AKHMEDOVA V AKHMEDOV – A CASE STUDY IN DEALING WITH DIFFICULT DEFENDANTS

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In this article, Anthony Riem and Andrew McLeod, Senior Partner and Associate at the London firm of PCB Byrne LLP, review the recent litigation in the judgment of Mrs Justice Knowles in the Family Division of the High Court in Akhmedova v Akhmedov 2021 EWHC 545, [2021] 4 WLR 88 (Fam), and the lessons that can be learned about dealing with a recalcitrant defendant in civil fraud proceedings. Such defendants seek to ignore their obligations to the Court or even actively frustrate the Court's orders and processes. That type of litigation conduct might be seen in the short term to have benefits, in disrupting or even derailing claims against them. Yet the various powers of the English court to grant interim remedies enable it to interrogate a defendant's claims and if necessary find other methods to compel a defendant to comply with their obligations. These present not only the ability to counteract a defendants' efforts to defeat the court's processes, but the opportunity to convert that litigation conduct into a successful outcome at trial.

Introduction

"All happy families are alike, each unhappy family is unhappy in its own way. With apologies to Tolstoy, the Akhmedova family is one of the unhappiest ever to have appeared in my courtroom".

Thus began Mrs Justice Knowles in her judgment in Akhmedova v Akhmedov [2021] EWHC 545, [2021] 4 WLR 88 (Fam). Her quote is more than a nod to the parties' Russian heritage; it reflects the troubled history of a high-profile divorce where every step was taken to try to prevent the enforcement of the court's earlier judgment in favour of Tatiana Akhmedova. In the course of the proceedings before her Ladyship, Temur Akhmedov was found to have "lied to this court on numerous occasions; breached court orders; and failed to provide full disclosure of his assets" and to be "a dishonest individual who will do anything to assist his father" in his scheme to put every penny of his wealth beyond Ms Akhmedova's reach[1].

Yet despite such aggressive and obstructive litigation conduct, Ms Akhmedova was overwhelmingly successful against respondents who were all found to have deliberately failed to comply with their disclosure obligations[2]. That result was the culmination of over a year of procedural wrangling in courts, both domestic and foreign, against the Respondents and various third-parties. In particular, Temur

1 Akhmedova v Akhmedov & Ors (Rev 1) [2021] EWHC 545 (Fam), [2021] 4 WLR 88 at [6].

2 Ibid, [130].

had been made subject to a suite of civil orders to compel or obtain disclosure. Each of these contributed in some small way to the documents at trial and ultimately the judgment against him.

This article presents the proceedings against Temur as a case study in the use of interim applications and the English court's coercive powers to compel such a defendant to produce documents that may be used to obtain a judgment against them.

Background

The background to the case rests in the marriage between Ms Akhmedova and Farkhad Akhmedov in Russia in 1993. Ms Akhmedova issued a petition for divorce and by a judgment handed down on 15 December 2016, Mr Justice Haddon-Cave (as he was then) awarded Ms Akhmedova an amount equal in value to the total sum of £453,576,152.

Despite having submitted to the jurisdiction, Mr Akhmedov failed to appear at the financial remedies hearing[3]. Instead, immediately before and during the trial he transferred substantially all his assets into a Liechtenstein trust structure. Mr Akhmedov then entered into a global effort to resist enforcement, describing it publicly as a war that he would "continue to fight for as long as it takes, and in whatever jurisdiction necessary" to resist a judgment he graphically described as "worth as much as toilet paper".

Ms Akhmedova's claims in England

Ms Akhmedova's claims were aimed at obtaining English judgments against third parties who had received assets from Mr Akhmedov as part of his evasionary scheme, as transactions made for a purpose of frustrating or impeding enforcement (under s.423 of the Insolvency Act 1986 and/or s.37 of the Matrimonial Causes Act 1973). For his part, Temur Akhmedov (one of the couple's sons) had received approximately US$100 million from Mr Akhmedov and his entities, as well as the beneficial ownership of a valuable central Moscow property with a value of £6.58 million, for no consideration and for the purpose, at least in part, of protecting them from enforcement by Ms Akhmedova against Mr Akhmedov.

Breach of disclosure obligations

The starting point was Temur's deficient disclosure. In July 2020, he served disclosure which contained none of his own documents[4], save for two discrete emails from 2013 (which he believed to be helpful to his case)[5], and did not cover most of the period in issue[6]. His disclosure statement explained that Temur no longer had relevant documents in his control because they had been destroyed, ostensibly for "security reasons"[7].

It belied belief that this non-disclosure was anything but deliberate. This approach is not unusual, with a defendant perhaps thinking they can frustrate a claimant's case.

Regardless, the lack of disclosure provided an opening for the use of the Court's other powers to expose the true position.

Interim application: Forensic Examination Order

Immediately following Temur's disclosure and his claim not to be able to access relevant documents, Ms Akhmedova applied for and obtained a delivery-up order, requiring that Temur deliver up his electronic devices, and access to four Google-hosted email accounts, to an independent forensic expert (Stroz Freidberg, an Aon subsidiary). Such an order is available in circumstances where the Court is seeking to ensure a party is complying with their disclosure obligations, and to confirm whether documents said to have been irretrievably destroyed can in fact be retrieved.

Temur's response was to further frustrate the order[8]. Having purported to arrange his devices to be delivered to Aon by DHL, the parcel "mysteriously disappeared prior to reaching DHL's warehouse"[9]. Temur later admitted to having masterminded a plan to use an employee to "lose" a parcel containing an old device, so as to provide a false excuse for his non-compliance with that order[10].

