



Neutral Citation Number: [2022] EWHC 2676 (Ch)

Case No: BR-2021-000044

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**INSOLVENCY AND COMPANIES LIST (ChD)**

Rolls Building, Royal Courts of Justice  
Fetter Lane, London, EC4A 1NL

Date: 27/10/2022

**Before:**

**MRS JUSTICE FALK DBE**

**Between:**

**LYUBOV KIREEVA**  
**(as bankruptcy trustee of Georgy Bedzhamov)**

**Applicant**

**- and -**

**GEORGY BEDZHAMOV**

**Respondent**

**Stephen Davies KC & William Willson** (instructed by **DCQ Legal**) for the **Applicant**  
**Justin Fenwick KC & Mark Cullen** (instructed by **Greenberg Traurig LLP**) for the  
**Respondent**

Hearing dates: 5 & 6 October 2022

**APPROVED JUDGMENT**

**This judgment was handed down remotely at 10.30am on 27 October 2022 by circulation to the parties or their representatives by email and by release to The National Archives.**

## **Mrs Justice Falk:**

### **Introduction**

1. This decision relates to the application by Mr Bedzhamov's Russian trustee in bankruptcy, Ms Lyubov Kireeva (the "Trustee"), for common law recognition in this jurisdiction (the "Recognition Application"). It follows a trial of issues remitted by the Court of Appeal pursuant to an order dated 21 January 2022.
2. Ms Kireeva is a Russian insolvency practitioner who was appointed on 2 July 2018 for the purpose of realising and liquidating Mr Bedzhamov's assets (the "Bankruptcy Order"). The Trustee's position is that the effect of the Bankruptcy Order is that all of Mr Bedzhamov's assets worldwide vest in her automatically under Russian law.
3. The basis on which the Bankruptcy Order was made was as follows:
  - a) Mr Bedzhamov granted a guarantee in favour of a Russian bank, VTB 24 ("VTB"), on 23 October 2015 (the "Guarantee") to support a loan facility given on the same date to his sister, Larisa Markus, in the sum of 320.441m Russian roubles (equivalent to around US \$5m).
  - b) Mr Bedzhamov did not pay under the Guarantee when it was called, and on 22 December 2016 the Meshanskiy District Court gave judgment against Mr Bedzhamov in favour of VTB (the "VTB Judgment").
  - c) On 13 April 2017 VTB applied for a bankruptcy order based on the VTB Judgment.
  - d) On 20 September 2017 the Moscow Arbitrazh Court accepted VTB's petition (the "VTB Bankruptcy Judgment"). The effect of the VTB Bankruptcy Judgment was to require a debt restructuring process to be undergone. An appeal against that decision failed. As already indicated, the final Bankruptcy Order, which appointed Ms Kireeva, was made on 2 July 2018.
4. Notwithstanding the Bankruptcy Order, separate proceedings (the "Bank Proceedings") were subsequently brought against Mr Bedzhamov in this jurisdiction by another Russian bank, Vnesheprombank LLC ("VPB"). VPB is also the majority creditor in the Russian bankruptcy, but its own petition, originally founded on a claim of around £40m for unjust enrichment, was not the basis on which Mr Bedzhamov was declared bankrupt.
5. The claim brought by VPB in the Bank Proceedings is much larger, at around £1.34bn. It relates to what it alleges is a massive fraud carried out by Mr Bedzhamov along with Ms Markus, who was President of VPB. VPB was declared bankrupt on 14 March 2016, and a Russian state corporation, the Deposit Insurance Agency ("DIA"), was appointed to act as its liquidator. Mr Bedzhamov resists the claim, and denies his participation in any fraud.

6. VPB's claim in the Bank Proceedings was originally issued in December 2018, although the court file was sealed pending an application for interim relief. A worldwide freezing order was made against Mr Bedzhamov in March 2019 (the "WFO"), and a search order was also granted. The evidence in support of the application for the WFO stated that the prospects of the Trustee seeking recognition in England and Wales appeared "very low indeed".
7. The Trustee took no steps in this jurisdiction until 19 February 2021, when the Recognition Application was made. That was very shortly after VPB had been notified of Mr Bedzhamov's intention to seek approval to sell or raise funds against property at 17 Belgrave Square and 17 Belgrave Mews West, London ("the Property") to pay legal costs and living expenses permitted to be incurred under the terms of the WFO. I granted Mr Bedzhamov's application to vary the WFO to that effect on 5 March 2021, but on terms that contemplated an application by the Trustee to set aside the order. I also expedited the Recognition Application.
8. The Recognition Application was first heard by Snowden J in April 2021. Judgment was handed down on 13 August 2021 ([2021] EWHC 2281 (Ch)). By his consequential order dated 25 August 2021, Snowden J determined that the Trustee should be recognised, but that she was not entitled to the assistance that she sought in respect of the Property, or the set-aside of the order I had made on 5 March 2021.
9. Both the Trustee and Mr Bedzhamov appealed against Snowden J's decision to the Court of Appeal. The Trustee's appeal in respect of the Property failed (although she has since sought leave to appeal to the Supreme Court). Mr Bedzhamov's appeal against recognition was allowed on one ground, namely that Snowden J had been wrong to reject, without prior cross-examination, a claim by Mr Bedzhamov that the Guarantee had been forged.
10. By its order dated 21 January 2022 the Court of Appeal remitted the following issues (the "Remittal Issues"):
  - a) whether the Guarantee was a forgery;
  - b) whether the VTB Bankruptcy Judgment was procured by the fraud of VTB; and
  - c) whether recognition of Mr Bedzhamov's Russian bankruptcy should be denied on the basis that the VTB Bankruptcy Judgment was procured by the fraud of VTB.
11. For completeness, I should mention that I have since provided consent in principle to a further variation of the WFO with a view to permitting a realisation of the Property (reported at [2022] EWHC 1166 (Ch)), the original permission given by my order dated 5 March 2021 having expired.

## **The remittal directions**

12. Following a directions hearing, I made an order on 10 March 2022 which included the following:
  - a) Each party was required to set out their case in respect of the Remittal Issues in a position statement.
  - b) Instead of conventional orders for disclosure, Mr Bedzhamov was required to provide disclosure of documents on which he intended to rely. The Trustee was required to use her best endeavours to procure the original signed Guarantee and certain other original documents, and to give disclosure of those and certain other documents within her control.
  - c) Provision was made for factual evidence, and for expert evidence in the field of forensic handwriting.

