**IN THE COURT OF APPEAL (CIVIL DIVISION)** **Claim no. CA-2026-000091**

**ON APPEAL FROM THE HIGH COURT**
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**
**COMMERCIAL COURT (KBD)**

**Henshaw J [2025] EWHC 3111 (Comm)**

**BETWEEN:**

**FH HOLDING MOSCOW LIMITED**
**(a company incorporated in the Republic of Cyprus)**

**Applicant/Claimant**

**-and-**

**(1) AO UNICREDIT BANK**
**(a company incorporated in the Russian Federation)**
**(2) UNICREDIT SPA**
**(a company incorporated in the Italian Republic)**

**Respondents/Defendants**

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**APPLICATION TO ADMIT FRESH EVIDENCE UNDER CPR 52.21(2)(b)**
**Applicant's skeleton argument**

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References in the form [**CB/XX**] and [**SB/XX**] are to page numbers in the Core Bundle and Supplementary Bundle filed in support of the permission to appeal application.

## (1) Introduction

1. On 16 January 2026 the Applicant ("**FHM**") applied to the Court of Appeal for permission to appeal (the "**PTA Application**") the judgment of Henshaw J of 25 November 2025 [**CB/91**] (the "**Judgment**") and his accompanying Order of 22 December 2025 [**CB/88**].

2. In support of its PTA Application, and if permission is granted, its appeal, FHM applies for permission to admit new evidence under CPR r.52.21(2)(b) for the reasons set out in this skeleton argument.

## (2) Factual and procedural background

3. The factual and procedural background is summarised at §§2-18 of FHM's PTA skeleton argument dated and filed on 16 January 2023. For brevity, it is not repeated.

4. Abbreviations follow those in the PTA skeleton, including: the First Respondent – "**AO**"; the Second Respondent – "**SPA**"; the Facility Agreement of 2 November 2018 – "**FA**"; the arbitration agreement at FA cl. 42 – "**Arbitration Agreement**"; arbitration under the rules of the Vienna International Arbitral Centre – "**VIAC Arbitration**"; and the foreclosure proceedings commenced by AO against FHM in Moscow which is the object of FHM's anti-suit injunction claim – the "**Moscow Proceedings**".

## (3) The new evidence and its relevance to FHM's appeal

5. The new evidence is the brief expert report of Victor Prokofiev dated 22 January 2026 (the "**Prokofiev Report**") [**SB/312-321**] on the translation of the phrase "arbitration court" in cl. 9.1.5(a) [**CB/184**] of the English version of the Mortgage Agreement of 6 November 2018 (the "**MA**"), noting that per MA cl. 13.5 [**CB/187**], the Russian version is authoritative. The Russian version of MA cl. 9.1.5(a), which Mr Prokofiev translates, is at [**CB/194**]. Mr Prokofiev also makes reference to MA cl. 21, which is at [**CB/188**] (English) and [**CB/201**] (Russian).

6. The Prokofiev Report is relevant to Ground 1 of FHM's Grounds of Appeal: that Henshaw J erred in finding that the Moscow Proceedings are not in breach of the Arbitration Agreement. Specifically, it relates to the learned Judge's finding in §59 of the Judgment that the translated phrase "arbitration court" in MA cl. 9.1.5(a) means "arbitral tribunal" in a sense that covers a VIAC Tribunal.

7. The Prokofiev Report confirms that the Russian (original) of MA cl.9.1.5(a) uses the phrase "арбитражного суда" and that this is a reference to the Russian commercial court, and not to a private arbitration institute, such as a VIAC Tribunal.

## (4) Legal framework

8. The Court of Appeal has a discretion to admit new evidence on appeal under CPR r.52.21(2)(b), which provides that: "*(2) Unless it orders otherwise, the appeal court will not receive (a) oral evidence; or (b) evidence which was not before the lower court*".

9. The criteria for the exercise of the Court's discretion under CPR r.52.21(2)(b) are the well-established principles set out in Ladd v Marshall [1954] 1 WLR 1489 (p.1491) as follows:

9.1. **Criterion 1**: "*it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial*".

9.2. **Criterion 2**: "*the evidence must be such that, if given, it would probably have an important influence on the result of the case, though it need not be decisive*".

9.3. **Criterion 3**: "*the evidence must be such as is presumably to be believed, or in other words, it must be apparently credible, though it need not be incontrovertible*".

## (5) Criterion 1 – reasonable diligence

10. For the following reasons, FHM's position is that the Prokofiev Report could not have been obtained with reasonable diligence for use at the time of the hearing (13 November 2025).[1]

11. Henshaw J based his finding that the phrase "arbitration court" in MA cl. 9.1.5(a) means "arbitral tribunal" in a sense that covers a VIAC Tribunal, on his conclusion that the parties' witness statements (specifically of their respective Russian lawyers in the Moscow Proceedings, Elena Trusova (for the Respondents) and Denis Lim (for FHM) had proceeded on the basis that the phrase "arbitration court" did cover an arbitral tribunal **in a sense other than meaning an arbitrazh commercial court**. That was wrong. Neither party addressed the linguistic meaning of "arbitration court" in their evidence. The sequence of relevant evidence was as follows.

