Case No: CL-2021-000649

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

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

Date: 03 June 2025

Before :

DEPUTY JUDGE CHARLES HOLLANDER KC

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Between :

(1) DMITRY GERASIMENKO
(2) REDOCTOBER LTD
(3) SEGOA VENTURES LIMITED
(4) BOONVISION LIMITED — **Claimants**

- and -

(1) VTB CAPITAL PLC (IN ADMINISTRATION)
(2) OWH SE (Previously known as VTB BANK (EUROPE) SE)
(3) JSC RESEARCH AND PRODUCTION CORPORATION URALVAGONZAVOD
(4) DMITRY ALEXANDROVICH PUMPYANSKIY
(5) PAVEL VLADIMIROVICH KROTOV
(6) PJSC TMK
(7) JSC RED OCTOBER CORPORATION
(8) HEFESTOS SPS SA (Previously known as TMK GLOBAL SA)
(9) RO STEEL SA — **Defendants**
(10) JSC VTB BANK

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Daniel Warents (instructed by **Candey**) for the **Claimants**
David Davies KC and Adam Al-Attar KC (instructed by **Weil Gotshal & Manges (London) LLP**) for the **First Defendant**

Hearing dates: 14-15 May 2025

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JUDGMENT

This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:30 on Tuesday 03 June 2025.

CHARLES HOLLANDER KC :

JUDGMENT ON SUMMARY JUDGMENT APPLICATION

The Claim

1. The First Claimant, Mr Gerasimenko, is a businessman of dual Ukrainian and Russian nationality with a background in the steel industry. He is the ultimate beneficial owner of the other Claimants.

2. The First Defendant ("VTBC") is an English company which carried on business in the provision of investment banking services as part of the VTB group of companies (Russia's second largest financial services group). The VTB group is majority owned and ultimately controlled by the Russian government but VTBC entered administration on 6 December 2022 after sanctions were imposed following the Russian invasion of Ukraine and VTBC is now under the control of its administrators.

3. The claim concerns the expropriation of the Claimants' interests in a Russian metallurgy business carried on by a group of companies known as the Red October Group, by means of what is said to be a corporate raid executed at the instigation of, or with the approval and active encouragement of, President Putin and his inner circle. It is referred to by the Claimants as "the Raider Attack". The use of what may be regarded as partisan definitions is in general unhelpful but as this expression was used during the hearing I will adopt it.

4. The claim has nothing to do with this jurisdiction save for the fact that VTBC is an English company and is sued as an "anchor defendant". The Claimants say that this gives the court jurisdiction over the claim against all ten defendants, and the case can only be heard in this jurisdiction because, given the allegations, it is impossible for the Claimants to have a fair trial in Russia.

5. VTBC bring proceedings for summary judgment against the Claimants. They say that, whether or not there is anything in these claims more generally, there is no basis for a claim against VTBC. If they succeed, the English court has no jurisdiction over the claim against the other nine defendants, because the jurisdiction for the English court to try those claims is parasitic on the jurisdiction established against VTBC. If the summary judgment application fails, I am asked to determine an application for service out of the jurisdiction against the other defendants and various ancillary applications.

6. The claim has had something of a chequered history, to say the least. A claim form was issued on 5 November 2021, three and a half years ago, naming the first five defendants. On 7 April 2022, the Claimants thought they had served VTBC but it subsequently transpired that service was ineffective because of an Insolvency Act moratorium of which the Claimants were unaware. On 6 December 2022 VTBC went into administration and now acts by its administrators. Various extensions of time were sought and obtained from this court, although there was no attempt to apply for leave to serve out on the other defendants. On 3 February 2023 service was effected on VTBC with the consent of the administrators and an Amended Claim Form issued adding five more defendants to the claim. On 30 June 2023 the Claimants applied for permission to pursue the claim in these proceedings against VTBC notwithstanding the Insolvency Act moratorium, and compromised that application on 9 November 2023 on terms of a moratorium settlement

agreement. On 27 November 2023 VTBC filed an Acknowledgement of Service. The history of the claim consists of many applications for extensions of time, although the Claimants point out that each such application was made before time expired.

7. A second claim was commenced on 31 July 2024, which was issued to protect the limitation position and which mirrors the amended main claim. The parties have agreed that the findings made on VTBC's summary judgment application will also apply to that claim.

