

Neutral citation number: [2021] EWHC 2099 (Ch)

**IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF
ENGLAND AND WALES
BUSINESS LIST (ChD)**

BL-2020-000671

DEPUTY MASTER MARSH

Judgment date: 30th July 2021

**Rolls Building
Fetter Lane
London EC4A 1NL**

B E T W E E N:

NATALIYA GOLUBOVICH

Claimant

--and--

ALEXEY GOLUBOVICH

Defendant/Part 20 Claimant

--and--

OLGA MIRIMSKAYA

Part 20 Defendant

JUDGMENT

Laurence Emmett QC (instructed by Enyo Law LLP) appeared for **Claimant and the Part 20 Defendant**

Rupert D’Cruz QC and **Douglas James** (instructed by Withers LLP) appeared for the **Defendant/Part 20 Claimant**

HEARING (by Teams)

15 June 2021

Judgment:

1. In this judgment I will, for convenience, refer to the parties using their given names. Alexey is the defendant and the Part 20 claimant. He was married to Olga who is the Part 20 defendant. They were divorced by a decree of a court in Moscow in 2012. Nataliya, their daughter, is the Claimant. She is aged 27 and lives in London at 28 Upper Mall, Hammersmith, London W6, and in Moscow. Both Alexey and Olga are resident in Moscow.
2. The claim concerns a substantial and valuable art and antiques collection focussed on Buddhist Art and Chinese Antiques which was acquired during the course of the marriage between Alexey and Olga and held at 28 Upper Mall when it was the family home in London. There is now a dispute about who owns the collection. Nataliya has brought this claim against her father seeking an order for delivery up of a significant proportion of the art and antiques. Alexey has defended the claim, counterclaimed against Nataliya and issued an additional claim against Olga. He obtained permission to serve the additional claim on Olga out of the jurisdiction in Russia by an order of Deputy Master Lloyd made on 21 July 2020. This judgment concerns Olga's application to set aside that order.
3. It is convenient to set out here, in brief form, the chronology of events from the date of issue of this claim that are relevant to Olga's application:
 - (1) Nataliya issued this claim against her father in London in April 2020. He has not disputed the jurisdiction of this court to try the claim. Her claim is founded upon a 'Deed of Gift' dated 30 September 2019 under which Olga assigned the collection of art and antiques to Nataliya.
 - (2) Alexey served a defence and counterclaim on 2 June 2020 and on the same date issued the additional claim against Olga. Alexey relies inter alia upon a 'Deed of Settlement' dated 27 September 2013 between him and Olga under which Olga transferred her interest in the art and antiques to him.
 - (3) On 21 July 2020 Deputy Master Lloyd made an order giving Alexey permission to serve the additional claim on Olga in Russia. The order was made at an *ex parte* hearing.
 - (4) The additional claim was deemed served on Olga on 30 July 2020.
 - (5) On 18 August Olga commenced proceedings in the Presnenskiy District Court of Moscow ("the Presnenskiy Proceedings") seeking a declaration that the 2013 Deed of Settlement between her and Alexey is a forgery.
 - (6) On 1 September 2020 Nataliya served a reply and defence to Alexey's counterclaim.
 - (7) On 28 September 2020 Alexey applied for an anti-suit injunction in London restraining Olga from pursuing the Presnenskiy Proceedings.
 - (8) On 23 October 2020 Olga filed an acknowledgement of service saying she intended to dispute the jurisdiction of this court.
 - (9) On 3 November 2020 Charles Morrison, sitting as a Deputy Judge of the High Court, dismissed Alexey's application for an anti-suit injunction.
 - (10) On 6 November 2020 Olga issued an application notice disputing the court's jurisdiction on the basis that Olga is not a necessary or proper party to the claim and/or that England is not the natural forum for the claim. The application also disputed the validity of service of the additional claim, but that point is no longer pursued.
 - (11) On 23 December 2020 the Presnenskiy District Court ruled that Olga did not sign the Deed of Settlement and therefore it is invalid.

