Neutral Citation Number: [2016] EWHC 1262 (Comm)

Case No: 2014 FOLIO 861 & 761

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/05/2016

Before :

MR JUSTICE LEGGATT

- -

Between :

AS LATVIJAS KRAJBANKA (In Liquidation)	**Claimant**
- and -	
VLADIMIR ANTONOV	**Defendant**

- -

Paul McGrath QC & George Hayman (instructed by **Stephenson Harwood LLP**) for the **Claimant**
No attendance on behalf of the Defendant

Hearing dates: 11 and 13-14 April 2016

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE LEGGATT

Mr Justice Leggatt :

Introduction

1. The claimant in these two consolidated actions ("the Bank") is a Latvian company, now in liquidation. Before its operations were suspended by the Latvian Financial and Capital Market Commission (the "FCMC") on 21 November 2011, it operated primarily as a retail bank and was one of the top ten banks in Latvia. At all relevant times a majority of the Bank's shares was owned by a bank in Lithuania, AB Bankas Snoras ("Snoras"), which is also now in liquidation.

2. The defendant, Mr Antonov, is a Russian national who at all material times was the majority shareholder of Snoras, and hence was the majority beneficial owner of the Bank. From 15 September 2009 until 22 November 2011, Mr Antonov was also a member of the Supervisory Council of the Bank which, pursuant to Article 291 of the Latvian Commercial Law, is responsible for supervising the activities of the Bank's management board.

3. The Bank's case in these actions is that, prior to its insolvency, Mr Antonov caused the Bank to enter into transactions which were not in its interests and which (although attempts were made to conceal this fact) were in fact arranged in order to benefit Mr Antonov himself and/or people closely associated with him. It is alleged that, in causing the Bank to enter into these transactions, Mr Antonov acted dishonestly and in breach of duties owed to the Bank. The eight transactions which are impugned in these proceedings have resulted in losses to the Bank of some £65 million in sterling terms, which the Bank is seeking to recover from Mr Antonov.

Procedural history

4. When Mr Antonov was served with these proceedings in July 2014, he was living in London and was domiciled in the United Kingdom for the purpose of Article 2(1) of Council Regulation (EC) No 44/2001. Mr Antonov acknowledged service of the proceedings on 29 July 2014 and did not dispute the jurisdiction of the English court. He filed defences in both actions denying liability on 17 December 2014.

5. At the outset of the proceedings, on 17 July 2014, the Court granted an injunction freezing Mr Antonov's assets worldwide up to an amount of £70 million. He was also ordered to disclose information about his assets.

6. Mr Antonov did not comply with the order for disclosure. At a hearing on 31 July 2014, which Mr Antonov attended in person, Mr Justice Andrew Smith ordered Mr Antonov to provide further information about his assets and prohibited Mr Antonov from leaving England and Wales until he had complied with the order.

7. Mr Antonov made affidavits which purported to comply with part of the court's order but the Bank did not accept that the information given was complete. On 5 November 2014 the Bank obtained an order which permitted entry and search of Mr Antonov's home in London to preserve relevant electronic evidence. The Bank is permitted by the terms of the search order and the order of Mr Justice Burton date 18 September 2015 to use the material obtained from this search for the purposes of these proceedings. On 12 November 2014 the Bank applied to cross-examine Mr Antonov

on his affidavit of assets. Mr Antonov did not oppose the application and the cross-examination took place on 27 January 2015, lasting a full court day.

8. On 12 June 2015 Mr Justice Andrew Smith made a series of orders requiring Mr Antonov to disclose specific documents and providing that, unless he did so by 4pm on 3 July 2015, he would be debarred from defending the claims in these proceedings. At the same hearing, the judge gave directions for the trial of the Bank's claims.

9. Mr Antonov did not comply, and has never attempted to comply, with the orders for disclosure of documents made on 12 June 2015. After he had been served with an application seeking his committal for contempt of court, he left the country, in breach of the order which prohibited him from doing so. He has not returned to the United Kingdom. He has, however, been notified of all steps taken in the proceedings and is plainly aware of them, as he has from time to time sent abusive messages in response.

10. At a hearing on 15 October 2015, Mr Justice Burton found that Mr Antonov had committed contempts of court by leaving the jurisdiction of England and Wales and failing to deliver up his passports in breach of the order of the court dated 31 July 2014. As punishment for those contempts, an order was made that Mr Antonov be committed to prison for a period of 12 months. He has not served this sentence and remains at large.

The trial

11. The trial of the Bank's claims took place over three days, with a further three days for pre-reading. Unsurprisingly given the procedural history, Mr Antonov did not appear. He had, however, been notified on 15 January 2016 of the trial date. I am satisfied that Mr Antonov's breaches of court orders which resulted in his being debarred from defending the proceedings and in his non-attendance at court were entirely voluntary and deliberate.

12. At the trial, the Bank called two witnesses of fact who verified the contents of witness statements which they had previously made. They were Mr Stephen Young and Mr Aivars Jurcans who are, respectively, the former Chairman of the Board and a current director of KPMG Baltics SIA, the insolvency administrator of the Bank. The Bank also relied on the reports of four expert witnesses who were each called to confirm the opinions stated in their reports. Those witnesses and their fields of expertise were: Mr Romualds Vonsovics – Latvian law; Professor Peter Maggs – Russian law; Mr Tim Millard – Russian real estate valuation; and Mr Adam Papadakis – yacht valuation. In addition, the Bank put in evidence a substantial volume of documentation including emails and other documents obtained pursuant to the search order mentioned earlier. I was taken through salient documents by Mr McGrath QC, leading counsel for the Bank, in the course of his submissions.

The law

13. The Bank's claims against Mr Antonov are governed by Latvian law. Although other provisions of Latvian law were discussed by Mr Vonsovics and relied on if necessary by the Bank, it is sufficient to refer to the following provisions.

14. Pursuant to Article 169 of the Commercial Law, members of the Bank's Supervisory Council were required to perform their duties as would an honest and careful manager and are liable for losses caused by a breach of this obligation. This provision is relevant in relation to those transactions which took place after 15 September 2009, when Mr Antonov became a member of the Supervisory Council. In relation to the three transactions impugned in these proceedings which took place before Mr Antonov was on the Supervisory Council, the Bank relies on Article 168 of the Commercial Law. By Article 168, a person who in bad faith induces a member of the management board or Supervisory Council to act against the interests of the company or its shareholders is liable for any losses incurred as a result.

15. Article 1779 of the Civil Code (as translated by the Latvian State Language Centre) provides that "everyone has a duty to compensate for losses they have caused through their acts or failure to act". Mr Vonsovics explained that this provision is applicable where financial loss is suffered as a result of the defendant's wrongful act or omission.

The transactions

16. The Bank's claims relate to eight separate transactions entered into between 2008 and 2011. I will examine each transaction in turn.

I. THE PLAZMEXON TRANSACTION

17. On 1 July 2008 the Bank agreed to make a loan of €2.4m to a Cypriot company called Plazmexon Investments Limited for the stated purpose of purchasing a motor yacht called "The Highlander". Under the terms of the loan agreement, the Bank agreed to advance €800,000 within two working days and the balance of €1.6m after a pledge over the yacht in favour of the Bank had been executed and registered.

