Neutral Citation Number: [2021] EWHC 403 (Ch)

Case No: BL-2017-000665

IN THE HIGH COURT OF JUSTICE
IN THE BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
CHANCERY DIVISION

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

Date: 24 February 2021

Before :

THE HONOURABLE MR JUSTICE TROWER

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Between :

JSC COMMERCIAL BANK PRIVATBANK **Claimant**

- and -

(1) IGOR VALERYEVICH KOLOMOISKY

(2) GENNADIY BORISOVICH BOGOLYUBOV

(3) TEAMTREND LIMITED

(4) TRADE POINT AGRO LIMITED

(5) COLLYER LIMITED

(6) ROSSYN INVESTING CORP

(7) MILBERT VENTURES INC

(8) ZAO UKRTRANSITSERVICE LTD

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Andrew Hunter QC, Robert Anderson QC and Christopher Lloyd (instructed by **Hogan Lovells International LLP**) for the **Claimant**
Tom Adam QC, Alec Haydon QC and Tom Foxton (instructed by **Fieldfisher LLP**) for the **First Defendant**

Hearing date: 12th February 2021

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Approved Judgment

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

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THE HONOURABLE MR JUSTICE TROEWR

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the representatives of the parties by email. The date and time for hand-down is deemed to be 10 am on 24 February 2021

Mr Justice Trower:

1. In these proceedings JSC Commercial Bank Privatbank (the "Bank") claims that its former majority shareholders, the first defendant, ("Mr Kolomoisky") and the second defendant ("Mr Bogolyubov") misappropriated US$1.9 billion from the Bank pursuant to a series of fraudulent loans and supply agreements. There is a detailed description of the background to the proceedings and the nature of the claim in the decision of the Court of Appeal given on the defendants' jurisdiction challenge (*PJSC Commercial Bank Privatbank v. Kolomoisky* [2020] 2 WLR 993). It is not necessary for me to give any of that detail for the purposes of this judgment.

2. On the application of the Bank made on 19 December 2017, Nugee J made a worldwide freezing order against the eight defendants up to a maximum sum of US$2.6 billion. For present purposes, the most relevant aspects of that order are those which affect Mr Kolomoisky.

3. By paragraph 8a of the freezing order, Mr Kolomoisky was required to the best of his ability to inform the Bank's solicitors (Hogan Lovells) in writing of all his assets worldwide exceeding £25,000 in value, giving the value, location and details of all such assets. Paragraph 8b of the freezing order defined what was meant by the value, location and details of a number of classes of asset but was not prescriptive as to the meaning of that phrase when applied to assets in the form of intangibles, apart from bank accounts, shares and interests in a trust. Mr Kolomoisky was also required to swear and serve an affidavit confirming (and if necessary, updating) this information.

4. So far as the merits of the proceedings are concerned, both Nugee J and a number of judges subsequently have accepted that the Bank has a good arguable case against, amongst others, Mr Kolomoisky. It is not said that I should do other than proceed on the same basis. It is also clear that I should approach this application on the footing that there is a real risk of dissipation of Mr Kolomoisky's assets so as to render any judgment that the Bank may obtain nugatory. That was the basis on which the freezing order was continued after the decision of the Court of Appeal.

5. I also accept the submission of Mr Andrew Hunter QC for the Bank that I should approach this application having regard to the seriousness of the allegations that have been made. The way this was put by Fancourt J in passages from his judgment on the jurisdiction challenge that were cited by the Court of Appeal ([2020] 2 WLR 993 at para [22]) was:

   (1) that the evidence "was strongly indicative of an elaborate fraud perpetrated by someone, allied to an attempt to conceal from any auditors or regulator the existence of bad debts on the bank's books, and money laundering on a vast scale"; and

   (2) that Mr Kolomoisky and Mr Bogolyubov had admitted "a good arguable case of fraud on an epic scale".

6. The original freezing order was varied by an order made by Snowden J on 9 January 2018, which increased the figure of £25,000 to £1 million and made provision for the disclosure of Mr Kolomoisky's assets located in Ukraine and/or Russia (the "U/R assets") to be made in the first instance only to his solicitors (Fieldfisher) to be held to

the order of the court. The freezing order was then continued by order made by Roth J on 15 January 2018, making specific provision for Mr Kolomoisky's disclosure affidavit to be served on Hogan Lovells by 18 January 2018.

7. On 19 January 2018 Nugee J made a further order which has come to be known as the confidentiality club or CC order. It made more detailed provision for preserving the confidentiality of the U/R assets and ordered that any document or information disclosed by Mr Kolomoisky relating to an asset located in Ukraine and/or Russia, or to shares in companies or entities which own (or whose subsidiaries own) assets in Ukraine and/or Russia, shall not be disclosed to any person other than identified solicitors and counsel.

8. The asset disclosures made by Mr Kolomoisky relating to his assets outside Ukraine and Russia initially took the form of an asset list provided on 9 January 2018, which described 40 assets. It was then updated by a revised asset list (the "non-U/R asset list") which Mr Kolomoisky exhibited to his first affidavit sworn on 18 January 2018. Mr Kolomoisky explained that he does not speak English and so his affidavit was sworn in Russian. He confirmed that he was satisfied that this list represented "to the best of my ability, an up-to-date and accurate list of my assets located outside Ukraine and Russia each with an estimated value of approximately £1,000,000 or more."

9. Mr Kolomoisky went on to confirm that "I am aware of my obligation to update the list if I become aware of any further relevant information which should be disclosed under the order." On the same day Mr Kolomoisky swore a second affidavit accompanied by an updated U/R asset list.

10. The non-U/R asset list ran to 18 pages. It was prepared in six columns headed respectively: Asset Description, Trading/Non-trading, Location, Detail, Estimated Value (USD) and Encumbrance (if any). A significant number of these assets were Mr Kolomoisky's interests in companies located in a number of different jurisdictions. The reference to Trading/Non-trading was a relevant detail because the freezing order as varied did not prohibit dealings or disposals in the ordinary and proper course of business, nor did it require notification to Hogan Lovells of dealings or disposals in the ordinary and proper course of business by any trading company.

11. Apart from Mr Kolomoisky's interests in the companies identified in the updated asset list, the other main types of asset were claims against third parties described variously as a debt or a chose in action. For present purposes however, the other asset of most relevance is described as a "Bitcoin investment" located in Georgia, the details of which were given as follows: "an investment placed by way of oral agreement with Mr Aleksi Kuchukhidze with a right to receive the lesser value of 50,000 Bitcoin or USD 1bn in January 2021". Under the column "Estimated Value" the following description was given: "The sum invested is c. USD 50,000,000. The potential value in January 2021 is USD 1bn or 50,000 Bitcoin (whichever is the lesser)".

12. The column for Trading/Non-Trading included the entry "N/A". As Mr Hunter pointed out, the way in which the non-U/R asset list was prepared indicated that this designation was used when Mr Kolomoisky wished to identify an asset other than an interest in shares, which he owned personally (rather than through a nominee company).

