

Neutral Citation Number: [2024] EWHC 2916 (Ch)

Case No: PT-2023-000280

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**PROPERTY TRUSTS AND PROBATE LIST (Ch D)**

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

Date: 15 November 2024

**Before:**

**DEPUTY MASTER FRANCIS**

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**Between:**

**BULGARIAN DEVELOPMENT BANK EAD**

**Claimant**

**- and -**

**ULAS INVESTMENTS EAD**

**Defendant**

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**Kamen Shoylev** (instructed on the public access scheme) for the **Defendant**  
**Emilie Gonin** (instructed by **Walker Morris LLP**) for the **Claimant**

Hearing date: 24 October 2024

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**APPROVED JUDGMENT**

This judgment was handed down remotely at 10.30 am on 15 November 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives

## **Deputy Master Francis**

1. This is a dispute about the beneficial ownership of shares in an English registered company, Bulsatcom UK Holdco Limited (“Holdco”). Holdco is in voluntary liquidation, and its liquidators are presently holding funds of €3,747,637 for distribution in respect of such shares following Holdco’s exit from administration.
2. The shares in question are held in the name of ULAS Investments EAD (“ULAS”), a Bulgarian company and defendant to the present claim. The claimant, Bulgarian Development Bank EAD (“BDB”), a Bulgarian state-owned bank, contends that ULAS at all times held the shares on bare trust for it, as its nominee, and seeks a declaration to this effect together with injunctive relief requiring ULAS to give instructions to the liquidators to pay the funds to BDB.
3. I have to decide whether the English court has jurisdiction to hear the claim, and if so whether it should exercise that jurisdiction. ULAS challenges jurisdiction by an application under CPR Part 11 to set aside an order made by Deputy Master Linwood on 26 June 2023 granting BDB permission to serve the claim form on ULAS out of the jurisdiction in Bulgaria. ULAS also contends that it was never validly served with the claim form and accompanying documents in Bulgaria.
4. The set aside application is supported by two witness statements of Stefan Staykov, a director of ULAS, made on 12 March 2024 and 24 April 2024. BDB relies on the statement of its solicitor, Nicholas Lees, made on 22 June 2023 in support of the original service out application, and two further responsive statements of Miroslava Zafirova, its Head of Legal Directorate, made on 10 April 2024 and 17 October 2024. At the hearing of the application, Kamen Shoylev of counsel, instructed on the public access scheme, appeared for ULAS, and Emilie Gonin of counsel, instructed by Walker Morris LLP, appeared for BDB. I am grateful for their concise and focused submissions.

## **Background**

5. BDB is a development and commercial bank constituted under the Bulgarian Development Act 2008 with specified objectives linked to national and regional economic development. ULAS is an SPV company incorporated in September 2018 by Vladimir Karolev, a Sofia-based financier and businessman. ULAS was wholly owned by Mr Karolev until his untimely death in October 2021 following a skiing accident earlier that year. His widow, Jordanka Karoleva, now owns the company, and is its director together with Mr Staykov.
6. Holdco was incorporated in September 2019 as part of the restructuring of the Bulsatcom group of companies. As the name suggests, the underlying business of the group was that of a satellite, television and mobile operator in Bulgaria carried on by its trading company Bulsatcom EAD, a Bulgarian company. This company was a wholly-owned subsidiary of Bulsatcom Investment Ltd (“BIL”), which in turn was owned by Bulsatcom Holdings Ltd (“BHL”), both of them English registered companies.
7. The restructuring was necessary after the Bulsatcom group companies had defaulted in respect of two loan facilities granted in 2014, the first a syndicated loan arrangement, and the second a bilateral loan facility with the European Bank for Reconstruction and

Development. The obligations under those facilities were secured, inter alia, by a charge over BHL's shares in BIL, held for the benefit of the lenders by a security trustee. As a result of such default, the BIL shares had been appropriated by the security trustee in August 2019. It is not disputed that BDB became a major creditor of the group by the restructuring, acquiring the outstanding debt due to one of the existing lenders, United Bulgarian Bank, under the syndicated loan facility, and part of the debt due to EBRD under the second facility, and participating as a lender in a new syndicated loan facility. It is also not disputed that the restructuring involved the transfer by the lenders to Holdco of the appropriated shares in BIL in return for the issue of an equivalent ordinary shareholding in Holdco, and the conversion of part of the debt into equity by the issue of new preference shares in Holdco.