He also claimed to be unable to remember the password or recovery details for his Google-hosted email accounts. This was despite Aon's investigation revealing that Temur had accessed and deleted one of his accounts after the making of the Forensic Examination Order[11]. Regardless, another route to the emails would be required.

While Google were willing to produce non-content information (i.e. email header information) if served with a US subpoena, it declined to produce content information (i.e. the emails themselves) unless Temur followed their account recovery process – which he was "unable" to do. A motion to the US District Court was brought seeking an order compelling Google to produce the emails in the named accounts to Aon. That application was made with the assistance of the English Court – first, Mrs Justice Knowles ordered

3 Akhmedova v Akhmedov & Ors (Injunctive Relief) [2019] EWHC 1705 (Fam) at [7].
4 Akhmedova v Akhmedov & Ors (Rev 1) [2021] EWHC 545 (Fam), [2021] 4 WLR 88 at [134].
5 Akhmedova v Akhmedov & Ors [2020] EWHC 3005 (Fam) at [23].
6 Akhmedova v Akhmedov & Ors (Rev 1) [2021] EWHC 545 (Fam), [2021] 4 WLR 88 at [134].
7 Ibid, [133].
8 Ibid, [138].
9 Ibid, [138].
10 Ibid, [141](c).
11 Ibid, [138].

Temur to execute signed mandates authorising and instructing Google to release his emails to Aon; then, when Google sought to argue that the English court did not need the documents, her Ladyship wrote a strongly worded note to the US District Court that confirmed English court required its assistance in producing the emails. Google were finally compelled by the US District Court to produce the emails in Temur's accounts.

Interim application: worldwide freezing order

The purpose of a worldwide freezing order is only intended to prevent a defendant from putting assets beyond the reach of possible judgment creditors. However, the Court's jurisdiction also carries with it the power to make whatever ancillary orders are necessary to make it effective, including disclosure information about assets. In fraud proceedings, the value of this ancillary disclosure cannot be overlooked.

In this case, a without notice worldwide freezing order was granted against Temur's assets up to US$120 million and – importantly – ancillary orders compelling Temur to disclose of his worldwide assets, after Ms Akhmedova learned that, in steps deliberately concealed from both Ms Akhmedova and the Court, Temur dissipated his interest in the Moscow Property by transferring it back to Mr Akhmedov shortly following proceedings being commenced against him in 2020 (the "WFO").

That ancillary disclosure was of some significance. In particular, it enabled other deficiencies in Temur's disclosure to be identified – in particular, his bank account records identified the existence of further email and storage accounts with Google and Amazon that had not been disclosed[12].

In addition, the WFO resulted in Temur seeking to mortgage a London property he beneficially owned, and which he claimed was his only asset of value, for the purpose of financing his participation in the proceedings. A variation to the WFO was agreed which made Temur's ability to raise funds conditional on making asset disclosure – this functioned as a mechanism to compel his compliance with the ancillary disclosure order.

Interim application: Anton Piller / Search Order relief

Pursuant to Temur's variation to the WFO, he was required to disclose documents relating to the funding. In late October 2020 – barely two months out from the trial – Ms Akhmedova received from Temur's solicitors a valuation report with photographs of the flat showing a number of electronic devices in Temur's study that plainly had not been disclosed by Temur pursuant to the Forensic Examination Order.

Anton Piller / Search Order relief is a draconian measure [13] with the purpose of preservation, not disclosure – however, while evidence is seized to prevent its destruction (and not per se its inspection or), it enables access to a source of relevant evidence that otherwise would not have been disclosed.

The execution of the search order on Temur's property did exactly that. A significant number of computers, phones, and storage devices – 47 in number – were found when the Search Order was executed, which contained "a mass of relevant documents"[14]. Amongst them were documents which countered Temur's claim not to have been involved in his father's contemptuous conduct[15], and the Order exposed another instance of Temur's contemptuous conduct.

Conclusion

The case showed how the Court's powers can be used by a claimant seeking to get around a defendant's refusal to comply with disclosure obligations. Successive interim applications create momentum and while each will have a distinct purpose, they inevitably become interlinked both in narrative and effect, with disclosure from one assisting another – sometimes, as with the Search Order, in unintended ways. When overseas defendants introduce an international angle to proceedings, there may be a wide range of other options available in other jurisdictions.

However, these efforts are ultimately a race against the clock. Indeed, efforts to obtain disclosure can play into a defendant's hands if they seek to slow down progress or even use them as the basis to seek an adjournment under the guise of needing time to comply. Claimants need to balance the value of obtaining these documents against the risks of prejudicing their ability to proceed with a trial, and the need to maintain momentum in the proceedings. That momentum is crucial not simply to exert pressure on defendants, but to maintain the stamina and willingness of all participants, when to do so feels like (with hopefully a final apology to Russian literature) its own personal Crime and Punishment.

Ms Akhmedova was represented by PCB Byrne LLP (Anthony Riem, Rachel Turner, Andrew McLeod, Catherine Eason, Caitlin Foster) and funded by Burford Capital.

12 Ibid, [139].

13 JSC BTA Bank v Ablyazov (No 1) [2015] UKSC 64; [2015] 1 WLR 4754 at [19].

14 Akhmedova v Akhmedov & Ors (Rev 1) [2021] EWHC 545 (Fam), [2021] 4 WLR 88 at [136].

15 Ibid, [280].