13. In March 2018 Mr Kolomoisky and the other defendants mounted jurisdiction challenges and applied to set aside the freezing order originally made by Nugee J. They were successful before Fancourt J in December 2018, but his decision was reversed by the Court of Appeal on 15 October 2019, when it delivered the judgment to which I have already referred. The freezing order stayed in place throughout this process.

14. At various points during the course of 2018 (20 February, 31 May, 16 July and 18 September), Mr Kolomoisky produced further updates to the non-U/R asset list. These updates provided further information both about assets that had already been disclosed and about additional assets which had not before been listed. He also provided further updates to the U/R asset list on a number of separate occasions during the course of 2018, again providing further information about listed assets and identifying additional assets which had not before been listed. None of these updates referred to the Bitcoin investment.

15. For many parts of the period for which the freezing order has been in force, Mr Kolomoisky has directed his attention to addressing queries from the Bank regarding his asset disclosures and the use to which he is putting his assets from time to time. Evidence from a partner at Fieldfisher is to the effect that he has made some 89 notifications to Hogan Lovells since the freezing order was originally granted and has sought consent in order to proceed with certain transactions on in excess of 120 occasions.

16. The Bank said that these communications did not of themselves illustrate that Mr Kolomoisky was a cooperative defendant as to his asset disclosure, and that when analysed there was in fact a striking paucity of notification relating to his financial, business or investment transactions. It is difficult to make an assessment as to whether that submission is justified, but Mr Kolomoisky is not a defendant who simply ignores his obligations by refusing to respond at all. The extent to which the disclosures that he has made are transparent and straightforward is one of the matters that I have to consider.

17. There has also been significant correspondence between the parties during the course of which Hogan Lovells sought further details of the nature of some of Mr Kolomoisky's disclosed assets. Until the beginning of this year, the only enquiry that related to the Bitcoin investment had been made on 15 January 2018, which was very early in the proceedings and shortly before the updated non-U/R asset list was served. That letter used the Bitcoin investment as an example of a contractual interest in respect of which the Bank sought documentary evidence. None was supplied, although the description of the Bitcoin investment given in the original 9 January version of the non-U/R asset list was amended to include reference to the fact that the investment placed with Mr Kuchukhidze had been placed "by way of oral agreement". No further particularisation was given, but the Bank took no steps to explore the nature or terms of the oral agreement and that stage.

18. Three years later, on 8 January 2021, Hogan Lovells wrote to Fieldfisher seeking further information about the Bitcoin investment. This request for information comprised eleven numbered questions. The Bank said that it did not take steps to obtain further information any earlier because the right only crystallised in January

2021 "such that there was no need to write to you in relation to this asset until this month".

19. The correspondence indicates that at that stage the Bank was considering an application for the appointment of a receiver over Mr Kolomoisky's rights in respect of the Bitcoin investment in the event that he did not provide what the Bank regarded as full and proper responses to the questions asked. If it were to be worth the lesser of US$ 1 billion and 50,000 Bitcoin it would have been an extremely valuable asset, as 50,000 Bitcoin was then worth substantially in excess of US$ 1 billion.

20. Fieldfisher responded 10 days later on 18 January 2021. The Bank criticised the time that it took them to do so. While I can understand that this delay might have appeared to be symptomatic of prevarication, more particularly in light of the apparently straightforward nature of Mr Kolomoisky's rights, I do not think that the time it took was inexplicable. The enquiry related to an asset that had not been the subject of enquiry for a considerable period of time and, although the Bank did not then know this, was more complex than the bare right that had been described in the U/R asset list.

21. In their letter, Fieldfisher said that the Bitcoin investment had (and was described as having) the "potential value" in January 2021 of US$1 billion or 50,000 Bitcoin whichever is the lesser. They explained that it was no more than an estimated value given at the outset of what was anticipated to be a highly profitable Bitcoin mining venture from the profits of which Mr Kolomoisky would be paid.

22. Fieldfisher explained that the US$50 million described as the sum invested was advanced to Mr Kuchukhidze by Georgian Manganese LLC ("GM"), a trading company in which Mr Kolomoisky has an indirect interest. They also explained that the oral agreement between Mr Kolomoisky and Mr Kuchukhidze was that any return would be realised after the settlement of all operational expenses (the most significant of which were electricity costs) and repayment to GM of the capital sum it had invested

23. They said that it was agreed that if the venture gave rise to at least 50,000 Bitcoin being available following the settlement of expenses and repayment of the invested capital sum, Mr Kolomoisky would receive the lesser of 50,000 Bitcoin or US$1 billion in January 2021. It seems that, in that sense, the right referred to in the non-U/R asset list was heavily contingent. In the event that less than 50,000 Bitcoin were available in January 2021 following settlement of expenses and repayment of the capital sum, it was agreed that the available Bitcoin would be shared between Mr Kolomoisky and Mr Kuchukhidze respectively in the proportions 90/10. No specific time was agreed as to when Mr Kolomoisky would receive his allocation of Bitcoin if the amount available was less than 50,000.

24. Fieldfisher then explained that production of Bitcoin stopped in September 2019, at which stage a total of 3,533.3 Bitcoin had been mined. They disclosed that, after payment of expenses and reimbursement to GM of the original investment, the current balance was approximately 800 to 1,000 Bitcoin of which Mr Kolomoisky was entitled to 90%.

25. On any view the description given by Fieldfisher in their letter of 18 January 2021 was very different from the impression given by the description in the non-U/R asset list. The Bank submitted that there can only be two explanations for the discrepancy. The first is that the original disclosure was accurate, and that Mr Kolomoisky had given instructions to Fieldfisher to mislead the Bank with a fabricated description of the asset. It said that the purpose of this subterfuge might be to give Mr Kolomoisky time to deal with the Bitcoin investment or the US$1 billion due to be paid to him in a way which will make it impossible for the Bank to enforce any judgment that it may obtain in due course.

26. The second explanation is that the original disclosure in the non-U/R asset list was inaccurate and has not been corrected over the course of the ensuing three years. The Bank believes that, if that is the case, the failure to correct was deliberate. It relies on the fact that there have been a number of other asset disclosure updates, but no mention was made of the true nature of the Bitcoin investment. In particular it relies on the fact that, in evidence filed by the Bank in November 2018 in support of an application for disclosure by Mr Kolomoisky of fuller details in relation to the legal owner of assets held on his behalf or for his benefit, reference was made to the Bitcoin investment and the role of Mr Kuchukhidze as a debtor, but Mr Kolomoisky did not take the opportunity to correct the description he had already given.

27. In a letter sent the following day, Hogan Lovells said that the nature of the asset now disclosed was fundamentally different. They said that this justified the service of a new affidavit to substantiate the new disclosure, to be served by 22 January 2021. They spelt out the matters which they contended needed to be included in that affidavit.

