

Case Nos: BR-2020-000418

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

INSOLVENCY AND COMPANIES COURT LIST (CHANCERY DIVISION)

IN THE MATTER OF KHADZHI-MURAT DEREV (IN BANKRUPTCY)

AND IN THE MATTER OF THE CROSS-BORDER INSOLVENCY REGULATIONS

2006

AND IN THE MATTER OF TRUSTS OF LAND AND APPOINTMENT OF TRUSTEES

ACT 1925

AND IN THE MATTER OF THE TRUSTEE ACT 1925

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Rolls Building

London

EC4A 1NL

Date: 9 March 2023

Before :

DEPUTY INSOLVENCY AND COMPANIES COURT JUDGE RAQUEL AGNELLO
KC

Between :

PAUL DAVID ALLEN

**(as designated person under Article 21(1)(e) of the
Cross-Border Insolvency Regulations 2006)**

Applicant

— and —

KHADZI-MURAT DEREV (A BANKRUPT)

Debtor/First Respondent

ZUKHRA MUSSAEVNA DEREVA

Second Respondent

Mr Daniel Lewis (instructed by Seladore Legal Limited) for the Applicant
No attendance from the Respondents

Hearing date: 7 November 2022

JUDGMENT

Introduction

1. This is the hearing of an application seeking a declaration as to the beneficial interests in relation to a property known as Flat 5, 14 Montpelier Street, London SW7 1EZ ('the property'). The current value of the property is between £11 million and £11.5 million. The application also seeks orders for possession and sale. The First Respondent, Mr Khadzhi-Murat Derev (Mr Derev) was declared bankrupt by the Arbitrazh Court of Karachay-Cherkess Republic in the Russian Federation on 22 July 2019. Mr Igor Vitalievich Protasov ('Mr Protasov') was appointed as Mr Derev's Russian Bankruptcy Manager, which Mr Allen believes is equivalent to a trustee in bankruptcy under English law. The bankruptcy was recognised in this jurisdiction on 1 December 2020 by an order made pursuant to the Cross Border Insolvency Regulations 2006 (CBIR) and the UNCITRAL Model Law on Cross Border Insolvency (Schedule 1 to the CBIR).
2. The application is brought by Mr Allen, a designated person pursuant to Article 21(1) (e) of the CBIR by virtue of the order of Mr Justice Adam Johnson dated 24 February 2021 (the appointment order). Under the terms of that order, Mr Allen has all the powers of a trustee in bankruptcy under the laws of England and Wales to be able to realise the assets of the bankruptcy estate.
3. Mr Derev is the joint legal owner of the property alongside his wife, Zukhara Mussaevna Dereva (Mrs Devera). As explained in the evidence presented to me by Mr Lewis, acting on behalf of Mr Allen, until the issue of the application, Mr Derev accepted that he and Mrs Dereva were joint beneficial owners. In his evidence dated 23 November 2021 filed in these proceedings, Mr Derev now asserts that he agrees with the evidence produced to the court from his wife that he had gifted all his property and assets outside of Russia to his wife and his children. Mr Derev explained that when he had asserted in earlier witness statements that the property was owned jointly, his understanding was, 'that the UK law worked that way'. Mrs Dereva was herself made bankrupt on 28 June 2021. Her Russian trustee in bankruptcy, Mr Rodionov has been provided with notice of this application and he supports it. There is currently no formal recognition of Mrs Dereva's

bankruptcy in England and Wales but I was informed that an application would be made shortly.