## **The position statements**

### *Mr Bedzhamov's position statement*

13. Mr Bedzhamov's case, as set out in his position statement, can be summarised as follows. In or around 2007 he was asked by Ms Markus to provide security for a US dollar loan to her from VTB. He agreed to pledge a plot of land that he owned in the Odintsovsky region, and also agreed to the pledge of two further plots in the same region that he was expecting to inherit from his mother (and did inherit in around 2011).
14. The position statement goes on to explain that Ms Markus subsequently informed Mr Bedzhamov that her loan had not been repaid in full and that she wished to refinance the loan in roubles with the three plots of land as security, to which he agreed. The position statement states that this occurred in or around 2015, but at trial this was said to be in error, and it should have said 2013.
15. The position statement then asserts that, to the best of his knowledge and belief, Mr Bedzhamov did not sign any documents in respect of the refinancing, had no recollection of being asked to do so, did not attend VTB's offices for any purpose and "definitely did not sign" any guarantee in respect of VTB's loan to Ms Markus. While it describes the loan agreement that Ms Markus "appears" to have entered into on the same date as the Guarantee, 23 October 2015 (the "2015 Loan Agreement"), it emphasises that Mr Bedzhamov was not asked to provide a guarantee, whether at that time or at all, and maintains that the signature on the copy of the Guarantee that was at that time available was not his. It points out that Mr Bedzhamov flew from Moscow to Nice on the date the Guarantee was allegedly signed.
16. The position statement also states that VTB stood to benefit from the Guarantee and relies on the fact that VTB is part owned by the DIA and part owned by the Russian Federation. It refers to the fact that VPB was added as a creditor in the bankruptcy once VTB's petition was accepted, and that an earlier bankruptcy

petition brought by VPB had been under appeal for reasons that included forged signatures on fictitious VPB loans.

*The Trustee's position statement*

17. The Trustee's position statement relies on the question of forgery not having been raised before Snowden J until part way through the hearing, and to there having been no challenge at that time to the existence of the 2015 Loan Agreement, a mortgage also said to have been executed by Mr Bedzhamov on 23 October 2015 (the "2015 Mortgage"), or a guarantee said to have been provided on the same date by Ms Markus's husband Lazar Markus. The statement refers to the reasons given by Snowden J for rejecting the forgery allegation, which included that it would not have been unusual for a guarantee to be provided in addition to a mortgage, that no real explanation had been provided as to how or why a forgery might have occurred (apart from a general campaign by the DIA), and that Mr Bedzhamov's assertion of a lack of funds to produce expert handwriting evidence was difficult to accept given his level of spending, including on other evidence in the Bank Proceedings (see Snowden J's judgment at [168]-[172]).
18. The Trustee's primary case, as set out in her position statement, is that the Guarantee is regular on its face, was provided pursuant to clause 8.3 of the 2015 Loan Agreement, which stipulated that guarantees were to be provided by Mr Bedzhamov and Mr Markus, and was in accordance with both an orthodox family arrangement (namely assistance to his sister) and in accordance with commercial practice. However, the Trustee also relied on witness evidence from the then head of the centre for mortgage lending at VTB, Ms Yulya Ermilova, to the effect that she had witnessed and counter-signed Mr Bedzhamov's signatures on both the Guarantee and the 2015 Mortgage on 23 October 2015, at VPB's (rather than VTB's) offices, before Mr Bedzhamov left to catch his plane.
19. In relation to the allegation that the forgery allegation was raised late, I should refer to my findings in a judgment granting security for costs in these proceedings, reported at [2022] EWHC 1047 (Ch), at [36]-[37]. In summary, the position is not as straightforward as the Trustee maintains. The expedited hearing before Snowden J allowed points of principle to be determined. If they had been determined in favour of Mr Bedzhamov that would have avoided the need for the fact-finding trial that the remittal involves. There was evidence before the court from Mr Bedzhamov's Russian lawyer, Mr Sergey Belchich, in a witness statement dated 23 March 2021, making clear that Mr Bedzhamov's position that he had not signed the Guarantee had been put to the Russian court as early as 20 September 2017. Further, Snowden J's judgment records at [18] that the issue was raised with the Russian court in 2016, when the VTB Judgment was obtained.
20. In his reply, Mr Bedzhamov denied the allegations made in Ms Ermilova's first witness statement and re-confirmed that he did not sign the Guarantee, whether at VTB's or VPB's offices or otherwise.

**The transaction history**

21. Both parties' cases before Snowden J and the Court of Appeal were based entirely on documents alleged to have been entered into in 2015. The Trustee says that at

that stage she had no knowledge of the earlier history, and the fact that what occurred in 2015 was a refinancing.

22. By the stage of the remittal hearing, the Trustee relied on the following transactions as having occurred, supported by the transaction documents now available:

- a) On 2 August 2007 Ms Markus entered into a facility agreement for a loan of US \$2.3m. Clause 2.3 of that document provided that the security was the pledge of one of the three land plots in the Odintsovsky region (being the one owned by Mr Bedzhamov at that time), and guarantees from both Mr Bedzhamov and Mr Markus. Mr Bedzhamov and Mr Markus executed guarantees on the same date. Copies of the loan facility and guarantees were in evidence but the mortgage was not.
- b) On 26 April 2013 Ms Markus entered into a further facility agreement to refinance the 2 August 2007 loan and two other loans entered into on 26 December 2006 and 1 August 2007 respectively. The total amount lent was US \$7m. Clause 2.4 of this agreement provided for the mortgage of all three plots of land, together with an apartment in Moscow belonging to Ms Markus, and for guarantees to be provided by Mr Bedzhamov and Mr Markus. Those guarantees, and Mr Bedzhamov's mortgage of the three plots, were executed on the same date by Ms Markus' personal assistant, Natalia Denshikova. Under their terms, the guarantees expired on 26 June 2023.
- c) Ms Denshikova acted pursuant to powers of attorney made three days earlier, on 23 April 2013. Two of these were signed by Mr Bedzhamov, authorising the entry into of his guarantee and the mortgage respectively, and the third was signed by Mr Markus in respect of Mr Markus's proposed guarantee. All three powers of attorney were notarised by a notary public, Ms Natalia Gagarina. The Trustee relies on copies of Ms Gagarina's handwritten records recording Mr Bedzhamov's appearance before her and summarising the relevant documents.
- d) The 2015 Loan Agreement was entered into on 23 October 2015. The Trustee's case is that Ms Markus had decided that she wished to refinance the outstanding loan in roubles. Consistently with this, the agreement states that its purpose was to refinance the 2013 loan. However, I also note that, whereas the 2013 loan was for a period of 84 months (7 years), the refinanced loan was for 134 months. Again, the document provided for a mortgage of the four properties and guarantees by both Mr Bedzhamov and Mr Markus.
- e) The Guarantee, and an addendum to that document that was also signed, are described further below. The 2015 Mortgage, also executed by Mr Bedzhamov on 23 October 2015 and additionally bearing a land registry stamp of 16 November 2015, recharged the three plots of land as security for the rouble loan. It was signed by Ms Ermilova on behalf of VTB.