28. On Friday, 22 January 2021 the Bank issued an application for an order pursuant to section 37(1) of the Senior Courts Act 1981 and/or the inherent jurisdiction that Mr Kolomoisky attend to be cross examined before a High Court judge in relation to his assets. Originally the Bank sought a hearing on Tuesday 26 January with a time estimate of half to one day. It was said to be extremely urgent, because of a concern that the Bitcoin investment was going to mature by the end of the month at the latest, before the Bank could take steps to preserve it. The way the point was put in the Bank's initial skeleton argument was "There is not time for the bank and D1 to go through further rounds of inter solicitor correspondence in relation to this asset, or for there to be a process of written interrogation of a written account yet to be provided by D1."

29. The draft order attached to the Bank's application notice included draft directions intended to apply to the cross-examination. In particular the draft contemplated that Mr Kolomoisky be ordered to file and serve an affidavit containing the information and exhibiting the documents set out in an annex to the order in relation to the Bitcoin investment. The draft order also contemplated that, not less than five days before the cross-examination hearing, the Bank would file and serve a list of topics to be addressed and a bundle of documents to which it intends to refer.

30. Although the imminent maturity of the Bitcoin investment was put forward by the Bank as the reason for urgency, and much of the evidence concentrated on what the Bank contended to be discrepancies in the way the Bitcoin investment had been described by Mr Kolomoisky, the Bank contemplated that any cross-examination

might range across his assets more widely. The Bank contended that the justification for taking this course was its evidence that there were serious or significant inadequacies in Mr Kolomoisky's asset disclosure in relation to his other assets. One of the questions which therefore arises if relief is appropriate in principle is what, if any, steps the court should take at this stage to limit the scope of the cross-examination to particular assets and asset classes, rather than leaving the Bank the ability to serve an undefined list of topics to be addressed shortly before the hearing.

31. Shortly after the Bank had served its application, it accepted that three clear days' notice was appropriate. However, it still sought an effective hearing on Thursday 28 January. This led to a short hearing on Tuesday 26 January at the conclusion of which I gave directions for evidence to enable a full hearing to be effective on 12 February.

32. I also made an order that by 4 pm on 29 January 2021 Mr Kolomoisky should file and serve a signed witness statement which (to the best of his ability and having made such enquiries of third parties as were reasonably practicable) was to contain the information and exhibit the documents relating to the Bitcoin investment set out in the annex to the draft order to which I have already referred. Mr Kolomoisky had by then accepted that the provision of an affidavit was appropriate in principle, although there was some argument over the precise terms of the order. I remain of the view that the order then made was a necessary and proportionate response to the ambiguities that had arisen in relation to the Bitcoin investment.

33. Mr Kolomoisky made two witness statements intended to comply with the requirements of this order: one dated 29 January 2021 and one dated 4 February 2021. The witness statement made on 4 February exhibits a large quantity of contractual documentation in relation to the Bitcoin mining venture much of which was in Georgian and which has not yet been analysed by the Bank.

34. Mr Kolomoisky's witness statements gave further details of the Bitcoin investment. He confirmed the oral agreement between himself and Mr Kuchukhidze described in the Fieldfisher letter of 18 January 2021 and that there were no documents recording its terms. He said that it had been entered into in June 2017 when the value of a Bitcoin was worth around US$2,500, and that, when he swore the affidavit verifying the non-U/R asset list, he expected the mining venture would be profitable, and was focused on the maximum return that he might make.

35. He said that Mr Kuchukhidze told him that he estimated that by January 2021 the mining operation should generate well in excess of 50,000 Bitcoin, but he explained that the right to receive the lesser value of 50,000 Bitcoin and US$1 billion in January 2021 was not a guaranteed return on an investment of US$50 million. He said it was entirely dependent on the success or otherwise of the Bitcoin mining operation, and that it was always the case that he would have made that clear if he had been asked, which was something the Bank did not do.

36. Mr Kolomoisky also gave details of the meeting at which he was introduced to Mr Kuchukhidze and to the Bitcoin mining operation itself. It involved GM and another company in which he had an indirect interest called Vartsikhe 2005 LLC ("Vartsikhe") purchasing large quantities of Bitcoin mining servers and other

equipment for installation in their premises in Georgia. The reference to Vartsikhe was new.

37. Mr Kolomoisky also gave a further outline of the arrangements that were reached between GM, Mr Kuchukhidze and a Mr George Kapanadze (also an indirect shareholder in GM and Vartsikhe) but he said that he personally was not involved in that negotiation. In his 4 February witness statement, he gives further details of what he says he has been able to discover in relation to the financing of the purchase of the Bitcoin mining equipment.

38. Meanwhile, on 2 February, Hogan Lovells had written to Fieldfisher seeking responses to a number of questions which they said were required in order to enable the Bank properly to understand the new account of the Bitcoin investment provided by way of Mr Kolomoisky's witness statement of 29 January. On 5 February, Fieldfisher responded declining to answer most of the questions, largely on the basis that they might be appropriate in relation to a disclosure exercise in a dispute over the oral agreement itself but were not appropriate or necessary for the purposes of policing the terms of the freezing order.

The Law

39. There is no dispute that the court has jurisdiction to order a defendant to make disclosure of assets in aid of a freezing order, both orally and in writing. Where cross-examination is sought, the principles to be applied are summarised by Vos J in *Jenington International v Assaubayev* [2010] EWHC 2351 at [22], in a passage which is cited and referred to with approval in a number of textbooks and subsequent authorities:

> "Against the background of those authorities and the submissions of the parties which were not much at odds as to the principles to be applied, it seems to me that the requirements for ordering cross-examination in circumstances such as these may be summarised as follows:
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> (1) the statutory discretion to order cross-examination is broad and unfettered. It may be ordered whenever the court considers it just and convenient to do so.
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> (2) generally, cross-examination in aid of an asset disclosure order will be very much the exception rather than the rule.
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> (3) it will normally only be ordered where it is likely to further the proper purpose of the order by, for example, revealing further assets that might otherwise be dissipated so as to prevent an eventual judgment against the defendants going unsatisfied.
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> (4) it must be proportionate and just in the sense that it must not be undertaken oppressively or for an ulterior purpose. Thus, it will not normally be ordered unless there are significant or serious deficiencies in the existing disclosure.

(5) cross-examination can in an appropriate case be ordered when assets have already been disclosed in excess of the value of the claim against the defendants."

40. The proper purpose of the order is (as Neuberger J said in *Great Future International Ltd v Sealand Housing Corporation* (22/3/2001) Unreported at p.2 of the Transcript): "solely to discover what assets the defendant has with a view, if the court thinks it appropriate, to making freezing orders or similar orders in respect of some or all of those assets". As Potter LJ said in *Motorola Credit Corporation v Uzan & Ors (No 2)* [2004] 1 WLR 113 at paragraph 142: "The purpose for which disclosure of assets is required and where disclosure is inadequate cross-examination is ordered is to enable the claimant to make the freezing order effective". The purpose is therefore to police the freezing order so that it has effect for the purposes for which it was originally granted.

41. It is possible to add to these principles by reference to a number of further authorities from which the following additional points can be derived:

(1) Significant or serious deficiency in the existing disclosure has been characterised as a necessary, but not sufficient, condition for ordering cross-examination: *Kazakhstan Kagazy v Zhunus* [2019] EWHC 1693 (Comm) at [39] (per Jacobs J).

