



THE RUSSIAN BEAR FIGHTS ON

Authored by: Trevor Mascarenhas and Nicola Boulton - PCB Byrne

The days of massive commercial disputes emanating from Russia and other FSU States are dead. That has been a constant concern of many leading practitioners in London, the epicentre of the largest, most high-profile of those disputes in the past 20 years.



2000-2009 – clash of the oligarchs

The privatisation of vast natural resources and industries in the 1990's led to highly publicised squabbles between oligarchs played out before

London's Commercial Court in the first decade of the 21st century. That decade included the eye-wateringly expensive claim brought by Tajik Aluminium plant against Avaz Nazarov, where it was alleged that Tajik Aluminium had been defrauded of hundreds of millions of dollars as a result of the corruption of senior management.

It also saw the start of multi-billion-dollar claims brought by Michael Cherney against Oleg Deripaska and by Boris Berezovsky against Roman Abramovich, as former business associates who had been at the forefront of acquiring privatised assets fell out with each other. In the former case, Mr Cherney was able to persuade the English Court that he would not be able to obtain justice in Russia, such that the English Court should assume jurisdiction. The latter case famously started with a scuffle in a luxury goods boutique in West London as Mr Berezovsky evaded Mr Abramovich's bodyguards to serve him with the claim form.



2010-2019 – bank disputes dominate

The second decade opened with a bang: simultaneous service of search orders at 3 premises and freezing orders in 4 jurisdictions in a US\$500m claim between the new and former owners of KazakhGold, relating to gold mines in Kazakhstan. But it was another Kazakh dispute which was to dominate most of the decade: the claims brought by BTA Bank against Mukhtar Ablyazov alleging numerous schemes by which he and a number of conspirators had siphoned billions of dollars out of the bank.

Indeed, claims by banks have featured heavily throughout the second decade of the 21st century. Some, like the BTA litigation, have been against alleged former owners/controllers. These include the claims brought by Mezhrprom Bank against Sergei Pugachev; by National Bank Trust against Ilya Yurov; and by Vnesheprombank against Georgy Bedzhamov, where there have been allegations of uncommercial lending to related parties to extract funds for the benefit of the defendants.

Other banks have sought to recover assets in respect of defaults on loans, both as against borrowers, guarantors and owners of the borrowers. VTB Bank brought substantial claims against each of Konstantin Malofeev and Pavel Skurikhin, whilst Bank of Moscow pursued Vladimir Kekhman and Andrey Chernyakov. These cases highlighted the attractions of litigating in London, with use of weapons such as freezing and search orders, receivers and committal applications.



The 2020's – families at war

Early into the third decade and a different type of claim is beginning to come to the fore. 20 years ago it was business partners falling out. Now it is family members. Akhmedova v Akhmedov resulted in a £450m award in favour of Tatiana Akhmedova, but Farkhad Akhmedov was determined not to pay a penny. This spawned litigation in numerous jurisdictions including England, Dubai, Liechtenstein, Switzerland, Cyprus, the Isle of Man, the US and the Marshall Islands before leading to what has been reported to be a very substantial settlement. Again, the weapons of the English Court including freezing and search orders, as well as committal proceedings all assisted in achieving recoveries against a recalcitrant debtor.

Looming on the horizon is the US\$1.5bn fraud and conspiracy claim brought by Loudmila Boulakova against her former

husband (now deceased) and his associates alleging that they put assets beyond her reach in Monegasque matrimonial proceedings.



Most favoured jurisdictions

There are a number of factors why common law jurisdictions, and London in particular, have been attractive places for the resolution of such claims.

First, there is a highly regarded, independent judiciary, and a pool of high-class litigation lawyers, who are experienced in dealing with complex disputes emanating from the region. Lawyers and judges are familiar with Russian tort law and similar provisions.

Second, as regards contracts, English law is seen as well suited to commerce, particularly in respect of complex financial transactions.

Third, there are the tools to ensure that justice is achieved. That includes a disclosure regime designed to prevent parties concealing adverse documents, and cross-examination to test witness testimony. It also includes the use of powerful orders (search and freezing orders) to prevent destruction of evidence and dissipation of assets.

Fourth, even post-Brexit there is value in obtaining judgments/orders from the English Court in terms of enforceability and in persuading courts in other jurisdictions to grant similar orders to secure assets.

The English and common law jurisdictions also provide assistance where the main claim is being fought in Russia or elsewhere. The English Court can grant a freezing order in support of a foreign proceedings under s25 of the Civil Jurisdiction and Judgments Act 1982, or even in support of a foreign appeal, as it did in *Ukrsibbank v Polyakov* all the way up to the Ukrainian Supreme Court. The Privy Council has in the recent *Broad Idea* case held that

freezing order relief is available in the BVI in support of foreign proceedings.

However, London may not remain the jurisdiction of choice. Previously, many wealthy individuals from Russia and the former FSU moved to London but some have seen that this makes them vulnerable to the jurisdiction of the English Courts and the freezing and search order relief that might be obtained against them. At least one high-profile Ukrainian oligarch chose to move from England to Switzerland so as to avoid being a target for English litigation.

Some prospective claimants are being put off by recent judgments where the English Court has declined jurisdiction, or by increasing costs of litigating and arbitrating in England. Businesses are looking at different venues, such as mainland Europe and Singapore, and at alternatives to English law.



The future

So as new claims begin to emerge from Russia and other former FSU States, London and other common law jurisdictions will probably still see further substantial litigation. Whether it will be on the scale that we have seen over the past 20 years is perhaps more doubtful.

