

Status: Positive or Neutral Judicial Treatment

JSC BTA Bank v Abylazov

Queen's Bench Division (Commercial Court)

16 February 2012

Case Analysis

Where Reported

[2012] EWHC 237 (Comm); Official Transcript

Case Digest

Subject: Civil procedure **Other related subjects:** Administration of justice

Keywords: Committal for contempt; Contempt of court; Freezing injunctions; Non-disclosure

Summary: The applicant bank had satisfied the court to the criminal standard of proof that the respondent was guilty of contempts of court by failing to disclose his assets in breach of a worldwide freezing order.

Abstract: The applicant Kazakh bank (J) applied to commit the first defendant (X) for contempt of court and for other associated relief. J had effectively been nationalised by the State of Kazakhstan. X was the former chairman of J and was accused of widespread misappropriation of its funds. X had left Kazakhstan and taken up residence in England. J had brought proceedings against him claiming in excess of US\$1.8 billion. X denied the claims which he said were politically motivated. J had obtained a worldwide freezing and disclosure order against X and the appointment of a receiver over his assets in support of that order. J advanced numerous allegations that X had failed to comply with the freezing order or had otherwise acted in contempt of court. For case management reasons the court determined that there should be a trial of only three allegations that X (i) had failed, in breach of the freezing order, to disclose his beneficial ownership of the shares in a company, Bubris, incorporated in the British Virgin Islands; (ii) when cross-examined under oath as to his assets, had failed to disclose his beneficial ownership of four residential properties in London and of the shares in three foreign companies, which had received substantial payments from a company which X admitted he owned; (iii) in breach of the freezing order, had dealt with the rights to the repayment of certain loans made by a Cypriot company, Stantis.

Application granted. (1) X did not hold his assets in his own name. Rather, a trusted associate appeared to hold shares in a holding company on his behalf and by that means controlled the shareholdings in a chain of other companies at the bottom of which was an operating business. The use of a nominee and of companies registered in offshore jurisdictions made it difficult to trace his assets. Assets held in that way were assets of X within the wide definition of assets in the freezing order. They were assets which X had the power indirectly to dispose of as if they were his own. Although not the registered owner of any shares in a company he was the ultimate