Neutral Citation Number: [2019] EWHC 932 (Fam)

Case No: ZC18P01426/FD18F00089

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/04/2019

Before :

MR JUSTICE WILLIAMS

- -

Between :

Elena Vasilyeva	**Applicant**
- and -	
Boris Shemyakin	**Respondent**

(Part III MFPA: Substantial Ground)

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Nigel Dyer QC (instructed by **Levison Meltzer Pigott**) for the **Applicant**
Richard Harrison QC (instructed by **Vaitilingham Kay**) for the **Respondent**

Hearing dates: 26th - 27th March 2019

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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 WILLIAMS

This judgment was delivered in public. The judge has given leave for this version of the judgment

Mr Justice Williams :

1. Elena Vasilyeva applies pursuant to section 13 of the Matrimonial and Family Proceedings Act 1984 (MFPA 1984) for the leave of the court to apply for financial relief in England and Wales. Leave may only be granted if there is a substantial ground for the making of an application for financial relief. The applicant is represented by Nigel Dyer, QC. The respondent to the application Boris Shemyakin opposes the grant of leave. He is represented by Richard Harrison, QC.

Background

2. The applicant and the respondent are Russian in origin. They married in Moscow on 26 April 2002 and spent the majority of their married lives in Moscow. Their daughter Vasilisa Shemyakina was born in Moscow on 22 January 2005.

3. In 2011 the respondent was arrested on suspicion of fraud on the Bank of Moscow. I'm not aware of the detail of the allegations or the sums involved, whether he has been charged, convicted in his absence or sentenced. However it seems to be agreed that if he returned to the Russian Federation it is likely that he would be incarcerated. On 29 September 2011 he came to the UK and claimed political asylum. He has remained here to this day. The applicant and their child remained in Moscow although visited the respondent in London during school holidays. This continued until 2014. On 21 February 2013 the respondent was granted asylum in the UK. Again I am not aware of the basis of this but self-evidently the Home Secretary considered that the respondent had a well-founded fear of persecution. Subsequently the husband was granted indefinite leave to remain. I believe he remains a citizen of the Russian Federation. In 2014 the applicant and child were granted visas on the basis of their being dependents of the husband: the Cafcass report refers to a family reunion Visa. At some point the husband's older daughter also moved to live with him in London. There is a dispute between the parties as to the extent to which the wife ever lived in London; it seems her passport shows that in 2015 she spent 96 nights in the UK and in 2016 48 nights. The wife spent time in Russia as well as in Tenerife where she was seeking to establish residency.

4. In September 2016 the marriage broke down and the parties separated. The applicant left London and, I believe, moved to Tenerife. She has spent almost no time in London since. I am not sure of her Visa status now. The respondent and the child remain living in Notting Hill, along with the respondent's adult daughter from an earlier relationship. The wife has seen very little of Vassilisa since 2016. The parties' daughter holds a very negative view of her mother and a very positive view of her father. Vassilisa said she believes that her mother has only brought an application to spend time with her because she wishes to secure a right to live in the UK and to seek financial support. The Cafcass officer considered that the child's views were essentially her own.

5. On 19 May 2017 the respondent issued a divorce petition in the Moscow court. It does not appear that the question of divorce proceedings had been discussed between the parties or by lawyers acting on their behalf in advance of this. The applicant's Russian lawyers became aware of this on 26 May 2017. On 8 June 2017 the wife's issued a divorce petition in the Central Family Court and this was served on the respondent in London. The wife's petition was founded jurisdictionally upon the habitual residence of the husband.

6. On 19 June 2017 a hearing took place in the Moscow court. Both of the parties' lawyers were present. The case was adjourned to allow for a reconciliation period.

7. On 22 June 2017 the applicant issued a Form A in the Central Family Court and applications for maintenance pending suit and a legal services order. On 30 June 2017 the applicant applied for a '*Hemain*' injunction and on 5 July 2017 at an *ex parte* hearing Mrs Justice Parker accepted an undertaking from the respondent not to bring forward or accelerate the hearing in the Moscow court. It seems clear; indeed it was effectively accepted by Mr Harrison, that the main concern of the parties was not their status but rather the financial consequences that would follow from a divorce. The '*Hemain*' application was listed at risk on 17 July 2017; so 2 days before the proposed hearing in Moscow.

8. In the wife's statement in support of her application she said that the family had lived an extremely comfortable life in Russia although the husband was always very secretive about his financial affairs. She said at one point he had admitted his wealth was in the region of US$150 million. She set out some of the assets that she was aware of saying '*I know of several properties owned by Boris, and of numerous corporate structures, but little of the detail. I am aware of the following, and of this being only a very small fraction of his total assets:'*

   There followed a list of properties and corporate interests. The wife also set out her own property and assets. Within the assets that the wife identified are most of the properties and shareholdings which subsequently appear in the husband's statement of claim. Missing are the cash sums and the interests the husband had in 2 BVI companies.

9. In the husband's statement in response he says that the wife has grossly exaggerated the extent of his wealth and says he is worth some £3 - £4 million. He says that he is not able in the short time available to provide the court with full disclosure of his assets but that he fully intends to do so at the appropriate time. He deals with the list of assets that the wife had identified and speculates that she had identified some of them through a company search. He says that many of the companies identified are old start-ups which failed. He produced a statement from his Russian lawyer which addressed the current status of many of the legal entities identified by the wife and the husband's position in relation to various properties.

10. On 17 July 2017 Mrs Justice Roberts made the *Hemain* injunction which restrained the husband from taking any steps whether by himself or through a third party to prosecute or progress his petition in order to obtain a divorce. He was ordered to instruct his Russian lawyer to take steps to adjourn or suspend the Moscow proceedings. It is said on the husband's behalf that at that hearing Mrs Justice Roberts made clear that the arguments on *forum conveniens* were by no means all one way. Thus Mr Harrison argues that there was no reasonable expectation that the wife could have had that she would have been able to pursue her Form A to a final hearing.

11. The hearing in Moscow on 19 July was adjourned but on 27 July 2017 a further hearing took place and a decree of divorce appears to have been granted. There is a dispute between the parties' Russian lawyers as to how that came about. The husband asserts that he complied with the order of Mrs Justice Roberts and he says that he instructed his Russian lawyers to adjourn or suspend the Russian proceedings and that they made written and oral applications in order to further that aim. The wife's Russian lawyer states in a witness statement that the position adopted by the husband's lawyer forced the judge to take a decision on the divorce. I am not entirely sure what this involved but it seems to be an assertion that whilst perhaps appearing to comply with the order, the husband's lawyer took a technical position which was bound to lead to the judge granting a divorce. There is considerable disagreement between the parties' Russian lawyers over a range of issues and there is no way those issues could be resolved (to the extent that they have to be resolved) without far more detailed exploration than was possible in the context of this hearing. It is a feature of the case before me that it is (certainly on the evidence available to me) extremely difficult, indeed potentially misleading to seek to draw parallels with English law, procedure and practice.

