Neutral Citation Number: [2016] EWHC 15 (Ch)

Claim No: HC-2012-000014

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Rolls Building, Fetter Lane,
LONDON EC4A 1NL
Date: Monday 18th January 2016

Before:

MR JEREMY COUSINS QC, SITTING AS A DEPUTY JUDGE OF THE CHANCERY DIVISION

- - - - - - - - - - - - - - - - - - - -

Between:

ALIAKSANDR HNIAZDZILAU

Claimant

- and -

(1) **ZSOLT ADAM VAJGEL**
(2) **KING HOWARD CORDERO ENRIQUEZ**
(3) **DMITRIY IVANOVITCH BRONOVETS**

Defendants

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

JEREMY COUSINS QC

Mr Clifford Darton and **Mr Paul Powesland** (instructed by **Messrs HCLS LLP**, of 3rd Floor, Carrington House, Regent Place, Mayfair, LONDON W1B 5SE) for the Claimant

Mr Thomas Roe QC and **Mr Alexander Halban (**instructed by **Messrs Gresham Legal Limited**, of Central Court, 25, Southampton Buildings LONDON WC2A 1AL) for the Third Defendant

The First and Second Defendants were neither present nor represented.

Hearing dates: 2nd, 3rd, 6th, 7th, 8th, 9th, 10th, 13th, 17th July, 28th and 29th September 2015

MR JEREMY COUSINS QC:

1. This case concerns the beneficial ownership of Bennet Invest Limited ("BIL"), a company incorporated in England and Wales on 14th February 2005. Subject to certain rights of economic management mentioned below, BIL is the owner of valuable commercial property (now said to be worth between $3m and $6m) at 46, Gurskovo Street, Minsk, Belarus ("the Property") which was purchased from a religious foundation, Dobraya Vest, in 2008. Both the Claimant, Mr Hniazdzilau, and the Third Defendant, Mr Bronovets, claim to be the beneficial owners of BIL, denying that the other has any interest in it. BIL's incorporation was arranged by Fitton Legal Company Limited ("Fitton"), which was an incorporation agent. Both Mr Hniazdzilau and Mr Bronovets assert that it was on their respective behalves that BIL was established. Whilst they also agree that BIL acquired the Property, their cases as to the source of the funding of that acquisition are diametrically opposed. Mr Hniazdzilau maintains that the monies came exclusively from entities that he owned and controlled, whereas Mr Bronovets suggests that they came from the trading activities of BIL.

2. Until well into the trial it appeared that the case turned upon the factual disputes between Mr Hniazdzilau and Mr Bronovets as to which of them it was on whose behest BIL had been established, and how the purchase of the Property had been funded. However, on the eighth day of the trial, and only immediately before Mr Roe QC, leading counsel for Mr Bronovets, was due to call his last witness, Mr Roe intimated that he would wish to make an application for permission to amend his client's Defence and Counterclaim so as to allege illegality on the part of Mr Hniazdzilau. This very late application, which I heard on 17th July 2015, and granted for reasons given at the time, was based upon evidence which Mr Hniazdzilau had given the previous week, to which evidence I shall return later in this judgment.

3. The First and Second Defendants, Mr Zsolt Vajgel and Mr King Enriquez, have played no part in this trial, and their parts in this litigation have been minimal, as I shall describe more fully below. In this judgment, therefore, where I refer to "the parties", I am referring to Mr Hniazdzilau and Mr Bronovets, unless I indicate otherwise.

BACKGROUND

4. Both Mr Hniazdzilau and Mr Bronovets are Belarusian nationals.

5. Upon the incorporation of BIL in February 2005, its registered office and postal address was at Suite 26, 22 Notting Hill Gate, London, which was also the trading address of Fitton. From that time, and until March 2011, Mr Vajgel, a Hungarian national whose present whereabouts are uncertain, was the only director of BIL. During that period he was also BIL's only shareholder, and remained so until 18th June 2013 (being after the commencement of proceedings), when he transferred his shareholding to Mr Enriquez.

The proceedings

6. Mr Hniazdzilau commenced these proceedings with a claim form issued on 18th December 2012. (For the avoidance of doubt, I mention at this point that unless it is necessary to be more specific in order to avoid any confusion, when referring to any pleading, I should be understood to be referring to it in its most recently amended version.) At that time the only defendant was Mr Vajgel. Mr Hniazdzilau sought a

declaration that Mr Vajgel held the entire issued shares of BIL on trust for Mr Hniazdzilau, and an order for their transfer to him, or his nominee. From the outset, Mr Hniazdzilau's pleaded case was that BIL was formed at his behest with monies provided by him through Mr Bronovets, his Belarusian lawyer, whom Hniazdzilau understood to be associated with a Moscow law firm, Amond & Smith ("A&S"). The purpose of forming BIL, it was alleged, was so that "a property" in Minsk could be transferred to a Belarusian subsidiary of BIL. The first pleaded basis for the existence of the trust upon which Mr Hniazdzilau relies, and Mr Hniazdzilau's primary case (to which I shall refer as "Mr Hniazdzilau's primary case"), was that that Mr Vajgel and Fitton, acted upon Mr Hniazdzilau's instructions as communicated through Mr Bronovets, and that Mr Vajgel received the shares ("the Shares") in BIL knowing that they belonged beneficially to Mr Hniazdzilau. Mr Enriquez, it was alleged was connected with Fitton, and received the Company's share capital as a professional trustee, or nominee; by reason of such acquisition, he was alleged to hold the stock on trust for Mr Hniazdzilau. This trust was said to be evidenced, amongst other things, by:

(1) A document described as "Verification of Beneficial Owner's Identity" ("the Verification") produced by BIL, dated 1st June 2005, suggested to have been signed by its attorney, Mrs Olena Turevych (of Fitton), confirming that Mr Hniazdzilau was the beneficial owner of the Company's assets, and any monies held in its accounts,

(2) A "Corporation Resolution" (*sic*), also said to have been signed by Mrs Turevych, and dated 1st June 2005, which authorised Mr Hniazdzilau to sign cheques and other instruments in connection with a bank account to be held by BIL. This was an ING Bank (Switzerland) Limited ("ING") standard form document, dealing with the deposit, custodian, current accounts and credit transactions of BIL.

(3) The grant to Mr Hniazdzilau of a Power of Attorney ("POA") to facilitate his conduct of business on behalf of BIL, including the formation of a subsidiary in Belarus, the authorisation of Mr Hniazdzilau to acquire property in that country, and his acting as BIL's representative abroad.

(4) A further document confirming Mr Hniazdzilau's beneficial ownership of BIL following its incorporation. This document, which was never produced in evidence, Mr Hniazdzilau alleges was kept in a safe to which Mr Bronovets had free access, but it was discovered to be missing once the dispute between the parties arose. Mr Hniazdzilau's case is that the

document was removed by Mr Bronovets (which the latter denies).For convenience I shall refer to this document, whose existence was much disputed, as "the Missing Formation Document".

7. A Belarus registered subsidiary Beni Limited ("Beni") was indeed later formed, as I shall explain more fully below; Mr Hniazdzilau asserted that he caused its entire share capital to be held by BIL.

8. The second, and alternative, pleaded basis for the trust was that was that Mr Hniazdzilau and/or his companies contributed, as part of an extensive development project involving BIL and a Minsk based construction company, some $6m towards the cost of refurbishing and rebuilding the Property which was transferred to Beni in about October or November 2009, thereby increasing the assets of BIL. By transferring the Property to Beni, and/or by transferring the shares in Beni to BIL, Mr Hniazdzilau maintained that he conferred a benefit upon BIL, and thus Mr Vajgel, for no consideration, whereas Mr Hniazdzilau had contributed $6m from his own funds. Mr Hniazdzilau asserted that, to Mr Vajgel's knowledge, these transactions were completed in the belief that Mr Hniazdzilau was already the beneficial owner of the Shares in BIL, so that it would be unconscionable for Mr Vajgel to deny the terms of the trust. Thus an estoppel against Mr Vajgel was said to have arisen. (For convenience I shall refer to this second basis of the claim as "Mr Hniazdzilau's alternative case".) The transfer of the Shares to Mr Enriquez was alleged to have been subject to an equitable lien or constructive trust in favour of Mr Hniazdzilau; alternatively, Mr Enriquez was alleged to have received the Shares knowing enough of the surrounding facts concerning their misapplication by Mr Vajgel to make it unconscionable for him to retain them as against Mr Hniazdzilau.

9. In his pleaded case, (at paras 7, 10C, 10F, 29I, and 29K of the Particulars of Claim, and in para 9, 10 of his Reply and Defence to Counterclaim), throughout his evidence, and in the manner in which his case was presented at trial, Mr Hniazdzilau has maintained that Mr Bronovets acted as his lawyer and fiduciary in connection with the establishment of BIL, and that Mr Bronovets is acting wrongfully in denying Mr Hniazdzilau's beneficial interest in the Shares. He has also expressly pleaded (at para 22 of his Reply) that the extent of any fiduciary duties owed by Mr Bronovets to Mr Hniazdzilau falls to be determined in accordance with English law. It seems to me that, properly analysed, this was a distinct formulation of Mr Hniazdzilau's claim, and I shall refer to it as "Mr Hniazdzilau's fiduciary case".

10. The claim, which sought relief in the form of a declaration against Vajgel (Mr Enriquez and Mr Bronovets not at that time being parties to the litigation) to the effect that he held the Shares on trust for Mr Hniazdzilau, or subject to an equitable lien in his favour, and an order against Mr Vajgel for the transfer of the Shares to Mr Hniazdzilau, was met with an application by Mr Vajgel challenging the jurisdiction of the court, and seeking an order that service upon him be set aside; it was asserted that Belarus was the appropriate jurisdiction. This application generated an exchange of witness statements, which included a brief and limited witness statement from Mr Vajgel, and on his behalf, a statement from Mr Michael Fenn, a solicitor with Messrs Pinsent Masons. Chief Master Winegarten dismissed the jurisdictional challenge by orders made in January and March 2013, and an appeal against this decision was struck out upon the failure of Mr Vajgel to provide security for the costs of the appeal. By this time, Mr Hniazdzilau had learnt of the transfer of Mr Vajgel's shareholding to Mr Enriquez, and therefore Mr Hniazdzilau applied for Mr Enriquez to be joined as a defendant, which was so ordered by Master Bragge on 4th December 2013.

11. It is common ground between the parties that at all material times, Mr Bronovets directed and controlled Mr Vajgel and Mr Enriquez' actions in respect of their dealings with the Shares, and their response to the litigation; Mr Bronovets says, in paras 20 and 52 of his Defence and Counterclaim, he did so as beneficiary of Messrs Vajgel and Enriquez.

12. On 31st January 2014 Mr Bronovets applied for an order that he be joined as a defendant in the proceedings, and was duly so joined by an order of Master Bragge made on 25th March 2014, but on terms that he indemnified Mr Hniazdzilau in respect of some of the costs orders that had previously been made in favour of Mr Hniazdzilau.

13. Mr Bronovets, by his pleaded case, disputed Mr Hniazdzilau's primary case. He denied that BIL was formed at Mr Hniazdzilau's behest, or that Mr Hniazdzilau provided money for its formation, or that any such matters were communicated to Mr Vajgel or Fitton. He asserted that his plans for BIL included the development of his business for dealing in electrical transformers and building materials. Mr Bronovets said that his instructions were communicated to Fitton through a Miss

Rachel Erickson, who established contact between Fitton and himself. Mr Vajgel, he asserted, did not know Mr Hniazdzilau owned the Shares; rather he declared a trust on 18th February 2005 in favour of Mr Bronovets, further evidenced by a Management and Indemnity Agreement of February 2005 ("the Management Agreement"). Mr Bronovets maintained that Mr Enriquez simply replaced Mr Vajgel as a nominee shareholder who holds the Shares on trust for Mr Bronovets, as is evidenced in a declaration of trust of July 2013 (which, of course, followed the commencement of these proceedings by many months).

14. As for the alternative basis of Mr Hniazdzilau's claim, Mr Bronovets' pleaded case was that he was offered the opportunity to acquire the Property, and took it in BIL's name to preserve confidentiality of ownership. It was, he asserted, under an equity construction agreement ("the Construction Agreement") with Dobraya Vest that BIL acquired the Property; in these dealings, BIL was represented by Mr Anatoly Orlov under a POA. The price paid was $1,471,260, paid in ten equal instalments between July 2008 and April 2009, from funds provided by Mr Bronovets and/or his companies. Thus he denied any funding by Mr Hniazdzilau, let alone in the sum of $6m, and asserted that Beni was formed on Mr Bronovets' instructions, not Mr Hniazdzilau's, so there was no question of Mr Hniazdzilau's conferring any benefit on Mr Vajgel. The estoppel asserted by Mr Hniazdzilau was therefore denied.

15. Importantly, Mr Bronovets also denied that he had acted as Mr Hniazdzilau's lawyer, although he accepted that he had assisted Mr Hniazdzilau previously in setting up companies. He denied knowledge of A&S at the material time. Having thus disputed all pleaded bases of Hniazdzilau's claim to the Shares, Mr Bronovets sought a declaration as to his own beneficial ownership of the Shares.

THE WITNESSES

Mr Hniazdzilau

16. Mr Hniazdzilau is a Russian speaker, who gave his evidence throughout, with the assistance of an interpreter, in Russian. He does not claim any command of the English language. Mr Bronovets suggested, however, based upon his experience of travelling with him abroad, that Mr Hniazdzilau did have some understanding of English, although he acknowledged that he did not know whether he could write in English. I was not satisfied, on the material before me, including his demeanour

whilst giving evidence, that Mr Hniazdzilau enjoyed any degree of proficiency in English.

17. In his witness statements, Mr Hniazdzilau maintained that his career background was in electronics and energetics, as well as construction for energy assets. He suggested that he had been in a very substantial way of business, with leading, or at least very significant stakes, in companies which undertook very high value projects in his field of business. However, unhelpfully to his case, he produced no corroborative material to substantiate these claims, even though the source of funding for the Property was an important issue in the case.

18. Apart from the lack of documentary material to support Mr Hniazdzilau's assertions as to the scale of his business dealings and assets, his evidence was extremely unsatisfactory in a number of important respects:

(1) Mr Hniazdzilau changed a most important aspect of his case several times as to who had signed some of the documents at the heart of this case; the first, dated 1st June 2005, was the Verification (see para 6(1) above), naming Hniazdzilau as the beneficial owner of BIL. The second, of the same date, was the Corporation Resolution (see para 6(2) above). The third was a document, dated 1st October 2006; it appears to bear the seal of Rosbank (Switzerland) SA ("Rosbank"), and is headed "Establishment of Beneficial Owner's Identity" ("the Rosbank Beneficial Identity Document"). (Rosbank was the Swiss subsidiary of the Russian Rosbank; it is now in liquidation). These documents, to which I shall refer collectively as the three banking documents, and Mr Hniazdzilau's changes of account in relation to their creation, have a bearing on several important factual issues in this case, and I shall return to them below. On two occasions Hniazdzilau said that Mrs Turevych had signed these documents, which if correct would have been very helpful to Hniazdzilau's primary case. However, on another two occasions, including in cross-examination, he said that he had signed them. It is simply not possible to believe that Hniazdzilau could have been mistaken as to whether a signature on a document was his or that of Mrs Turevych. I should add that Mr Bronovets disputes the authenticity of these three

documents, not merely as to whether it was Mr Hniazdzilau or Mrs Turevych who signed them[1].

(2) Both in his pleaded case, and in his June 2015 witness statement, he had positively relied on his having been granted a POA in 2005, but when he gave evidence he denied that he had ever been issued with such a document.

(3) His evidence as to how he had funded the acquisition of the Property emerged fully in a most unsatisfactory fashion in cross-examination, with his asserting that he had generated a series of completely fictitious invoices in order to facilitate the payments. It was this evidence that gave rise to the late application on behalf of Mr Bronovets to introduce a plea of illegality.

(4) His involvement in the Kolchugino Reinforced Concrete Products Plant ("Kolchugino") loan transaction (which I consider below) showed him in an unfavourable light; on his own evidence he was either party to misleading a Russian court, or giving false testimony in the present case.

19. I have found it necessary, in light of these matters, to approach Mr Hniazdzilau's evidence with great caution, and always to consider whether on material disputes of fact his account has been supported by other evidence, whether from witnesses, documents, or circumstances. Despite these reservations about him as a witness, I found him on several important matters to be a more reliable and credible witness than Mr Bronovets.

Mr Bronovets

20. Mr Bronovets graduated in law, aged 24, from the Belarusian State University in 1991. In his witness statement of 10th January 2013, directed toward the challenge to the jurisdiction of the courts in England, he described himself as being a lawyer. He said that he had an average command and understanding of the English language. All of his witness statements, throughout the case, were made in English. Immediately before Mr Roe called Mr Bronovets to give evidence, Mr Roe explained that Mr Bronovets might at times need the assistance of an interpreter. In the event, all of Mr Bronovets' evidence was given through an interpreter, and every time that reference

[1] The originals of these documents have not been produced, and this fact has been the subject of a significant body of correspondence between the parties' solicitors. In relation to the Rosbank Beneficial Identity Document, Mr Hniazdzilau's solicitors informed Mr Bronovets' solicitors of the liquidation of Rosbank, raising this as an impediment to obtaining the original document. No party has made any application to a court for assistance in recovering these, or other documents, from ING or Rosbank.

was made to a document in English, it was interpreted to Mr Bronovets in Russian. This seemed to be at variance with what Mr Bronovets himself had said as to the extent of his command of the language, and the facts that the documentary evidence demonstrated that he had routinely communicated on business matters in English, and that he had, according to his evidence in cross-examination, been in business in the United States during the 1990s. He had, he said, visited that country quite frequently for periods of three or four months, and on one occasion, he thought in 1994, he had lived there for a continuous period of about six months. Whilst it is sensible for anyone giving evidence in proceedings which are not conducted in their native tongue to have the assistance of an interpreter unless they are completely confident of their comprehension and communication skills, my clear impression was that Mr Bronovets sought to minimise and play down the extent of his understanding of the English language. On reflection I consider that this was because it suited him to profess a much lesser degree of understanding than was justified with a view to extricating himself from the difficulty of having to explain marked inconsistencies (as I shall mention later in this judgment) between what had been said previously by him, or on his behalf, in correspondence, pleadings and witness statements.

21. I found Mr Bronovets to be a profoundly unsatisfactory and unreliable witness. He quite clearly told his first solicitors that he had acted as Mr Hniazdzilau's lawyer, a matter of critical importance in the case, and his second solicitors that he had only relatively recently inserted his name on a Declaration of Trust. He then lied about both those matters, and unfairly tried to blame his former solicitors for the inconsistencies in his account of them. Furthermore, he was evasive as to his business experience, and the source of his alleged wealth; his evidence as to his position within businesses run by Mr Hniazdzilau I found impossible to accept. It was perfectly clear from the evidence, not only from documentary evidence (for example in relation to a company called Paritet) that Mr Bronovets had been employed in a subordinate role to Mr Hniazdzilau, and had worked as his lawyer, but also from the evidence of a number of witnesses, who gave evidence by video-link, who had worked with both men.

Mrs Olena Turevych

22. Mrs Turevych was already a graduate of the University of Kiev when she came to England to live and work in 2003. On her arrival in England she studied at the University of East London, graduating with an MBA in 2005, or 2006. Despite her

commitment to her studies, she was involved from 2003 in establishing corporate service businesses in England, and became the owner of Fitton; she had worked for a similar business in the Ukraine. Her husband was involved with her in the business of Fitton. As a company, it no longer exists, but Mrs Turevych and her husband have set up other similar businesses, including T&T Incorporators LLP, and Regico Limited.

23. It was very clear from Mrs Turevych's evidence that over the years her businesses have dealt with a very large number of company formations, and they have provided corporate services to many companies. In these circumstances it would not be surprising if her recall as to what she knew about the circumstances of individual companies and those interested in them was incomplete. Her evidence tended to confirm this. She was not entirely confident about matters relating to arrangements within Fitton; for example, she could not remember, when asked, why her husband had held all the shares in the company. Mrs Turevych was not a director of Fitton, but she said that at all times she was concerned with its provision of services to BIL. When asked about who had signed the incorporation documents for BIL she said that she thought it was her husband. In the same way, she thought that there was a POA in her name. She did not express herself on these subjects with a great deal of assurance. It was perfectly clear to me that she could not be certain, or even particularly confident, about such matters, though I have no doubt that she did her best to tell the truth as she recalled it. It would have been surprising if she had professed certainty.

24. The fact, to be expected, that Mrs Turevych did not have an encyclopaedic and comprehensive knowledge and recollection of the affairs of companies to which she provided services was illustrated by the fact that Fitton lost a pre-paid order from an intermediary relating to the filing of company returns. This resulted in the striking off of BIL; before Mrs Turevych realised the oversight, it was too late, and BIL was struck off. After this, she liaised with an intermediary, known as "Vitaly" in Latvia and BIL was restored to the register. She confirmed that until the last couple of years her dealings had been with Vitaly and not Mr Bronovets.

25. I consider that it is important to keep in mind the nature and extent of Mrs Turevych's knowledge of, and dealings with, BIL over the years from its formation when having

regard to Mr Roe's submission, founded principally on Mrs Turevych's evidence, that Fitton had never heard of Hniazdzilau.

Mr Van de Staan

26. Mr van de Staan was the senior manager who dealt with BIL both at ING and later at Rosbank. He said that he had known Mr Bronovets since about 1995 when he worked for International Finance Corporation, a member of the World Bank Group, in Belarus. Mr van de Staan came across as a perfectly honest witness, but, as with Mrs Turevych, his recollection of important matters seemed to be very vague, or even non-existent; a good example of this was his assertion, early in his oral evidence, that when at ING, he had had no dealings with Mr Hniazdzilau, about which he was quite plainly wrong.

APPROACH TO ASSESSMENT OF THE EVIDENCE

27. In this case there are many areas of factual dispute between the parties, on which generally the evidence of Mr Hniazdzilau and Mr Bronovets is diametrically opposed. It is most convenient to consider the evidence dealing with the topic of each dispute separately. However, before reaching any overall conclusion on the facts, and individually in relation to each of the topics, it is appropriate to stand back and consider the material as a whole. For this reason, I have, generally, set out my factual conclusions in relation to all of the factual disputes in one section of this judgment below, rather than compartmentalise the findings by reference to individual matters which are in contention.

THE RELATIONSHIP BETWEEN MR HNIAZDZILAU AND MR BRONOVETS

28. At the heart of the dispute between the parties is the issue of which of them worked for the other. Put colloquially was Mr Hniazdzilau the boss for whom Mr Bronovets worked, or was it the other way around?

29. Mr Hniazdzilau said that he first met Mr Bronovets in about 2000, having been introduced to him as the husband of an acquaintance. He said that at that time Mr Bronovets was working in Minsk, practising law, and teaching at the Belarus State

University. Mr Hniazdzilau said that he offered to employ Mr Bronovets because he had wide connections in foreign banks and understood the structures of foreign company registration. Mr Hniazdzilau needed someone who could take care of registration and management of the various foreign companies that were a part of his business. It was in these circumstances, said Mr Hniazdzilau, that Mr Bronovets, having accepted the offer of employment, became his lawyer; BIL was the first foreign company registered with the assistance of Mr Bronovets.

30. More generally as to the relationship between himself and Mr Bronovets, Mr Hniazdzilau said several times in cross-examination that Mr Bronovets was his lawyer and nothing more, though he did accept that Mr Bronovets might have been the owner of some of the companies who assisted in funds transfers for Mr Hniazdzilau. He emphasised that Mr Bronovets was a salaried member of his staff.

31. Mr Bronovets' case as to the nature of the relationship between the two men was completely different. He said that when he and Mr Hniazdzilau first met, Mr Hniazdzilau and his wife were unemployed, so that Mr Hniazdzilau asked Mr Bronovets to give him a job, but they came to work together on some joint ventures, into which Mr Hniazdzilau did not make any substantial investments; by contrast Mr Bronovets claimed to have made a loan of around €1.8m to Mr Hniazdzilau for Kolchugino. In 2005, he asserted, Mr Hniazdzilau and his wife were still living in a poor area in Moscow, although he did acknowledge that a few years later Mr Hniazdzilau did live as though he were a wealthy man. Mr Hniazdzilau and he only went into business together, Mr Bronovets claimed, because Mr Hniazdzilau had the projects in construction and power engineering, and power plants, and they were able to combine efforts. He said that Mr Hniazdzilau claimed to have a background in power engineering, although he saw no evidence of this, but still he employed him in about 2006. Later he conceded that Mr Hniazdzilau had some knowledge of electrical engineering, although Mr Bronovets did not know the depth of that knowledge. It was at about this time that BIL went into the business of selling electrical transformers.

