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# Mezhprom v. Pugachev: Can fraudsters safely protect their assets in offshore trusts?

**Andrew Onslow QC**

21 November 2019



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## The claim

- *JSC Mezhdunarodny Promyshlenniy Bank v Pugachev* [2017] EWHC 2426 (Ch)
- Sergei Pugachev – founder of Mezhprom Bank, oligarch, Russian senator, “Putin’s banker”
- Ex-partner of Alexandra Tolstoy – 3 children
- Mezhprom Bank and its liquidators claim in England to enforce a US\$1 billion Russian judgment against P



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## The trusts

- 5 New Zealand trusts settled by P 2011-2013
- Assets worth \$95m
- P as Protector
- Discretionary beneficiaries include P, AT, children and P's other sons
- Trustees New Zealand trust companies
- William Patterson, a NZ solicitors, a director, drafts the trust deeds



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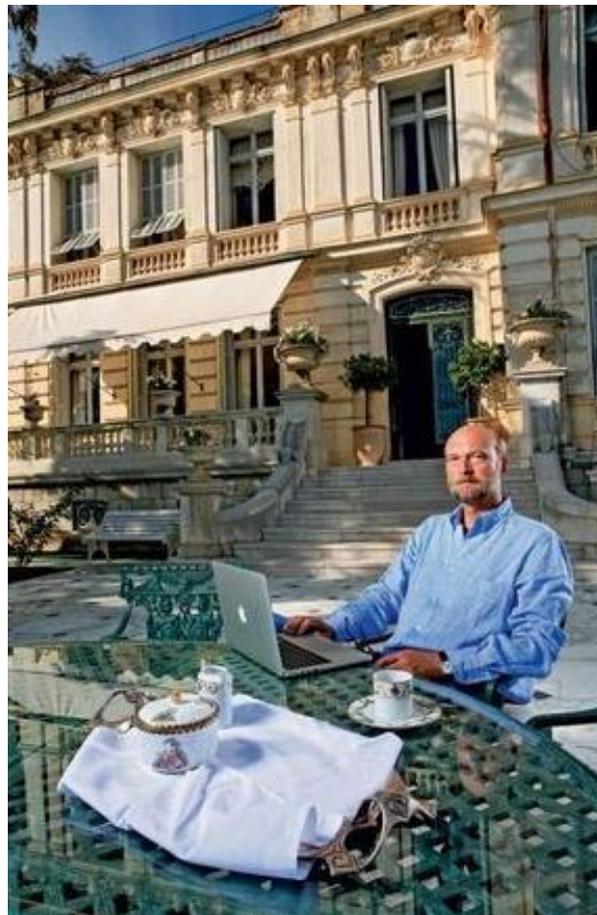
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## The proceedings

- 2014 – Russian liquidation recognised in England – WFO against P - disclosure of the Trusts
- 2015 – Freezing order over Trust assets under *Chabra* jurisdiction
- 2016 – P held in contempt of court, sentenced to 2 years
- 2017 – trial of issue between Cs and P/AT children: whether P is the beneficial owner of the “trust” assets

## The arguments

- “Illusory Trust”/“True Effect of the Trusts” – the trusts ineffective to divest P of his beneficial ownership of the assets
- “Sham” – the trusts and trust deeds are shams
- Insolvency Act s.423 – the transfers into the trusts (at an undervalue) were for the purpose of prejudicing creditors’ interests

## Trusts of no effect

Judge held that the Trusts were not effective to divest P of his beneficial interests, because:

- P had extensive powers as Protector
- P's powers were personal only, and not fiduciary, and could be “selfishly” exercised entirely in P's own interests
- the effect was that P had complete control over the assets

## Trusts a sham

- Judge applying standard English law principles ([\*Snook v London and West Riding Investments\* \[1967\] 2 QB 786](#); [\*A v A\* \[2007\] EWHC 99 \(Fam\)](#))
- “Sham” depends on common intention to pretend and mislead
- If trust deeds did successfully divest P of the assets, they were a sham
- P intended to be the sole owner and unfettered controller of the assets
- Mr Patterson had no intention independent of P – he was recklessly indifferent

## Insolvency Act s.423

- In 2013, before creating four of the trusts, P explicitly discussed “asset protection”; and was under increasing pressure in Russia
- In fact obvious to P in 2011 that assets outside Russia at risk
- Real and substantial purpose of defeating creditors established

## Implications

- Result unsurprising, but decision opens up new trust-busting routes
- True effect: Standard discretionary trust deeds and structure did not work to protect assets
- Sham: Nor did Mr Patterson's status as solicitor and professional trustee

## Questions

- True effect: where did this cross the line?
- Sham: how might Mr Patterson have distanced himself?
- Will the *Mezhprom* analysis be followed (i) here; (ii) offshore?

## Footnote

- Judgment paragraphs 438-442
- Shape-shifting trust instruments
- The canny professional and the Angora cat





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