(2) Defects in asset disclosure should be identified with as much precision as possible - a general suspicion that disclosure is inadequate is unlikely to be sufficient: *CBS United Kingdom v Perry* (1985) FSR 421 at 429.

(3) A change in the respondent's story may be a good reason to order cross-examination: *Shalson v Russo* (Neuberger J, Unreported 23 March 2001) (at p.5).

(4) The court will have regard to whether there is a less intrusive means to obtain the information required (and in that context will take account of earlier efforts to do so by means of solicitors' correspondence and the like): *Otkritie v International Urumov* [2012] EWHC 3106 (Comm) at [33].

(5) It would be wrong to make an order for cross-examination for a wider purpose, such as the investigation of issues in the substantive claim or to obtain ammunition for an application for contempt (*JSC Mezhdunarodniy Bank v Pugachev (No 2)* [2016] 1 WLR 781 at [39]).

42. Mr Tom Adam QC for Mr Kolomoisky relied on the decision of HHJ Pelling QC in *Bank of Scotland Plc v Greville Development Company* [2013] EWHC 983 (Ch) at para [34] in support of a submission that an order for cross-examination is an order of last resort, which Mr Hunter construed as a submission that the Bank needs to show that cross-examination is the only possible way forward. Whether or not Judge Pelling QC intended to go quite that far, I think it is clear that, given the intrusive and burdensome nature of the process, the court will always give very careful consideration to "whether there are not alternative means of achieving the same end that are less burdensome" (per Phillips LJ in *Yukong Line Limited of Korea v Rendsburg Investments* (Court of Appeal Unreported 17 October 1996)).

43. The way that Mr Adam put this point in the course of his submissions was that "last resort" is a fair description because it is only when the court decides that other forms of enquiry have run into the sand, and there is no point in going on with them, that the stage is reached at which a cross-examination is appropriate. In large part I agree, although, at the end of the day the reason for that is that it is only then that in the normal case this is the just and convenient order to make.

44. Mr Adam also drew my attention to some further passages from the judgment of Vos J in *Jenington* (at paras [58]-[61]), which are of assistance in illuminating the correct approach to an application for cross-examination as to assets in litigation of this sort. It is, however, important to recognise that the statutory discretion is broad and unfettered, and what ultimately is just and convenient will depend on all the circumstances of the particular case:

> "58. There is a fine line between a genuine scepticism about the veracity of asset disclosure and a refusal to accept the truth of any statements made by a mistrusted defendant. This case has epitomised that line. The claimants in this case have seemingly refused to accept the truth of anything the defendants have said, querying everything and demanding documents to support every point.
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> 59. The defendants say that this is simply not what asset disclosure is about. It is not intended to allow the claimant to investigate every aspect of every transaction undertaken by a defendant in the run-up to litigation.
>
> 60. It seems to me that the balance between these two positions must be carefully held. Asset disclosure is intended to ensure that the worldwide freezing order is effective, and that the claimants are aware of assets owned or allegedly owned by the defendants so as to prevent their being dissipated so as to frustrate an eventual judgment obtained.
>
> 61. But the asset disclosure process cannot resolve disputed questions as to the ownership of assets. Nor is it appropriate to allow any kind of mini-trial, by endless rounds of evidence and counter-evidence. A stage is eventually reached at which the claimants can contend that an asset is owned by the defendants and the defendants can contend that it is not. It [is] then up to the claimants to take such steps as they legitimately can to persuade this court -- or in some cases a foreign court -- that that asset should be preserved, pending the conclusion of the contested substantive litigation. Only at that stage, during a final enforcement process, will the court determine whether a disputed asset actually belongs to a defendant, so that it can be enforced against."

The Bank's Case

45. At the time of the hearing on 26 January, the Bank had put in a skeleton argument in support of the relief sought which adopted a three-stage approach. First, it contended that there were serious and significant deficiencies in Mr Kolomoisky's asset disclosure. Secondly, it said that in all the circumstances an order for cross-examination was proportionate and necessary. Thirdly, it was said to be necessary in

order to make the freezing order effective to require Mr Kolomoisky to serve an affidavit explaining his interest in the Bitcoin investment.

46. The third stage has been overtaken by events in the sense that Mr Kolomoisky has now made the two witness statements to which I have already referred. The Bank now relies on those witness statements as illustrative of the deficiencies in Mr Kolomoisky's disclosure and as supporting its case that it is now just and convenient for an order to cross-examine him to be made.

47. What the Bank called the serious and significant deficiencies in Mr Kolomoisky's existing disclosures is the background against which it seeks an order for cross-examination. It submitted that such an order furthers the purposes for which the freezing order was originally made, because it will enable it to understand the true details of his assets to ensure that the order is properly policed. It also submitted that there are not any other viable or realistic means of getting to the truth.

48. It also denied that this is a case in which it is seeking cross-examination for any form of collateral purpose. In particular it pointed out that the Bitcoin investment is irrelevant to the substantive issues in the proceedings, and it was undertaking not to use the information acquired in the course of any cross-examination in support of an application to commit Mr Kolomoisky for contempt.

The Bitcoin Investment

49. The Bank's submissions on the deficiencies in Mr Kolomoisky's asset disclosure are now made by comparing how Mr Kolomoisky has described the Bitcoin investment in the non-U/R asset list, the letter from Fieldfisher of 18 January 2021 and the witness statements which he made on 29 January and 4 February. Mr Hunter submitted that the original version and what he called the new evolving version are fundamentally different and that Mr Kolomoisky cannot say that the original asset disclosure simply amounted to a truncated disclosure of what he is now saying.

50. It was also argued that the explanation of the nature of the Bitcoin investment that was advanced by Mr Kolomoisky for the first time in January 2021 is riddled with inconsistencies and inherent implausibility. The Bank submitted that there is no way that it and the court are being given anything like the whole truth and that, put in the context of the substantive allegations for which it has already established a good arguable case, there is a real concern that Mr Kolomoisky is engaged in an exercise of concealing the Bitcoin investment and rendering it judgment proof.

51. By way of development of its submission that the original description was telescoped in a misleading manner, the Bank said that the account now given by Mr Kolomoisky contains three fundamental differences from the description he originally gave.

52. The first is that the description of Mr Kolomoisky's assets in the non-U/R asset list normally distinguished between his personal investments, his investments through non-trading companies and his investments in trading companies. The Bank then contrasted this with the description of the Bitcoin investment in the non-U/R asset list, which disclosed nothing to do with a trading or non-trading company. The Bank then

submitted that because, unlike many other entries, the Bitcoin investment was not said to be held through a non-trading company or other third party, the original description was plainly intended to identify a personal investment, in the sense that the US$50 million came from him personally. It said that this now transpires not to have been the case.