32. Mr Bronovets disputed the lawyer and client relationship asserted by Mr Hniazdzilau. He also denied that he managed offshore accounts for Mr Hniazdzilau. However, in answers to a Part 18 Request served by Mr Hniazdzilau, Mr Bronovets stated in July 2014 that he had controlled various companies which had participated in a

collaboration between the parties, although these companies were beneficially owned by Mr Hniazdzilau. In cross-examination Mr Bronovets said more than once that this part of his answer contained a mistake.

Evidence of Staff and Colleagues

33. In support of Mr Hniazdzilau's case that the businesses in which Mr Bronovets worked, were owned, controlled, and directed by him, Mr Hniazdzilau called a number of members of staff and colleagues. These witnesses almost invariably spoke of events subsequent to the incorporation of BIL, but their evidence is directly relevant to the question of the relative positions within the various businesses that were enjoyed by the parties. The first such witness to be called was Eugeniya Borysova. Her evidence was that she came to know Mr Hniazdzilau in about 2006 at a time when she was working for a construction company in Moscow. She said that Mr Hniazdzilau bought two apartments from the company for which she worked, at a total cost of about $7m. Subsequently, she said, Mr Hniazdzilau offered her a job in his company Energoactiv, and that she was employed as the head of its financial department, becoming its CEO after about 18 months. The offices of Energoactiv, she said were in the same building as Mr Hniazdzilau's other company, Setstroi.

34. Mrs Borysova said that Energoactiv at the time was a newly formed company with about ten employees. Setstroi was already what she described as a "huge company" with a large number of employees, although she was not aware whether Mr Bronovets was amongst them. He only occasionally visited the Setstroi offices. She said that she understood that Mr Bronovets worked part-time in the office, but spent the rest of his time dealing with Mr Hniazdzilau's businesses based in Minsk. She described the offices of Setstroi as having many rooms, but said that Mr Hniazdzilau as the chairman of the board of directors, had his own separate office.

35. Mrs Borysova's very clear impression was that Mr Hniazdzilau was a wealthy man who owned many assets in Moscow as well as in Europe.

36. In cross-examination, Mrs Borysova said that she did not actually know whether Mr Bronovets was an employee; she only saw him a few times. She said that Mr Bronovets was never an employee of Energoactiv. She accepted that she did not often go to the Setstroi offices and that she saw Mr Bronovets only a few times over

several years. She accepted that she did not have information as to whether or not Mr Bronovets was a wealthy individual.

37. In re-examination she said that she had regarded Mr Hniazdzilau as her direct and immediate "boss" and did not know of anyone senior to him within the organisation.

38. Mrs Aleksandrovna Golovkina said that she was introduced by a mutual friend to Mr Hniazdzilau in around April 2005, with a view to discussing employment opportunities at his company Enstrom, which was in the construction business. She said that she was aware that he also owned Setstroi, and subsequently BIL. She said that in 2006 she met Mr Hniazdzilau again and was offered a position as a company lawyer at Enstrom, commencing work at that company in July 2006. She dealt with the development of regulations, corporate law, company registration and meetings of shareholders and the board of directors.

39. Mrs Golovkina said that it was in about July 2006 that she first Mr Bronovets, who had begun to work for Enstrom as a lawyer, though his responsibilities were different from hers. He dealt with customs registration and goods and company contracts. Her evidence as to the functioning of the Enstrom business was similar to that of Mrs Borysova both as to Mr Hniazdzilau's seniority within the business and the accommodation which he occupied. She said that Mr Bronovets had a seat in the legal department, separate from the other lawyers.

40. Mrs Golovkina acknowledged in cross-examination that what she said in her witness statement as to the ownership of BIL (being in Mr Hniazdzilau's ownership) was based upon what Mr Hniazdzilau had told her.

41. She recalled that there were a number of POAs in connection with BIL and that Mr Hniazdzilau had told her that Mr Bronovets took care of the technical details of registering the company.

42. Mrs Eugeniya Cheburova said that in 2006 she was offered a position as project manager at Enstrom, having negotiated her salary with Mr Hniazdzilau, from whom she understood she was to take instructions. She said that her work began in about April or May of 2007, and that it was in the course of her work that she attended a

meeting to discuss BIL with Mr Hniazdzilau; on this occasion, she said, Mr Hniazdzilau introduced Mr Bronovets as his legal expert. Subsequently Mrs Cheburova was appointed as the CEO of what she described as the Russian branch of BIL.

43. As with the other witnesses, Mrs Cheburova said that Mr Hniazdzilau was the chairman of the board of directors of Enstrom, which she said was engaged in the construction of power facilities, and made all final decisions in relation to that company. She said that the same was the position in relation to BIL. She said that at all internal meetings when she and Mr Bronovets were present, it was Mr Hniazdzilau who made the final decisions.

44. Mrs Cheburova could not remember precisely when Mr Bronovets began working in the business, but she did recall that he introduced himself as a lawyer for international matters, taking all his instructions from Mr Hniazdzilau. She said that she remembered Mr Hniazdzilau's assigning to Mr Bronovets various tasks, such as the drafting of paperwork for the registration of a Moscow branch, and related legal proceedings. Mr Bronovets, she said, worked full-time at the Moscow office, and was busy on a daily basis. She said that he was instructed to go abroad in order to obtain documents in connection with the opening of the Russian branch of BIL. She also said that Mr Bronovets' wife was employed as an economist in Enstrom. She said that at the end of 2008 her employment with Enstrom ended because of a financial crisis which affected Enstrom, as a result of which it was dissolved, although she believed that subsequently it had been restored.

45. In cross-examination, Mrs Cheburova said that, at the times that she was describing, she lived in Vladimir and went to Moscow only as necessary, about 2 or 3 times a week. She said that Mr Hniazdzilau was a director of Enstrom, not the chairman of that company, though he was chairman of Setstroi. She said that her knowledge about BIL was based on what she learnt from the meetings at which she was present, and that in the course of these meetings, she could see that all final decisions about the company and BIL, were made by Mr Hniazdzilau. She said that she only attended such working meetings when BIL was discussed, and also the opening of an office in Moscow. She said that she could not say how often Mr Bronovets worked for Enstrom, although he was in the Enstrom office in Moscow quite often. She said that the instruction to Mr Bronovets to obtain documents in connection with BIL was

given by Mr Hniazdzilau, whose decision it was to open the Moscow branch and as to dealing with various properties which she identified. She mentioned specifically the Kolchugino concrete factory, and she said that Mr Hniazdzilau was its owner. She said that that was the only property with which she dealt. She confirmed that Kolchugino was transferred to BIL as part of a settlement in litigation, as I shall explain more fully below.

46. Tatyana Tishalovich ("Tatyana"), Mr Hniazdzilau's former wife, said that in 2010 Mr Hniazdzilau offered her a position as a director with Beni, whereby she became BIL's official representative and manager of assets in Belarus. Amongst other things, she managed buildings, and staff recruitment. She reported to Mr Hniazdzilau; summaries of their meetings were passed to Mr Orlov for stamping. In cross-examination she said that Mr Hniazdzilau told her that Mr Orlov had been provided with a POA so that he could represent BIL. She said that Mr Hniazdzilau made all financial decisions relating to Beni.

47. As for Mr Bronovets, Tatyana said that when she first met him, he had worked as university lecturer, and later started his own paragliding business, later working for Mr Hniazdzilau as a lawyer. During the course of her employment, he did not have an active role with BIL, although she said that Mr Hniazdzilau informed her that Mr Bronovets represented Mr Hniazdzilau's interests in BIL in Britain. According to her, Mr Bronovets on occasions complained to her about salary arrears unpaid by Mr Hniazdzilau. In cross-examination she added that Mr Bronovets had told her that BIL was Mr Hniazdzilau's company, although this was not something mentioned in her written evidence, a fact for which she could not satisfactorily account even suggesting at one point that it had been left out of her statement to save making it too long. I do note, however, that in her written evidence she had said nothing of her involvement in opening the BIL bank accounts, although on any view she had been involved in that respect; it might be that when she was asked to provide her written evidence she was not adequately informed of the topics that it needed to address. Even making due allowance for that, I found Tatyana to be an unimpressive witness. I am not satisfied that Mr Bronovets told her that BIL belonged to Mr Hniazdzilau.

48. Mr Vyacheslav Gorb said that he was appointed by Mr Hniazdzilau as Head of Security at Setstroi's offices in Moscow in 2007. He confirmed Mr Hniazdzilau's position as chairman of the board of directors, and Mr Bronovets' position within the

legal department. His evidence, like that of several of the other witnesses, was that Mr Hniazdzilau was the decision maker within Setstroi, with Mr Bronovets being one of the subordinates to whom instructions were given. Mr Bronovets was not often in the office, Mr Gorb said, adding that Mr Bronovets claimed that this was because he was busy carrying out Mr Hniazdzilau's instructions, and claiming that he was he was not paid enough for an entire working day. I consider that Mr Gorb, whilst he genuinely recalled his perception as to the relative significance of Mr Hniazdzilau and Mr Bronovets in Setstroi, probably embellished his evidence as to the conversation just mentioned.

49. Mr Gol'din's evidence was, to say the least confusing. He said that in about 2008 to 2010 he had worked for Mr Hniazdzilau, his tasks involving the study of contracts for the acquisition and development of property in Gurskovo Street. In cross-examination he supplemented his witness statement as to his knowledge of Mr Hniazdzilau, saying that whilst he was not a friend of Mr Hniazdzilau, they had a very good relationship, and that they had previously worked together in about 1998, on another project that was nothing to do with this case. As for his dealings with Mr Bronovets, in his witness statement, Mr Gol'din said that it was whilst undertaking work on the Gurskovo Street project (that is in about 2008 to 2010) that he met him. From his description of their dealings at this time, Mr Bronovets played only a subordinate part in the business, merely taking contractual documents as amended by Mr Gol'din to another lawyer on several occasions; he was not up to the job of a lawyer. Mr Bronovets' role was really nothing more than that of a courier, according to Mr Gol'din; a fact about which Mr Bronovets complained, but a function which he continued to perform on the orders of Mr Hniazdzilau. Mr Gol'din claimed that Mr Bronovets used to take instructions from Mr Hniazdzilau, and write them down. It was clear, so Mr Gol'din said, that it was Mr Hniazdzilau who was "the boss". Mr Gol'din claimed to know that Mr Hniazdzilau was the owner of the Property, making all decisions about it, though he did not claim to know how its acquisition was financed.

50. In cross-examination, however, Mr Gol'din disputed that he had met Mr Bronovets in 2008, suggesting that it had been only two or three years ago, in about 2012. This evidence cannot be reconciled with the fact, which is common ground, that the Property purchase and redevelopment occurred at a much earlier time. In my view, it demonstrates that Mr Gol'din's recollection was not reliable. Further, my impression

was that Mr Gol'din was a rather partisan witness who was keen to diminish Mr Bronovets, whilst emphasising his own importance in affairs. I did not find his evidence at all helpful in casting light upon the true nature of the relationship between Mr Hniazdzilau and Mr Bronovets, and where power really resided in BIL.

51. Mr Bronovets suggested that he was not subordinate to Mr Hniazdzilau; the reverse was the case.

52. With regard to Mr Bronovets's part in BIL's business, Mr Hniazdzilau said that the only thing that Mr Bronovets took care of was the making of arrangements for cash flows that passed between its account and foreign companies; there was no trading activity by BIL as was suggested by Mr Bronovets.

THE INCORPORATION OF BIL

Mr Hniazdzilau's evidence

53. Mr Hniazdzilau's evidence was that prior to February 2005, he had wished to redevelop the Property, or another if he did not succeed in acquiring it, but that he did not want the fact of his ownership to be public knowledge in Belarus. He said that he asked for Mr Bronovets' advice, and that Mr Bronovets advised setting up a holding company in England, which company would acquire a Belarusian subsidiary which would in turn receive title to the property. Mr Hniazdzilau said that he agreed with Mr Bronovets' suggestion and put him in funds to instruct Fitton to establish the company which became incorporated as BIL. He understood that Mr Bronovets was working with A&S. Mr Hniazdzilau took no part in the process of giving instructions to A&S, or to Fitton; all of this was left to Mr Bronovets. As far as Mr Hniazdzilau was concerned, he said, in all these respects Mr Bronovets was acting on his behalf. Mr Hniazdzilau had no dealing at all with Mr Vajgel.

54. In his written evidence Mr Hniazdzilau asserted that Mr Vajgel had known of him and that he was the beneficial owner of the shares, as was demonstrated by the fact the three banking documents that I have described at para 18 above. Mrs Turevych had signed none of these documents as I have explained already, and as Mr Hniazdzilau finally conceded in cross-examination by Mr Roe, it was Mr Hniazdzilau himself who had signed them. That was entirely consistent with the

evidence given by Mrs Turevych herself; she said that she had no knowledge of the documents, and saw them for the first time in June 2015 in connection with this litigation. She added that she had checked the records of BIL, and that there were no resolutions of the kind mentioned in the Corporation Resolution. Moreover, she added that she had never heard of Mr Hniazdzilau until about August 2012, when his solicitors made contact. However, potentially helpfully to Mr Hniazdzilau in respect of his case on the Missing Formation Document, in cross-examination, asked about the Corporation Resolution, she said that her position at Fitton would only have been known to someone who had seen internal company documents showing that she was an authorised signatory.

55. Mr Hniazdzilau's final confirmation, in cross-examination, as to the identity of the signatures on the documents substantially diminished their probative value to him; if signed by Mrs Turevych then they would necessarily have demonstrated that Fitton had been aware that BIL was established for the benefit of Mr Hniazdzilau, and tended to suggest that this must have been communicated to Fitton through Mr Bronovets, thereby undermining the latter's case. The absence of such connection to Mrs Turevych enabled Mr Roe to develop his submission to the effect that there was no evidence that Fitton or Mr Vajgel had ever heard of Mr Hniazdzilau, and therefore could not have known that they held the Shares on trust for him. Mr Darton, nonetheless, relied on the documents even though they were not signed by Mrs Turevych; he maintained that they were of significance in other respects. In my judgment, he was right to do so, for reasons that I shall explain later.

56. In answer to some questions which I asked Mr Hniazdzilau, he said that he believed that one of the documents to which he had referred in his third witness statement as having been signed on the 1st June by Mrs Turevych verifying that he was the beneficial owner of BIL's assets, was a document that was held by ING, and not one that he held personally, that is, not the one copied into the trial bundle. He elaborated on this, saying that he went to Geneva in 2012 and met someone who provided him with ING bank statements for BIL, and who also provided him with the copy Verification and the Corporation Resolution documents. He said that although he tried to obtain a copy of the whole of BIL's file from ING, he was told that he would require a document making an appropriate request from BIL, which he was unable to provide.

57. Hniazdzilau also relied upon the Missing Formation Document, whose existence was not supported by the evidence of Mrs Turevych, and contradicted by Mr Bronovets. Clearly, if there ever were such a document, it would answer Mr Roe's point concerning Fitton's lack of any knowledge of Hniazdzilau; it would be wholly consistent with Hniazdzilau's case. Mr Roe very specifically challenged Mr Hniazdzilau's evidence on this point in cross-examination, just as Mr Darton put it very clearly to Mr Bronovets that he had been responsible for the disappearance of this disputed document, which Mr Bronovets denied.

58. In further cross-examination by Mr Roe, Mr Hniazdzilau said that he believed that a document verifying his beneficial ownership must have existed because no bank account in Switzerland could have been opened without documentary proof as to an appropriate resolution from BIL and verifying the company's ownership. Since the account was opened, he suggested, such documents must have been submitted. This was a point much relied upon by Mr Darton in his closing submissions.

59. From what I have said before, it is apparent that Mr Hniazdzilau was unable to produce to the court any document emanating from Fitton that demonstrated that he was the beneficial owner of BIL. His case as to any such Fitton document depends upon inference from the opening of accounts, (only possibly without being duplicative of the last mentioned item) the document that he suggested might be on the ING files but not copied to the trial bundle, and the Missing Formation Document.

Mr Bronovets' evidence

60. Mr Bronovets' account of dealings with Fitton was that in late 2004, or early 2005, he decided to expand his business of buying and selling electric transformers and building materials and, believing that it would be easier to conduct international transactions through an English registered company, he made enquiries of Miss Rachel Erickson, who is now an international department manager at T & T Incorporators LLP. (T & T are now associated with Mrs Turevych.) He said that he knew that Miss Erickson was aware of Fitton; all his communications in this regard were effected through Miss Erickson. Mr Bronovets said that he did not wish his name to appear on any records as either a shareholder or a director, because he was concerned about "raider attacks" which were common in Russia, Belarus and other Former Soviet Union ("FSU") countries; apparently such raiders are reluctant to

attack foreign companies that have no links to the FSU. On his enquiries, he was told that Fitton could arrange for nominee director and shareholder services, and therefore he proceeded with the instruction of Fitton, paying for their services. He said that Fitton provided him with a number of documents which evidenced his beneficial ownership of BIL. They consisted of:

(1) The Management Agreement bearing the date of 14th February 2005. In this document (whose genuineness was denied by Mr Hniazdzilau in his Reply and Defence to Counterclaim, as well as in his oral evidence) Mr Vajgel was named as the nominee, and Mr Bronovets as the beneficial owner. If it is genuine, and dates from February 2005, this document is important evidence in favour of Mr Bronovets, reciting that BIL had been established at the will of Mr Bronovets, and that he had requested Mr Vajgel to act as a member, director, shareholder and officer of BIL as nominee on Mr Bronovets' behalf. By clause 4 of the Agreement, Mr Vajgel confirmed that he had no beneficial interest in BIL, and that he held the shares on trust for Mr Bronovets. Under the Agreement the nominee was to provide management services on instructions given from time to time by Mr Bronovets. On its face, the document appears to have been signed both by Mr Vajgel, and by Mr Bronovets, but Mr Bronovets accepted that he did not know when Mr Vajgel signed it, as he had never met him or communicated with him. Curiously, Mr Bronovets had no recollection of sending a copy signed by him to Fitton, so that it would not appear, on his evidence, that it was something that Fitton or Mr Vajgel needed from him for the purposes of acting in respect of BIL.

Mr Vajgel was not called as a witness by Mr Bronovets; his witness statement was concerned with the jurisdictional dispute at the inception of these proceedings. It did not deal with the Management Agreement. It is noteworthy that whilst Mr Bronovets conceded that he directed and controlled Mr Vajgel's responses to this litigation, Mr Vajgel was not asked to deal with the circumstances of the creation of this document, or the other documents mentioned below, upon which Mr Bronovets relies, whether in his witness statement filed with the court, or in any other witness statement.

Mrs Turevych's evidence did not deal with the Management Agreement. No Fitton seal appeared upon it.

Mr Hniazdzilau gave evidence of his belief that this document came into being only many years later, in 2011, which was the time at which Mr Hniazdzilau suggested that Mr Bronovets had decided to take over the company. This suggestion was necessarily based upon surmise as to what Mr Bronovets' intentions had been at that moment. The original of this document, although disclosed, and available for inspection, was not subjected to any document examination. It was not put to Mr Bronovets that it had been forged.

(2) A declaration of trust, in respect of the Shares. On any view of Mr Bronovets' evidence, it is clear that at the time this document was purportedly created by Mr Vajgel (18th February 2005), no one's name had been entered in the space identifying the person for whom Mr Vajgel was said to be a nominee and trustee, carrying with it the necessary implication that Mr Vajgel had signed documents in blank. On Mr Bronovets' evidence, it was he who inserted, with a heavy marker pen, his name Dmitri Bronovets, on the document, a feature of several documents that I mention below. There is no Fitton seal applied to this document.

(3) A declaration of BIL's non-trading signed by Mr Vajgel and Mrs Turevych, dated 22nd February 2005. Mr Bronovets also inserted his name with a marker pen upon this document; it is not clear why this was thought to be necessary.

(4) An undated letter of resignation, signed by Mrs Turevych on behalf of Fitton, in respect of the office of secretary of BIL. Fitton's seal, again, was applied over the signature of Mrs Turevych. The letter was clearly intended to be dated at such time as the owner of BIL should wish such a resignation to take effect. Once again, Mr Bronovets wrote his name, in marker pen, upon this document.

(5) An undated letter of resignation from Mr Vajgel in respect of his being the managing director of BIL. The date on this document was clearly intended to be inserted at the convenience of the owner of the company. Fitton's seal was not applied to this document, but, once again, Mr Bronovets at some subsequent time applied his name in marker pen.

(6) Minutes of the first meeting of the directors held at 22 Notting Hill Gate on the 18th February 2005. The minutes record that present were Mr Vajgel as shareholder/director (in the Chair) and Fitton represented by "authorised

signatory" Mrs Turevych. The resolutions of the meeting, as recorded, dealt with the issue to Mr Vajgel of a share certificate, his appointment as a director, the appointment of Fitton as company secretary, and the address mentioned as the registered office. On the English version of this document, Fitton's seal was applied over the signature of Mrs Turevych. The document made no reference to the Management Agreement.

61. In the course of the trial, an important issue arose as to the time at which Mr Bronovets had inserted his name in marker pen upon the documents which I have mentioned, and it was linked to what had been said previously by Mr Fenn (as mentioned above, Mr Bronvets' previous solicitor) served in support of Mr Vajgel's challenge to the jurisdiction of the English court.

62. In cross-examination, Mr Bronovets confirmed that the declaration of trust upon which he relied at paragraph 17 of his Defence and Counterclaim, was the one which I have described above, and on which he had inserted his name in marker pen. He was taken to Mr Fenn's witness statement dated the 16th November 2012. At paragraph 21.5 of that statement, Mr Fenn asserted that Mr Hniazdzilau's "previous lawyer", Mr Bronovets, was likely to be a material witness in the claim. This evidence suggested that Mr Fenn's instructions were to the effect that Mr Bronovets acted merely as a lawyer in connection with the transaction, and was not himself asserting an interest as a beneficial owner. If he were a beneficial owner, it was curious that he should not reveal this at a time when, through Mr Vajgel, he was seeking to resist Mr Hniazdzilau's claim for a transfer of the shares. Indeed, by referring to himself as Mr Hniazdzilau's lawyer, in that respect he aligned his position with that relied upon by Mr Hniazdzilau in para 7 of his Particulars of Claim.

63. No doubt anticipating that Mr Fenn's "previous lawyer" evidence about Mr Bronovets would be the subject of enquiry at trial, Mr Bronovets, in his second witness statement said that the circumstances in which Mr Fenn had prepared his statement were as follows. Mr Bronovets had been advised to challenge the jurisdiction of the court, and to defend the proceedings through Mr Vajgel, and not to reveal his beneficial ownership of BIL, because of his fear of raider attacks. It was only when, in discussion of the position with solicitors and counsel in January 2013, the assessment of evidence supporting the jurisdictional challenge was considered to

be weak without revealing that Mr Bronovets was the beneficial owner, that the decision was taken to reveal what Mr Bronovets says was the true position as to beneficial ownership of BIL.

64. When Mr Fenn's "previous lawyer" evidence was pointed out to Mr Bronovets, by Mr Darton, Mr Bronovets' response was to suggest that it was a mistake. He volunteered that when Mr Fenn made the statement, his firm, had already been instructed that Mr Bronovets was the beneficial owner. He was asked about para 5 of his second witness statement in which he had said that he had provided the supporting documents in relation to beneficial ownership to Pinsent Masons at the end of December 2012, or early in January 2013, that is significantly later than the time when he had instructed Pinsent Masons; to this his response was that he had shown his proof of ownership to previous solicitors, namely Messrs McGriggors (to a Mr Sokolov) in about October or November 2012. He suggested that Mr Fenn had failed to review the evidence in this case, and that Pinsent Masons had been satisfied with the documents. Whilst Mr Bronovets accepted that he had on occasions assisted Mr Hniazdzilau with company formation, and the operation of off-shore companies, he said that he had never been Mr Hniazdzilau's lawyer, so that Mr Fenn's evidence was wrong.

65. Mr Darton suggested to Mr Hniazdzilau that he could not have shown any documents onto which he had placed his name in marker pen to Pinsent Masons by the time that Mr Fenn made his witness statement, despite Mr Bronovets' insistence to the contrary. To demonstrate this, Mr Darton took Mr Bronovets to a letter from Messrs Hierons, his later solicitors, dated the 31st July 2014. In that letter, Hierons stated that:

(1) The documents at (1)-(5) mentioned in para 60 above, so far as Mr Bronovets could recollect, had been received by him around the end of February/March 2005.
(2) Mr Bronovets signed the Management Agreement shortly after receiving the documents.
(3) Mr Bronovets inserted his name with the marker pen in the other documents in about December 2012, although Mr Bronovets could not recall the exact date of doing so.