The application to adjourn

4. Before me at the start of the hearing, Mr Manoj Aggarwal, a person who represented before me that he was speaking on behalf of Mrs Dereva, sought an adjournment of the hearing on behalf of Mrs Dereva. Mr Aggarwal explained that Mrs Dereva had been legally represented until 2 November 2022 but had not been able to find new legal representation since her previous solicitors came off the record. He was not currently licensed to act as a solicitor (or a barrister) and therefore, his role was a Mackenzie friend. Mrs Dereva was not in attendance although some of her children were present in court. I dealt with the application which was made seeking to adjourn the hearing and refused the adjournment. That judgment was given on the day. However, I did adjourn the hearing of the application before me to 2 pm on the same day. Neither Mr Derev or Mrs Dereva attended and there was no attendance by any legal representative. For completeness, I add that an earlier adjournment application was made on behalf of Mrs Dereva on 26 October 2002 on medical grounds. This was refused by ICC Judge Prentis on 31 October 2022. At the hearing of that application, Mrs Dereva was represented by both counsel and solicitors. Thereafter, her solicitors came off the record with the Applicant being notified on 2 November 2022.
5. According to the order of Chief ICC Judge Briggs dated 23 November 2021, all those who had filed either witness statements or affidavits were required to attend court at the final hearing to be cross examined. This was subject to the usual provision that no such witness need attend for the purposes of cross examination in a case where the other parties gave notice in writing that a particular deponent was no longer required to attend for the purposes of cross examination. As neither Mr Derev or Mrs Dereva have attended before me, I need to consider the effect of their non attendance in relation to the evidence

which has been filed by them. As set out in CPR 32.5, deponents of witness statements are required to attend court at trial to give oral evidence unless the court orders otherwise. Unless there is a proper hearsay notice (which there is not in this case), where a deponent does not attend, the court is not obliged to take into account the evidence which has been filed (*William v Hinton* [2011] EWCA Civ 1123). Accordingly, it is a matter for the court to determine whether to take the evidence into account and also what weight to give, if any, to that evidence. Mr Lewis did not ask for the statements to be excluded. He invited me to take them into account but to give limited weight to their contents except where there are contemporaneous documents which support what is being said. I propose to deal with the evidence of both Mr Derev and Mrs Dereva, in principle, as proposed by Mr Lewis.

Acquisition of the property

6. The property was purchased on 4 May 2017 for £13,500,000 and registered in the joint names of Mr Derev and Mrs Dereva. There are, according to the evidence, creditors' claims in that bankruptcy of over £87 million. Mr Allen sets out some of the background in relation to the affairs of Mr Derev and Mrs Dereva. For current purposes, I do not need to summarise these but reference can be made to the judgments in the appointment application as well as the earlier recognition order and the freezing order which was before Mr Justice Zacaroli on 28 July 2020. The allegations made by Mrs Dereva and Mr Derev relating to alleged misconduct by Mr Protasov and the background to the bankruptcy order against Mr Derev, were before the Judge who made the recognition order. The recognition order was made. Therefore, I proceed on the basis that the recognition order is valid and binding such that Mr Allen's application as a person designated is valid and proper in accordance with these previous orders made by this court.

7. Mr Allen sought to obtain possession and sale of the property by consensual means. There is evidence of the correspondence in this respect dated 19 March 2021, 23 June 2021 and 25 June 2021. None of these approaches led anywhere. The property is occupied by Mr Derev and his adult children, being Alkhas Derev and Ms Sabina Derev. Additionally, Mrs Dereva asserts that she resides in the property.
8. As I have set out above, the evidence shows that the current valuation of the property is between £11 million and £11.5 million. The property is subject to a mortgage in favour of Julius Baer Bank of around £7.8 million which is in default and repayment/interest instalments are not being made.

The position of Mr Allen

9. The appointment order states as follows:-

“Mr Allen shall be entitled to exercise such powers of an insolvency officeholder and/or trustee in bankruptcy under the laws of England and Wales as are reasonably necessary (i) to get in and realise the Debtor's assets located in Great Britain as disclosed in Mr Derev's First and Second Witness Statements served in these proceedings, save for personal chattels other than (to the extent they are located in Great Britain) the Rolex, Parmigiani and Vacheron Constantin watches identified in the Debtor's asset disclosure, which are located at Flat 5, 14 Montpelier Street, London SW7 1EZ and Flat 4, 20 Basil Street, London SW3 1AR”