12. On 3 August 2017 - thus within a week of the divorce - the respondent issued a financial application in the Moscow court [C298]. In answer to my query whether there was some clock ticking against him which required the husband to issue the application I was told that there was not. Indeed it seems to emerge from the evidence of the Russian lawyers that an application relating to finance or property can be made at any stage. It is the wife's case that this was further evidence of the husband taking steps in Russia to frustrate her ability to pursue a financial remedy application in the English court. The husband's case is that he simply wanted to put in train a process which was simple, formulaic and low-cost in order to resolve issues relating to matrimonial property. Given the absence of any time limit counting against him there may be some force in the wife's submission although of course I cannot determine the husband's motivation without hearing evidence which is not possible within this hearing. The letter which emerged from the husband's English solicitors after the completion of the Russian process which specifically refers to a potential Part III claim and the relevance of the Russian process and order certainly demonstrates how very aware the husband was of the potential impact of the Russian proceedings upon the wife's prospects of pursuing a claim in England. Of course the issuing of the

application was not a breach of the '*Hemain*' injunction although one might reasonably conclude that it was far from compliant with the spirit of the process that Roberts J had put in train.

13. In the course of this hearing and even with the assistance of leading counsel and statements from the Russian lawyers I have not been able to fully (or even very substantially) grasp the nature of the Russian financial proceedings, the basis upon which they are determined, the process which is commonly followed, or still less the positions which each of the parties adopted. That is not to say that with further time and exploration it would not be possible; but even with the relatively generous time estimate for reading that this 'leave' application has had I have not been able to untangle matters. Some matters which do emerge are as follows:

    i) A party to a marriage can make an application to the court to determine matters of ownership of marital property. In such an application the court appears to apply a general rule of equal division. It does not appear that the court has a general discretion as an English court would.

    ii) Within such an application the court deals with the assets which the applicant has asked for a ruling upon. The court does not as a matter of course require full and frank disclosure of all assets of both of the parties. It is not clear to me what scope there is within that process for the investigation of other assets. Mr Harrison submitted that it was clearly open to the wife to ask questions about further assets which might exist beyond those put before the court by the husband. Whilst that may seem common-sense to an English lawyer steeped in English financial remedy law and practice I was unable to ascertain from the evidence whether that was the case in Russia.

    iii) The Russian court divides assets not values. This I suppose would not matter if all assets were before the court and all were divided equally. The difficulty arises where some assets are not before the court or where assets are being transferred by agreement and some balancing exercise is required in order to achieve equality.

14. Between 15 August 2017 and 26 September 2017 various procedural steps including the First Appointment on the applicant's application for financial remedies had been due to occur but did not take place. Mr Harrison submitted that had the wife wished to do so she could immediately have issued an application under Part III, which no doubt is technically correct. It is hard to avoid the conclusion that such application would have been resisted then as it is now.

15. The husband's application to the court made on 3 August 2017 is entitled 'statement of claim- on division of common property of spouses.' In it the husband sets out some property which he identifies as belonging to the wife and property belonging to him. As noted above most of the property identified by the husband was identified within

the wife's first main statement. A shareholding was identified as having a value of in excess of £3 million. However he also disclosed cash amounting to £230,000 in UK and Swiss bank accounts and around US$5 million owed to him by 2 companies. He also identified a sum he owed to a company which had paid the rent for a house in London where he lived. No claims were advanced in that application and some documents were produced.

16. On 7 September 2017 the husband's lawyers filed a further document entitled '*revised update of statement of claim - on division of common property of spouses'.* It seems this was filed because the shareholding referred to as being worth £3 million was overstated by a factor of 10. The document also identified that the companies which owed the husband money were registered in the British Virgin Islands and it now contained a 'claim' that certain assets should be transferred from the husband to the wife in their entirety and a proportion of some other shareholdings should be transferred to her ownership. It also identified that one of the BVI company loans was entirely made up of funds provided to the husband by his mother.

17. On 25 September 2017 a further document '*of statement of claim- on division of comm*on *property of spouses'* was filed with the Russian court. In that document, the husband's cash holdings, his debts and the BVI company loans no longer appear. The claim has also altered; thus the former matrimonial home is now to be retained by the husband.

18. It appears that the wife's Russian lawyer responded to the 25 September 2017 statement of claim on 6 December 2017. In that document it states

'the respondent […] Categorically disagrees with this method of dividing the spouses common property, as the aggregate of the property set out in the petition forms only part of the jointly acquired property to be divided between the petitioner and respondent being the spouses common property.'

The document proposes a different approach; essentially an equal division of all of the property identified as belonging to the husband or the wife.

19. That document was filed on the same day as a hearing took place before the judge in Moscow. It seems reasonably clear, and indeed was accepted by Mr Harrison that the approach of the wife's Russian lawyer was to adopt a position that required equal division of all of the items of property as a tactical approach which supported a proposed application to the English court. It seems that such a 50-50 approach in Russia was perceived as not impacting upon proposed English proceedings in any meaningful way.

20. I have been provided with a transcript of the hearing that took place before Judge Patyk. To say that it is difficult to follow would be an understatement. That is not because the quality of the transcription is poor (see [C106]) but rather firstly because

the positions adopted by the lawyers bear little resemblance to those which would be familiar to an English lawyer applying English financial remedy law but also because they appear to have been perceived as very unhelpful by the judge who expresses considerable frustration or exasperation at various stages. At one stage and contrary to the husband's statement of claim his lawyer says, *'we want to give everything to the respondent'*. The judge asks why. On another occasion the husband's lawyer suggests to the judge that checks could be undertaken to verify that the property before the court was all the property; the wife's having suggested that the property before the court was '*no more than part of the common and genuinely jointly acquired property.'* The judge asks why the the court should gather evidence for them. It emerges quite clearly that the wife's position was that there was further property which was not before the court. The hearing was then adjourned to enable the husband's lawyer to take his instructions on the wife's proposal.