8. The terms and mechanics of the restructuring were set out in a Restructuring Deed dated 25 September 2019 governed by English law, to which both BDB as ULAS were parties, the latter described as "the Permitted Nominee". The amount which was due to the lenders under the existing and new facilities was recorded in clause 5.6, in the case of BDB in the aggregate sum of €12,502,246.22. Clauses 5.7 and 5.8 made provision for the transfer of the BIL shares from the security trustee to the lenders, and in turn from the lenders to Holdco, and clause 5.13 made provision for the issue of new ordinary and preference shares in Holdco to the lenders. In the case of BDB, the transfer from the security trustee of the appropriated shares in BIL under clause 5.7 was to be made "to the Permitted Nominee (on behalf of Bulgarian Development Bank)" for onward transmission to Holdco, and the issue of the ordinary and preference shares in Holdco under clause 5.13 was in turn to be made "to Bulgarian Development Bank (or its Permitted Nominee)".
9. The restructuring proceeded in accordance with the provisions of the Restructuring Deed, pursuant to which, as it is recorded in the minutes of a Holdco meeting dated 25 October 2019, ULAS was to transfer to Holdco 173 ordinary shares in BIL "acting on behalf of the Bulgarian Development Bank" and Holdco in turn resolved to allot 13,718 new ordinary shares and 17,364 new preference shares "to the Bulgarian Development Bank (or its permitted nominee ULAS Investments EAD)". ULAS was entered on Holdco's register of members on the same date; in an apostilled version of the register which had been translated into Bulgarian and was held by BDB, the entry refers to ULAS as "acting on behalf of the Bulgarian Development Bank". This is similarly reflected in the later confirmation statement dated 27 October 2020 filed by Holdco with Companies House on 4 January 2021, which lists ULAS as holder of 13,901 ordinary shares and 17,364 preference shares "acting on behalf of the Bulgarian Development Bank".
10. In paragraph 10 of witness statement made in support of the service out application, Mr Lees explains why the shares in Holdco were allotted to and held in ULAS's name: BDB was unable to hold the Holdco shares directly in its own name due to regulatory limitations on its role as a development bank, and for that reason appointed ULAS as nominee to hold them on its behalf. Support for that explanation is found in a letter addressed to BDB from Max Ziff, the former CEO of BULSATCOM EAD, dated 28 March 2019, which had been prepared in connection with an earlier incarnation of the proposed restructuring which did not proceed. This letter sets out some of the background to Mr Karolev and BDB's involvement in the proposed restructuring, and then records what Mr Ziff had himself been told concerning two major issues regarding BDB's equity participation, viz.

“I. A regulatory limitation on the bank financing related parties. As BDB had already joined the lenders’ consortium it had an entitlement to be a shareholder (and therefore a related party) under the terms of the restructuring, and

“II. BDB’s role as a development bank, in which capacity it would be outwith its mandate for BDB to acquire direct equity participations in a foreign legal entity (which de facto Bulsatcom’s holding companies are)”

He then goes on to explain that he asked BDB’s senior management “whether it would be acceptable to use a separate independent Special Purpose Vehicle ... to hold the UK equity participations” for BDB, and suggested that ULAS could be used for this purpose.