The summary judgment application

8. On 14 June 2024 VTBC issued an application for reverse summary judgment. That should have been heard in December 2024, but the Claimants were in funding difficulty and VTBC ultimately did not challenge an application for a delay of three months.

9. Although procedurally and factually the claim is highly complex, VTBC say that there is a simple issue: there is no case to go to trial against VTBC which can survive a summary judgment application. The Claimants in turn say that VTBC are seeking to have a mini-trial on contested evidence and the court cannot resolve this material on a summary judgment application. They also point out that the evidence available to them is limited and there is reason to believe that much more will come out if the matter proceeds to trial.

Nature of the claim

10. The Claimants' case pleads that:

> "*each of the Defendants has participated in the Raider Attack…*" (PoC, [16]);
>
> "*none of the Defendants when participating in the Raider Attack can have been ignorant of or can have failed to understand the part it was playing (and that it was playing a part) in the Raider Attack*" (PoC [18]);
>
> "*Each of the Defendants is jointly and severally liable under Articles 1064 and/or 1080 of the Russian Civil Code ("the Civil Code") for: (1) causing unlawful harm to the Claimants and participating in and/or a course of conduct which was intended to and did expropriate and/or seriously diminish the Claimants' interests in the Red October Group….*" (PoC, [21]);
>
> "*each of the Defendants knew that it/he was participating in such an attack, and that it was an attack on the Claimants and/or in any event (if any of the Defendants was unaware of the identity/ies of any of the Claimants) on the beneficial owners of the Red October Group, aimed at the misappropriation and/or expropriation of their assets*" (PoC, [112(3)]).

Russian law

11. The Claimants have put in evidence from Professor Asoskov on Russian law, which for present purposes is the system of law accepted to apply to the claims. VTBC say they are content for present purposes to treat the evidence as correct.

12. The Claimants plead a case under Articles 10, 1064 and 1080 of the Russian Civil Code. These provisions, which essentially set out the Russian law of tort, have been considered and summarised in a large number of English law cases, see for example the summary of Article 1064 in *VTB v Parline* 2015 [EWHC 1135 (Comm) at [48]-[52].

13. The nature of the case is what Prof Asoskov describes as a Scenario 1 case. Professor Asoskov's evidence is that:

> Asoskov-1, [161] '*In Scenario 1, the claimant bears the onus of proving that the actions of several tortfeasors were joint, i.e. they comprised of the concerted (coordinated) efforts in the pursuit of a common intention.*'
>
> Asoskov-1, [162] '*This case law demonstrates that it suffices to show that each tortfeasor played at least some role when conceiving and implementing a common unlawful scheme, including as a mastermind, accomplice, accessory, etc.*'
>
> Asoskov-1, [172] '*In Scenario 1 with joint (concerted) actions of multiple defendants, elements of tort (including harm, unlawfulness and causation) shall be established with regard to the actions of all involved tortfeasors.*'

Development of the Claimants' case

14. The application for summary judgment was issued on 14 June 2024. It was supported by a witness statement of Stephen Browne, one of the joint administrators of VTBC, which pointed out that almost all the allegations pleaded had nothing to do with VTBC. It was however alleged by the Claimants that VTBC were involved in the making of a criminal complaint by VTB Russia in January 2016 ("the Criminal Complaint") and that this led to wrongful criminal charges against Mr Gerasimenko. Mr Browne explained that VTBC were not involved in this and there was simply no evidence to support any allegation that VTBC were so involved. Indeed, on the basis of the documents available to Mr Browne, he says that VTBC only became aware of the Criminal Complaint in March 2016.

15. The materials put forward by Mr Browne led to a change of tack by the Claimants. Mr Browne exhibited documents and set out the chronology, so far as he was aware, between VTBC and its advisers and the Russian authorities. Based on what he said in his witness statement, the Claimants drafted pleading amendments to the effect that a lawyer at the law firm Morgan Lewis, Mr Marinichev, had made deliberately false statements to the Russian authorities on behalf of VTBC in a document referred to as the Explanations Document which led to charges in April 2016 against Mr Gerasimenko (referred to as "the Embezzlement Indictment") and that it was this conduct that was now relied on in support of the allegation of VTBC's involvement in the Raider Attack.

16. In the event, there is no reliance on the originally pleaded case against VTBC in the Claimants' counsel's skeleton argument and there was no reliance on it in oral argument. Counsel for the Claimants said he was not making concessions in relation to the original pleaded case, but his case was now based on the new allegations.

