THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

TERRITORY OF THE VIRGIN ISLANDS

BVIHCMAP2022/0073

BETWEEN

IKON SHINA LTD (formerly NOKIAN SHINA LLC)

Appellant

and

OLGA BORISOVNA SMYSHLIAEVA

Respondent

Before:

The Hon. Mr. Trevor M. Ward — Justice of Appeal
The Hon. Mde. Esco L. Henry — Justice of Appeal
The Hon. Mde. V. Georgis Taylor-Alexander — Justice of Appeal [Ag.]

Appearances:

Mr. Andrew McLeod with him Mr. Iain Tucker and Ms. Cate Barber for the Appellant
No appearance for the Respondent

2024: October 28;
2025: July 09.

Commercial Appeal - Appeal against the order of a judge of the Commercial Division of the British Virgin Islands – Dismissal of appellant's claim for enforcement of a money judgment of the Commercial Court of the Republic of Bashkortostan in the Russian Federation - Whether the June Ruling operates to assign to the appellant the debt established under the March Ruling – Whether the March and June Rulings should be construed together as constituting a foreign judgment for a definite sum, enforceable by the appellant against the respondent - Whether the March and June Rulings are final and conclusive as against the respondent - Whether the March and June Rulings are unenforceable in the BVI as being contrary to public policy

The appellant, a subsidiary of Nokian Tyres, is a company principally engaged in automotive parts trading. The appellant entered into a Sale and Purchase Agreement dated 28th February 2014 with Russhina-Tyumen LLC ("Russhina"), a Russian company, under which Russhina agreed to purchase the appellant's products ("the Supply Agreement"). The appellant subsequently concluded a surety agreement with Track LLC ("Track"), another Russian company engaged in tyre distribution, on 3rd March 2014 by which Track, which belongs to the same corporate group as Russhina, guaranteed Russhina's payment

obligations under the Supply Agreement. Despite these arrangements, Russhina defaulted on its payment obligations and Track failed to honour its guarantee.

Track was held to be insolvent by the Commercial Court of the Republic of Bashkortostan in the Russian Federation (the "Russian Court") on 2nd March 2016 and bankruptcy proceedings were initiated before that court. On 28th March 2019, the Russian Court issued a ruling ("the March Ruling") holding Track's owners liable for the company's debts and this ruling was delivered in response to an application filed by Track's bankruptcy receiver, which sought to impose secondary (or "subsidiary") liability on individuals who had unlawfully siphoned assets from Track. The Russian Court in its March Ruling awarded judgment against Track's owners for 3.2 billion rubles in favour of Track's bankruptcy estate, imposing on them joint and several liability. This sum represented the aggregate debts owed by Track to its creditors, including the outstanding amount due to the appellant.

On 13th June 2019, the Russian Court issued a further ruling ("the June Ruling") in response to an application by Track's insolvency receiver. The application sought to substitute the recoverer in the March Ruling for the purpose of enforcing joint and several liability against Lidia Mikhailovna Salmanova, Evgenii Mikhailovich Fedorov, Olga Borisovna Smyshliaeva, Sergei Aleksandrovich Gorokhov, and Andrei Valerevich Smyshliaev. In the June Ruling, the Russian Court, acting under applicable Russian law, allocated a proportionate share of Track's claims to the appellant, which was effected by substituting the appellant for Track as an enforcement creditor, a recognised remedy under Russian insolvency law that serves as an alternative to Track pursuing claims collectively on behalf of all creditors. As a result, the appellant became a judgment creditor of the respondent. The appellant had received only a fraction of the Judgment Debt through Russian insolvency proceedings amounting to approximately 8.5 % of the total due.

The appellant commenced proceedings in the High Court of Justice (Commercial Division) in the BVI against the respondent and Mr. Andrei Valerevich Smyshliaev (the sole shareholder of Russhina and alleged to have been the ultimate beneficial owner of Track) seeking enforcement of the March and June Rulings against Mr. Smyshliaev and the respondent, as well as the sum of 1,554,102,387.86 rubles being the total amount of the Judgment Debt arising under the March and June Rulings and comprising a total principal of 1,254,529,474.11 rubles plus total interest and total costs of 299,572,913.75 rubles). The appellant also sought interest from the date of the March Ruling and June Ruling until the date of payment at a judgment rate of 5% per annum. The trial occurred on 4th April 2020 and judgment was delivered on 30th September 2022, wherein the learned judge of the Commercial Division of the British Virgin Islands dismissed the claim against the respondent and awarded her costs of the claim and ordered that the court will hear the parties further on the disposition of the claim against Mr. Smyshliaev.

Dissatisfied with the decision of the learned trial judge, the appellant appealed. By notice of appeal filed on 22nd April 2024, the appellant advanced the following grounds: (1) the court wrongly concluded that the Russian Judgment did not constitute a judgment for a definite sum of money enforceable by the appellant against the respondent; and (2) the court failed to give any (alternatively, any sufficient) consideration or weight to the appellant's pleaded

case that the June Ruling had the effect of assigning the debt created under the March Ruling, to the appellant.

The respondent subsequently filed a notice of opposition and counter notice, opposing the appeal and stating that the judgment should be upheld. The respondent asserted that the appellant must prove to the Court that the learned judge erred in favour of the respondent in the lower court and also proffered that a Russian expert report indicates that both the March and June Rulings were obtained through fraud, based on a forged guarantee which may be rescinded or varied by the Russian Court and which violates BVI public policy. Additionally, the respondent posits that a breach of natural justice occurred as the March and June rulings were made without critical evidence due to the respondent being unable to challenge the guarantee's validity in the Russian proceedings. The counter notice also emphasized that, given the respondent's bankruptcy, any claims should be pursued through the Russian bankruptcy proceedings rather than in the BVI.

Held, allowing the appeal, setting aside the orders dismissing the appellant's claim against the respondent and dismissing the counter appeal, judgment entered against the respondent in favour of the appellant in the amount of 1,554,102,387.86 rubles with interest to run from the date of the Wallbank J. Order until payment, at the rate of 5% per annum under the Judgments Act Cap 35, costs awarded to the appellant on appeal and in the court below to be assessed if not agreed within 14 days of the date of this order, that:

1. The June Ruling had the legal effect of assigning to the appellant a portion of the judgment debt created by the March Ruling. The June Ruling did not merely effect a procedural substitution of the appellant in place of the bankruptcy estate but rather operated as a partial assignment of the judgment debt established under the March Ruling. The rulings must be read together, as part of a single procedural continuum, grounded in Russian insolvency law. The effect of the June Ruling, properly construed under the *lex fori*, is that the appellant acquired a distinct, enforceable right to recover the portion of the judgment debt corresponding to its admitted claim in the Track bankruptcy. This conclusion is supported by the uncontested expert evidence that Russian law, following the 2017 insolvency reforms, permits such assignment mechanisms to enable creditors to enforce recovery independently. While there remains academic debate on the downstream distribution of proceeds, that does not alter the fact that the appellant stands as the assignee of a specific, quantifiable portion of the judgment debt.

   Flat Point Development Limited v Canisby Limited ANUHCVAP2016/0006 (delivered 7th December 2017, unreported) applied.

2. The June Ruling did not undermine the finality of the March Ruling. Rather, its purpose was to assign to the appellant a portion of Track's right to enforce the March Ruling, pursuant to Article 61.17 of the Russian Bankruptcy Law. The judgment expressly recorded the application as substituting the appellant as the creditor entitled to recover that portion of the claim. The Russian court confirmed that, under the applicable statutory framework, this right to recover, transferred to the creditor electing that mode of enforcement, upon substitution. The appellant acquired the

right to enforce its allocated share of the judgment debt in its own name. The March and June Rulings form part of a single cause of action: the enforcement of liability against the controlling persons of Track under Case No. A07-1646/2016. The June Ruling implemented a statutory mechanism for the assignment of enforcement rights, giving effect to the March Ruling which had imposed the underlying liability. When read together, the two judgments establish a clear and enforceable obligation for a definitive sum by providing that the respondent, jointly and severally with others, is liable to pay to Nokian a total sum of 1,554,102,387.86 rubles , comprising: 1,169,116,226.17 rubles (principal); 5,766,839.25 rubles (financial sanctions); 85,413,247.94 rubles (principal); and 293,806,074.50 rubles (financial sanctions). The existence and enforceability of the obligation must therefore be assessed by construing both judgments in tandem.

Russell v. Smyth (1842) 9 M. & W. 810, 819; **Schibsby v. Westenholz** (1870) L.R. 6 Q.B. 155 applied; **Godard and another v Gray and another** (1870) LR 6 QB at 139,149-150 applied; **Adams v Cape Industries PLC** [1990] 2 WLR 659 applied, **Rubin and another v Eurofinance SA and others** [2013] 1 AC 236 followed; **Dicey, Morris and Collins on the Conflict of Laws** (16th edn, Sweet & Maxwell 2022) considered; **Adrian Briggs, Private International Law in the English Courts** (2nd edn, Oxford University Press 2023) considered.

3. It is well established that a foreign judgment is impeachable for fraud under English law, and by extension BVI law, only where such fraud falls within the categories recognised in Rule 43 of Dicey, Morris and Collins on the Conflict of Laws. The claim of fraud however does not fall within the scope of Rule 43 and does not suffice to render the foreign judgments unenforceable. The alleged forgery relates to internal matters within Track, and was not shown to have been perpetrated or known by the appellant.