- f) One day prior to this, on 22 October 2015, Mr Bedzhamov had entered into two documents which were also notarised by Ms Gagarina. Both of these documents related to the proposed mortgage. The first was a spousal declaration, which confirmed that Mr Bedzhamov had no spouse affecting the security rights to be granted to VTB. The second was a power of attorney under which Mr Bedzhamov authorised various individuals at VTB to be his representative for the purpose of registering the new mortgage and terminating the registration of the previous one.

## Legal principles

23. The applicable legal principles were not in dispute. In particular, it was not disputed that the burden of proof is on Mr Bedzhamov to establish the forgery allegation. Mr Davies also emphasised that an element of falsity will not render a document void unless it goes to its substance. That will clearly be the case if a signature agreeing to a guarantee is forged. But some other false elements may not render a document void: see *Lombard Finance v Brookplain* [1991] 1 WLR 271 at 277F, where Dillon LJ referred to fraud rendering a document void if it went to the “essence” of the instrument (the context there being an alteration to a previously executed document).
24. A foreign judgment may not be recognised if it is tainted by fraud. The test is whether the fraud in question was operative in obtaining the judgment. In *Gelley v Shepherd* [2013] EWCA Civ 1172 at [49] Sales J (sitting in the Court of Appeal) expressed it as follows:

“... in order for the exception to recognition to apply it is necessary to establish that the fraud in question has been operative in obtaining the foreign judgment and order in issue, in the sense that without such fraud having been practised the order would not have been made, or there is a real possibility that it would not have been made.”

25. Mr Davies also referred me to *R (oao Dutta) v General Medical Council* [2020] EWHC 1974 (Admin) at [39]-[42], where Warby J summarised and commented on various statements in the authorities about the fallibility of memory and the importance of contemporaneous documents. I do not need to lengthen this judgment by setting out the detail, which is well known and uncontroversial.

## The evidence

### *Witness evidence*

26. Mr Bedzhamov has provided two witness statements in these proceedings, the first of which was provided during the hearing before Snowden J and the second for the purposes of this hearing. He was extensively cross-examined by Mr Davies. His partner Alina Zolotova also provided a witness statement. Her evidence was not challenged. There was also no challenge to witness statements provided by Mr Bedzhamov’s Russian lawyer Mr Belchich.
27. Mr Bedzhamov further relied on evidence provided by his solicitor Mr Shobbrook (a partner at Greenberg Traurig). This evidence included records of interviews

with unnamed former members of Mr Bedzhamov's staff in Moscow. The Trustee made no objection to the inclusion of that hearsay evidence, but submitted that no weight should be accorded to it.

28. The Trustee relied on three witness statements by Ms Ermilova. It had been planned that Ms Ermilova would give oral evidence, and a UK visa was procured for that purpose. However, shortly before the hearing Ms Ermilova decided that she was not prepared to subject herself to cross-examination. This led to a late hearsay application by the Trustee in respect of the three statements and in respect of related evidence from the Trustee's solicitor Mr Elliot (a partner at DCQ Legal). I determined that application in the Trustee's favour at the start of the remittal hearing ([2022] EWHC 2511 (Ch)).
29. Both parties produced expert evidence, from Michael Handy for the Trustee and from Fiona Marsh for Mr Bedzhamov. Both experts were briefly cross-examined.

#### *Documentary evidence*

30. By the date of the remittal hearing a number of original documents had been provided by the Trustee. In addition to the Guarantee, these comprised: the 2015 Mortgage; the related spousal declaration and power of attorney each dated 22 October 2015; an addendum to the Guarantee dated 23 October 2015 (the "Addendum"); an application form or questionnaire dated 7 October 2015 (the "Application Form"); and a consent to the processing of personal data dated 23 October 2015 which stated that Mr Bedzhamov intended to put the three plots of land up for sale and gave consent for data processing in that connection (the "Distressed Asset Letter").
31. Copies of a number of other documents were provided, including loan agreements and guarantees from 2007 and 2013, and powers of attorney dating from 2013 and 2015. As already indicated, the Trustee further relies on copies of notarial records from 2013 and 2015 which she says evidence the execution of the powers of attorney and spousal declaration. Mr Bedzhamov's objections to the introduction of some of this evidence, in particular the notarial records, was also addressed in the ruling referred to at [28] above.

#### **The Guarantee and Addendum**

32. The Guarantee is a relatively detailed document. There are thirteen numbered pages and a fourteenth unnumbered page. It is or purports to be signed by Ms Ermilova on behalf of VTB and by Mr Bedzhamov both on page 5 and on the reverse of the fourteenth page, with Mr Bedzhamov's signature also appearing on the front of that page.
33. The first five pages set out the "individual terms". Pages 6-13 contain generic "guarantee rules", which where relevant are overridden by the individual terms. The front of the fourteenth page contains provisions consenting to the processing of personal data, on terms that the consent may be withdrawn by submission of a form.