11. For its part, ULAS does not accept that it was allotted or held the shares in Holdco as nominee on behalf of BDB as these documents appear to suggest. In his first statement in support of the set aside application, Mr Staykov suggests that the relationship of ULAS to BDB was not one of nominee or trustee, but was rather a commercial relationship arising from some form of joint venture. He explains Mr Karolev had identified that Bulsatcom’s business was undervalued and that there was an opportunity to invest in the group through a financial and operational restructuring, and had approached BDB with a proposal to exploit this opportunity. He states his understanding that BDB and ULAS agreed commercial terms which would likely have been reduced into a formal written contract which governed their relationship, although he acknowledges that this is a “provisional view” formed in what he describes as a “vacuum of evidence”.
12. The vacuum of evidence to which Mr Staykov refers arises, he says, because of what he regards as an inexplicable dearth of written records thus far disclosed on the part of BDB, combined with the fact that Mr Karolev conducted most if not all of the direct discussions with BDB on behalf of ULAS. I shall return to this in more detail below, but it is a notable feature of this case that there has not at present been found or disclosed any contemporaneous agreement, declaration or memorandum entered into between BDB and ULAS direct which sets out what was agreed between them relating to the Holdco shareholding.
13. Be that as it may, BDB has found and disclosed two written agreements made between it and ULAS (acting by Mr Karolev) which it says provide further support for its case:-
  - a) the first is an agreement dated 4 April 2019 made in the context of the earlier proposed restructuring, under which ULAS agreed that it would participate as shareholder in an intended new holding company as “Permitted Nominee” of BDB pursuant to the then proposed restructuring deed, and would act in accordance with its instructions;
  - b) the second is an agreement dated 10 February 2021 relating to the costs of arbitration proceedings which had been brought against Holdco and its shareholders, including ULAS, by a disgruntled former investor, Plamen Genchev, arising out of the restructuring; the original is in Bulgarian, but as translated this agreement expressly records that “the debt securities are held by BDB EAD’s nominee - Ulas Investments EAD”, and accordingly provides that BDB will be responsible for ULAS’s share of the legal costs to be incurred in the proceedings.

14. Holdco went into administration on 21 May 2021, in the course of which BIL was sold, realising sufficient funds to enable a distribution to be made in Holdco's subsequent CVL to the holders of the preference shares in Holdco. BDB asked ULAS to give the requisite instructions to the joint liquidators for payment of such distribution into a designated account in its name, which ULAS refused to do. By letter of 30 March 2023, Holdco's joint liquidators then informed the parties that they would make a distribution to ULAS on 17 April 2023 unless BDB commenced proceedings in England and Wales seeking transfer to it of the legal title to the shares. The present claim was issued by BDB in this court on 11 April 2023 in response to that requirement.

### **The application to set aside permission for service out**

15. Deputy Master Linwood granted permission to BDB pursuant to CPR r. 6.36 to serve the claim form and amended particulars of claim on ULAS out of the jurisdiction in Bulgaria on paper on 26 June 2023, being satisfied on the evidence before him that the requirements set out in r.6.37 were made out. On ULAS's application to set aside such permission, I must consider afresh whether those requirements are satisfied on the more extensive evidence now before me.

16. The general principles applied by the Court when determining an application under CPR r. 6.36 and r. 6.37 are well established, and were not disputed before me. They were restated by Lord Collins in *Altimo Holdings and Investment Ltd v Kyrgyz Mobile Tel Ltd* [2011] UKPC 7; [2012] 1 WLR 1804, at [71], [81] and [88], a summary subsequently endorsed by the Court of Appeal in *VTB Capital Plc v Nutritek International Corp* [2012] EWCA Civ 808; [2012] 2 Lloyd's Rep. 313, at [99] to [101]. The claimant must satisfy the Court that:-

- a) there is a serious issue to be tried on the merits of the claim, i.e. a substantial question of fact or law or both; this means that there has to be a real, as opposed to a fanciful, prospect of success on the claim: *Altimo* [71], *VTB* at [99];
- b) there is a good arguable case that the claim against the foreign defendant falls within the grounds set out at PD 6B, paragraph 3.1; "good arguable case" in this context means that the claimant has a much better argument than the foreign defendant: *ibid.*;
- c) in all the circumstances England is clearly or distinctly the appropriate forum for the trial of the dispute and that the court ought to exercise its discretion to permit service of the proceedings out of the jurisdiction: *ibid.*; in this respect:-
  - i) the task of the Court is to identify the forum in which the case can be suitably tried for the interests of all the parties and the ends of justice: *Altimo* [88] and *VTB* at [101] referring to the classic speech of Lord Goff in *Spiliada Maritime Corporation v Cansulex Ltd* [1987] AC 460, at 475-484, which I have re-read in the course of my deliberations;
  - ii) the burden is on the claimant to persuade the court that England is clearly or distinctly the appropriate forum: *ibid.*