Owens Bank v Bracco [1994] 2 WLR 759 applied; **Dicey, Morris and Collins on the Conflict of Laws** (16th edn, Sweet & Maxwell 2022) considered; **Halsbury's Laws of England** (Vol. 19, 2024) considered.

4. While a foreign judgment obtained in breach of natural justice may be refused recognition on public policy grounds, the respondent's complaint is procedural and relates to a limitation imposed by Russian law at the time of the ruling. The inability to challenge the guarantee's validity was a consequence of the applicable procedural framework, not a denial of the right to be heard. The respondent, by her own evidence in the lower court, acknowledges that Track had an opportunity to be heard in the bankruptcy proceedings on the question of whether the Guarantee was forged. The respondent therefore has not established a denial of justice sufficient to violate basic principles of fairness under BVI law.

5. The 2017 amendments to Russian insolvency law are designed to facilitate creditor recovery from those who abuse corporate structures to shield themselves from liability, when their conduct justifies deviation from corporate separateness. The BVI courts are not being asked to override the Russian insolvency regime but to give

effect to judicial determinations rendered within it. The enforcement sought does not conflict with the collective aims of that regime; rather, it operates within its framework, following the assignment of claims by the bankruptcy trustee pursuant to Russian law. There is, therefore, no principled reason why the Rulings should be denied recognition on insolvency-related public policy grounds. The respondent's public policy objections to enforcement are therefore without merit and the underlying/related ground of appeal must be dismissed.

6. The Rulings constituted a debt for a definitive sum by the respondent in favour of the appellants and are not unimpeachable on the grounds cited in the Counter Appeal. The Rulings do not leave any matters outstanding, nor do they require any further judicial determination or procedural step in the foreign court to give them legal effect. They finally and authoritatively determine the respondent's liability and the quantum of the debt. Furthermore, the Rulings have not been impeached under any of the relevant exceptions under Rules 42 to 45 of Dicey, Morris and Collins on the Conflict of Laws, such as fraud, public policy, or lack of due process. The respondent's arguments in the Counter Appeal failed to establish any viable ground upon which the Rulings might be impugned. Accordingly, the Rulings are enforceable in the BVI. They are *res judicata* between the parties and therefore, they are final and conclusive as against the respondent.

Nouvion v Freeman (1889) LR 15 App Cas 1 applied; **Dicey, Morris and Collins on the Conflict of Laws** (16th edn, Sweet & Maxwell 2022) considered.

JUDGMENT

[1] **TAYLOR-ALEXANDER, JA [AG.]:** This is an appeal against the Order of a Judge of the Commercial Division of the British Virgin Islands (the "learned judge") dated 4th April and 30th September 2022 (the "Order") together with the learned judge's written judgment of the same date (the "judgment") dismissing the appellant's claim for enforcement of a money judgment (the "Claim") of the Commercial Court of the Republic of Bashkortostan in the Russian Federation (the "Russian Court") recorded in rulings dated 28th March 2019 (the "March Ruling") and 13th June 2019 (the "June Ruling"); together with the March Ruling, the ("Russian Judgment") (paragraph 1 of the Order) and awarding the respondent her costs of the Claim (paragraph 2 of the Order).

Background

[2] There were two rulings issued by the Commercial Court of the Republic of Bashkortostan in the Russian Federation ("the Russian Court"), which are at the heart of the British Virgin Islands (BVI) litigation. In these rulings, the respondent and Andrei Valerevich Smyshliaev ("Mr. Smyshliaev") were found jointly and severally liable to the appellant for the sum of 1.5 billion rubles ("the Judgment Sum").

[3] The appellant is principally engaged in automotive parts trading and is a subsidiary company of Nokian Tyres, which is a major European tyre producer. The appellant entered into a Sale and Purchase Agreement dated 28th February 2014 with Russhina-Tyumen LLC ("Russhina"), a Russian company, under which Russhina agreed to purchase the appellant's products ("the Supply Agreement"). Separately, on 3rd March 2014, the appellant, acting as principal, concluded a surety agreement with Track LLC ("Track"), another Russian company engaged in tyre distribution. Track, which belongs to the same corporate group as Russhina, guaranteed Russhina's payment obligations under the Supply Agreement. Despite these arrangements, Russhina defaulted on its payment obligations, and Track failed to honour its guarantee.

[4] The Smyshliaeves were involved in the operations of both Track and Russhina. Mr. Smyshliaev is the sole shareholder of Russhina and is alleged to have been the ultimate beneficial owner of Track. The Russian Court determined that the true managers and owners of Track included Mr. Smyshliaev, Ms. Smyshliaeva (his wife), Ms. Salmanova (Ms. Smyshliaeva's mother), and one additional individual.

[5] On 2nd March 2016, the Russian Court held Track to be insolvent and bankruptcy proceedings were initiated before that court. On 21st June 2018, an interim freezing injunction was granted ex parte in the BVI against Averon, a BVI company that owns a motor yacht, "Olga", in support of proceedings in Russia to recover debts owed to the appellant by the respondent and Mr. Smyshliaev on the basis that there is good

reason to believe the yacht is ultimately beneficially owned by Mr. Smyshliaev. On 28th March 2019, the Russian Court issued a ruling ("the March Ruling") holding Track's owners liable for the company's debts. This ruling was delivered in response to an application filed by Track's bankruptcy receiver, which sought to impose secondary (or "subsidiary") liability on individuals who had unlawfully siphoned assets from Track.

[6] The March Ruling summarised the Russian Court's decision on this point in the following terms:

> "To recover 3,228,393,383.31 rubles jointly and severally from Lidia Mikhailovna Salmanova, Evgenii Mikhailovich Federov, Olga Borisovna Smyshliaeva, Sergei Aleksandrovic Gorokhov, Andrei Valerevich Smyshliaeva in the framework of subsidiary liability to the bankruptcy estate of the Limited Liability Company Track ("Track's owners")."

[7] In its March Ruling, the Russian Court awarded judgment against Track's owners for 3.2 billion rubles in favour of Track's bankruptcy estate, imposing on them joint and several liability. This sum represented the aggregate debts owed by Track to its creditors, including the outstanding amount due to the appellant.

[8] On 13th June 2019, the Russian Court issued a further ruling ("the June Ruling") in response to an application by Track's insolvency receiver. The application sought to substitute the recoverer in the March Ruling for the purpose of enforcing joint and several liability against Lidia Mikhailovna Salmanova, Evgenii Mikhailovich Fedorov, Olga Borisovna Smyshliaeva, Sergei Aleksandrovich Gorokhov, and Andrei Valerevich Smyshliaeva.

[9] In the June Ruling, the Russian Court, acting under applicable Russian law, allocated a proportionate share of Track's claims to the appellant. This was effected by substituting the appellant for Track as an enforcement creditor, a recognised remedy under Russian insolvency law that serves as an alternative to Track pursuing claims collectively on behalf of all creditors. As a result, the appellant

became a judgment creditor of the respondent. The June Ruling specified the following:

> "Guided by Article 61.17 of the Federal Law 'On Insolvency (Bankruptcy)', Articles 150,184, 223, of the Code of Commercial Procedure of the Russian Federation, the court
>
> HAS RULED AS FOLLOWS
>
> To satisfy the application of insolvency receiver of Limited Liability Company Track….Aleksei Vicheslavovich Emelianov for substitution of the recoverer in accordance with the ruling of the Commerical Court of the Republic of Bashkortostan dated March 28, 2019.
>
> (1) To substitute Limited Liability Company Track….as the recoverer in accordance with the ruling of the Commercial Court of the Republic of Bashkortostan dated March 28, 2019 by Limited Liability Company Nokian Shina…in respect of the claims in the amount of 1,169,116,226.17 rubles of the principal debt, 5,766,839.25 rubles of financial sanctions with the priority of satisfaction as the claims of third-priority creditors included in the register of creditors' claims;
>
> - In respect of claims in the amount of 85,413,247,94 rubles of the principal debt recorded in the register of creditors' claims, and 293,806,074.50 rubles of financial sanctions- at the expense of the debtor's property remaining after the satisfaction of the creditor's claims included in the register of the debtor's creditor's claims."

[10] The appellant has received only a fraction of the Judgment Debt through Russian insolvency proceedings, approximately 8.5 % of the total due.

[11] By claim form dated 24th July 2020 ("the claim")[1], the appellant commenced proceedings in the High Court of Justice (Commercial Division) in the BVI against the respondent and Mr. Smyshliaev by which the appellant sought the following:

(i) The enforcement of the March and June Rulings against Mr. Smyshliaev and the respondent;

(ii) The sum of 1,554,102,387.86 rubles being the total amount of the Judgment Debt arising under the March and June Rulings, comprising

[1] Pages 156-158 of the Core Bundle filed on 2nd February 2024.

a total principal of 1,254,529,474.11 rubles plus total interest and total costs of 299,572,913.75 rubles);

(iii) Interest from the date of the March Ruling and June Ruling until the date of payment at judgment rate of 5% per annum; and

(iv) Costs.

[12] Both Mr. Smyshliaev and the respondent were served with the claim form and statement of claim, to which they both filed acknowledgements of service, however, only the respondent filed a defence to the claim. The appellant therefore filed a request for entry of judgment in default against Mr. Smyshliaev.

