No: 2789 of 2014

IN THE HIGH COURT OF JUSTICE
IN BANKRUPTCY

IN THE MATTER OF GEORGY YURIEVICH TREFILOV
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

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

Date: 29 April 2016

Before:

Mr Registrar Baister

- -

Between:

(1) CARL JAMES BOWLES **(2) ROBIN HAMILTON DAVIS** **(The joint trustees in bankruptcy of Georgy Yurievich Trefilov)**	**Applicants**
- and -	
GEORGY YURIEVICH TREFILOV	**Respondent**

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Ms Charlotte Cooke (instructed by **Stephenson Harwood LLP**) for the **Applicants**
Mr Thomas Roe QC and **Mr Alexander Halban** (instructed by **Rosenblatt**) for the **Respondent**

Hearing date: 24 February 2016

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Approved Judgment

I direct pursuant to CPR PD 39A para 6.1 that no official shorthand note shall be taken of this judgment and that copies of this version as handed down may be treated as authentic.

.....

Mr Registrar Baister:

The applications and the evidence

1. The subject matter of this judgment is two applications brought against the respondent bankrupt by his joint trustees, the first seeking an order suspending the former's discharge from bankruptcy for a further period of six months, the second seeking an income payments order.

2. The applications have generated a significant amount of evidence: four witness statements of Carl James Bowles and one of Julian Adam Cahn on behalf of the applicants and one from the respondent; there are others which are exhibited or which appear in two supplementary bundles filed for an earlier hearing. I raised at the outset the question whether any of the witnesses was to be called for cross-examination but was told that the parties wished to proceed on the basis of the written evidence alone.

Background

3. The respondent, Mr Trefilov, was adjudged bankrupt on his own petition on 29 August 2014. His statement of affairs disclosed creditors totalling £121,325,717. The applicants were appointed as his trustees in bankruptcy on 29 November 2014.

4. Mr Trefilov was due to be automatically discharged on 29 August 2015. However, on 17 September 2015 I made an order suspending his discharge until 16 December 2015 or earlier upon the applicants' filing a certificate that he had complied with his obligations including certain undertakings set out in the order.

5. The applicants' application for a further suspension of Mr Trefilov's discharge was originally listed for hearing on 15 December 2015, but Mr Trefilov's solicitors sought an adjournment, and a consent order was made providing for a hearing on the first available date after 28 days, Mr Trefilov's discharge to remain suspended in the meantime.

6. The applicants now seek an order suspending Mr Trefilov's discharge from bankruptcy for a further six months on the basis that he has failed and continues to fail to provide a full and true account of his affairs.

7. Mr Trefilov, who is a Russian national by birth but has also acquired Bulgarian nationality by marriage, was once the controller and ultimate majority owner of a Russian company, LLC Elekskor ("Elekskor") which ran a chain of supermarkets in Russia called Grossmart. Elekskor rented the premises from which it operated the supermarkets under leases made between it (or a subsidiary) and the relevant landlord.

8. Elekskor was indebted to OJSC Alfa Bank ("Alfa Bank") under a credit facility in support of which Mr Trefilov gave a personal guarantee on 21 April 2008.

9. On 6 May 2008 Alfa Bank called in Elekskor's indebtedness. On 16 May 2008 it made demand under the guarantee.

10. Elekskor decided that the Grossmart chain should be sold as a going concern, but when that possibility fell through a company called X5 Retail Group NV ("X5"), a large retailer which belonged to the same group as Alfa Bank, expressed interest in

acquiring Grossmart's premises. Because a Russian lease is not transferable (it is common ground that this is so under Russian law) this could only be accomplished by persuading the relevant landlord to release Elekskor (or the relevant subsidiary) from its lease and to enter into a new one with X5 (or a company nominated by X5).

11. That was where Cotchford Secretary Limited ("Cotchford") came in. Cotchford is an English company. It was incorporated in 1948. Its sole director at all relevant times was a British businessman, Peter Hammersley, who together with a nominee shareholder, Huntnews Limited, also controlled Cotchford. Cotchford was used to negotiate the termination of the leases held by or on behalf of Elekskor and the landlords' agreement to new leases being granted to X5.

12. On 24 July 2008, Cotchford and X5 entered into a "Framework Agreement" pursuant to which Cotchford and its agents (pursuant to side agreements relating to specific properties) would receive around US$100 million from X5 in return for its services. The Framework Agreement was signed by Mr Trefilov (using a power of attorney dated 30 June 2008) for and on behalf of Cotchford.

13. Mr Trefilov settled in this country in 2010 with his wife and four daughters.

14. In September 2011 the Russian Federation applied for Mr Trefilov's extradition on fraud charges. He contended that these were trumped-up charges procured by pressure from rivals in Russia. In November 2012 the Westminster Magistrates' Court declined to order his extradition.

15. In March 2013 Mr Trefilov was caught entering the United Kingdom under an assumed name on a false passport. He had gone abroad to be with his wife while she received medical treatment. He was charged and pleaded guilty but said that he had used an assumed name out of fear for his personal safety and of possible further extradition attempts if he was found outside the United Kingdom. He was given a suspended sentence.