21. On 14 December 2017 the wife's lawyer filed an amendment to the objections raised by the wife to the husband's claim. This repeated the assertion that the assets listed in the claim were only part of the jointly acquired assets that are subject to division. The amendment in substance stated that there were no legal objections to either dividing the joint marital assets equally or with the consent of the parties to transferring all the jointly acquired marital assets subject to division into the wife's ownership. It seems reasonably clear that this was not an acceptance that all of the parties' assets were before the court; this would be self-contradictory.

22. On 21 December 2017 the parties attended again before Judge Patyk. If anything this hearing is even harder to follow and understand. By this stage the husband's lawyer was seeking to introduce questions of the true value of assets rather than their nominal value and in connection with this, questions of set off. Reference is made to the fact that the Russian court is dealing with the assets which were identified by the wife to the English court. I assume this is a reference to the wife's ***Hemain*** injunction statement. Issues arise about the husband having recently informed his Russian lawyer about other assets of the wife's and issues to do with the wife's Swiss bank accounts which cause the judge some concern. There is reference to the understanding that there will be further proceedings in England [C81] [C82] [C83] and that the decision of the Russian court will matter there. There is reference to a property in England (I think this must be an error although one cannot be sure). At one stage the judge says (I think out of exasperation) *'I'm going to stop* (due to translation complications, it may be *or top*) *myself right now'.* The judge states that he will not establish the value of the property. The husband's Russian lawyer states that they do not want a second division in England [C86]. The judge's exasperation with the husband's lawyer appears very clearly at [C87] and the judge refuses to adjourn any further to allow further instructions to be taken from the husband. The wife's lawyer restates her position that they wish to share everything equally. At the conclusion of the hearing the husband's lawyer then offers to transfer everything to the wife which the wife agrees to and the hearing is closed.

23. A written ruling was issued dated 21 December 2017 although I believe it was actually circulated later. The ruling records that the claim was brought by the husband demanding a division of jointly acquired assets; ultimately a transfer of the entire jointly acquired assets. The ruling identifies the properties set out in the husband's statement of claim and confirms that they were jointly acquired marital assets and upholds the husband's claim. It identifies that when joint marital assets are divided shares are deemed to be equal unless stipulated otherwise. It also identifies the court has the right to depart from the principle of equality having regard to the interests of minor children or the interests of one of the spouses that deserves consideration.

24. The ruling provides that:

'to divide jointly acquired marital assets of [the husband] and [the wife] by transferring assets into the ownership of the wife flats number 250...flat number 389…Apartments at Tenerife…Number 23 [Moscow FMH], a 100% stake in Korgino, a 50% stake in Extechno a 33% stake in quantum Satis, a 20% share in TSP, a 1/8 share in Muscle Dystonia Assistance Social Foundation.'

25. The effect of the order is said by the wife to have left the wife with £1.64 million of marital assets and the husband with £1.93 million of marital assets. If one adds in non-marital assets the wife is said to have been left with £1.68 million and the husband with £3.64 million. The husband says that the wife received £2.21 million of marital assets and the husband £1.93 million, including non-marital assets the husband says the wife received £3.131 million and the £3.64 million. Part of the difference in the marital share figures seems to be that the wife values the Russian shareholdings at zero whereas the husband values them at £280,000 and part of the difference arises from a £200,000 differential in the valuation of the wife's property in Tenerife. In respect of the non-marital figures the wife puts her other assets at only £30,000 whereas the husband puts them at £920,000.

26. Between February and March 2018 there was some correspondence between the solicitors for the parties over a possible Part III MFPA 1984 claim with the husband's lawyers putting down a marker as to the significance of the Russian proceedings for attempted Part III application.

27. However it was not until 7 December 2018 that the applicant issued her application for leave to issue a Part III claim. This was supported by a statement dated 15 November 2018. At an ex parte hearing on 10 December 2018 Mr Justice Hayden directed that the matter be relisted *inter partes* on 11 March 2019. The respondent filed a statement on 5 March 2019.

This Hearing

28. The case came before me on 11 March 2019. It had been given a half-day time estimate. This in itself was an increase on the 1 ½ hour time estimate that Mr Dyer

had suggested to Mr Justice Hayden on 10 December. In preparation for this half day hearing I was provided with the following:

i) an 8 page 'Note' [not a recognised form of document under the FPR 2010] but in reality a skeleton argument on behalf of the wife.

ii) a 15-page skeleton argument on behalf of the husband

iii) an essential reading list comprising some 250 odd pages

iv) the bundle of 6 authorities.

29. Given the essential reading itself mounted to some 4 hours of reading the half-day time estimate was wholly inadequate to deal with the application and I adjourned for a further day and a half. I heard submissions from Mr Dyer and Mr Harrison on 27 March.

The Applicant's case

30. Mr Dyer supplemented his Note in his oral submissions. In particular he focused on the current connection that exists with England and Wales. The applicant's case in respect of the section 16(2) MFPA 1984 factors can be found in her statement [C138-40] and Mr Dyer focused on particular aspects of it.

i) The husband has lived in London continuously since October 2011 and is likely to remain here - he has now secured indefinite leave to remain. He does not work in London but has been living off funds he has access to. The wife obtained a dependents Visa in 2014 and spent substantial periods of time here between 2014 and 2016 when the marriage ended. The child has lived in London for the last 4 years.

ii) The husband no longer lives in Russia and will not return there - indeed cannot return there. The wife spends some time in Russia and sometime in Tenerife. There are limited assets retained in Moscow.

iii) The only other connection that the parties have with a country is the wife's residence in Tenerife.

iv) As a result of the Russian court order the wife received assets as follows:

a) the family flat in Moscow, value £1.1 million

b) a parking space value £38,000

c) shareholdings said to be worth £430,000.

The wife alleges that these are a tiny percentage of the husband's total wealth. She says there was no investigative disclosure process. She says that historically the family lived a very good standard of living. She identifies that currently the husband's outgoings are inconsistent with his stated assets. She appears to accept she retained assets following the Moscow proceedings in addition to those transferred from the husband

v) The wife does not accept the values attributed to the Russian shareholdings or that she will be able to realise anything from them.

vi) The wife appears to accept that she could theoretically issue a further claim in the Russian court if she could demonstrate there were other assets in addition to those which have already been dealt with. In the absence of any disclosure process the wife does not believe she could demonstrate this. She also states that she has no faith in the Russian system providing her with a fair outcome. She also suggests that as the husband would not be able to attend hearings in Russia that it would be a 'pointless one-sided charade'. One can of course attend by video link although Mr Dyer makes the point that in cases where credibility and detailed examination may be required video link is a poor and potentially wholly inadequate substitute for personal attendance.

vii) The wife is unable to identify any property in England and Wales until the husband provides disclosure.

viii) The wife submits that the husband is subject to the personal jurisdiction of the courts of England and Wales and the wide powers of enforcement this court has.

ix) The wife submits there's been no delay in the issuing of her application.