53. I think that there is real substance in the submission by the Bank that the original description of the Bitcoin investment gave the impression that the right to receive the lesser of 50,000 Bitcoin or USD $1 billion was the fruits of a US$50 million investment that had been placed by Mr Kolomoisky personally. As Mr Kolomoisky chose to describe the right in the 4th and 5th columns of the list by reference to the original investment, the most natural reading of what he said was that he was the person who placed the investment. The detail of the asset was said to have been the "investment … with a right" which linked the right directly to the investment. It was also said to have been "placed by way of oral agreement". While Mr Adam was correct to submit that the passive tense was used, it is accepted that Mr Kolomoisky personally is the party to the oral agreement. As the estimated value column includes reference to the "sum invested", the natural inference is that it was Mr Kolomoisky who made the investment.

54. Nonetheless, the significance of this particular deficiency is in my view overstated by the Bank. I think that Mr Adam is correct to submit that the asset disclosed in the non-U/R asset list is a chose in action in the form of the right that Mr Kolomoisky has against Mr Kuchukhidze, and the person who provided value in consideration for which the right was acquired is not an essential part of the description of that right. This is not a complete answer to the Bank's submission that the description appears to be inconsistent with the position as it is now said to be, but it goes a considerable way towards undermining its real significance.

55. The second difference is that the disclosure of Mr Kolomoisky's asset as being a right to receive the lesser value of 50,000 Bitcoin or US$1 billion in January 2021 was telescoped to the point of being what the Bank called misleading, because it can now be seen that such rights as he had were hedged about with qualifications and contingencies. The Bank submitted that the reference to a right to receive appeared to refer to an absolute right. There is no hint of any conditionality in the "Details" column (whether in the form of a successful mining of 50,000 Bitcoin or otherwise) and the only question would appear to be whether the value of 50,000 Bitcoin or US$1 billion was the lesser.

56. Mr Hunter submitted that the starting point for any disclosure of the details of an asset in the form of a contractual entitlement should extend to the key terms of the contract (more particularly where it is an oral agreement) and that is what the Bank thought that Mr Kolomoisky had done. To that extent, the Bank's view (as evidenced by Mr Lewis of Hogan Lovells) that the account of the Bitcoin investment "appeared reasonably clear and straightforward at least as to its basic terms" was understandable. As Mr Hunter said in his submissions "How could we police whether a contingency was being met or not if we'd no idea about it?"

57. However, the freezing order was not prescriptive as to the details to be given as to any assets in the form of contractual rights. That is not surprising because contractual rights can take many forms and the more convenient way of proceeding would have

been for specific requests for further information to be made if required to enable the order to be policed effectively. Use of the word "right" without qualification does not necessarily mean that the beneficiary of the right has an absolute entitlement without the need for conditions or contingencies to be satisfied before a cause of action to realise value from the right is complete. All will depend on the relevant context, and that context will include such other incidents of the right as are disclosed in (or can be discerned from) the surrounding circumstances, including in particular other parts of the same document.

58. As to this, I agree with the submission made by Mr Adam that there were likely to be other qualifying terms and conditions attributable to the right, because of the reference to "the potential value" in the description of its estimated value. This is a plain reference to the phrase "USD 1bn or 50,000 Bitcoin (whichever is the lesser)" which itself directly tracks the phrase "the lesser value of 50,000 Bitcoin or USD 1bn" in the Details column. I do not, therefore, accept Mr Hunter's submission that the "Details" column should be read separately from the "Estimated Value", nor that the one does not inform the proper meaning of the other.

59. Furthermore, if the right were to be absolute, the only reason to qualify the estimated value would be because of credit risk. In my view the phrase "potential value" would be a strange one to use in that context. It is much more likely to have indicated a contingency that was capable of affecting the face value of the right.

60. More generally, it is instructive to compare the description of the Bitcoin investment with the description of other contractual rights, all of which are very abbreviated in their form. As Mr Adam submitted, the purpose of this type of list is not to provide chapter and verse on contractual rights. It is there to provide sufficient information to enable the recipient to identify and obtain an overview of the nature of a defendant's relevant assets. What matters in particular is to identify the counterparty from or against whom the chose in action can be recovered or realised and sufficient detail as to its inherent nature to enable it to be described by the person to whom it is disclosed and to work out what steps are required to be taken in order to protect it.

61. Mr Adam also made submissions on the uncommercial nature of what the Bank contended to be the natural meaning of Mr Kolomoisky's original description of the Bitcoin investment. He said that Mr Kolomoisky was not likely to be referring to an investment of approximately US$50 million in 2017 as having provided him with a guaranteed unconditional right to US$1 billion or 50,000 Bitcoin three years later. The Bank suggested that the straightforward agreement which it assumed to have been described might have involved a hedge to protect a Bitcoin miner against a drop in the price of Bitcoin below US$1,000, but Mr Adam pointed out that an unconditional deal of that sort would be astonishingly bad for Mr Kuchukhidze unless his obligations to Mr Kolomoisky were contingent on producing at least 50,000 Bitcoin. Otherwise, a bare and unqualified obligation to pay Mr Kolomoisky whichever was the lesser of 50,000 Bitcoin and US$1 billion would leave Mr Kuchukhidze heavily exposed if he had not succeeded in mining 50,000 Bitcoin but the value had risen to somewhere approaching US$20,000 (or more).

62. I agree with the substance of Mr Adam's submission. In my view it was fairly obvious that there would have been other terms which attached to the right, even if (as suggested by the Bank) the essence of the asset was to be a future purchase of Bitcoin

as at January 2021. The circumstances in which the right was to accrue (at that stage more than three years ahead) pointed to the distinct possibility that the right might not be unqualified, not least because of the enormous potential return on a US$50 million investment.

63. The third difference was said to be the mention of a new right in the form of an entitlement to 90% of the surplus Bitcoin in the event that 50,000 Bitcoin were not produced by the mining venture for which the US$ 50 million was invested. Echoing the rhetorical question he asked about policing a contingent asset, Mr Hunter asked: "How could we police whether there's been proper treatment of a subsidiary right we'd no idea about?"

64. The Bank then said that there are discrepancies even between what was said by Fieldfisher in their letter of 18 January and what was said by Mr Kolomoisky in his witness statement. There was no mention of Vartsikhe in the Fieldfisher letter and the amounts invested were not US$50 million but were rather more. It submitted that this is a further indication of the wholesale deficiencies in the way in which Mr Kolomoisky has made disclosure in relation to this asset and supports the application for an order for cross-examination.

65. Turning to what it said was the implausibility of Mr Kolomoisky's new description of the Bitcoin investment, the Bank divided the arrangement into three parts: first the personal agreement between Mr Kolomoisky and Mr Kuchukhidze, secondly the mining agreement between GM and Vartsikhe on the one hand and Mr Kuchukhidze on the other and thirdly the mining operation itself. It submitted that Mr Kolomoisky was not giving the court anything like the whole truth in relation to any of these matters.