34. The individual terms provide for Mr Bedzhamov to be jointly and severally liable with Ms Markus for all liabilities under the refinanced loan. Details of the loan terms are set out in some detail, together with descriptions of the mortgaged properties. Based on my reading of what is obviously a Russian law governed document, I would agree with the Trustee that the operative signatures are those on page 5.
35. The Addendum is headed “Additional Agreement No.1”. Although bearing a (printed) date of 23 October 2015 as the date of the document, Mr Davies for the Trustee did not disagree that this document must in fact have been executed later. The body of it refers to the Addendum, and an addendum to the 2015 Loan Agreement, as each being “concluded on 3 November 2015” in Moscow. I find that the Addendum was executed on or after that later date.
36. The Addendum made certain amendments to the Guarantee. Ms Ermilova’s evidence was that VTB routinely required signature of an addendum to reflect changes in currency values during the day a guarantee (and presumably loan) was signed, its purpose being to confirm the amount guaranteed. In fact it, and the related addendum to the 2015 Loan Agreement, also recorded some fairly material alterations to the payment provisions, enabling Ms Markus to make payments of interest only for an initial period.
37. The Addendum, together with the addendum to the 2015 Loan Agreement and a further addendum to Mr Markus’s guarantee reflecting the same alterations, each appear to be signed by Ms Ermilova for VTB. Mr Bedzhamov’s short form signature appears on page 3 of the Addendum and on a label on its reverse.

### **Expert evidence: findings**

38. It is convenient to deal with the expert evidence at this point. In short, both experts agreed that the evidence as to whether Mr Bedzhamov provided his signature on page 5 of the Guarantee is inconclusive. The experts reached the same conclusion about his signature on the reverse of the fourteenth page, which is located within a label stuck on to the page (meaning that the signature could have already been on the label when it was stuck on the page). Further, as well as being unnumbered, the fourteenth page has a different font, such that it is unlikely that it was typed as a continuous document with the other pages. In both places Mr Bedzhamov’s signature is in an abbreviated (short) form, and is what the experts described as simplistic. Ms Marsh commented that Mr Bedzhamov’s short form signature is easy to copy, and Mr Handy expressed the view that it was susceptible to simulation. The pages of the document are also held together only by string passing through punch holes, with the label stuck over the string.
39. Ms Marsh, but not Mr Handy, was also asked to opine on certain other signatures. Of these, she opined that the evidence as to whether Mr Bedzhamov had made the short form signatures on the front (as opposed to the reverse) of the fourteenth page of the Guarantee, and on the Addendum and the 2015 Mortgage, was inconclusive. She also concluded that there was no evidence to indicate that Mr Bedzhamov had made the abbreviated signatures on the Application Form or on the Distressed Asset Letter.

40. Ms Marsh further pointed out that there was “moderate” evidence to indicate that handwriting associated with Mr Bedzhamov’s signature on the front of page 14 of the Guarantee and on the Application Form, being handwriting which set out his surname in full, was written by the same person as a signature she had previously examined in the Bank Proceedings, and there was no evidence to link that writing to Mr Bedzhamov.
41. I accept the evidence of both experts and also find that it is more likely than not that Mr Bedzhamov did not sign the Application Form or the Distressed Asset Letter. It is noteworthy, however, that (a) Mr Handy’s instructions were limited in the way just outlined (a point on which Mr Bedzhamov relied); and (b) neither expert was instructed in relation to any of the 2007 or 2013 documents, or in relation to what was said to be Mr Bedzhamov’s short form and long form signatures on the disputed notarial records. Those records were introduced in evidence after the date of the joint report.
42. As to the additional handwriting setting out Mr Bedzhamov’s full name on the Guarantee, and indeed further such handwriting on the Addendum in a different style, I do not consider that it has particular significance. If Mr Bedzhamov did sign the relevant documents, then it is wholly plausible that he would have left it to someone else to fill in any administrative details. The fact that the writing on the Guarantee might be linked to that on VPB documents that have been found to be forged does not materially assist me in demonstrating that the Guarantee is also forged, bearing in mind that the borrower was VPB’s President, and that (as described further below) her personal assistant Ms Denshikova was clearly involved in the documentation process both in 2013 and 2015.

### **Factual evidence for Mr Bedzhamov**

#### *Written evidence*

43. Mr Bedzhamov’s first witness statement was produced during the hearing before Snowden J. It denies the Guarantee but proceeds on the basis that Mr Bedzhamov did pledge security “in respect of my sister’s loan agreement with VTB24 dated 23 October 2015”, states that the security was sufficient to satisfy the loan and claims that the Guarantee was “another fraud committed by the DIA”, comparing it to other documents relied on by VPB which it is now accepted were forged. No mention is made of any earlier loan or pledge.
44. Mr Bedzhamov’s second statement, provided in July 2022, more closely reflects his position statement, referring to being asked by his sister in around 2007 to assist by pledging the plot of land he then owned to support a personal loan, and being aware that the plots his mother owned were also pledged. He recalled a further conversation when he inherited those plots and again in 2013, but nothing after that until the claim was brought against him by VTB in 2016. He believed that he was required to sign documents in 2007 but did not recall what they were and did not obtain legal advice. He trusted his sister “completely”. He had no recollection of the guarantee apparently signed by him in 2007, had no knowledge of the 2013 refinancing, powers of attorney and guarantee, and at the time thought the loan had been repaid or was close to being repaid. It was possible that the 2013 powers of attorney were presented with other documents to sign but he

“would have asked questions” and did not recall doing so. The same applied to the various 2015 documents, and specifically he would have refused to sign the Distressed Assets Letter with its stated intention to sell, and would have asked his sister about it. He also referred to the forged VPB documents relied on by the DIA and to other individuals who had also been victims of such forgeries.