- (12) On 30 April 2021 an appeal court in Moscow upheld the decision of the Presnenskiy District Court.
 - (13) On the same date Alexey issued further proceedings against Olga in Russia alleging that money held in banks outside Russia are marital assets.
 - (14) On 15 June 2021 Olga’s application issued on 6 November 2020 was heard before me.
4. Olga relies upon events that post-date the hearing before Deputy Master Lloyd on 21 July 2020 as being relevant to the determination of her application:
 - (1) She says the judgment of the Deputy Judge on Alexey’s application seeking an anti-suit injunction determined that England is not clearly or distinctly the most appropriate forum and it would be an abuse of the court’s process for Alexey to contend otherwise on the hearing of Olga’s application.
 - (2) She also relies upon the decisions of the Russian courts relating to the Deed of Settlement and the fact that Alexey has issued fresh proceedings against her in Russia.
 5. There is no dispute between the parties that the core tests to be applied on an application for permission to serve out of the jurisdiction are those derived from the decision of the Privy Council in *Altimo Holdings v Kyrgyz Mobile Tel Ltd* [2011] UKPC 7 delivered by Lord Collins at [71]. For the English court to take jurisdiction and give permission to serve out in the circumstances of this case where Alexey relies on ground set out at paragraph 3.1(4) of Practice Direction 6B (“Gateway 4”) it must be satisfied that:
 - (1) There is a serious issue to be tried on the merits applying the same test as the first limb of CPR rule 24.2;
 - (2) Alexey has made out a good arguable case that Olga is a necessary or proper party to the claim or the additional claim;
 - (3) England is clearly or distinctly the most appropriate forum for the trial of the claim and that in all the circumstances the court ought to exercise its jurisdiction to permit service out of the jurisdiction.
 6. Mr Emmett who appeared for Olga submitted that where the court is faced with an issue of law on an application for permission to serve out of the jurisdiction, and the question of law goes to the existence of the jurisdiction, the court should decide it. The proposition is not in itself controversial. The notes at 6.37.14 (on page 376) of *Civil Procedure 2021* discuss the point fully. It is worth recording, however, that the approach is not an absolute invariable rule. First, the facts upon which the issue of law is to be decided must be clear. Secondly, there are exceptions, in the same way as under CPR rule 24.2, where the point is particularly difficult. It is uncontroversial that the more doubtful the point of law, the more cautious the court should be about deciding the point for the purposes of a jurisdiction application.
 7. Before proceeding to consider the relevant facts there are two points that can be dealt with at this stage. The first is what is the correct approach to considering the proper party test? The second is to what extent is the court entitled to have regard to events taking place after the original grant of permission to serve out of the jurisdiction? I will deal with them in turn.
 8. As to the first point, the correct test can be found in judgment of the Privy Council delivered by Lord Collins in *Altimo Holdings* at [87] under the heading: “One investigation”/ “closely bound up”:
 - “87. ... the question whether D2 is a proper party is answered by asking: “Supposing both parties had been within the jurisdiction would they both have

been proper parties to the action?": *Massey v Heynes & Co* (1888) 21 QBD 330 at 338, per Lord Esher MR. D2 will be a proper party if the claims against D1 and D2 involve one investigation: *Massey v Heynes & Co* at 338, per Lindley LJ; applied in *Petroleo Brasileiro SA v Mellitus Shipping Inc (The Baltic Flame)* [2001] EWCA Civ 418, [2001] 1 Lloyd's Rep 203, at [33] and in *Carvill America Inc v Camperdown UK Ltd* [2005] EWCA Civ 645, [2005] 2 Lloyd's Rep 457, at [48], where Clarke LJ also used, or approved, in this connection the expressions "closely bound up" and "a common thread": at [46], [49]."

9. The terms "necessary" and "proper" are not synonymous. A necessary party will always be a proper party but the reverse is not so. They are, however, alternatives and it suffices to consider whether Olga is a proper party, always bearing in mind that caution is needed when bringing a party into this jurisdiction.¹
10. Mr D'Cruz, who appeared for Alexey submitted that if the court determines that it is proper for the additional claim to be tried in England, because it is closely bound up with the main claim and/or there is a common thread between the two claims, it is a short step to conclude that England is the appropriate forum. He relies upon dicta to that effect in *Credit Agricole Indosuez v Unicof* [2003] EWHC 2676 (Comm) at [19] where Cooke J said that to establish Gateway 4 "virtually concludes the question" of appropriate forum and went on to say:

"... "if proceedings are going on in this jurisdiction on the self-same or linked issues, this is clearly the most appropriate forum for those common and connected issues to be tried between all relevant parties."
11. I respectfully adopt those observations noting, however, that "virtually concludes" does not obviate the need for the issue of forum to be considered. A determination that the additional party is a proper party to either the main claim or the additional claim is likely to be very influential on the subject of forum, but it is not conclusive.
12. The second point concerns the nature of the hearing when an application is made to set aside an order granting permission to serve out of the jurisdiction. Here it suffices to refer to the short discussion at [91] in the judgment of Marcus Smith J in *Microsoft Mobile Oy v Sony Europe Ltd* [2017] EWHC 374 where he cites with approval a passage in Briggs Civil Jurisdiction and Judgments 6th ed. at p460. An applicant who seeks to set aside an order giving permission to serve out of the jurisdiction is not subject to a burden that requires the applicant to establish that the order was wrongly made. On the contrary, the court will decide the issue afresh and it is for the party seeking permission to serve out of the jurisdiction to satisfy the court that the order was correctly granted, albeit the court might reach the same conclusion by a different route.
13. Whether taking the decision afresh is best described as a rehearing may be debatable because often there will not have been a hearing on the first occasion service out was considered. Furthermore, and more significantly, when the application to set aside the order is heard, the court is under some restraints about the evidence it should take into account. The court must consider whether permission should be granted in light of the circumstances that pertained when the order to serve out of the jurisdiction was made. The court may have regard to additional evidence, but only to the extent that the additional evidence sheds light upon considerations that were relevant at that time. This will not normally permit the court to have regard to later events. The principle derives from the judgment of Hoffmann J in *ISC Technologies Ltd v Guerin* [1992] 2