66. When confronted with this material, Mr Bronovets asserted that Hierons had made a mistake. He said that he had in fact signed the documents after he received them, and that this was probably in 2006 or even in 2005. His last word on this was that it was most likely that he had put his name on the Declaration of Trust late in 2005, but he accepted that Fitton did not get back from him a completed declaration of trust for several years. A little later in his cross-examination, Mr Bronovets said that when the documents which he signed in marker pen had been sent to him by Mr Vajgel, the space for his name had been left blank. He insisted that Fitton knew that he was the owner because he had given to Fitton documents which proved his beneficial ownership; Fitton knew that it was his company that had asked for proof of ownership. He then said that his evidence, just mentioned, with regard to showing Fitton documents, related to Pinsent Masons rather than to Fitton. He said that it had been an aberration to refer to Fitton in this context.

67. Later in cross-examination, Mr Bronovets said that the various blank documents had arrived in a pack with the Agreement dated the 14th February 2005. He said that he did not know when Mr Vajgel had signed the enclosed documents. Mr Bronovets acknowledged towards the end of his cross-examination, that he had not been able to produce any documents bearing a Fitton's seal upon them, which declared his beneficial ownership of BIL.

68. To complete the picture in relation to the evidence provided by Mr Fenn, in his witness statement of 10th January 2012, referring back to his earlier statement and the description of Mr Bronovets as Mr Hniazdzilau's previous lawyer, Mr Fenn said that Mr Bronovets had "clarified this" and addressed the point in his (first) witness statement. Mr Fenn did not suggest that he had been mistaken in his earlier evidence. Mr Bronovets did not deal with the "lawyer point", although he did assert that he had always been the beneficial owner of BIL; in his second witness statement he did assert a mistake on the part of Mr Fenn.

69. I found Mr Bronovets' attempts to blame Pinsent Masons and Hierons for mistakes that he alleged that they had made on the matters respectively of his having acted as Mr Hniazdzilau's lawyer, and the date upon which he had inserted his name in marker pen on the documents, wholly unconvincing. I have no hesitation in rejecting what I find to be his deliberately untruthful evidence as to his solicitors' suggested mistakes. I find that Mr Bronovets was described in the way he was by Mr Fenn

because that is how Mr Bronovets presented the position at the time to Mr Fenn. I have kept in mind Mr Bronovets' suggestion that he was keen not to reveal his position as beneficial owner and the reasons for that; a point to be considered is whether Mr Bronovets misled Mr Fenn about his earlier role as a lawyer out of his desire for commercial secrecy. The fact that he may have misled Mr Fenn, or Hierons, does not necessarily prove that that he is now trying to mislead the court as to the nature of his interest in BIL, and the part that he played when BIL was formed. However, Mr Bronovets did not suggest that he had given misleading instructions to his lawyers to serve that commercial purpose. What is very clear, even on Mr Bronovets' evidence, is that what is pleaded at para 17 of his Defence and Counterclaim cannot be correct. There it was asserted that following his receipt of the Shares, Mr Vajgel declared a trust in favour of Mr Bronovets absolutely, as evidenced by the document dated 18th February 2005. He did no such thing, because on Mr Bronovets' evidence the document was left blank and completed later by him, whether in 2005 or in 2012.

The evidence of Mrs Turevych

70. Mrs Turevych was called to give evidence on behalf of Mr Bronovets. She explained that Fitton had been established in 2003, and that it was a business run by her and her husband shortly after they both arrived in England from the Ukraine. Fitton was a company that provided formation, management and secretarial services, but it was dissolved in 2014. Mrs Turevych's recollection was that it was her husband who had dealt with the incorporation of BIL, although she recalled that a POA had been granted in her name. She said that she might have signed documents based on such a POA. Mrs Turevych confirmed what was to be anticipated in light of what Mr Hniazdzilau said in evidence (as opposed to his witness statements) that she did not sign any of the three documents upon which he had previously relied as being signed by her.

71. In re-examination, Mrs Turevych said that Fitton's clients were professional intermediaries. Sometimes clients' intermediaries paid in respect of two or three years' services in advance. She said that in the case of BIL, the intermediary had instructed Fitton to continue to provide services for such a period, but that unfortunately the pre-paid order had been lost and therefore the annual return for BIL was on one occasion not filed on time, which led to its being struck off and dissolved. She said that Fitton contacted the intermediary and also applied for

restoration of BIL to the Register; it was duly restored to the Register of Companies. She said that her dealings with BIL were through an intermediary called "Vitaly" who was based in Latvia. Apparently no warning was given to Vitaly that BIL might be struck off for having failed to make an annual return. She confirmed that her only communications, until the last couple of years, had been with Vitaly rather than with Mr Bronovets.

72. Whilst I accept that Mrs Turevych was doing her best to tell the truth, I do not consider that her evidence assists in determining, the issue as between Mr Hniazdzilau and Mr Bronovets as to whether Mr Bronovets was acting on his own behalf when he caused BIL to be incorporated, or on behalf of Mr Hniazdzilau. (Her evidence removed any doubt on the point, although Mr Hniazdzilau had already conceded that she had not signed the three documents which he had previously said had been signed by her.) I do not consider that her recollection was sufficiently specific, or accurate, as an indication as to whether the name of Mr Hniazdzilau was known to all Fitton personnel in connection with the formation of BIL, or as to the beneficial interests in that company, a point to which I shall return later.

BIL'S BANKING ARRANGEMENTS

73. Much attention was paid, during the course of the trial, to the circumstances in which arrangements had been made on behalf of BIL with a view to setting up a bank account, first with ING on 1st June 2005, and later with Rosbank in 2006[2]. Both Hniazdzilau and Mr Bronovets maintained that the evidence relating to the banking arrangements supported their respective cases by throwing light upon the issue as to who was BIL's true owner. The evidence of Mr van de Staan was of considerable importance in relation to the opening and operation of the accounts.

Hniazdzilau's evidence

74. In his first witness statement, Hniazdzilau said that Mr Vajgel knew of him and that he was the beneficial owner of the Shares because Fitton as BIL's company secretary had appointed him to be the sole signatory to the account which it opened with ING. He relied for this purpose upon the Corporation Resolution and the Rosbank

[2] The precise date for the opening of the Rosbank account is not common ground. The disputed Rosbank Beneficial Identity Document, relied upon by Mr Hniazdzilau, is dated 1st October 2006, and Mr Bronovets' counsels' chronology puts the opening of the account on that date, but Mr Bronovets, at para 27 of his third witness statement puts the date at "June 2006" without being more precise, and without tying this evidence to any particular document.

Beneficial Identity Document, but, as explained above, the signatures on those documents were his, and no-one from, or on behalf of, Fitton had signed those documents.

75. Mr Hniazdzilau placed much emphasis, as did Mr Darton in closing, on the fact (confirmed by the evidence of Mr van de Staan) that under Swiss law an account can only be opened if there is confirmation of the beneficial ownership as to the funds in the account, as well as confirmation of the decision to open the account. (Of course, such requirements are now widely internationally imposed upon bankers; see, for example, equivalent provisions as to customer due diligence imposed in English law under the Money Laundering Regulations 2007, discussed in *Paget's Law of Banking* 14th edition at paras 2.32-2.35.) He said that it had, therefore, been necessary for such confirmations to be sent first to ING, and later to Rosbank, and that such confirmations must have come from BIL's company secretary; in order for the accounts to be opened, those documents must have been received, though he had not seen them. To demonstrate that Mr van de Staan was fully conscious of the requirement for such confirmations, reliance was placed upon the Corporation Resolution (an ING document), to which a caption, apparently in the handwriting of Mr van de Staan, was attached by way of a post-it note. That note was undersigned by Mr van de Staan. It read "The original of the Corporation Resolution signed by the secretary of [BIL] will be received by June 20, 2005". In this respect Mr van de Staan's post-it note may be significant, even though the document to which it was attached was signed only Mr Hniazdzilau and not by Mrs Turevych.

76. As to the banking documents which were available, and which he exhibited to his witness statements, Mr Hniazdzilau said that he had personally obtained them from ING and Rosbank. He added that he had tried to obtain copies of the whole of BIL's files from the banks, but that he was informed that a request from BIL was required before he could have them. He suggested that the documents must still be available and in the banking archives.

77. In his second witness statement, Mr Hniazdzilau said that BIL's first bank account was opened with ING in Geneva in July 2005, and that he was present in Geneva and signed all necessary documents as the beneficiary of BIL. This meeting, he said, was organised by Mr Bronovets, who knew it was necessary for Hniazdzilau to execute the documents so as to comply with Swiss banking law. He said that it was his

decision to entrust management of the account to his former spouse Tatyana, and that she was present at the meeting in Geneva. In re-examination Mr Hniazdzilau said that he remembered meeting Mr van de Staan (who, he recalled, spoke in Russian) at the meeting in Geneva which had been arranged for the opening of the ING account. He said that before he signed the Verification it was translated and explained to him, probably by Mr van de Staan; similarly with the Corporation Resolution.

78. Mr Hniazdzilau said that Mr van de Staan knew that he was the beneficial owner, and that Mr van de Staan arranged dinners with him, and was aware that he made the decisions and that it was clear to Mr van de Staan that BIL was Mr Hniazdzilau's company and that Mr Bronovets had helped him to set it up.

79. On Mr Hniazdzilau's evidence, the operation of the BIL bank account, whether with ING or later Rosbank, was consistent with Mr Bronovets' carrying out instructions given by Mr Hniazdzilau, and simply operating the account in accordance with those instructions. By way of an example of the operation of the account in accordance with Mr Hniazdzilau's instructions, Mr Hniazdzilau referred, in re-examination, to an order for a cash transaction addressed to Rosbank and dated "31/09/2009" (*sic*), which bore his name as the author of the instruction. This document, he said, had been prepared in English by Mr Bronovets. The transaction carried out Mr Hniazdzilau's instructions, and he spoke by telephone to the bank confirming those instructions. Mr Hniazdzilau also, in re-examination, referred to a similar transaction, similarly documented, and dated the 12th January 2010.

80. A document dated the 14th February 2005 described as "Declaration of the Owner", relied upon by Mr Bronovets which showed Mr Bronovets as the beneficial owner, was suggested by Mr Hniazdzilau to be a forgery. The document was an instruction to servicing agents as to arranging the filing of accounts for BIL. The document bears the signature of Mr Bronovets only.

81. Mr Hniazdzilau said that the source of all transfers to BIL's bank accounts were his own funds.

Mr Bronovets' evidence

82. Mr Bronovets said that in 2005, he contacted Mr van de Staan who was at that time at ING, to ask for assistance with the opening of a bank account for BIL, informing him that Mr Hniazdzilau and Tatyana were to be co-signatories on BIL's account with ING. He accepted that Mr Hniazdzilau and Tatyana had been in Geneva in connection with the opening of the ING account in 2005, and that he had paid for Tatyana to travel to Geneva. Although his written evidence (especially his first witness statement at paras 19-21 and his third witness statement at paras 24, 26 and 28), his Defence and Counterclaim at para 20, and even the chronology prepared and provided by his counsel before trial, proceeded upon the basis that an ING account had actually been opened, though not traded through, in cross-examination he insisted that an account had not actually been opened with ING. Mr Bronovets said that his conversation with Mr van de Staan related to opening a bank account in general. He said that in the event, ING, as a private bank, was not suitable for BIL as a corporate client, and he decided not to use ING for BIL's corporate account. By contrast, in his witness statement he said that Mr van de Staan left ING in early 2006, and this was the reason for BIL's move to Rosbank. (Mr van de Staan said he joined Rosbank in March of that year.) In his witness statement, Mr Bronovets also suggested that the Rosbank account was not opened until June 2006, which suggests that BIL was left without a functioning bank account for around a year; this might not have mattered if BIL was not actively trading at that time. My clear impression was that Mr Bronovets changed his account as to whether the ING account had actually been opened because he perceived an advantage to his case in there never having been an ING account whose existence might suggest that certain formalities as to required documents had been completed, which would be difficult to reconcile with his case.

83. In cross-examination Mr Bronovets accepted, in common with Mr Hniazdzilau and Mr van de Staan, that, in order to open a bank account in Switzerland, documents had to be provided to ING so as to identify the beneficial owner. Mr Bronovets said that, for the opening of the bank accounts, he took all of the Fitton documents with him to Switzerland, and that he asked Fitton to provide him with apostilled copies of whatever documents were required. He accepted that his copies of the documents, produced in the litigation, did not bear a Fitton stamp. He said that the banks had wanted a POA, a declaration of ownership, an incorporation certificate, a charter, a declaration as to beneficial owner, and documents which were to be apostilled including those relating to incorporation and the charter. (Mr Bronovets said that POAs were granted by BIL, and that these expired annually. He said that he kept the

originals of those POAs.) He said that he asked Fitton to make apostilled copies of documents where they were required. He accepted, however, that he had not, in connection with the litigation, made a request of ING for a full set of documents in the bank's possession relating to the dealings with BIL; he suggested that this was because its services had not been required. He confirmed that he had not requested archived documents from Rosbank, although he had requested statements of account. Mr Darton relied heavily upon the absence of request by Mr Bronovets for the account opening documents in relation to both ING and Rosbank dealings, since, obtaining the documents could have substantiated Mr Bronovets' case as to what information had been provided as to beneficial ownership.

Mr Van de Staan's evidence

84. Mr van de Staan's witness statement was very brief. He said that he had known Mr Bronovets since 1995. His statement made no mention of his working at ING at all, and he said that he was introduced to Mr Hniazdzilau by Mr Bronovets as a trustee partner in 2006, and after an initial official meeting he had no contact with Mr Hniazdzilau. He also suggested that it was Mr Bronovets who had the sole authority under a POA to sign on behalf of BIL.

85. When Mr van de Staan gave evidence, by video link from Chicago, he added in chief to what was in his witness statement, namely that both Mr Hniazdzilau and Mr Bronovets held powers of attorney which enabled them to manage the account, at least when the account was held by Rosbank; he acknowledged that he had forgotten that Mr Hniazdzilau had a POA, and that before Mr Bronovets had sent copies of two POAs to him in the week before he gave evidence, he had believed that the sole such power was in favour of Mr Bronovets. Mr van de Staan said that he had no dealings with Mr Hniazdzilau when he was at ING; this put his evidence at variance not only with that of Mr Hniazdzilau, but also Mr Bronovets' third witness statement (at para 26) where he suggested that Mr Hniazdzilau was there for the opening of the accounts at both banks. Mr van de Staan said that it was not always Mr Hniazdzilau who made the decisions, and that from the first time that he had heard of BIL, it was Mr Bronovets who dealt with things; he added that it was always clear to him that the company was Mr Bronovets' and had been set up to deal with Mr Bronovets' business.

86. In cross-examination, he said that although he had known Mr Bronovets for a long time, the last time that they had spoken was a few years ago; in re-examination he added that Mr Bronovets was a long-time acquaintance, but they were not in touch with one another sufficiently to be good friends. As for Mr Hniazdzilau, he said that he had met him first in 2005 at a dinner, and that he had met Tatyana at the same time. He disputed ever having been at a dinner with a Mr de Vaux, or at a Rosbank dinner with Mr Hniazdzilau, as had been suggested by Mr Hniazdzilau.

87. When he was taken to the Corporation Resolution, he acknowledged his signature upon it, and accepted that on its face there was no provision for Mr Bronovets to be an account signatory, and that it was consistent with Mr Hniazdzilau alone being a signatory. He did not recall that Tatyana was a signatory to the ING account. He had no recollection of receiving any document bearing Mr Hniazdzilau's signature, but given the state of his recollection of his dealings with this matter, I do not consider that I can attach any significant weight to that.

88. Asked about the further documents that he had seen after making his witness statement, Mr van de Staan said that these documents had been provided by Mr Bronovets only the week before Mr Hniazdzilau gave evidence. He said that Mr Bronovets had sent copies of POAs to him, adding that he had forgotten that Mr Hniazdzilau had held a POA before he received the documents recently from Mr Bronovets. Up until that time, he had believed that the sole power of attorney was in favour of Mr Bronovets, explaining that when he had made his statement he had had no documents, but that he had known roughly what the transaction had been. So far as the position with ING was concerned, in connection with documents, Mr van de Staan could not recall the position without seeing the documents. He said that his belief was that ING had never received all of the documents, by which I understood him to mean, all of the documents that it might normally require. His post-it note endorsement (see para 75 above) as to awaiting the original of the Corporation Resolution duly signed by the secretary of BIL does add some support to that recollection.

89. As for Rosbank, Mr van de Staan accepted that Rosbank would have required proof of beneficial ownership, documents to verify signatures, an account operating resolution, and a short biography of the owner. Such documents could bear a Rosbank seal, and should have been archived. As for the Beneficial Identity

Document, (given its prominence in the case, I mention again, bearing a Rosbank stamp and naming Mr Hniazdzilau as the beneficial owner), Mr van de Staan confirmed that this was a standard Form A to be received from a beneficial owner; if Mr Bronovets were the beneficial owner, then Rosbank should have the document which could be obtained from the archive. Mr van de Staan added that if the document had come from Rosbank, then he would have to change his mind with regard to who the beneficial owner was. Once again he confirmed that any papers should still be within the Rosbank archive. In my judgment it was significant that although Mr van de Staan was not shown the original of the document (since it was never produced by either Mr Hniazdzilau or Mr Bronovets), he recognised its appearance as a standard Rosbank form. He made no adverse comment, in cross-examination, or re-examination, which might give rise to suspicion about it.

90. Mr van de Staan was taken by Mr Darton to a money transfer instruction dated 7th June 2007 (under Mr Hniazdzilau's name) for €1,080,000 from BIL to Kolchugino which was written in English. (The transactions in relation to this are potentially significant, and I deal with them fully below.) He said that Mr Bronovets could speak English (though not very well), and write in English. He agreed that if Mr Bronovets had been a signatory for the Rosbank account, then he could have signed documents as necessary, for example, such money transfers, without the need to involve Mr Hniazdzilau at all.

The operation of the Rosbank account

91. The trial bundle contained many examples of BIL's instructions to Rosbank, written in English and under the name of Mr Hniazdzilau, for the payment of substantial sums. Similar instructions for payments of €10,000 were expressly stated to be for the credit of Mr Hniazdzilau's personal account in Italy. As to these personal payments to Mr Hniazdzilau, Mr Bronovets said that he had personally authorised them, despite the fact that Mr Hniazdzilau had owed him $1.8m in respect of Kolchugino; they were, he said, still friends, and the payments were minor in relation to the debt.

92. The Rosbank account, Mr Bronovets said, was for his company, BIL, and Mr Hniazdzilau's role was to act as a signatory on the account for transactions that Mr Bronovets approved. Mr Hniazdzilau had nothing to do with BIL's trading, and had no interest in the invoices. It was, Mr Bronovets himself who dealt with all the bank

correspondence. He accepted, however, that in March and June 2009 personal payments both for €10,000 had been made from the Rosbank account to Mr Hniazdzilau's personal account in Italy, but claimed that he had authorised this, with the necessary documents being drawn up by his secretary. (There was also, I note, a funds transfer of €20,042.60 to Mr Hniazdzilau on 20th November 2008.) All this was despite the monies due on the Kolchugino loan, and absence of accounting for rents, as I shall explain below.

THE PROPERTY PURCHASE

93. The Construction Agreement by which BIL was to acquire the Property from Dobraya Vest was concluded on 7th July 2008; on behalf of BIL, it was signed by Mr Orlov. The Property was only partially constructed, and the agreement imposed an obligation upon BIL to complete the construction in April 2009. The price of $1,471,260 was agreed to be paid by ten equal instalments $147,126 commencing in July 2008, the last of which fell due in April 2009. The payment dates were set out in Annex 3 of the agreement. Some of the payments made are reflected in BIL's Rosbank statements, but these are incomplete, and so there is no full payment record available. The Rosbank statements, so far as they are available, show that on three occasions a payment for a sum a little greater that the instalment imminently due to Dobraya Vest would be received into the account shortly before an instalment payment would be made to Dobraya Vest; for example, on 29th July 2008 $148,000 was received from Hallsville Trading Corporation ("Hallsville"), to be followed by a payment the next day to Dobraya Vest in the sum of $147,188. Similar transactions occurred in late September, and October. Some of the instructions to Rosbank to make payment were, on their face, given in the name of Mr Hniazdzilau; thus double payments of $294,552 on 12th May and 17th June 2009 were so given, but he also authorised single payments of $147,126 in July and September 2009.

94. In outline Mr Hniazdzilau's case as to the funding of the purchase of the Property was that he had sold various business interests, placed the proceeds offshore, and then transferred such monies as were required from time to time to BIL so as to enable it to make payment. Mr Bronovets' case, by contrast, was that BIL had generated all of the funds from trading activities, and was thereby in a position to make payment to Dobraya Vest.

Mr Hniazdzilau's case as to funding the purchase

95. Both aspects of Mr Hniazdzilau's case as to the funding of the Property purchase were explored in considerable depth in the course of the trial, but even so his case remained murky.

96. As to the first, relating to the source of the funds enabling Mr Hniazdzilau to make the purchase as he claimed that he had done, in order to demonstrate the scale of his business activities, Mr Hniazdzilau described how they had extended to the construction of power plants in Russia. He said that he was the general director of a joint venture known as EnergoSetstroi, whose founders were Zapadelectrosetstroi (owned by his old school friend, Mr Aleksandr Klymov) and LLC Evrostil, a company owned and controlled by Mr Hniazdzilau. He said that he also owned another closed joint stock company, Enstrom, which was also engaged in energetics construction works. He said that between 2003 and 2006 EnergoSetstroi carried out work in Russia to a value of approximately $100m, in the course of which large quantities of equipment, including electric transformers, had to be procured.

97. It was for undertaking work in Moscow that a closed joint stock company, known as CJSC Setstroi ("Setstroi") was established in 2006 with two partners, Mr Yuriy Trofimov and Mr Ara Martirosyan. Mr Hniazdzilau said that it was so as to "hide" the participation of Messrs Trofimov and Martirosyan that another company Infoengineering Limited ("IE") was established. No transactions involving that company were carried out because it never executed any works. It was established only for the purposes of registering Setstroi which carried out works worth between $120m and $130m in the period 2006/2008.

98. Mr Hniazdzilau said that he had been chairman of the board of directors of Setstroi, from the time of its establishment until he left the company and sold his stock in it (some 26% of the company) to Mr Martirosyan for the equivalent, in Roubles, of $5.5m. (Mr Bronovets said that by 2009 he too had sold shares that he owned in Setstroi to Mr Matirosyan.)

99. He said that this sale of shares was carried out through another company controlled by him, Volgogradenergostroi Limited ("VE"). He said that approximately $3.5m of these proceeds were invested in the purchase and development of the Property. Other funds from the sale of Setstroi, he said, were used for the purchase of office premises

in Moscow, which he still owned at the commencement of this litigation, although he added that he had been obliged to sell those premises and his apartment in Moscow, to repay a loan which had been taken out to buy an interest in Kolchugino.

100. In cross-examination by Mr Halban, junior counsel for Mr Bronovets, Mr Hniazdzilau was taken to a document which was an extract from the Unified State Register of Legal Persons which related to VE. (This document had been included in an Application Bundle on behalf of Mr Hniazdzilau in connection with an application that he should be permitted to rely upon such documents despite their late disclosure and/or the fact that proper inspection of them had not been afforded.) It was suggested to Mr Hniazdzilau that many of the entries included in that document were at variance with his case as to the establishment, control and ownership of VE; the register indicated that a Marina Kystanova was a director and founder, and other material within the same document suggested that the founder was a Mr Kirill Schults. Mr Hniazdzilau said that the description of these persons in the document might have arisen from a confusion between two words in Russian; one word relates to a founder and another to a participant, including an equity participant who joins a company after it has been founded. He said that he may have confused the terms because of his not being a lawyer, but whichever term had been used, he said, it did not matter, because the persons concerned, or Mr Orlov, were all "his people". It was pointed out to him by Mr Halban that in paragraph 16 of his third witness statement, Mr Orlov had been referred to as the nominal founder of VE. Again, Mr Hniazdzilau said that it had not been his intention to suggest that it was Mr Orlov who had created the company; he was prepared to accept that he probably used some terms rather loosely. In fairness to Mr Hniazdzilau, it must be noted that in paragraph 16 of his witness statement, he described Mr Orlov as the "nominal founder". Mr Shults, said Mr Hniazdzilau, was a young man who had merely dealt with administration; he was purely a nominal first founder and director of VE, later being replaced by Mr Orlov.