31. Mr Dyer in particular focuses on s.16(2)(d) & (e) MFPA 1984 and the agreement that was reached in Moscow. He submits that the fact of the court-approved agreement should carry little weight in this jurisdiction for the following reasons:

a) It is not accepted that H provided full and frank disclosure of all of his financial resources to the Moscow court; that court only dealt with the assets that the husband listed in his 25 September 2017 statement of claim. The situation in relation to the changes in the assets which appear on the husband's statement of claim and how they were dealt with is opaque.

b) The only assets (apart from a car parking space) that the husband was left with after his rent debt has been paid are the "duff"/risk laden loans", which are unlikely to provide the husband with the resources to

fund his expensive lifestyle in London for the foreseeable future, and therefore it can be inferred that he has access to other financial resources outside of Russia which he is benefiting from whilst living in London.

c) There was no opportunity to investigate the husband's financial presentation and to obtain disclosure in the Russian proceedings; the husband did not attend the hearing, there was no opportunity to cross examine him. A significant part of the assets were loans to BVI registered companies totalling some £3.5 million. The wife says no financial disclosure took place nor was there any opportunity for her to obtain such. She asserts that the assets which the court dealt with were those identified by the husband who has absolute choice over which assets are put before the court.

d) The wife accepted the offer the husband made to her, but it was not accepted to be in full and final satisfaction of all of her claims in any jurisdiction; the wife's Russian lawyer told the judge that the wife intended to issue financial proceedings against the husband in England, and the prospect of Part III proceedings was clearly anticipated by the husband's solicitors the month after the Moscow court order was effective (see their letter **[C/198]**). Mr Dyer notes that in ***Zimina-v-Zimin*** [2017] EWCA Civ 1429 the Russian order was expressed as clearly being in full and final satisfaction of all claims and contrasts that to both how the order is expressed in this case and what was said in the written documents and in court.

e) The husband denied the wife the opportunity to bring a financial claim in London (where he resides) by obtaining a divorce in the Moscow court in contravention of the ***Hemain*** order, an order *in personam*.

f) The financial claim in the Moscow court was issued as a tactical ploy to try and avert a Part III claim.

32. He argues that the significance of the financial order and the adequacy of the financial provision that W has received is a matter that should be considered in the context of full disclosure at a final hearing when the court can properly evaluate its relevance. He also submits that (as a matter of justice) H's breach of the *Hemain* order should weigh in favour of allowing W the opportunity to issue a claim under Part III. In addition the wife identifies that the husband's petition in the Moscow court was inaccurate and misleading in various respects.

33. A central aspect of the wife's case is that the husband is vastly wealthier than was reflected in the proceedings in Moscow. At paragraph 33 of her statement she refers to 3 statements of claim which the husband filed in Moscow. The first dated 3 August

2017 put the assets at £7.83 million, the 2nd dated 7 September 2017 put them at £5.47 million (the difference being a shareholding in Eks Techno which was valued at £3,053,435 initially reduced to £305,344) and the last dated 25 September 2017 which appears to have been incomplete. The wife says that at the conclusion of the Moscow proceedings the husband retained a parking space, English and Swiss bank accounts and the BVI loans. The total value of those assets was (net of debts) some £3.5 million. The wife says that the husband's standard of living is not consistent with a net asset position of £3-£4 million. She is able to identify expenditure in the region of £400,000 per annum minimum in the period 2011 onwards and she submits that is simply inconsistent with his level of declared assets.

34. She further submits that the delay between the conclusion of the Russian proceedings and the issuing of her process was less than one year. Mr Dyer points out that in the *Zimina* case the delay was 5 years. The wife he says had to consider financing proceedings and she does not have bottomless pockets.

The Respondent's case

35. On behalf of the husband Mr Harrison both in his skeleton argument and in his oral submissions submits that this is a wholly unmeritorious application; a try on or a fishing expedition. He focused on 3 particular issues:

    i) The lack of connection; this was a Russian case.

    ii) The parties reached a final agreement in Russia.

    iii) The wife's reasons for making this application, in particular her asserted needs case are without foundation; she has no relationship with the parties' daughter which would require a property here.

36. He submits (by reference to the section 16(2) factors) that there are no 'substantial' or 'solid' grounds for pursuing it and it should be dismissed because:

    (a) This is a Russian case with substantial Russian connections. The marriage has a limited connection to this jurisdiction compared with Russia (the country of which both parties are nationals). In support of this he submitted:
        a. All the properties identified by the wife were Russian.
        b. All 17 companies identified by the wife were Russian.
        c. The parties are Russian and lived most of their lives and the majority of the marriage in Russia.
        d. They did not live together in England.
        e. The wife's connection with England is very limited; the maximum time she has spent here was 96 nights in 2016 and in recent years she has spent almost no time here.

f. Russia was the appropriate forum for determining the claims and remains so. Documents would need to be translated from Russian to English. The wife would need an interpreter.

(b) The parties reached an agreement in Russia which is enshrined in a court order dated 21 December 2017.

a. The wife did not raise questions about disclosure or additional assets in Russia.

b. The Russian process was appropriate and straightforward. Each party was represented. The fact that the process does not mirror the English financial remedy process does not mean that it was not a perfectly proper process. In effect there is no room for discounting the Russian process because it is different or unfamiliar.

c. It is clear if one follows the documents and offers and responses through that the wife accepted the husband's offer. This was clearly offered by the husband in full and final settlement of the claim and so as to avoid further proceedings in the UK. Thus if the wife accepted it, she must be taken to have accepted it on the husband's terms. Mr Harrison conducts a detailed analysis of the progress of the proceedings in his skeleton argument from paragraphs 28 through to 45.

d. Whilst it might be the case that the wife's lawyer was seeking to protect her English claim during the initial skirmishes by the time the hearing concluded on 21 December 2017 she had clearly changed her position and was accepting the husband's offer in full and final settlement. It would be unfair for her now to seek to take a host of assets during the Russian proceedings and then seek a further bite of the cherry in England.

(c) Both parties were legally represented in Russia. H made full disclosure of all his assets including those which were 'non-matrimonial' in nature. The wife could have sought further disclosure but did not do so.

(d) Under the agreement the wife received assets worth at least $2.3 million as well as retaining other assets which were not disclosed by her. She received or retained more than 50% of the 'matrimonial' assets.