66. So far as the personal agreement between Mr Kolomoisky and Mr Kuchukhidze was concerned, the Bank pointed out that it appeared to be a very bad deal for Mr Kuchukhidze because he gave up the lion's share of the potential profit from the mining venture to Mr Kolomoisky. It said that there were some circumstances in which his rights if more than 50,000 Bitcoin were mined would be worth less than his rights if the amount mined were just under 50,000. These oddities made no commercial sense from Mr Kuchukhidze's perspective, more particularly in circumstances in which there was no prior business relationship between him and Mr Kolomoisky.

67. The Bank also pointed to the wholly insubstantial nature of the very limited evidence that Mr Kolomoisky adduced from Mr Kuchukhidze, which said nothing about the nature of the oral agreement itself and simply confirmed Mr Kolomoisky's evidence as to the total number of Bitcoin mined and the fact that no payments had been made to him. The Bank submitted that the fact that Mr Kuchukhidze said nothing about the terms of the oral agreement undermined the credibility of Mr Kolomoisky's account.

68. In support of its arguments as to the implausibility of the terms of the agreement between Mr Kolomoisky and Mr Kuchukhidze, the Bank also relied on the fact that at no time prior to the beginning of 2021 did Mr Kolomoisky explain that a time had been reached at which there was no prospect of the contingency being satisfied. It was submitted that his failure to disclose to the Bank that there was no prospect of the contingency arising, meant that there was then no prospect of Mr Kolomoisky

continuing to have "a right to receive the lesser value of 50,000 Bitcoin or USD 1 bn in January 2021". He should have disclosed these developments, and the fact that he did not do so was said by the Bank fatally to undermine the credibility of Mr Kolomoisky's new story. It is clear that he was well aware of his continuing obligations in that regard, because he confirmed at the time the non-U/R asset list was served that he had to update the list if he became aware of any further relevant information.

69. So far as the Bitcoin mining agreement itself is concerned, the Bank challenged Mr Kolomoisky's account in a number of respects. It pointed out that there is no documentation recording or even referring to the agreement said to exist between GM and Vartsikhe of the one part and Mr Kuchukhidze of the other. All that has been disclosed is a vast quantity of contractual documentation mostly in Georgian and none of which appears to record the mining agreement described by Mr Kolomoisky. I was taken to some of the material and Mr Hunter demonstrated that it appeared (at first blush, anyway) to be unrelated to the mining venture as described, and in some respects is inconsistent with it.

70. The Bank also contended that the agreement appeared to be all risk and no benefit so far as GM and Vartsikhe are concerned, and there is no witness evidence as to the terms of this agreement either. It also raised doubts as to whether anyone had any power to bind GM to an agreement with Mr Kuchukhidze or his companies.

71. As to the actual operation of the Bitcoin mining venture, the Bank submitted that the court should be highly sceptical about the amount of Bitcoin that Mr Kolomoisky now says has been mined. It adduced evidence from an expert (Dr Edouard Klein) who estimates that the mining equipment purchased with GM's investment would have generated significantly greater numbers of Bitcoin than the amounts disclosed by Mr Kolomoisky. This gave rise to an elaborately crafted argument that Mr Kolomoisky's new account is not credible, that the rights which he originally disclosed are being or have been dissipated and that a cross-examination is necessary to protect the Bank's ability to enforce any judgment in due course.

72. More specifically, the Bank questioned what is now said to have been the limited use to which the mining equipment was put and asked what was happening to it during the lengthy periods for which the mining operations were said to be uneconomic. Mr Hunter then made a number of submissions as to why the explanation put forward on behalf of Mr Kolomoisky lacked credibility. These included an analysis of the original purchase and maintenance contracts for the mining equipment and what appeared to be an agreement for the sale of hashing power by a company called BlockPower LLC, even though that power was generated with the mining equipment that had been acquired by GM and Vartsikhe.

73. In response to Dr Klein's report, Mr Kolomoisky has put in evidence from GM's chief operating officer, Mr Merab Lominadze, which amongst other matters confirmed his evidence that the Bitcoin mining operations only took place for 17 months between November 2017 and November 2018 and then again between May 2019 and September 2019. It also corroborated what was said by Mr Kolomoisky in a number of other respects, including the overall number of Bitcoin that were mined and explained that the number of Bitcoin mining servers assumed by Dr Klein was too high for a number of reasons.

74. The submissions made by the Bank appeared to give rise to points of real substance on the commerciality of the arrangements that had been entered into between the participants in the mining venture. The Bank submitted that this is all the more concerning when put in the proper context of the potential value of the asset at the time of its original disclosure and the nature of the substantive allegations that I described at the beginning of this judgment. It said that the inconsistencies in the story evidence what Mr Hunter called a smokescreen created by a professional creator of smokescreens to hide assets.

75. The Bank also submitted that the evidence which has now emerged is illustrative of Mr Kolomoisky's ability to produce further information in relation to the Bitcoin investment when it suits him to do so. The pressure which has been imposed upon him as a result of this application has, in effect, procured additional detail which will enable the Bank better to police the freezing order. It submitted, however, that this process is nowhere near complete and that the only appropriate way forward is for an order for cross-examination to be made at this stage.

The Bank's Case: Other Non-Disclosures

76. The Bank also relied on inadequacies in relation to other asset disclosures, which are said to throw into doubt the extent of Mr Kolomoisky's compliance with the freezing order to date and to justify a more wide-ranging cross examination in relation to his assets generally. These inadequacies formed a subsidiary part of the Bank's case and I did not understand them to be put forward as warranting the grant of the relief sought in their own right and without more. They were advanced as supporting grounds for ordering cross-examination and are said to fall into three categories.

77. The first relates to details of certain receivables, which were included in the U/R asset list of which the principal one is the Company X receivable. Mr Kolomoisky has confirmed through Fieldfisher that it has not yet been realised and still takes the form that was originally described. The Bank says that it doubts the credibility of this account, but there is no actual evidence which suggests that this is not an accurate statement of the position.

78. The remaining receivables that are relied on by the Bank are some miscellaneous intangible investments. In some respects, these give rise to similar issues to the Bitcoin investment because some of them arise under oral agreements, and others arise under agreements the terms of which are non-specific or obscure. The Bank submitted that cross-examination is necessary and proportionate because of the very significant value of the receivables, which are said to be owed pursuant to oral or undisclosed agreements and which are extremely easy to deal with or dispose of. The Bank said that it is entitled to full information in relation to these assets so that it can properly police the freezing order.

79. The second category relates to the way in which trading and non-trading companies have been designated, which the Bank said has been manipulated by Mr Kolomoisky. This is said to be the case in relation to the designation of two Optima companies with assets in the United States as trading companies in respect of which the freezing order provided that no consents were required for dealings in the ordinary course of

business. The first of these was Optima Ventures LLC, which was initially described as a non-trading company valued at US$29 million with a single trading subsidiary valued at US$7.2 million. This designation was challenged by Hogan Lovells in June 2018, which caused Mr Kolomoisky to change it from non-trading company to a trading company in order to explain why no consent was sought for a sale by Optima Ventures of an office block in Cleveland, Ohio. The second of these was Optima 500 LLC, which was also designated as a trading company by Mr Kolomoisky, and in respect of which he has declined to provide further details.