[13] The trial of the claim occurred on 4th April 2020 and judgment was delivered on 30th September 2022[2] ("the judgment"), wherein the learned judge dismissed the claim against the respondent and awarded her costs of the claim and ordered that the court will hear the parties further on the disposition of the claim against Mr. Smyshliaev.

The Appeal

[14] By notice of appeal filed on 22nd April 2024[3], the appellant sought to challenge the judgment delivered on 30th September 2022 and advanced the following grounds of appeal:

(1) The court wrongly concluded that the Russian Judgment did not constitute a judgment for a definite sum of money enforceable by the appellant against the respondent.

(2) The court failed to give any (alternatively, any sufficient) consideration or weight to the appellant's pleaded case that the June Ruling had the effect of assigning the debt created under the March Ruling to the appellant.

[2] BVIHCM 2022/0113 (delivered on 30th September 2022, unreported)
[3] Page 3 of the Core Bundle filed on 2nd February 2024.

The Counter Notice

[15] On 22nd December 2022, the respondent filed a notice of opposition and counter notice[4], opposing the appeal. The respondent asserted that the appellant must prove to the Court that the learned judge erred in favour of the respondent in the lower court. The respondent made reference to its trial skeleton argument and stated that in addition to the learned judge's reasoning being sound, it is likely that he considered other facts beyond what was explicitly stated In the judgment. The respondent stated that the judgment should be upheld, and the appeal dismissed.

[16] The respondent also proffered that a Russian expert report indicates that both the March and June Rulings were obtained through fraud, based on a forged guarantee which may be rescinded or varied by the Russian Court, and which violates BVI public policy. Additionally, the respondent was initially unable to challenge the guarantee's validity in the Russian proceedings, and the judgments were made without critical evidence, thereby breaching natural justice.

[17] The counter notice also emphasized that, given the respondent's bankruptcy, any claims should be pursued through the Russian bankruptcy proceedings rather than in the BVI.

Issues for Determination

[18] From the notice and counter notice of appeal and the written and oral submissions of the parties, the following issues appear to be under challenge:

(1) Did the June Ruling operate to assign to the appellant the debt established under the March Ruling?

(2) Should the March and June Rulings be construed together as constituting a foreign judgment for a definite sum, enforceable by the appellant against the respondent?

(3) Are the March and June Rulings final and conclusive as against the respondent?

[4] Pages 9-12 of the Core Bundle filed on 2nd February 2024.

(4) Are the March and June Rulings unenforceable in the BVI as being contrary to public policy?

Whether the June Ruling had the effect of assigning the debt created under the March ruling to the appellant.

The appellant's Submission (Ground 1)

[19] The appellant submits that the learned judge treated the March and June Rulings as distinct and independent instruments requiring separate evaluation, rather than considering the legal implications arising from their combined effect. This artificial separation the appellant submits, failed to account for the legal significance of the Rulings when considered together and led to the flawed conclusion that the June Ruling merely effected a procedural substitution of the appellant as judgment creditor for part of the debt under the March Ruling and no freestanding obligation to pay a definite sum to the appellant arose. As a result, the learned judge determined that there was no judgment debt owed by the Smyshliaeves to the appellant that could be enforced at common law.

[20] The appellant contends that the learned judge failed to properly consider its argument that the June Ruling represented not a mere procedural substitution, but the partial assignment of the judgment debt established in the March Ruling. The appellant further submits that in determining the legal effect of the June Ruling, the learned judge was required to consider the law applicable to judgment debts and, by necessary extension, to the assignment of such debts.

[21] Specifically, the appellant argues that the nature and effect of the June Ruling is governed by the *lex fori* that is, the law of the jurisdiction in which the judgment was issued, the Russian Federation. Had the learned judge properly applied this principle, the only correct conclusion would have been that the June Ruling effected

a partial assignment of the judgment debt established in the March Ruling to the appellant, corresponding to the amount owed to it by the debtor, Track.

[22] In support of this position, the appellant relies on the explanation of Professor Adrian Briggs:

> "Judgment debts are governed—born, regulated, supervised, terminated—by the law of the country giving the judgment."[5]

In accordance with that governing law, the June Ruling arose out of an application by the insolvency receiver of Track, the original claimant in the proceedings under Case No. A07-1646/2016, the same proceedings in which the March Ruling ordered the joint and several recovery of funds from Track's owners, including the respondent. The receiver applied to the Russian Court to substitute the Track bankruptcy estate with the appellant and other creditors as the new beneficiaries of the judgment debt, allocating shares of the debt in proportion to what Track owed to each of them. The effect of the June Ruling, properly understood under Russian law, was therefore to assign to the appellant a portion of the judgment debt created under the March Ruling, giving rise to an enforceable right in the appellant's favour under common law principles.

[23] The appellant relies on the opinion and evidence of their expert Professor Rustem Timurovich Miftakhutdinov who provided evidence in the court below regarding the legal effect of the Russian rulings. Professor Miftakhutdinov concluded that by virtue of the June Ruling, the appellant acquired the right to independently enforce the judgment debts against the Track Owners.

[24] The appellant asserts that both parties' experts agreed that the June Ruling effected an assignment of obligations established under the March Ruling, notwithstanding the experts' divergence on the incidental legal consequences of such assignment. They rely on the statement of Mr. Vaneev, the Respondent's expert who in his first

[5] Adrian Briggs 'Private International Law in English Court' (2nd ed., Oxford University Press, 2023) at page 615.

report (Vaneev 1) at paragraph 33 reached the same conclusion as their expert on the effect of the 2017 Insolvency law reforms when he said, “Now the creditors can require an assignment of a claim in an amount equal to the amount of their claims that are still not satisfied in the bankruptcy proceedings”

[25] The appellant submits that had the learned judge addressed this alternative way of assessing the two rulings, he should have concluded that the appellant had the benefit of a debt by reason of the assignment, which would have provided a sufficient basis for him to uphold the appellant’s claim and enter judgment in its favour.

The Respondent’s case (Ground 1)

[26] While the respondent opposes the appeal, she emphasizes her inability to fully contest it, due to lack of financial resources. She however relied on the findings of the learned judge and submitted that the learned judge would have considered factual and legal matters advanced in her trial submissions, even if not exhaustively addressed in the judgment.

[27] In the respondent’s trial submissions she argued that the assignment mechanism in the June Ruling did not transform the debt into a "judgment" for enforcement purposes but merely altered the creditor’s identity. Secondly even if the judgments were technically enforceable, the BVI court should refuse recognition on the grounds of public policy as the signature of the respondent was obtained by fraud.

[28] The respondent submits that the June Ruling transferred to the appellant the right previously held by the bankruptcy trustee to enforce claims against subsidiary debtors, including the respondent’s, up to the full value of the creditor’s claim in the bankruptcy. This claim was quantified as 1,254,529,474.11 rubles in principal and 299,572,913.75 rubles in interest. Importantly, they highlighted that under Russian bankruptcy law, principal and interest carry different priorities.

[29] The respondent highlights that the appellant was not alone in opting for this enforcement method; three other creditors also sought and obtained similar assignments. Under Russian law, any creditor may request a writ of enforcement within three years of making such an election. The respondent submits that such assignment does not alter the collective nature of Russian bankruptcy proceedings. She relies on the evidence of her expert, Mr. Alexander Vaneev, that with such assignments any recoveries must still be distributed *pari passu* among creditors with writs of execution, preserving the collective framework of the insolvency regime.

[30] This approach she submits is to be preferred to the radical approach of the appellant's expert, Mr. Miftakhutdinov, who argued that the assignment transformed the creditor's position, allowing individual enforcement akin to a standalone debt claim, even outside Russia. Under this view, the appellant could recover and retain proceeds without accounting to other creditors. Mr. Vaneev contends there is no statutory basis for such a radical position. She submitted that because of the nature of the assignment, the June Ruling is arguably neither for a fixed sum nor final.

The Experts Reports

[31] The learned judge accepted that both experts were imminently able to offer guidance of Russian Insolvency law, although he ultimately expressed a preference for the opinion of Mr. Miftakhutdinov. At paragraph [40] of the judgment, he referenced the credentials of the experts. He said:

> "[40] The expert instructed by the Claimant, Mr. Rustem Timurovich Miftakhutdinov, is a former judge of the Russian Supreme Commercial Court, one of the most senior judicial positions in Russia. He worked in the Russian Court system from 2001 to 2014, including as a Judge of the Commercial Court of Tatarstan Republic prior to his appointment to the Supreme Court. He is now an associate professor at the department of Commercial Law and Commercial Procedure at the Private Law Research Centre. As a Judge, he dealt with insolvency cases and took part in the drafting of many Russian laws relating to insolvency. Accordingly, his expertise in addressing these types of questions is undoubtedly significant. The expert instructed by the Second Defendant, Mr.Vaneev, is a lawyer in private practice, having begun practicing in 2006.His experience appears to be in commercial practice."