10. Mr Lewis submits that the effect of the recognition of the Russian bankruptcy under CBIR is that Mr Allen can rely upon the same rights and legal consequences as would have arisen had the bankruptcy order been made in this jurisdiction. He relied upon the recent decision of ICC Judge Jones of *Re Olusoji Samson Tomoye [2020] EWHC 1965 (Civ)*. In that case, the Judge considered a US appointed Bankruptcy Trustee who had obtained a recognition order pursuant to CBIR on 16 January 2020. The US Bankruptcy

had commenced on 20 July 2018. One of the issues before the Judge was whether the effect of the recognition order on the bankrupt's legal and beneficial interest in the lease of Flat 40, Coral Apartments, 17 Western Gateway, Royal Victoria Docks, London E16 1AQ. After considering some of the authorities in this area, the Judge held that the US Trustee can rely in this jurisdiction on the remedies under the Insolvency Act 1986 as though the bankruptcy was an English bankruptcy. That included section 284 of the Insolvency Act 1986 which relates to the avoidance of dispositions. At paragraph 12, the Judge went through the remedies which he stated were available to the US Trustee, and stated the following:-

- (1) *'Third, section 284 of the Act provides that any disposition of property made by the person made bankrupt from the day the bankruptcy application was made or petition presented to the day the bankruptcy estate vested in a trustee in bankruptcy will be void. The exception being property or payment received before the commencement of the bankruptcy in good faith, for value and without notice of the bankruptcy application.'*
- (2) *Fourth ("the Vesting Route"), applying section 306 of the Act, the estate will vest in the trustee in bankruptcy on the date the bankruptcy order. The trustee will either be the Official Receiver, who is automatically appointed under section 291A of the Act or an insolvency practitioner appointed instead. From the date of vesting (i.e. the bankruptcy order), trustees in bankruptcy can rely upon the fact that they hold the legal and/or beneficial interest in the property in issue by operation of law.*
- (3) *Section 306 of the Act is a mandatory vesting provision. It does not contain an equivalent to the good faith, for value and without notice exception to be found in section 284 of the Act. However, in the case of registered land, it is necessary to address the Land Registration Act 2002 for the purposes of the Vesting Route.'*

11. For current purposes, it is not necessary to turn to the Land Registration Act 1925 because the current case before me does not seek to avoid some dealings with the property after the date of recognition of the foreign bankruptcy order. However, in my judgment, Mr Lewis is correct in relying upon this case. It provides support for the current application by Mr Allen seeking a declaration as to beneficial interest and also an order for sale and possession. I am not necessarily persuaded that the property is actually vested in Mr Allen by the terms of the CBIR, because he is a person designated to realise the assets which vest in the estate in bankruptcy of Mr Derev. Mr Allen is not the foreign

insolvency office holder. According to the terms of the appointment order, Mr Allen was given the powers to exercise such powers of a trustee in bankruptcy under the laws of England and Wales to get in and realise the Debtor's assets which included his interest in the property. There may well be an argument as to whether those 'powers' given to Mr Allen as a designated person include what ICC Judge Jones called 'remedies', referring to the vesting provision (section 306), as well as other provisions. Clearly under the terms of the appointment order, Mr Allen is entitled to bring these proceedings and seek not only the declaration as to beneficial interests, but also seek possession and sale. All of that relates to realising the assets of the bankrupt. The issue of whether section 306 actually applies to Mr Allen rather than the foreign insolvency office holder can be dealt with, in so far as necessary, under the terms of any order made.

Legal principles on asserting beneficial interest

12. The application seeking possession and sale arises pursuant to section 14 of the Trusts of Land and Appointment of Trustees Act 1996. Additionally, one year has passed since the making of the bankruptcy order and therefore section 335A of the Insolvency Act 1986 applies. The property includes a dwelling house which has been or is the home of the bankrupt. This means that after the period of one year, an order for sale and possession is to be granted unless exceptional circumstances have been established as the interest of the creditors will otherwise outweigh all other considerations. As Mr Lewis points out, there are no exceptional circumstances identified in the evidence.
13. Mr Lewis helpfully set out the general principles in relation to the formalities required for the creation of a trust of land. These must be evidenced in writing pursuant to section 53 of the Law of Property Act 1925. In the absence of a declaration of trust, there is a presumption that the beneficial ownership follows the legal title. The burden is upon those who seek to displace the presumption to establish why it should be displaced (*Stack v Dowden* [2007] AC 776). In cases, such as here, where there is no express declaration

of trust, Mr Lewis referred to a summary in Lewin on Trusts 20th edition at paragraph 10-063, of what a person needs to establish in order to displace the presumption:-

