

**ENGLISH HIGH COURT DISMISSES APPLICATION BY TRUSTEES TO
DISCHARGE OR VARY A WORLDWIDE FREEZING ORDER AGAINST A
BENEFICIARY**

*JSC Mezhdunarodniy Promyshlenniy Bank & Anor v Pugachev & Ors [2014] EWHC 3547
(Ch)*

Introduction

In *JSC Mezhdunarodniy Promyshlenniy Bank & Anor v Pugachev & Ors* [2014] EWHC 3547 (30 October 2014), the English High Court dismissed an application by the trustees of five discretionary trusts (“the Applicants”) to discharge or vary an order for disclosure of information relating to the trusts that was part of a worldwide freezing order against one of the discretionary beneficiaries of the trusts.

Background

Sergei Pugachev is a prominent Russian billionaire who now resides principally in central London. He was the founder, in the early 1990s, of the failed bank JSC Mezhdunarodniy Promyshlenniy Bank (“the Bank”). He is one of the discretionary trustees of five New Zealand-based trusts.

Mr Pugachev is currently defending claims brought first in Russia (“the Russian proceedings”) and, subsequently, in England (“the English proceedings”) by the liquidator of the Bank, which alleges that he transferred hundreds of millions of dollars from the Bank to a private bank account in Switzerland and accuses him of being vicariously liable for the Bank’s collapse. The amounts claimed exceed US\$2 billion.

By orders of 11 July 2014 and 18 July 2014, the High Court (Henderson J) granted against Mr Pugachev:

- (a) a worldwide freezing order against assets of which Mr Pugachev was the sole or joint owner, assets in which Mr Pugachev had a legal or beneficial interest, and assets which Mr Pugachev had a direct or indirect power to dispose of up to a value of £1,171,490,852; and
- (b) an order for Mr Pugachev to disclose his assets.

The worldwide freezing order was granted pursuant to Section 25 of the Civil Jurisdiction and Judgments Act 1982 in aid of the Russian proceedings. Mr Pugachev served a schedule of his assets on 23 July 2014.

By an order of 25 July 2014, Mr Pugachev was ordered to disclose to the best of his ability:
(a) the identity of the trustee(s), settlor(s), any protector(s) and the beneficiaries of the trusts; and
(b) details of the trust assets.

Evidence disclosed demonstrated that one of the trusts owned a company which in turn owned Mr Pugachev's primary residence in central London.

The Applicants applied for the discharge or variation of the terms of the trust asset disclosure order. The hearing was partly held in private in order to preserve a confidentiality regime that protected information concerning Mr Pugachev's living expenses.

The Applicants' Submissions

The Applicants submitted:

- (a) that the Court had not had jurisdiction to order disclosure as the assets of the discretionary trusts could not be subject to a freezing order unless the discretionary trusts themselves were shams. On the facts, there was no proper reason to think that the discretionary trusts were shams;
- (b) that there was no real risk of dissipation;
- (c) the balance of convenience concerning the risk of injustice favoured the Applicants;
- (d) if the application was refused then the order should require an undertaking in damages and a confidentiality regime.

The Decision

In dismissing the application, Mr Justice David Richards ("the Judge") held in relation to the issue of whether the Court had jurisdiction to make the asset trust disclosure order:

- (a) that the Applicants had based their application upon a construction of the freezing order that was too narrow;
- (b) that the purpose of a freezing order was for the preservation of assets in order that claimants, if successful, would have assets against which to enforce their judgment;
- (c) that freezing orders are often necessarily drafted broadly because of the inherent uncertainty as to the nature and extent of the defendant's assets, such uncertainty being heightened where assets are held in opaque corporate or trust structures;
- (d) that even the limited evidence available showed that there were strong connections between Mr Pugachev and the trusts;
- (e) the Claimants had reserved their position on whether the discretionary trusts were shams and had not argued that point;
- (f) it was clear that the Court had jurisdiction to order disclosure for the purpose of ascertaining the true position of the trusts and the extent of Mr Pugachev's control of the assets that the trusts held.

The Judge held in relation to the Applicants' submission that there was no real risk of dissipation:

- (a) that this was not as relevant to an order for the disclosure of assets as it was to the grant of a freezing order;
- (b) the Claimants were not suggesting dissipation by the trustees but rather dissipation of assets out of companies that were held within the overall trusts structures connected to Mr Pugachev;
- (c) there was a real risk of dissipation because any transfer of assets to any beneficiary would constitute dissipation so long as those assets fell within the extended definition of 'assets' in

the freezing order.

The Judge held in relation to the Applicants' submission on the balance of convenience:

(a) that membership of a confidentiality club had already been agreed and was restricted to disclosure pursuant to the trust disclosure order;

(b) the Court generally would not require an undertaking in damages to be given for a disclosure order, and would only do so if it considered that there was evidence adequately demonstrating that there was a real risk that the Applicants would suffer loss caused by the disclosure order itself.

Concluding Remarks

The Decision is a demonstration of the power and effectiveness of a worldwide freezing order granted by the English High Court and, in particular, demonstrates the ability of the English courts to lend assistance to proceedings outside of its jurisdiction through the granting of interim relief.

Mr Pugachev is appealing against the order of Henderson J dated 18 July 2014 varying the worldwide freezing order against him.

25 November 2014