[32] An examination of the expert evidence before the lower court on the effect of the two Rulings and the effect of the June Ruling, offers some perspective. In Vaneev 1, Alexander Vaneev the respondent's expert explained the legislative background underpinning the March and June Rulings. He said:

> "In accordance with paragraph 34 of Article 2 of the Insolvency Law, a person controlling a debtor is a person who has or had the right to give instructions binding on the debtor or the right to otherwise determine the debtor's actions not more than three years before the moment when the commercial (arbitrazh) court accepted an application to declare the debtor bankrupt for consideration.
>
> According to Article 10(4) of the Insolvency Law." If a debtor is declared bankrupt due to the actions and (or) omissions of the debtor's controlling persons, such persons are subsidiary liable for the debtors obligations. Until proven otherwise, it is presumed that the debtor has been declared bankrupt due to the actions and (or) inactions of the debtor's controlling persons, if one of the following circumstances exist:
>
> -damage to the property rights of the creditor has been caused as a result of one or more transactions of the debtor, including the transactions referred to in Articles 61.2 and 61.3 of this Federal Law, carried out by or in favour of this person or approved by this person.
>
> "…"
>
> If a debtor is declared bankrupt due to the acts and or omissions of several persons controlling the debtor, these persons are jointly and severally liable.
>
> *"…""*

[33] He clarified that there were two rulings issued by the Commercial Court of the Republic of Bashkortostan during the bankruptcy proceedings of Track. He stated that the March Ruling held the Mr. Smyshliaev and the respondent jointly and severally liable, alongside other parties, for Track's debts. This ruling mandated that Mr. Smyshliaev and the respondent, along with others, be subject to subsidiary liability, with recovery to be made from them for Track's bankruptcy estate.

[34] The court determined the amount of subsidiary liability to be equal to the total outstanding creditors' claims due to the debtor's insufficient assets. Mr. Vaneev

stated that the total amount of subsidiary liability for the controlling parties, as granted by the court, amounted to 3,228,292.38 rubles. This sum was to be recovered not from one controlling party but jointly and severally from all the controlling parties liable for the debt.

[35] He explained that, in accordance with Article 61.17(1) of the insolvency law, the bankruptcy administrator is required to notify creditors, allowing them to choose the method of enforcement to bring the debtor's controlling parties to subsidiary liability. He outlined three enforcement methods available under Article 61.17(2):

(1) Recovery of the subsidiary liability debt from the controlling persons through bankruptcy proceedings.

(2) Sale of the subsidiary liability debt by the bankruptcy administrator as an asset of the debtor in accordance with insolvency law.

(3) Assignment of a portion of the subsidiary liability debt to a creditor, equal to the creditor’s claim.

[36] The bankruptcy administrator prepares and submits to the Commercial Court a report on the method of enforcement chosen by the creditors, which shall include information on the choice made by each creditor, the amount of the claim of each creditor, and the order of satisfaction of the claim of each creditor. When enforcement via assignment is chosen, the Commercial Court on the basis of the report prepared by the bankruptcy administrator, substitutes the debtor with the creditor in the role of the recoveror under the court act to bring the debtors controlling persons to subsidiary liability, with the creditors who have chosen enforcement by means of assignment.

[37] The court then issues a writ of execution in the creditor’s name, specifying the amount owed and the way the claim will be satisfied. A writ of execution is also issued in the debtor’s (Nokian’s) name for the remaining portion of the subsidiary liability claim.

[38] Mr. Vaneev explained that Article 61.17(6) of the Insolvency Law provides that a creditor who has chosen enforcement by means of assignment acquires part of the subsidiary liability claim, equal to the size of their claim against the debtor, from the moment the Commercial Court issues its ruling. If the creditor's claim is partially or fully satisfied by the persons held subsidiary liable, the amount of the creditor's claim against the debtor, any guarantor, or any other liable individual will be reduced accordingly. He nevertheless opined that the "assignment" of enforcement rights does not disturb the collective nature of the bankruptcy regime in Russia, and that should recovery be made, such must be distributed in accordance with the rules of bankruptcy *pari passu* amongst the creditors who have taken out writs of execution.

[39] Rustem Tumurovich Miftakhutdinov is the appellant's expert. He explained the nature of a subsidiary liability claim. He explained that such a derivative action is brought in the interests of a group of persons. He clarified that these claims are considered derivative because, although the claimant (Track) is the debtor company itself, the claims are brought by authorized persons in the name of the creditors. The creditors receive compensation indirectly, as the funds recovered are added to the insolvency estate, from which creditors' claims are subsequently satisfied.

[40] He explained that Russian civil and commercial procedures classify claims into three categories: (1) claims to compel, (2) claims for declaratory relief (also known as claims for recognition), and (3) transformative claims, with claims to compel being the most common. In such claims, the claimant asks the court not only to recognize the existence of their disputed substantive right but also to compel a defendant to either perform a specific act or refrain from doing so. The aim of claims to compel is twofold: first, to secure judicial recognition of the claimant's rights, and second, to compel the defendant to fulfill a specific duty.

[41] Professor Miftakhutdinov stated that by the March Ruling, the Russian Court expressly recognized Track's substantive right, as insolvent debtor, to recover

damages from the respondent and others, for harm caused to Track's creditors; and issued a mandatory order for payment of such damages. He stated that judgments rendered prior to the 2017 insolvency law reforms would have been final and enforceable, and Track would have held exclusive enforcement rights. Affected creditors could only have sought compensation through Track's bankruptcy estate, and for pro rata distribution based on claim values of each creditor.

[42] In paragraphs 38 to 43 of his first report, he explained that Russian law on liability in insolvency cases underwent significant and rapid development. Under the earlier legal regime, the Federal Law on Insolvency addressed the liability of controlling persons only by referring to Chapter 56 of the Russian Civil Code (RCC). In contrast, current law now includes a dedicated chapter addressing this liability in detail. The nature of such liability was once a subject of academic debate until the Supreme Court of Russia clarified the matter in its Presidium Resolution No. 9127/12 (6th November 2012), confirming that Chapter 59 of the RCC, which governs tortious liability, as it applies to controlling persons.

[43] Professor Miftakhutdinov stated that legislative reform was necessary because, under the previous regime, the recovery of damages was largely ineffective. Specifically, Article 56 of the RCC and its mirror provision in Article 10 of the Federal Insolvency Law failed to provide an effective basis for pursuing secondary liability. The modern doctrine of secondary liability, as known today, was shaped by the 2009 reform and prompted by widespread abuses of the corporate form by company owners. Prior to the reform, courts were reluctant to impose liability on controlling persons and cautious in awarding damages, leaving creditors inadequately protected.

[44] Reforms from 2009 to 2015 improved judicial willingness to impose secondary liability on dishonest controlling persons. However, enforcement of these judgments remains problematic. He highlighted several reasons: enforcement proceedings are costly; auctioning debtors' assets is inefficient; and there are legal uncertainties

about the priority of claims by controlling persons in insolvency. He said that recovering funds from controlling persons is often prohibitively expensive and procedurally complex. Judgment enforcement is hindered by the need to pay administrators, resistance from controlling persons, and the difficulty of selling judgment debts at auction. According to the Federal Tax Service's statistics, only about 0.25% of secondary liability judgments are successfully enforced. He attributed poor enforcement rates to several factors: (i) controlling persons conceal assets before judgment due to the late accrual of claims and difficulties in obtaining interim relief; (ii) true beneficiaries are obscured behind nominee directors and founders; (iii) conceptual flaws in the insolvency law and its inconsistent application by courts hinder effective creditor response; and (iv) asset auctions are generally inefficient.

[45] He says the 2017 law reform was a statutory response to the said ineffectiveness. He said the reforms fundamentally altered this framework. It addressed challenges faced by creditors in enforcing claims against controlling persons. The reform allowed creditors to independently determine the portion of the judgment debt they were entitled to and recover that portion without needing to join forces with other creditors and pursue enforcement of the entire judgment debt through auction under Article 140 of the Federal Law on Insolvency. Mr. Miftakhutdinov explained that the reform also introduced additional ways to improve the effectiveness of enforcement. For instance, a creditor's claim could be pursued outside of or after insolvency proceedings, or even in the absence of such proceedings, particularly in cases where there were insufficient funds to finance the insolvency process.

[46] He noted that the amendments introduced two key improvements: (1) a more efficient procedure for obtaining interim remedies, as the lack of effective remedies previously hindered subsequent enforcement of a judgment, and (2) a provision allowing a creditor to substitute the debtor in enforcement proceedings when the debtor's claim remained unsatisfied due to the actions of a dishonest director or owner who had driven the company into insolvency. These amendments

empowered creditors to take independent steps to enforce judgments in proportion to their claims.

[47] Both Professor Miftakhutdinov and Mr. Vaneev confirmed that Article 61.17 of the Federal Law on Insolvency permits creditors to petition the bankruptcy administrator for selected enforcement modalities, and three distinct enforcement options exist under this provision.

[48] Professor Miftakhutdinov concurred that in this case the creditors collectively elected the third enforcement option, as formalized in the June Ruling and this option operated as a procedural substitution mechanism, whereby Track was replaced in enforcement proceedings by its creditors. Each creditor became entitled to recover a portion of the judgment debt, corresponding to the damages caused by the controlling persons' dishonest actions to that creditor. The replacement did not apply to the entire judgment debt but was instead based on the pro rata amount to which each creditor was entitled.

[49] Professor Miftakhutdinov explained that the June Ruling modified the enforcement procedure established by the March Ruling. It substituted Track with certain of Track's creditors as the designated recoverors. He stated the June Ruling vested the appellant with an autonomous right to enforce its proportionate share of the damages as specified in the judgment's dispositive provisions.