***Is there a serious issue to be tried?***

17. In his evidence in support of the set aside application, Mr Staykov suggested that the claim was not one which enjoyed real as opposed to fanciful prospects of success. In his submissions before me, Mr Shoylev did not press any such argument. In my judgment, he was right not to. It is quite clear that the claim raises a serious issue to be tried as to whether the shares were held by ULAS as nominee on bare trust for BDB, whether or not a court might ultimately conclude that the relationship between the parties was on a different basis, governed by the terms of commercial joint venture. I am satisfied that BDB has real prospects of establishing that such trust arose either by the express intention of the parties, which can objectively established by the contemporaneous documents, words and conduct of the parties, or at any rate, as a matter of law as a resulting trust based on the presumed intention of the parties in circumstances where BDB provided the consideration for the allotment of the shares.
18. It is unnecessary for me to venture much further into the merits of the proposed claim in the light of Mr Shoylev's effective concession of the point. However, it is right to record that in my assessment all the documentary evidence adduced by BDB which is presently before the court either supports, or at any rate is consistent with BDB's case. In contrast, ULAS has not adduced any documentary evidence to support the commercial joint venture arrangement which Mr Staykov has postulated. It is noteworthy that Mr Staykov himself expressly qualifies his own evidence as being simply his "provisional view", a view which is not based upon his own contemporaneous dealings with BDB or any specific knowledge of what Mr Karolev discussed with BDB, but rather what he supposes would have been the case.
19. In advancing such suppositions, Mr Staykov seeks to make much of the apparent dearth of contemporaneous documentary evidence; he states that it is most improbable that BDB does not have much more extensive documentary record of the parties' dealings and suggests that the absence of such records may be the result of their deliberate suppression, or at any rate a wilful or negligent failure on the part of BDB's current management to search for such records. He invites the conclusion that there is documentary evidence, as yet undisclosed, which will prove the relationship to be as he postulates. This is a flimsy basis for seeking at this threshold stage to challenge BDB's case, supported as it is by the documentary material which is available. In any event, I do not consider there to be anything of substance in Mr Staykov's allegations as they are presently made. There is no proper evidential basis for any suggestion that material has been suppressed – an allegation which Mr Staykov saw fit to make without even having had sight of the documents which BDB had included within its its initial disclosure list – and I accordingly give it no weight. And I am satisfied from Mrs Zafirova's first statement that BDB has carried out a proper initial search for relevant documents. It is notable that ULAS itself has not disclosed any documents whatsoever, which might be thought surprising if there was in existence the wealth of documents which Mr Staykov suggests; even if ULAS's knowledge of the transaction lay principally with Mr Karolev and was lost on his unfortunate death, I cannot see why the documents which evidenced such transaction should not have survived and be available to the present directors of ULAS.

***Is there a good arguable case that the claim falls within one or more of the jurisdictional gateways?***

20. BDB relies on one or more of the grounds set out in sub-paragraphs (2), (11), (12), (12C) and (12E) of PD6B paragraph 3.1 as the jurisdictional gateway permitting entry to the

English court. I have come to a clear view as to the application of the property gateway under sub-paragraph (11), which makes it unnecessary for me to determine any of the other proposed gateways, some of which give rise to difficulties. However I shall briefly state my conclusions (some of them tentative) on the remaining gateways in case the jurisdiction dispute goes further.