18. Plazmexon entered into an agreement dated 17 July 2008 to purchase the yacht for a sum of €2.4m from Latin American Tug Holding NV, a company represented by Mr Victor Muller. Of the purchase price of €2.4m, the sum of €800,000 was payable to Spyker Cars NV ("Spyker") to discharge a debt which Mr Muller owed to Spyker.

19. The sum of €800,000 was advanced by the Bank to Plazmexon on 3 July 2008. After that advance had been made, Mr Muller gave a personal guarantee of the loan to the Bank dated 11 July 2008. On 15 July 2008 the management board of the Bank resolved to dispense with the requirement of a pledge before the balance of €1.6m was advanced, which occurred on 12 August 2008.

20. On 23 March 2009, the Bank agreed to increase the loan by advancing a further sum of €350,000 for the purpose of funding improvements and re-equipping the yacht. This sum was paid to Plazmexon on 23 March 2009 and was immediately transferred by Plazmexon to a bank account in the name of Mr Muller.

21. Plazmexon soon defaulted on the loan. In December 2009 the Bank entered into a settlement agreement with Plazmexon under which it agreed to waive the indebtedness of Plazmexon in return for possession of the yacht. This agreement was made on the basis of a valuation by OOO Finance Group Moscow dated 23 December 2009, which attributed to the yacht a value of €6,082,000. The expert evidence of Mr

Papadakis, which I accept, indicates that this was a gross over-valuation and that the open market value of the yacht at that time was €3 – 3.5m.

22. After the Bank had taken possession of the yacht, Mr Muller was nevertheless involved in marketing it and the yacht was not sold at that stage. After the insolvency administrator was appointed, the yacht was ultimately sold at auction in August 2012 for a sum equivalent to US$1,033,157.

Disadvantageous nature of the transaction

23. It is plain that the loan made to Plazmexon was not an arm's length transaction and was contrary to the Bank's interests. In particular:

i) The initial application for a loan was made in the name of Latin American Tug Holding NV, which was wholly owned by Mr Muller. The reason for replacing Latin American Tug Holding NV as the borrower by Plazmexon – as Mr Antonov admitted in the course of his cross-examination on 27 January 2015 – was that the Bank's credit committee could not approve a loan to Mr Muller because of Mr Muller's bad credit history.

ii) No due diligence whatsoever was undertaken in relation to Plazmexon, which appears not even to have made a loan application. The loan was advanced without any security in place over the yacht.

iii) Plazmexon was not a borrower to which the Bank would have been willing to lend at arm's length. It was an offshore company with one employee and no trading history.

iv) As demonstrated by many documents put in evidence by the Bank, and as Mr Antonov admitted in response to a request for further information made in these proceedings, Plazmexon was in fact beneficially owned by Mr Antonov himself.

v) The initial advance of €800,000 was used to repay a debt owed by Mr Muller to Spyker, a car manufacturing company in which Mr Antonov had a beneficial interest.

vi) The only security for the loan was a personal guarantee from Mr Muller (given after the €800,000 had already been advanced). No attempt was made to verify Mr Muller's financial standing, which was clearly no better as a guarantor than if he had been the borrower.

vii) No attempt was made to ensure that the further advance of €350,000 made in March 2009 was used for its stated purpose of re-equipping the yacht.

viii) The settlement agreement under which the Bank released Plazmexon from its indebtedness (and hence also Mr Muller from liability under his personal guarantee) in return for possession of the yacht was based on a valuation of the yacht which was grossly inflated. OOO Finance Group which provided the valuation was not a specialist yacht valuer and did not inspect the yacht.

ix) The material obtained pursuant to the search order contains numerous email exchanges between Mr Antonov and Mr Muller regarding the yacht, Mr Muller's financial difficulties and the Plazmexon loan. These include a number of emails which show that, at Mr Muller's request, Mr Antonov arranged for the Bank to pay invoices for insurance of the yacht and various work carried out on the yacht.

Conclusion

24. I am satisfied that the Bank would not have entered into this transaction unless Mr Antonov had induced the Bank to do so and that, in causing the Bank to advance a total sum of €2.75m to Plazmexon for the benefit of Mr Muller and himself, Mr Antonov acted dishonestly and in reckless disregard of the fact that the transaction was not in the interests of the Bank. He is accordingly liable under Article 168 of the Commercial Law and Article 1779 of the Civil Code for the losses caused to the Bank. Those losses, after giving credit for the proceeds of sale of the yacht and repayments of the loan, amount to €1,872,674 and US$269,292.

II. THE KRAPIVNY TRANSACTION

25. On 14 February 2008 the Bank entered into an agreement to make a loan of US$20.65m to a company incorporated in the Seychelles called Consultant Support Inc ("Consultant"). The stated purpose of the loan was to finance the development of a property at Krapivny Lane 4A, St Petersburg ("the Krapivny property"). By clause 7.1 of the loan agreement, Consultant agreed to provide security for the loan consisting of a mortgage over the Krapivny property and a personal guarantee from Mr Maxim Anchipolovskiy, who signed the loan agreement on behalf of Consultant. Mr Anchipolovskiy provided such a guarantee, also dated 14 February 2008.

26. On 14 and 15 February 2008 the Bank paid the sum of US$20.6m into an account in the name of Consultant at Snoras Bank. The loan money was released even though no mortgage over the Krapivny property was yet in place. Consultant did not even own the property, which was owned by a Russian company called OOO Stroj Briks. Stroj Briks granted to the Bank a mortgage over the property on 22 March 2008.

27. The Bank was provided with a written agreement dated 18 February 2008 by which Consultant supposedly agreed to purchase all the shares of Stroj Briks from a company incorporated in the British Virgin Islands called Durcon Technologies Inc for the sum of US$20.65m.

28. In April 2009 Consultant failed to make the first principal repayment due under the loan agreement, and was thereby in default. For no evident commercial reason, the Bank agreed to extend the time for payment. Consultant defaulted again, however, and the Bank issued proceedings against Consultant in Latvia. Consultant did not defend the proceedings and on 28 January 2010 the Bank obtained a judgment against Consultant in the sum of US$20,718,423.

29. Instead of exercising its right to take possession of the Krapivny property under the mortgage, the Bank then entered into an agreement with Stroj Briks dated 12 July 2010 under which the property was to be sold at an auction to be organised by Stroj Briks. It was agreed that the reserve price would be set at 80% of the market value of

the property based on a valuation figure of US$25.9m. The auction was to be declared void if there were fewer than two bidders or if the reserve was not reached, in which event the Bank had the right to purchase the property at the reserve price. In the event of repeated void auctions, the Bank had the right to purchase the property at 75% of the reserve price. For organising the auction, Stroj Briks was paid a fee of RUB 1m under an agency agreement made with the Bank dated 9 August 2010.

30. An auction was held on 7 September 2010. There were no bids and no bidders and the auction was therefore declared void. Instead of holding another auction (and, if that failed, purchasing the Krapivny property at 75% of the reserve price) the Bank entered into an agreement with Stroj Briks dated 14 September 2010 to purchase the property for the full reserve price, being the Ruble equivalent of US$20,883,356. This amount was then set off against the outstanding amount of the loan so as to extinguish the liabilities of Consultant.