¹ Per Lloyd LJ in *The Golden Mariner* [1990] 2 Lloyd's Rep 215 at 222.

Lloyd's Rep 430 at 434 col 2 and the judgment of Gloster LJ in *Erste Group Bank v JSC 'VMZ Red October'* [2015] EWCA Civ 379 at [45]. Recent examples of the principle being applied can be seen in *Microsoft Mobile Oy v Sony Europe Ltd* at [92] and the judgment of Morgan J in *Satfinance Investments v Phillbrick* [2020] EWHC 3527 (Ch) at [41]-[43].

14. It follows that it is not open to the court on hearing Olga's application to have regard to the Presnenskiy Proceedings she instituted in Moscow or to the proceedings instituted by Alexey more recently. The fact that Olga instituted the Presnenskiy Proceedings very shortly after she was served with the additional claim pursuant to Deputy Master Lloyd's order illustrates why the evidence to which the court should have regard on hearing Olga's application is curtailed. It would otherwise be open to a defendant who is served with unwelcome proceedings to take steps to undermine the order giving permission to serve out of the jurisdiction. The Presnenskiy Proceedings cannot be said to 'shed light' on the considerations that were present when the Deputy Master granted permission to serve out of the jurisdiction.
15. The position about the decision of the Deputy Judge on the application for anti-suit injunction application is different, not least because it was a step taken by Alexey. That difference is material although it is of limited impact. I do not accept that the decision of the Deputy High Court judge bears the analysis that Olga places upon it on the subject of *forum conveniens*, for reasons I will explain later in this judgment, but even if it does, it is not open to Olga to rely upon an issue estoppel or an abuse of process argument. It is appropriate, however, to have regard to the Deputy Judge's analysis of the issue of *forum conveniens* to the extent it may shed light upon that issue.
16. As is common in applications of this type the court has been provided with a substantial body of witness statements. Olga relies upon witness statements from Ms Mirimskaya (Olga), Mr Telyatnikov (a partner at Enyo Law LLP) and Ms Zhuravleva (a lawyer acting for Olga in Russia). Alexey relies upon witness statements of Ms Menshenina (a partner at Withers LLP) and Mr Korchuganov (a lawyer acting for Alexey in Russia).
17. I now turn to consider the main claim and the additional claim.

The Main Claim

18. The main claim was preceded by two events that are material. First, in 2016 there was a dispute between Nataliya and Alexey about beneficial ownership of 28 Upper Mall which led to correspondence being exchanged, and secondly, in 2019 the Deed of Gift was executed.
19. The correspondence in 2016 is material because:
 - (1) On 5 April 2016 Alexey, in response to a letter from Nataliya, stated that the matrimonial assets he and Olga owned were divided by a series of orders and legal agreements following their divorce in 2009. He asserted that Olga had no interest in the chattels that are the subject of the current dispute.
 - (2) On 9 June 2016 the "Deed of Settlement" was circulated to Olga's and Nataliya's advisers. No issue about it being invalid or Olga's signature on it being a forgery was raised at that stage has been placed before the court.
20. The Deed of Gift was made between Olga and Nataliya on 30 September 2019 with an English choice of law clause. The main claim is founded upon the Deed of Gift. Olga relies upon the breadth of its main operative clause as a basis for submitting that

there is no benefit in permitting Alexey to bring the additional claim against her in this jurisdiction. Clause 1 provides:

“In consideration of her natural love and affection [Olga] hereby gives assigns and transfers to [Nataliya] absolutely all her legal and beneficial interest in the Chattels together with all rights and causes of action in respect thereof.”