12. In her first witness statement ("**Trusova 1**") Ms Trusova analysed the meaning of MA cl. 9.1.5 at §26 [**SB/246**], as follows: "*I note that, pursuant to sub-clause 9.1.5 AO UniCredit was not obliged, before exercising its right to levy execution in a judicial procedure, to "take any action or obtain a decision of any court, arbitration court or state authority against the Mortgagor". In other words, the Mortgage Agreement expressly allowed AO UniCredit to proceed straight to seeking to levy execution in the Russian courts, and it did not require AO UniCredit to commence any other proceedings as a prior step".* There is no mention here of the phrase "arbitration court" and its meaning; neither is there any gloss of the text of MA cl. 9.1.5(a) – it is simply cited on the basis that its meaning *as a whole* is assumed to be self-evident.

[1] That litigation is to be conducted with a "cards on the table" approach is a well-known procedural principle: FHM were entitled to know the case they had to meet before the time to submit expert evidence was closed.

13. At §36-37 [**SB/251-252**], Ms Trusova §36 cites the English translations of MA cl. 9.1.1, 9.1.3, 9.1.5, 21.1 and then at §37 asserts: "*Therefore, under the Mortgage Agreement, AO UniCredit was entitled to proceed to levy execution on the Mortgaged Property without first obtaining a decision from an arbitral tribunal*". There is no attempt here, either, to link that conclusion to the phrase "arbitration court" in MA cl. 9.1.5(a); rather, the conclusion is based on a structural analysis of MA cl. 9 read together with MA cl. 21 (i.e. the clauses cited at §36).

14. In his responsive evidence, being his second statement ("**Lim 2**"), Mr Lim at §14-35 [**SB/271-275**] disputed the argument at Trusova 1 §26 that MA cl. 9.1.5 entitled AO to execute the mortgage without commencing any other proceedings as a prior step. He did not engage with the meaning of "arbitration court" because he did not understand Ms Trusova to be relying on that phrase (including by reference to the Russian language original) as meaning anything other than an arbitrazh commercial court. Instead, Mr Lim analysed how MA cl. 9 as a whole (i.e. structurally) operates when interpreted alongside MA cl. 21 (the jurisdiction clause) – he took that approach in response because it follows the structural (rather than linguistic) nature of Ms Trusova's analysis.

15. In her second statement ("**Trusova 2**") Ms Trusova says nothing more about the meaning of MA cl. 9.1.5 (and, again, nothing about the meaning of the phrase "arbitration court" or "арбитражного суда"), in support of her argument, save to note that she disagrees with Mr Lim's interpretation (Trusova 2 §10 [**SB/288**]).

16. When reading Trusova 1 and 2 and Lim 2, it is **fundamentally important** to read those documents in the **context** that it would have been obvious to native Russian speakers (and particularly Russian qualified *lawyers*) that "arbitration court"/ "арбитражного суда" at MA cl. 9.1.5(a) could only mean "arbitrazh commercial court". This is clear from the Prokofiev Report (§2.1(6) [**SB/316-317**]. Indeed, it is reasonably clear that this is why Ms Trusova made no attempt to overtly and clearly suggest that she understood the term "arbitration court"/ "арбитражного суда" at MA cl. 9.1.5(a) to mean anything other than an arbitrazh commercial court: for had she done so, Mr Lim would easily have rebutted that argument based on the plain language of the Russian text. The suggestion that Mr Lim, as a very experienced Russian lawyer, had somehow agreed with Ms Trusova that "arbitration court" in MA cl. 9.1.5(a) meant "arbitral tribunal" in a sense that included a VIAC Tribunal is simply absurd.

17. That AO and SPA also understood "arbitration court" to mean arbitrazh commercial court is clear from their pleadings in the Moscow Proceedings, all of which are addressed to "To the Arbitration Court of the Moscow Region" [**SB/481**]; e.g. AO's own statement of claim in the Moscow Proceedings states ~~(as translated by the Respondents *themselves* for these proceedings)~~[2] that "*According to Art. 38 of the Arbitration Procedure Code of the Russian Federation, claims concerning rights to real property* ***shall be brought before the Arbitration court*** *at the location of such property … Accordingly, this Statement of Claim is to be filed with and considered by the Arbitration Court of the Moscow Region"* (emphasis added) [**SB/486-487**] exhibited to the first statement of Adam Greaves. FHM pointed this out to Henshaw J at the hearing (Transcript p. 62, lines 1-2) [**SB/304**].

18. The Respondents only revealed their hand on the construction of "arbitration court" in MA cl 9.1.5(a) when they filed their skeleton on 10 November 2025.[3] By this time, it was too late for FHM to adduce expert evidence about the correct meaning of ""арбитражного суда" in the Russian original version of MA cl. 9.1.5(a). In any event, given that it was the Respondents who were relying on MA cl. 9.1.5(a) in support of their case and not FHM, it was incumbent on them to adduce expert evidence that the phrase meant what was being asserted in their skeleton argument and not the other way around.