17. It is obvious that the originally pleaded case against VTBC was hopeless and I accept VTBC's case on this. Whatever steps may have been taken by the other defendants (on which I express no view), there is simply no material to suggest that (subject to the proposed amendments) VTBC was involved in the Raider Attack, and the evidence

suggests they only learned about the Criminal Complaint some weeks after it had been delivered to the Russian authorities.

18. The claim was commenced in November 2021 and the draft amendments were put forward in January 2025. It follows that the case which was being put forward against VTBC as justifying these proceedings against all ten defendants being brought in this jurisdiction has effectively been abandoned after over three years, and replaced by a new one after the application for reverse summary judgment was brought.

The new case

19. The new case put forward by the Claimants against VTBC is based on the Explanations Document. This is referred to in the witness statement of Mr Browne. It is apparent that in January 2015 information was provided to the Russian Federal Security Service ("FSS") by Mr Marinichev. The administrators say they do not have a copy of what was sent, but Mr Browne exhibits a draft. The Claimants rely on one specific false statement in the Explanations Document and two other points which they say were misleading. They say they were not aware of this document until Mr Browne produced it. They rely on this as the basis of the new case against VTBC to the effect that (PoC 57) VTBC agreed with VTB Russia and/or with agents of the Russian state and/or other participants in the Raider Attack that VTBC would support the Criminal Complaint (the VTB Russia complaint dated January 2016) and would support and assist any subsequent investigation and proceedings and did in fact assist and co-operate with VTB Russia in the making of the Criminal Complaint and the subsequent criminal case.

20. It is thus necessary to examine the new case put forward by the Claimants in some detail.

The loans

21. A loan ("Loan 1") was entered into on 9 March 2007 between VTBC as lender and JSC RusSpecialSteel ("RSS") as borrower. RSS was the parent company of OJSC "Red October" Steel Works ("SWRO"), which was in turn the parent company of JSC VMZ Red October ("VMZ"), one of the Red October group companies. The loan amount was US$80 million. Loan 1 was 100% funded by VTB Russia pursuant to a participation agreement with VTBC dated 22 March 2007. RSS drew down approximately US$65 million under Loan 1 and the money was advanced by VTB Russia to VTBC and then to RSS.

22. A second loan ("Loan 2") was entered into on 26 November 2007 between VMZ as borrower and VTBC, which is identified in the loan agreement as mandated lead arranger and bookrunner, original lender, facility agent and security agent. The loan amount was US$80 million, and the loan was drawn down in full. SWRO was the guarantor. Between 19 December 2007 and 29 February 2008, VTBC transferred or sub-participated its interest in Loan 2 to five other banks. From the end of February 2008, VTBC's role in relation to Loan 2 was limited to that of "facility agent" and "security agent". VTBC's role was "solely mechanical and administrative in nature".

23. It appears VTBC's participation in the two loans is explained by the desire to make the loans subject to English law and jurisdiction.

24. The two loans went into default and attempts were made by the lenders to obtain recovery. The recovery efforts in relation to Loan 1 were managed by CJSC VTB Debt Centre, a separate legal entity based in Russia. Various claims were filed and VMZ entered bankruptcy supervision in November 2009 but no meaningful recoveries were ever made.

The transfer of assets

25. The asset transfers are complex. The summary below is substantially taken from the account set out by the Claimants, so it may be that not all of it is accepted by VTBC.

26. Mr Gerasimenko became involved in the business of the Red October Group in October 2011 when he was appointed as an executive director of VMZ, having been invited by Mr Sienko (a Putin associate), to assist in carrying out a turnaround of the Red October business. Mr Sienko arranged for the incorporation of AO Volgogradskiy Metallurgical Combine "Krasny Octyabr" ("VMK") to acquire the assets which had been held by SWRO and VMZ. In around May 2013, Mr Sienko invited Mr Gerasimenko to take control and ownership of VMK. In June 2013, Red October International SA ("Red October Switzerland") of which Mr Gerasimenko was the ultimate beneficial owner acquired VMK's shares from JSC ORT ("ORT") for approximately $6,885,000.

