Proprietary interests, proprietary freezing injunctions, and legal and living expenses (Vneshprombank v Bedzhamov; Kireeva v Bedzhamov)

This analysis was first published on Lexis®PSL on 31 May 2022 and can be found here (subscription required)

Dispute Resolution analysis: Bedzhamov (GB) was the subject of a worldwide freezing order (WFO) in proceedings brought by Vneshprombank (VPB). He sought permission to sell a property to fund his legal and living expenses. GB's bankruptcy trustee (Kireeva) sought to have her appointment recognised and obtain the court's assistance. This had raised various as yet unresolved issues relevant to whether Kireeva should be treated as being in the position of a third party with a proprietary interest, such that the principles governing the use of proprietary funds for legal and living expenses would apply. GB also sought a declaration that Kireeva could not seek to claw back any amounts paid to GB's lawyers for the period prior to the grant of recognition and assistance. The court held that: (i) in principle, the sale could proceed; (ii) Kireeva should be treated as having an arguable proprietary interest in the sale proceeds; (iii) the sale proceeds could be used for certain expenditure; and (iv) it was premature to determine whether Kireeva could claw back GB's legal expenditure. Written by Jon Felce, partner at Cooke, Young & Keidan LLP.

Vneshprombank LLC v Bedzhamov; Kireeva (as bankruptcy trustee of Georgy Bedzhamov) v Bedzhamov [2022] EWHC 1166 (Ch)

What are the practical implications of this case?

This judgment indicates that:

- it may be possible to establish an arguable proprietary claim, even in a non-straightforward case
- even if there is an arguable proprietary claim to funds, it does not mean that a defendant will be prevented from using those funds for its legal/living expenses. The court will balance the potential injustice to the claimant of using proprietary funds with that to the defendant of being prevented from advancing a potentially successful defence
- particularly relevant to the exercise of that discretion is likely to be the claimant's conduct of the proceedings. Practitioners should be wary of this. For example, while it is tempting to seek to take steps that have the effect of denying a defendant access to assets that might otherwise be available to fund reasonable legal and living expenses, this may be a factor that encourages a court to permit proprietary funds to be used for that purpose
- when determining the use of frozen funds, the court may adopt different approaches for different periods and in relation to different categories of expenditure. Practitioners should consider this when framing/defending an application
- just because a party is the subject of a proprietary claim, that does not mean that any fees paid to its lawyers should be clawed back. Nevertheless, those lawyers should carefully monitor on an ongoing basis whether they become on notice of facts giving rise to a well-founded proprietary claim

What was the background?

GB was the subject of a WFO, and had been made bankrupt in Russia. His bankruptcy trustee Kireeva had applied: (i) for her appointment to be recognised; and (ii) to set aside an order permitting GB to sell a London property to fund his legal costs and living expenses, arguing she was entitled to GB's assets.

Whilst Kireeva's appointment was recognised, the set aside application failed and assistance was refused for the property, as there was no power to make an order vesting immovables in Kireeva or to otherwise confer possession or control on her. GB and Kireeva appealed the respective decisions. Meanwhile, Kireeva sought a declaration that the property sale proceeds would be movables and thus vest in her. That application was stayed pending the appeals. With respect to the respective appeals:

- GB's appeal succeeded, so Kireeva's recognition application was remitted to the High Court to determine GB's allegation that the petition debt was vitiated by fraud
- Kireeva's appeal failed, and she applied to the Supreme Court for permission to appeal

GB owed his former and current solicitors substantial sums. He applied to vary the WFO to permit him to sell or raise funds against the property to fund his legal and living expenses, following a new deal that he had negotiated. Kireeva argued that she would have a prospective proprietary interest in any sale proceeds pending determination of the remittal, the Supreme Court appeal and her declaration application, such that the principles relating to proprietary injunctions should apply by analogy to the use of funds for legal and living expenses.

GB also sought a declaration that Kireeva did not have any proprietary rights prior to recognition and assistance, and therefore could not claw back reasonable legal expenses paid for that period.

What did the court decide?

The proposed transaction was approved in principle, but the court needed to be satisfied about further details.

As to use of the sale proceeds, and Kireeva's prospective proprietary interest, the judge did not find the issue straightforward, and considered a number of factors, including: (i) Kireeva had never sought interim proprietary relief; (ii) the Court of Appeal had decided she had no interest; (iii) there was a potentially arguable case for a receiver, albeit on terms preserving GB's ability to fund expenditure; (iv) Kireeva had claimed an entitlement to all of GB's assets, including after-acquired property, such that GB could not use different assets of his to fund expenditure; and (v) Kireeva's outstanding declaration application was not unarguable even though it would undermine the decision on the immovables rule.

Accordingly, the better approach, especially given Kireeva's extant declaration application, was to proceed on the basis that Kireeva had an arguable proprietary claim to the sale proceeds. However, there was a discretion to permit the use of funds for GB's expenditure, and relevant to that was the conduct of the proceedings to date. Accordingly, subject to further evidence, the court permitted that use in certain respects and, in others, a more granular approach was to be adopted.

As to GB's declaration application, honest solicitors were not to be imputed with knowledge of a proprietary interest (and were not therefore accountable for monies received) because they knew of the existence of a (disputed) claim to that effect against their client (*Carl Zeiss Stiftung v Herbert Smith & Co (No. 2)* [1969] 2 Ch 276). There was a distinction between notice of a claim and notice of facts that demonstrated that a proprietary claim was well-

founded. The court concluded that it was not in a position to determine GB's application at this stage.

Case details

- Court: Chancery Division, Business and Property Courts of England and Wales, High Court of Justice
- Judge: Mr Justice Falk
- Date of judgment: 20 May 2022

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