13.1. Does the case fall within the domestic consumer context, such that the common intention doctrine applies?

13.2. Is there evidence of an actual common intention, in the form of an agreement, arrangement or understanding between the parties that the beneficial ownership should not follow the legal ownership, either at the date when the property was first acquired or at some later date?

13.3. In the absence of such a common intention, can an agreement, arrangement or understanding to this effect be inferred from the parties' conduct?

13.4. Has the claimant relied to her detriment on the common intention relied upon?

13.5. If there is an actual common intention, does it extend, either expressly or by inference, to the shares in which the property is to be beneficially owned?

13.6. If the common intention does not extend to the shares in which the property is to be beneficially owned, what is a fair share having regard to the whole course of the parties' dealing in relation to the property, and to both financial contributions and other factors?

14. A common intention constructive trust is defined in Lewin (at paragraph 10-53) as being where the purchaser of property shares a common intention with the claimant that the claimant is to have a share, or an increased share, in the beneficial interest in the property either at the time of acquisition or at a later date and the claimant acts to her detriment upon the basis of the common intention. Equity will impose a constructive trust so as to give effect to the common intention constructive trust.

15. Mr Lewis also referred me to the recent Supreme Court case, *Guest v Guest [2022]* UKSC 27 which set out the principles relating to proprietary estoppel. In short, a claimant is required to establish a promise which has been relied upon by the claimant to his or her detriment.

16. All of the above which I have adopted from Mr Lewis' skeleton, provides a helpful summary of the law in cases where a claimant seeks to rebut the presumption of beneficial interest or assert an estoppel. Much will depend on the evidence before the court.

Beneficial Interest

17. Mr Lewis submits that even without oral evidence, Mr Derev and Mrs Dereva have failed to discharge the burden to establish that the property was a gift to Mrs Dereva such that she had the entire beneficial interest in the property. There are no contemporaneous documents produced by either of them which support the assertion that the property was a gift to Mrs Dereva or a gift to Mrs Dereva and her children. Mr Allen states in his witness statement dated 25 August 2021, that he obtained the files of Messrs Charles Russell Speechlys who acted for Mr Derev and Mrs Dereva in their acquisition of the property. He states that members of his team went through the files and found nothing to suggest that the beneficial ownership was other than following the legal title. It is of course difficult to establish a negative, but I do not have details of what exactly members of the teams were asked to look for or their experience in being able to ascertain what could be evidence supporting the relevant common intention or estoppel referred to above. So this statement is of limited use, but there is clearly before me no express declaration of trust varying the beneficial interest as between the two of them. Such a declaration would have been located and of course referred to by Mr Derev and Mrs Dereva.
18. On 28 July 2020, Mr Justice Zacaroli made a freezing order as against Mr Derev. Paragraph 12 of that order required Mr Derev to inform the Applicant's solicitors of all his assets worldwide with a value exceeding £1,000 in value whether in his own name or not and whether solely or jointly owned. Mr Derev was also required to serve a witness statement with a statement of truth setting out these details. On 15 October 2020, Mr

Derev signed the requisite statement. He had also signed an earlier one dated 12 August 2020. Both these statements refer to the fact that Mr Derev is unable to speak English and that the statements were prepared by his solicitors in English following face to face meetings which were attended by him and his children who are both fluent English speakers. The statements were then translated into Russian and signed by him. The asset disclosure list which forms part of that statement provides details of the property and its contents. In the witness statement dated 12 August 2020, Mr Derev expressly stated that that the property was owned jointly with his wife, Mrs Dereva. Mr Lewis points to the difference between the statement made by Mr Derev relating to the property and where he states, in relation to a Mercedes motor vehicle, AD09 AMG, that this was purchased as a gift by him to his son. Mr Lewis therefore submits that Mr Derev knew the difference as between a gift and an asset being jointly owned. As I have set out above, Mr Derev now asserts that the property was a gift to his wife and his children. I also note that these freezing order statements were prepared at a time when Mr Derev had retained and was being advised by Messrs Taylor Wessing.

