been proposed by Mr Taruta. I have in mind that experts' reports should be exchanged by 7 June, with the experts to meet by either 21 or 28 June, so that is either within two weeks or within three weeks of their primary reports, with joint memoranda to be completed within a week of the deadline for their meeting. The experience of the court is that the longer that is left between the meeting and the joint memoranda, the more are the legal teams tempted to involve themselves where they should not.

d. In those circumstances and maintaining the progress monitoring date and pre-trial review date, I would have in mind a date relatively shortly after the pre-trial review, but obviously bearing in mind that is mid July, for supplemental reports, if any, the precise scope of which will be a matter for the pre-trial review agenda. It may be that, to this extent, at that stage in the process the parties and their experts will need to work in a sense at risk as to whether the work product will be allowed as supplemental reports (but even if it is not the work product will not go to waste because it will assist the experts in being ready for trial), namely that we should set the timetable on the basis that that which any party has in mind to seek to serve as a supplemental report will be worked on between completion of joint memoranda and pre-trial review, even if permission for any such report is to be a matter for the pre-trial review. In those circumstances, it ought to be workable for the deadline for supplemental reports to be only a week after the pre-trial review, 26 July.

57. On all those bases and for all of those reasons, the application to adjourn on case management grounds, asserting an unreadiness for trial this autumn, is also dismissed.

58. I shall hear counsel now on costs, any other consequential matters, and in particular any observations any of them have on the detail of the pre-trial timetable that I have proposed.