45. As to the events of 23 October 2015, Mr Bedzhamov’s evidence was that he had no recollection of meeting Ms Ermilova. The flight records demonstrated his departure for Nice by private jet at 5.30pm on that day, which would have been for a family holiday in Monaco (it being the end of the school quarter and also shortly before his birthday). Mr Bedzhamov’s partner Ms Zolotova always insisted that he stayed at home rather than going into central Moscow on a day when they were flying as a family, having once missed a flight slot due to the notoriously bad and unpredictable traffic. He had no specific recollection of the day but described his normal routine, including the trip to the airport from his home via the children’s school (a journey which avoided central Moscow) and a practice of aiming to be at the airport at least an hour before take off. Mr Bedzhamov provided various journey distances and times, including that it was 31 km from VPB’s offices to the airport and that it could take between around 1 hour 15 minutes and “2 hours or more”.
46. Ms Zolotova’s unchallenged statement records that she was also a victim of forgery in respect of fictitious loans to her by VPB. As regards 23 October 2015, like Mr Bedzhamov Ms Zolotova did not recall the day in question, but her account supported his. After the previous occasion when a flight had been missed due to Mr Bedzhamov being delayed by Moscow traffic, she had made it clear that she would not tolerate him going into central Moscow on a day when they were flying as a family. She could not recall a single occasion when that rule had been broken. If it had been she would definitely remember because it would have made her very angry and caused a huge amount of stress.
47. Mr Shobbrook’s evidence recorded conversations with four members of Mr Bedzhamov’s staff at the relevant time, of whom two were said to have recalled the specific date. None were prepared to reveal their identity due to concerns for their safety or career prospects. I accept Mr Shobbrook’s assessment that the fears were genuinely held, and that draft witness statements prepared for the two individuals with specific recollections were checked and confirmed by them.
48. In brief, all four members of staff supported Mr Bedzhamov’s and Ms Zolotova’s account about Mr Bedzhamov not being allowed to travel to central Moscow on family flight days. Two recalled the date, one of them (Witness 1) doing so once they had spoken to the other (Witness 2). Witness 2, who was one of Mr Bedzhamov’s personal security staff, professed to have a clear recollection of the date, associated with his/her own birthday. The account that Witness 2 gives of the day is very specific, among other things confirming that he/she was certain that Mr Bedzhamov did not leave the house before departing for the airport via the children’s school, a journey which Witness 2 also took. Witness 2 also gives a similar account to that of Mr Bedzhamov and Ms Zolotova of the state of Moscow traffic, including that it would be particularly bad on what was both a Friday and the start of a school holiday. Apart from being rather detailed for an account from some seven years ago, the account given appears to be credible.

*Mr Bedzhamov's oral evidence*

49. I did not find Mr Bedzhamov's oral evidence to be particularly illuminating. It is fair to say that he consistently maintained his case that he had limited the assistance he had given to his sister in respect of the loan to pledges of the three plots of land, which he said had been discussed in 2007. He said that a guarantee had never been discussed and he was confident that he would not have provided one. However, it appeared that his actual recollections of signing documents were limited or non-existent. He also trusted his sister.
50. Further, Mr Bedzhamov had no clear explanation for his apparent acceptance in his first witness statement and before Snowden J of the existence of the 2015 Loan Agreement and 2015 Mortgage, and his failure to mention any earlier transaction. In contrast, by the stage of the trial Mr Bedzhamov did not agree that he had signed the 2015 Mortgage.
51. I did not find Mr Bedzhamov's evidence that he had not met Ms Gagarina since 2010 or 2011 to be very persuasive. As explained at [83] below, he described her as like a "pocket" public notary for VPB, which was her main client. He clearly knew her. Mr Bedzhamov may not have attended Ms Gagarina's offices for a lengthy period, but that does not mean that she did not attend VPB's offices, and if she did he may well not recall having seen her there. His recollection of dates may also be incorrect.
52. More generally, my assessment is that Mr Bedzhamov is not a person who would typically spend time considering details of legal documents. Further, although the powers of attorney record that they were read aloud to him, if Ms Gagarina was a "pocket" notary then some of the normal formalities might end up being overlooked, Mr Bedzhamov may not have paid attention, or he may simply have forgotten.
53. I do not need to make adverse findings about Mr Bedzhamov's credibility to reach the conclusions that I have. One point worth noting is Mr Bedzhamov's understanding that the land provided adequate security for VTB. If he considered that to be the case and, as he indicated in oral evidence, "gave away" or handed over the land to his sister for that purpose, he may have thought no further about the various documents that he was asked to sign, because he assumed that VTB would resort to the security if they needed to enforce repayment of the loan.

**Ms Ermilova's evidence, and relevant VTB emails**

54. Mr Fenwick submitted that Ms Ermilova's reasons for non-attendance were thin, that her evidence was inconsistent, and that I should accord little or no weight to her witness statements.
55. As I said in the ruling granting the hearing application, I am not satisfied that Ms Ermilova was unable, as opposed to unwilling, to attend. Communications sent by her following her decision not to attend refer to a medical issue, such that she considered that the stress of attending court should be avoided. However, no medical evidence was provided and I did not consider it to be appropriate to entertain the Trustee's suggestion of having a hearing in private to listen to the

details that Ms Ermilova had apparently provided to the Trustee's legal team on a confidential basis. Whatever the issue was did not prevent her departing on a planned vacation to Armenia at around the time of the trial. It has also not prevented continuing posts on her (active) Instagram account, some of which I viewed.

56. I agree with Mr Fenwick that there are a number of inconsistencies in Ms Ermilova's evidence, and it raises a number of questions. Indeed, at trial, and despite it being a material feature of the Trustee's case in her position statement, Mr Davies placed relatively little reliance on it.
57. I will first summarise Ms Ermilova's version of events and then comment on it.

*Summary of Ms Ermilova's evidence*

58. The first of Ms Ermilova's three witness statements was taken in March 2022 by Mr Tchernenko, a senior lawyer at A1, the entity that is providing litigation funding to VPB and the Trustee. Mr Tchernenko is the person I have previously described as conducting the Bank Proceedings, at least on a day to day basis (see for example *Vneshprombank v Bedzhamov* [2020] EWHC 2114 (Ch) at [23]). The second and third witness statements were taken more conventionally by DCQ Legal.
59. The first statement, which was made with the benefit of copies of the 2015 Loan Agreement, 2015 Mortgage and the Guarantee, describes Ms Ermilova's role at VTB (where she remained until 2018), and her responsibility at the time for organising the work of the mortgage lending department. It gives an account of Ms Markus's request to refinance a loan in September/October 2015, stating among other things that it was standard to take security as well as guarantees to secure a loan of that size, that Ms Ermilova was responsible for the execution of the documentation and that she dealt with Ms Markus's assistant. Ms Ermilova claims to remember the details very clearly, partly because of the large sums involved but also because, unusually, she had to take the documents to Ms Markus's office at VPB for signature rather than sign them at VTB. The statement describes in detail the visit said to have been made to VPB's offices on 23 October 2015, including a description of the room, Ms Markus signing the documents and then, after a wait, Mr Bedzhamov arriving with his suit bag and making it clear that he had little time because he had a flight to catch. The account records that Ms Ermilova checked his passport before signing both the 2015 Mortgage and the Guarantee. The process was complete at around 1pm.
60. The second statement, taken in July 2022, confirms the first and expands on some points. In it Ms Ermilova considers documents from the 2007 and 2013 transactions, including the originals then available, as well as further documents from 2015. It states that, although both were required, neither the Application Form nor the Distressed Asset Letter needed to be witnessed by a VTB staff member. It further states that the Addendum was also signed on 23 October 2015.
61. The third statement, provided in early August, responds to evidence from Mr Bedzhamov. It states that the Distressed Asset Letter did not fall within Ms Ermilova's responsibility but was a "standard" confirmation, and that the data

form on the front of the fourteenth page of the Guarantee could have been signed at another time, it not requiring to be witnessed by bank staff.