27. Prior to Mr Gerasimenko's involvement in the Red October Group, in May 2009 SWRO and VMZ had transferred most of their assets to RusSpetsMash LLC ("RSM") by way of capital contribution to RSM in return for shares in RSM ("the RSM Transaction") so that the shares in RSM were divided between SWRO and VMZ to reflect the value of their respective contributions. VMZ contributed assets with a nominal value of 1.775 billion roubles ("the VMZ Capital Contribution") in return for a shareholding of 92.6353% in RSM. SWRO contributed assets with a nominal value of 141 million roubles, comprising 92 items of immovable property ("the SWRO Capital Contribution") in return for a shareholding of 7.364% in RSM.

28. The VMZ Capital Contribution (but not the SWRO Capital Contribution) was successfully challenged by one of VMZ's creditors, Gazprombank, on the basis that it was unlawful and void because it had been carried out for the purpose of harming creditors. By a judgment dated June 2010 the Russian Arbitrazh Court for the Volgograd Region ("the June 2010 ACVR Judgment") ordered RSM to return the assets comprising the VMZ Capital Contribution to VMZ.

29. Before enforcing its rights under the June 2010 ACVR Judgment, Gazprombank assigned those rights to an entity ultimately owned by the Russian state, RT Capital LLC.

30. Subsequently in April 2011, pursuant to a settlement agreement between RSM and VMZ ("the VMZ Settlement Agreement"), RSM returned *in specie* to VMZ the property comprising the VMZ Capital Contribution, save for a minor part of the property (about 1% by value) which could not be returned by RSM as a result of it having been previously sold, written-off, or consumed following the RSM Transaction. The VMZ Settlement Agreement was approved by Arbitrazh Court for the Volgograd Region the ACVR in a judgment dated June 2011 ("the June 2011 ACVR Judgment"). That Judgment recorded that RSM was not able to return the whole of the VMZ Capital Contribution to VMZ and that RSM was therefore liable to pay monetary compensation for the property that could not be returned and for the use of the property prior to its return. The June 2011 ACVR

Judgment recorded that RSM had agreed to pay monetary compensation in the sum of 183,281,167.61 roubles, about 10% of the value of the VMZ Capital Contribution.

31. On 24 August 2011 RSM entered into an insolvency procedure. According to a document prepared by the office-holder in RSM's insolvency the total value of the property which could not be returned by RSM to VMZ because it had been sold on, worn out, or consumed was approximately 19,421,000 roubles (around 1% of the total value of the VMZ Capital Contribution) for which RSM agreed to pay monetary compensation to VMZ. RSM also agreed to pay compensation to VMZ for wear and tear or depreciation of the property comprising the VMZ Capital Contribution in the sum of 163,860,000 roubles (around 9% of the total value of the VMZ Capital Contribution). The total monetary compensation which RSM agreed to pay to VMZ therefore matches the figure set out in the June 2011 ACVR Judgment. The assets comprising the VMZ Capital Contribution which were returned *in specie* to VMZ were ultimately acquired by VMK from the liquidators of VMZ from the summer of 2013 onwards. VMK did not acquire any assets which had formed part of the VMZ Capital Contribution other than those which had been returned *in specie* to VMZ.

32. As to the assets comprising the SWRO Capital Contribution, pursuant to contracts of sale in April 2011, RSM sold property including the property comprising the SWRO Capital Contribution to Innovation, Revival, Development LLC ("IRD") for 129.7 million roubles. The liquidator of SWRO brought a claim against IRD to recover the assets comprising the SWRO Capital Contribution. That claim was rejected in a judgment of the ACVR dated 20 April 2012 ("the April 2012 ACVR Judgment"). The ACVR held that the SWRO Capital Contribution (unlike the VMZ Capital Contribution) had not previously been challenged in SWRO's insolvency proceedings and that IRD was a bona fide purchaser of the relevant assets. The assets comprising the SWRO Capital Contribution were subsequently acquired by JSC ORT by a further transaction ("the ORT Transaction"). At the first stage of the ORT Transaction, on 25 June 2012 ORT entered into a loan agreement with IRD ("the IRD Loan") pursuant to which ORT advanced a loan of 95 million roubles to ORT in June 2012. On 23 July 2012 IRD entered into two settlement agreements with ORT pursuant to which IRD transferred property (including the assets comprising the SWRO Capital Contribution) valued at 95,455,479.40 roubles in repayment of the IRD Loan. On the incorporation of VMK on 20 December 2012, ORT contributed all of the property it had acquired pursuant to the ORT Transaction (including the assets comprising the SWRO Capital Contribution) to the authorised capital of VMK. Thus Mr Gerasimenko through Red October Switzerland and VMK came to acquire, from June 2013 onwards, the assets of the Red October Group which had previously been held by SWRO and VMZ.