[50] It also helpful to this discourse to recall the terms of the March and June Rulings. The June Ruling was previously recited at paragraph [9] above provided:

> "Guided by Article 61.17 of the Federal Law 'On Insolvency (Bankruptcy)', Articles 150,184, 223, of the Code of Commercial Procedure of the Russian Federation, the court
>
> HAS RULED AS FOLLOWS
>
> To satisfy the application of insolvency receiver of Limited Liability Company Track….Aleksei Vicheslavovich Emelianov for substitution of the recoverer in accordance with the ruling of the Commerical Court of the Republic of Bashkortostan dated March 28, 2019.

(2) To substitute Limited Liability Company Track….as the recoverer in accordance with the ruling of the Commercial Court of the Republic of Bashkortostan dated March 28, 2019 by Limited Liability Company Nokian Shina…in respect of the claims in the amount of 1,169,116,226.17 rubles of the principal debt, 5,766,839.25 rubles of financial sanctions with the priority of satisfaction as the claims of third-priority creditors included in the register of creditors' claims;

- In respect of claims in the amount of 85,413,247,94 rubles of the principal debt recorded in the register of creditors' claims, and 293,806,074.50 rubles of financial sanctions- at the expense of the debtor's property remaining after the satisfaction of the creditor's claims included in the register of the debtor's creditor's claims."

[51] The Russian Court's order in the March Ruling is contained at paragraph 13 of the appellant's submissions and it is in the following terms:

> "The amount of claims of the creditor Nokian Shina LLC equals 1,554,102,387.86 rubles, including 1,169,116,226.17 rubles of the principal debt, 5,766,839.25 rubles of financial sanctions, 85,413,247.94 rubles of the principal debt recorded in the register of creditors' claims, and 293,806,074.50 rubles of financial sanctions recorded as off-register creditors' claims.
> ...
> Insolvency receiver received from the creditors Nokian Shina LLC, ...applications on selection of the method of exercising the right of claim for bringing subsidiary liability with request to assign a part of the claim for imposition of subsidiary liability.
> ...
> Within the meaning of ... the Bankruptcy Law, a claim in the relevant part passes to the creditor who has selected the assignment (subparagraph 3, paragraph 2, Article 61.17 of the Bankruptcy Law) ... regardless of selection made by other creditors. Their consent to the assignment is not required.
> ...
> In view of the above, the court considers that the application of the insolvency receiver is subject to satisfaction. In accordance with paragraph 6, Article 61.17 of the Federal Law 'On Insolvency (Bankruptcy)', the creditor who has selected the method provided by subparagraph 3, paragraph 2 of this Article [i.e. the assignment method], from the moment of passing a ruling by the commercial court on substitution of the recoverer by this creditor, acquires part of the claim for imposition of subsidiary liability equal to the amount of claim of this creditor to the debtor.

> Such transfer of claim does not reduce the amount of this creditor's claim to the debtor, the person who provided security or other persons to whom the claim may be made in accordance with this Chapter.
>
> In case of full or partial satisfaction of the creditor's claim by the person held liable, the amount of claim of this creditor to the debtor, the person who provided security or other persons to whom the claim may be made in accordance with this Chapter is reduced in the relevant amount."

Assessment

[52] I accept the appellant's submission that, under established principles of private international law, the *lex fori* governs the nature and assignability of judgment debts. This principle was affirmed by our Court in **Flat Point Development Limited v Canisby Limited**[6] , where the majority upheld the appeal. In her leading judgment, Blenman JA (as she then was) confirmed at paragraph 33 that the enforcement of foreign judgments must be evaluated through the lens of the standards of justice and public policy applicable in the forum jurisdiction.

[53] The appellant submits that the correct legal approach is to construe the March and June Rulings together, as components of a single enforcement process, in order to assess their combined legal effect under Russian law - the law governing the original proceedings. The appellant argues that the June Ruling was not simply a procedural substitution of the bankruptcy estate but instead functioned as a partial assignment of the judgment debt originally established by the March Ruling. According to the appellant, Russian law recognises that the June Ruling transferred to it a proportionate share of the judgment debt, equivalent to the amount Track owed to the appellant.

[54] I have considered the expert evidence on the purpose of and the effect of the reforms and the proceedings before the Russian Courts. The Rulings arose within a single cause of action for the enforcement of the liability of Track's controlling persons under Case No. A07-1646/2016. The June Ruling, made subsequently,

[6] ANUHCVAP2016/0006 (delivered 7th December 2017, unreported).

gave effect to Article 61.17 of the Russian Federal Law on Insolvency which provides a mechanism for the assignment of enforcement rights to individual creditors. The purpose of this mechanism is to allow creditors to pursue recovery directly. On this point, there is no material dispute between the parties.

[55] The respondent's position that recoveries obtained under such assignments must still be distributed *pari passu* under the collective insolvency framework does not, in my view, undermine the appellant's position that an assignment of the judgment debt occurred. It is common ground between the parties, and indeed between their respective experts, that an assignment did take place. The core dispute is the legal effect of that assignment, whether it created an individual enforceable right in the appellant's favour or whether enforcement remained restricted to the collective administration of the bankruptcy estate.

[56] While the respondent emphasizes the traditional collective character of insolvency proceedings in Russia, her expert does not dispute that assignments of claims are now permissible under the post-2017 regime. Rather, she disputes that such assignments confer a fully independent right to retain proceeds outside the collective structure.

[57] In light of the foregoing, I am satisfied that the June Ruling did not merely effect a procedural substitution of the appellant in place of the bankruptcy estate but rather operated as a partial assignment of the judgment debt established under the March Ruling. The rulings must be read together, as part of a single procedural continuum, grounded in Russian insolvency law. The effect of the June Ruling, properly construed under the *lex fori*, is that the appellant acquired a distinct, enforceable right to recover the portion of the judgment debt corresponding to its admitted claim in the Track bankruptcy.

[58] This conclusion is supported by the uncontested expert evidence that Russian law, following the 2017 insolvency reforms, permits such assignment mechanisms to enable creditors to enforce recovery independently. While there remains academic

debate on the downstream distribution of proceeds, that does not alter the fact that the appellant stands as the assignee of a specific, quantifiable portion of the judgment debt.

[59] I therefore conclude that the June Ruling had the legal effect of assigning to the appellant, a portion of the judgment debt created by the March Ruling.

Whether the March and June Rulings must be construed together as constituting a foreign judgment for a definite sum, enforceable by the appellant against the respondent.

[60] The appellant contends that the learned judge erred in interpreting the June Ruling in a manner that impeded its enforcement as a debt under common law. The appellant provides three reasons to demonstrate that the learned judge's approach was incorrect.

[61] First the appellant submits that, the learned judge based his decision on a passage from **Dicey, Morris and Collins on the Conflicts of Laws[7] ("Dicey")** that he incorrectly interpreted. The relevant passage in Dicey stated:

> "For a claim to be brought to enforce a foreign judgment, the judgment must be for a definite sum of money, which expression includes a final order for costs, e.g. in a divorce suit. It must order X, the defendant in the English action, to pay A, the claimant, a definite and actually ascertained sum of money; but if a mere arithmetical calculation is required for the ascertained of the sum it will be treated as being ascertained; if, however, the judgment order him to do anything else e.g. specifically perform a contract, it will not support an action though it may be res judicata as to the issues of substance, with the consequence that there may be summary judgment as to liability on a fresh claim brought on the original action."

[62] The appellant argues that the learned judge took this passage out of context and wrongly treated it as if it were statutory language. The learned judge insisted that the foreign judgment must provide express language such as "Ms. Smyshliaeva shall pay to Nokian the Judgment Sum" for it to be enforceable. The appellant

[7] Dicey, Morris & Collins on the Conflict of Laws (16th edn, Sweet & Maxwell 2022) r 42.

submits that the learned judge failed to consider key case law such as **Sadler v Robins**[8] as well as **Hall v Odber**[9] which were both cited in **Dicey**, which had he considered it, he would have had a broader appreciation of the context of rule 42 of **Dicey.**

[63] In **Sadler v Robins**, the English Court held that a foreign judgment for an amount subject to costs that had not been taxed could not be enforced, as it was not a definite sum. In contrast, in **Hall v Odber**, the Court found a Quebec judgment with a fixed sum, but with interests and costs to be taxed, enforceable, as the sum was considered definite despite the need for further calculation. The appellant argues that both cases demonstrate that a foreign judgment can be enforced even if the exact amount is not explicitly stated therein, if it is ascertainable from the judgment.

[64] The appellant submits that the learned judge fell into error by focusing only on the formal, operative part of the June Ruling while he overlooked crucial sections, including the Russian Court's reference to Article 61.17 of the Federal Law on Insolvency. This provision specifies that a creditor who selects a particular method of recovery acquires part of the claim for subsidiary liability equal to the amount owed.

[65] The appellant submits that the learned judge ought to have properly considered the entirety of the June Ruling, to ascertain what obligation was imposed by it and in order to properly determine whether that obligation was to pay a fixed and definite sum of money to the appellant. Had he done so he would have concluded that the March and June Rulings are interconnected and must be read together. The June Ruling explicitly refers to the March Ruling and, when considered in tandem, creates a clear liability for the respondent to pay the Judgment Sum to the appellant.