80. The Bank also relied on the description of GM as a "trading company" in Fieldfisher's letter of 18 January 2021 in which they had said that GM lent c.US$50 million to Mr Kuchukhidze in order to mine Bitcoin, which was said on any view to be uncommercial because there was no upside to GM for participating in the transaction. This was said to be illustrative of the difficulties which arise where Mr Kolomoisky is given free rein to designate companies as "trading companies" and was said to justify of itself further interrogation by means of cross-examination.

81. The third factor on which the Bank relied was the asset holding structures which Mr Kolomoisky employs and which are said to give rise to serious concerns as to his compliance with the freezing order. In particular it points to Mr Kolomoisky's ability to change the identity of his numerous nominees, without notice to the Bank or Hogan Lovells and without the consent of the court. In particular it relies on a change to the identity of the nominee holding his interest in one of the assets disclosed in the U/R asset list. This involved a change from a structure in which Mr Kolomoisky's interest arose under a written declaration of trust dated July 2012 to a situation in which his interest arose under an oral sub trust declared by the beneficiary under a deed of trust dated January 2018.

82. The Bank also expressed concern that the nominee structures (by which Mr Kolomoisky holds his interests in corporate entities in various parts of the world) allows the assets held by those entities to be misappropriated. The Bank has identified one situation in which this has occurred and submitted that this suggests that the nominee ownership structures are easily manipulated and that dealings with the underlying assets can be concealed with relative ease.

83. Mr Kolomoisky's answer to this is that these issues were raised in an application in June 2018 which was adjourned pending the determination of the jurisdiction challenge and then never pursued after the Court of Appeal handed down its judgment at the end of 2019. It does not seem to me that that is of itself an answer to the point. Of rather greater significance, however, is the evidence that Mr Kolomoisky has in any event notified the vast majority of the nominees of the existence of the freezing order and that any dealing with his interests cannot be carried out without the consent of the court. It is not immediately apparent what use a cross-examination of Mr Kolomoisky will be on this particular point.

84. In relation to all three of these categories, it may be the case that the Bank will wish to formulate further focused interrogatories in relation to the terms and incidents of these debts which are justified as a necessary basis for their preservation, but that is not the focus of the application today.

Conclusions

85. I think that the right starting point is to consider whether there is a significant or serious deficiency in the existing disclosure. The Bank's case was put by reference to the Bitcoin investment.

86. Mr Adam described this as a threshold issue, largely on the basis that there are cases (e.g., *Kazakhstan Kagazy v Zhunus* [2019] EWHC 1693 (Comm) at [39] (per Jacobs J)) in which it has been said that a significant or serious deficiency is a necessary but not sufficient condition for ordering cross-examination. For my part I prefer the way it was put by Vos J in *Jenington* that significant or serious deficiencies must normally be shown. However, as reasonable minds can disagree about what is significant or serious, I doubt that very much turns on this difference.

87. The starting point for freezing order purposes is whether or not an asset of Mr Kolomoisky's has been described in the disclosure list in a manner that enables it to be identified and then preserved. If so, any deficiencies in the precise form of the description are less significant than if it had not been disclosed at all, unless they are of a nature that might tend to impair the process of its preservation.

88. I also consider, in agreement with Mr Adam, that the initial information to which the Bank was entitled was a simple description of the right against Mr Kuchukhidze, because that is the relevant intangible asset. It does not extend to all of the collateral arrangements which relate to or are incidental to that asset, such as how it is to be funded or otherwise facilitated, unless those arrangements bear on the right itself.

89. I agree that where, as in this case, the asset is the benefit of an oral agreement, the Bank was entitled to receive (if it asked for it) a reasonable degree of knowledge about the terms that are said to have been agreed and with whom. However, I do not think that a reasonable degree of knowledge about the terms extends to a detailed examination of how it is that the chose in action will be funded by Mr Kuchukhidze i.e., through the Bitcoin mining venture which itself is funded through investments made by third parties (GM and Vartsikhe).

90. In this case the asset was identified in very general terms at the outset and so was the identity of the person against whom it needed to be enforced. As to the identification of the person who provided the original US$50,000,000 investment, I do not think that the non-U/R asset list can properly be considered as containing anything other than a summary explanation of what it was that would or might cause the right against Mr Kuchukhidze to become realisable. In some instances, the way in which the original investment to enable the chose in action to be realised was made may constitute one of the incidents of the asset itself, but it is not obvious why that sort of detail is required to enable the asset to be preserved and the terms of the freezing order itself did not define the details required in that way. If it is not a required element of the chose in action itself, it is difficult to see why the omission of any description of it is a serious or significant deficiency in the disclosure.

91. Nonetheless, standing back and looking at the way in which the Bitcoin investment was originally described, the impression given is that it was an asset of a different quality from the asset now described by Mr Kolomoisky. There are many respects in which it could have been described more fully in a manner that more accurately

explained the nature of the claim that he has against Mr Kuchukhidze. There was very little in that original description which signalled that the asset in fact took the form that Mr Kolomoisky now says that it takes, and in particular that the contingencies had such a significant impact on its ultimate value.

92. Having said that, I do not regard the description as actively misleading by comparison to the characteristics that it is now said to have. I have explained why that is so earlier in this judgment, but in summary I am satisfied that it must have been obvious to any reasonable reader that the contractual right was qualified and that there would be circumstances (the likelihood of which was simply not signalled one way or the other) in which the potential estimated value would not be realised. In my view there is force in Mr Adam's submission that the disclosure was not rendered false or inaccurate by not spelling out the contingent nature of the right, largely because of the phrase "potential value" in the estimate of value column. I think that there is force in the submission that the list never purported to be more than a summary description of the assets concerned.

93. I also have difficulty in seeing why, when dealing with an asset in the form of contractual rights said to derive from an oral agreement, it is not incumbent on a litigant in the position of the Bank to seek further clarification of its terms, if and insofar as they consider it necessary to do so for the purposes of its preservation. The list was prepared on the basis that it was always open to the Bank to make further enquiries should it wish to do so. It did not do so for three years. Doubtless any refusal by a defendant to respond in an appropriate manner to a request for a reasonable degree of knowledge about the terms that are said to have been agreed (and with whom) might found an application for further relief, including where appropriate an order for cross-examination, but taking those sorts of step will normally be a necessary preliminary.

94. It follows that, while I agree that there were some deficiencies in the disclosure in the original non-U/R asset list, I do not consider that they were significant or serious (in the sense contemplated by Vos J in *Jenington*) by reference to the description that has now been given.

95. However, the question of what was said at the outset and also what could have been asked over the course of the next three years, cannot be looked at in isolation. It is important to have regard to the credibility of what is now said to be the position. Does its inherent credibility require further exploration both to test the veracity of what has been said and to try to open up further lines of inquiry which might help to preserve or enhance the asset?