33. I have set out these transactions in some detail because they are relied upon by the Claimants as showing that Mr Gerasimenko had no part in any wrongdoing in relation to the transfer of assets and there is no suggestion in the judgments of the ACVR that he did.

The case based on the Explanations Document

34. As explained above, the case now put against VTBC is in substance based entirely on the Explanations Document.

35. On 3 March 2014 the Main Investigations Department of the Volgograd regional Chief Directorate of the Ministry of Internal Affairs ("the MIA") wrote to Mr Marinichev summoning him to appear at the Investigations Office of the MIA in connection with a criminal investigation into the unlawful satisfaction of certain creditors by the management of VMZ and to provide certified copies of documents. On the same date Mr Elkins of VTBC sent a letter enclosing copies of certain documents relating to Loan 2 to Ms Markova of Morgan Lewis who acted for VTBC. On 24 March 2014 Mr Marinichev wrote to Mr Privalov of the FSS enclosing various notarised documents relating to Loan 2. In April 2024 Mr Smirnov of the MIA wrote to Mr Marinichev and Ms Markova requesting that they attend as representatives of VTBC to testify in relation to the criminal investigation concerning the Red October Group.

36. According to Mr Browne, on 10 November 2014 Mr Marinichev was contacted by the FSS and was asked to confirm and verify the contents of a briefing note prepared by the FSS concerning its investigation into the Red October Group and Mr Marinichev notified VTBC of this enquiry. Mr Browne says that around 9 December 2014 Mr Marinichev wrote to the FSS providing additional information on the insolvencies of VMZ and SWRO. A draft copy of the response ("the December 2014 Note") has been provided. The December 2014 Note refers to the RSM Transaction and the fact that both VMZ and SWRO entered into the agreement for the foundation of RSM. When referring to the June 2010 ACVR Judgment, Mr Marinichev correctly stated that the VMZ Capital Contribution was declared illegal but did not incorrectly state (as he later did) that the SWRO Capital Contribution had also been declared unlawful. It is not suggested by the Claimants that anything in the December 2014 Note was wrong or misleading.

37. On 20 January 2015 Mr Marinichev wrote to VTBC informing them that on 15 January 2015 he and Mr Chertov had been questioned by the FSS concerning the circumstances of the insolvency cases in respect of VMZ and SWRO. The letter stated that the prosecutor had told Mr Marinichev that the investigation was being conducted to identify individuals who are related to the legal actions aimed at transferring the assets out of VMZ's and SWRO's insolvency estate and that the prosecutor had requested a detailed written summary of the facts of which VTBC is aware relating to the transfer of assets from circumstances of the insolvency cases in respect of VMZ and SWRO into RSM and the subsequent transfer of these assets to IRD, ORT and Red October Switzerland.

38. According to Mr Browne, Mr Marinichev responded to the FSS requests at the end of January 2015. There is no record of the response but Mr Browne exhibits a draft response referred to as the Explanations Document. As explained above, the Claimants' case is that the Explanations Document contained a series of false statements and it is to be inferred that those false statements were incorporated in the final version.

39. The three alleged false statements contained in the Explanations Document are described by the Claimants as:

    (1) 'the SWRO Capital Contribution Invalidity Statement',

    (2) 'the Settlement Agreement Statement', and

    (3) 'the Unlawful Asset Transfers Narrative'.

The SWRO Capital Contribution Invalidity Statement

40. After referring to the June 2010 ACVR Judgment, Mr Marinichev stated that by that judgment the ACVR had

> "*concluded that the articles of incorporation [of RSM] dated 30 March 2009 and the subsequent transfer of assets from [VMZ] and [SWRO] were illegal under Russian law, as they were transactions aimed at deceiving the companies' creditors.*"

41. This was wrong. The ACVR did not reach any such conclusion in relation to SWRO or Loan 2. The statement is accepted by VTBC to be wrong.