101. I found Mr Hniazdzilau's attempts to explain how there could have been confusion over the words unimpressive; he was cross-examined in English by Mr Halban (himself a Russian speaker) through an interpreter. The concepts about which he claimed to be confused seemed relatively straightforward.

102. In cross-examination resumed by Mr Roe, Mr Hniazdzilau confirmed that VE had been fully controlled by him, but he said that he was not able to produce documents for VE because since the company was sold and liquidated, he had not kept any accounting records. Similarly, he said that he had retained no paperwork in respect of Setstroi. Mr Hniazdzilau was not able to produce any other paperwork to support his case that his businesses had provided the substantial cash sums which, routed through various offshore companies, ultimately constituted the payments for the property. By way of suggested explanation, he claimed that he has operated a network of offshore companies; these were just instruments, he asserted, controlled by financial structures for the movement of his money.

103. Dealing with the second aspect of his case as to the funding of the Property purchase, and how from his supposed funds, Mr Hniazdzilau had actually made the payments for the Property, the bank statements for BIL showed no substantial capital sums resting in its account for the material period. As explained above, payments, apparently for trading were received into the account, matching invoices raised by BIL. Mr Hniazdzilau suggested, in cross-examination and for the first time, that the various invoices which had been issued by BIL, and which appeared to evidence sale of equipment were not genuine, and that they had been created simply as a justification for the making of money transfers to BIL's bank account. It was from these sources that BIL in turn made payment for the Property. Mr Hniazdzilau said that, despite what the relevant invoices appeared to record, there had been no income stream from the buying and selling of equipment. By way of example, there was an invoice dated 4th March 2009, from BIL to Sigma Trade Inc for $148,000, signed by Mr Hniazdzilau, and thanking the other party for doing business with BIL. Mr Hniazdzilau said that none of the supplies for a transformer mentioned in the invoice actually took place. The same was true, he said, of other invoices, including in relation to Hallsville, which had generated the funds for the purchase of the Property. He said that BIL could not have written (that is recorded in the documents) that they were to fund investment activities; by this I took him to mean that it would have been disadvantageous to BIL to disclose that investment activities were the true purpose of the money transfers. These payments, he suggested, were part of a financial scheme to effect money payments around the world; a chain of companies might be involved, but the arrangements were controlled by banks that specialised in global money transfers, and charged for their services. He suggested that the purpose of the misleading description in the invoices that triggered payments to BIL was the

optimisation of tax. This was rather like what he said of the documents generated in connection with the Kolchugino transaction (described later in this judgment) which documents were used in Russian court proceedings.

104. In answer to questions from me, Mr Hniazdzilau said that the payments were arranged through his financial director Mr Bogdanovsky, who was in charge of money, and who dealt with all foreign transactions; Mr Hniazdzilau had only a general picture of the process, instructing that money was to be transferred. He was not able to say from which of his accounts payments had come, as he no longer had the paperwork.

105. This evidence from Mr Hniazdzilau went very much further than had been foreshadowed in his witness statements, where he had merely suggested that he was unaware of revenues from sales of equipment, denying that there was a separate business selling transformer equipment. In those passages he was expressly addressing Mr Bronovets' case as to how the purchase of the Property was funded. He did not say, until he gave evidence, that documents had been falsely generated so as to conceal the transfer of his own funds into BIL. It was fashion of these money transfers on Hniazdzilau's oral evidence that gave rise the Mr Bronovets' plea of illegality.

Mr Bronovets' case as to funding the purchase

106. Mr Bronovets' case as to funding was also marked by obscurity; in my judgment he deliberately did little to assist with any explanation, preferring to keep as much as possible about his case shrouded in mystery. He was even more elusive than Mr Hniazdzilau about the source of his alleged wealth, and the monies used to pay for the Property.

107. In his Defence and Counterclaim, at para 33, Mr Bronovets asserted that the instalment payments for the Property were paid from funds provided to it by him or his companies. A Part 18 request was raised of him in respect of this assertion, asking, not unreasonably, how such funds were provided, whether they were paid into a bank account, whether they were paid by Mr Bronovets' companies, and for related particulars. Mr Bronovets declined to provide this information, saying that the request was not reasonably necessary or proportionate; it was objected that it sought evidence and was improper.

108. In his third witness statement, Mr Bronovets suggested that by 2004-2005 he had a business of selling and purchasing electric transformers and building materials, and that he then decided to expand it to an international level; it was for this reason that he decided, he claimed, to incorporate BIL. He said that in 2008, he had an opportunity to participate in the project to develop the Property through BIL, and that Mr Hniazdzilau did not wish to be involved in the project. The funding for the purchase, he said, came from BIL's trading activities. He completely disputed Mr Hniazdzilau's case as to his interests in the various companies whose sale proceeds he had suggested provided the wherewithal for the purchase. Mr Bronovets said he had no knowledge of Mr Hniazdzilau's asserted shareholding in Setstroi, despite having his own stake in it through IE.

109. Mr Darton's cross-examination of Mr Bronovets as to his financial affairs was justifiably searching, but Mr Bronovets demonstrated no willingness to assist by giving straightforward answers to the questions put to him. He said that he had graduated, aged twenty four, from Belarus State University, and became a lawyer with the Chamber of Commerce. He also lectured in law. In the 1990s, he said, he was in the United States in the business of manufacturing propellers for sports aeroplanes which he described as micro-light aircraft, and boats, but he was not employed there. He asserted that he sold his American business in 1999, but was unable to recall for how much, save that it was for several hundred thousand dollars. His visits to the United States, he said, were quite frequent, and might last four or six months. He said that in 2001 or 2002 he had started a business in Russia, where he spent most of his time from 2004, and that he lived in Moscow, although he could not give an address. He also had a flat in Minsk; his passport gave an address in Korolya Street, which he acknowledged consisted of a Soviet era block of flats, but he suggested that he did not live at that address, but in a prosperous area of the city. Mr Bronovets said that in about 2000 he was an entrepreneur in the construction, investment, car, and aviation businesses, but nothing that he said, or could demonstrate about his style of life, in the era before about 2005, suggested that he was a person of significant wealth.

110. It was, Mr Bronovets claimed in about 2004 or 2005 that he sold his first transformer; there were other people involved in the business, including a Mr Kornevic. Mr Bronovets professed to be unable to remember the names of the

companies that were selling the transformers, or the names of any of the buyers; the former he said were liquidated ten years ago after they had completed the transactions. When tested about his knowledge of the transformer business he conceded that he had no qualifications in electronics; he was completely unable to explain what a bath transformer (referred to in an invoice to Hallsville dated 7th July 2008) was. He said he was not interested in what it did; technical matters were dealt with by management, and he was never interested in this. He did not care about such matters; his task was simply to find money. He was, he said, a multi-millionaire, with a "multi-million business". However, he accepted that according to Russian Income Tax Certificates for 2009 and 2010, he was shown as an employee of a company belonging to Mr Hniazdzilau, Paritet, in Moscow. His monthly salary was shown as 40,000 Roubles (then about £800); his explanation for this was that he had asked Mr Hniazdzilau to register his work record with Paritet, because they were friends. Despite what this work record showed, he said that at that time he had amassed considerable wealth, and by 2009 he had foreign companies that were registered in Russia. He added that despite what the tax records showed, he was not receiving any salary at all from Paritet, and he suggested that someone else must have been receiving it. This evidence however, to my mind, tended to suggest that it was Mr Bronovets who worked as an employee for Mr Hniazdzilau, rather than Mr Hniazdzilau who worked for Mr Bronovets. That view is also consistent with the undoubted fact that Mr Bronovets undertook the task of arranging a visa for Mr Hniazdzilau in March 2009, evidenced in an e-mail exchange (in English) with Mr Ema Radzepagic who gave advice on what the contents of the visa application should state. Once again, Mr Bronovets attributed to friendship his performance of this essentially clerical task on behalf of Mr Hniazdzilau.

111. As for the financing of the transformer business, Mr Bronovets accepted that the equipment was expensive, but he said the mark-up on sale was of the order of 10-100 per cent. He said that BIL's funding for the purchase of transformers came from loans and third parties; BIL itself had not borrowed, rather Mr Bronovets himself had done so, having made agreements with partners.

112. It was pure coincidence, Mr Bronovets said, that the invoice to Sigma, was just below the $148,000 paid to Dobraya Vest. All of the invoices that might have appeared to generate the payments for the Property actually represented genuine

sales, and there was no question of "tax optimisation" in any of his dealings. He accepted, initially, in cross-examination, that he had sent an e-mail to esstroy@bk.ru on 17th June 2008, an address used by Mr Shults or Mr Bogdanovsky, providing BIL's Rosbank account details, an account which he said he controlled (despite the evidence of payments made on the instruction of Mr Hniazdzilau), and stating that it was necessary to pay the $148,000 - "(it maybe for a supply of transformers)". Later he suggested that he did not know whether he had sent the e-mail or someone else had done so.

113. The close correlation between sums paid into the Rosbank account, and payments out of the account to Dobraya Vest, and the timing of such receipts and payments, tends to suggest that more than co-incidence was in play, which in turn weakens Mr Bronovets' suggestion that genuine trading was the source of the funds. The arrival of the funds in the accounts appears to have been more contrived, and controlled with a view to the making of payment. Mr Bronovets did not suggest that transfers in from some other source under his control had been effected.

BENI LIMITED

114. On 4th October 2009, Beni Limited ("Beni") was registered in Minsk by Mr Orlov, on behalf of BIL. This was recorded in the minutes of the board meeting of BIL held on 9th May 2011. It is common ground that Beni had "a right of economic management" over the Property. This is a concept under Belarus law under which management rights are conferred upon a local company (here Beni) but the foreign company (here BIL) is not deprived of its rights of ownership. (The concept was discussed more fully in the joint report of Messrs Vassili Salei and Alexander Stepanovski, both Belarus lawyers, to which it is unnecessary to refer more fully.)

115. There is an issue between the parties as to who gave the instructions for the formation of Beni; both claim to have done so. Mr Hniazdzilau says that he was a director of Beni, which is disputed, but it is common ground that Tatyana was appointed its CEO; Mr Bronovets says that this was merely to demonstrate his confidence in Mr Hniazdzilau, and as part of their informal business co-operation.

116. From the time that Beni began to manage, and collect rents from, the Property, it did not account to BIL. This is reflected in the board minutes mentioned

above: Mr Orlov had, since registration, failed "to transfer property documents and [Beni's] organizational documents to [BIL]. In addition, Mr Anatoly Orlov did not coordinate with [BIL] regarding the appointment of [Beni's] director and chief accountant. Furthermore, Mr Anatoly Orlov did not provide financial statements of [Beni] to [BIL]." BIL board meeting resolved to ratify and adopt the establishment of Beni and all related transactions, and to require Beni to produce to BIL amongst other things, the documents mentioned and other financial documents.

117. In his third witness statement Mr Bronovets said that after the development was completed (in around October 2009), Tatyana and Mr Hniazdzilau had managed to identify tenants and subsequently collected rent from them on behalf of BIL, although it later transpired that they failed to account for the rents. Mr Bronovets confirmed in cross-examination that he knew that the Property was rented out, saying that he asked why no rents were being received from the Property. In his third witness statement he had suggested that this conversation was in December 2010, and that Mr Hniazdzilau denied there was any such income, and refused to make any transfer. However, asked why he had left it so late to pursue this enquiry about rents and transfers of them, Mr Bronovets said that he did not accept that he had made no enquiries about the rents before that time, despite what had been said in his written evidence.

118. I reject Mr Bronovets' evidence as to the time when he first raised questions about the rents. His witness statement was perfectly clear on the date; I note also that in his Defence, at para 39, it was pleaded that, from around December 2010, the Property started to generate income, and that he asked for it to be transferred. There was no suggestion, before Mr Bronovets gave oral evidence, that he had made demands earlier than December 2010.

THE BELARUS LITIGATION

119. On 17th July 2012, Mr Hniazdzilau and Tatyana, by a sale agreement with TrioExpress Limited ("Trio"), transferred the Property to Trio, a company owned and controlled by Mr Hniazdzilau, who says that he did so because he discovered that Mr Vajgel and Mrs Kalopungi were acting contrary to the terms of the trust and trying to remove him from Beni; Mr Bronovets counters that it was an unlawful, indeed

criminal, attempt to deprive Mr Bronovets of the Property. Proceedings were commenced by BIL against Beni and Trio, with Mr Hniazdzilau as a third party, in the Minsk Commercial Court with a view to setting aside that transfer, and on 30th October 2012 the court (Judge Oleshkevich) found in favour of BIL, holding that the sale and transfer to Trio were null and void.

120. There was an appeal against Judge Oleshkevich's decision, but it was affirmed on 21st January 2013 by the Appeal Court, but that decision was reversed on 12th March 2013 by the Supreme Court of Belarus, holding that the lower courts should have considered evidence of English company and trust law, particularly as to whether beneficial shareholders had the power to transfer company property. The proceedings then recommenced in the first instance court, with evidence of English law. It held that the sale agreement for the Property between Beni and Trio was illegal and void; this decision was upheld by the Appeal Court on 5th August 2014. The decision was also upheld by the Supreme Court on 30th September 2014.

121. On 9th September 2014, the first instance court set aside the registration of the sale agreement between Beni and Trio, restoring the Property to the Company. An appeal against this decision was dismissed on 16th October 2014, and there was no further appeal.

THE KOLCHUGINO LOAN

122. Mr Hniazdzilau had a substantial interest in Kolchugino. According to a decision of the Moscow Arbitration Court (Judge Semikana), dated 23rd January 2008, Kolchugino borrowed 69,961,650 roubles from BIL in December 2006, and subsequently the period of the borrowing was extended by 170 days, and additional funds of €1,080,006 were made available. The indebtedness was not disputed, and the judge ordered that Kolchugino repay the lending to BIL, together with court costs. When Mr Hniazdzilau was cross-examined about this transaction, Mr Roe took him to

the related documents, and asked why if, as he suggested, he owned BIL, Mr Hniazdzilau caused it to sue Kolchugino, another of his companies. Mr Hniazdzilau's answer was that it was a tactical decision to present the transaction as one of loan and a failure to repay, because if there had been a sale and purchase agreement in respect of Kolchugino then taxes would have had to be paid upon it. He suggested that by presenting the matter to the court as they did, it had been possible to avoid the payment of tax because on the basis of the court's later decision of 17th March 2008, Kolchugino was handed over to BIL. The exercise, he asserted was to optimise tax, and it involved nothing criminal in any country; he denied that there was anything dishonest in having use the process of the Russian court in this fashion.

123. For his part, Mr Bronovets said that he lent €1.8m to Mr Hniazdzilau in connection with the concrete plant, without looking at his ability to repay the loan, although Mr Bronovets said that he had visited the plant several times. His case was, therefore, that this was a genuine transaction in which the court documents reflected the underlying reality. He said that the loan was made to Mr Hniazdzilau and his companies on the strength of his personal assurance, and the loan agreement. None of the loan monies have been repaid, he said. When it was put to him that if this was correct it followed that the Property was purchased against the background of his being owed €1.8m, he said that he was able to spend $1.4m on the Property, while at the same time being owed the full sum lent on the concrete plant.

124. Quite clearly, if contrary to Mr Hniazdzilau's evidence, the Kolchugino transaction, evidenced in the documents put to him, was a genuine transaction, as the Russian court clearly took it to be, it is powerful evidence supporting Mr Bronovets' case that BIL was not Mr Hniazdzilau's company.

125. As to Mr Hniazdzilau's evidence on this point, not surprisingly Mr Roe submits that on any view it shows Mr Hniazdzilau in a bad light; if true, Mr Hniazdzilau deliberately misled the court in Moscow for reasons of "tax optimisation", and if false, it was a lie in the present case.

THE APPLICATION TO AMEND

126. On 24th September 2015, during the Vacation, and just days before closing submissions were due to be heard in this case, following a substantial break since the

conclusion of the evidence in mid-July, Mr Hniazdzilau's solicitors issued an application for the re-re-amendment of the Particulars of Claim ("the proposed amendments"). In fairness to Mr Hniazdzilau, and those representing him, it must be said that the possibility of an application to amend the pleading further was something discussed at the conclusion of the evidence, more than two months before; the lateness of the application in the absence even of any earlier notification of the terms of the proposed amendments had, however, not been anticipated.

127. The thrust of the proposed amendments was as follows:

(i) If Mr Vajgel had not known that Mr Hniazdzilau was to be beneficial owner of the Shares then nevertheless he took his stock as trustee for Mr Hniazdzilau since (a) Mr Bronovets had acted as Mr Hniazdzilau's agent in relation to the formation of BIL, (b) Mr Hniazdzilau provided the monies used to acquire the Shares and/or BIL, and (c) any failure by Mr Bronovets to inform Mr Vajgel that Mr Hniazdzilau was the true beneficial owner of the Shares was a breach of Mr Bronovets' fiduciary duties which he owed to Mr Hniazdzilau as his agent.

(ii) In the circumstances, Mr Vajgel held the Shares on trust for Mr Hniazdzilau as Mr Bronovets' undisclosed principal or as the voluntary recipient of the stock.

128. I heard this application immediately before closing submissions were due to be heard. The application was opposed by Mr Roe, who objected to the proposed amendments on a number of grounds: (1) their lateness and the disruption that would be caused to the trial, (2) the need for expert evidence on Belarus law which might govern the relevant law of agency, particularly as to any remedy available, (3) the foreseeability of this point in light of the Management Agreement which was made available long ago, (4) the inadequacy of the time to consider the points raised (and to reflect on them, and research them) given the stage that the trial had reached, (5) the inconsistency between the suggested new case and Mr Hniazdzilau's primary case on the facts, (6) the extreme lateness of notification of the proposed amendments, (7) the inability to consider any foreign law limitation points that might be open to Mr Bronovets.

129. Mr Darton submitted that there was no real issue as to the applicable law; it must be English law; the transaction under scrutiny took place in England (that between Vajgel and Mr Bronovets). He relied on *Martin v Secretary of State for Work and Pensions* [2009] EWCA Civ 1289. As to the suggested inconsistency with Mr Hniazdzilau's primary case, it was perfectly permissible for Mr Hniazdzilau to advance the suggested alternative because the facts that were asserted were facts outside Mr Hniazdzilau's direct knowledge. He distinguished *Clarke v Marlborough Fine Art (London) Ltd* [2002] 1 WLR 1731, relied on by Mr Roe, on this point. The relationship of lawyer and client, Mr Darton reminded me (entirely correctly), had been asserted from the outset of the pleaded case against Mr Bronovets. As for the extreme lateness of the application, there was evidence that Mr Hniazdzilau had not been able to put his solicitors in funds until close to the hearing.

130. Rather than delay the progress of the trial further, whilst I ruled on the application, following after the short adjournment on the day on which the application was made, I indicated that I would give my reasons for refusing permission to amend in this judgment. The considerations which particularly weighed with me were those raised by Mr Roe as to the possible application of Belarus law on points of agency, remedy, and limitation in connection therewith, and the inability, given the lateness of the application to give proper consideration to such points, and lead any evidence that might be relevant, without severe disruption to the progress of the trial. The possible need for the agency case to be developed seemed to me, for reasons submitted by Mr Roe, something which should have been foreseen much earlier. I was not troubled by the suggested inconsistency with the existing case in the newly formulated claim. As Mr Darton suggested, it would arise by way of inference from facts not within the knowledge of Mr Hniazdzilau.

131. I should add, though it hardly needs saying, that to the extent that any of the points that Mr Hniazdzilau might wish to advance, closely linked as they might be to the proposed amendments, were already pleaded (by way of example, breach of fiduciary duty as Mr Hniazdzilau's lawyer which had figured in earlier versions of the pleading), my refusal of permission to amend would not, and could not, prevent those points from being relied upon on behalf of Mr Hniazdzilau. The proposed amendments, in my judgment, if allowed, would only have had any value to Mr Hniazdzilau if the agency allegations which he wished to introduce would have advanced the scope of his case beyond what was already pleaded in the sense of an

agency relationship outside the scope of the already pleaded lawyer and client relationship. In the event, for reasons which I explain below, I am satisfied that Mr Hniazdzilau has proved that Mr Bronovets acted as his lawyer in relation to the transaction under consideration, so that he had no need to prove any wider agency relationship to succeed on his fiduciary case.

AIRPLUSX

132. Mr Hniazdzilau sought to support his case against Mr Bronovets by relying upon some documents which were referred to in the course of the trial as "the airplusx e-mails". Mr Hniazdzilau said that he had received a series of e-mails from the address airplusx@gmail.com, maintaining that the sender of these messages was Mr Bronovets, a fact disputed by Mr Bronovets, who also put in issue the provenance of the e-mails. His attempt to rely upon these e-mails was problematic because there had been a failure on his part to allow proper inspection of them before trial. On the first day of the trial, 2nd July 2015, Mr Hniazdzilau's solicitors issued an application for permission to rely on a number of documents, including the disputed e-mails, disclosed under a disclosure list of that date. Copies of the documents the subject of the application were included in a bundle before me when I ruled on the application. The disputed e-mails appeared as a series of screenshots, in Russian. Previously they had been disclosed only as a series of compiled and extracted translations apparently prepared on behalf of Mr Hniazdzilau. This objection had previously been raised in correspondence, as early as February 2015, by Mr Bronovets' solicitors. I heard submissions on the application on 3rd July, and (a week-end intervening) delivered my reasons for refusing the application on the 6th July. In particular, in view of the late production of the documents for inspection, I did not consider that the case could fairly be tried without allowing an adjournment, which would have completely disrupted the process of the trial. Although use of the documents the subject of the application of 2nd July 2015 had been refused, Mr Darton pursued matters in relation to the airplusx e-mails by reference to evidence about them that was already before the court, both in cross-examination, and in closing submissions.

133. In his written evidence, Mr Hniazdzilau had placed particular reliance upon text which he suggested had been translated from some of the disputed e-mails. I mention one said to date from 12th June 2011, stating that Mr Hniazdzilau "did not pay an annual fee for the company and for annual return. Due to the fact that your debt is still not settled no service is provided to your company since December 2010.

After you settle the debt we can revert to provide service to your company and will try to find out the legal consequences of the protocol which you gave us." If this was an accurate translation of an e-mail actually sent by Mr Bronovets, then it would tend to support Mr Hniazdzilau's case that BIL belonged to Mr Hniazdzilau; it would also tie in with Mrs Turevych's evidence concerning the striking off of BIL in connection with the failure to file an annual return.

134. Mr Darton cross-examined Mr Bronovets as to whether he had made use of the airplusx e-mail address; Mr Bronovets denied this. He said that he did not know what it was associated with, and that he had never used it. He maintained that he had only encountered the address when it had come to the attention of his solicitors in the course of the proceedings. This, Mr Darton submitted, was inconsistent with other e-mail traffic (albeit significantly earlier). He pointed out that there was an e-mail from bronvets@setistroi.ru dated 17th June 2008 to esstroy@bk.ru advising of the details of BIL's bank account for a payment of $148,000, and stating that later invoice details would be given of "where it is necessary to pay the rest of 452,874.00 USD till the end of the month." There was a further e-mail to esstroy@bk.ru on 18th June 2008 stating "Here (see also an attachment). It is necessary to pay the rest of 452,874.00 USD." This latter e-mail appeared to have been sent from the airplusx address. This demonstrated, argued Mr Darton, that Mr Bronovets had used the address when he worked as Mr Hniazdzilau's lawyer.

135. Mr Roe's principal submission as to these e-mails is that their authenticity was not proved, and even if they are genuine e-mails, it is not established that Mr Bronovets was their author. In my judgment, on the material available, this submission is well founded. It is reinforced by Mr Roe's point that Mr Hniazdzilau's evidence in his third witness statement was that he had dismissed Mr Bronovets in 2010, and ceased to use his services, because of disagreements between them relating to payment of Mr Bronovets' fees for various services, the despatch of tax documents, and his refusal to provide documents, including POAs, to Mr Hniazdzilau. This evidence is somewhat inconsistent with the communications in the disputed e-mails in which Mr Hniazdzilau sought to enlist Mr Bronovets' assistance in regaining control over BIL in 2011.