31. Instead of then selling the Krapivny property, the Bank entered into a management agreement with Stroj Briks dated 30 December 2010 with a term of three years under which the Bank agreed to pay Stroj Briks a monthly fee for managing the property. The Krapivny property was valued in the Bank's accounts at US$33m, making it appear that the Bank had made a profit from the transaction. However, when the Bank went into insolvency administration, this value – and indeed all previous valuations of the property – turned out to be illusory. The Krapivny property was ultimately sold by the insolvency administrator in January 2013 for a sum equivalent to US$2,581,408. Mr Millard, an independent valuer whose expert evidence I accept as reliable, has valued the property as at 14 February 2008 (the date of the loan agreement) at US$2.9m and as at 14 September 2010 (the date of the Bank's agreement to purchase the property from Stroj Briks) at US$2.5m.

Disadvantageous nature of the transaction

32. It is plain that the loan made to Consultant was not an arm's length transaction and was contrary to the Bank's interests. Consultant had no financial standing as a borrower. It had been incorporated only seven months previously and had no financial records. Yet the Bank without any formal loan application entered into an agreement to lend over US$20m to Consultant only three days after the Know Your Client documentation had been completed, and transferred the sum of US$19.6m to Consultant on the same and following day. The rest of the loan money was paid on the following day. Furthermore, this was done without undertaking any due diligence, without any mortgage in place over the Krapivny property which was the subject of the loan, and with no evidence that Consultant had any interest in the property. The only security obtained before the loan money was advanced was a personal guarantee from Mr Anchipolovskiy, but no evidence was sought of his financial standing and ability to meet a demand under the guarantee.

33. It is equally plain that the arrangements made with Stroj Briks, including the agreement dated 14 September 2010 by which the Bank agreed to purchase the Krapivny property from Stroj Briks, were not arm's length commercial arrangements. The effect of those arrangements was that the Bank, instead of repossessing the property over which it held a mortgage, agreed to purchase it for a sum of approximately equal to the outstanding amount of the loan thus extinguishing the liability to repay the loan. Having agreed a valuation of the Krapivny property which,

as shown by the expert valuation evidence, was around 10 times what the property was actually worth, the Bank did not even wait to hold a second auction after the first auction was declared void so as to become entitled to acquire the property at 75% of the reserve price. Instead, the Bank agreed to purchase the property at the full reserve price. Furthermore, the Bank then took no steps to sell the Krapivny property (which would have exposed the grossly inflated value attributed to it). On top of this, the Bank agreed to pay substantial fees to Stroj Briks, first of all for organising the void auction, and then for the ongoing management of the Krapivny property.

34. Thus, at every stage of the transaction the Bank acted in a way which was clearly contrary to its own commercial interests. The obvious inference is that the Bank was induced to act in this way by someone who was in a position to exercise influence over the Bank. There is cogent evidence that this person was Mr Antonov, that he beneficially owned and controlled Consultant, Stroj Briks and Durcon, and that the transaction was a fraud by which Mr Antonov removed money from the Bank to benefit himself.

Mr Antonov's interest in the transaction

35. The beneficial owner of Consultant was identified in the Know Your Customer documentation for the loan as being Mr Anchipolovskiy. Mr Anchipolovskiy is an individual who is closely connected with Mr Antonov. In a witness statement made in these proceedings dated 29 August 2014 Mr Antonov has described Mr Anchipolovskiy as the "chief legal officer" of the Convers Group of companies which was beneficially owned and controlled by Mr Antonov. On 5 November 2008 Mr Anchipolovskiy was made a member of the Bank's Supervisory Council. Shortly before that, he purportedly sold his shares in Consultant for US$600,000 to an individual called Ms Makedonskaya who also had connections with Mr Antonov.

36. Emails obtained pursuant to the search order show requests being made to Mr Antonov to approve payments for Consultant. For example, on 3 July 2009 Mr Anchipolovskiy sent an email to Mr Antonov asking him to approve a payment of US$1,250 for "extension" of the company Consultant (which I take to mean maintaining its registration). Mr Antonov replied "OK". In another email sent on 1 September 2009 Mr Anchipolovskiy asked Mr Antonov to approve an expense of US$2,230 for purchasing a company and replacing the director/beneficiary of Consultant. By this time the beneficial owner of Consultant was nominally Ms Makedonskaya. Emails forwarded by Mr Anchipolovskiy to Mr Antonov indicated that the new beneficiary of Consultant was to be a Mr Yuriy Panamarev and referred to the preparation of a nominee agreement. It is clear from this and other evidence that Mr Anchipolovskiy and the subsequent shareholders of Consultant were all nominees for Mr Antonov who acted on his instructions.

37. It is also clear that Stroj Briks was one of Mr Antonov's companies. A shareholder resolution dated 7 March 2008 and other documents (including an email from Mr Antonov's father to Mr Antonov dated 30 December 2009) record that the sole shareholder of Stroj Briks was OOO Conversinvest. Conversinvest was part of the Convers Group of companies controlled by Mr Antonov. Documents signed on behalf of Stroj Briks were signed by employees of the Convers Group. Furthermore, emails between Mr Antonov and his father referred to the Krapivny property as a property which they owned through Conversinvest.

38. I have no doubt that the agreement dated 18 February 2008 between Consultant and Durcon was a sham document, prepared in order to provide cover for the payment of the loan money to Durcon, a company incorporated in the BVI. (There is no evidence to show what happened to the money after it was received by Durcon.) The agreement is only two pages in length, misstates the address of the Krapivny property and is formatted in the same way as other contracts between parties connected to Mr Antonov. As mentioned, the sole shareholder of Stroj Briks was Conversinvest, so Durcon did not own the shares in Stroj Briks which it purported to sell. I am quite sure that Mr Antonov would not have allowed Consultant to pay US$20.65m to Durcon for shares which Durcon did not own in a company (Stroj Briks) which Mr Antonov already controlled unless he had also beneficially owned and controlled Durcon. I conclude that the sham agreement with Durcon was simply part of the scheme by which money was extracted from the Bank for Mr Antonov's personal financial benefit.

39. There is direct evidence that the subsequent sale of the Krapivny property by Stroj Briks to the Bank at a grossly inflated price was orchestrated by Mr Antonov and his father. Particularly telling is an email sent by Mr Antonov's father on 8 September 2010 to employees of Convers Group following the auction at which no bids had been received. Far from lamenting that fact, the email is couched in gleeful terms, beginning "Dear passengers! Our train has successfully reached its point of destination …" It is clear from the email that Mr Antonov's father was celebrating the fact that the auction had failed and planning the next steps to be taken in dealing with the property.

Conclusion

40. I am satisfied that the Krapivny transaction was a fraud perpetrated by Mr Antonov on the Bank in breach of Article 168 of the Commercial Law and Article 1779 of the Civil Code. After giving credit for the proceeds of sale of the property, the loss caused to the Bank was US$20,448,960 less €1,704,479.

III. THE EAGLE RIVER TRANSACTION

41. By an agreement dated 23 October 2009, the Bank agreed to lend a sum of €12,185,000 to a German company called Eagle River Deutschland GmbH ("Eagle River") for the purpose of purchasing 10.72% of the share capital of Nobiskrug GmbH, a German yacht builder. Under the terms of the loan agreement, Eagle River agreed to provide security for the loan consisting of a pledge over 20% of Nobiskrug's share capital and a personal guarantee from Mr Roman Trotsenko, a Russian national.