The Settlement Agreement Statement

42. Mr Marinichev stated that so far as he was aware RT Capital LLC had not filed a claim with the bailiff seeking the enforcement of the writ of execution. He went on to say that *"instead, in around April 2011, it allowed [VMZ], [SWRO] and [RSM] to enter into an agreement" that "the assets previously transferred to [RSM] would not be returned in full and in kind"* and "*[RSM] was required to pay [VMZ] compensation*" before noting that RSM "*was insolvent at the time this agreement was signed, and [VMZ], [SWRO], RT Capital LLC and [RSM] were or should have been aware that the compensation payable by [RSM] would not be paid"*.

43. The Claimants' say about the description of the Settlement Agreement in the Explanations Document:

> "*This conveyed the meaning that VMZ, SWRO, and RusSpetsMash had knowingly entered into an agreement, and RT Capital had knowingly permitted that agreement, which improperly prevented the VMZ Capital Contribution and the SWRO Capital Contribution from being returned to VMZ and SWRO respectively and that RusSpetsMash had improperly been allowed to retain such property*."

44. VTBC say that there is nothing factually incorrect in the document in this regard and Mr Marinichev's note does not bear the imputation alleged.

The Unlawful Asset Transfers Narrative

45. Mr Marinichev referred (under the heading "*Transfer of [SWRO's] assets to the authorised capital of [RSM] and the further transfer of these assets*") to the April 2012 ACVR Judgment and stated that "*it follows*" from that Judgment that the assets comprising the SWRO Capital Contribution were transferred to IRD. Mr Marinichev did not mention that the ACVR had (as the basis of its decision) determined that the SWRO Capital Contribution had never been found to be unlawful and that IRD was a bona fide purchaser.

46. The Claimants' complaint is as follows:

> "*As a consequence of the matters summarised above, the Explanations Document conveyed the meaning that (a) assets originating from SWRO had been unlawfully transferred from RusSpetsMash to Mr Gerasimenko's companies (via transfers to IRD and subsequently from IRD to ORT), and (b) assets originating from VMZ had*

been unlawfully transferred from RusSpetsMash to Mr Gerasimenko's companies (via transfers to IRD and subsequently from IRD to ORT)"

47. Again, VTBC say that there nothing factually incorrect in the document in this regard and the note does not bear the imputation alleged.

The Criminal Complaint and the Embezzlement Indictment

48. A Criminal Complaint was made by VTB Russia on 22 January 2016. It notified the authorities of what were said to be illegal actions of the management of VMZ and Razvitie Management Company, whom it said had been taking "*actions within the framework of the bankruptcy proceedings of VMZ and aimed at creating a fictitious debt of the enterprise and causing damage to the material interests of [VTB Russia]*"; and "*the withdrawal of the assets of the enterprises of Red October group implemented by the interested parties over a number of years also made it impossible to perform settlements not only under the loans of VTB Group banks, but also other creditors of the indicated enterprises*".

49. Mr Browne says that the documentation he has seen indicates that VTBC were not aware of the Criminal Complaint until after it had been made. There is no evidence before me to contradict that.

50. On 5 February 2016, the Ministry of Internal Affairs decided to commence criminal proceedings and bring an investigation in relation to "*unidentified individuals, inter alia, the employees of RusSpetsStal CJSC*".

51. On 7 April 2016, the Ministry of Internal Affairs issued an indictment referred to in the PoC as the "Embezzlement Indictment." The Embezzlement Indictment is issued against Mr Gerasimenko. It accuses him of embezzlement on the grounds that he joined an "organized group" and carried out fraudulent actions connected with the bankruptcy of VMZ. On 9 August 2016, VTB Russia instigated a civil damages claim within these criminal proceedings. These proceedings refer to the non-repayment of Loan 1 and the consequent harm to VTB Russia (on the basis that it had a 100% interest in that loan). VTBC was not a party to this.

The Claimants' New Case

52. The case which the Claimants now put is as follows:

    (1) It was apparent from previous correspondence that Mr Marinichev was aware of the 2010 ACVR judgment and had previously referred to its effect correctly.

    (2) The Explanations Document was an important document which had been requested by the Russian authorities for an understanding of the transfers of assets relating to Loan 1 and Loan 2 and which Mr Marinichev would have known would be relied upon.

    (3) It was thus, as Mr Marinichev would have been aware, important for him to present the position accurately.

    (4) The misstatements made in the Explanations Document were reflected in the Embezzlement Indictment in 2016.

(5) It thus can only be the position that what Mr Marinichev said in the Explanations Document was deliberately misleading and intended to further the Raider Attack.