(e) The husband is the primary (indeed, sole) carer for the parties' daughter Vassilisa who has lived with him in England since 2014. She is the court's 'first consideration'. The wife has had little contact with Vasilisa and has paid nothing at all for her. The husband is solely responsible for bringing her up and providing for her financially.

(f) The wife delayed making this application by c.1 year after the Russian financial order. There is no explanation for the delay, but it is notable that the application was made c.2 months after the death of the husband's father, from whom the

husband expects to inherit. The wife could have immediately moved from her financial remedy application in Form A into Part III proceedings

37. Mr Harrison refutes the assertion that any criticism can be targeted at the husband in relation to the granting of the Russian decree. He submits that the husband did all that he could to comply with the injunction but that ultimately it was not in his gift; it being a matter for the Russian court.

38. Mr Harrison submits that the Part III process is not to be used merely as a vehicle to test disclosure or to carry out a fishing expedition. He submits that the wife's assertions that the husband is worth in the region of US$150 million are wholly without foundation and that the court cannot permit an application to proceed on the basis of such spurious assertions. The lifestyle of the parties historically and now, and the totality of the property assets they currently own are not consistent with the sorts of figures that the wife gives.

39. In support of his 3rd point Mr Harrison submits that the basis of the wife's claim is without foundation. She has never lived here and will not live here and so does not need a property in order to live here. I was provided today with the Cafcass report which has been filed with the court as a result of the wife's application for a child arrangements order which was issued on 28 November last year. Mr Harrison points out that the wife has had virtually no contact with Vassilisa in the last 2 years although the child is not averse to having some relationship with the mother. Mr Harrison submits that if the wife was truly interested in spending time with her daughter she would have made more of an effort to do so in recent years. He suggests the wife's asserted need for a property in London is simply false. He points out that on the wife's calculation of the assets she is in possession of more than sufficient resources to meet her needs.

40. Overall Mr Harrison submits that if one looks at the position in the round there is no substantial ground for me to grant leave.

The Legal Framework

41. Insofar as appears to be relevant to this application the statutory provisions which apply are set out below.

12 Applications for financial relief after overseas divorce etc
(1) Where –
(a) a marriage has been dissolved or annulled, or the parties to a marriage have been legally separated, by means of judicial or other proceedings in an overseas country, and
(b) the divorce, annulment or legal separation is entitled to be recognised as valid in England and Wales,

either party to the marriage may apply to the court in the manner prescribed by rules of court for an order for financial relief under this Part of this Act.
(4) In this Part of this Act except sections 19, 23, and 24 'order for financial relief' means an order under section 17 or 22 below of a description referred to in that section.

13 Leave of the court required for applications for financial relief
(1) No application for an order for financial relief shall be made under this Part of this Act unless the leave of the court has been obtained in accordance with rules of court; and the court shall not grant leave unless it considers that there is substantial ground for the making of an application for such an order.[emphasis added]

(2) The court may grant leave under this section notwithstanding that an order has been made by a court in a country outside England and Wales requiring the other party to the marriage to make any payment or transfer any property to the applicant or a child of the family.
(3) Leave under this section may be granted subject to such conditions as the court thinks fit.

15 Jurisdiction of the court
[there is no dispute over jurisdiction based on habitual residence of the respondent.]

16 Duty of the court to consider whether England and Wales is appropriate venue for application
(1) Subject to subsection (3), before making an order for financial relief the court shall consider whether in all the circumstances of the case it would be appropriate for such an order to be made by a court in England and Wales, and if the court is not satisfied that it would be appropriate, the court shall dismiss the application.
(2) The court shall in particular have regard to the following matters –
(a) the connection which the parties to the marriage have with England and Wales;
(b) the connection which those parties have with the country in which the marriage was dissolved or annulled or in which they were legally separated;
(c) the connection which those parties have with any other country outside England and Wales;
(d) any financial benefit which the applicant or a child of the family has received or is likely to receive, in consequence of the divorce, annulment or legal separation, by virtue of any agreement or the operation of the law of a country outside England and Wales,
(e) in a case where an order has been made by a court in a country outside England and Wales requiring the other party to the marriage to make any payment or transfer any property for the benefit of the applicant or a child of the family, the financial relief given by the order and the extent to which the order has been complied with or is likely to be complied with;

(f) any right which the applicant has, or has had, to apply for financial relief from the other party to the marriage under the law of any country outside England and Wales and if the applicant has omitted to exercise that right the reason for that omission;
(g) the availability in England and Wales of any property in respect of which an order under this Part of this Act in favour of the applicant could be made;
(h) the extent to which any order made under this Part of this Act is likely to be enforceable;
(i) the length of time which has elapsed since the date of the divorce, annulment or legal separation.
(3) [omitted]

17 Orders for financial provision and property adjustment
[(1) Subject to section 20 below, on an application by a party to a marriage for an order for financial relief under this section, the court may—
(a) make any one or more of the orders which it could make under Part II of the 1973 Act if a decree of divorce, a decree of nullity of marriage or a decree of judicial separation in respect of the marriage had been granted in England and Wales, that is to say—
(i) any order mentioned in section 23(1) of the 1973 Act (financial provision orders); and
(ii) any order mentioned in section 24(1) of that Act (property adjustment orders); and
(b) if the marriage has been dissolved or annulled, make one or more orders each of which would, within the meaning of that Part of that Act, be a pension sharing order in relation to the marriage;
[(c) if the marriage has been dissolved or annulled, make an order which would, within the meaning of that Part of that Act, be a pension compensation sharing order in relation to the marriage].]
(2) Subject to section 20 below, where the court makes a secured periodical payments order, an order for the payment of a lump sum or a property adjustment order under subsection (1) above, then, on making that order or at any time thereafter, the court may make any order mentioned in section 24A(1) of the 1973 Act (orders for sale of property) which the court would have power to make if the order under subsection (1) above had been made under Part II of the 1973 Act.

18 Matters to which the court is to have regard in exercising its powers under s 17
(1) In deciding whether to exercise its powers under section 17 above and, if so, in what manner the court shall act in accordance with this section.
(2) The court shall have regard to all the circumstances of the case, first consideration being given to the welfare while a minor of any child of the family who has not attained the age of eighteen.
(3) As regards the exercise of those powers in relation to a party to the marriage, the court shall in particular have regard to the matters mentioned in section 25(2)(a)

to (h) of the 1973 Act and shall be under duties corresponding with those imposed by section 25A(1) and (2) of the 1973 Act where it decides to exercise under section 17 above powers corresponding with the powers referred to in those subsections.
[(3A), -(5) omitted]
(6) Where an order has been made by a court outside England and Wales for the making of payments or the transfer of property by a party to the marriage, the court in considering in accordance with this section the financial resources of the other party to the marriage or a child of the family shall have regard to the extent to which that order has been complied with or is likely to be complied with.