19. Mr Lewis submits that the schedule which I have referred to in relation to his assets needs to be read alongside the statement in his August 2020 witness statement because it is this statement which states that the property is jointly owned. The schedule merely listed the property as his asset without that detail. Mr Lewis also referred me to the skeleton which was filed by Counsel acting on behalf of Mr Derev at the hearing before Mr Justice Adam Johnson on 18 February 2021. In that skeleton, reference is made to the property as being jointly owned and also makes an express reference to Mr Derev's previous disclosure statement which stated that the property was jointly owned. The skeleton also contends that the terms of the freezing order went beyond what is necessary and effectively prevented Mrs Dereva from dealing with her half interest in the jointly owned property. There is a further reference in the skeleton to the property being co owned by Mrs Dereva. I do not consider that a skeleton filed by Counsel on behalf of Mr Derev is

essentially ‘evidence’. However, it is clear that its contents are consistent with what Mr Derev set out in his own witness statements which were signed by him with a statement of truth.

20. By letter dated 8 March 2021, Mr Derev wrote to Mr Allen providing certain details and dealing with an interview which Mr Allen wished to have with him. In that letter, Mr Derev stated that his wife, Mrs Dereva, has a 50% interest in all the assets disclosed. There is no evidence which explains how Mr Derev came to write this letter in English to Mr Allen, but it is likely that his children assisted him with this. A later letter dated 13 April 2021 from Mr Derev to Mr Allen confirmed that his daughter Sabina, was assisting Mr Derev in writing the letter. The earlier letter dated 8 March 2021 attached various documents signed by Mr Derev, including a bankruptcy questionnaire which Mr Allen required Mr Derev to fill in and to sign with a declaration of truth. That document was signed by Mr Derev and is dated 8 March 2021. The document states that the property is jointly owned by him and his wife and also includes the phrase, ‘50% interest each’.
21. A further letter dated 18 June 2021 was sent by Mr Derev to Mr Allen which again stated that he and Mrs Dereva owned the property jointly. That letter uses the phrase that his “wife has a ‘50% interest’ “.
22. Mrs Dereva’s witness statement in these proceedings dated 17 November 2021 also states that she is not an English speaker and that the statement is accompanied by a Russian translation. She states that she opposes the orders and declarations sought by Mr Allen. Both she and Mr Derev rely in these statements on allegations made to support why, as a matter of public policy, the bankruptcy orders should be set aside. The statements rely on details concerning Mr Derev’s business affairs and what they both believe was an elaborated corporate raid perpetuated against their family. Those statements include challenging Mr Protasov, asserting that he lacked authority when he made his application for recognition, asserting that he has acted illegally in making the application to the

English Court, and that he has acted in breach of Russian law by failing to provide the requisite information and reports to the body of creditors. Mrs Dereva also refers to proceedings in Russia investigating Mr Protasov and his conduct in the insolvency field. In my judgment, these matters are not relevant to the orders sought by Mr Allen. Firstly, some of the matters raised were before this court at the recognition hearing and also at the appointment order hearing. Despite those issues, the Court made the orders sought. Secondly, the terms of the appointment order do not provide for the proceeds of realisation of assets to be paid over to Mr Protasov. The order enables either Mr Protasov or Mr Allen to make a further application back to the Court. The application before me and the order sought by Mr Allen relates to a realisation of assets which fall into the estate in bankruptcy.

23. At paragraph 16, Mrs Dereva states as follows :-

'As far as I understand it, it is a matter for myself to assert my rights in the interests, which are the subject matter of these proceedings. From the outset, I must say that I always understood that the portfolio of assets held by Moonlight Limited (as well as Moonlight Limited itself) (which are the subject of legal proceedings in the Isle of Man) and the apartment at 14 Montpelier Street and all other assets legally owned by my husband, Mr Derev, outside of Russia, were beneficially owned and controlled by me and my three children from the moment when the relevant assets were incorporated or purchased. From my perspective, I always understood that these assets were presents from my husband to myself and my three children (all of whom are over 18 years of age).'