136. I am not satisfied as to the authenticity of the disputed e-mails, or their authorship.

FACTUAL FINDINGS

137. For reasons explained above, at some length both in my review of them as witnesses and when considering individual topics, I have found both Mr Hniazdzilau and Mr Bronovets to be very unsatisfactory witnesses. Both men have been prepared, without any compunction, to put forward completely false evidence to further their respective cases, well demonstrated (by way of example only) by Mr Hniazdzilau's willingness to give false evidence about who signed various documents, and changing his account about that on various occasions, and by Mr Bronovets' preparedness falsely to accuse solicitors of having mis-stated his case. This does not mean that either of them never speaks the truth, but it does make the task of being confident about what is true very much more difficult.

The relationship between Mr Hniazdzilau and Mr Bronovets

138. I am satisfied that Mr Hniazdzilau was a man of considerable substance and resource when he first encountered Mr Bronovets. There appears to be no challenge to the fact that he was chairman of the board of Setstroi, and that he had a major interest in Kolchugino.

139. Mr Bronovets, I find, worked for Mr Hniazdzilau in various subordinate capacities, or, at the very least, in circumstances in which Mr Bronovets was the person who took instructions, and Mr Hniazdzilau gave them. The documentary evidence in relation to Paritet (see para 110 above) demonstrated that as late as 2009 and 2010, Mr Bronovets worked as a salaried employee in one of Mr Hniazdzilau's companies. I reject his explanation for this fact, namely that it related to a request to Mr Hniazdzilau to register his work record on account of friendship. I also reject his evidence that he did not receive the salary. On another occasion, Mr Bronovets arranged a travel visa for Mr Hniazdzilau (see also para 110), and I do not accept that this was done merely out of friendship.

140. Mr Bronovets worked, I find, on a regular basis, as Mr Hniazdzilau's lawyer. For reasons explained above in paras 61-69, I am satisfied that Mr Bronovets did instruct his previous solicitor, Mr Fenn, that he had acted as Mr Hniazdzilau's lawyer. I am also satisfied that Mr Bronovets, as he described in answers to Mr Hniazdzilau's Part 18 Request (but denied when giving evidence), had controlled various offshore companies on behalf of Mr Hniazdzilau. Further, by paras 11 and 14 of his Defence and Counterclaim, Mr Bronovets admitted that he had

occasionally assisted Mr Hniazdzilau in setting up companies in various jurisdictions, although he maintained that he had not been instructed to do so as Mr Hniazdzilau's lawyer

141. My impression as to the respective stature of Mr Hniazdzilau and Mr Bronovets in their business relationship is reinforced by the evidence that was given by some of the staff and colleagues who were called on behalf of Mr Hniazdzilau. Mrs Borysova's evidence supported the view that Mr Hniazdzilau was a man of substance, engaged in significant property transactions, and was chairman of the board at Setstroi. Mrs Golovkina's evidence was similar in relation to Enstrom. She and Mrs Cheburova firmly put Mr Bronovets as someone in the legal department, the latter in particular emphasising how it was Mr Hniazdzilau who was the decision maker, whereas Mr Bronovets undertook tasks assigned to him by Mr Hniazdzilau. I accept the evidence of these three ladies. It is noteworthy that Mr Bronovets called no witnesses to counter the impression that their evidence conveyed. I was not impressed with Tatyana, or Mr Gol'din, and I derived little assistance from the evidence of Mr Gorb.

142. The evidence in relation to the operation of the Rosbank account also suggests that it was Mr Hniazdzilau who gave instructions to Mr Bronovets as to the making of payments from it, including for personal payments to Mr Hniazdzilau. See in particular paras 91-92 above.

The formation of BIL

143. I accept Mr Hniazdzilau's evidence that he gave instructions to Mr Bronovets, as his lawyer, to set up BIL, and put him in funds for this purpose, and that his reason for this was that he intended ultimately to use BIL as a vehicle for acquisition of property, if not the Property, in Minsk. The fact that the two men should enter into such an arrangement was entirely consistent with the other arrangements that they had, denied by Mr Bronovets, but described in his Part 18 answers, whereby Mr Bronovets controlled offshore companies on Mr Hniazdzilau's behalf.

144. I find that Mr Hniazdzilau believed that since he had instructed Mr Bronovets to make arrangements for BIL's incorporation for Mr Hniazdzilau's benefit, and put him in funds for this purpose, this had been effected. Had he not believed this, I find it inconceivable that he would have been prepared to arrange for the transfer of the

substantial funds for the purchase of the Property, and the interest in Beni to BIL, as to which I set out my findings below, in relation to the purchase of the Property. His belief, I find, was not only based upon the perfectly reasonable expectation that his lawyer, Mr Bronovets, would have carried out faithfully the instructions which he had been given, but is likely to have been reinforced by documentary evidence. Indeed, I consider it unlikely that Mr Hniazdzilau would have been prepared simply to rely upon what Mr Bronovets should have done before he was prepared to make the transfers concerned; the Property purchase, on any view, involved significant expenditure. As to Mr Hniazdzilau's reliance on Mr Bronovets as a lawyer, Mr Bronovets' position was that he had not acted for Mr Hniazdzilau in the transaction as his lawyer or otherwise; I have rejected that evidence. However, Mr Bronovets has not put forward, nor could he given his case which I have just described, that, having been instructed to form BIL for Mr Hniazdzilau's benefit, he deliberately caused Fitton or Mr Vajgel to issue documents suggesting that he was the beneficial owner.

145. As to documentary evidence, there are, I consider, two reasons for supposing that Mr Hniazdzilau believed that documents proving his beneficial ownership had been provided by Fitton. First, I find that support for this is provided by the evidence in relation to the opening of the bank accounts in Switzerland, as I explain below. Secondly, and despite my reservations about Mr Hniazdzilau as a witness, I find it more likely than not that he was truthful in relation to the issue of the Missing Formation Document[3]. Mr Bronovets' evidence in cross-examination was that he had indeed kept all documents relating to the formation of BIL in a safe deposit box with a bank in Minsk. He disputed that there was such a document as Mr Hniazdzilau suggested, but having reached the conclusion that the banks are likely to have held documents from Fitton confirming Mr Hniazdzilau's beneficial ownership, I do not find it hard to accept that equivalent documents were provided to Mr Bronovets for BIL's records, and that they were then kept in a safe by him, before he chose to remove them.

146. I reject Mr Bronovets' evidence that he inserted his name in marker pen on the various documents provided by Fitton late in 2005. I find that he did not insert his name on those documents until about December 2012; see paras 65-69 above. However, the very fact of issue of documents to Mr Bronovets in blank, for the

[3] See para 6(4) above.

insertion of the beneficial owner's name, does not support his case that it was his name that was provided to Fitton as that of the beneficial owner; it undermines it, and his reliance upon the Management Agreement somewhat. The Management Agreement, although describing Mr Bronovets as "Beneficial Owner" was dated 14th February 2005, which was four days before the Declaration of Trust relied upon by Mr Bronovets was issued leaving blank the identity of such a person. If such identity had been settled several days previously, then it is not clear why the later dated document should have been blank in that regard. I do not consider that the explanation for this inconsistency can be simply that the document was provided to Mr Bronovets in blank so as to facilitate a later change of ownership by completion of the document. If that had been the intention, it would not have been appropriate to insert the date, because such insertion suggests that the document speaks from that time.

147. The Management Agreement is plainly an important document, and it does afford support to Mr Bronovets' case. However, given the lack of evidence from Mr Vajgel (whom, it must be remembered, Mr Bronovets has conceded in his pleadings, he directed and controlled in his dealings with the Shares and his response to this litigation) as to the circumstances of its creation, the doubt as to its content generated by the blank Declaration of Trust (inconsistent with para 17 of Mr Bronovets' defence) later completed in marker pen, the circumstances which I have identified which suggest that Mr Hniazdzilau, and Mr Bronovets, knew (and agreed) that Mr Hniazdzilau was to be the beneficial owner of BIL, and that others, namely Fitton and/or Mr Vajgel, also knew that and must have provided confirmatory evidence to ING and Rosbank (for reasons mentioned below), I am of the view that the weight of the evidence is against what is recorded in that document.

BIL's banking arrangements

148. Despite the non-production of the originals of the three banking documents, I accept Mr Hniazdzilau's evidence that he obtained the copies from ING and Rosbank. The document about which it is possible to be most confident as having been used in connection with the opening of the account is the Corporation Resolution because Mr van de Staan acknowledged his signature upon it, and on the post-it note caption; see para 87 above. In the circumstances, I have little doubt that the original of this document was produced to ING for the purposes of opening an

account. This is significant because Mr Bronovets was there for the opening of the account, and the document suggested that Mrs Turevych had certified the resolutions set out in it, including that Mr Hniazdzilau should be the authorised sole signatory. Whilst Mrs Turevych had not, in fact, signed the document, Mr Bronovets nonetheless seems to have been perfectly content for the document to be used for its ostensible purpose; indeed at para 25 of his Defence and Counterclaim he pleaded that the ING account was opened through Mrs Turevych, and asked that Mr Hniazdzilau and Tatyana be co-signatories to act on his instructions.

149. As for the Rosbank Beneficial Identity Document, as described above at para 89, Mr van de Staan's evidence, in my judgment provided support for its authenticity. He recognised the form as a Rosbank standard document. It suggested that the original bore a Rosbank seal. Mr van de Staan identified nothing suspicious about the document from its appearance. (I add also that the copy document suggests that it was certified by a Swiss notary.) Mr Darton submitted that it was inconceivable that Rosbank would have held on its files two inconsistent documents as to who was the beneficial owner – the copy document relied upon by Mr Hniazdzilau, and another document showing Mr Bronovets as such. I consider that Mr Darton overstated the position somewhat by his suggesting that such a position was inconceivable, but it is nonetheless a powerful and persuasive point. Furthermore, as Mr Darton pointed out, Mr Bronovets had produced no document, copy or otherwise, which had been provided to Rosbank to confirm Mr Bronovets' beneficial ownership; for reasons explained above, I find that the "marker pen" documents could not have been used in that connection because he had not inserted his name on those documents by the time that the Rosbank account was opened.

150. As for the Verification document, this is the one about which there is little if any supporting evidence for Mr Hniazdzilau's account as to his having recovered it from the bank concerned. As Mr van de Staan said, there was nothing to suggest that an official stamp had been applied to the original. He was unable to remember what the letters "CDB" stood for in the caption "(Form A as per art. 3 and 4 CDB)" immediately below the title of the document. Once again, however, his answers concerning this document suggested that as a type of document he recognised it. However, on balance I accept Mr Hniazdzilau's evidence as to how he came by the document, namely from ING itself, suggesting that it had been on its files from the time that the account was opened. This would be consistent with what later

happened, in respect of the very same class of document, in the case of Rosbank for which the evidence is stronger.

151. It was not suggested to Mr Hniazdzilau that he had forged any of the bank documents. He was, of course, cross-examined as to the falsity of his earlier evidence concerning Mrs Turevych's signatures upon them, but it was not suggested that in other respects the documents were fabricated, or that he was not telling the truth about how he had come by them. (The Verification and Rosbank Beneficial Identity Document do not suggest by their respective terms that the signatures now acknowledged to be Mr Hniazdzilau's were those of Mrs Turevych.) Very properly, and in measured fashion, Mr Roe and Mr Halban in their written closing submissions referred to the documents "whatever their provenance", and reminded me that their authenticity was in issue, submitting that their authenticity has not been proved, inviting me not to place weight on the documents for these reasons and because of Mr Hniazdzilau's incredibility on the subject of these documents relating to his earlier false assertions as to Mrs Turevych's signatures. I have taken these points into account, in reaching my conclusions expressed above.

152. I find, contrary to Mr Bronovets' evidence, that an account with ING was actually opened. There was, quite clearly, a trip to Geneva attended by Mr Bronovets, Mr Hniazdzilau, and Tatyana for that very purpose in June 2005. Mr Bronovets even paid for Tatyana to make that trip. His written evidence, and pleadings, suggested that the account was opened, and that is consistent with Mr Hniazdzilau's evidence. The Verification has an account number upon it, suggesting that the account was actually opened, but I have no direct evidence from ING that it was a bank official who inserted the number.

153. In the circumstances, I accept Mr Darton's submission that a document, though it has not been produced, from Fitton or Mr Vajgel confirming Mr Hniazdzilau's beneficial ownership was received by the banks, since proof of beneficial ownership was required before an account could be opened, but accounts with both ING and Rosbank were opened. In his oral closing submissions, Mr Roe suggested that Mr van de Staan's evidence was to the effect that an account could have been opened on the basis of a POA, so that it was not necessary that Rosbank must have seen a deed of trust. Mr van de Staan had not said this in his written evidence. Furthermore, it was not the tenor of his evidence given in court (see para 89 above); he did say that an account could be managed with the benefit of a POA.

He said also that if Mr Bronovets was the beneficial owner, it should have the document (implicitly to confirm this) which could be obtained from the archive. Moreover, Mr Bronovets, in the course of his cross-examination, said that ING required identification of the beneficial owner, and later he said that the "Swiss Bank" required a declaration of beneficial ownership. This was consistent with Mr Hniazdzilau's evidence on the topic throughout. It was not suggested by either Mr Hniazdzilau or Mr Bronovets that any account had actually been opened without reliance upon such a declaration.

154. A further, reinforcing consideration, as to the person who was beneficially interested in the accounts, in my view, is that that Mr Hniazdzilau, for reasons discussed already, was the person for whom Mr Bronovets worked. If the accounts were for Mr Bronovets' benefit, it would mean that Mr Hniazdzilau was attending, with his wife, in Geneva, to facilitate the opening of accounts for the benefit of a subordinate. I consider that to have been an unlikely arrangement.

The Property purchase

155. As I have said already, I accept that at the times material to this case, Mr Hniazdzilau was a man of wealth and substance, demonstrated by his chairmanship of Setstroi, his position at Enstrom, his interests in Kolchugino, and his property transactions confirmed by Mrs Borysova in particular. I accept that he realised many of his investments as he described, and thereafter placed funds in offshore accounts under his control.

156. By contrast, I am not satisfied as to the ability of Mr Bronovets to have funded a transaction on the scale of the Property purchase. I accept that he may have been involved in various business ventures over the years, including in the United States, but I am not persuaded that any of those would have generated the capital of the order necessary to effect the transaction concerned. At the time under consideration, Mr Bronovets was a lawyer, living in modest circumstances, who facilitated transactions for other, wealthier men, in particular Mr Hniazdzilau, and this is why his participation in the matters which feature in this case was in the capacity of Mr Hniazdzilau's lawyer, as Mr Bronovets had originally described himself to his own solicitors. Even long after the events concerned, Mr Bronovets worked for Mr Hniazdzilau in a modestly salaried position at Paritet.

157. I found Mr Bronovets' suggestion that he had run BIL as a trading company dealing in transformers, and that this business had generated the income necessary to fund the purchase completely incredible. When cross-examined about elementary aspects of the business, it was apparent that Mr Bronovets was completely out of his depth.

158. What I found particularly persuasive, indeed compelling, as to the source of funding, and which was completely at variance with Mr Bronovets' assertions as to trading proceeds, was the demonstrated receipt into BIL's bank account of almost precisely a sufficient sum to discharge the next instalment of the purchase price for the Property. Such a history was not, in my judgment, capable of explanation by co-incidence of trading receipts with subsequent payments out of the account. It was consistent with orchestration of the introduction of funds already under the control of the business owner; it was completely at variance with Mr Bronovets' case. Unattractive as Mr Hniazdzilau's "tax optimisation" explanation for the invoicing and receipt of funds was, I found it to be entirely credible, and I accept it. It may demonstrate that Mr Hniazdzilau is a man with scant regard for paying his due share of tax, and the keeping of honest business records; whether or not this is a consideration which should preclude his being granted relief is for consideration later in this judgment in connection with the topic of illegality.

159. Mr Roe fairly made the point in closing that Mr Hniazdzilau had not produced any documents to prove that money was transferred from him, or Setstroi, or VE to any offshore company, nor any document relating to the sale of Setstroi. Whilst this observation was undoubtedly correct, and I have weighed it in the balance when considering whether I can accept Mr Hniazdzilau's evidence as to the source of funding, I believed Mr Hniazdzilau's account of his realisation of several of his corporate assets, and his decision to place the money offshore. It was consistent with his desire for obscurity in relation to his financial affairs and "tax optimisation"; and I repeat what I said in the previous paragraph about the compelling evidence as to the feeding of money into the bank account from outside sources in time to make a payment for the Property purchase.

Beni and the Belarus litigation

160. I accept Mr Hniazdzilau's evidence as to the giving of instructions for the formation of Beni. The fact that Tatyana was appointed its CEO is consistent with

his having a personal and significant interest in the Property. He wanted his former wife and place woman to look after his interests. Further, I find Mr Bronovets' failure to chase the receipt of rents (see paras 117-118 above) sooner, after rents were to his knowledge being generated, as strongly indicative of the fact that he had no personal interest in BIL or Beni.

161. The Belarus litigation (see paras 119-121 above) was brought about, I find, as an ill-considered attempt on the part of Mr Hniazdzilau and Tatyana to protect themselves against their growing concerns about Mr Bronovets and his improper designs on assets rightly belonging to Mr Hniazdzilau. Their concerns about Mr Bronovets were justified, but they went about protecting their interests in the wrong manner, and this is why they were ultimately unsuccessful in the Belarus litigation. I do not consider that the outcome of that dispute assists me one way or the other in resolving the issues that I have to decide.

The Kolchugino loan

162. I accept Mr Roe's submission that whatever the truth in respect of this transaction, concluding with litigation in Moscow, it does not reflect well upon Mr Hniazdzilau. It shows him either to have misled the Russian court, in a further exercise in "tax optimisation", or to have lied to this court. As with the false invoicing issue, I accept Mr Hniazdzilau's evidence given in this court. It was a matter of indifference to Mr Hniazdzilau if, in order to achieve the fiscal consequences that he desired, he had to present an untrue picture to the Russian judge.

163. I reject, in the circumstances, Mr Roe's point, which he made very powerfully, that the litigation demonstrated that BIL and Kolchugino were not in the common beneficial ownership of Mr Hniazdzilau. I also reject Mr Bronovets' evidence as to his ability to have funded the purchase of the Property against the background of a loan made by him which was in default, and of his being prepared to make a large loan to Kolchugino without looking at Mr Hniazdzilau's ability to repay the loan. I do not accept that Mr Bronovets had the resources to behave in this fashion, whereas it was, it would seem, second nature for Mr Hniazdzilau to put "tax optimisation" before probity in his tax affairs.

DISCUSSION

164. In light of the facts as I have found them to be, I consider the consequences in equity of the transactions described, leaving until I have resolved other questions, the issue of illegality. Subject to that issue, and standing back from legal analysis for the moment, the facts as I have found them demonstrate that Mr Hniazdzilau instructed Mr Bronovets as his lawyer to establish BIL, with monies provided by Mr Hniazdzilau, and quite clearly for the benefit of Mr Hniazdzilau. Either Mr Bronovets carried out his instructions faithfully, requiring Fitton to establish BIL for the benefit of Mr Hniazdzilau, and this was done, or he did not. If Mr Hniazdzilau's instructions were properly carried out, then Mr Hniazdzilau will have become entitled beneficially to the Shares that were initially held by Mr Vajgel. If Mr Bronovets failed properly to carry out his instructions so that Mr Vajgel or his successor is holding the Shares, or supposing that he holds the Shares, for the benefit of Mr Bronovets, then it would be surprising that by virtue of Mr Bronovets' failure faithfully and properly to discharge his obligations, he should now be able to assert title to the Shares as against Mr Hniazdzilau.

Mr Hniazdzilau's primary case

165. Mr Roe, in my judgment was right to begin his analysis of the case by reference to the manner in which the case has been pleaded. As for Mr Hniazdzilau's primary case of an express trust, he correctly makes the point that what is pleaded is that Mr Vajgel received the Shares knowing that they were to belong beneficially to Mr Hniazdzilau, that thereby he assumed the duties of a trustee, so that he held the Shares upon trust for Mr Hniazdzilau, and that at the time of incorporation Fitton provided a document in which it acknowledged that it acted on Mr Hniazdzilau's behalf in respect of the formation of BIL.

166. Mr Roe submitted that Mr Hniazdzilau had simply failed to make out this case. Mr Roe and Mr Halban initially in their written closing submissions suggested that the nearest that Mr Hniazdzilau got to a requisite declaration of trust (see *Snell's Equity*, 33rd edition (2015) at para 22-012) was in respect of the Missing Formation Document, but that this had never been put to Mr Bronovets or Mrs Turevych. Rightly, Mr Roe conceded in oral submissions that Mr Bronovets had been challenged about these very matters; he most certainly was, and I noted it at the time. With regard to Mrs Turevych, it is important to consider just what she had said in her witness statement, and what she said when giving evidence. First, of relevance in her witness statement, she said that she was always concerned with Fitton's provision of services to BIL, which rather suggests that it was addressing the period following the

initial setting up of the company, and not necessarily the initial formation of the company and dealing with such matters as ascertainment of beneficial interests. In any event, as I have described above in paras 22-25, Mrs Turevych was cross-examined about her dealings with BIL and it became clear that her recollection was not expressed with a great deal of confidence. Furthermore, it would not necessarily follow that because she was concerned with the provision of services to the company, she would necessarily be concerned with dealing with all documents that might be generated in connection with it, for example, including a declaration of beneficial ownership.

167. Secondly, as to her recollection of not having heard of Mr Hniazdzilau until August 2012, she did not say, in her witness statement or her evidence that she, as opposed to another colleague, would necessarily have expected to do so had Fitton been instructed that Mr Hniazdzilau was to be the beneficial owner.

168. The obligation upon counsel to challenge witnesses on aspects of their evidence has been considered in many cases. Witnesses must be challenged if their evidence is to be disbelieved (see *Browne v Dunn* (1894) 6 R 67; *Markem Corporation v Zipher Ltd* [2005] RPC 31; [2005] EWCA Civ 267; Phipson on Evidence (18th ed) para 12-12; Cross & Tapper on Evidence (12th ed) pp.313-314). Allegations of dishonesty, complicity in fraud, or partisanship (on the part of an expert witness) must be put. On this point see also *Sharab v Al-Waleed* [2013] EWHC 2324 (Ch). Such allegations are not being made by Mr Hniazdzilau against Mrs Turevych. The requirement is only to challenge evidence which the witness has given, not to provide the witness with an opportunity to discuss a matter on which she has not given evidence (*FSA v Asset LI* [2013] EWHC 178 (Ch) at para 66 per Andrew Smith J, where the learned judge said that "the rule [as to challenging witnesses about evidence which the court will be invited not to accept] is flexible, directed to ensuring procedural fairness in litigation"). Where, as here, the witness has not asserted that she would necessarily have dealt with all documents, or have heard of an intended beneficial owner, and especially where it is apparent that her recollection is incomplete or vague (for understandable reasons), it does not seem to me that it was incumbent upon Mr Darton to put to the witness that she dealt with such a declaration, or that she had heard of Mr Hniazdzilau. I do not consider that there is anything procedurally unfair in Mr Darton's making the submissions which he did as to the likelihood of the existence of Missing Formation Document, or my

accepting that submission, despite the fact that the point was not expressly put to Mrs Turevych.

169. I have already explained, in paras 148-153 above, why I consider that the bank documents, the evidence as to the Swiss law requirement for a declaration as to beneficial ownership, and the fact of the opening of the ING and Rosbank accounts supports the view that a document must have been provided to the banks by Fitton and/or Mr Vajgel which constituted such a declaration of trust in favour of Mr Hniazdzilau, and why I also find it was more likely than not that the Missing Formation Document was provided to BIL, kept in a safe and removed by Mr Bronovets.

170. In my judgment, in these circumstances, Mr Hniazdzilau has made out his primary case. Subject to the issue of illegality, this finding is sufficient to determine the case in favour of Mr Hniazdzilau, but since the case was fully argued on other bases as well, it is appropriate for me to state my conclusions on those matters.

Mr Hniazdzilau's fiduciary case

171. Before I consider what I have described as Mr Hniazdzilau's alternative case, based upon estoppel, it is convenient to consider Mr Hniazdzilau's fiduciary case to which I have referred at para 9 above, namely, the case based upon the fact that Mr Bronovets acted as Mr Hniazdzilau's lawyer. Mr Darton developed the principles upon which he relied in this regard both in his opening and closing, written and oral submissions. He maintained that where property is received pursuant to an agreement or arrangement as to beneficial ownership, the recipient can be found to have taken it on trust for the beneficiaries of such agreement or arrangement pursuant to a constructive trust; he relied upon the decision of the Court of Appeal in *Neville v Wilson* [1997] Ch 144. Such a trust, he submitted, prevented a party who would otherwise have legal title from benefiting wrongfully from the transaction. Such a trust falls within the exception in favour of "resulting, implied, or constructive trusts" in s 53(2) of the Law of Property Act 1925, so that it does not need to be in writing. He submitted further that consideration can arise out of the fact that a party subsequently acts to his or her detriment in the belief that they have, or will acquire, a beneficial interest in the property concerned; see *Singh v Anand* [2007] EWHC 3346 (Ch). He also relied upon *Yaxley v Gotts* [2000] Ch 162 for the proposition that in such situations there is a considerable overlap between the law of estoppel and constructive trusts.