*Comments on Ms Ermilova's evidence, and relevant VTB emails*

62. A general point to make is that, at least, the witness statements show signs of embellishment. The level of detail and clarity of recollection that Ms Ermilova appears to profess of a short meeting around seven years ago is not credible. Nevertheless, and for what it is worth, in my assessment it is intrinsically more likely that Ms Ermilova rather than Mr Bedzhamov would have recalled the existence (as opposed to all the details) of a meeting at what Ms Ermilova says was an unusual location, in respect of a large loan, and with wealthy individuals such as Ms Markus and Mr Bedzhamov.
63. One material inconsistency relates to the Addendum. Ms Ermilova's evidence not only failed to mention the material changes it made, but also confidently stated that such a document would be signed on the same day as the guarantee or later in the day, which it patently was not in this case. Whilst Ms Ermilova does say that she does not recall whether the Addendum was signed with the Guarantee, she also states that she only met Mr Bedzhamov once. She accepts that she would have been responsible for the Addendum but she does not address the fact that she appears to have signed it with him.
64. Another apparent inconsistency is Ms Ermilova's complete failure to mention Mr Markus's guarantee, which she apparently signed on behalf of VTB on the same date as the Guarantee and 2015 Loan Agreement. When compared to the detail of Ms Ermilova's account of signature of the documents by both Ms Markus and Mr Bedzhamov at VPB's offices on 23 October 2015, before returning to her own office, this is material.
65. A further point, also relied on by Mr Fenwick but in my view less material, is that in her first witness statement Ms Ermilova only explicitly confirms Mr Bedzhamov's signature on the reverse of the fourteenth page of the Guarantee, rather than what is in fact the operative signature on page 5. There is no reference to page 5 in that witness statement. However, although this point is not fully remedied by either later statement, there is a reference in the third statement (in another context) to Mr Bedzhamov signing "at clause 10". Clause 10 is the signature provision at the end of the individual terms on page 5.
66. Despite the inconsistencies just described, I am prepared to accord some weight to parts of Ms Ermilova's evidence. In doing so I rely on an email she sent to Ms Denshikova at 14.52 on 22 October 2015. This email reads as follows:

"Natalia, I saw your calls, I was in a meeting.

I am attaching the preliminary calculations. The amount of payment is indicated in the penultimate column: "Amount of payment for interest repayments".

Tomorrow I will again talk everything through with Larisa Ivanovna when I see her.

I would also like to ask you to clarify regarding Georgy Ivanovich and the guarantee from Lazar Albertovich, where and when will we

be able to sign the agreements? It is very important for us not to delay this issue.

Kind regards,

Yulia Ermilova

Head of the Mortgage Credit Department Additional office “CIK”

“At Miasnitskaya street”

VTB24 (PAO)”

67. Whilst this does not evidence that Mr Bedzhamov signed anything, or did so on 23 October, it does evidence that Ms Ermilova was planning to meet Ms Markus on that date and was stressing the urgency of signatures by both Mr Bedzhamov and Mr Markus. Given that Mr Bedzhamov was about to depart for a half term holiday with his children, that makes a brief meeting of the kind Ms Ermilova describes more credible.
68. I also have to take into account that Mr Bedzhamov has not succeeded in demonstrating that Ms Ermilova is anything other than a disinterested witness, with no apparent motive to lie or, importantly, to have participated in a fraud in 2015.
69. Mr Fenwick relied on the fact that there is no reference in the email to meeting Mr Bedzhamov, and the fact that the only reference to a guarantee relates to Mr Markus. But as already mentioned the reference to urgency provides some support for the Trustee’s case, particularly when put together with the power of attorney and spousal declaration notarised on the same date (as to which see below). The absence of a reference to a guarantee in respect of Mr Bedzhamov in a brief email is far from determinative, particularly when it makes no reference to a mortgage either.
70. It is convenient to add in parenthesis at this point that I have also had regard to the fact that a section in the body of the Application Form dealing with consent to data processing contemplates Mr Markus providing consent in connection with his guarantee and Mr Bedzhamov providing consent in respect of the mortgage, with no reference to a guarantee by him. However, the heading and signature boxes cover all categories of borrower, pledgor and guarantor. Overall this form slightly favours Mr Bedzhamov’s case, but it is relatively weak evidence when compared to the other documentary evidence, including the terms of the loan agreements.
71. There is another relevant email that it is also convenient to refer to now, although it was not sent by Ms Ermilova. This one was sent to Ms Denshikova on 30 September 2015 by Natalia Bulatova, another VTB employee. It reads as follows:

“Natalia,

It has been agreed that we will be re-financing the current foreign currency loan of Larisa Ivanovna into roubles, and then we will put the plots of lands in v. Uspenskoe up for sale.

Questions:

1. A photograph of the land is required for the purposes of publishing an announcement regarding the sale. Can it be arranged for the valuer

to have access to the plots of land to photograph or can we use your photographs.

2. According to Larisa Ivanovna, what is the value of the land for sale?

3. The plots of land are owned by G.I. Bedzhamov, earlier in respect of each operation he used to provide a power of attorney. Will there be a power of attorney this time?

4. In order to amend the mortgage agreement we will require the information about the person registered in the flat in Leontievskiy lane.