PD6B paragraph 3.1 (11): claim about property within the jurisdiction

21. This gateway applies where “*the subject matter of the claim relates wholly or principally to property within the jurisdiction*”.
22. There is no doubt that the gateway extends to personal and intangible property, including shares: see *Re Banco Nacional de Cuba* [2001] 1 WLR 2059. Moreover, the gateway is not limited to disputes about title to or ownership of property, but is more far-reaching so as to catch any claim whose subject matter relates wholly or principal to property in the jurisdiction. As Lightman J noted in the *Cuba* case at [33]:

“This construction vests in the court a wide jurisdiction, but since the jurisdiction is discretionary the court can and will in each case consider whether the character and closeness of the relationship is such that the exorbitant jurisdiction against foreigners abroad should properly be exercised”
23. Here, the claim is one as to beneficial ownership of shares which are themselves in an English registered company, and for that reason in the jurisdiction. On the face of it, therefore, the gateway clearly applies.
24. On behalf of ULAS, Mr Shoylev submits that, these matters notwithstanding, the claim does not *wholly or principally* relate to property in the jurisdiction because in reality the claim concerns a broader contractual relationship between BDB and ULAS which was entered into and fell to be performed principally in Bulgaria.
25. There is nothing in this. The claim with which this court is seized is as to beneficial ownership of the Holdco shares, even if the relationship between the parties extended to other matters beyond the mere holding of the shares. It may be that the court has to decide in due course whether ULAS acquired the shares as nominee for BDB under a trust relationship, or whether (putting its case at its highest) ULAS acquired full beneficial ownership of the shares under a commercial joint venture arrangement between itself and BDB where (one presumes) ULAS was under only a contractual or restitutionary obligation to BDB to account to it for some part of the proceeds or value of such shares. But even if that turns out to be the real dispute between the parties, it is nevertheless one which concerns the ownership of, or otherwise relates wholly or principally to the Holdco shares.
26. In my judgment, BDB has the better argument that the claim falls within this gateway. Indeed, I consider it quite plain that it does so.

PD6B paragraph 3.12 (C): claim made in respect of trust created in the jurisdiction

27. This gateway, like that under paragraph 3.12 (E), is relatively new, having been introduced by CPR PD Update 149 with effect from 1 October 2022, following a review by the service subcommittee of the Civil Procedure Rules Committee.

28. On behalf of BDB, Ms Gonin contends that the trust was one “created in the jurisdiction” because it arose pursuant to the Restructuring Deed and was constituted by the steps taken to implement the Restructuring Deed, namely the allotment and issue of shares in Holdco to ULAS. On behalf of ULAS, Mr Shoylev contends that any trust was created in Bulgaria, where the parties were based, and where (so far as relevant) each of them executed the Restructuring Deed.
29. I was not taken to any authority on what is meant by the words “created in the jurisdiction” and / or what steps should be regarded as the key or central to its creation for the purposes of this gateway. However, on the face of it, the words appear to be focused upon the actions or conduct by which ULAS assumed the obligations of trustee to BDB in relation to the shares. Where this was done voluntarily, by agreement or arrangement between the parties, I tentatively conclude that, as with the contract gateway under sub-paragraph (6), it is necessary to consider where the relevant agreement was entered into. In this case, that appears to be in Bulgaria, whether the relevant agreement is the Restructuring Deed itself, or some antecedent bilateral oral or written agreement between the parties.
30. The position may well be different if the trust relationship arose by presumption of law, under resulting trust principles, rather than voluntarily. In such circumstances, it is doubtful whether the claim would fall within the scope of sub-paragraph (12C) at all, because such trust is not “created” by the voluntary act of the parties. But, on the face of it, the claim would fall within sub-paragraph (15), as a claim made against a defendant as a trustee of a resulting trust, where the claim either (a) arises out of acts committed or events occurring within the jurisdiction, or (b) relates to assets within the jurisdiction. Neither party in fact addressed me on the application of this sub-paragraph and so my conclusion must again be a tentative one which is not crucial to my overall decision on this application.