172. Mr Roe did not dispute the principles for which Mr Darton relied on these authorities. His attack was very much on the factual underpinning of the case which Mr Darton suggested that those authorities supported; insofar as there is overlap between Mr Hniazdzilau's alternative case based on estoppel, and his fiduciary case, I will deal with Mr Roe's submissions when dealing with the former. For reasons explained above, when discussing my factual findings, despite the powerfully developed attack made by Mr Roe upon Mr Hniazdzilau's case as to the lawyer and client relationship between the parties, and the instructions for the establishment of BIL being given in that context, I am satisfied as the factual basis of this aspect of Mr Hniazdzilau's case.

173. If I had not concluded that Mr Hniazdzilau succeeded on his primary case, I would have had no hesitation in finding that he should have succeeded on his fiduciary case. Mr Bronovets acted as his lawyer in making arrangements for the establishment of BIL, and was put in funds to do so. The intention shared by both men was plain, namely, that Mr Hniazdzilau was beneficially entitled to the Shares that were to be issued. It was Mr Bronovets' responsibility to make the arrangements to put this into effect. If he withheld the necessary information from Fitton, such that no document was created establishing Mr Hniazdzilau's beneficial entitlement, Mr Bronovets cannot now take advantage of that as against Mr Hniazdzilau, his former client. To tolerate such an abuse of the relationship would defeat the common intention of the parties. This conclusion, in my judgment, is entirely consistent with authority. In *Yaxley v Gotts* the second defendant, whom the plaintiff believed to be the owner of the property concerned, offered to give the plaintiff the ground floor of a house, in return for which the plaintiff, a builder, would convert the remainder of the house into flats. The property was actually acquired by the second defendant's son, the first defendant, but the trial judge held that he had adopted the agreement between his father and the plaintiff, who had performed his side of the bargain, and carried out the conversion. The judge held that the plaintiff was entitled to ownership of the ground floor on the doctrine of proprietary estoppel. At page 176B-177G Robert Walker LJ, as he then was, discussed the relationship between proprietary estoppel and constructive trusts:

> "At a high level of generality, there is much common ground between the doctrines of proprietary estoppel and the constructive trust, just as there is between proprietary estoppel and part performance. *All are concerned with*

equity's intervention to provide relief against unconscionable conduct, whether as between neighbouring landowners, or vendor and purchaser, or relatives who make informal arrangements for sharing a home, or a fiduciary and the beneficiary or client to whom he owes a fiduciary obligation. The overlap between estoppel and part performance has been thoroughly examined in the appellants' written submissions, with a survey of authorities from *Gregory v Mighell* (1811) 18 Ves. 328 to *Take Harvest v Liu* [1993] AC 552.

The overlap between estoppel and the constructive trust was less fully covered in counsel's submissions but seems to me to be of central importance to the determination of this appeal. Plainly there are large areas where the two concepts do not overlap: when a landowner stands by while his neighbour mistakenly builds on the former's land the situation is far removed (except for the element of unconscionable conduct) from that of a fiduciary who derives an improper advantage from his client. But in the area of a joint enterprise for the acquisition of land (which may be, but is not necessarily, the matrimonial home) the two concepts coincide. Lord Diplock's very well-known statement in *Gissing v Gissing* [1971] AC 886, 905 brings this out,

> "A resulting, implied or constructive trust - and it is unnecessary for present purposes to distinguish between these three classes of trust - is created by a transaction between the trustee and the cestui que trust in connection with the acquisition by the trustee of a legal estate in land, whenever the trustee has so conducted himself that it would be inequitable to allow him to deny to the cestui que trust a beneficial interest in the land acquired. And he will be held so to have conducted himself if by his words or conduct he has induced the cestui que trust to act to his own detriment in the reasonable belief that by so acting he was acquiring a beneficial interest in the land."

Similarly Lord Bridge said in *Lloyds Bank v Rosset* [1991] 1 AC 107, 132,

> "The first and fundamental question which must always be resolved is whether, independently of any inference to be drawn from the conduct of the parties in the course of sharing the house as their home and managing their joint affairs, there has at any time prior to acquisition, or exceptionally at some later date, been any agreement, arrangement or understanding reached between them that the property is to be shared beneficially. The finding of an agreement or arrangement to share in this sense can only, I think, be based on evidence of express discussions between the partners, however imperfectly remembered and however imprecise their terms may have been. Once a finding to this effect is made it will only be necessary for the partner asserting the claim to a beneficial interest against the partner entitled to the legal estate to show that he or she has acted to his or her detriment or significantly altered his or her position in reliance on the agreement in order to give rise to a constructive trust or a proprietary estoppel."

It is unnecessary to trace the vicissitudes in the development of the constructive trust between these two landmark authorities, except to note the important observations made by Sir Nicolas Browne-Wilkinson V-C in *Grant v Edwards* [1986] Ch 638, 656, where he said,

> "I suggest that in other cases of this kind, useful guidance may in the future be obtained from the principles underlying the law of proprietary estoppel which in my judgment are closely akin to those laid down in *Gissing v Gissing* [1971] AC 886. *In both, the claimant must to the knowledge of the legal owner have acted in the belief that the claimant has or will obtain an interest in the property. In both, the claimant must have acted to his or her detriment in reliance on such belief. In both, equity acts on the conscience of the legal owner to prevent him from acting in an unconscionable manner by defeating the common intention.* The two principles have been developed separately without cross-fertilisation between them: but they rest on the same foundation and have on all other matters reached the same conclusions."
>
> In this case the Judge did not make any finding as to the existence of a constructive trust. He was not asked to do so, because it was not then seen as an issue in the case. But on the findings of fact which the Judge did make it was not disputed that a proprietary estoppel arose, and that the appropriate remedy was the grant to Mr Yaxley, in satisfaction of his equitable entitlement, of a long leasehold interest, rent free, of the ground floor of the property. Those findings do in my judgment equally provide the basis for the conclusion that Mr Yaxley was entitled to such an interest under a constructive trust. The oral bargain which the Judge found to have been made between Mr Yaxley and Mr Brownie Gotts, and to have been adopted by Mr Alan Gotts, was definite enough to meet the test stated by Lord Bridge in *Lloyds Bank v Rosset.*" (Emphasis added)

174. Clarke LJ, as he then was, and Beldam LJ, both delivered concurring judgments. Clarke LJ expressly agreed (at page 181E-F) with Robert Walker LJ's analysis under the heading of constructive trust, as well as agreeing generally with his judgment; Beldam LJ, in a fully reasoned judgment, also held that the plaintiff had established his case on the basis of a constructive trust, and that the trial judge had been entitled to reach the same conclusion by finding a proprietary estoppel; page 193E-F.

175. Later cases which were discussed in *Davies v O'Kelly* [2015] 1 WLR 2725, to which I refer below when considering the illegality issue, as well as that case itself, emphasise the importance of the common intention of the parties in identifying beneficial entitlement to an asset which is acquired by one or both of them pursuant to an enterprise in which they are, or have been, engaged. Many of these cases, such as *Stack v Dowden* [2007] 2 AC 432, and *Jones v Kernott* [2012] 1 AC 776, were decided at the highest level. I need not refer to them further.

176. Furthermore, the object of the equitable principles in play, illustrated by the passage which I have cited above from Robert Walker LJ's judgment in *Yaxley v Gotts*, is to provide relief against unconscionable conduct. Mr Bronovets, knowing of

the arrangements that had been made between the parties, and knowing that Mr Hniazdzilau transferred funds for the Property purchase, and the interest in Beni, which Mr Bronovets could only reasonably have supposed was done on the basis of Mr Hniazdzilau's beneficial entitlement to the Shares, it would be inequitable for Mr Bronovets to deny Mr Hniazdzilau's interest. Irrespective of the fact that Mr Bronovets was acting as Mr Hniazdzilau's lawyer, it would be unconscionable for him to deny Mr Hniazdzilau's interest in the Shares in light of the arrangements which they had made. The fact that Mr Bronovets was Mr Hniazdzilau's lawyer, and thus a fiduciary, simply puts Mr Bronovets' conduct all the more firmly within the kind of case in which equity will grant relief, as is demonstrated by what Robert Walker LJ said in relation to a fiduciary and his beneficiary or client to whom a fiduciary obligation is owed. I should add in this respect that whilst Mr Roe, in opposing Mr Darton's application to amend (see paras 126-131 above), could object that the proposed amended case as to agency might give rise to issues of Belarus law which Mr Bronovets and his advisers had had no chance to consider, no such point arises in relation to Mr Hniazdzilau's fiduciary case which has always been pleaded on the basis of the lawyer and client relationship, and by Mr Hniazdzilau's reply, expressly on the basis that English law applies. If Mr Bronovets had wished to seek to adduce evidence that a Belarus lawyer owes differing duties to his client from an English lawyer, or that remedies for breach might be different, he has had the opportunity to explore that avenue, but has not done so. In any event, for the reasons which I have explained, the lawyer and client relationship is, on this aspect of the case, simply the background against which the unconscionability of Mr Bronovets' denial of the common intention Mr Hniazdzilau's equity is demonstrated, and in respect of which it would be appropriate to grant relief.

177. In my judgment it does not matter that in the present case Mr Bronovets may not at any time have been the legal owner of the Shares. As the decision of the Court of Appeal in *Neville v Wilson* demonstrates, an agreement as to the disposition of an equitable interest (in that case also in respect of shares) can give rise to an implied or constructive trust; see *per* Nourse LJ, delivering the judgment of the court, at pages 154F-155F.

Mr Hniazdzilau's alternative case

178. The pleaded alternative case is in October 2009 to the knowledge of Mr Vajgel, Mr Hniazdzilau acted to his detriment or conferred a benefit upon Mr Vajgel, which rendered it unconscionable for the latter to deny the terms of the asserted trust,

in that by issuing or transferring the shareholding in Beni to BIL, and/or by transferring the Property to Beni, Mr Hniazdzilau conferred a benefit upon BIL and thus Mr Vajgel for no consideration when the $6m rebuilding costs were provided by Mr Hniazdzilau. The plea continues that, to the knowledge of Mr Vajgel, Mr Hniazdzilau completed those transactions in the belief that he was already the beneficial owner of the Shares, and would be the ultimate beneficiary of the Property. It is thus that an estoppel is alleged to arise.

179. On the basis of the factual findings that I have made above, this case provides an additional basis for finding that Mr Vajgel was, and now Mr Enriquez, who stands in no better position than Mr Vajgel, is a trustee accountable to Mr Hniazdzilau as the beneficiary of the trust. However, as Mr Roe submitted, the court need hardly resort to a finding of estoppel if Mr Vajgel finds that he has declared himself a trustee.

180. If, however, I had not been satisfied of the fact of a declaration of trust in favour of Mr Hniazdzilau, and that Fitton had been aware of Mr Hniazdzilau's interest, the alternative claim as pleaded would run into difficulty for the reasons identified by Mr Roe: it was not suggested, by evidence or otherwise, that Mr Vajgel encouraged Mr Hniazdzilau to believe that Mr Hniazdzilau was already the owner beneficially of the Shares, nor, on this counter-factual scenario was there any understanding that Mr Vajgel held the Shares as trustee for Mr Hniazdzilau at any stage, whether in 2009 or earlier. Further, continuing with this scenario, there would be no basis upon which Mr Vajgel could have known that Mr Hniazdzilau was funding the acquisition of the Property. (Mr Roe also, of course, disputed the factual case advanced by Mr Hniazdzilau as to his having actually funded the purchase.) In short, the focus of the pleaded alternative claim was upon Mr Vajgel, who, as Mr Roe submitted in his oral closing submissions, had no dealings with the transactions concerned independently of Fitton. Thus if Fitton did not know of the matters relied upon by Mr Hniazdzilau, there is no basis for saying that Mr Vajgel did. On this scenario, the alternative claim, shorn of my factual findings in Mr Hniazdzilau's favour on the primary case as to what was communicated by Mr Bronovets, would fail.

181. For the avoidance of any doubt, however, I should make it clear that my conclusions overall are that even if Mr Hniazdzilau's primary and alternative cases failed, he would have succeeded on his fiduciary case. His fiduciary case does not

depend upon Mr Bronovets' faithful communication of his instructions concerning BIL to Fitton or Mr Vajgel; it would arise from his failure to make that communication, and I should add, in circumstances where the failure would not be explicable by oversight. Mr Vajgel and Mr Enriquez were never more than bare trustees who cannot assert interests contrary to those of the true beneficial owner of the Shares. There is no basis for supposing that anyone other than Mr Hniazdzilau or Mr Bronovets has such an interest. As between them, for reasons considered in relation to Mr Hniazdzilau's fiduciary claim, Mr Bronovets cannot dispute that Mr Hniazdzilau is the beneficial owner because of the common intention which they shared, and because the circumstances would make it unconscionable for Mr Bronovets to defeat that intention.

ILLEGALITY

The parties' submissions

182. As explained earlier in this judgment, the illegality plea was raised in the course of the trial in response to Mr Hniazdzilau's evidence given in cross-examination. The plea has two distinct limbs to it:

(i) The arrangements made for the funding of the acquisition of the Property, involving the generation of "invoices" concocted in order to give a false impression that the funds were derived from BIL's trading. This, it is alleged, was done to mislead banks into processing the transactions, and to evade payment of tax by Mr Hniazdzilau, or BIL, which was due as a result of the making of the payments, but which would not have been due if the payments had been made from, as the invoices made them appear to be, the proceeds of trading. Thus, it is alleged, in order to prove his claim that he provided funds to purchase the Property, Mr Hniazdzilau relies upon his own illegal actions.

(ii) The use of BIL as part of a pre-arranged scheme, in connection with the Kolchugino loan transaction, whose purpose, on Mr Hniazdzilau's evidence, was to disguise the transfer of assets, ostensibly in consequence of a court judgment, thereby avoiding an obligation to pay tax, by Kolchugino or Mr Hniazdzilau, which would otherwise have been required to be paid, if it had been disclosed that the assets transferred had actually been sold by Kolchugino to BIL. By this scheme, Mr Bronovets alleges, Mr Hniazdzilau used BIL and Kolchugino to defraud the authorities of tax which was

properly due upon a sale, so that Mr Hniazdzilau used BIL as a vehicle for fraud.

183. Mr Roe submitted that the formulation of Mr Hniazdzilau's claim based upon estoppel requires Mr Hniazdzilau to rely on his own asserted conduct in falsifying invoices so as to present the tax authorities with a false picture of what he was doing.

184. Mr Roe submitted that it was not necessary for evidence as to Belarusian or Russian criminal or tax legislation to be adduced to demonstrate the unlawful nature of the transactions concerned, first, because of the manner in which the evidence emerged at trial, and because Mr Hniazdzilau declined to seek an adjournment to obtain any foreign law or other evidence, and, secondly, because, in the absence of such evidence, the court will assume that the relevant foreign law is the same as English law (*Dicey, Morris & Collins* (15th ed.), rule 25(2) (vol 1, p 318)), under which Mr Hniazdzilau's conduct would have constituted cheating the public revenue at common law. This offence is committed (*inter alia*) whenever a person provides to the revenue a statement or document which is to his knowledge false, for the purpose of avoiding the payment of tax: *R v Hudson* [1957] 2 QB 252, CA. The offence can involve any form of fraudulent conduct which diverts money from the revenue: *R v Mavji* [1987] 1 WLR 1388, CA. Mr Roe submitted that Mr Hniazdzilau's evidence, if true, showed also that, had he so acted in England, he would have been guilty of false accounting contrary to s17 of the Theft Act 1968. It is not an essential ingredient of this offence that one actually shows the falsified document to anyone.

185. I accept Mr Roe's further submission that it is simply inconceivable that the Belarusian or Russian legal systems consider it lawful to create false documents in order to escape the payment of tax which would be due if the truth were revealed. Mr Darton did not suggest to the contrary.

186. Mr Roe submitted that the *ex turpi causa* principle would be engaged, even if Mr Hniazdzilau's evidence did not demonstrate criminal offences, if it revealed, on his case, dishonesty which affects the public interest, since it concerns the payment of taxation. This is because, Mr Roe argued, the principle's application extends to quasi-criminal acts and acts which engage the public interest, such as cases of dishonesty or corruption: *Les Laboratoires Servier v. Apotex Inc* [2015] A.C. 430 *per* Lord Sumption at paras 23, 25.

187. Mr Roe took me through the leading modern authorities dealing with illegality, recognising that at least two different approaches to the illegality defence emerge from them. The first is the policy-based approach commended in the majority judgments in *Hounga v Allen* [2014] 1 WLR 2889, and the second (and one established in some of the more traditional authorities such as *Bowmakers Ltd v Barnet Instruments Ltd* [1945] KB 65, CA) is the rule-based approach of *Tinsley v Milligan* [1994] 1 A.C. 340.

188. *Hounga v Allen*, was a case arising from the employment, in Britain, of a young Nigerian woman as a home-help. It had not only been unlawful, but also a criminal offence under s24 of the Immigration Act 1971, for Miss Hounga to enter into that contract of employment. Following her dismissal, Miss Hounga issued proceedings in the employment tribunal for, *inter alia*, unlawful discrimination in relation to her dismissal. Although she was successful before both the employment tribunal, and the Employment Appeal Tribunal, the Court of Appeal allowed the employer's appeal on the basis that the illegality of the contract of employment formed a material part of Miss Hounga's complaint, so that to uphold that complaint would be to condone the illegality. Miss Hounga was successful in her appeal to the Supreme Court.

189. Lord Wilson, with whose judgment Baroness Hale and Lord Kerr agreed, having reviewed many authorities concerned with the defence of illegality, said at paras 42-44:

> "42 The defence of illegality rests on the foundation of public policy. "The principle of public policy is this …" said Lord Mansfield by way of preface to his classic exposition of the defence in *Holman v Johnson* (1775) 1 Cowp 341 , 343. "Rules which rest on the foundation of public policy, not being rules which belong to the fixed or customary law, are capable, on proper occasion, of expansion or modification": *Maxim Nordenfelt Guns and Ammunition Co v Nordenfelt* [1893] 1 Ch 630 , 661 (Bowen LJ). So it is necessary, first, to ask "What is the aspect of public policy which founds the defence?" and, second, to ask "But is there another aspect of public policy to which application of the defence would run counter?"
> 43 An answer to the first question is provided in the decision of the Canadian Supreme Court in *Hall v Hebert* [1993] 2 SCR 159. After they had been drinking heavily together, Mr Hebert, who owned a car, allowed Mr Hall to drive it, including initially to give it a rolling start down a road on one side of which there was a steep slope. The car careered down the slope and Mr Hall was seriously injured. The Supreme Court held that the illegality of his driving did not bar his claim against Mr Hebert but that he was contributorily negligent as to 50%. At the outset of her judgment on behalf of the majority, McLachlin J, at p 169, announced her conclusion about the basis of the power to bar recovery in tort on the ground of illegality, which later she substantiated in convincing terms by reference to authority. Her conclusion was as follows:

> "The basis of this power, as I see it, lies in [the] duty of the courts to preserve the integrity of the legal system, and is exercisable only where this concern is in issue. This concern is in issue where a damage[s] award in a civil suit would, in effect, allow a person to profit from illegal or wrongful conduct, or would permit an evasion or rebate of a penalty prescribed by the criminal law. The idea common to these instances is that the law refuses to give by its right hand what it takes away by its left hand."
> 44 Concern to preserve the integrity of the legal system is a helpful rationale of the aspect of policy which founds the defence even if the instance given by McLachlin J of where that concern is in issue may best be taken as an example of it rather than as the only conceivable instance of it. I therefore pose and answer the following questions: (a) Did the tribunal's award of compensation to Miss Hounga allow her to profit from her wrongful conduct in entering into the contract? No, it was an award of compensation for injury to feelings consequent on her dismissal, in particular the abusive nature of it. (b) Did the award permit evasion of a penalty prescribed by the criminal law? No, Miss Hounga has not been prosecuted for her entry into the contract and, even had a penalty been thus imposed on her, it would not represent evasion of it. (c) Did the award compromise the integrity of the legal system by appearing to encourage those in the situation of Miss Hounga to enter into illegal contracts of employment? No, the idea is fanciful. (d) Conversely, would application of the defence of illegality so as to defeat the award compromise the integrity of the legal system by appearing to encourage those in the situation of Mrs Allen to enter into illegal contracts of employment? Yes, possibly: it might engender a belief that they could even discriminate against such employees with impunity.
> 45 So the considerations of public policy which militate in favour of applying the defence so as to defeat Miss Hounga's complaint scarcely exist."

190. Lord Wilson went on to note, at para 49, that the employment tribunal had made no finding as to whether Miss Hounga had been the victim of trafficking. Then, at the conclusion of para 49, he observed that "judicious hesitation" led him to conclude that "if Miss Hounga's case was not one of trafficking on the part of Mrs Allen and her family, it was so close to it that the distinction will not matter for the purpose of what follows". Next, he considered the Council of Europe Convention on Action against Trafficking in Human Beings CETS No 197, Article 4 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and related judicial authority, and he concluded, at para 52 that "the decision of the Court of Appeal to uphold [the employer's] defence of illegality to [Miss Hounga's] complaint runs strikingly counter to the prominent strain of current public policy against trafficking and in favour of the protection of its victims. The public policy in support of the application of that defence, to the extent that it exists at all, should give way to the public policy to which its application is an affront; and Miss Hounga's appeal should be allowed".

191. Lord Hughes, with whom Lord Carnwath agreed, was also in favour of allowing Miss Hounga's appeal. However, his approach to the issue of illegality

differed. He began, at para 54, by saying that as Lord Wilson's "penetrating analysis clearly shows, a generalised statement of the conceptual basis for the doctrine under which illegality may bar a civil claim has always proved elusive." He continued at para 55-58:

"55. The various analyses offered in past cases are largely, as it seems to me, different ways of expressing two connected aspects of the basis for the law of illegality. The first is that the law must act consistently; it cannot give with one hand what it takes away with another, nor condone when facing right what it condemns when facing left. The second is that before this principle operates to bar a civil claim, and particularly one in tort, there must be a sufficiently close connection between the illegality and the claim made. Neither proposition is suggested as a comprehensive test. En route to the answer in an individual case, the court is likely to need to consider also the gravity of the illegality of which the claimant is guilty and her knowledge or intention in relation to it. It will no doubt also consider the purpose of the law which has been infringed and the extent to which to allow a civil claim nevertheless to proceed will be inconsistent with that purpose. Other factors may arise in individual cases. It is via considerations such as these that the general public policy is to be served. Public policy very obviously underlies the rules upon illegality as it affects civil claims, but I do not think that the cases establish a separate trumping test of public policy.

56. Whilst Lord Mansfield's early statement of the law in *Holman Johnson* (1775) 1 Cowp 341, 98 Eng Rep 1120 **c**annot be treated as a comprehensive test for the application of the law of illegality, it is important to remember one central feature of it, which remains true. When a court is considering whether illegality bars a civil claim, it is essentially focussing on the position of the claimant vis-à-vis the court from which she seeks relief. It is not primarily focusing on the relative merits of the claimant and the defendant. It is in the nature of illegality that, when it succeeds as a bar to a claim, the defendant is the unworthy beneficiary of an undeserved windfall. But this is not because the defendant has the merits on his side; it is because the law cannot support the claimant's claim to relief. Lord Mansfield's classical expression of this principle was as follows:

"The objection, that a contract is immoral or illegal as between plaintiff and defendant, sounds at all times very ill in the mouth of the defendant. It is not for his sake, however, that the objection is ever allowed; but it is founded in general principles of policy, which the defendant has the advantage of, contrary to the real justice, as between him and the plaintiff, by accident, if I may so say."

57. This is, as it seems to me, consistent with elementary justice. If the bank robbers (or terrorists) are using explosives in their crime, and A is injured by a premature explosion attributable to the carelessness of B, it does not seem to me to be controversial to deny A a civil claim against B. That will not be because he voluntarily accepted the risk of B's negligence; on the contrary he no doubt relied on B to do his job well. It will be because there is such a close connection between the illegality and the civil claim that the court could not consistently condemn the first and give relief upon the second. For the same reason, claims by one criminal against another in relation to bad driving in escape from the crime will fail.