16. On 13 January 2014 Alfa Bank, having obtained judgment in Russia against Mr Trefilov on his personal guarantee and tried unsuccessfully to enforce it in Austria, commenced proceedings to enforce in the Commercial Court in London. It applied for summary judgment which was granted on 4 June 2014 in the sum of 368,270,686.83 roubles, the sterling equivalent being £6,804,066 odd.

17. Things did not proceed smoothly under the Framework Agreement, as a result of which on 27 February 2015 Cotchford brought a claim against X5 for sums said to be due amounting to some $38.5 million. The proceedings were settled by deed dated 6 November 2015 under the terms of which X5 was to pay US$14 million odd to Cotchford. Mr Trefilov was a party to the settlement deed and signed it in a personal capacity, in spite of the fact that it provided for him to release claims that he might have against X5 which would have vested in the applicants as trustees such that they could not be released without their consent. The applicants were only informed of this on 11 November 2015 by which time the sums due to be paid to Cotchford were held in escrow.

18. On 17 November 2015 Mrs Justice Rose granted a proprietary injunction and made a freezing order over the sums payable to Cotchford under the settlement deed.

Cotchford agreed to pay those monies into court pending determination of the substantive application or further order.

19. The applicants contend that Mr Trefilov is the beneficial owner of Cotchford and/or its assets and/or sums payable to Cotchford or its agents under the Framework Agreement and/or sums payable to Cotchford under the settlement deed, and/or that Mr Trefilov has a contractual entitlement to receive the sums payable to Cotchford by X5, the same being property belonging to the bankrupt at the commencement of the bankruptcy which vested in the bankruptcy estate. On 20 November 2015 they issued an application in the bankruptcy under section 363 Insolvency Act 1986 seeking *inter alia*:

> (a) a declaration that Mr Trefilov is the beneficial owner of Cotchford, or its assets, or sums payable to it under the Framework Agreement or the side agreements or their traceable proceeds, or the Cotchford settlement sum; or
>
> (b) a declaration that the Cotchford settlement sum, or a sum of $25m (from Cotchford) is due to Mr Trefilov under a contract or by way of *quantum meruit*.

20. In the declaration application the applicants rely on various matters including the fact, they say, that funds paid by an affiliate of X5 under one of the side agreements found their way to an Isle of Man company called Portville Investments Limited ("Portville") which is alleged to be "under the control of Mr Trefilov and/or close members of his family".

21. Initial directions in the declaration application have been agreed.

22. Those short facts are sufficient to set the scene. I shall deal with other relevant matters as necessary below.

The application to suspend discharge

23. Power to suspend the running of the bankruptcy discharge period is given by section 279 Insolvency Act 1986 which provides:

> "(1) A bankrupt is discharged from bankruptcy at the end of the period of one year beginning with the date on which the bankruptcy commences.
>
> (2) [. . .]
>
> (3) On the application of the official receiver or the trustee of a bankrupt's estate, the court may order that the period specified in subsection (1) shall cease to run until—
>
> (a) the end of a specified period, or
>
> (b) the fulfilment of a specified condition.

> (4) The court may make an order under subsection (3) only if satisfied that the bankrupt has failed or is failing to comply with an obligation under this Part.
>
> (5) In subsection (3)(b) "condition" includes a condition requiring that the court be satisfied of something.
>
> [...]".

24. In their skeleton argument Mr Roe QC and Mr Halban[1] identify the principal obligations of a bankrupt under Part IX as being the following:

> (a) under section 288 to submit a statement of affairs to the official receiver within 21 days of the commencement of the bankruptcy;
>
> (b) under section 291 to deliver up to the official receiver all books, papers and other records relating to his estate or affairs;
>
> (c) under section 291(4), to "give the official receiver such inventory of his estate and such other information, and [to] attend on the official receiver at such times, as the official receiver may reasonably require".
>
> (d) under section 311(1) to assist the trustee to "take possession of all books, papers and other records which relate to the bankrupt's estate or affairs and which belong to him or are in his possession or under his control (including any which would be privileged from disclosure in any proceedings)";
>
> (e) under section 312(1) to "deliver up to the trustee possession of any property, books, papers or other records of which he has possession or control and of which the trustee is required to take possession".

These obligations are without prejudice to the general obligations on the bankrupt set out in section 333(1), namely to:

> "(a) give to the trustee such information as to his affairs,
>
> (b) attend on the trustee at such times, and
>
> (c) do all such other things,
>
> as the trustee may for the purpose for carrying out his functions under any of this Group of Parts reasonably require."

Section 333(2) additionally provides:

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[1] I shall henceforth refer to the skeleton argument as being Mr Roe's. I do so for the sake of brevity and do not mean thereby to overlook Mr Halban's contribution.

> "Where at any time after the commencement of the bankruptcy any property is acquired by, or devolves upon, the bankrupt or there is an increase of the bankrupt's income, the bankrupt shall, within the prescribed period, give the trustee notice of the property or, as the case may be, of the increase".