[(7) omitted]

42. The meaning of substantial ground for the making of an application for such an order has been considered by the Supreme Court. The burden is on the Wife to show a 'substantial' ground for making the application. The meaning of 'substantial' was considered in the leading judgment of Lord Collins in *Agbaje v Agbaje* [2010] 1 AC 628 at §30 onwards. Lord Collins expressed concern at §32 about the waste of costs and court time and prejudice to applicants caused by applications to set aside *ex parte* orders granting leave but stated '*That must of course be balanced by a proper application of the threshold of "substantial ground.'* Recognising the inherent imprecision of the word 'substantial' he went on to say at §33:

'In the present context the principal object of the filter mechanism is to prevent wholly unmeritorious claims being pursued to oppress or blackmail a former spouse. ***The threshold is not high, but is higher than "serious issue to be tried" or "good arguable case" found in other contexts. It is perhaps best expressed by saying that in this context "substantial" means "solid".'*** [emphasis added]

43. He went on to say that unless it was clear that the respondent could deliver a '*knockout blow'* the court should use its case management powers to adjourn an application to set aside to be heard with the substantive application.

44. The appeal in *Agbaje* was in respect of an order for financial relief which had been made as opposed to an appeal against the granting of leave. The substantive appeal emphasised a number of points in relation to the application of sections 16, 17 and 18 MFPA 1984 and the making of final orders. I remind myself of them so that my determination of whether the wife can demonstrate substantial grounds for the making of the application is set in its proper context.

i) Section 16 addresses matters which the court must have regard to in considering whether it would be appropriate for such an order to be made by a court in England and Wales. They are separate criteria to be applied in answering the question of whether the order for financial provision sought should be made.

ii) The list of criteria in section 16 are not exhaustive. The whole point of the section 16(2) factors is to enable the court to weigh the connections of England against the connections with the foreign jurisdiction so as to ensure that there is no improper conflict with the foreign jurisdiction.

iii) Sections 17 and 18 are relevant in answering that latter question.

iv) Thus the first question is to consider whether England and Wales is the appropriate venue for the application; the second is to consider whether an order should be made under section 17 having regard to the matters in section 18. They are interrelated though.

v) In deciding whether to make an order for financial provision the court must have regard to 'all the circumstances' including but not limited to those identified specifically in section 18.

vi) Hardship or injustice may be taken into account either under section 16 or section 18.

vii) The whole basis of Part III is that it may be appropriate for two jurisdictions to be involved

viii) Hardship or exceptionality is not a precondition of the exercise of the jurisdiction. There is no basis for limiting Part III relief to the minimum extent necessary so as to remedy the injustice perceived to exist without intervention.

ix) It is not the intention of the legislation to allow a simple 'top-up' of a foreign award so as to equate with an English award. The English provisions in contrast to the Scottish provisions provide a deliberately more flexible approach where it may be appropriate to ask what provision would have been made had the divorce been granted in England but there will be other cases where the order made by the foreign court is less than that which might have been made following an English divorce but which would still be considered adequate so no top up would be appropriate. It will not usually be a case for an order under Part III where the wife had a right to apply for financial relief under the foreign law and an award was made in the foreign country. Mere disparity between what was received and what might be received in England is insufficient to trigger the application of Part III.

x) The amount of any award will depend on all the circumstances and there is no rule that it should be the minimum amount required to overcome injustice.

xi) Conditions can be attached to leave which together with the court case management powers can be used to define the issues and to limit the evidence to be filed. Thus the jurisdiction can be tailored to the needs of the individual

case so that the grant of leave does not inevitably trigger a full-blown claim for all forms of financial remedy.

45. In *Traversa v Freddi* [2011] 2 FLR 272, CA, Thorpe LJ rejected a suggestion in a previous decision of Mostyn J that 'substantial' meant more than 50% and held at §§29-30 that:

'As to the interpretation and application of section 13 , there could hardly be clearer guidance than that given by Lord Collins in the three sentences that open paragraph 33 of his judgment…

It is clear that the section 13 filter is there to exclude plainly unmeritorious cases and, although, in the evaluation of substance, regard must be paid to overall merits, it does not call for a rigorous evaluation of all the circumstances that would be considered once the application has passed through the filter.'

46. 'Substantial' is identified as a higher threshold than the tests of 'serious issue to be tried' or 'good arguable case' found in other contexts which appear to bear the following meanings and which shed some light on the approach to be adopted:

i) a serious issue to be tried on the merits, i.e. a substantial question of fact or law, or both**;**

ii) "good arguable case" connotes that one side has a much better argument than the other…

Altimo Holdings and Investment Limited and Others v Kyrgyz Mobil Tel Limited and Others [2011] UKPC 7

iii) 'good arguable case' *"is more than barely capable of serious argument, and yet not necessarily one which the judge believes to have a better than a 50% chance of success …".*

Ninemia Maritime Corp v Trave Schiffahrtsgesellschaft GmbH & Co KG [1984] 1 All ER 398

47. Section 16 of the MFPA 1984 along with sections 17 and 18 are directly applicable when the court is adjudicating upon the application and considering whether to make an order. They thus come into play after leave has been granted pursuant to section 13. Of course, an applicant will invariably choose to refer to the section 16 factors and might go further and refer to the section 18 factors to demonstrate that it was likely the court would conclude in the circumstances that it was both appropriate to make an order and identify the sort of order that the court might consider appropriate in all the circumstances by reference to the section 18 MFPA 1984 (and perhaps section 25 MCA 1973) factors.

48. Once one embarks upon this exercise of looking at the section 16 factors and indeed broader considerations there is a danger that one commences the sort of detailed (or rigorous) evaluation that it is intended should take place once leave has been granted. The dicta of Lord Collins in ***Agbaje*** (above) in respect of 'substantial ground' and the disadvantages of hearing applications to set aside leave granted *ex parte* were no doubt considered because the Court of Appeal had spent some time considering '*the first question: the permission stage and the difference with the substantive application'*. At paragraph 33 of the Court of Appeal's judgment Lord Justice Ward set out the difference between the application for leave and the substantive application that the Law Commission identified. This identified the proposition that at the application for leave the court would only have one side of the story before it, and secondly, that the burden on the applicant was inevitably somewhat lower because then the court had to be satisfied that there was a 'substantial ground' for making the application whereas at the final stage the applicant would have to satisfy the court that it was in all the circumstances appropriate for an order to be made (both by the English court and generally). As I have noted above Lord Collins' view was that set aside hearings should not take place unless it was clear that the respondent could deliver a knockout blow.