> 58. Conversely, when the illegality is not sufficiently closely connected to the claim, and can properly be regarded as collateral, or as doing no more than providing the context for the relationship which gives rise to the claim, the bar of illegality will not fall."

192. It was because of the absence of a sufficiently close connection between the illegality concerned and the tort committed that caused Lord Hughes to hold that Miss Hounga's claim should not be barred; see para 59 of his judgment, and also para 67 where he stated his conclusion, which also highlighted the difference between his approach from that of Lord Wilson:

> "For these reasons my conclusion is that Miss Hounga succeeds in her appeal, on the particular facts of this case, on the ground that there is insufficiently close connection between her immigration offences and her claims for the statutory tort of discrimination, for the former merely provided the setting or context in which that tort was committed, and to allow her to recover for that tort would not amount to the court condoning what it otherwise condemns. But it is not possible to read across from the law of human trafficking to provide a separate or additional reason for this outcome. Even if one assumes in Miss Hounga's favour that her treatment by Mrs Allen in England amounted to slavery or forced labour, and even if one assumes, without any findings of fact, that Mrs Allen brought her to England with the purpose of so treating her, she does not appear to have been compelled to commit the immigration offences which she certainly did commit."

193. Mr Roe then referred me to the decision of the Court of Appeal in *R (Best) v Chief Land Registrar* [2015] 2 P&CR 1, and in particular to the judgment of Sales LJ, who, in his analysis of the authorities, said at para 52 that "the task for the court is to identify in the specific context in question a particular rule which reflects in an appropriate way the relevant underlying policy in that area". Mr Roe relied upon Sales LJ's description, in that case at para 51, of Lord Wilson's judgment in *Hounga* as "the best guidance on the relevant analytical framework". *Best*, Mr Roe pointed out, was a case concerned with property rights, specifically adverse possession, but still the court applied *Hounga* rather than *Tinsley*.

194. Applying the *Hounga* approach to the present case, Mr Roe submitted, in relation to Mr Hniazdzilau's need to prove detrimental reliance to make out an estoppel, that the question for the Court is: may it take into account, as detrimental reliance, the payment for the Property by means of a transaction alleged by Mr Hniazdzilau himself to have been specifically set up in such a way as to mislead the tax authorities? To that question, Mr Roe submitted that the answer must be "No". He advanced the following points, by reference to Lord Wilson's questions posed at para 42 in *Hounga*, in support of that answer:

(i) Mr Hniazdzilau would (but for other deficiencies in his case) be taking the benefit of the Property purchased through a transaction defrauding the tax authorities. The Property is therefore, on Mr Hniazdzilau's own case, the fruits of his own illegality.

(ii) Allowing Mr Hniazdzilau to rely upon what he did as detrimental reliance might allow him to evade a criminal penalty. Mr Roe conceded that this was not clear, but possibly it might have that result if Mr Hniazdzilau could persuade the relevant prosecutors or courts that the transaction somehow carried the English court's approval.

(iii) To permit Mr Hniazdzilau to rely on what he did as detrimental reliance would compromise the integrity of the legal system by appearing to encourage those in his position to carry out transactions to defraud the tax authorities. Allowing a fraudulent transaction to be relied upon so as to obtain an equitable remedy, and indirectly to obtain the Property, would undermine the legal system, in appearing to condone the illegality and thus encouraging others to carry out similar transactions. Comity between nations dictates, submitted Mr Roe, that it could not be an answer that it does not matter because that the target of the illegality was another nation's authorities and not our own.

(iv) A refusal to allow Mr Hniazdzilau to rely on his illegal actions as constituting detrimental reliance would not compromise the integrity of the legal system by appearing to encourage those in Mr Bronovets' position, because such a refusal would not amount to any sort of comment on anything that Mr Bronovets had done.

195. As a matter of public policy, Mr Roe submitted, Parliament, in this context, has provided that *all* undeclared income constitutes the proceeds of crime, not merely such part of it as would otherwise have been taxed: see *R v William* [2013] EWCA Crim 1262, concerning the Proceeds of Crime Act 2002. There is, therefore, he submitted, no reason for the court to take an approach which is more generous to Mr Hniazdzilau than this. It would, therefore, be irrelevant, if the money provided for the purchase of the Property was, as Mr Hniazdzilau suggested (and Mr Bronovets denies), his own money, since a substantial part of it was only available to him (on his evidence) because he avoided paying it over to the tax authorities by pretending that it was being used for trade, and further because, again, on Mr Hniazdzilau's evidence, the whole purpose of the manner of completion of the transaction was tax evasion. Still further, the manner of payment, as well as the fact of such payment, ought to be

considered; any other approach would be overly narrow and would frustrate the policy behind the illegality defence. It would reward, Mr Roe argued, in one area of the law conduct which would be condemned in another area, and this was precisely what McLachlin J warned against in *Hall v Hebert* at 176 (in a passage approved by Lord Sumption in *Les Laboratoires Servier* [2015] AC 430 at para 24).

196. Finally, in support of the application of the *Hounga* approach, Mr Roe relied upon *dicta* of Mr Andrew Sutcliffe QC in *Piper v Kirk* [2010] EWHC 23 (Ch), whilst acknowledging that the issues were not the same as in the present case. In *Piper* the deputy judge held that, if he had found (which he did not) that a particular agreement had been entered into, he would have declined to enforce it on the grounds of public policy, because it had involved bringing money into the country in cash with a view to avoiding paying tax. The evasion of tax was thus 'an integral part of the transaction': at para. 106(e). Mr Roe invited me to adopt the same approach.

197. Turning then to the approach in *Tinsley v Milligan*, Mr Roe submitted that if that decision continues to be applicable, Mr Hniazdzilau's claim should still fail because Mr Hniazdzilau had to rely upon his own illegality in order to make out his claim in that Mr Hniazdzilau he seeks to establish detrimental reliance by reference to the money transfers which on his case were made under false invoices for the purpose of misleading the tax authorities. For this purpose, Mr Roe renewed his submission that the court should not look only to the alleged fact of the payments while ignoring the way in which the payments were said to have been made; again he invoked what McLachlin J, as she then was, said in *Hall v Hebert* and the endorsement of this in *Les Laboratoires Servier* which followed *Tinsley*.

198. Furthermore, Mr Roe submitted, Mr Hniazdzilau's evidence, if accepted, makes this case quite different from the facts of *Tinsley*. There, the plaintiff had already acquired an interest in the property under a resulting trust through her payments, which were made legitimately and from her own funds, before any fraud was carried out. That the parties put the property into the defendant's sole name for a fraudulent purpose did not mean that the plaintiff was in any way relying on the fraud. The funds were not themselves used to perpetrate the fraud. He referred to pages 371G-372A in the speech of Lord Browne-Wilkinson.

199. It is otherwise in the present case Mr Roe submitted. The very payments by which Mr Hniazdzilau claims to have provided the funds were made, on his evidence, in a fraudulent way and for a fraudulent purpose. This requires him to rely on his

illegality in a way which the plaintiff in *Tinsley* did not. Mr Hniazdzilau here did not acquire any interest in the Company separate from his fraudulent payment of the funds.

200. From a procedural perspective, continued Mr Roe, in *Tinsley* the plaintiff did not give evidence about the illegality, which only emerged in the course of cross-examination of the defendant. Lord Browne-Wilkinson held that this confirmed that the plaintiff was not relying on illegality: at 372A. However, in the present case, Mr Hniazdzilau gave evidence about the illegality precisely in order to support his case that he had provided the funds for the Property, since without the invoices there would be no documentary evidence that he paid for the Property. It is therefore the case that he does rely on his illegality.

201. Bringing together his very thorough and helpful submissions on illegality, Mr Roe submitted that the *Hounga* approach is to be preferred and was applied by the Court of Appeal in *Best*, as mentioned above. In the event that any conflict between the lines of authority (*Tinsley* and *Hounga*) should make it necessary to choose between them, Mr Roe helpfully reminded me of the principle that a lower court may choose between conflicting decisions of a court whose decisions are binding on it: see *Young v Bristol Aeroplane Co Ltd* [1944] KB 718, 725–726 and *Patel v Secretary of State for the Home Department* [2013] 1 WLR 63.

202. Finally, Mr Roe submitted, the false invoicing in connection with the purchase of the Property, and the Kolchugino transaction, have a relevance beyond the plea of illegality. He invited me to conclude that they should operate as a bar in equity to any relief, assuming contrary to Mr Bronovets' case, that otherwise Mr Hniazdzilau had made out a case for such relief. Mr Roe reminded me of the now well-established principle that where a case for equity's intervention is made out, it is to be satisfied by giving the 'minimum equity to do justice': *Megarry & Wade* at 16-020, 16-021. Mr Roe argued that the court should refuse relief if Mr Hniazdzilau has committed serious misconduct: *ibid* at 16-023, citing *J. Willis & Son v Willis* [1986] 1 E.G.L.R. 62 (where the submission of a fraudulent claim to improvements of a property was held to amount to sufficient misconduct to bar relief).

203. Mr Darton began his submissions as to illegality by reminding me that where a defence of illegality is raised, it is for the party raising the plea to prove the illegality. He relied on para 16-221 in *Chitty on Contracts* (32nd edition):

> "The party alleging the illegality of the contract bears the legal burden of proving this fact; therefore if the contract be reasonably susceptible of two meanings or two modes of performance, one legal and the other not the legal burden of proving its illegality is undischarged and that interpretation is to be put upon the contract which will support it and give it operation. If the contract on the face of it shows an illegal intention, an evidential burden lies upon the party supporting the contract to bring evidence reasonably capable of showing the legality of the intention."

204. Mr Darton struggled, however, when I raised the matter with him during his closing submissions, to suggest any honest explanation for the conduct behind the false invoicing and the suggested misleading of the Russian court in connection with the Kolchugino transaction. However, his principal submission with regard to illegality was formulated simply, but powerfully, namely, that on Mr Hniazdzilau's primary case (the same point would apply to his fiduciary case), which was that he was beneficially entitled to the Shares, and had been since Mr Bronovets had procured their issue pursuant to arrangements made in connection with the formation of BIL, Mr Hniazdzilau did not need to rely upon the suggested false invoicing, since the Shares belonged beneficially to Mr Hniazdzilau long before any false invoices were generated. Similarly, the Kolchugino transaction took place much later than the time when the Shares were issued. The doctrine of illegality, he submitted, did not prevent the passing of legal title, so that once property had passed to a party, then the rights thereby acquired would be recognised and enforced notwithstanding that the claimant's purpose in taking a transfer was objectionable; *Bowmakers Ltd v Barnet Instruments* [1945] KB 65.

205. Further, Mr Darton submitted, the doctrine did not prevent the enforcement of beneficial titles where the illegality was not relied upon. For this proposition he relied upon *Tinsley*, submitting that the principle applied to both legal and equitable titles. He maintained that the same principle applied to constructive trusts, where the facts giving rise to such a trust were not in themselves unlawful; *Davies v O'Kelly* [2015] 1 WLR 2725, CA. In the present case, he argued, the Kolchugino transaction had no connection with the acquisition of the Shares; further the money that was used to fund the purchase of the Property already belonged to Mr Hniazdzilau. Any illegality was engaged merely in the description of the transaction, not in the acquisition of the Property. Thus the suggested illegality was even more remote from the transaction than was the case in *Tinsley*.

206. Addressing the questions posed by Lord Wilson in *Hounga*, Mr Darton submitted that:

(a) Any award would not allow Mr Hniazdzilau to profit from his wrongful conduct in entering into the transaction, because it was Mr Hniazdzilau's money, and he was not profiting from illegality.

(b) Any award would not assist in the evasion of any penalty prescribed by the criminal law. The availability of the property afforded an asset against which any authority might enforce, for example, a tax penalty.

(c) An award to Mr Hniazdzilau would not compromise the integrity of the legal system by appearing to encourage persons in the position of Mr Hniazdzilau to enter into illegal contracts.

(d) Conversely allowing Mr Bronovets' plea of illegality could compromise the legal system's integrity by encouraging lawyers in the position of Mr Bronovets to be rewarded.

207. As for any divergence of approach between the *Tinsley* and *Hounga* decisions of the House of Lords and the Supreme Court, Mr Darton submitted that *Tinsley* remains good law; see the observations of Lord Sumption at para 62 in *Bilta (UK) Ltd (in liquidation) and others v Nazir and others (No 2)* [2015] 2 WLR 1168. *Hounga*, he submitted, was a case in which the precluding effect of illegality was reduced rather than extended.

Discussion

208. As Lord Wilson recognised in *Hounga*, following *Tinsley*, what he described as the "reliance test" took hold. It is against the background of the application of that test, subject to criticism in some quarters at the highest level, reflecting a concern for the need to temper the test with considerations of underlying policy, that *Hounga* came to be decided. In my judgment it is, therefore, convenient to begin the consideration of the authorities with *Tinsley*, which preceded *Hounga* by twenty years.

209. In *Tinsley* the plaintiff and the defendant, who had formed a business together for running lodging houses, bought a house in which they lived together, but which was in the plaintiff's sole name, though there was an understanding that it was jointly held beneficially. This arrangement was made to perpetrate frauds on the Department

of Social Security ("the DSS"). The defendant, with the connivance of the plaintiff, made false benefit claims upon the DSS, as did the plaintiff. The defendant ultimately disclosed the frauds to the DSS; thereafter the plaintiff moved out of occupation, and commenced proceedings, asserting her sole ownership of the property, claiming possession thereof from the defendant. The defendant counterclaimed for an order for sale, and a declaration as to joint beneficial ownership. At trial the judge dismissed the plaintiff's claim, and allowed the counterclaim; the Court of Appeal (by a majority) affirmed that order. The House of Lords by a majority (Lords Jauncey, Lowry and Browne-Wilkinson, with Lords Keith and Goff dissenting) dismissed the plaintiff's appeal.

210. Lord Jauncey began his analysis of the authorities by referring to what Lord Eldon LC said in *Muckleston v Brown* 6 Ves. 52 at page 69:

> "the plaintiff stating, he had been guilty of a fraud upon the law, to evade, to disappoint, the provision of the legislature, to which he is bound to submit, and coming to equity to be relieved against his own act, and the defence being dishonest, between the two species of dishonesty the court would not act; but would say, 'Let the estate lie, where it falls."

He then referred to Lord Eldon's later decisions in *Curtis v Perry* 6 Ves. 739 and *Ex parte Yallop* 15 Ves. 60 where the same principle was considered. At page 366B-366H Lord Jauncey continued:

> "At the outset it seems to me to be important to distinguish between the enforcement of executory provisions arising under an illegal contract or other transaction and the enforcement of rights already acquired under the completed provisions of such a contract or transaction. Your Lordships were referred to a very considerable number of authorities, both ancient and modern, from which certain propositions may be derived.
> First, it is trite law that the court will not give its assistance to the enforcement of executory provisions of an unlawful contract whether the illegality is apparent ex facie the document or whether the illegality of purpose of what would otherwise be a lawful contract emerges during the course of the trial: *Holman v. Johnson*, 1 Cowp. 341 , 343, *per* Lord Mansfield C.J.; *Pearce v. Brooks* (1866) L.R. 1 Ex. 213 , 217-218, *per* Pollock C.B.; *Alexander v. Rayson* [1936] 1 K.B. 169 , 182; *Bowmakers Ltd. v. Barnet Instruments Ltd.* [1945] K.B. 65, 70.
> Second, it is well established that a party is not entitled to rely on his own fraud or illegality in order to assist a claim or rebut a presumption. Thus when money or property has been transferred by a man to his wife or children for the purpose of defrauding creditors and the transferee resists his claim for recovery he cannot be heard to rely on his illegal purpose in order to rebut the presumption of advancement: *Gascoigne v. Gascoigne* [1918] 1 K.B. 223, 226; *Palaniappa Chettiar v. Arunasalam Chettiar* [1962] A.C. 294, 302; *Tinker v. Tinker* [1970] P. 136, 143, *per* Salmon L.J.
> Third, it has, however, for some years been recognised that a completely executed transfer of property or of an interest in property made in pursuance of an unlawful

agreement is valid and the court will assist the transferee in the protection of his interest provided that he does not require to found on the unlawful agreement: *Ayerst v. Jenkins,* L.R. 16 Eq. *275* , 283; *Alexander v. Rayson* [1936] 1 K.B. 169 , 184-185; *Bowmakers Ltd. v. Barnet Instruments Ltd.* [1945] K.B. 65 and *Singh v. Ali* [1960] A.C. 167 , 176. To the extent, at least, of this third proposition it would appear that there has been some modification over the years of Lord Eldon's principles.
The ultimate question in this appeal is, in my view, whether the respondent in claiming the existence of a resulting trust in her favour is seeking to enforce unperformed provisions of an unlawful transaction or whether she is simply relying on an equitable proprietary interest that she has already acquired under such a transaction."

211. Lord Jauncey stated his conclusion at page 367B-C, namely, that:

"...the transaction whereby the claimed resulting trust in favour of the respondent was created was the agreement between the parties that although funds were to be provided by both of them, nevertheless the title to the house was to be in the sole name of the appellant for the unlawful purpose of defrauding the D.S.S. So long as that agreement remained unperformed neither party could have enforced it against the other. However, as soon as the agreement was implemented by the sale to the appellant alone she became trustee for the respondent who can now rely on the equitable proprietary interest which has thereby been presumed to have been created in her favour and has no need to rely on the illegal transaction which led to its creation."

212. Lord Lowry agreed with the conclusions reached by Lords Jauncey and Browne-Wilkinson, to the latter of which I refer below. He expressed himself (at page 367F) as being "unable to accept and act upon Lord Eldon's wide principle despite its eminent authorship and its impressive antiquity." At page 367F-368A Lord Lowry continued:

"The advancement cases belong to a class in relation to which the rule seems to me to conform with equitable principles. The ostensible donor makes a gift with a fraudulent purpose in view; when he tries to assert his equitable title, he is obliged to rely on his own fraud in order to rebut the presumption of advancement. Equity, through the mouth of the court, then says, 'We will not assist you to recover your property, because you have to give evidence of your own wrongdoing in order to succeed.' On the other hand, under the wide principle, someone in the position of Miss Milligan, who has only to show a trust, resulting from the fact (which he must prove or which may be admitted) that the property was acquired wholly or partly by the use of his money, is said to be defeated by the maxim that he who comes into equity must come with clean hands, on the ground that the original transaction was undertaken for a fraudulent purpose. But in the latter case the claimant is not relying on his own fraud in order to succeed and is merely said to be defeated by a rule of policy, despite the fact that he already has an equitable interest, as the locus poenitentiae rule confirms."

Later, at 368C-H he said:

> "The rule of policy which is said to justify the wide principle should be closely examined. A and B buy property in equal shares and by agreement B acquires the legal title. A, either by himself or in conspiracy with B (who may or may not stand to benefit from the fraud), plans to obtain a financial advantage by falsely pretending that he owns no property: if A goes through with the scheme, the wide principle applies, although, in order to assert his rights against B, A does not need to rely on his own fraud. Indeed, where the presumption of advancement does not apply, it is B who will have to rely on the fraud (to which in some cases he has been privy) as a defence. If, on the other hand, the property has been innocently acquired and A later takes advantage of his lack of a legal title to make the same false pretence, his claim against B on foot of a resulting trust cannot be defeated. The criminal sanction against A is the same in either case.
> I am not impressed by the argument that the wide principle acts as a deterrent to persons in A's position. In the first place, they may not be aware of the principle and are unlikely to consult a reputable solicitor. Secondly, if they commit a fraud, they will not have been deterred by the possibility of being found out and prosecuted. Furthermore, the wide principle could be a positive encouragement to B, if he is aware of the principle, because by means of his complicity, he may become not only the legal owner but the beneficial owner.
> For A to take proceedings in order to vindicate his equitable rights as sole or joint beneficial owner is not an example of the maxim ex turpi causa non oritur actio because his equitable title and his cause of action do not arise out of his illegal or immoral act. It is B who must rely on the turpis causa as a defence.
> The foregoing considerations render me all the more convinced that the right view is that a party cannot *rely* on his own illegality in order to prove his equitable right, and *not* that a party cannot recover if his illegality is proved as a defence to his claim. I consider that the wide principle is not well founded and, since it is not binding on your Lordships, that your Lordships should not follow it."

213. Lord Browne-Wilkinson, having considered *Bowmakers*, *Ferret v Hill* (1854) 15 CB 207, *Taylor v Chester* LR 4 QB 309, and *Alexander v Rayson* [1936] 1 KB 169 said at page 370C-F:

> "From these authorities the following propositions emerge: (1) property in chattels and land can pass under a contract which is illegal and therefore would have been unenforceable as a contract; (2) a plaintiff can at law enforce property rights so acquired provided that he does not need to rely on the illegal contract for any purpose other than providing the basis of his claim to a property right; (3) it is irrelevant that the illegality of the underlying agreement was either pleaded or emerged in evidence: if the plaintiff has acquired legal title under the illegal contract that is enough.
> I have stressed the common law rules as to the impact of illegality on the acquisition and enforcement of property rights because it is the appellant's contention that different principles apply in equity. In particular it is said that equity will not aid Miss Milligan to assert, establish or enforce an equitable, as opposed to a legal, proprietary interest since she was a party to the fraud on the D.S.S. The house was put in the name of Miss Tinsley alone (instead of joint names) to facilitate the fraud. Therefore, it is said, Miss Milligan does not come to equity with clean hands: consequently, equity will not aid her."

214. Lord Browne-Wilkinson then went on, at pages 371F-372C to explain the importance of the presumption of resulting trust in the cases dealing with the effects of illegality:

> "The presumption of a resulting trust is, in my view, crucial in considering the authorities. On that presumption (and on the contrary presumption of advancement) hinges the answer to the crucial question 'does a plaintiff claiming under a resulting trust have to rely on the underlying illegality?' Where the presumption of resulting trust applies, the plaintiff does not have to rely on the illegality. If he proves that the property is vested in the defendant alone but that the plaintiff provided part of the purchase money, or voluntarily transferred the property to the defendant, the plaintiff establishes his claim under a resulting trust unless either the contrary presumption of advancement displaces the presumption of resulting trust or the defendant leads evidence to rebut the presumption of resulting trust. Therefore, in cases where the presumption of advancement does not apply, a plaintiff can establish his equitable interest in the property without relying in any way on the underlying illegal transaction. *In this case Miss Milligan as defendant simply pleaded the common intention that the property should belong to both of them and that she contributed to the purchase price: she claimed that in consequence the property belonged to them equally. To the same effect was her evidence in chief. Therefore Miss Milligan was not forced to rely on the illegality to prove her equitable interest. Only in the reply and the course of Miss Milligan's cross-examination did such illegality emerge: it was Miss Tinsley who had to rely on that illegality.*
> Although the presumption of advancement does not directly arise for consideration in this case, it is important when considering the decided cases to understand its operation. On a transfer from a man to his wife, children or others to whom he stands in loco parentis, equity presumes an intention to make a gift. Therefore in such a case, unlike the case where the presumption of resulting trust applies, in order to establish any claim the plaintiff has himself to lead evidence sufficient to rebut the presumption of gift and in so doing will normally have to plead, and give evidence of, the underlying illegal purpose." (Emphasis added)

215. Two developments of the law in the nineteenth century were then considered by Lord Browne-Wilkinson. First (at page 373F-374A), he explained that in *Ayerst v Jenkins* LR 16 Eq 275, Lord Selborne LC treated a party to the relevant illegality in that case as entitled to enforce express trusts against a trustee. This, he suggested, would be quite inconsistent with a general rule that a court of equity will never enforce equitable proprietary interests at the suit of a party to the illegality. Secondly, the evolution of the *locus poenitentiae*, whereby it was recognised both at law and in equity that a plaintiff who repented before his illegal purpose was carried out could recover his property (demonstrated in *Taylor v Bowers* 1 QBD 291, and *Symes v Hughes* LR 9 Eq 475), Lord Browne-Wilkinson considered to be "irreconcilable with any rule that where property is transferred for an illegal purpose no equitable

proprietary right exists." His lordship continued, by way of explanation and analysis at page 374C-G:

> "The equitable right, if any, must arise at the time at which the property was voluntarily transferred to the third party or purchased in the name of the third party. The existence of the equitable interest cannot depend upon events occurring after that date. Therefore if, under the principle of locus poenitentiae, the courts recognise that an equitable interest did arise out of the underlying transaction, the same must be true where the illegal purpose was carried through. The carrying out of the illegal purpose cannot, by itself, destroy the pre-existing equitable interest. The doctrine of locus poenitentiae therefore demonstrates that the effect of illegality is not to prevent a proprietary interest in equity from arising or to produce a forfeiture of such right: the effect is to render the equitable interest unenforceable in certain circumstances. The effect of illegality is not substantive but procedural. The question therefore is, 'In what circumstances will equity refuse to enforce equitable rights which undoubtedly exist.'
> It is against this background that one has to assess the more recent law. Although in the cases decided during the last 100 years there are frequent references to Lord Eldon's wide principle, with one exception (*Cantor v. Cox*, 239 E.G. 121) none of the English decisions are decided by simply applying that principle. They are all cases where the unsuccessful party was held to be precluded from leading evidence of an illegal situation in order to rebut the presumption of advancement. Lord Eldon's rule would have provided a complete answer whether the transfer was made to a wife or child (where the presumption of advancement would apply) or to a stranger. Yet with one exception none of the cases in this century has been decided on that simple basis."