25. Section 281 provides that discharge releases the bankrupt from all the bankruptcy debts but has no effect:

> "(a) on the functions (so far as they remain to be carried out) of the trustee of his estate, or
>
> (b) on the operation, for the purposes of the carrying out of those functions, of the provisions of this Part".

26. The authorities, Mr Roe submits, demonstrate that the requirement in section 279(4) (that the court be satisfied of a failure by the bankrupt to comply with his obligations under Part IX) must be satisfied before the court can exercise its discretion. That is an "important jurisdictional hurdle," in the words of Kitchin LJ in *Bramston v Haut* [2012] EWCA Civ 1637, [2013] 1 W.L.R. 1720 at paragraph 53.

27. The purpose of suspension of discharge was discussed by Sir Andrew Morritt C in *Shierson v Rastogi (a bankrupt)* [2007] BPIR 891 (paragraph 65):

> "It is clear from the terms of section 279 of the IA 1986 that postponement of discharge is linked to a failure to comply with the obligations imposed on a bankrupt by Part IX. But is the purpose of the power to postpone a discharge to provide an incentive to full compliance? Or is it that the disabilities arising from being an undischarged bankrupt should, in the public interest, continue until there has been full compliance? I doubt whether, on the facts of this case, it is necessary to reach a final conclusion on those questions. But in my view the purpose of the power is the latter, even though its effect may be to achieve the former. Were it otherwise I would have expected Parliament to have made discharge conditional on full compliance."

Thus, says Mr Roe, suspension must be based on a failure to comply with obligations, the suspension being a penalty for failure to do so.

28. The foregoing passage from *Shierson v Rastogi* was approved in *Bramston v Haut* (paragraph 50), after which Kitchin LJ continued (in paragraph 51):

> "A purpose of the power conferred by section 279 is therefore to extend the period of the bankruptcy and to ensure that the bankrupt continues to suffer the disabilities arising from his undischarged bankruptcy until he complies with his obligations. I accept the submission advanced by the trustee that in this sense the power is intended to be penal in character and used for purposes connected with the functions of the official

> receiver and the trustee and to allow the trustee to get in, realise and distribute the bankrupt's estate in accordance with the provisions of Chapter IV [of Part IX]."

29. There is another passage in *Bramston v Haut* (at paragraph 56) on which Mr Roe relies to the effect that, in order to satisfy itself within the meaning of section 279(4), the court may be required to resolve any conflicts of evidence. In that case the judge failed to do so and the Court of Appeal held that he thereby "wrongly conflated the separate and distinct issues of jurisdiction and discretion and wrongly failed adequately to address the former".

30. Mr Roe also draws on *Chadwick v Nash* [2012] BPIR 70 in which the trustees had suspicions that the bankrupt was withholding information and suspicions based on his lifestyle (paras 50-54). Mr Registrar Nicholls held that this was not sufficient: "The court should not reach a conclusion that there has been a failure of an obligation, or exercise discretion, based upon suspicions". The registrar also noted (at paragraph 8 of his judgment) that,

> "T]he hearing of an application under s 279(3) of the 1986 Act should not be an opportunity to trawl through all the affairs of the bankrupt in order to find circumstances which might satisfy the court that the bankrupt had failed, or was continuing to fail, to comply with an obligation under Part IX of the 1986 Act. A trustee has a continuing right, notwithstanding discharge, to further examine a discharged bankrupt under s 366 of the 1986 Act."

31. He relies on the same authority as to delay as well as on *Bagnall v Official Receiver* [2003] EWCA Civ 1925, [2004] 1 WLR 2832, the leading authority on the point.

32. Ms Cooke draws on many of the same authorities. She summarises the resulting position succinctly in paragraph 9 of her skeleton argument as follows:

> "If the Court is satisfied that Mr Trefilov has failed or is failing to comply with [his obligations under section 333(1)], then the Court may exercise its discretion to order the suspension of Mr Trefilov's discharge from bankruptcy: see *Shierson v Rastogi* [2007] EWHC 1266 (Ch); *Hellard v Kapoor* [2013] B.P.I.R. 745."

33. That statement demonstrates the agreement between counsel for the parties that the court must consider the application in two stages: first it must be satisfied that that the respondent has failed or is failing to comply with a relevant obligation (the jurisdiction stage mentioned in *Bramston v Haut*); secondly, it must then consider how it is to exercise its discretion (the discretion stage mentioned in the same case).

34. The application to suspend Mr Trefilov's discharge simply asks for that relief and refers for the grounds to the witness statement of Mr Bowles in support (his fifth in the bankruptcy dated 30 November 2015). There is a great deal of detail in the witness statement (as well as in the others filed) but in paragraph 5 Mr Bowles summarises the position like this:

> "The present application arises out of my belief that Mr Trefilov has not truthfully explained to me: (1) his interest in Cotchford Secretary Limited ("Cotchford"), and (2) his right to a claim against Cotchford for an agreement to transfer leases his company held; and (3) his interest in Portville Investments Limited (Portville')".