42. Mr Trotsenko executed a written guarantee dated 23 October 2009 and on 27 October 2009 the Bank advanced the sum of €12,185,000 to Eagle River. No pledge was provided until 17 February 2010, when Eagle River granted a pledge to the Bank over approximately 19.44% of the share capital of Nobiskrug.

43. The first principal repayment under the loan agreement was due on 15 October 2010. The repayment was not made and on 27 October 2010, for no apparent commercial reason, the loan agreement was amended so as to postpone the repayment date by a year until 15 October 2011. No payment was made on or after that date. However,

on 5 December 2011 the loan agreement was amended again to postpone the date for the first principal repayment until 15 December 2012.

44. In December 2011, after a new investor had acquired a majority interest in Nobiskrug, the company was restructured. The effect of the restructuring was to render Eagle River's shareholding worthless unless Eagle River made a further injection of capital, which it did not do. A challenge by Eagle River to the validity of the restructuring was rejected by the German Court.

45. No repayment of the loan was made by Eagle River on 15 December 2012 or at all. On 17 March 2013 Eagle River went into administration by order of the German Court. Although the Bank submitted a claim in the administration, no recovery has been made.

46. In September 2013 the Bank's insolvency administrator commenced a claim against Mr Trotsenko in Latvia under his personal guarantee. No recovery has been made, however, under the guarantee. The expert evidence on Russian law given by Professor Maggs, whose evidence I accept, indicates that the guarantee is in practice unenforceable against Mr Trotsenko in Russia, even if the Bank first obtains a judgment against him from the Latvian Court.

Disadvantageous nature of the transaction

47. There is clear evidence that the loan made to Eagle River was not an arm's length commercial transaction and was not made or managed in the best interests of the Bank. In particular:

    i) No financial statements for Eagle River nor any other evidence of its standing as a borrower was provided to the Bank before the loan was made.

    ii) The Bank did not seek any advice about the validity or enforceability of the guarantee given by Mr Trotsenko before the loan money was advanced.

    iii) The Bank took no steps to obtain a pledge over Eagle River's shares in Nobiskrug for several months after the money had been advanced.

    iv) When Eagle River defaulted in making the first repayment of principal under the loan, the Bank simply extended the repayment date by a year for no apparent commercial reason. Then a year later the Bank did the same again and extended the repayment date by a further 14 months.

48. Furthermore, the evidence conclusively shows that, of the money advanced to Eagle River, only a sum of €2,954,800 was actually used to purchase a shareholding in Nobiskrug and €9m was transferred to a Cypriot company called Spilen Limited. As Mr Antonov has admitted in his witness statement made in these proceedings dated 29 August 2014, Spilen was "part of the offshore network of the Convers Group of companies" which Mr Antonov controlled.

49. Pursuant to a shareholder's resolution dated 30 June 2009, the share capital of Nobiskrug was increased such that Eagle River held one share in Nobiskrug with a nominal value of €2,556,500 (approximately 9.28% of the total share capital). On the

same date, Eagle River was granted an option to purchase a further share in Nobiskrug with a nominal value of up to €2,954,800 (approximately 10.72% of the total share capital). The option could be exercised at any time before 31 October 2009.

50. Eagle River duly exercised the option on 27 October 2009 and, from the money advanced by the Bank, the sum of €2,954,800 was paid on that day to purchase a single share in Nobiskrug with a nominal value of €2,954,800. Of the balance of the loan money, €9m was paid to Spilen on 27 October 2009 and a number of other small payments were made (including payment of the loan arrangement fee). Although Mr Antonov claimed in his statement dated 29 August 2014 that he did not know what happened to the money after it was paid into Spilen's account, Spilen was (as mentioned) a company which Mr Antonov controlled and the money was obviously used for his own purposes.

The fraudulent "transfer agreement"

51. To explain the payment to Spilen, a "transfer agreement" dated 27 October 2009 between Spilen and Eagle River was provided to the Bank. This document states that on 30 June 2009 Spilen had concluded an option agreement which gave it an option to purchase 2,954,800 shares of Nobiskrug at the price of €2,954,800 before 31 October 2009. The transfer agreement further stated that Spilen agreed to assign this option to Eagle River for a price of €9m.

52. It is clear, for the following among other reasons, that the transfer agreement was a sham:

    i) Nobiskrug did not have 2,954,800 shares, as suggested in the transfer agreement. It had only two shares, one of which was already owned by Eagle River and the other by its majority shareholder.

    ii) Eagle River already had an option to buy a further share for the sum of €2,954,800. There is no evidence that any other option to purchase a shareholding in Nobiskrug was ever issued to Spilen or anyone else (let alone an option to purchase a shareholding with exactly the same nominal value, exercisable by the same date).

    iii) Eagle River did not purchase two separate shareholdings in Nobiskrug, each for a sum of €2,954,800. The documents show that it purchased only one such shareholding by exercising the call option dated 30 June 2009 which it already had. Furthermore, the total amount paid by Eagle River before 31 October 2009 to purchase an additional shareholding in Nobiskrug was €2,954,800 and not twice that amount.

    iv) A loan agreement between Eagle River and Spilen was also executed, said to be made and effective on 27 October 2009, under which Eagle River purported to make a loan of €9m to Spilen repayable in annual instalments. This document is obviously inconsistent with the transfer agreement.

Mr Antonov's interest in the transaction

53. Insight into what lay behind the Eagle River transaction is provided by documents obtained pursuant to the search order. These documents indicate that Mr Antonov and Mr Trotsenko had agreed to form a joint venture under which they would each beneficially own 50% of the shareholding in Nobiskrug held by Eagle River. Attached to one email sent to Mr Antonov was a draft agreement dated February 2010 recording the terms of the joint venture.

54. The parties to the joint venture agreement were AEON, which was evidently a company controlled by Mr Trotsenko, and Convers Group, which (as previously mentioned) was owned and controlled by Mr Antonov. The preamble to the draft agreement recorded that AEON, referred to as "Party 1", had exercised an option to acquire 10.16% of the share capital of Nobiskrug for €2,954,800 and now owned 19.44% of the share capital. The document further recorded that AEON had received a loan provided by the Bank in the amount of €12,185,000 to be used as follows: €2,954,800 for the shares of Nobiskrug; €9m for "needs" of Convers Group; and €230,200 for other expenses associated with obtaining the loan and acquisition of the shares. The draft agreement went on to provide that the 19.44% shareholding in Nobiskrug was to be allocated between the parties 50/50 and that all obligations regarding service and repayment of the loan were to be fulfilled by Convers Group (referred to as "Party 2"). Convers Group further undertook to procure the termination of the guarantee given to the Bank by Mr Trotsenko as collateral for the loan.

55. At the time when the Bank entered into the Eagle River transaction, Mr Antonov was on the Supervisory Council of the Bank. It is plain that the transaction was not in the Bank's interests and that Mr Antonov must have known that to be the case. It is also clear that Mr Antonov used the transaction to perpetrate a fraud whereby he covertly extracted €9m from the Bank for his own benefit and used the rest of the money to invest in a project which he undertook with Mr Trotsenko. I am satisfied that the loan to Eagle River would never have been made if Mr Antonov had not procured the Bank to enter into the transaction and taken steps to conceal its true nature.