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[8] (1807) 170 E.R. 948
[9] (1809) 103 E.R. 949.

[66] The appellant submits that the learned judge's approach to the June Ruling stands in stark contrast with his analysis of the March Ruling, wherein the learned judge correctly determined that the foreign judgment ordered a fixed sum of money, and emphasized at paragraph 147 of the judgment that:

> "It bears stating that in considering whether a judgment orders a defendant to pay a definite sum of money, this must mean that the court has to discern the effect of the judgment in question. Simply put, the Court has to ask itself 'what does the judgment purport to do?' The Court is not looking for adhesion to a specific verbal formula. There are potentially many different ways of expressing what it is that a judgment purports to do, and these may be coloured by national and cultural modes of expression and the commonly understood norms of a particular legal system."[10]

[67] The appellant also submits that the learned judge made a fundamental error by conflating the obligation created by the foreign judgments, that is, the March and June Rulings with the documents or instruments used to determine that obligation.

[68] Thirdly, the appellant draws the Court's attention to the appellant's expert evidence[11] as well as the Respondent's expert evidence.[12] The learned judge's conclusion was inconsistent with both experts' evidence on Russian Law and the parties' factual evidence. The learned judge incorrectly stated that neither party's experts directly stated that the June Ruling created an obligation for the Smyshliaeves to pay the respondent the judgment sum. The appellant submits that the learned judge overlooked the appellant's factual evidence, which showed that the Russian Court had issued writs of execution for the enforcement of the debt under the June Ruling, clearly indicating that the June Ruling imposed a definite obligation to pay the appellant. Furthermore, he unfairly singled out the appellant's expert for not treating the March and June Rulings separately, despite the Court's own instructions that the experts should consider them together. The appellant argues that the learned judge should have concluded that the June Ruling created

[10] BVIHCM 2020/0113 (delivered on September 30th, 2022, unreported) at paragraph 147.
[11] Page 210 of the Core Bundle filed on 2nd February 2024.
[12] Page 228 of the Core Bundle filed on 2nd February 2024.

a debt under Russian Law and should have been recognized as a foreign judgment under the laws of the BVI.

Summary of the Respondent's Position Regarding the two Rulings

[69] In its Counter-Notice, the respondent did not dispute the appellant's submission that the March and June Rulings, when read together, may constitute a judgment. However, the respondent contests the appellant's further submission that these rulings amount to a foreign judgment for a definite sum capable of enforcement against the respondent. The respondent argues that the rulings are neither final nor binding. This is said to be due not only to the variable nature of the sums referenced, but also to the fact that the judgments remain susceptible to rescission or variation by the Russian court. Specifically, the respondent asserts that the March and June rulings were made on the basis of a guarantee which has since been determined to be forged and that a judgment which remains liable to alteration or setting aside cannot be considered final for the purposes of enforcement.

[70] Expounding on these two points, the respondent submitted before the lower court that the Rulings were issued solely as a consequence of, and within the context of, the bankruptcy proceedings involving Track. She contended that the rulings have effect only within the framework of those insolvency proceedings.

[71] At paragraphs 19 to 23 of her defence statement filed before the lower court, the respondent addressed the nature and effect of the rulings. She contends that the first relevant judgment (the March Ruling) does not constitute a final money judgment against her capable of enforcement in the British Virgin Islands or any other jurisdiction. Rather, its effect is to permit Track's bankruptcy trustee to pursue individuals subject to subsidiary liability in order to recover assets for inclusion in Track's bankruptcy estate, to be distributed among creditors on a *pari passu* basis.

[72] The respondent denies that the second relevant judgment (the June Ruling) entitles the appellant to collect any purported debt owed by Track outside the scope of Track's bankruptcy proceedings.

The effect of the June Ruling, as summarised by the respondent, is as follows:

(a) The bankruptcy trustee's right to pursue individuals with subsidiary liability was assigned to various creditors;

(b) In the appellant's case, the June Ruling specifies that the claims were assigned in the amounts of 1,169,116,226.17 rubles (principal) and 5,766,839.25 rubles (financial sanctions), and a further 85,413,247.94 rubles (principal) and 293,806,074.50 rubles (financial sanctions), totalling 1,554,102,387.86 rubles;

(c) The appellant is thus entitled to participate in the bankruptcy proceedings and to assert claims against the respondent alongside other creditors but does not hold a judgment entitling it to the payment of a fixed sum by the Respondent in its own favour.

[73] Mr. Alexander Vaneev, the respondent's expert, offered further clarification on the nature of the judgments. He contended that, given the respondent's status as a debtor subject to insolvency proceedings in Russia, any judgment against her could not be regarded as one for a fixed and enforceable sum. Rather, he characterised the rulings as merely establishing a maximum recoverable amount, contingent upon the availability of assets after the satisfaction of higher-ranking creditor claims.

[74] This position was contradicted by the appellant's expert, Mr. Miftakhutdinov, who opined that the combined effect of the March and June Rulings was to establish a judgment for definite and fixed sums. He affirmed that these rulings confer an immediate and enforceable right to recover the specified amounts, without the need for any further judicial determination or procedural step.

[75] Before the lower court the appellant firmly rejected the respondent's position on this issue arguing that it is fundamentally flawed under both common law and Russian legal principles. The appellant submitted that the distinction drawn by Mr. Vaneev between a fixed liability and a contingent recovery is legally unsustainable and does not affect the enforceability of a judgment that quantifies a definite sum. The appellant argues that the distinction between a judgment which establishes liability and its enforcement, which may be influenced by the debtor's financial position are separate issues, and the speculative nature of recovery does not affect the certainty of the judgment.

[76] The appellant also rejected Mr. Vaneev's claim that the respondent's liability was uncertain due to the joint and several nature of the debt, as co-debtors could potentially satisfy some or all of the obligation. The appellant submitted that this too was a fundamental misunderstanding of both Russian and Common Law. Under both systems, joint and several liability entitles a creditor to recover the entire amount from any one or more of the debtors. Internal contribution arrangements between co-debtors are irrelevant to the creditor's right of recovery, and they relied on the opinion of their expert Mr. Miftakhutdinov who affirmed that while recovery from one co-debtor may reduce the outstanding balance, it does not alter the definitive sum for which judgment was entered.

[77] Before the lower court, the appellant had submitted that in the case of **JSC Mezhdunarodniy Promyshlenniy Bank, State Corporation 'Deposit Insurance Agency' v Sergei Viktorovich Pugachev & ors**[13], (**Pugachev**) the English court had recognised a Russian judgment concerning subsidiary liability for the purpose of enforcing it against assets located within its jurisdiction. However, the appellant acknowledged that no detailed, reasoned judgment directly addressing the recognition issue had been identified. The appellant accepted that this was a relatively recent development in Russian law. Nevertheless, it relied on the expert

[13] [2017] EWHC 2426 (Ch)22.

evidence of Mr. Miftakhutdinov, who noted that the Russian Supreme Court has issued authoritative guidance requiring that creditors be treated equally during enforcement. He cited rulings affirming that creditors' claims must be satisfied on a pro rata basis, and that creditors must be afforded equal procedural opportunities in enforcing judgments. Mr. Miftakhutdinov stated that the Supreme Court had clarified that disputes between creditors may be resolved through separate damage claims, brought by one creditor against another if necessary.

The Decision below on this issue

[78] The learned judge rejected the submission of the respondent that the sums confirmed by the June Ruling are not for a definitive sum as track's debtors are liable jointly and severally and another debtor may satisfy some or all of the obligations due to Track. The learned judge found this to be a surprising proposition, stating that if such reasoning were correct, no judgment could ever be regarded as final or for a fixed sum. He observed that, on that logic, the amount ultimately recovered under any judgment would always be uncertain, as it would depend on the defendant's financial position and the claims of other creditors, factors which are extrinsic to the nature of the judgment itself.

[79] He found that the respondent's argument was also incorrect as a matter of Russian law. The appellant's expert had confirmed that the notion of a judgment representing merely the *maximum* amount a creditor might recover is not recognised in Russian legal doctrine. On the contrary, Russian law permits a claimant to recover independently their proportionate share of the damages awarded.

[80] The learned judge further held that both the respondent and her expert had improperly conflated the concept of a judgment with its enforcement. He clarified that the question of what may ultimately be recovered through enforcement depending on the financial circumstances of the defendant is a distinct and separate

matter and is not an issue that falls to be determined by the court in proceedings at that stage.

[81] The learned judge also rejected the respondent's submission that the Russian judgments lacked sufficient context to determine even the maximum sum that Nokian would be entitled to recover. The context said to be missing related to the fact that the underlying liability was shared on a joint and several basis among multiple parties, and the potential for recovery from sources other than the respondent. The learned judge found that, if the respondent's expert's proposition were correct, the same issue would arise in every case involving joint and several liability, namely, that no definitive sum could ever be identified where multiple debtors are involved. He held that this position was incorrect both under common law and Russian law.