He goes on in paragraph 6 to reiterate "my belief that Mr Trefilov has not complied with his obligation to disclose his assets to us," and after setting out more detail concludes,

> "7.7 I therefore consider Mr Trefilov to be in breach of his duty to disclose the entirety of his assets to me. Mr Trefilov owes the Joint Trustees a full account of his assets and in my respectful view must remain bankrupt until he so provides".

In his latest witness statement (of 12 February 2016) Mr Bowles summarises the position in paragraph 5 as being that,

> "Mr Trefilov has not truthfully explained to the Joint Trustees: (1) his interest in Cotchford; (2) his right to a claim against Cotchford arising out of the Framework Agreement (and related agreements); and (3) his interest in Portville. Moreover, his conduct and his regard for the entire bankruptcy process has been one of obfuscation and evasion."

After reviewing some old material and updating the court by reference to new material he concludes in paragraph 94:

> "[...] I consider that Mr Trefilov has not complied with his obligations under the bankruptcy to co-operate fully with his joint trustees and to provide full and accurate responses as to his affairs. [...] The combination of Mr Trefilov's extravagant lifestyle with no evidenced means of supporting it and Mr Trefilov's continued contradictory explanation of his affairs provide grounds for my suspicions. [Mr Trefilov's affairs] are complex affairs which have been made even more complicated by Mr Trefilov's evasiveness and uncooperativeness."

35. In the course of his submissions Mr Roe suggested that the applicants should be confined to their initial allegations, those set out in the first witness statement filed in support of the application under r. 6.215(2) Insolvency Rules 1986 (Mr Bowles's fifth). I reject that submission. The rule does not say, nor does it imply, that the initial grounds cannot be amplified or supplemented later. Indeed this often happens in applications of this kind: the trustee's initial complaints prompt a response from the bankrupt which itself gives rise to questions which the bankrupt fails to deal with, thus providing further fuel for the initial application. It would be quite wrong, in my view, to let a bankrupt off the hook in circumstances such as those. Whilst I can see that some applications may be so complicated that they need to proceed by way of pleadings, the majority proceed by exchange of evidence which often reflects the shift of focus of the investigation so that the evidence necessarily develops. Generally

speaking, in my view, it would not be desirable to compel a trustee to formulate the basis of his application with "the inflexibility of a criminal indictment" (to borrow a phrase from a different regime) and then to stick to it. In any event, here the applicants' case at the final hearing is, in relation to the two main outstanding matters (ownership of Cotchford and ownership of Portville and two related companies), substantially the same as it was to begin with: it is just that it is now supported by further material.

36. There is no question about the fact that the respondent's initial co-operation was inadequate. That is why I suggested the undertakings which Mr Trefilov gave and which are recorded in the order of 17 September 2015. They went to Mr Trefilov's interest in a Cypriot company and the trustees' legitimate need to know the identity of those who Mr Trefilov claimed were funding his living expenses. Thus, the first stage, the jurisdiction threshold or hurdle which I have mentioned above, was met. It follows that the court had then and still has now jurisdiction to make the order the applicants seek, even if only by reference to past conduct, and that I am now concerned only with the exercise of the discretion, the second stage.

37. With that in mind I shall deal first with the allegations concerning Cotchford.

38. A great deal of evidence has been filed. Rather than trawl through it for everything on which the applicants rely I shall set out their case by reference to the matters comprehensively summarised in Ms Cooke's skeleton argument: they are an accurate and sufficient summary for present purposes so I draw on them almost verbatim.

39. The following facts and matters are relied on in support of the contention that Mr Trefilov's account of arrangements has been unclear and inconsistent (see paragraph 14 of Ms Cooke's skeleton argument):

> (a) By letter dated 10 July 2015 Mr Trefilov said that he has no interest in Cotchford and that the current ownership structure of Cotchford is outside his knowledge (see Mr Bowles's fifth witness statement pages 461-462).
>
> (b) When he attended for interview in July 2015, Mr Trefilov maintained that he has no interest in Cotchford, but suggested (contrary to what he had said previously) that in fact he did know who owned Cotchford (saying of Cotchford's involvement in the arrangements summarised above, "That's why Peter [Hammersley] presented his company Cotchford" CJB 5 pages 244-407).
>
> (c) Quite why Mr Trefilov (he says) put in place arrangements whereby Cotchford (in which he says he has no interest) would earn up US$100 million (from X5 being granted leases in respect of properties held by his company, Elekskor) has never been properly explained by him.
>
> (d) As to the arrangements between Mr Trefilov, Cotchford and Alfa Bank, in the Interview Mr Trefilov said that "all money which we receive from X5 would first go to fulfil my

obligation with Alfa Bank, which was 20 million net, but I remember it was some interests, 25 million, because Alfa Bank; they are very aggressive in interest".

(e) In Trefilov 2 Mr Trefilov says that as Cotchford stood to earn c. US$100 million, it was prepared to give up a relatively small sum, c. US$3 million from the proceeds from X5 to pay Alfa Bank (which is obviously quite different to the US$20 million he referred to in his Interview).