Conclusion

56. The entire amount advanced to Eagle River has been lost. I conclude that Mr Antonov is liable for the Bank's loss pursuant to Article 169 of the Commercial Law and Article 1779 of the Civil Code. The loss caused to the Bank was €12,256,139 comprising the sum advanced by the Bank and expenses of €71,139.

IV. THE MULTIKAPITALS TRANSACTION

57. The next claim arises out of a consortium bid which the Bank made together with a company called SIA Multikapitals to purchase approximately 54% of the shares of Marina AD Bar ("Marina"), a company owned by the State of Montenegro which operated a marina in the Montenegrin city of Bar. A bid was submitted in September 2009, which was accepted, to purchase the shares for €2,222,222 and to invest a further €12.2m over five years, with all this investment to be funded by the Bank.

58. On 29 December 2009, the Bank and Multikpitals entered into a share purchase agreement with the Government of Montenegro by which they agreed to purchase the shares in Marina for the sum of €2,222,222. On the same day the Bank and Multikapitals entered into a cooperation agreement under which they agreed to conclude the share purchase agreement. They further agreed that Multikapitals would be the beneficial owner of the shares and that any shares acquired by the Bank would be held on trust for Multikapitals. Supposedly for its assistance and services as trustee, the Bank was to receive the enormous fee of €7m.

59. On 30 December 2009 the Bank entered into two loan agreements with Multikapitals under which the Bank agreed to make, respectively, a loan of €2.5m for the acquisition of the shares and a further loan of €7m. In relation to each loan, Multikapitals also entered into a pledge agreement with the Bank pledging all of its assets including its interest in the shares as security for its obligation to repay the loan.

60. The €2.5m loan and the first instalment of €3.5m of the €7m loan were advanced by the Bank to Multikapitals on 30 December 2009. The second €3.5m instalment of the €7m loan was advanced on 2 February 2010. Each of the payments of €3.5m was immediately paid back by Multikapitals to the Bank, supposedly to pay the fee of €7m payable to the Bank under the cooperation agreement.

61. Multikapitals defaulted on the loans. After the Bank was declared insolvent, the insolvency administrator sought to enforce the Bank's security over the shares in Marina. However, on 2 December 2013, the Government of Montenegro terminated the share purchase agreement on the ground that, by pledging the shares in Marina to the Bank as security for the loans, Multikapitals had violated a clause of the share purchase agreement under which Multikapitals had agreed not to dispose of or encumber the shares without the consent of the Government. The insolvency administrator also received legal advice that the pledges over the shares could not in any event be enforced without the consent of the Government of Montenegro, which it was obviously not prepared to give.

Disadvantageous nature of the transaction

62. From the Bank's point of view, the transaction involving Multikapitals made no commercial sense. It is not apparent why the Bank would want to invest in a yacht marina in Montenegro; but, if it did, there was no reason to involve Multikapitals at all, since the whole of the funding for the investment was provided by the Bank. The Bank's own credit analysis showed that Multikapitals was a shell company with no trading history and no standing as a borrower. There was no evidence of its ability to repay the loans. Furthermore, the pledges of the shares in Marina provided as security were given in clear contravention of the share purchase agreement and were therefore self-defeating.

Mr Antonov's control of Multikapitals

63. It is plain that the true reason why the Bank became involved in the transaction was that Mr Antonov induced it to do so and that it was in fact Mr Antonov who beneficially owned and controlled Multikapitals. In a witness statement which he made in these proceedings on 29 August 2014 Mr Antonov said that he wished to "state categorically … that not only do I not own an interest in or control over

Multikapitals, but I never have". The evidence adduced by the Bank has demonstrated, however, that this statement was a lie.

64. Attached to an email copied to Mr Antonov on 9 March 2011 was a chart showing the assets of the Convers Group. The email was sent by Mr Martins Zalans, who in an earlier email dated 24 February 2011 had said that he was acting upon the instruction of Mr Antonov and described himself as the "chief legal counsel" of the Convers Group. The structure chart shows assets held by Mr Antonov in his own name, such as his shares in Snoras Bank, and other assets evidently considered to be part of the group which were held through nominees. Multikapitals appears on the chart, with 75% of its shares in the name of Mr Stanislav Kovtun and the other 25% in the names of two other individuals.

65. An unsigned trust management agreement between Mr Kovtun and Mr Antonov dated 3 September 2009 states that Mr Kovtun has acquired shares of Multikapitals on behalf of Mr Antonov and records Mr Kovtun's agreement to ensure that the ownership of the shares was registered in his name but to manage and dispose of the shares only pursuant to assignments and orders of Mr Antonov.

66. If there were any doubt about Mr Antonov's interest in Multikapitals, it is dispelled by the consortium bid submitted to the Government of Montenegro. The bid document stated, first of all, that Mr Antonov had the absolute ownership and management control of the Bank and also that Mr Antonov "is the founder and the owner of the company SIA Multikapitals". The document went on to present as an advantage of the bid the fact that there was no conflict of interest between the two members of the consortium, as both were controlled by Mr Antonov.

The Bank's loss

67. The Bank has not made any claim for damages in relation to the €7m loan. In my view, it is correct not to do so as that loan was plainly a sham and has not caused the Bank any loss. Once advanced, the sum of €7m was immediately repaid to the Bank supposedly as remuneration for cooperating with the bid and providing trust services. However, the cooperation had already been given long before the agreement to pay the remuneration was made and no trust services or none of any significance were provided. Nor was there any commercial purpose for lending €7m to Multikapitals. The true purpose of the arrangements was to bolster the Bank's accounts by booking a bogus profit of €7m in the 2009 financial year.

68. The €2.5m loan, on the other hand, has resulted in a loss to the Bank of €1,000,852, which is the amount outstanding after giving credit for repayments received. I am satisfied that this loss was caused by Mr Antonov's breach of his obligations under Article 169 of the Commercial Law to act in an honest and careful manner as a member of the Bank's Supervisory Council and that he is also liable for the Bank's loss under Article 1779 of the Civil Code.

V. THE CLARKSON TRANSACTION

69. On 28 October 2009 the Bank agreed to make a loan of €15m to Clarkson Limited, a Dominican company, to finance the acquisition of 100% of the shares of a Russian company called MGSS Nedvizhimost ("MGSS"). The loan was repayable by three

annual payments of €5m, with the final repayment to be made on 28 October 2012. As security for the loan, MGSS granted to the Bank a pledge over two properties at 7 Starokoptevsky Lane, Moscow.

70. The loan money was advanced to Clarkson on 30 October 2009, although the pledge over the properties was not registered until 28 January 2010. Shortly before the first repayment of principal fell due on 15 October 2010, the Bank agreed to postpone the repayment date by a year until 15 October 2011. In October 2011 a further request was made to extend the time for repayment of principal, to which the Bank again agreed.