19. **In summary**, FHM's position is that: (1) it was not clearly flagged in Ms Trusova's evidence that she understood "arbitration court" in MA cl. 9.1.5(a) to mean anything other than arbitrazh commercial court; (2) Mr Lim had certainly not agreed that "arbitration court" in MA cl. 9.1.5(a) meant anything other than arbitrazh commercial court; and (3) it was only clear that AO and SPA were going to run that argument in their skeleton argument, by which time it was too late for FHM to adduce new expert evidence.

20. For completeness, Henshaw J was also (inter alia) wrong in the following aspect of his reasoning for refusing permission to appeal on Gound 1 (in form N460 [**CB/124**]): "*On a point of detail, C's proposed reliance on the Russian text of cl. 9.1.5(a) (a) is my view not open to it for*

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[2] Correction: the translation into English was done by FHM's legal representatives in the Moscow Proceedings using machine translation.

[3] See §9(a): "*FHM advances a mistaken construction of the parties' contractual arrangements which, in particular, does not take into account the express terms of the Mortgage Agreement permitting UniCredit Russia to bring proceedings to foreclose without any prior decision from a* ***court or tribunal***" (emphasis added) [**SB/555**]. See likewise §§15(c), 16, 17, 21(b), 22, 23, 36 of the Respondent's skeleton argument below. The Respondents' skeleton was served on 10 November 2025, after the hearing bundle and FHM's skeleton argument had been filed on 7 November 2025.

*the reasons given in [Judgment §59], (b) was not argued below even orally, (c) conflicts with the parties' agreement (reflected at p.432 of the hearing bundle before me) to rely on the English text for the purpose of the hearing and (d) does not address the other points made in [Judgment §§57-60] regarding clause 9 as a whole"*. As to these reasons:

20.1. As to (a), the Judge's reasons at Judgement §59 are addressed at §§10-19 above.

20.2. As to (b), the point was argued orally below (see Transcript p.57 line 22 – p.63 line 17 [**SB/303-304**] – FHM's submissions; Transcript p. 112 line 4 – p. 116 line 13 [**SB/305-306**] – the Respondents' submissions; and Transcript p.166 line 20 – p.170 line 20 [**SB/310-311**] – FHM's reply).

20.3. As to (c), p. 432 of the hearing bundle below was a placeholder for the exhibit in the first statement of Adam Greaves, FHM's solicitor. The placeholder read: "*Mortgage Agreement (Russian Version) Pages 391-441 of Exhibit AG1 are omitted as the English Version will be relied upon for the purposes of the hearing"*. This was done to reduce the page numbers in the hearing bundle and on the basis that (for the reasons explained above) at the time the hearing bundle was filed (7 November 2025) FHM did not understand the linguistic meaning of "arbitration court"/"арбитражного суда" at MA cl. 9.1.5(a) to be in issue.[4]

20.4. As to (d), this is not relevant to Criterion 1. To the extent it is relevant to Criterion 2 it is addressed below.

## (6) Criterion 2 – important influence on the result of the case

21. The new evidence on the meaning of "arbitration court" at MA cl. 9.1.5(a) would (at minimum) "probably" have an important influence on the result of the case, as the Judge's central reason for holding that there was not a breach of the AA was that the parties had "legislated" for that through MA cl. 9 (Judgment §55), in reliance on cl. 9.1.1, 9.1.2, 9.1.3, and cl. 9.1.5 (Judgment §59).

[4] See correspondence of 4 November 2025 between Mohamed Sacranie, Associate and A&O Sherman, and Sophie Francis, paralegal at Branch Austin McCormick; and in particular margin comments on the Russian version of the MA in the draft index [**SB/322-329; in particular 328**].

22. The Judge went on to hold (Judgment §60), that regardless of the "potential controversy" over the meaning of "arbitration court" in MA cl. 9.1.5(a),[5] that this clause still "lends support" to the Judge's interpretation of MA cl. 9 as a whole. With respect to the learned Judge, FHM disputes that for the reasons at §§25-41 of its permission to appeal skeleton argument of 16 January 2025, based on the analysis of the relevant clause of MA cl. 9. Indeed, the fact that MA cl. 9.1.5(a) referred only to court and other state institutions, is a powerful reason for concluding that selection of words "lends support" to the conclusion that MA cl. 9 as a whole was not intended to apply to disputes that were required by the Arbitration Agreement to be referred to a VIAC Tribunal.

**(7) Criterion 3 – evidence presumably to be believed**

23. Victor Prokofiev is a credible expert for the reasons he gives in his report, and as evidenced in his CV [**SB/319-321**].

**(8) Conclusion**

24. The Court of Appeal is respectfully invited to allow the application for the reasons above.

23 January 2026[6]

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[5] The "potential controversy" again makes evident that the point was argued orally below.
[6] Amended on 28 January 2026 only: (1) to update the relevant references to the Supplementary Bundle, with the permission of Master Bancroft-Rimmer by Order of 26 January 2026; and (2) to withdraw the factual assertion at §17, as explained in the correction at footnote 2; and further amended on 18 March 2026 only to update reference to the final CB and SB.