(f) As to the extent of Mr Trefilov's involvement in the Cotchford Litigation, the story given by him to the Trustees is as set out in Rosenblatt's letter dated 14 August 2015, i.e. Mr Trefilov "is not involved in the litigation regarding [Cotchford] other than to provide information on the basis of his past work in Russia concerning the subject matter of that litigation" (CJB 9 page 14).

40. Ms Cooke goes on (in paragraph 16) to say that accounts given in pre-bankruptcy proceedings (the extradition proceedings and Alfa Bank's application for summary judgment) differ from what Mr Trefilov has subsequently told the applicants:

(a) An attendance note of proceedings before the Westminster Magistrates' Court on 9 March 2012 records Mr Trefilov as having explained to that Court

"When the company went bankrupt he signed with Alpha Bank (sic) and for X5 to but his stores for $50m. GT explained that he didn't sell the stores rather he sold his possibility to rent, like a premium. However, they took his stores and Alpha Bank (*sic*) did not pay him" (emphasis added).

(b) After summary judgment was entered in favour of Alfa Bank in proceedings brought against Mr Trefilov by Alfa Bank before he was adjudged bankrupt, when he was examined as to his assets, in Mr Trefilov said of X5:

"...we make agreement that they paid me substantial amount of money, something like 100 – around $100 million. And they paid a few millions but then they stopped and from this money I paid Mr Resabayer [presumably Mr Rzhebaev who is mentioned elsewhere]" and that this "was end of 2008 or start of 2009" (again emphasis added).

Mr Trefilov's attempt to explain away this testimony on the basis that he did not understand the question asked of him (see paragraphs 47 to 53 of Walton 1) is, Ms Cooke says, completely unconvincing, not least because Mr Trefilov was very specific about where the money had come from.

41. In the course of their investigations the trustees have obtained access to documents held by two firms of solicitors engaged by Mr Trefilov, Rosenblatt, his present solicitors, and Peters & Peters, who acted in the extradition proceedings.

42. A number of points are made by reference to the Rosenblatt documents relating to the Alfa Bank proceedings (see paragraph 17 of Ms Cooke's skeleton argument):

(a) In a letter of instruction to leading counsel, Sonia Tolaney QC, and dated 19 March 2014 Rosenblatt said:

> "By way of a brief explanation on the issues set out in the proof of evidence, Mr Trefilov's position is that he believes the sums being claimed by Alfa Bank under the terms of the personal guarantee have, or should have, been paid to Alfa Bank (or its affiliated companies) as a result of an agreement that Mr Trefilov made with Alfa Bank and its group company X5"

(which is inconsistent with what Mr Trefilov says in Trefilov 2 about US$ 3million being paid to Alfa Bank).

(b) Ms Tolaney's skeleton argument in the Alfa Bank Proceedings (CJB 5 pages 414-437) stated:

> "6. Indeed although Alfa-Bank claims monies are owed – this is the result of the failures of Alfa-Bank itself and of X5 (a company within the Alfa Group) properly to fulfil their obligations under the agreement with Mr Trefilov [as explained in Mr Trefilov's witness statement, above]. These failures are to be the subject of a related claim in England brought by companies associated with Mr Trefilov. It would be sensible for that claim to be consolidated with the present claim [...]
>
> 26. Meanwhile, negotiations were continuing with X5 for the transfer of Grossmart leases.... On 24 July 2008, X5 entered into a framework agreement ("Framework Agreement") with an English SPV, Cotchford Secretary Ltd ("Cotchford"), acting on the instruction of Mr Trefilov.
>
> 27 [...] Over the course of 2008 and 2009, Cotchford and the Russian Affiliates effected the transfer to X5 or its subsidiaries of a number of leases, in return for which X5 was obliged to make payments under the Framework Agreement of over US$35m.... Mr Trefilov believes that only US$7m of this sum has in fact been paid in to the accounts with Alfa-Bank of the Russian Affiliates for the purpose of discharging Elekskor's debts. Mr Trefilov's companies intend to bring a claim in England in respect of X5's failure to make these payments in full." (emphasis added).

(c) A draft Defence in the Alfa Bank Proceedings described Cotchford as an "English company acting on the instruction of Mr Trefilov..."

(d) A transcript of the hearing of Alfa Bank's summary judgment application contains the following:

> "Judge Edelman: But if Cotchford aren't party to the agreement [between Mr Trefilov and Alfa Bank], what help is that to them, the bank? It is totally irrelevant. If they do a deal with X5, they're entitled to say: I don't care what deal you've got with him; it's nothing to do with us. It's a completely different deal.
>
> Ms Tolaney: There are two points to be made. Obviously Mr Trefilov is in both companies [Elekskor and Cotchford] and, therefore, may well have been authorised or felt confident that he would be authorised.
>
> Judge Edelman: … but whether they can achieve that [Alfa Bank being paid off] is going to depend on whether they can secure that term with Cotchford….
>
> Ms Tolaney: … There's no suggestion, from either the bank or my client, that Cotchford couldn't have been – that my client would have been able to secure that, him running both entities" (emphasis added).

