



## NICK RACTLIFF

Partner

*Nick specialises in high value, complex and multi-jurisdictional asset recovery and civil fraud cases. He has worked on some of the largest cases commenced and conducted in the English High Court with extensive experience in obtaining freezing, search, and disclosure orders involving creative and innovative strategies resulting in solutions that are ground breaking and test the legal boundaries.*



## JACK BEEVERS

Trainee Solicitor

*Jack is a trainee solicitor who assists the team with multiple complex dispute resolution and commercial litigation matters and is largely involved in high-value civil fraud cases.*

### **Victory against Abuse of Process**

#### **Introduction**

Last month, PCB had further success, this time in the Court of Appeal, in acting for JSC VTB Bank (“**VTB**”) in its long standing battle to recover its lending to the SAHO Group, a substantial agricultural business based in Russia from its owner and personal guarantor, Pavel Skurikhin (“**Mr Skurikhin**”).

In Mr Skurikhin’s latest attempt to obstruct VTB, the Court of Appeal dismissed the appeal of a Liechtenstein Foundation believed to be under his ownership or control and provided a welcome reminder that the Court will not tolerate the abuse of its processes for illegitimate collateral purposes and to cause manifest unfairness.

#### **Background**

In March and November 2014, VTB obtained two judgments against Mr Skurikhin for the Russian Rouble equivalent of £13.4 million for common law claims based on judgments obtained against him in the Russian Courts.

It subsequently took steps to enforce the judgments against three properties used by Mr Skurikhin and his family in Italy worth a combined value of €17million. The properties were registered with and owned by an English LLP, Pikeville Investments LLP (“**Pikeville**”).

The membership interests in Pikeville were held by two individuals based in Switzerland, Zeno Meier and



Beat Lerch and a Hong Kong registered company, Crown Capital Holdings Limited (“**Crown**”) as nominees for the benefit of a Liechtenstein Foundation, Berenger. Mr Skurikhin was a discretionary beneficiary of Berenger and considered by VTB to be its owner and/or controller.

### **Receivership Order**

Following an application by VTB, Mr Christopher Butcher QC (sitting as a deputy judge of the Commercial Court) in a judgment dated 21 July 2015 was satisfied that Mr Skurikhin had sufficient control of the assets of Berenger, including the membership interests in Pikeville held by Messrs. Meier and Lerch and Crown that he ordered the appointment of Court Receivers over those interests (the “**Receivership Order**”). The Court Receivers used the powers granted by the Receivership Order to have themselves appointed as the Administrators of Pikeville to take control and realise the properties to satisfy VTB’s judgments.

### **Application to Discharge the Receivership Order**

Two years later Berenger sought to exclude Mr Skurikhin as a discretionary beneficiary and use that as a basis to apply for the discharge of the Receivership Order on the grounds that this was a material change of circumstance, Mr Skurikhin no longer had an interest in Pikeville and the Receivership Order had no purpose.

In dismissing the application in her judgment dated 12 June 2019, Mrs Patricia Robertson QC sitting as a deputy judge of the Commercial Court held, amongst other things, that the alleged change of circumstance was an abuse of process brought about by Berenger at the instigation of Mr Skurikhin to throw an obstacle in the way of VTB’s attempt to enforce its judgments.

### **The Appeal**

Berenger appealed on the grounds that an application to discharge an interlocutory order based on a material change of circumstance could not be an abuse of process where the change was lawfully implemented by the applicant and there was no misuse of procedure.

In response to the appeal, VTB claimed that the change of circumstance was a breach of the Receivership Order and a Worldwide Freezing Order imposed by Eder J in June 2014 against Mr Skurikhin’s assets after it had obtained the first of its two judgments against him.

### **The Court of Appeal’s Judgment**

In its judgment dated 21 October 2020, the Court of Appeal rejected the appeal.

In giving the leading judgment, Lord Justice Phillips considered that it was clear from the authorities on abuse of process that proceedings could be struck down even where there has been no unlawful conduct or breach of procedure. He reasoned that the power of the Court exists precisely to prevent the Court’s process from being abused through the lawful and literal application of the rules. He considered that recognised aspects of abuse of process include those that arise from a material change of circumstances which bring the administration of justice into disrepute and proceedings which are manifestly unfair but the crucial question is whether, taking a broad merits-based approach, a party is misusing or abusing the process of the court.

He considered that in this case the judge, Patricia Robertson QC (sitting as a deputy judge of the Commercial Court) was plainly right that Mr Skurikhin’s exclusion as a discretionary beneficiary of Berenger almost two years after the Receivership Order was not a genuine attempt to divest him of his beneficial interest but merely another attempt to frustrate VTB’s enforcement of its judgments against him. He considered the process “*was redolent with illegitimate collateral purposes, subterfuge and*



*manifest unfairness” and “there could not be a clearer example of a wrongful and abusive process”.*

He also found that it breached the Worldwide Freezing Order of Eder J in June 2014 of which Berenger had notice and for that reason it could not be relied upon as a basis for discharging the Receivership Order.

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For access to the full text of the judgment click [here](#).

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