24. At paragraph 17, she states:-

'I am aware that my husband's previous solicitors and my husband have previously stated that certain assets are owned jointly by myself and my husband and I understand and always understood that, legally, certain assets may be owned by my husband and myself jointly in equal shares and that this may have been done purposely for legal, tax or some other reasons when the assets were initially acquired by my family. For example, my understanding is that a mortgage on the properties in the UK could not be obtained

without my husband owning part of the property. However, I must say that I have not always fully understood the legal intricacies of the arrangement we had with my husband (e.g. the difference between legal/beneficial ownership). Nonetheless, I always understood that, legally, assets were owned jointly, whilst my husband has gifted these to me and my children and that the legal interest was always going to pass to me and my children eventually as well'

25. She then explains that she was not a party to earlier proceedings where her husband had not stated, she understands, that the assets (which would include the Property) were owned by her and the children. She asserts the following , *'However, I believe that my husband may have similarly not necessarily been fully aware of the differences between legal and beneficial ownership, as an English law concept. However, he was certainly aware of his intentions and the fact that the assets in question were gifts to me and the children. He also stated to me, when the purchases were made, that he understood that these assets had to be structured in a particular way for particular reasons, but that this did not change the fact that these were my and my children's gifts.'*

26. She asserts that her husband has stated previously privately and at family gatherings that all assets outside Russia were meant to be gifts from him to her and the children. She states that she has always occupied the properties in the UK (being the property and another property in Basil Street) and she produces certain council tax bills as well other bills which she asserts, 'we' have been paying for.

27. Mr Lewis submits that what is set out by Mrs Dereva is extremely vague and lacks any real substance. He also took me to Mr Derev's witness statement in these proceedings dated 23 November 2021 where Mr Derev refers to the statement of his wife and agrees that he always intended to gift his assets situated abroad (out of Russia). His explanation as to why he made the earlier signed statements to the contrary is his assertion that his understanding was that the UK law worked that way. I have set this out above. In my judgment, this explanation makes little sense. It is simply not possible to give any real weight to these vague and unparticularised statements made by Mr Derev and Mrs Dereva when they have both failed to attend for cross examination as was ordered.

28. As I have already set out above, Mr Derev was legally represented at the time when he made his statements in compliance with the freezing order. These statements would have been, in my judgment, carefully prepared and I have no doubt that his solicitors would have been meticulous in ensuring that those statements were accurate. This is especially the case, in my judgment, when the freezing order could only effectively ‘bite’ on assets which belonged to Mr Derev. Moreover, the statements were translated into Russian for him to consider before he signed the statements. Again, I have no doubt that the importance for Mr Derev of ensuring his statement as to assets was true and accurate would have been explained to him. I am not prepared to reject the previous signed statements of Mr Derev asserting a joint beneficial interest on the basis of the vague and unsubstantiated assertions contained in the statements which have been filed in the application before me. The burden remains on those who seek to rebut the presumption or assert an estoppel to establish the case. As Mr Lewis submits, there is also no evidence relating to reliance or detriment. Accordingly, I place no real weight on the assertions made in the witness statements in relation to displacing the presumption as to beneficial interest or establishing an estoppel, or a constructive trust of any form.

29. Mr Lewis referred me to the documents which are in the evidence and also took me to details of the Isle of Man proceedings which have been referred to in the witness statements. Mrs Dereva’s witness statement exhibits a number of council tax bills. One of these is addressed to Ms S Dereva and relates to a property at 4 Washington House, Basil Street, London SW3 1AR. This is clearly a different property. There is a council tax bill which relates to the property dated 3 June 2020 and this is addressed to Ms S Dereva and A Derev. Mr Lewis stated that this appeared to be the son and daughter who are said to live at the property. There is an energy bill in the name of Mr A Derev and a Thames water bill for the Basil Street property. As Mr Lewis observes, in so far as the son and daughter live at the property, it is unsurprising to find bills addressed to them.