(e) An email from Mr Walton of Rosenblatt, dated 25 April 2015, shows that Trefilov's influence in the Cotchford Litigation extended well beyond that of a mere witness. Sonia Tolaney QC and Chris Bond, were instructed by Cotchford "at George's behest" CJB5/458. (See also Mr Trefilov's email to Rosenblatt in respect of his instruction of his counsel team in the Alfa Bank Proceedings: "We indeed choose her [Sonia Tolaney QC] based on recommendation of Eversheds with the view of having one QC work on both matters." Rosenblatt's files also show that Mr Trefilov and Rosenblatt were closely involved with Eversheds, who acted for Cotchford in the Cotchford Litigation, Mr Trefilov and Mr Walton (from Rosenblatt) attending meetings with Eversheds (see Bowles 5, para 26)).

Ms Cooke rejects Mr Trefilov's explanation that Ms Tolaney was not on top of the case: Ms Tolaney acted for both Cotchford and Mr Trefilov and is unlikely to have made an elementary mistake about the scope or nature of her instructions.

43. Then there is what has come from the Peters & Peters files (see paragraph 19 of Ms Cooke's skeleton):

(a) In an attendance note from 9 March 2012 entitled "Review hearing Westminster Magistrates' Court", Peters & Peters record that:

> "When the company went bankrupt he signed with Alpha Bank and for X5 to buy his stores for $50 million. GT explained that he didn't sell stores rather he sold his possibility to rent, like a premium. However, they took his stores and Alpha Bank did not pay him." (emphasis added) (CJB 6/10-11).

(b) A file note of a meeting between "GT" [Georgy Trefilov] and "KEO" [Keith Oliver of Peters & Peters] states (CJB 6/14):

> "GT: Case v X5 – like you to do that too
>
> Think they have tried Alpha case so can settle both at the same time
>
> Alpha Bank own X5/
>
> Alpha wrote debt off 4 years ago.
>
> I've a solid claim for £40m –
>
> I've [unknown] I'll take £25m…" (emphasis added).

(c) A file note dated 4 February 2014 says that Mr Trefilov has "asked us [Peters & Peters] to obtain a formal opinion from Counsel on the merits of the Cotchford Secretary Ltd claim against X5" (CJB 9/117).

(d) An undated document, entitled "X5 Summary of Events" sets out an account of Mr Trefilov's dealings with X5 and Cotchford makes it clear that the relationship between Mr Trefilov extended far beyond being a mere witness in the Cotchford Litigation (CJB 7/106). The following extracts from that document are noted in particular:

(i) "Mr Trefilov and Mr Khasis [of X5] met several times during July to discuss the terms of the [Framework Agreement]";

(ii) "To protect his interests, Mr Trefilov insisted that the framework agreement have English governing law and jurisdiction";

(iii) "Mr Trefilov was trying to accelerate the signing of the Framework Agreement, but was also conscious to protect his interests";

(iv) "It was intended by Mr Trefilov that the majority of payments for services pursuant to [side agreements to the Framework Agreement] was to take place in Russian, with only 10-15% abroad. Mr Trefilov aimed to direct most funds generated from these service to free certain assets in Russia

> from debt security with the view to sell them with greater returns and to use the funds to pay for the running costs of providing the services to X5 and also to refinance certain personal obligations in England"
>
> (v) "In the end Mr Trefilov and Mr Khasis signed a framework agreement for a total value of 99.85 million dollars. Immediately thereafter the parties started work on the agreements for specific items of properties in Russia. On Mr Trefilov's side these agreements were entered into by a number of Russian companies such as Beauty Leasing and Eleckron…A number of other leases were transferred to X5 by means of Mr Trefilov's and his affiliated entities' services…";
>
> (vi) [Following X5's failure to pay] "Having lost hope to receive anything through negotiations, Mr Trefilov hired a Russian lawyer Eduard Babanov and his team to try to recover funds…Then cases were prepared in relation to two Russian agreements on behalf of Beauty Leasing and Elekron…";
>
> (vii) "In November 2012 X5 Nedvizhomost entered into agreements with Beauty Leasing, Elekron, Brenthill Finance Inc and Economia SA…pursuant to which payment of 6.915 million dollars was made by X5 Nedvizhomost…the fact of the payment by X5 Nedvizhomost…demonstrate the right of Mr Trefilov's entities to payment of the funs pursuant to the agreements with X5";
>
> (viii) "In 2013, Mr Trefilov's lawyer in Russian – Vagram Kalachyan was also able to obtain the framework agreement with X5 from July 2008…Consequently Mr Trefilov now possesses the framework agreement and also funds of around 4 million dollars - Mr Trefilov's position as told to the Trustees is, of course, that he has no assets (3 million from the sum paid by X5 Nedvizhomost was spent on legal proceeding and legal consultants in Russia) to prepare a case against X5 Retail Group NV in England."