[82] He accepted the evidence of Mr. Miftakhutdinov, the appellant's expert, who confirmed that the principle of joint and several liability is well-established under Russian law and operates in a manner broadly consistent with the common law understanding. Specifically, it entitles a creditor to recover the full amount of the debt from any one or more of the debtors. He concluded that, once again, the respondent's expert, Mr. Vaneev, had conflated the issue of the existence and definitiveness of a judgment with the separate question of how it may be enforced. He reaffirmed that enforcement contingencies such as which debtor ultimately satisfies the liability do not undermine the status of a judgment as one for a definite sum.

[83] Nevertheless the learned judge concluded that the two rulings were to be assessed separately to determine their enforcement and concluded at paragraphs 121-142 that the June Ruling is not enforceable in the British Virgin Islands because it does not constitute a judgment for a definite sum of money, as required under common law principles summarised **in Dicey, Morris & Collins, Rule 42**[14]. Specifically, the

[14] Dicey, Morris and Collins on the Conflict of Laws (16th edn, Sweet & Maxwell 2022).

June Ruling merely substituted Nokian Shina for Track as the beneficiary of the March Ruling but did not order the defendants to pay any sums to Nokian Shina. In other words, the June Ruling transfers rights but does not itself impose a payment obligation on the respondent to pay Nokian.

[84] The learned judge emphasized that for a foreign judgment to be enforceable, it must clearly order the respondent to pay a definite and ascertained sum of money to the appellant. The court noted that Nokian did not plead a claim for mere recognition of the foreign judgments, but expressly sought enforcement, which requires stricter criteria. He found that the June Ruling did not meet this standard. It referenced specific monetary sums but failed to direct their payment to Nokian.

Discussion

[85] The basis for the recognition and enforcement of foreign judgments in England, and by extension, in the British Virgin Islands (BVI), is the common law doctrine of obligation, namely, that the judgment of a court having competent jurisdiction over the defendant imposed on him an obligation to pay the sum for which judgment had been given.[15] This principle was restated by Blackburn J in **Godard and another v Gray and another**[16] where he observed:

> "We think that... the true principle on which the judgments of foreign tribunals are enforced in England is... that the judgment of a court of competent jurisdiction over the defendant imposes a duty or obligation on the defendant to pay the sum for which judgment is given, which the courts in this country are bound to enforce, and consequently that anything which negatives that duty or forms a legal excuse for not performing it, is a defence to the action. It follows that, provided the foreign court had jurisdiction to give the judgment according to the English rules of the conflict of laws, the judgment is conclusive in England unless it is impeachable for reasons of fraud, public policy, or the like, and is not merely prima facie evidence of the defendant's liability, as had at one time been supposed."

[15] see Russell v. Smyth (1842) 9 M. & W. 810, 819; Schibsby v. Westenholz (1870) L.R. 6 Q.B. 155.
[16] (1870) LR 6 QB at 139,149-150.

[86] This foundational principle was adopted by the English Court of Appeal in **Adams v Cape Industries PLC**[17] and more recently reaffirmed by the UK Supreme Court in **Rubin and another v Eurofinance SA and others**[18], a case cited by the appellant. In **Rubin**, Lord Collins stated:

> "The theoretical basis for the enforcement of foreign judgments at common law is that they are enforced on the basis of a principle that where a court of competent jurisdiction has adjudicated a certain sum to be due from one person to another, a legal obligation arises to pay that sum, on which an action of debt to enforce the judgment may be maintained."

[87] The appellant submits, correctly, in my view, that this principle remains the juridical foundation for determining when and why a foreign judgment should be recognised and enforced at common law. Accordingly, where a BVI or English court is asked to determine whether a foreign court's decision gives rise to an obligation that is enforceable at common law, two separate questions arise: Firstly, does the judgment give rise to an enforceable obligation? This requires an inquiry into whether the conditions for recognition are satisfied, that is, whether a legal obligation to comply with the foreign court's decision has arisen. If so, it must then be considered whether that obligation is nonetheless defeated by defences such as fraud, public policy, or breach of natural justice. Secondly, what is the content of the obligation? This concerns the substance of what the losing party is required to do in order to comply with the foreign court's decision. In answering this question, the BVI or English court must ascertain the meaning and legal effect of the foreign judgment, an exercise governed by the foreign law under which the judgment was rendered. This may require consideration of the judgment itself, the procedural rulings it stems from, and any related instruments that illuminate its operative effect.

[88] This two-stage approach identified by the appellant is consistent with the doctrine of obligation as restated in **Godard v Gray** and reaffirmed in **Rubin.** This two-stage approach ensures that while the existence and validity of the obligation are governed by English (or BVI) law, the interpretation and effect of the judgment

[17] [1990] 2 WLR 659.
[18] [2013] 1 AC 236 at [9]

remain rooted in the foreign legal system. Professor Briggs in Private International Law in English Courts[19] captured the obligation thus:

> "to abide by the judgment or pay the sums due under it-the identification of which judgments give rise to that obligation of which defenses annul the obligation-is governed by English Law, not foreign law. Foreign law provides the data, but the obligation is created and governed by English law."

Substantive Analysis of the Obligation Arising from the Russian Judgments

[89] The first of the two questions is dealt with below under public policy considerations. I begin here with the second of the two principal questions, namely the content of the obligation arising from the Russian court decisions which obligation derives from the March and June Rulings, the statutory framework under which they were rendered, and expert evidence regarding the relevant provisions of Russian law.

[90] It was common ground between the parties that the March Ruling arose from an application by Track's insolvency receiver seeking to impose subsidiary liability on the company's controlling persons, including the respondent. It was also agreed that the judgment identified specific sums to be recovered jointly and severally from those persons, although the parties differed as to whether those sums were sufficiently fixed and enforceable.

[91] The June Ruling did not undermine the finality of the March Ruling. Rather, its purpose was to assign to the appellant a portion of Track's right to enforce the March Ruling, pursuant to Article 61.17 of the Russian Bankruptcy Law. The judgment expressly recorded the application as substituting the appellant as the creditor entitled to recover that portion of the claim. The Russian court confirmed that, under the applicable statutory framework, this right to recover, transferred to the creditor

[19] Adrian Briggs, Private International Law in the English Courts (2nd edn, Oxford University Press 2023) at 356.

electing that mode of enforcement, upon substitution. The appellant acquired the right to enforce its allocated share of the judgment in its own name.

[92] Both expert witnesses agreed that the 2017 amendments to the Russian Insolvency Law, including Article 61.17, were enacted to strengthen creditor protections and facilitate the enforcement of claims against controlling persons of insolvent companies. Under the amended provisions, a creditor who had established a valid claim in the insolvency proceedings could, by judicial substitution, directly enforce its proportionate share of the judgment debt.

[93] Insofar as the learned judge relied upon the formulation set out in Rule 42 in **Dicey**, namely, that for a foreign judgment to be enforceable it must order X, the defendant in the English proceedings, to pay A, the claimant, a definite and actually ascertained sum of money, that proposition is not inaccurate. However, it is subject to important limitations. In many, and indeed in the majority of cases, the operative terms of a foreign judgment can be clearly and unequivocally determined from the face of the judgment itself. In such circumstances, the task of the enforcing court is relatively straightforward. There are, however, cases, of which the present is one, where the terms of the foreign judgment may not be immediately apparent from the judgment alone. In such instances, it may be necessary for the enforcing court to examine other documents filed in the proceedings; understand the legislative or legal framework under which the judgment was issued, to ascertain the substance and effect of the relief granted. The court is in such circumstances not confined solely to the express terms of the judgment but may properly consider the broader procedural record in order to identify, with the requisite degree of clarity, the obligations imposed by the foreign court.

[94] The March and June Rulings form part of a single cause of action: the enforcement of liability against the controlling persons of Track under Case No. A07-1646/2016. The June Ruling implemented a statutory mechanism for the assignment of enforcement rights, giving effect to the March Ruling which had imposed the

underlying liability. When read together, the two judgments establish a clear and enforceable obligation for a definitive sum by providing that the respondent, jointly and severally with others, is liable to pay to Nokian a total sum of 1,554,102,387.86 rubles, comprising: 1,169,116,226.17 rubles (principal); 5,766,839.25 rubles (financial sanctions); 85,413,247.94 rubles (principal); and 293,806,074.50 rubles (financial sanctions). The existence and enforceability of the obligation must therefore be assessed by construing both judgments in tandem, and I so find.

Whether the March and June Rulings are unenforceable in the BVI as contrary to public policy?

[95] The respondent contends that the March and June Rulings should not be recognised or enforced in the BVI on the grounds that they are contrary to public policy. Three principal arguments are advanced in support of this position: alleged fraud, breach of natural justice, and conflict with the principles of collective insolvency.

Alleged Fraud in the Procurement of the Rulings

[96] The respondent submits that both Rulings were obtained on the basis of a forged guarantee, purportedly executed by Track. She relies on a Russian state expert report, produced in unrelated criminal proceedings, which concludes that the signature on the guarantee is not genuine. It is said that this forged document formed the foundation of the appellant's claim in the Russian proceedings and, consequently, of the judgments now sought to be enforced. The respondent argues that this constitutes clear evidence of fraud and that it would be contrary to public policy in the BVI to enforce judgments obtained in reliance on fraudulent documents.