30. There is an email referring to a meeting held on 26 November 2018 which appears to be between Ms Sabina Dereva, Mr Stas Derev and Mr Edward Capel Cure from Julius Baer Bank. The email sets out details of discussions relating to 'Moonlight', a reference to the property as follows, *' check with Fedelta, if we make any income distributions to the mortgage account in the personal name (Montpellier Street) , should this be by way of a shareholder loan'*
31. As Mr Lewis asserts, there is no reference here to the beneficial interest in the property, which by then, had already been acquired by Mr Derev and Mrs Dereva in May 2017. There is some reference to mortgage payments to be made from Moonlight to the property, but in my judgment, this email really does not take the beneficial issue any further.
32. Other documentation which has been produced by Mrs Dereva in support of her claim cannot really be described as supporting her assertions relating to beneficial interest in the property. An email dated 28 July 2017 from Zak Soithongsuk, a trainee solicitor at Baker & MacKenzie to Daria Addison, of Charles Russell Speechlys concerning the completion of the transfer of the freehold of the property. The email requests information relating to the completion of the deed of novation relating to the service charge deposit deed. This email was then forwarded to Mrs Dereva by Ms Addison later the same day in an email. It explains that the transfer of title of the management company will be carried out shortly and requests Mrs Dereva to advise, if contrary to the solicitor's belief, she did not have authorisation to complete the agreement on the transfer of obligations under the deposit agreement that was signed by her and Mr Derev a few weeks earlier. There is also an email dated 30 August 2013, which was written in Russian but a translation appears in the evidence. This email is from Mr Sergey Litochenko of Pinsent Masons to Mrs Dereva and states that Mr Litochenko is sending a copy of the agreement on the legalization of Sabina and Stanislav and also states that the writer plans to send this agreement to Fedelta for signing on Monday of the following week. Mr Lewis speculates that this is likely to

be a reference to the acquisition of another flat and he points to the attachment being titled lodgers agreement. It is not really possible to say what this email refers to. The witness statement of Ms Irina Borisovna Itlyasheva dated 16 November 2021, which is also relied upon, relates to proceedings in the Isle of Man which have as the Claimant, Mr Protasov. The defendants are Mr Derev, Mrs Dereva, Fedelta Trust Ltd, Fedelta Nominees Limited, Moonlight Limited and Polar Sun Limited. Ms Itlyasheva states that she worked at the automobile plant in the LLC AK 'Derways' company as a Deputy Financial Director. She states that Mr Derev was the CEO and managed all the assets he owned in Russia. She asserts that Mrs Dereva managed assets outside of Russia. She asserts that from memory assets in the form of real estate in the UK and other assets located outside the Russian Federation, in particular the financial portfolio owned by the company Moonlight Limited, registered in the Isle of Man , and managed by Julius Baer Bank, were acquired by both Mr Derev and Mrs Dereva for the use of Mrs Dereva and her children. She then asserts from her memory that the real estate in the UK was originally supposed to be registered in the names of the children and Mrs Dereva but the bank that issued the loan refused to register the property only in their names. It was therefore registered in the names of Mr Derev and Mrs Dereva. She provides no documentation which supports what she has asserted and provides no details of how she is aware of the matters set out in her statement, or what was the basis of the conversations she had with Mr Derev or Mrs Dereva. I should add that in so far as Mrs Dereva and Mr Derev seek to rely on this witness statement of Ms Itlyasheva, then as a witness she should have attended to be cross examined. She did not attend this hearing.