71. No repayments were made by Clarkson when they fell due in 2012. The insolvency administrator of the Bank has brought proceedings in Moscow to enforce the Bank's pledge and obtain an order for sale of the properties. That claim has been strenuously resisted by MGSS. In addition, the parent company of MGSS, a Russian company called Mezhgorsvyazstroy LLC, which transferred the properties to MGSS shortly before the properties were pledged to the Bank, has brought proceedings challenging the validity of that transfer. As a result of this litigation, the Bank has to date been unable to sell the properties. Even if the properties could be sold, it is clear that the proceeds would fall far short of the outstanding amount of the loan, as the initial sale value attributed to the properties in a decision of the Moscow Court dated 19 October 2015 was 208,213,500 Rubles, which is equivalent to approximately €2.7m.

Disadvantageous nature of the transaction

72. It is plain that the loan made to Clarkson was not an arm's length transaction and was contrary to the Bank's interests. In particular:

    i) Clarkson was a newly formed offshore company which had been in existence for less than three weeks when the loan agreement was made and which had no business or assets. Clarkson therefore had no standing as a borrower and no resources which would enable it to repay the loan.

    ii) The only security for the loan was the pledge granted by MGSS, which was not registered until almost three months after the loan money had already been advanced. The Bank did not obtain any guarantee from the beneficial owner of Clarkson nor any other form of recourse if the loan was not repaid. Nor was any indication given of how Clarkson would be able to meet its obligations to repay the loan.

    iii) The Bank was provided with a valuation of the properties dated 14 October 2009 prepared by a Russian company called Masterskaya Ocenki, which valued the properties at the Ruble equivalent of US$32,283,000. Masterskaya Ocenki was recommended to the Bank by Mr Antonov's father in his capacity as president of Convers Group. According to the expert evidence of Mr Millard, which I again accept as reliable, the true value of the properties in October 2009 was approximately US$2.978m. For reasons explained in detail by Mr Millard in his report, the value attributed to the properties by Masterskaya Ocenki was far in excess of their actual value and was one which no reasonable valuer acting honestly could possibly have supported.

iv) The two substantial extensions of the loan subsequently granted were agreed by the Bank without any serious consideration or commercial justification. That behaviour in itself suggests that someone able to influence the Bank's decisions had an interest in the loan.

The fraudulent share purchase agreement

73. When the loan money was released on 30 October 2009, Clarkson immediately paid a sum of €9m to a Cypriot company called Utrania Ltd, which was entirely unconnected with the transaction. This sum was repaid to Clarkson on 12 November 2009, on which date the whole sum of €15m was transferred to a company incorporated in the British Virgin Islands called Volarius Investments Inc. To explain this payment, the Bank was provided with a share purchase agreement between Clarkson and Volarius dated 12 November 2009 under which Clarkson agreed to purchase from Volarius 99.99% of the share capital of MGSS for a sum of €23m. Of this sum, €8m was said to have already been received from Clarkson by the time of signing the agreement, with the balance of €15m payable within seven days. There is no evidence, however, that the sum of €8m had in fact been paid by Clarkson nor of any source of funds from which Clarkson could have made such a payment. More fundamentally, Volarius did not own the share capital of MGSS, which was a wholly owned subsidiary of Mezhgorsvyazstroy. The plain inference is that the share purchase agreement was a sham devised in order to assist in the diversion of the money to an offshore company.

Mr Antonov's interest in the transaction

74. Documents put in evidence by the Bank clearly demonstrate that Mezhgorsvyazstroy, and hence MGSS, formed part of the Convers Group owned and controlled by Mr Antonov. Amongst other documents obtained pursuant to the search order:

i) Documents attached to an email sent to Mr Antonov on 11 September 2009 included an executed agreement dated 9 June 2009 by which Convers Group, represented by Mr Antonov, had purchased from AEON, represented by Mr Trotsenko, 100% of the share capital of Nexus Investments Limited, which in turn owned 99.72% of the share capital of Mezhgorsvyazstroy.

ii) On 13 November 2009 Mr Antonov's father forwarded to him an email which showed that Consultant (the recipient of the Krapivny loan) owned a 100% interest in Nexus, which in turn owned a 99.72% interest in Mezhgorsvyazstroy.

iii) A document describing Convers Group attached to an email sent to Mr Antonov on 11 May 2010 stated that "the ultimate beneficiary of the Group is Mr Vladimir Antonov" and included a chart of the Group with Mr Antonov at its centre which shows him as "ultimate beneficiary" of Mezhgorsvyazstroy.

75. The Bank was told that the beneficial owner of Clarkson was a Mr Jarcevs. Mr Jarcevs had an email address at Investbank, which was owned by Mr Antonov. Moreover, documentary evidence clearly shows that the true beneficial owner of Clarkson was Mr Antonov himself. For example:

i) An email forwarded to Mr Antonov on 20 January 2012 requested his approval to transfer the management of several companies, described in the email as "VA's companies" and as "Vladimir's companies", to his lawyers. One of the companies named in the email was Clarkson. Mr Antonov replied to say that his father was dealing with the matter.

ii) On 7 November 2012 Mr Antonov sent an email which included instructions to appoint his father as a director of Clarkson. Further emails sent on the same day show this instruction being followed up.

iii) An email sent to Mr Antonov on 19 November 2012 on the subject of Clarkson attached an invoice for the prolongation of the company and asked Mr Antonov to sign a declaration form (which was also attached) confirming his beneficial ownership of the company.

Conclusion

76. The inescapable conclusion from the evidence is that the loan made to Clarkson was a transaction procured by Mr Antonov as a dishonest means of extracting €15m from the Bank for his own financial gain. The total loss caused to the Bank (including costs incurred in seeking to enforce its security over the properties) is €15,000,000 and US$24,172. I am satisfied that Mr Antonov is liable for this loss under Article 169 of Commercial Law and Article 1779 of the Civil Code.

VI. THE VTB BANK TRANSACTION

77. In a letter dated 5 February 2010, the Bank gave an undertaking to its regulator, the FCMC, that it would not make any further loans to borrowers who were not resident in Latvia. On the strength of that undertaking, the FCMC discontinued an investigation of the Bank. In order to evade this restriction, however, arrangements were made to deposit cash with two correspondent banks which agreed to make loans to non-resident entities at the direction of the Bank. Mr Antonov admitted at a meeting with representatives of the FCMC held by video link on 18 November 2011, just before the Bank's operations were suspended, that these arrangements were made on his initiative. He again admitted that he was responsible for these arrangements when he was interviewed as part of a criminal investigation on 27 June 2013.

78. One of the correspondent banks used for this purpose was VTB Bank (Austria) AG. On 25 July 2011 the Bank entered into a trust agreement with VTB Bank under which VTB Bank agreed to accept cash deposits to be held on trust for the Bank, which could then be used to make loans to borrowers as instructed by the Bank.

79. On 9 August 2011, the Bank instructed VTB Bank to make such a loan in the sum of €20m to a Swiss company called Multiasset SA. The loan was to be repayable on 11 November 2011 and was to carry interest at a rate of 1.8% per annum. VTB Bank complied with the Bank's instruction. On 11 August 2011 the Bank paid €20m into its account with VTB Bank and on the same day the following further transfers took place:

i) VTB Bank advanced the sum of €20m to Multiasset by transferring that sum to an account of Multiasset at Rietumu Banka in Latvia;

ii) The sum of €20m was transferred from that account to an account of Multiasset at the Bank;

iii) From that account the sum of €19,948,888 was transferred to an account at the Bank in the name of Taurus Asset Management Fund Limited ("Taurus");

iv) Taurus transferred the same amount to an account at the Bank in the name of Overseas Unitrade Corp ("Overseas Unitrade"); and

v) Overseas Unitrade transferred the sum of €20m to an account at another bank in the name of Realityme Investments Limited "Realityme").