49. In this case leave was not granted *ex parte* and so this hearing has not been constructed around a set aside argument where the burden might be on the respondent to show that leave was wrongly granted. It has been constructed around a much more fully argued consideration of whether there is substantial ground for the making of an application.

50. Thus although only at the leave stage - a stage which I consider was only really intended to represent an opportunity to dip a foot (or a leg) in the waters of sections 16 and 18 in order to determine whether there is a substantial (or solid) ground for making such an application or whether it was wholly unmeritorious - I have been invited in particular by Mr Harrison to dive in if not complete a couple of vigorous lengths. If one is tempted to fully immerse oneself in the section 16 and section 18 factors there is a danger that the leave stage becomes substantial satellite litigation in which the court is attempting to evaluate matters which are not capable of determination because of an underlying evidential dispute, or not capable of appropriate evaluation because the relevant procedural stages have not been gone through in terms of the disclosure of information and the collation of evidence which enables the court to fulfil that function.

51. Having regard to all of the above it seems to me that there may be many factors which persuade a court that there is substantial ground for the making of an application for such an order. At one end of the spectrum will be cases where it is blindingly obvious that leave should be granted; for instance that identified at paragraph 64 in ***Agbaje***. At the other end of the spectrum there will be cases where the respondent can deliver a knockout blow, for instance by being able to demonstrate on indisputable evidence

the lack of application of the section 16 factors. Those cases will be clearly unmeritorious. However between unmeritorious and substantial ground it seems to me there is no clear boundary. In between the plainly unmeritorious and the plainly meritorious will be many cases where the assessment of substantial or solid ground is as much an art as a science; the classic territory of judicial evaluation. In some cases, there may be one factor which is of such significance that it crosses the threshold. In others, there may be a constellation of factors which taken together give the case substance or solidity. Having regard to the inevitable limitations imposed by the court's inability at this stage to resolve disputes of fact, or to fully evaluate competing arguments, sometimes (like the elephant) it is hard to describe but one knows it when one sees it. Thus reminding myself that: substantial does not equate to showing a more than 50% prospect of an order ultimately being made but that there is something which can sensibly be said to amount to more than substantial issues of fact or law that require determination, more than good arguments, that the application raises substantial issues which as a matter of justice require determination, and that the application is not wholly unmeritorious or capable of being determined by knockout blow, I turn to my evaluation.

Discussion

52. I clearly have jurisdiction to grant permission given that the husband has been habitually resident in the UK for several years.

53. Whilst Mr Harrison is undoubtedly right that much about this case is Russian that is only part of the picture. There is now a significant English element to it as a result of the habitual residence of the husband and the child in London. The husband chose to seek asylum in England and has made his home here for 8 years. That choice - which was his - has led to the accretion of significant connections with England. From 2014 to 2016 following the grant of visas the marriage was based in England; it could not be anywhere else due to the husband's predicament. Whilst it is right that there are few identifiable assets in England, at present I am unsure whether there has been full and frank disclosure. In his main statement the husband said that he would in due course provide such disclosure but it has not yet emerged. As Mr Dyer points out, it would have been relatively easy for the husband to provide further documentation evidencing for instance how he meets his living expenses. Whilst I appreciate that the rejoinder to that is that it is for the wife to establish substantial grounds and it is not for the husband to disprove them, in the context of this hearing, which, whilst it is not an application to set aside leave, has resulted in far more detailed evidence being before the court, the husband has chosen not to put that material into the court arena despite an earlier indication that he would do so. What is known as a result of the husband's disclosure in Russia, which was not known to the wife when she filed her main statement, was that the husband has significant offshore connections with 2 BVI companies which owe him very substantial funds, and a further offshore company which it is said he owed significant sums to. Thus I conclude that on the material

currently before me there is a connection with England and Wales which is significant. Of course there is also a significant connection with Russia. There is a connection with Tenerife albeit it is one-sided and more limited than the English or Russian connection.

54. The wife has received a financial benefit in consequence of the Russian divorce. As I have indicated earlier in this judgment it has been incredibly difficult to unscramble the Russian process and indeed the true import of the ruling which resulted within the confines of this leave hearing. At this stage (but without determining the issue of course) it seems to me that there is a very real argument over the impact that the ruling of 21 December 2017 should have within a Part III claim. It is far from clear to me that that process led to an agreement and thus an order which was in full and final settlement of all the parties' claims. If that is so why does the order not record that? If that is so why within the course of the 21 December hearing were there frequent references to intended proceedings in Great Britain? Why did the wife's documents expressly refer to only part of the marital assets being before the court? Why does this appear within the transcripts? Was the position taken by the wife within the totality of those proceedings a protective one engaging with the Russian court but doing so principally to ensure the preservation of a potential claim in the UK, or was it a genuine engagement with court in order to reach a final resolution? There are hints from the Russian judge himself that he was detecting procedural manoeuvring.

55. Whilst Mr Harrison presents a persuasive narrative in his skeleton argument of that process he of course focuses on the plums and not the duff. The sense of the process which emerges from those transcripts and the judgment is not in any sense as clear-cut as he submits. It may of course be, given the constraints within which I am operating in this leave hearing, that the impressions may be confounded upon a more detailed enquiry into the position. But for the purposes of leave such an enquiry is not possible and impressions based on a partial immersion are what I ultimately have to operate upon in this hearing. Thus I conclude that there is a real argument as to what impact that process and order have.

56. Whilst I accept Mr Harrison's submission that a Part 3 application cannot simply be a fishing expedition or a means to crosscheck the disclosure that was made in the Russian court, the picture which emerges from the current documentary evidence tends to support Mr Dyer's argument that it was more narrowly focused on the assets the husband put before the court and that the enquiry into assets both as to their value or existence was limited because of the framework within which the matter was heard. The fact that in the Statement of Claim the Husband identifies the wife as having $300,000 in a bank account but refers to her having c.€1m in his recent statement adds to the lack of clarity over what information the Russian court was given and what it was taking into consideration. Again it may be that on a deep dive into this with the benefit of more evidence a different picture could emerge. However, as matters currently stand there seems to be merit to Mr Dyer's argument that the

Russian process did not involve the sort of full and frank disclosure and the opportunity for investigation and testing which would justify this court placing very significant weight on the Russian ruling so as to seriously undermine the solidity of the wife's application – or to deliver a knockout blow.