PD3B paragraph 3 (12E): claim for breach of trust where the breach is committed in the jurisdiction

31. BDB contends that ULAS has acted in breach of trust in failing to recognise and give effect to BDB’s beneficial entitlement, and to follow BDB’s lawful instructions for the transfer to it of the trust property (the distributable proceeds from the sale of the shares held by the joint liquidators). BDB contends that such breach has been committed in this jurisdiction, notwithstanding the fact that ULAS is located and administered in Bulgaria, because the distributable proceeds are held by the joint liquidators in England, and may only be paid by them to BDB on the receipt of the requisite authority from ULAS. For its part, ULAS contends that any breach of trust should not be regarded as having taking place in England since the performance required of ULAS as trustee was not one which had to take place in England; it could take the necessary steps in Bulgaria to authorise payment to BDB of the distributable proceeds.
32. Although I was initially attracted to ULAS’s argument, in my judgment, the performance required of ULAS as trustee was the communication to the joint liquidators in England of the requisite authority to pay the trust property to BDB. Even if ULAS could dispatch the communication from Bulgaria, it would be effective, at least where it was sent electronically, only on its receipt by the joint liquidators in England. Accordingly, I would be satisfied if it were necessary to decide the point that BDB has a good arguable case that the breach was committed in England.



PD6B paragraph 3.1 (2): claim for injunction ordering defendant to do or refrain from doing an act in the jurisdiction

33. BDB seeks by way of primary remedy an injunction requiring ULAS (a) to transfer legal title to the shares, or (b) to give the requisite authority to the joint liquidators to pay over to BDB the distributable proceeds from the sale of the shares. In the alternative, in the event that the joint liquidators pay the proceeds to ULAS, BDB seeks an injunction (c) requiring ULAS to pay the same over to it.
34. BDB contends that injunctions in the form of (a) and (b), but not (c), would constitute orders requiring ULAS to do an act in the jurisdiction. For its part, ULAS challenges this on the basis that ULAS can carry out the necessary acts in Bulgaria.
35. To the extent that it were necessary to decide the point, I would similarly be satisfied that BDB has made out a good arguable case that the gateway applies in relation to injunctions (a) and (b). The transfer of legal title to the shares would require not merely the execution of a stock transfer but also its delivery to Holdco in England. Likewise the conferral of the requisite authority to the joint liquidators to make payment to BDB is premised upon their receipt of the relevant communication in England.

PD6B paragraph 3 (12): claim in respect of a trust created orally and evidenced in writing which is governed by the law of England and Wales

36. This gateway would only be of application to the claim as it is brought on the footing that there was an express trust evidenced in writing. BDB accepts that it would not apply to its alternative claim based on resulting trust.
37. It was common ground between the parties that the governing law of any such express trust would fall to be determined under the provisions of the Hague Convention on the Law Applicable to Trusts and their Recognition 1986 as incorporated into English law by the Recognition of Trusts Act 1987. Under Article 6 of the 1986 Convention, the governing law is that chosen by the settlor, whether express or implied in the terms of the instrument creating or the writing evidencing the trust, interpreted, if necessary, in the light of the circumstances of the case. If there is no choice of governing law, under Article 7 the trust is governed by the law with which it is most closely connected; for the purposes of ascertaining the law with which the trust is most closely connected, reference should be made in particular to (a) the place of administration of the trust designated by the settlor; (b) the situs of the assets of the trust; (c) the place of residence or business of the trustee; and (d) the objects of the trust and the places where they are to be fulfilled.
38. The Restructuring Deed itself contains a choice of law clause in the following terms in clause 26:-

“This Deed and all non-contractual and other obligations arising out of or in connection with it are governed by and construed in accordance with English law”
39. At first blush, this clause appears to be of wide application, and apt to capture ULAS’s obligation as trustee / nominee which arise in connection with the Restructuring Deed.

However, on BDB's own case, the Restructuring Deed is only evidence of an express trust separately agreed between BDB and ULAS, and so its choice of law clause is of assistance only to the extent that it is possible to infer from it evidence of BDB's intention as to the law which should govern the trust. In my judgment, the inclusion of such a clause in a multi-partite deed relating to a complex and multi-faceted restructuring is not a particularly potent indicator as to the law intended to govern an ancillary relationship between BDB and ULAS, and I do not consider that it is sufficient to engage Article 6 of the 1986 Convention.