216. Two Privy Council decisions, *Singh v Ali* [1960] AC 167 and *Chettiar v Chettiar* [1962] AC 294 were next considered by Lord Browne-Wilkinson, who continued at page 376C-F:

> "In my judgment these two cases show that the Privy Council was applying exactly the same principle in both cases although in one case the plaintiff's claim rested on a legal title and in the other on an equitable title. The claim based on the equitable title did not fail simply because the plaintiff was a party to the illegal transaction; it only failed because the plaintiff was bound to disclose and rely upon his own illegal purpose in order to rebut the presumption of advancement. The Privy Council was plainly treating the principle applicable both at law and in equity as being that a man can recover property provided that he is not forced to rely on his own illegality.
> I therefore reach the conclusion that, although there is no case overruling the wide principle stated by Lord Eldon, as the law has developed the equitable principle has become elided into the common law rule. In my judgment the time has come to decide clearly that the rule is the same whether a plaintiff founds himself on a legal or equitable title: *he is entitled to recover if he is not forced to plead or rely on the illegality, even if it emerges that the title on which he relied was acquired in the course of carrying through an illegal transaction.*" (Emphasis added)

217. Following this extensive review of authority, Lord Browne-Wilkinson stated his conclusions at pages 376F-377C:

> "As applied in the present case, that principle would operate as follows. Miss Milligan established a resulting trust by showing that she had contributed to the purchase price of the house and that there was common understanding between her and Miss Tinsley that they owned the house equally. She had no need to allege or prove *why* the house was conveyed into the name of Miss Tinsley alone, since that fact was irrelevant to her claim: it was enough to show that the house was in fact vested in Miss Tinsley alone. The illegality only emerged at all because Miss Tinsley sought to raise it. Having proved these facts, Miss Milligan had raised a presumption of resulting trust. There was no evidence to rebut that presumption. Therefore Miss Milligan should succeed. This is exactly the process of reasoning adopted by the Ontario Court of Appeal in *Gorog v. Kiss* (1977) 78 D.L.R. (3d) 690 which in my judgment was rightly decided.
> *... In my judgment the court is only entitled and bound to dismiss a claim on the basis that it is founded on an illegality in those cases where the illegality is of a kind which would have provided a good defence if raised by the defendant. In a case where the plaintiff is not seeking to enforce an unlawful contract but founds his case on collateral rights acquired under the contract (such as a right of property) the court is neither bound nor entitled to reject the claim unless the illegality of necessity forms part of the plaintiff's case*." (Emphasis added)

218. The decision in *Tinsley* has been applied in many subsequent cases, including, as Mr Darton submitted, in the case of *Davies v O'Kelly* [2015] 1 WLR 2725 which was concerned with a constructive trust. In that case, an unmarried couple, the claimant and the defendant, had put a property into the defendant's name alone in order to enable her fraudulently to claim social security benefits as though she were a single mother living alone. The county court judge held that that the claimant did not need to rely on the illegality of the transactions concerned to make out his claim based upon the common intentions of the parties. His decision was upheld by the Court of Appeal (Pitchford, Beatson, and Gloster LJJ). The leading judgment of the court was given by Pitchford LJ, who made extensive reference to *Tinsley*, and in particular to the speech of Lord Jauncey and the final paragraph which I have cited above from page 366B-366H of the report, for the proposition which Pitchford LJ stated at para 20, that:

> "Equity will not come to the aid of a party who must rely on his unlawful purpose but if his right to an equitable interest in property can be identified without the need to rely on his unlawful purpose it can be enforced."

His lordship then went on to state that in that in the appeal in that case the question was whether "the claimant's claim to a constructive trust founded on the parties' inferred common intention amounts to an attempt to enforce unperformed provisions

of an unlawful transaction. Put another way: can the claimant prove the trust without recourse to the unlawful agreement?" After reviewing many authorities including *Stack v Dowden* [2007] 2 AC 432 and *Jones v Kernott* [2012] 1 AC 776, decided in the House of Lords, and the Supreme Court respectively, and the Court of Appeal decisions in *Drake v Whipp* [1996] 1 FLR 826 and *Oxley v Hiscock* [2005] Fam 211, in which the significance of the parties' common intention was analysed in resulting and constructive trust cases, Pitchford LJ summarised, at paras 30 and 31, the county court judge's findings as to the nature of the claimant's interest, and his reasons for finding that the claimant's interest was not affected by considerations of illegality:

> "... While the reason for purchase in the defendant's sole name was unlawful, *the acquisition of a beneficial interest in the property arose not from the illegal purpose but from the parties' common intention, inferred from their continuing course of dealing, that the claimant should have such an interest. The unlawful purpose may have explained their conduct but it was the conduct itself that gave rise to the constructive trust.*
> 31 Although the judge may not have analysed the consequences to enforceability of a finding of a constructive rather than a resulting trust, it seems to me that on the facts of the present case he was correct to find that the claimant was not required to rely on his illegal purpose in order to establish his beneficial interest in either property. The judge's finding that the defendant held the equitable interest in 42 William Street on trust for herself and the claimant was plainly open to him on the evidence he had heard. ..." (Emphasis added)

219. Pitchford LJ, at para 32, found that the approach of the county court judge derived support from Lord Browne-Wilkinson's speech in *Tinsley* (at page 376C-F) in the passage which I have cited above dealing with *Singh v Ali* and *Chettiar v Chettiar*. Then, in the concluding passages of his judgment, Pitchford LJ said at para 32-34:

> "... it was not in the present case necessary for the claimant to prove the reason why the legal estate of both properties was conveyed into the defendant's sole name; it was enough that the starting point was that the legal estate was vested in the defendant alone. Subject to proof of a contrary intention, the equitable interests in the property followed the legal estate. From that starting point the judge concluded that although there was no express agreement as to disposition of the beneficial interest in [the property], the common intention of the parties, inferred from their conduct throughout, was that the beneficial interest should be shared equally between them. It was not necessary for the claimant to advance his unlawful agreement in order to make good his claim to a constructive trust. As in *Tinsley v Millington* [*sic*] the merits as between the parties are all one way. The issue is whether public policy should intervene to prevent the claimant from enforcing his interest. The conduct identified by the judge was not the making of the unlawful agreement (which was about purpose and not about shared equitable interest) but the course of dealing between the parties relating to their financial contributions to the purchases. While it is no longer appropriate to think in terms of an evidential presumption as to intention, the very conduct that, formerly, would have created that presumption supported the inference drawn by the judge

and, in my judgment, for that reason the intervention of public policy is avoided (ground 2).
33 A different conclusion on dissimilar facts was reached by David Richards J in *Barrett v Barrett* [2008] 2 P & CR 345, in which the claimant had sold his house to his brother, the defendant, in order to place his home (rather than the proceeds of sale) beyond the reach of his trustee in bankruptcy. The brother purchased the house with the aid of a mortgage secured on the property. The claimant could not demonstrate that he had made any contribution to the purchase price that would have enabled him to establish a resulting trust. He relied on his agreement with his brother that he would make periodical repayments of the mortgage. The defendant denied the agreement, saying that they were simply payments of rent. David Richards J found that in order to support the claim to a beneficial interest in the property based on a common intention between vendor and purchaser the payments had to be unequivocally referable to the agreement that the claimant should retain the beneficial interest in the property. These payments could only be explained as referable to the retention of a beneficial interest if the claimant relied, as he had pleaded, on the illegal agreement. In my judgment, *Barrett v Barrett* is distinguishable on the ground that the conduct on which the claimant was relying could not be said, without more, to support an inference of common intention. It could only have that effect if the claimant relied on the express unlawful agreement.
34. On the findings of the judge in the present case the dealings between the parties during the period 1990–2011 could and did give rise to the inference of their common intention without the need to refer to or to rely on the illegal purpose. In my view, this case demonstrates the accuracy of the proposition advanced at para 22-066 of *Snell's Equity* (para 17 above) that a finding of a constructive trust "might" be precluded by the need to advance the unlawful agreement in proof of the common intention to share the beneficial interest in property. Whether the claimant is precluded depends on the nature of the case, the evidence advanced and the judge's conclusions of fact."

220. Beatson LJ agreed with Pitchford LJ, as did Gloster LJ, who in a short concurring judgment made these important observations at para 37:

"Whether the analysis depends on constructive or resulting trust, or merely the ascertainment of the parties' common intention, there was no need for the claimant to rely on the illegality relating to the reason for the legal title to [the property] being in the defendant's name in order to establish his beneficial interest in the property. The decision in *Tinsley v Milligan* [1994] 1 AC 340 was clearly applicable.

221. In my judgment it emerges very clearly from *Davies v O'Kelly* that the principles confirmed more than twenty years ago in *Tinsley*, following from a long line of authority, were still regarded as being applicable in cases concerned with establishing equitable interests in property; as Gloster LJ put it, whether "the analysis depends on constructive or resulting trust, or merely the ascertainment of the parties' common intention" (mirroring what Pitchford LJ had said at para 31 as to the judge's analysis). The principles are that the claimant's own illegal conduct will not affect

his ability to establish his beneficial interest in property the subject of his claim, provided that there is no need for him to rely on his illegality in respect of the reason for legal title to the property concerned being in another's name. This will be so even if it emerges in the course of cross-examination that the title on which the claimant relies was acquired in the course of carrying through an illegal transaction. If the acquisition of an interest arises from the parties' common intention and not from the illegal purpose, equity, like the law, will enforce it. The position will be different where the claimant needs to rely upon an unlawful agreement to maintain his claim.

222. *Davies v O'Kelly* (judgment handed down on 11th December 2014) was argued on 11th November 2014, that is more than three months after judgments were delivered in *Hounga* on 30th July in the same year, but it has to be acknowledged that *Hounga* was neither cited in argument, nor in the judgments in the later decision of the Court of Appeal, though it was relied upon in *Best*; similarly *Davies v O'Kelly* was not cited to, or by, the Court of Appeal in *Best.*

223. I have to determine whether the principles described above have been displaced by other authority for the reasons submitted by Mr Roe. In my judgment none of the cases relied upon by Mr Roe assists him in that regard. *Hounga* was a claim founded in tort, and, importantly, was concerned with unlawful discrimination. This set the context for Lord Wilson's analysis of the authorities. He observed, in para 25 of his judgment, that the application of the defence of illegality to claims in tort is highly problematic. In para 24 he identified how a claim by Miss Hounga founded in contract would founder, expressly stating that a claimant for unfair dismissal is seeking to enforce a contract, and that the appeal in that case had proceeded without challenge to the employment tribunal's conclusion, upheld by the appeal tribunal, that the defence of illegality precluded Miss Hounga's claim for unfair dismissal. Her contractual claim had failed because of her need to enforce an illegal contract. This was not a result with which Lord Wilson expressed disagreement.

224. Later in his judgment he went on to consider the decision in *Tinsley*, acknowledging at para 29 that since that decision "the reliance test" had inevitably taken hold, and at para 30 that such test "continues to carry maximum precedential authority but has attracted criticism". However, in the same paragraph he said that he considered that Lord Phillips had been correct in *Stone & Rolls Ltd v Moore Stephens* [2009] AC 1391 to "soften the effect of the reliance test by the need to consider the underlying policy". In that case Lord Phillips had said, at para 25, that he did not

believe that it was right to proceed on the basis that the reliance test could automatically be applied as a rule of thumb, and that it was necessary to give consideration to the policy underlying *ex turpi causa* in order to see whether that defence was bound to defeat the claim then under consideration. None of this suggests that Lord Wilson considered that the application of the test in *Tinsley* had produced an unjust result in that case; if anything, it suggests that he favoured a relaxation of the test so that what might otherwise be a valid claim should not be defeated by the application of too rigid a rule. This was the approach which he adopted to the application of the illegality defence to the facts in *Hounga*, as is clear from the concluding paragraph of his judgment, where he said (clearly in relation to that particular factual context) that the "public policy in support of the application of that defence, to the extent that it exists at all, should give way to the public policy to which its application is an affront".

225. With regard to *Best*, this was a case concerned with the issue of whether a squatter could acquire title to land by virtue of sustained averse possession of land although during part of his time in possession his actions amounted to a criminal offence; see para 1 of the judgment of Sales LJ. The Court of Appeal held that he could. Mr Roe, as I have explained above, placed considerable emphasis upon para 51 of Sales LJ's judgment in that case, but in order to understand precisely what the learned lord justice was saying, it is necessary to consider that part of his judgment more fully. Sales LJ said at paras 51-52:

> "51 In my view, the best guidance on the relevant analytical framework for present purposes is given in the speech of Lord Wilson JSC (speaking for the majority) in *Hounga v Allen (Anti-Slavery International intervening)* [2014] 1 WLR 2889 . In that case, an employee who had been brought from Nigeria by her employer so as to enter the United Kingdom in breach of immigration control, to take up employment here illegally, was then dismissed by the employer. The employee sought to bring a claim for unlawful race discrimination in relation to her dismissal. Her claim succeeded in the employment tribunal, but the Court of Appeal set its order aside, holding that the illegality of the contract of employment formed a material part of the claimant's complaint and that to uphold it would be to condone the illegality. The Supreme Court allowed the employee's appeal.
> 52 In doing so, the Supreme Court confirmed the position arrived at in *Tinsley v Milligan* [1994] 1 AC 340 : the law of illegality does not operate to confer a broad discretion on a court to take any illegal actions on the part of a claimant into account when deciding the extent to which such illegality has an impact on the relief sought by the claimant. Rather, *the task for the court is to identify in the specific context in question a particular rule which reflects in an appropriate way the relevant underlying policy in that area*: see *Hounga*, paras 42 et seq; also *Gray v Thames Trains Ltd* [2009] AC 1339 , paras 30-31, per Lord Hoffmann; *Stone & Rolls Ltd v Moore Stephens* [2009] AC 1391 , paras 20-25, per Lord Phillips of Worth Matravers; and now *Les Laboratoires Servier v Apotex Inc* [2015] AC 430 , paras

13-22, per Lord Sumption JSC. Although in each case a rule is to be identified, rather than just taking a discretionary approach of a kind disapproved in *Tinsley v Milligan*, *Hounga* and *Les Laboratoires Servier*, there is not one single rule with blanket effect across all areas of the law. Instead, there are a number of rules which may be identified, each tailored to the particular context in which the illegality principle is said to apply: see *Gray v Thames Trains Ltd* (para 30: the ex turpi causa policy is based "on a group of reasons, which vary in different situations"; and para 32: as between rules applicable in different contexts, "the questions of fairness and policy are different and the content of the rule is different. One cannot simply extrapolate rules applicable to a different kind of situation") and *Les Laboratoires Servier*, paras 19 and 22." (Emphasis added)

226. In my judgment, it is not possible to read the whole of this part of Sales LJ's judgment as suggesting that the *Tinsley* approach to illegality had been supplanted by any later decision; more particularly it does not suggest that in the context of the law of trusts, a claim to establish an equity which would have succeeded, on *Tinsley* principles, in the face of a plea of illegality, might now be defeated by a different application of the *ex turpi causa* principle. Sales LJ, in terms, was stating that there are a number of rules tailored for application to the particular context in which an illegality issue may arise. The present case arises in the context of the law of trusts in which intentions, agreements, and contributions are leading considerations. The rules tailored to these circumstances are well defined, and have recently been reaffirmed *Davies v O'Kelly*.

227. The status of the decision in *Tinsley* was recently the subject of discussion in the Supreme Court in *Bilta (UK) Ltd (in liquidation) and others v Nazir and others (No 2)* [2015] 2 WLR 1168, a case concerned with the attribution of the actions and state of mind of its directors to a company. The position was summarised in paras 13-17 in the judgment of Lord Neuberger:

"13 First, then, there is the proper approach which should be adopted to a defence of illegality. This is a difficult and important topic on which, as the two main judgments in this case show, there can be strongly held differing views, and it is probably accurate to describe the debate on the topic as involving something of a spectrum of views. The debate can be seen as epitomising the familiar tension between the need for principle, clarity and certainty in the law with the equally important desire to achieve a fair and appropriate result in each case.
14 In these proceedings, Lord Sumption JSC considers that the law is stated in the judgments in the House of Lords in *Tinsley v Milligan* [1994] 1 AC 340, which he followed and developed (with the agreement of three of the four other members of the court, including myself and Lord Clarke JSC) in *Les Laboratoires Servier v Apotex Inc* [2015] AC 430. He distinguishes the judgment of Lord Wilson JSC in *Hounga v Allen (Anti-Slavery International intervening)* [2014] 1 WLR 2889 as involving no departure from *Tinsley v Milligan*, but as turning on its own context in which "a competing public policy required that damages should be available

> even to a person who was privy to her own trafficking" (para 102). By contrast Lord Toulson JSC (who dissented from that approach in the *Les Laboratoires* case) and Lord Hodge JSC favour the approach adopted by the majority of the Court of Appeal in *Tinsley v Milligan* and treat that of Lord Wilson JSC in para 42ff of *Hounga v Allen* as supporting that approach.
> 15 In my view, while the proper approach to the defence of illegality needs to be addressed by this court (certainly with a panel of seven and conceivably with a panel of nine Justices) as soon as appropriately possible, this is not the case in which it should be decided. We have had no real argument on the topic: this case is concerned with attribution, and that is the issue on which the arguments have correctly focussed. Further, in this case, as in the two recent Supreme Court decisions in the *Les Laboratoires* and *Hounga* cases, the outcome is the same irrespective of the correct approach to the illegality defence.
> 16 It would, in my view, be unwise to seek to decide such a difficult and controversial question in a case where it is not determinative of the outcome and where there has been little if any argument on the topic. In *Les Laboratoires*, the majority did opine on the proper approach not because it was necessary to decide the appeal, but because they considered that the Court of Appeal (who had reached the same actual decision) had adopted an approach which was inconsistent with *Tinsley*. Similarly in *Hounga*, as Lord Sumption JSC has shown in para 99, it may well not have been necessary to consider the proper approach to the illegality defence, but it none the less remains the fact that it was the subject of argument, and that Lord Wilson JSC did express a view on the point, and two of the four other members of the court agreed with his judgment.
> 17 *Les Laboratoires* provides a basis for saying that the approach in *Tinsley* has recently been reaffirmed by this court and that it would be inappropriate for this court to visit the point again. However, it was not argued in *Les Laboratoires* that *Tinsley* was wrongly decided, and, as Lord Toulson JSC pointed out in his judgment, the majority decision was reached without addressing the reasoning in *Hounga* . Lord Sumption JSC is right to say that, unless and until this court refuses to follow *Tinsley*, it is at the very least difficult to say that the law is as flexible as Lords Toulson and Hodge JJSC suggest in their judgment, but (i) in the light of what the majority said in *Hounga* at paras 42-43, there is room for argument that this court has refused to follow *Tinsley*, and (ii) in the light of the Law Commission report *The Illegality Defence* (2010) (Law Com No 320), the subsequent decisions of the Court of Appeal, and decisions of other common law courts, it appears to me to be appropriate for this court to address this difficult and controversial issue—but only after having heard and read full argument on the topic."

228. This passage demonstrates, in my view, that, whilst there may be a debate as to whether the decision in *Tinsley* should continue to be followed, that decision has not been overruled, even if there might be "room for argument" about the topic. In the circumstances, I must apply it, and in my judgment, applied to this case I do not consider that it requires me to find that Mr Hniazdzilau's claim is defeated by virtue of the suggested illegality in relation to either the transfer of the funds required to complete the purchase of the Property, or the Kolchugino transaction. Mr Hniazdzilau does not need to rely on his suggested illegality in respect of the reason for legal title to the Shares being in another's name. He does not seek to rely on an illegal contract

as the basis of his asserted interest. His primary and his fiduciary cases are that he was the owner of the Shares long before the funds for the purchase of the Property were transferred, or the Kolchugino transaction was carried out. His alternative case as to the provision of the monies for the purchase of the Property also does not depend upon his reliance upon an illegal transaction. His case is that the money transferred was his. He did not need to advance illegality as part of his case. It was sufficient for him to say that the money that he transferred was his. If he had not been cross-examined upon such evidence, his case, if otherwise meritorious, would have been made out without any need to rely upon or assert illegality. The fact that he might have misled tax authorities as to the reason for his transfer of funds does not affect the fact that it was his funds that were transferred. All of this was in circumstances in which it was his belief that he was the shareholder who would benefit from that transfer through the acquisition of the Property, and Mr Bronovets knew this to be the case and the only basis upon which Mr Hniazdzilau would effect, or effected, the transfer of funds. His title is not affected by the fact that it emerged in cross-examination that the transfer of funds to buy the Property may have been illegally presented to a third party as for a different purpose.

229. The Kolchugino transaction, in my judgment, is very much further removed from anything that Mr Hniazdzilau has asserted or relied upon as part of his case. It was raised only in cross-examination, and not relied upon by Mr Hniazdzilau in any way so as to justify his ownership of the Shares or the Property.

230. Finally, as to illegality, I would add that even if Mr Roe had persuaded me that the approach described in *Hounga* has now supplanted that in *Tinsley*, I would have reached the same conclusion on the issue of the illegality defence as applied to this case. The *Hounga* approach would lead to no different result on Mr Hniazdzilau's primary or fiduciary cases that the acquisition of Mr Hniazdzilau's beneficial interest in the Shares preceded the alleged illegality. On Mr Hniazdzilau's alternative case, depending on the transfer of funds, and assuming it otherwise to be meritorious, having regard to the questions posed by Lord Wilson at para 44 in *Hounga*, it does not seem to me that recognising an equity in Mr Hniazdzilau's favour allowed him to profit from entering into an illegal contract. Adapting the questions posed by Lord Wilson to the different circumstances of this case:

(a) The equity arises from the fact of payment of the monies and the intentions of the parties, not from entering into any illegal contract.

(b) I see no basis for saying that Mr Hniazdzilau would avoid a penalty because of a finding in his favour in this case. He would remain liable to prosecution.

(c) Upholding an equity on the facts of this case would not encourage others to enter into illegal contracts, nor would it encourage the making of illegal payments, in the sense of misappropriating monies, because the funds concerned were Mr Hniazdzilau's. In my judgment upholding an equity is neutral on the issue of encouraging falsification of documents, because any sanction, by way of civil or criminal penalty survives. Further, once Mr Hniazdzilau had obtained a transfer of money to himself by means of the false documents, there can be no doubt that the money in the receiving account was his. A payment to a third party, say, under a purchase contract, could not be disputed by the receiving party on the basis that the paying party had received the funds by generating false invoices.

(d) Application of the defence of illegality in a case such as this might encourage dishonest persons to cheat those who pay them by accepting payment of monies knowing that they are paid on a particular basis, whilst having every intention of "going back" on arrangements once the payment is safely banked.

In these circumstances, public policy considerations weigh heavily against applying the illegality defence.

231. For the sake of completeness I would add that approaching this case, using the approach of Lord Hughes in *Hounga*, precisely the same result would be achieved. The illegality was collateral to the transactions concerned, and there was not a sufficiently close connection between it and the transactions which give rise to the equity asserted for the claim to be barred by illegality.

232. For all these reasons, I conclude that the plea of illegality fails.

SUMMARY AND DISPOSAL

233. Mr Hniazdzilau succeeds on his primary case; Mr Enriquez holds the Shares on trust for him, and they must be transferred to him.

234. I dismiss Mr Bronovets' counterclaim for a declaration that the Shares belong to him absolutely.

235. If I had not found for Mr Hniazdzilau on his primary case, I would have found for him on what I have called his fiduciary case against Mr Bronovets (see paras 171-177 above).

236. I will hear further submissions, on the handing down of this judgment, as to the form of order, and any consequential matters if such matters cannot be agreed.

237. Finally, I express my thanks to all counsel for the efficiency with which they dealt with this case, for their very able and helpful submissions, and for the thoroughness of their researches.