57. Mr Harrison is right that insofar as the wife advances a needs-based claim it looks weak if not spurious given her housing needs are met in Tenerife and Russia and if she really needed a London base she could re-arrange her assets accordingly. Although the bottom line figures still leave some room for argument in terms of disparity; but that might well only be the sort of disparity that would be acceptable. A top-up approach would probably fall into the unmeritorious category. But this is not the sole basis of her making this application; the more substantial point is whether there are assets which were not disclosed within or or as part of the Russian process, and thus whether this court might be looking at very substantially different assets and orders.

58. I note that there is no reference in any of the transcripts to the wife asserting that what was before the court was a completely inadequate reflection of the husband's true wealth. However there is in reality very little reference to anything other than the properties identified in the husband's statement of claim; there is no broader discussion about the lifestyle of the parties. Perhaps that is because the Russian court was undertaking a quite different exercise to that which is familiar to the English court or perhaps it is because the wife was adopting a tactical approach and simply not proactively putting such issues before the court. Perhaps it was because she thought it might be considered ludicrous? It is simply impossible to get to the bottom of this in such a hearing. However the significant point for my purposes is whether there appears to be a genuine issue over the true extent of the husband's wealth. If there is a real issue over this, and thus a real issue over whether the orders of the Russian court did not deal with a significant part of his wealth, then it may be that it would be appropriate for an order to be made by this court.

59. What is a court in the current position to do when there is no direct evidence that the foreign court order only dealt with part of the assets? Of course in a case like ***Agbaje*** (above) where it is plain that the foreign court did not deal with English-based assets, and where those assets are substantial the court may find the task of discerning substantial grounds relatively easy. What of a case such as this where it is the wife's position that the husband as an entrepreneur and banker had extensive wealth prior to 2011 but is unable to identify it? It seems to me that the court must look at what indicators exist and extrapolate from them whether there is a real or viable argument that more extensive assets exist which would form the foundation of a further order. If there are such arguments they may translate into a substantial or solid ground. The husband accepts that since 2011 and continuing he is making extensive expenditure out of capital in the region of up to £400,000 per annum net up to January 2018. This is very substantial expenditure albeit far from the oligarch league. I note that the

husband asserts that 95% of the business of his main business vehicle Family Health Ltd was lost when the manufacturer of the product decided to distribute it directly rather than through his business. The husband does not ascribe a value to Family Health Ltd at any stage and it is therefore almost impossible to get any feel for this. It is clear that some of the husband's business assets have considerable value i.e. Ekstechno and the properties which have been purchased both in Russia and Tenerife together with the substantial BVI funds suggest that at some point prior to 2011 the husband had quite significant financial resources. It may of course be right that in effect since then the husband has been drawing down on assets built up prior to his leaving Russia and that his asset base is being steadily and significantly eroded each year by the expenditure that he has been and continues to make being something in excess of £300,000 per annum. However the alternative is that at some point prior to the collapse of Family Health Ltd and the husband's hurried flight from Russia on the back of political persecution he was a man of considerable substance and that the Russian assets and the Swiss and UK bank accounts and the BVI assets are not a full representation of his finances. It may well be that his rapid application to the Russian court following the grant of a divorce was only designed to make use of a cheaper and more straightforward procedure than would have occurred in England. However it might also be that it was designed to secure a favourable outcome as a stepping stone to preventing a deep dive into his financial position that would generally accompany English proceedings. It would be inappropriate for me to draw any conclusions on these two possibilities in the absence of hearing evidence from the parties about it. The various strands relating to the husband's expenditure, his previous position in Russia, his rapid application to the Russian court are sufficient in my view to raise a reasonable or viable argument that the assets considered by the Russian court were not a full reflection of his finances notwithstanding the relative lack of particularity of the wife's contention.

60. I acknowledge Mr Harrison's argument that the timing of the application close to the death of the husband's father indicates this is a try on. However it is of course right that a claim in the English courts was a live issue throughout the Russian process. Mr Dyer's explanation for the delay is hardly full, but given the wife's means embarking on expensive English litigation is likely to have played a part in that delay. Again this issue is not capable of full evaluation in the context of a leave application – who knows what the outcome might be after full exploration – but it is not sufficient to knock out or undermine the other strands of the wife's case.

Conclusion

61. So is there a substantial or solid ground for the making of an application for financial remedy in England and Wales? Can the applicant soar or creep over the bar which is not set high but involves demonstrating more than a serious issue of fact or law to be tried on the merits; does she have a much better argument than the respondent but not necessarily one which gives her a greater than 50% prospect of success, bearing in

mind the filter is designed to knock out unmeritorious claims and to allow those which appear to have substantial merit but not following a rigorous evaluation of all the circumstances?

62. Taking all of the various considerations that I have addressed above it may be arguable that none on their own might provide a substantial or solid ground but taken together I consider that the wife has demonstrated that there is a substantial ground for me to grant leave. Her claim in my view plainly cannot be characterised as wholly unmeritorious. In the circumstances it would be unjust to close the door. Whether the grant of leave ultimately translates into a decision following detailed consideration of the section 16 factors that it is appropriate for the English court to grant relief, or whether it is appropriate to make an order after detailed consideration of the section 18 factors, is to prejudge the ultimate questions.

63. The nature of the case where the wife says the husband has failed to provide anything like an accurate portrayal of his assets to the Russian court and where she asserts that there is extensive hidden wealth combined with the husband's retort that this is a try on in the light of his expected inheritance suggests that the parameters of the application will be broad. However it does appear in relation to Russian assets that they have been relatively extensively enquired into, and that the focus of the application is likely to be on assets held outside Russia; probably with the focus being on Swiss or offshore assets. That may narrow the parameters both of disclosure and of the issues which the court ultimately needs to determine.

64. I raised the issue with the parties as to whether if I granted leave there should be a condition pursuant to section 13(3) MFPA 1984 that the wife provide security for costs. Having sprung that on the parties Mr Harrison invited me to make such an order if I granted leave. Mr Dyer submitted that it raised issues which required fuller consideration.

65. On reflection and having considered Mr Dyer's brief further submissions it seems to me that I cannot determine that issue within this judgment. I will therefore determine that issue at a further hearing at which the court will consider the sorts of issues which would usually fall for consideration at a first directions appointment.

66. That is my decision.