40. However, I am satisfied that BDB has a good arguable case that the governing law of the trust is English law under Article 7, as the place with which the trust is most closely connected. Notwithstanding what is said by Mr Staykov as to mooted existence of a commercial joint venture agreement which governed the relationship between the parties, I am satisfied on the evidence which is now before that the court that BDB has a good arguable case that its relationship with ULAS was one which was established in the specific context of, and for the purposes of facilitating the implementation, of the restructuring of the Bulsatcom group, by enabling the shares in Holdco which were to be allotted in consideration for BDB becoming a major creditor of the group, to be held on its behalf. The trust is clearly connected with the place of the restructuring and the securities created thereunder, relevant factors under (b) and (d) above. In my judgment, in the context of this case, those factors are of overriding significance as against factors (a) and (c) in indicating that England rather than Bulgaria is the place with which the trust is most closely connected.

*Is England clearly and distinctly the appropriate forum?*

41. Having been satisfied that there is a good arguable case that the claims falls within one or more of the jurisdictional gateways, I must now consider whether BDB has also satisfied me that England is clearly and distinctly the appropriate forum for the determination of the dispute as to beneficial ownership of the Holdco shares. That assessment is an evaluative one, involving the weighing in the scales of a number of potentially competing considerations.

42. There are a number of features which point to Bulgaria as the appropriate forum:-

- a) both parties are based and carry on business wholly or principally in that jurisdiction;
- b) most if not all of the witnesses of fact are likely to be resident in that jurisdiction; most if not all will speak Bulgarian as their mother tongue, and some will no doubt need interpreters in order to give evidence in an English court;
- c) Mr Shoylev suggests that the likely witnesses will include former employees of BDB who have severed their relationship with the bank, and who might therefore be reluctant to give evidence unless compelled, and even more reluctant to travel to England for that purpose; I take this into account, although it is at present somewhat speculative;
- d) Mr Shoylev also suggests that in any proceedings in this forum expert evidence may be required both as to Bulgarian law, and as to Bulgarian banking regulation and practice, the latter for the purposes of interrogating the justification put forward by BDB for the use of ULAS as nominee to hold the shares, and to assist the court in understanding the

commercial and regulatory context in which BDB operated; I take this into account as possibility although it again appears somewhat speculative at present.

43. All of these matters are significant factors, although they are not ones which would pose any particular difficulties or burdens to the parties or the court if the claim is litigated in this jurisdiction, and are of course common features of litigation conducted in the Business and Property Courts.
44. One factor upon which ULAS places great emphasis but which is strongly disputed by BDB is the likely volume of documents in the case, their language and their location. It contends that there is likely to be a very substantial paper trail in Bulgaria, as yet undisclosed, relating to and recording BDB's participation in the restructuring and its relationship with ULAS. It raises the prospect that there will be a large number of such documents, in Bulgarian, which will require translation if the claim is to proceed in the English court. It also suggests that the location of such documents in Bulgaria may give rise to difficulties in policing the proper discharge by BDB of its disclosure duties. In my judgment, there is little substance to any such concerns. As I have already set out, Mr Zafirova has stated in evidence the extensive search which has already been undertaken by BDB for relevant documents, which have formed the basis of its initial disclosure list, and there are no proper grounds for challenging the integrity or results of that process, even though it has uncovered only a relatively limited number of documents. Nor is there any basis for suggesting that BDB will not properly discharge its ongoing disclosure duties or will fail properly to comply with any order for extended disclosure, and the court of course has effective means to enforce such duties where necessary to do so.
45. On the other side of the balance, I take into account the following factors:-
  - a) the dispute is one which concerns beneficial ownership of shares in an English registered company, and entitlement to the distributable proceeds of such shares following their realisation in the insolvent administration of that company;
  - b) the current proceedings have been brought in this jurisdiction at the requirement of the joint liquidators of Holdco, in order to forestall the payment of the distributable proceeds to ULAS;
  - c) if BDB was required instead to pursue a claim in Bulgaria against ULAS to determine the question of beneficial ownership of the shares, that would give rise to the risk of further or ancillary proceedings in England including, potentially, injunctive proceedings to prevent the payment of the distributable proceeds by the joint liquidators to ULAS or to prevent their dissipation in ULAS's hands, or proceedings by the joint liquidators themselves either for directions or for payment of the funds into court;
  - d) there is at least a good arguable case that the dispute relating to beneficial ownership of the shares will be governed by English law, as the law most closely connected with the putative trust on which the shares were held, under Article 7 of the 1986 Convention (as it would apply to an express trust) or at common law (as it would apply to any resulting trust).
46. Taking into account all the factors which have been urged upon on either side, I am satisfied that the English court is clearly and distinctly the appropriate forum for determination of