The latter document. Ms Cooke notes, also describes the deal with X5 as having been "prepared in significant secrecy on Mr Trefilov's side" and says that a "significant amount of electronic correspondence was carried out via new gmail accounts specifically created for this deal." Those email accounts (or at least one to which Mr Trefilov still has access) have now, Mr Roe says, been disclosed.

44. Finally, Ms Cooke draws the court's attention to what Mr Hammersley said in the interview he attended with the trustees on 9 December 2015 as to Cotchford's business purpose:

> Mr Hammersley: "What it was reactivated to do [it had been a dormant company] was to actually provide a UK company if

> people wanted to have a format that they could bring cases in the UK."
>
> Mr Cahn: "So almost like a litigation vehicle, as it were?"
>
> Mr Hammersley: "Yes. That was the idea. The X5 litigation was the first one that was thrown at us that way" (CJB 9/82-83).

45. I have set out the applicants' main submissions in some detail. There is more, but I think I have adequately covered the points on which the applicants rely. There is much to the contrary effect in Mr Roe's skeleton argument, but I would prefer to go to what Mr Trefilov has said, as far as possible in his own words.

46. I begin with an interview Mr Trefilov attended with one of the trustees and his solicitors on 16 July 2015. Mr Roe makes the points (a) that his client did attend when asked to and (b) that no further meeting has ever been sought.

47. The main thrust of the dealings between Cotchford, X5 and Mr Trefilov appear from the transcript of the interview in bundle 2 at pages 321-331, although the spelling is not entirely accurate and in reading it one must bear in mind that English is not Mr Trefilov's native tongue. The following matters are tolerably clear from what Mr Trefilov said (the more so in the light of further information and clarification we now have):

> (a) the structure of Elekskor's ownership and how the leases from which Grossmart operated were held;
>
> (b) that Elekskor was insolvent and could not pay its running costs (including the rent for its leases);
>
> (c) that X5 was to take over Elekskor's leases;
>
> (d) the reasons why it was necessary to terminate or cancel the leases and for X5 and the landlords to enter into new ones – as we have seen, the leases could not simply be transferred;
>
> (e) how Cotchford came to be involved and the role in its becoming involved of Mr Hammersley and Mr Rzhebaev;
>
> (f) the need for (or desirability of) Mr Trefilov's involvement (which began in 2008) because of his knowledge and connections, hence his being given capacity to sign in the form of a power of attorney. (As Mr Trefilov says at one point, "I was like the manager of the project");
>
> (g) Cotchford would pay a sum (£20-25 million) to satisfy Mr Trefilov's liabilities to Alfa Bank (there was an oral agreement) but Cotchford would take the rest;

(h) Cotchford would pay Mr Trefilov separately a fee for what I suppose could be described as his management role or consultancy work in implementing the project.

48. A letter from Rosenblatt to the trustees' solicitors of 10 July 2015 is broadly consistent with the above or at least not inconsistent or necessarily inconsistent with the above.

49. The involvement of Cotchford and the reason why Mr Trefilov may not have made as much out of the X5 project as the applicants might otherwise have expected becomes a little clearer once the position regarding the ability to transfer Russian leases is understood; Mr Trefilov's involvement in the project similarly becomes clearer, or explicable, at least at some level; and the same necessarily applies to his involvement in the Alfa Bank litigation: his and Cotchford's interests may not have been exactly the same, but on his account there was some overlap.

50. In his witness statement of 1 February 2016 Mr Trefilov says that he has nothing to do with the ownership of Cotchford; neither he nor any member of his family has any legal or beneficial interest in it; Mr Hammersley is the owner; his role has been as a consultant (paragraph 10.1). He accepts, indeed he says he has never denied, that he has a link with Cotchford and was associated with the negotiations with X5 and was thus involved in the subsequent litigation, but he says he has always been open about that (paragraph 15). He cannot prove a negative and should not have to remain in bankruptcy because he denies what the trustees allege (paragraphs 10.2 and 10.3). He concludes, "I have not failed to disclose any interest in Cotchford. I have no such interest. I never had any such interest" (paragraph 40).

51. It seems to me that Mr Trefilov's account is broadly consistent in its essentials if not in all the details. Mr Roe submits (a) that, absent cross-examination, I cannot disbelieve Mr Trefilov's evidence and (b) if I did so, it would be tantamount to deciding the pending declaration application before disclosure and cross-examination, which that application will require. I do not accept the latter proposition, for I could find non-cooperation without making a positive finding about the Cotchford issue, though doing so might, I accept, mean dancing uncomfortably on a pin head; but I do accept the former proposition. Whilst I might share and sympathise with the applicants' suspicions about the relationship between Mr Trefilov and Cotchford, as Mr Registrar Nicholls rightly observed in *Chadwick v Nash*, suspicion is not enough. On an application of this kind the court will often give great weight to the views of a trustee, but it cannot abandon its role by simply adopting the trustee's stance. I remind myself that interfering with a bankrupt's expectation of discharge after the one year period provided for by the Insolvency Act is a serious interference with his rights and is not something to be done lightly. The material relied on by the trustees is very persuasive but not so much so as to warrant disbelieving Mr Trefilov's evidence in the context I have outlined above. I also remind myself of Mr Roe's submissions as to his client's continuing obligations after discharge and of the existence of the declaration application which is now, in my view, the proper application in which the strength or otherwise of the trustees' claims can be properly tested.