80. In November 2011, just before the loan was due to be repaid, the repayment date was postponed on the Bank's instruction until 10 February 2012. On 18 November 2011, however, after an insolvency administrator had been appointed to Snoras, VTB Bank terminated its trust agreement with the Bank and exercised its right to assign the Multiasset loan to the Bank while retaining the sum of €20m which the Bank had deposited with it. Multiasset has not repaid, and has no assets from which to repay the Bank, which has accordingly lost the sum of €2m.

Mr Antonov's interest in the transaction

81. This transaction was plainly not undertaken in the interests of the Bank. No attempt was made to assess the suitability of Multiasset as a borrower. There was no commercial reason to make an unsecured loan of €20m at an interest rate of 1.8% to a borrower without any proven financial standing, let alone to do so in defiance of an undertaking given by the Bank to its regulator not to lend to non-resident entities. There is direct evidence in emails obtained pursuant to the search order that Mr Antonov was involved in the transaction and that his approval for it was sought. There is also unequivocal evidence that each of the entities in the chain along which the money was transferred was beneficially owned and controlled by Mr Antonov himself. In an affidavit dated 18 March 2013 made by Mr Antonov in proceedings brought against him in England by Snoras, Mr Antonov listed a number of companies, including Multiasset, Taurus, Overseas Unitrade and Realityme,[1] and stated:

> "It is possible that these companies could be owned by me … However, I do not know the ownership structure of these companies and whether in fact I do own them. This is because, if I do own them, they will have been incorporated by those working at Snoras Bank and [the Bank] and not by me personally."

Despite Mr Antonov's uncertainty, the documentary evidence conclusively shows that Mr Antonov did indeed own each of these companies.

82. The Know Your Customer documentation relating to Multiasset held by the Bank indicates that Multiasset was a subsidiary of Multikapitals and that its authorised representative was Mr Kovtun. As already mentioned, there is evidence that Multikapitals was beneficially owned and controlled by Mr Antonov. There is also

[1] Other companies in the list included Spilen Limited, mentioned at paragraph 48 and following above, and Utrania Limited, mentioned at paragraph 73 above.

evidence which separately shows that he owned and controlled Multiasset. For example, a structure chart of the Convers Group which Mr Antonov himself attached to an email dated 2 December 2010 showed Multiasset as part of the group and included a description of its activities. Emails obtained pursuant to the search order refer to Mr Antonov receiving dividends from Multiasset. In one email from Mr Kovtun to Mr Antonov dated 8 October 2009, Mr Kovtun described Multiasset's premises in Geneva and sought approval from Mr Antonov for renting additional office space.

83. There is equally clear evidence that Taurus and Overseas Unitrade were companies beneficially owned and controlled by Mr Antonov. For example, email correspondence in December 2010 refers to Multiasset subscribing for shares in Taurus. Furthermore, a Know Your Client form for Taurus dated 13 March 2007 held by the Bank identified its authorised representative as Mr Kovtun and its true beneficial owner as Mr Antonov. Similarly, a Know Your Customer form for Overseas Unitrade dated 29 September 2009 identified the owner of its shares as Mr Alfred Brewster and the beneficial owner of the company as Mr Antonov.

84. As for Realityme, an email dated 12 August 2011 sent by an employee of the Bank to Mr Martins Zalans, the chief legal counsel of the Convers Group, attached a draft loan agreement between Overseas Unitrade and Realityme. The draft agreement provided for Mr Antonov to sign it both on behalf of Overseas Unitrade as the lender and also on behalf of Realityme as the borrower. Further evidence of Mr Antonov's control of Realityme is provided by a letter dated 30 August 2011 from Mr Antonov on behalf of Realityme to Bank Syz in Switzerland, giving instructions to close the account of Realityme opened with Bank Syz & Co S.A.

Conclusion

85. It has been clearly shown that this transaction was another fraud by which Mr Antonov removed money from the Bank for his own use. He is again liable under Article 169 of the Commercial Law and Article 1779 of the Civil Code for the Bank's loss, which comprises the amount of €20m advanced to Multiasset plus associated costs and expenses of €55,902.

VII. THE EWUB TRANSACTION

86. The next claim relates to a similar transaction involving a further loan of €12m made to Multiasset, this time through a different correspondent bank, East West United Bank ("EWUB"), which is incorporated in Luxembourg.

87. On 23 February 2011, EWUB granted a loan facility and advanced the sum of €10m to Multiasset. The loan was repayable on 23 May 2011 and carried interest at a rate of 3% per annum. On the same date the Bank pledged the sum of €10m to EWUB which was held in its account with EWUB as security for the loan.

88. On receipt of the loan, Multiasset immediately transferred the sum of €9.95m to Taurus, which paid that sum to an account of Convers Sports Initiatives plc at Snoras Bank. Convers Sports, like Multiasset and Taurus, was part of the Convers Group of companies beneficially owned and controlled by Mr Antonov. In connection with these transfers, the following documents were executed:

i) A subscription agreement dated 23 February 2011, which provided for Multiasset to subscribe for shares in a fund operated by Taurus in return for paying to Taurus the sum of €9.95m; and

ii) A loan agreement also dated 23 February 2011, by which Taurus agreed to lend to Convers Sports the sum of €9.95m.

89. Emails obtained pursuant to the search order show that Mr Antonov was closely involved in the arrangements for the loan to Multiasset and the further money transfers.

90. On 13 April 2011, the amount of the loan was increased by €2m to €12m, again secured by funds held in the Bank's account with EWUB. EWUB advanced the sum of €2m to Multiasset, which transferred €1.99m to Taurus. Taurus in turn transferred the sum of €1.99m to the account of Convers Sports at the Bank, from which a payment of €740,000 was made to Multikapitals. A share subscription agreement and loan agreement, both dated 13 April 2011 and similar to those dated 23 February 2011, were executed in connection with these transfers.

91. On 23 May 2011, EWUB agreed to extend the repayment date of the loan to Multiasset, upon the Bank pledging the sum of €12m to EWUB for an extended term until 23 August 2011. On that date, a further extension of the repayment date and the Bank's pledge was granted until 23 November 2011.

92. On 23 November 2011, EWUB gave notice to the Bank that Multiasset had defaulted on its obligation to repay the loan and that it would therefore exercise its right to retain the money held in the Bank's account with EWUB as security for the loan. In consequence, the Bank has lost the sum of €12m plus associated costs of €18,477.

Conclusion

93. It is plain that this transaction was another fraud perpetrated by Mr Antonov and that he is liable for the Bank's loss pursuant to Article 169 of the Commercial Law and Article 1779 of the Civil Code. I am also satisfied that the Bank is not prevented from obtaining judgment for this sum by the fact that it has made a claim for compensation from Mr Antonov in criminal proceedings in Latvia, in circumstances where that claim has not yet been determined and no recovery has to date been made from Mr Antonov.