the dispute. The fact that the current proceedings have been brought in this jurisdiction at the instigation of the joint liquidators and in order to prevent payment of the distributable proceeds is a compelling justification for the choice of forum, as likewise the fact that there is a good arguable case that the dispute is governed by English law. The matters of convenience which weigh in favour of Bulgaria as the appropriate forum are not ones which would pose any substantial difficulties or impediments to the determination of the dispute in England, and, individually and collectively, pale into comparative insignificance against the factors which support England as the appropriate forum.

### **Was the claim form and amended particulars of claim validly served on ULAS in Bulgaria?**

47. In addition to its jurisdiction challenge, ULAS further contends that the purported service of the claim form and amended particulars of claim on it in Bulgaria was invalid and should be set aside.
48. It is common ground that BDB was required to serve the proceedings on ULAS in Bulgaria in accordance with the provisions of the Hague Service Convention. It is not disputed that BDB followed the requirements of that Convention in sending the relevant documents with certified translations to the Foreign Process Section at the Royal Courts of Justice in London on 10 July 2023 with duly completed letter of request, and that the Foreign Process Section dispatched the documents to the designated central authority in Bulgaria, the Ministry of Justice, for service in accordance with Article 3 of the Convention. After some delay, that authority wrote back to FPS on 19 January 2024 confirming execution of the letter of request and certifying that service had been effected in accordance with Article 5 of the Convention on 8 January 2024 by delivery of the documents to Mr Staykov.
49. Mr Staykov does not dispute that such steps were taken. He confirms that he was served with the documents on 8 January 2024 on attending Sofia City Court for that purpose. However, he complains that the documents as they were received by him were in an irregular state; pages were unstapled and disordered, and some pages of translation may have been missing. On ULAS's behalf, Mr Shoylev wrote by e-mail to Walker Morris LLP on 6 February 2024 complaining of these matters and requesting a full set of the documents as they were intended to be served, for which purposes he would accept service by e-mail at two addresses he supplied, whilst expressly reserving ULAS's position with regards to such irregularities. Walker Morris LLP then sent to Mr Shoylev a complete set of the documents with accompanying translations on 9 February 2024.
50. Mr Shoylev submits that the irregularities in the documents as they were received by Mr Staykov is such as to render service invalid. He has not provided any authority for that proposition or explained why such matters should render the process as a whole of no effect. In the absence of such authority, I do not accept that minor irregularities in the documents such as those complained of leads to the conclusion that service was not effected in accordance with the requirements of the Convention and should as a result be treated as invalid. In any event, I am satisfied that any irregularities were cured by the full set of documents being re-served on Mr Shoylev at his request.

### **Disposal**

51. In consequence of my findings, both limbs of ULAS's application stand to be dismissed. In accordance with CPR r. 11 (7) I will direct a further period for ULAS to file a further acknowledgment of service, and for the filing of a defence thereafter. I will leave it to the parties in the first instance to agree dates for these steps, and to endeavour to reach agreement on costs and any other consequential matters. Such matters as are agreed should be embodied in a draft order for my approval to be submitted in advance of the handing down of this judgment. If costs or any other matters remain in dispute, I will consider whether to deal with such matters by written submissions or at a further short consequential hearing.