[97] The learned judge addressed this issue comprehensively at paragraphs 62 and 63 of his judgment. He found no allegation that any forgery or irregularity occurred outside the offices of Track itself. The guarantee bore Track's corporate seal, and the individual who signed it was not alleged to lack authority or not to have been

held out by Track as duly authorised. Crucially, there was no allegation, before the Russian court or in these proceedings, that the claimant/appellant had any knowledge of or involvement in the alleged forgery. The learned judge further noted that the issue of forgery had been raised before the Russian court, which dismissed it as irrelevant to the appellant's claim against Track.

[98] It is well established that a foreign judgment is impeachable for fraud under English law, and by extension BVI law, only where such fraud falls within the categories recognised in Rule 43 of **Dicey**. That rule provides:

> "A foreign judgment relied upon as such in proceedings in England is impeachable for fraud. Such fraud may be either (1) fraud on the part of the party in whose favour the judgment is given; or (2) fraud on the part of the court pronouncing the judgment."

This position is also affirmed by Halsbury's Laws of England.[20]

In **Owens Bank Ltd v Bracco**[21] the court confirmed the principle thus**:**

> "Two principles of our law were liable to be brought into direct conflict in such proceedings: the first was that no man should be permitted to take advantage of his own wrong, such as by enforcing for his benefit a judgment which he had procured by fraud; and the second was that the decision of a court of competent jurisdiction, including a foreign court, was not examinable upon its merits, whether as to decisions of law or of fact. Since it was clearly established that "Fraud is an extrinsic, collateral act; which vitiates the most solemn proceedings of courts of justice:" see per De Grey C.J. in the Duchess of Kingston's Case (1776) 20 St.Tr. 355, 537n., 544n.,"

[99] The respondent's allegations do not meet this threshold. She does not allege that the appellant procured the judgments by fraud, nor is there any suggestion of misconduct or impropriety on the part of the Russian court. The alleged forgery relates to internal matters within Track, and was not shown to have been perpetrated or known by the appellant. Accordingly, the claim of fraud does not fall within the

[20] Halsbury's Laws of England (Vol. 19, 2024) at para. 151.
[21] [1994] 2 WLR 759.

scope of Rule 43 and does not suffice to render the foreign judgments unenforceable.

Breach of Natural Justice

[100] The respondent further argues that the judgments were obtained in breach of natural justice. She submits that, at the time of the Russian proceedings, she lacked standing to challenge the validity of the guarantee due to her status as a party subject to subsidiary liability. This restriction has since been lifted by a higher Russian court decision. She also claims that the Russian court refused to allow forensic examination of the guarantee, and that relevant evidence has only recently become available as a result of a criminal investigation.

[101] While a foreign judgment obtained in breach of natural justice may be refused recognition on public policy grounds,[22] the respondent's complaint is in my view procedural and relates to a limitation imposed by Russian law at the time of the ruling. The inability to challenge the guarantee's validity was a consequence of the applicable procedural framework, not a denial of the right to be heard.

[102] The respondent filed a witness statement on 11th March 2022 in the proceedings before the lower court. In it, she stated that on 25th October 2016, the Russian Court added the appellant as a creditor of Track. According to the respondent, her mother, who is acknowledged as the owner of Track, maintained that Track never issued the Guarantee and that her signature on the document was forged. The respondent further stated that her mother gave evidence to this effect during Track's bankruptcy proceedings and requested a forensic examination of the Guarantee, which the Russian court declined to permit. By her own evidence in the lower court, the respondent acknowledges that Track had an opportunity to be heard in the bankruptcy proceedings on the question of whether the Guarantee was forged.

[22] [1990] 2 WLR 657.

I therefore find that, on this issue, the respondent has not established a denial of justice sufficient to violate basic principles of fairness under BVI law.

The Changeable Nature of the Judgment Sum

[103] The respondent submits that the June Ruling is not final and binding not only because of the changeable nature of the sum and it is liable to be changed. The respondent had argued before the lower court that as the respondent is herself in an insolvency process in Russia, any judgment against her is not for a definitive sum, but only the maximum sum that could be received, assuming that the respondent had sufficient funds to pay all her creditors.

[104] The learned judge found this argument to be preposterous, as admittedly I do for the reasons articulated by him. The learned judge found that such an argument would result in an untenable position under the Common Law, where no judgment would be final and for a fixed sum, as an amount received on enforcement will always depend on the unknown of the defendant's financial position, and the claim of other creditors.

[105] The learned judge concluded that a judgment for a specified sum of money is a judgment for the entire amount. This of course he concluded may or may not be recovered on enforcement depending on the defendant's financial position. That is a separate issue he found which the Court is not required to consider in these proceedings at this stage.

Conflict with the Principles of Collective Insolvency

[106] Finally, the respondent submits that enforcement of the Rulings would subvert the collective nature of the Russian bankruptcy proceedings. She notes that she is now bankrupt and argues that any claims against her must be pursued through the Russian insolvency regime, in accordance with its *pari passu* distribution rules.

Permitting enforcement in the BVI, she submits, would enable the appellant to bypass this structure and obtain an advantage over other creditors, contrary to the collective principles underpinning insolvency law.

[107] The learned judge addressed this argument and acknowledged that enforcement of foreign judgments in the context of insolvency proceedings can give rise to competing public policy considerations. He recognised the importance of preserving the integrity of collective insolvency frameworks but found that the respondent's position accorded disproportionate weight to this objective, such that if collective recovery cannot be achieved no creditor should recover anything. The learned judge found that this approach would leave wrongdoers clear to enjoy their ill-gotten gains.

[108] The learned judge, correctly in my view, found that the respondent's approach runs counter to the long-established public policy of English law and, by extension, BVI law which favours the enforcement of lawful debt obligations and the recovery of losses, even if only in part. The learned judge noted that imperfect recovery remains preferable to none, especially where liability has been judicially determined in proceedings.

[109] I agree with the learned judge's conclusion. The respondent's submission appears to challenge the very rationale behind the 2017 amendments to Russian insolvency law, as stated by Professor Miftakhutdinov. These amendments are designed to facilitate creditor recovery from those who abuse corporate structures to shield themselves from liability, when their conduct justifies deviation from corporate separateness. The BVI courts are not being asked to override the Russian insolvency regime but to give effect to judicial determinations rendered within it. The enforcement sought does not conflict with the collective aims of that regime; rather, it operates within its framework, following the assignment of claims by the bankruptcy trustee pursuant to Russian law. There is, therefore, no principled reason why the Rulings should be denied recognition on insolvency-related public policy grounds.

[110] The respondent's public policy objections to enforcement are without merit and the underlying/related ground of appeal must be dismissed.

Whether the March and June Rulings are final and conclusive as against the respondent.

[111] Rule 35(1) and (2) of **Dicey** provides that a foreign judgment in personam given by the court of a foreign country with jurisdiction to give that judgment in accordance with the principles set out in Rules 36 to 39, and which is not impeachable under any of Rules 42 to 45, may be enforced by a claim or counterclaim for the amount due under it if the judgment is:

> "(a) for a debt, or definite sum of money (not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or penalty; and
>
> (b) final and conclusive
> but not otherwise…
>
> (2) A foreign judgment given by the court of a foreign country with jurisdiction to give that judgment in accordance with the principles set out in Rules 36 to 39, which is not impeachable under any of the Rules 42 to 45 and which is final and conclusive on the merits, is entitled to recognition at a common law and may be relied upon in proceedings in England."

[112] In assessing finality, the lower court applied the well-established test of finality in **Nouvion v Freeman**[23], which requires that the foreign judgment "conclusively, finally, and forever" determine the debt to constitute res judicata between the parties. **Nouvion** provides:

> "...in order to establish that [a final and conclusive] judgment has been pronounced, it must be shewn that in the Court by which it was pronounced it conclusively, finally, and for ever established the existence of the debt of which it is sought to be made conclusive evidence this country, so as to make it res judicata between the parties."

[23] (1889) LR 15 App Cas 1 at page 8.

[113] I have concluded that the Rulings constituted a debt for a definitive sum by the respondent in favour of the appellants and I have not found the Rulings to be unimpeachable on the grounds cited in the Counter Appeal. The Rulings do not leave any matters outstanding, nor do they require any further judicial determination or procedural step in the foreign court to give them legal effect. They finally and authoritatively determine the respondent's liability and the quantum of the debt. Furthermore, the Rulings have not been impeached under any of the relevant exceptions under Rules 42 to 45, such as fraud, public policy, or lack of due process. The respondent's arguments in the Counter Appeal failed to establish any viable ground upon which the Rulings might be impugned. Accordingly, the Rulings are enforceable in the BVI. They are *res judicata* between the parties and therefore, they are final and conclusive as against the respondent.

Disposition

[114] For the foregoing reasons to which the other members of the panel concur, I would allow the appeal and make the following orders:

(1) The orders dismissing the appellant's Claim against the respondent are set aside. The Counter Appeal is dismissed.

(2) Judgment is entered against the respondent in favour of the appellant in the amount of 1,554,102,387.86 rubles with interest to run from the date of the Wallbank J. Order until payment, at the rate of 5% per annum under the Judgments Act Cap 35.

(3) The appellant is awarded its costs on appeal and in the court below to be assessed if not agreed within 14 days of the date of this order.

(4) The claim against Mr. Smyshliaev shall proceed in the High Court in accordance with the Civil Procedure Rules.

I concur.
Mr. Trevor M. Ward
Justice of Appeal

I concur.
Mde. Esco L. Henry
Justice of Appeal

By the Court

Chief Registrar