5. Please provide SNILs of Larisa Markus.

Kind regards

Natalia Bulatova

Deputy head of Mortgage Credit Department

Additional office "CIK" "At Miasnitskaya street"

VTB24 (PAO)"

72. Insofar as this indicates an agreement to refinance Ms Markus' loan into roubles in 2015, it clearly supports the Trustee's case. Further, and crucially, it also refers to the earlier provision by Mr Bedzhamov of a power of attorney. That is of particular significance in considering the 2013 powers of attorney, discussed further below.
73. Mr Fenwick relied on the reference to putting plots up for sale, to which Mr Bedzhamov had not agreed, and Ms Marsh's opinion that there was no evidence to indicate that Mr Bedzhamov had signed the Distressed Asset Letter which purports to record the intention to sell. I agree with Mr Fenwick that there is no evidence to link Mr Bedzhamov to any intention to sell the land, but in my view this does not detract from the value of the email evidence. It is of course quite possible that Ms Markus did not intimate any such intention to Mr Bedzhamov, and I have found that he did not sign the Distressed Asset Letter, a document on which the Trustee does not rely. Alternatively, it is possible that Ms Ermilova's evidence that VTB required a document in the form of the Distressed Asset Letter in every case, apparently even if there was in fact no intention to sell, reflects the true position. In any event, some defects in the Trustee's evidence appear to me, overall, to be more consistent with the Guarantee being genuine rather than an elaborate forgery.
74. I also reject any suggestion that any plan to sell the land would have an impact on whether VTB required a guarantee. As discussed below, it is inherently unlikely that VTB would forego a guarantee if it was standard to require one or, more importantly, if one was already in existence and VTB was being asked by the borrower to refinance the loan.



## The notarial records

### *What the notarial records evidence*

75. The Trustee relies on the notarial records as evidencing the two powers of attorney she says Mr Bedzhamov provided in 2013, and the power of attorney and spousal declaration he gave in 2015.
76. The records are handwritten. They set out Mr Bedzhamov's name, address and passport details, describe the documents and include against each document description the notary's fee and Mr Bedzhamov's short form and long form signature in a column headed "Acknowledgement of receipt of notarised document".
77. The description of the 2013 power of attorney related to the 2013 guarantee reflects the terms of the power of attorney. It commences as follows:

"Power of Attorney granting the right to execute a guarantee agreement with VTB 24 Bank (CJSC) to secure the performance of the obligations of Larisa Ivanovna Markus under a facility agreement on the following terms: "in the event of failure to perform or improper performance of the obligations by the Borrower under the facility agreement, to be liable to the Creditor, jointly and severally with the Borrower, in the amount equal to the sum of all the Borrower's obligations under the Facility Agreement, including:

- The amount of obligations for repayment of the Loan amounting to USD 7,000,000 granted for a period of 86 months.

[Further details of the terms are then set out.]"

Therefore, to represent my interests in VTB24 Bank (CJSC) on all issues related to the execution of the above guarantee agreement in the name of Natalia Vasilevna Denshikova ...without the right of substitution."

78. The notarial records relating to the other documents set out a similar level of detail.

### *Weight*

79. I have concluded that weight should be accorded to the documents that the Trustee relies on having been notarised by Ms Gagarina (being the two powers of attorney given in 2013 and the power of attorney and spousal declaration given in 2015). In broad terms, I accept the Trustee's explanation for their late introduction.
80. The starting point is that it was Mr Bedzhamov, not the Trustee, who disclosed the 2013 powers of attorney. From the Trustee's perspective Mr Bedzhamov's only disclosure obligation related to documents on which he intended to rely: see [12] above. In fact, Mr Bedzhamov had agreed with VPB that he would be permitted to use in these proceedings any material responsive to a search for the term "VTB24" that had been disclosed by VPB in the Bank Proceedings, but only on condition that all documents responding to that search term would also be

provided to the Trustee. The powers of attorney fell into that category. I note that the same applies to the email of 22 October 2015 referred to at [66] above and the email of 30 September referred to at [71] above.

81. The Trustee's advisers did not understand Mr Bedzhamov to be challenging the authenticity of these earlier documents, or indeed the 2015 Mortgage (which they thought Mr Bedzhamov had accepted that he executed), the 2015 power of attorney or spousal declaration, until around two months before the remittal hearing, and even thereafter his position was not that clear. It was in those circumstances that the notary was approached. This cannot have come as a complete surprise, bearing in mind that the powers of attorney disclosed by Mr Bedzhamov, of which he must have been aware for some time, bore notarial stamps.
82. Mr Fenwick relied on the absence of disclosure of communications to the notary by the Trustee, the absence of any expert evidence in respect of Mr Bedzhamov's signatures on the copies of the register, the fact that in her letter to the Trustee enclosing extracts from the register Ms Gagarina did not explicitly certify their accuracy (although I would point out that that alleged defect is remedied by her endorsement and seal on the copy extracts themselves), and more generally the failure to produce an apostille certificate in the form provided for by the 1961 Hague Convention.
83. I have taken these points into account, but they must also be weighed against other relevant facts and the inherent probabilities. First, Mr Bedzhamov's own evidence was that Ms Gagarina was like a "pocket" public notary for VPB, which was her main client. Her offices were close to VPB's. Whatever may have occurred since, there is no indication that she was, for example, under the influence of the DIA at the time. Secondly, it is hard to see what her motivation would be to construct or falsify records from either 2013 or 2015. Mr Bedzhamov suggested in cross-examination that she might do so because of the criminal sanctions that would attach if she lied. But that simply makes it more likely that she produced the records that she had. Thirdly, it is significant that what she was asked to produce in respect of 2013 was prompted by Mr Bedzhamov's own disclosure. The notion that the Trustee, or anyone connected with her case, could have conjured up notarial records to support a case relying on documents executed in 2013, the significance of which were not appreciated until Mr Bedzhamov's disclosure, seems inherently unlikely. It also seems highly unlikely that the significance of the 2013 documents would have been appreciated by A1 or anyone else at the much earlier stage at which they were disclosed in the Bank Proceedings.
84. In principle, the notarised power of attorney in respect of the 2013 guarantee is a significant document. It indicates that Mr Bedzhamov was at that time willing to give a guarantee, contradicting his evidence that he had never agreed to do so, and it is supported by third party evidence in the form of the notarial records, independently of disclosure made by VPB.