52. I do not propose to trawl though all the evidence about Portville, French Childrens Wear Limited or Tanwood Limited. Ms Cooke sets out the applicants' case in paragraphs 24-32 of her skeleton argument. The points made are of a similar nature

and quality as the points about Cotchford and are compelling as far as they go, but for similar reasons to those I have given in relation to Cotchford are not strong enough to satisfy and do not outweigh the fact that I am in no position to disbelieve Mr Trefilov's evidence. That is, in summary, that he has no connection with and does not own French Childrens Wear Limited (paragraph 41 of his witness statement of 1 February 2016); that Portville is a company in which his wife was involved and in which she may in time acquire a beneficial interest, but it was and is ultimately controlled by a Mr Dmitry Koval (paragraph 47); and that he has no interest in Tanwood Limited which simply held shares in Portville for his wife (paragraphs 50-53). In paragraph 54 he says in terms, " [T]he current position is that I do not have any interest in Portville or FCW and nor does any member of my family".

53. For all the foregoing reasons I shall dismiss the application further to suspend the running of the respondent's discharge period.

The income payments application

54. Section 310 Insolvency Act 1986 provides:

> "(1) The court may make an order ('an income payments order') claiming for the bankrupt's estate so much of the income of the bankrupt during the period for which the order is in force as may be specified in the order.
>
> (1A) An income payments order may be made only on an application instituted—
>
> (a) by the trustee, and
>
> (b) before the discharge of the bankrupt.
>
> (2) The court shall not make an income payments order the effect of which would be to reduce the income of the bankrupt when taken together with any payments to which subsection (8) applies below what appears to the court to be necessary for meeting the reasonable domestic needs of the bankrupt and his family.
>
> (3) An income payments order shall, in respect of any payment of income to which it is to apply, either—
>
> (a) require the bankrupt to pay the trustee an amount equal to so much of that payment as is claimed by the order, or
>
> (b) require the person making the payment to pay so much of it as is so claimed to the trustee, instead of to the bankrupt.
>
> (4) Where the court makes an income payments order it may, if it thinks fit, discharge or vary any attachment of earnings order that is for the time being in force to secure payments by the bankrupt.

> (5) Sums received by the trustee under an income payments order form part of the bankrupt's estate.
>
> (6) An income payments order must specify the period during which it is to have effect; and that period—
>
> (a) may end after the discharge of the bankrupt, but
>
> (b) may not end after the period of three years beginning with the date on which the order is made.
>
> (6A) An income payments order may (subject to subsection (6)(b)) be varied on the application of the trustee or the bankrupt (whether before or after discharge).
>
> (7) For the purposes of this section the income of the bankrupt comprises every payment in the nature of income which is from time to time made to him or to which he from time to time becomes entitled, including any payment in respect of the carrying on of any business or in respect of any office or employment and (despite anything in section 11 or 12 of the Welfare Reform and Pensions Act 1999) any payment under a pension scheme but excluding any payment to which subsection (8) applies.
>
> [...]"

55. This application is the strangest of its kind I have heard in that I am asked to decide what (if anything) Mr Trefilov should pay on the basis of almost no information. All I know is that (a) Mr Trefilov's statement of affairs made when he presented his petition showed that he had outgoings of £23,700 a month and had no income; he is still earning no regular income but is supported by his family and friends; (b) he lives in rented accommodation costing £104,000 per annum; (c) he is owed £40,600 for work done for Cotchford between February 2014 and November 2015 (see the breakdown in bundle 5, page 203). I know nothing about the income of other members of his household, his wife and daughters. Mr Trefilov resembles the bankrupt in John Updike's essay, *The Bankrupt Man*, in which the author poses the rhetorical question how the bankrupt pays for things if he is bankrupt and answers,

> "One is too shy to ask. Bankruptcy is a sacred state, a condition beyond conditions, as theologians might say, and attempts to investigate it are necessarily obscene, like spiritualism. One knows only that he has passed into it and lives beyond us, in a condition not ours."

56. Neither Ms Cooke nor Mr Roe were able to offer much assistance as to how I should deal with this bankrupt man. The applicants seek an order for the whole of the sum payable by Cotchford. Mr Trefilov offers nothing. I complained that I was being left to guess what I should do, and that is in fact what I am left to do.

57. Doing the best I can to guess what the right result may be I conclude that I should do what I indicated at the hearing I was minded to do, namely to allow Mr Trefilov to retain an amount representing the rateable equivalent of the London living wage. At present that stands at £9.40 an hour, £329 a week assuming a 35 hour working week. Assuming a working year of 48 weeks that gives an annual gross salary of £15,792 or £1,316 a month. Mr Trefilov's earnings appear to have accrued over a period of 22 months. I therefore leave him £28,952 out of income earned to date and order the balance to be paid to the applicants.