94. A claim relating to a further transaction by which EWUB made a loan of €15m to a company called Helvetia Financial Products S.A has not been pursued by the Bank.

VIII. THE DAVITIASHVILI TRANSACTION

95. The final claim relates to a loan of US$10m which the Bank agreed on 17 June 2008 to make to Mr Davitiashvili, a Russian national who was closely associated to Mr Antonov. The loan was supposed to be secured by mortgages over two properties: (i) an office building located at Smolenskaya Naberezhnaya, Moscow ("the Smolenskaya property"); and (ii) a warehouse located at Zvezdnaya 7, Balashika, Moscow ("the Zvezdnaya property"). Neither property was owned by Mr Davitiashvili. The owner of the Smolenskaya property was a Russian company called OOO Tetra and the

owner of the Zvezdnaya property was a Russian company called Konkurent+. Both Tetra and Konkurent+ were described as companies in the ConversInvest Group, which was part of the Convers Group.

96. Mr Davitiashvili was at the time the General Director of ConversInvest and had a consultancy agreement with ConversInvest which provided for him to be paid the equivalent of US$140,000 per month. This corresponded to the amount of his annual income, as represented to the Bank. The Bank was also provided with an agency agreement dated 15 September 2007 between Mr Davitiashvili and a Cypriot company called Panatrones Holdings Limited under which, in return for services in connection with a property development, Mr Davitiashvili was to receive the sum of US$25m.

97. The Bank agreed to release the first tranche of the loan in the sum of US$4.85m before any security over the properties had yet been provided and when its only security consisted in a pledge over the shares of Tetra. The money was paid to Mr Davitiashvili on 20 June 2008. The second tranche of the loan in the sum of US$5.15m was to be released after mortgages over the properties had been registered. On 31 July 2008, however, the Bank's management board approved an amendment to the loan which permitted the money to be released upon the delivery for registration (but not the actual registration) of the mortgage documents. The sum of US$5.15m was advanced to Mr Davitiashvili on 6 August 2008.

98. On 29 August 2008, the Bank's application to register its mortgage over the Smolenskaya property was rejected on the basis that Tetra had never obtained valid title to the property. No request was made for any alternative security, however, nor was any other action taken by the Bank.

99. On 9 October 2008, after Mr Davitiashvili had failed to pay interest due on the loan, the Bank varied the terms of the loan so as to extend the date of the first interest payment until 15 January 2009 and to defer contractual penalties arising from the default. On 27 January 2009 the Bank's board further decided to amend the loan so as to remove the requirement for any security to be provided over the Smolenskaya property. Then, after Mr Davitiashvili had failed to pay interest due on 15 March 2009 and to make payments of principal and interest due on 15 June 2009, the Bank amended the loan on 26 June 2009 so as to capitalise the overdue interest and defer any repayment obligations until January 2010.

100. On 30 March 2010 the Bank finally served a notice of default on Mr Davitiashvili and thereafter brought proceedings against him. The Bank obtained a default judgment on 8 June 2010 but took no steps to enforce it.

101. On 15 September 2011 Mr Ivanovich Korotkov, who had purportedly approved the grant of the mortgage over the Zvezdnaya property on behalf of Konkurent+, obtained a judgment from a court in Moscow declaring that the mortgage had not been properly authorised and was void. Subsequent appeals against that decision were dismissed. On 14 January 2013, Tetra was removed from the Russian State Registry of legal entities as a non-operating/non-existent company. Accordingly, any possibility of enforcing the pledge over the shares of Tetra also disappeared.

Disadvantageous nature of the transaction

102. It is clear that the loan made to Mr Davitiashvili was not an arm's length transaction and that, in advancing the loan without ensuring there was any adequate security in place – as well as in subsequently granting to the borrower numerous significant indulgences, the transaction was handled in a way which was contrary to the Bank's interests. I am satisfied that the Bank's approach was the result of influence exercised by Mr Antonov over the Bank's management and that, without Mr Antonov's influence, the loan would not have been made. I draw that conclusion from the combination of (i) Mr Antonov's close relationship with Mr Davitiashvili, (ii) the uncommercial way in which the transaction was conducted and (iii) control which Mr Antonov exercised over the affairs of the Bank. There is, in addition, direct evidence from a member of the Bank's management board, Mr Prieditis, when he was questioned about this loan, that Mr Antonov exerted pressure to get the loan made to Mr Davitiashvili.

Conclusion

103. I am satisfied that, in bringing such pressure and influence to bear for the benefit of someone closely associated with him, Mr Antonov was acting in a way which he must have realised was not in the Bank's interests and was acting in bad faith. He is accordingly liable under Article 168 of the Commercial Law and Article 1779 of the Civil Code for the loss caused to the Bank. That loss consists of the amount of US$10m advanced to Mr Davitiashvili plus legal fees of US$20,034 incurred in the unsuccessful attempts made to enforce the pledged security.

SUMS RECOVERABLE

104. I have considered the eight transactions which are the subject of the Bank's claims against Mr Antonov separately. In each case the evidence shows that Mr Antonov caused the Bank to advance to a borrower closely connected to himself money which has not been repaid or recovered. In each case I have concluded that Mr Antonov acted dishonestly and in breach of duties owed to the Bank. My conclusions in relation to each of the transactions are further reinforced when the evidence is viewed as a whole. Looking at the transactions, a clear pattern emerges of Mr Antonov subordinating the Bank's interests to his own and repeatedly abusing his position of influence over the Bank's affairs for his own private advantage.

105. I have identified above the losses caused by Mr Antonov's wrongdoing for which he is liable to compensate the Bank. In total, they amount to €60,499,567 and US$30,762,458.

106. In addition to these direct losses, the Bank is in principle entitled pursuant to Article 1784 of the Latvian Civil Code to recover as damages profits that would have been earned if the money had not been deployed in these transactions and had instead been used for other purposes (for example, lending to other customers). No evidence has been adduced, however, to prove the amount of any such lost profits. Based on the opinion of Mr Vonsovics, the Bank has submitted that in these circumstances it is presumed by Article 1788 of the Civil Code to have suffered lost profits in the amount of statutory interest which is set by Article 1765 at 6% per annum.

107. Article 1788 (as translated) provides:

> "When a monetary debt is not paid by the due date, the creditor may demand only the interest set by law in compensation for the lost profits, unless the creditor is able to definitely prove that the losses suffered exceed such sum of interest."

Although Mr Vonsovics asserts that this provision is applicable in the present case, according to its express wording it applies only when a debt is not paid by the due date, which is not the basis of the Bank's claim. In any case, the effect of Article 1788, where it applies, seems to me to be simply to limit the creditor to claiming interest on the money of which it has been deprived, unless it can prove that it has lost profits in a greater amount than the interest which it is entitled to recover. Since the Bank has not proved what profits it has lost, I proceed on the basis that its only claim for loss of use of the money is a claim for interest.

108. It is clear that interest is recoverable under Latvian law, as it would be under the Senior Courts Act 1981. I invite submissions on whether the rate of interest which the court should award is determined by Latvian law (as the law applicable to the Bank's claims) or by English law (as the law of the forum), as to which see Dicey, Morris & Collins, *The Conflict of Laws* (15th Edn, 2015) rule 20. I also invite the Bank to prepare a calculation of the amount of interest payable on its damages.