33. Included in the evidence before me are two witness statements of Mrs Dereva filed in the Isle of Man proceedings. According to the witness statement dated 1 November 2021, those proceedings related to declarations sought by the Claimant, Mr Protasov, in relation to certain assets and loans held within or through Moonlight Limited. The statement contains similar statements as are contained in the witness statement filed in the

proceedings before me relating to the elaborate corporate raid perpetrated against her family and also asserts that Mr Protasov is working with a Mr Ali Kaitov to strip the family of its assets. Allegations are also made as against Mr Protasov. That statement also refers to the bankruptcy proceedings instituted by Mr Protasov as against Mrs Dereva and that there was then a pending application by her bankruptcy administrator, Mr Rodionov, for recognition in the Isle of Man of those bankruptcy proceedings. She repeats in that statement that the properties in London were gifts to her and the children as were properties and assets held through Moonlight Limited. She accepts that the assets and property titles appeared to be structured in a different way but as far as she was concerned, she always understood these assets and properties to be her husband's presents to her and her children.

34. In her second witness statement in the Isle of Man proceedings, dated 16 November 2021, Mrs Dereva repeats the assertion that she always understood that the assets, being the property and the portfolio of assets held by Moonlight Limited were beneficially owned and controlled by her and her two children. This goes no further than the bare assertions which I have set out above. There are also two further witness statements filed in the Isle of Man proceedings, one from each of her children, but these appear to be in the same wording and provide no detail either.

35. Mr Lewis took me to the transcript of the judgment of Deemster Corlett dated 1 December 2021. As set out in that judgment, the Deemster was concerned with the beneficial interests in Moonlight Limited. In those proceedings Mr Protasov sought a declaration that the interests of Mr Derev and Mrs Dereva were 50% each. Mrs Dereva was asserting that it all belonged to her and the children. The Deemster had before him the witness statement prepared by Mr Derev in the freezing order proceedings and specifically referred to the declaration made by Mr Derev that he owned 50% of the property. The Deemster considered the declaration of trust in relation to Moonlight Limited, which he stated was in a usual form. The Deemster rejected the assertion being

made that Mr Derev did not understand the difference between legal and beneficial interest. He noted that at the time that the statement was made, Mr Derev was represented by Taylor Wessing, being, the Deemster stated, eminent UK solicitors. He held that the explanation being provided was incredible and that he was certain that the solicitor would have explained the difference between legal and beneficial interest. The Deemster rejected the case being raised by Mrs Dereva and held that on the evidence before him there was an express declaration of trust in the assets and properties relating to Moonlight Limited and they were held 50/50.

Determination

36. In many respects, the judgment of the Deemster demonstrates just why an order was made in this case for cross examination. As it stands, there are simply bare assertions made by Mr Derev and Mrs Dereva. They are inconsistent with an earlier witness statement provided by Mr Derev who provides a really unsatisfactory and unbelievable explanation as to why he signed it declaring that the beneficial interest was in equal shares. Equally, the evidence by them really lacks the detail necessary for a court to be able to assess whether the presumption has been displaced, whether there is some other constructive trust arising or an estoppel. For the reasons I have set out above, little weight can be given to their statements in this case. The documents which are included in the evidence really do not assist them. The bills do not go toward establishing the beneficial interest, or supporting a displacement of the presumption. The fairly random emails provided really take the matter no further. Reliance on the statements in the Isle of Man again take the issue no further and weigh in many respects against Mrs Dereva. However, the Deemster was not dealing with the property so his judgment is not binding upon me.

37. In my judgment, the documentation which has been produced by Mr Derev and Mrs Dereva falls very far short of displacing the presumption that the property was held in joint equal shares by them. I place no real weight on the bare assertions in their witness

statements, but also I agree with Mr Lewis that these statements, even if I gave some weight to them, do not displace the presumption bearing in mind how little detail is contained therein. Moreover, Mr Derev's explanation relating to why he signed his witness statement in the freezing injunction proceedings which declares 50-50 is simply not believable. The correspondence from him thereafter also asserted a 50-50 beneficial interest and no real explanation was provided for those letters. Mrs Dereva has failed to establish that the beneficial interest was anything other than held in equal shares.

38. I am satisfied that the appropriate declaration is that beneficial interest in the property is held in equal shares by Mr Derev and Mrs Dereva. The evidence sets out no exceptional circumstances pursuant to section 335A of the Insolvency Act 1986 and therefore I will grant an order for possession and sale. I will determine the precise terms of the order when this judgment is handed down.

Dated 9 March 2023