53. The case is pleaded as follows:

> "*In the premises it is to be inferred that, prior to providing the Explanations Document to the FSS, Mr Marinichev was either informed or otherwise appreciated that the FSS expected him to provide material which could be used to justify the pursuit of false criminal charges against Mr Gerasimenko.*
>
> *Mr Marinichev would therefore have appreciated that the Russian criminal authorities would use the false and misleading material in the Explanations Document as a justification for pursuing false criminal charges as a part of a [Raider Attack].*"

Summary Judgment

54. The principles applicable to an application for summary judgment are well known and set out in *Easyair Ltd (t/a Openair) v Opal Telecom Ltd* [2009] EWHC 339 (Ch).

55. Counsel for the Claimants warned me against getting involved in a mini-trial on a summary judgment application and emphasised that the case now being put forward was based only on disclosure of limited information by VTBC. In reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial: *Royal Brompton Hospital NHS Trust -v- Hammond (No.5)* [2001] EWCA Civ 550.

56. Lord Briggs said in *Lungowe -v- Vedanta Resources plc* [2020] AC 1045 [45]:

> "*… On the one hand, the claimant cannot simply say, like Mr Micawber, that some gaping hole in its case may be remedied by something which may turn up on disclosure. The claimant must demonstrate that it has a case which is unsuitable to be determined adversely to it without a trial. On the other, the court cannot ignore reasonable grounds which may be disclosed at the summary judgment stage for believing that a fuller investigation of the facts may add to or alter the evidence relevant to the issue…*"

57. Counsel also emphasised the need to not decide disputed issues of fact on an application for summary judgment.

58. I accept all those principles and have well in mind that the bar is not high for a party seeking to oppose a summary judgment application.

Discussion

59. The case now made against VTBC is not concerned with the Criminal Complaint, which was the main plank of the prior pleading, no doubt because there is no evidence that VTBC was aware of the Criminal Complaint until after it had been presented. The new

case is concerned with the Embezzlement Indictment launched in April 2016 against Mr Gerasimenko and others and the part VTBC allegedly played in it.

60. Counsel for the Claimants said that he was putting the case in two alternative ways:

    (1) That Mr Marinichev was put up to make these untrue and misleading statements by VTBC who authorised or supported them; or

    (2) That he did so without the approval of VTBC but VTBC were responsible in law for his actions, vicariously or otherwise.

61. In their skeleton argument VTBC pointed out that (i) these involved matters of Russian law but the Claimants had led no evidence of Russian law in support of the allegation that the statements by Mr Marinichev could be treated as statements for which VTBC were liable (ii) there was no pleaded case in relation thereto. The Claimants, no doubt taken by surprise in this regard, provided a further draft amended pleading very shortly before the hearing to cover the points and, recognising that their Russian law evidence did not cover this ground, submitted that I could reach conclusions for present purposes either through simply reading the words of the Russian statute or by a broad application of the principles relating to presumptions of foreign law being the same as English law.

62. Neither of these routes were at all satisfactory and I did not consider the new draft pleading properly covered the way the Claimants said they were putting the case.

63. That said, whilst these might well be crucial points if raised at trial, on a summary judgment hearing, if I was otherwise satisfied as to the factual arguability of the claim against VTBC, I would be very cautious about shutting out the Claimants on grounds such as these.

64. I turn to the merits of the claim against VTBC. In my judgment it is important to have in mind that the Claimants have all but abandoned the case against VTBC which they have relied upon for over three years and are now putting forward a new case based on a single document disclosed in the witness statement in support of VTBC's summary judgment application. One might readily think this was a last minute attempt to save a case that had otherwise run aground. It is particularly important because the sole basis of English jurisdiction for an otherwise Russian dispute is the involvement of VTBC as anchor defendant.

65. Moreover, the allegation now being made does not fit very well with the allegation hitherto central to the claim. The conduct alleged against the defendants was an unlawful plan to effect the Raider Attack, principally through the Criminal Complaint. The Claimants cannot show VTBC played any part in the Criminal Complaint, or were aware of it when it was presented, so the focus on the new case is on the Embezzlement Indictment in April 2016, fifteen months after the Explanations Document.