### **Whether fraud is established: discussion**

85. Mr Bedzhamov has not succeeded in persuading me that the Guarantee is vitiated by fraud.
86. My conclusions are based principally on the available documents, including those from 2007 and 2013, and inherent probabilities. As already indicated, the expert evidence is of limited assistance and there are direct conflicts in the factual witness evidence, conflicts which cannot be fully reconciled.
87. The first point to emphasise is that there is no dispute that there was a real loan (or loans) from VTB to Ms Markus in 2007, for which Mr Bedzhamov agreed to grant security. Unlike some of the loans considered in the Bank Proceedings, this is not a case of a fictitious loan.
88. The provision of a guarantee as well as a mortgage is not only entirely plausible but was provided for in the 2007 facility agreement. It is inherently unlikely that it was not provided in accordance with the requirements of that agreement. Having been provided at that time, it is also unlikely that the lending bank would agree to forego it subsequently, and indeed it was not Mr Bedzhamov's case that it had. There is also no realistic basis to maintain that the 2007 facility agreement was itself a fraudulent document or that it has subsequently been altered to refer to a guarantee (and indeed no such specific allegation was made).
89. Similarly, the 2013 facility agreement required a guarantee from Mr Bedzhamov as well as the mortgage. The existence of the powers of attorney granted at that time is confirmed not only by the email dated 30 September 2015 referred to at [71] above but by the notarial records, which spell out the key terms of the guarantee. Together that is strong evidence, despite the fact that there is no expert handwriting evidence in respect of the signatures on the records.
90. Mr Bedzhamov's case was not assisted by his failure to refer to any transactions earlier than 2015 before Snowden J, and his apparent acceptance at that time of the existence of the 2015 Loan Agreement (which again provided for a guarantee from Mr Bedzhamov) and the 2015 Mortgage. The emergence of earlier transactions and related documents, initially via Mr Bedzhamov's position statement and then his disclosure, also make the existence of any fraud related to the existence of those documents more unlikely.
91. It is highly unlikely that, having had the benefit of a guarantee expiring in 2023, VTB would agree to forego it when Ms Markus chose to refinance her loan into roubles in 2015. This is irrespective of whether there was or was not any intention to sell the mortgaged land.
92. Further, the fact that the 2015 Loan Agreement was signed on 23 October 2015, and the fact that VTB was chasing for signatures from Mr Bedzhamov and Mr Markus, are strongly supported by the 22 October 2015 email referred to at [66] above. The notary records for that date provide additional support that Mr Bedzhamov did agree to execute additional documents at that time. Indeed, the fact that those notarial records cover only documents linked to the 2015 Mortgage rather than the Guarantee rather supports the authenticity of the records.

93. Related to this, it is very hard to see any motive for a fraud. Mr Bedzhamov's allegation that this was a fraud committed by the DIA does not appear to fit to any extent with the 2007 and 2013 transactions: the DIA's shareholding in VTB was not acquired until late July 2015. In any event those earlier transactions must have occurred well before any investigation into VPB and Mr Bedzhamov's affairs.
94. Mr Fenwick pointed to unanswered questions about how the Trustee obtained the documents and evidence that she did manage to obtain, which he submitted was indicative of co-operation between VPB (or more accurately the DIA as its liquidator) and VTB, and in contrast the Trustee's failure to produce other documents, such as VTB's complete loan file and relevant email communications. Mr Fenwick also stressed the limits of the expert evidence sought by the Trustee. But these points do not outweigh the basic point that the 2007 and 2013 transactions occurred when there was no apparent connection between the DIA, as liquidator or investigator of VPB, and VTB or its lending activities. I also note that, beyond an obligation to seek to procure certain original documents, the Trustee's disclosure obligations in respect of the Remittal Issues were confined to documents under her control. She was not obliged to seek further documents.
95. As already indicated, I have not simply accepted Ms Ermilova's evidence, but I have accorded weight to some parts of it. I cannot resolve the conflict between her evidence and that of Witness 2 (and indeed Witness 1). As regards Mr Bedzhamov and Ms Zolotova, neither have an actual recollection of the day and I further note that, even if the traffic was very busy, Mr Bedzhamov would have had plenty of time to travel to catch his flight if he had met Ms Ermilova before 1pm, as she says he did. Overall, however, the evidence about not travelling into central Moscow on 23 October 2015, or more generally on days that the family was catching a flight, is outweighed by the documentary evidence.
96. Mr Fenwick also relied on a letter sent by VTB to the Trustee setting out the bank's procedures for signing personal guarantees. He submitted that there were differences between that and Ms Ermilova's account. However, I cannot see that any failure to follow the precise detail of VTB's internal procedures affects the validity of the Guarantee.
97. The fact that the Application Form and Distressed Asset Letter were not signed by Mr Bedzhamov is also insufficient to render the Guarantee void. Further, I am unable to accept Mr Fenwick's submission that, even if I was not persuaded that the Guarantee was a forgery, I might nonetheless conclude that the VTB Bankruptcy Judgment was procured by the fraud of VTB through reliance on the Application Form and Distressed Asset Letter (Remittal Issue b)). The latter document relates to the mortgaged land rather than the Guarantee and (possibly for that reason) was not before the Meshanskiy District Court. The former document does appear to have been before the court but I do not see how it could realistically have been regarded as a material (or operative) document. The key question must have been whether Mr Bedzhamov executed the Guarantee – that being the point that Mr Belchich was challenging on Mr Bedzhamov's behalf – not whether he filled in or signed other forms that the bank may have required as part of its internal processes.

98. Remittal Issue c) is whether recognition of Mr Bedzhamov's Russian bankruptcy should be denied on the basis that the VTB Bankruptcy Judgment was procured by the fraud of VTB. The issue is framed with specific reference to the alleged fraud and does not leave scope for a wider ranging enquiry into whether the court's discretion to recognise the bankruptcy should be exercised. That issue has already been determined.
99. My conclusion that the Guarantee was not a forgery therefore resolves all three Remittal Issues in the Trustee's favour.

### **Conclusion**

100. My conclusions on the Remittal Issues are:

- a) Mr Bedzhamov has not established that the Guarantee was a forgery;
- b) it follows that he has not established that the VTB Bankruptcy Judgment was procured by the fraud of VTB; and
- c) recognition of Mr Bedzhamov's Russian bankruptcy should therefore not be denied on the basis that the VTB Bankruptcy Judgment was procured by the fraud of VTB.