96. As I mentioned earlier, one of the core points which underpins the Bank's application is its belief, or at least its suspicion, that Mr Kolomoisky has, or has access to, the very valuable Bitcoin which he had said (or at least given the impression) that he was entitled to receive. The Bank clearly considers that it is possible that the more recent evidence is an elaborate smokescreen to hide that fact.

97. I have paused over this central issue, but the problem from the Bank's perspective is that there is little hard evidence which supports this suspicion. Mr Kolomoisky's explanation is corroborated by all of the evidence from those who have any first-hand knowledge of what was agreed and what occurred and I have reached the firm

conclusion that it would be wrong for me to draw material adverse inferences against Mr Kolomoisky arising of the inconsistencies in what he now has to say about the extent and characteristics of the Bitcoin investment at this stage.

98. True it is that Mr Kolomoisky has now given considerably more information about the Bitcoin investment than was the case at the time of the non-U/R asset list, and Mr Adam frankly accepted that there are oddities and inconsistencies in his explanation. But the evidence in support of those inconsistencies came in large part from Dr Klein, and in my view, Mr Adam went some way towards dispelling a number of the criticisms that were made by Mr Hunter. He also demonstrated that a number of the evidential bases that underpinned Dr Klein's report were misconceived. They included basic misunderstandings as to the number of servers that were actually acquired for the purpose of carrying out the mining venture and the nature of the hashing agreement that was entered into and why.

99. I also think that Mr Adam was justified in submitting that some aspects of the inconsistencies were an inevitable consequence of the process that the Bank had chosen to adopt, seeking to compress a wide-ranging dispute as to the characteristics of an asset into an unfeasibly tight timescale. While Dr Klein's misconceptions may not have been his fault, they may well have been caused by the haste with which the Bank sought to persuade the court that Mr Kolomoisky's explanations were demonstrably untrue and therefore required to be tested by cross-examination. In these circumstances, it is much more difficult to rely on any deficiencies in the explanations so far given by Mr Kolomoisky as being of themselves indicative of a lack of transparency.

100. In my view, there was also some force in Mr Adam's submission that Mr Kolomoisky was being placed in a difficult position because, having given more detail about the Bitcoin investment, he was then faced with the Bank seeking ever more information and then characterising his attempt to draw a line when he says that "enough is enough" as evasion. Once the true nature of the asset is taken into account (i.e., the claim against Mr Kuchukhidze) some of the most recent questions do not appear to be about asset identification or preservation at all.

101. I have not received detailed submissions in relation to these recent requests. Nonetheless, it is clear to me that several were excessively wide-ranging and extended substantially beyond matters which the Bank might reasonably have required to understand in order to police the freezing order. I think that Mr Kolomoisky was entitled to much more focus from the Bank as to why each question asked was required for the purposes of enabling it to understand the nature of the asset itself and what if anything the Bank needed to do in order to facilitate its preservation. This correspondence reads more as a series of ambitious requests for further and better particulars in the context of a dispute over the oral agreement itself, rather than restricting itself to what is required to enable the Bank to police the freezing order.

102. On an application of this sort the court must hold a careful balance when asked to resolve the issue of who is right and who is wrong on the precise terms and incidents of an inherently uncertain chose in action, or who is entitled to its recovery and in what amount. Applying what was said by Vos J in *Jenington* at para [61], I do not consider that an oral cross-examination is an appropriate course on which to embark as part of the process of seeking to police the terms of this particular freezing order.

The Bank submitted that, because there are competing arguments of substance, this is one of the very reasons why a cross-examination is required. I disagree.

103. It is well established that the court will not conduct a mini trial as to many of the types of matter raised by the Bank. It would give rise to undesirable collateral litigation in circumstances in which the prospects of it being able to reach a conclusive resolution are slim. While I think that the Bank is entitled to understand what Mr Kolomoisky says are the terms of the contract and can seek any further information from him in writing to the extent that it can establish that any of this remains genuinely unclear, the purpose of taking that course is to enable the Bank to take steps to preserve the asset in so far as it needs and is able to do so. A cross-examination as to assets in the context of this freezing order is most unlikely to be an appropriate or effective means of progressing that process, even less of challenging the terms of an oral agreement both the parties to which assert that it does not have the terms for which the claimant contends, which is likely to be the situation in the present case.

104. As Vos J pointed out, it is only at the stage of final enforcement that the court will determine whether a disputed asset actually belongs to a defendant, which in the case of a chose in action is likely to involve concluded findings as to its terms. The investigatory focus of a claimant in the position of the Bank before trial should be on obtaining the information that it needs to identify the asset (which it has now done) and to persuade the court of the further relief required to ensure that whatever the asset may be should be preserved.

105. In considering whether the exceptional order for cross-examination is required in this case, I also bear in mind that the Bank had already determined that cross-examination was appropriate before it received Mr Kolomoisky's two new witness statements. True it was that, at the time it made its application, it considered that there was real urgency because of what it understood to be the impending maturity of the asset, but I think that a more appropriately measured approach would have been to await receipt of the written evidence and only to proceed with an application for cross-examination once it had determined that the form of the evidence warranted taking that course. This is all the more so in light of the Bank's delay and the stage which the litigation has now reached. I think there is some substance in Mr Adam's submission that the Bank committed itself to a course of action which it is now reluctant to diverge from, despite the emergence of additional information and written materials from Mr Kolomoisky.

106. Of course, it is inherently problematic for a third party to protect an asset in the form of contractual rights under an oral agreement and the court will do what it can to assist in the preservation of the asset, particularly where, as in this case, there are a number of obvious oddities about its essential nature. But in my view the Bank now has a clear statement of what Mr Kolomoisky says constitutes all the essential incidents of the chose in action.

107. This means that the Bank has sufficient information to do what it can to preserve its position as a putative judgment debtor seeking to protect its ability to enforce against the right (or its fruits) at some stage in the future. I do not rule out the possibility that it may be able to justify requests for further written information as part of the process of preserving the cause of action against Mr Kuchukhidze. Where those requests are reasonable but not complied with Mr Kolomoisky can expect that the court will order

him to do so. However, if that course of action is to be pursued, I think that something very much more limited and focused is required than the rather scattergun approach displayed in the 2 February letter.

108. As to this I also think that there are real question marks as to what a cross-examination will achieve at a much more basic level. The focus of the hearing before me dealt with a number of highly technical questions in relation to the potential profitability of a Bitcoin mining venture, an activity with which Mr Kolomoisky has no apparent familiarity. I do not consider that the Bank has established that, even if it were otherwise to be justified as part of the process of acquiring a reasonable degree of knowledge as to the terms of the relevant contract, a cross-examination is the right way of obtaining information about those more technical aspects of the mining operation as were in evidence at the hearing.

109. Overall, I consider that an order for cross-examination of Mr Kolomoisky would be a disproportionate response to the issues highlighted by the Bank at this stage and is not just and convenient. I do not think that any role it might play in identifying and enhancing the preservation of the assets caught by the freezing order justifies the grant of what on any view is exceptional relief which, however well controlled in its execution, is capable of being both intrusive and oppressive in its impact. Accordingly, the relief sought by the Bank is refused.