66. All that is available in relation to the Explanations Document is a draft. We do not know whether the document ultimately submitted to the FSS was in the same terms. Perhaps the error in relation to Loan 2 was corrected. We do not know whether the draft was written by Mr Marinichev or (for example) a subordinate who had misunderstood the facts. However, as VTBC say they have not contacted Mr Marinichev to ask about it, it might be said that it is not open to them to take such points (and they did not do so). So

I proceed on the assumption that the Explanations Document reflected the terms of the document sent to FSS.

67. Mr Marinichev is a partner of Morgan Lewis, a well-respected and well-known international law firm, and is apparently qualified in several different jurisdictions. The Claimants say they do not know nor can say on present information whether he was put up to making false allegations by VTBC. To say the least, it would be pretty extraordinary for him to do that without some form of encouragement or authorisation.

68. But the real problem with this new case is that the complaints about the Explanations Document are the thinnest possible gruel. The case is that this document was a deliberately false attempt to further the Raider Attack. But it is a relatively anodyne document. Mr Gerasimenko, apparently the target of the raid, is mentioned once, not in a context relevant to any of the alleged falsities, and there is no allegation made against him at all in the Explanations Document. It does not even say that he was the owner of any of the relevant companies.

69. VTBC accept that the document contains an error in the way it refers to the 2010 ACVR Judgment. The Explanations Document says the court found:

> "*the subsequent transfer of assets from the Borrower and the Guarantor were illegal under Russian law, as they were transactions aimed at deceiving the companies' creditors.*"

The error is to add the words "*and the Guarantor*." But the transactions are highly complex and the wrong addition of those words seems a feeble basis for an allegation of serious dishonesty by a senior legal professional. It is notable that the preceding and immediately subsequent paragraphs of the document set out the position entirely accurately and are consistent with the terms of the 2010 ACVR Judgment.

70. This error is the most serious of the three complaints about the Explanations Document. The allegation referred to as the Settlement Agreement Statement does not contain any misstatement or error. The allegation is that it is misleading for what it does not say. But this is not a full and frank disclosure application. It is an allegation that this document deliberately created a false narrative for the purpose of furthering the Raider Attack. The worst that can be said is that in this regard it may be regarded as slightly misleading.

71. As for the Unlawful Asset Transfers Narrative complaint, this does not even rely on specific statements, more the general tenor of the document. Again, the worst that can be said is that it may be regarded as slightly misleading by what it does not say. As an allegation of serious wrongdoing, it does not get off the ground. If Mr Marinichev really wanted to tell untruths to the Russian authorities for the purpose of furthering the Raider Attack, this is an extraordinary and thoroughly ineffective way of implicating Mr Gerasimenko.

72. Moreover, the Russian judgments were public documents. Anyone writing the Explanations Document would expect that those receiving the document would have read them. The Explanations Document purports to annexe all the Russian judgments. Of course this is only a draft. But the case is based on the draft, so the Claimants must take the draft we have as a whole. It would be a very curious thing for someone seeking

deliberately to misrepresent the judgments to enclose them thus knowing that the recipient was likely to read them.

73. The Claimants say that the misstatements in the Explanations Document were carried over into the April 2016 Embezzlement Indictment. It is certainly true that the Embezzlement Indictment makes allegations against Mr Gerasimenko which the Claimants say were wholly false. It was 15 months after the Explanations Document. And the allegations range far and wide and bear no resemblance to what is said in the Explanations Document. There is an analysis by Mr Rivkin, a further expert whose evidence is put forward by the Claimants, as to the relationship between the Explanations Document and the Embezzlement Indictment but the relationship seems very limited at best.

74. The Claimants emphasised that at the present stage information available is limited and it is to be expected more will be available after disclosure and at trial, and that I should not conduct a mini-trial on complex materials. But the problem is that the material before the court, and that relied on by the Claimants, does not make out any sort of case against VTBC.

75. There was a suggestion in the Claimants' skeleton argument that negligence plus foreseeability of harm might be sufficient to get a Russian law case against VTBC off the ground. The point was not developed in oral argument. I do not read Russian law as having this effect, but in any event I do not consider the Claimants have established any factual basis for such a claim in any event.

Conclusion

76. In short, I do not consider that any arguable case has been put forward against VTBC. In those circumstances I give summary judgment for VTBC. It will follow that there is in the light of my judgment no basis for the court to assume judgment in respect of the claims against the other Defendants but I am not asked to make any order in that regard.

77. This case was well argued and well prepared on both sides.

78. I will give judgment remotely. I will deal with consequential matters on the basis of written submissions unless either party requires an oral hearing.