21. The Chattels are defined as being a collection of chattels which are listed in the Schedule to the Deed and the Recitals assert that they were removed from 28 Upper Mall by Alexey on unknown dates between 2012 and 2015. The Schedule to the Deed of Gift sets a list of 358 items that are catalogued by reference to a Christie’s valuation and a further 76 ‘Non-Christie’s items’ that are described and recorded in a catalogue of photographs.
22. The Deed of Gift was executed shortly before the main claim was issued and was clearly executed with the intention of enabling Nataliya to bring a claim against her father. Olga and Nataliya have appointed the same firm of solicitors to act for them. Mr Emmett who appeared for Olga accepted that they seek the same objective, namely that Olga wishes Nataliya to have the Chattels. It seems to me that the inference can readily be drawn that Olga and Nataliya are acting in concert in light of the letters written in 2016 and production in 2016 of the Deed of Settlement. That is not to say that Nataliya is merely a cipher for her mother, but for the purposes of Olga’s application it is right to treat them as working together towards a common objective.
23. The principal elements of the main claim are:
 - (1) Nataliya is described as being a Russian citizen who divides her time between an address in the Odinstovo district in Moscow and 28 Upper Mall. Alexey is described as a Russian businessman who was formerly an executive with Yukos Oil Company and is resident in Moscow. Olga is described as a Russian businesswoman who resides in Moscow.
 - (2) Nataliya alleges that in the period between 1995 and 2016 Olga acquired with her own money a substantial art and antiques collection. The items that are said to have been acquired by Olga are defined for the purposes of the pleading as “the Collection” without specifying what items it comprises. The term is adopted in the defence and counterclaim and the additional claim. Nataliya’s case is that 50% of the Collection was bought through Christie’s, where Olga had her own account, and the remainder through other dealers, markets and shops. Nataliya alleges that at all times up to the Deed of Gift Olga was the legal and beneficial owner of the Collection.
 - (3) Nataliya alleges that between 2012 and 2016 Alexey removed a substantial part of the Collection from 28 Upper Mall. She describes the items he removed as “the Missing Items” comprising 273 items purchased from Christie’s (“the Christie’s Works”) and 76 other items (“the Non-Christie’s Works”). The pleading does not specify the items that are not missing.
 - (4) She says that on one occasion in November 2015 there was a substantial argument between her and Alexey about the removal of the Missing Items. This led to a dispute between them about the beneficial ownership of 28 Upper Mall in the course of which Alexey’s solicitors provided the Deed of Settlement allegedly made between Alexey and Olga to Nataliya’s solicitors.
 - (5) Nataliya sets out in detail the provisions of the Deed of Settlement and alleges that Olga’s signature on it is a forgery. At paragraph 18 of the

particulars of claim Nataliya says: “Olga has confirmed that she did not sign it and that she had never seen it before or soon after its production on 9 June 2016.” It appears that the dispute about the authenticity of the Deed of Settlement has only arisen relatively recently.

- (6) Relying upon the terms of the Deed of Gift Nataliya alleges that she is now the sole legal and beneficial owner of the Missing Items, namely the items she alleges that Alexey removed from 28 Upper Mall.
- (7) Nataliya made a demand for return of the Missing Items. She refers to letters from Alexey dated 22 November and 13 December 2019 in which he confirms that a significant proportion of the Christie’s Works are in his possession and had been transferred to him under the Deed of Settlement.
- (8) Nataliya alleges that Alexey has unlawfully interfered with the Missing Items and refused to return them.
- (9) She seeks an order for delivery up and damages.

24. In his defence and counterclaim Alexey:

- (1) Admits that Olga is a businesswoman who resides in Moscow but claims that he is the direct or indirect source of her wealth as a consequence of the transfer of ownership and/or control of most of his assets when Yukos and associated companies “came under investigation as part of a politically motivated campaign”. He says the assets were transferred to Olga on the basis of a mutual understanding that she would hold them for their mutual benefit. He sets out the sources of family finances that were used to pay for family finances and Olga’s expenses.
- (2) He says the Collection was acquired by him and Olga jointly on the basis that it would be owned by them jointly as part of their family assets and he funded its purchase from sources he specifies.
- (3) He relies on four grounds to say that at the date of the Deed of Gift the Collection, or a substantial part of it, belonged to him:
 - (i) The Collection belonged to him after Olga’s transfer of her interest in it to him under the Deed of Settlement.
 - (ii) Alternatively, under Russian law the Collection and other items (including jewellery) belonged to him and Olga jointly.
 - (iii) Alternatively, the Collection belonged to Alexey and Olga jointly under a common intention constructive trust arising from their mutual understanding that family funds would be used to build up the Collection.
 - (iv) Alternatively, if the common intention is not found to exist, the Collection belonged to Alexey under a resulting trust on the basis that he provided funds for its purchase.
- (4) Alexey says that the Deed of Settlement was made pursuant to Article 38(2) of the RF Civil Code and transferred artwork and antiques (“the Deed of Settlement Artwork”) valued at approximately 170 million roubles comprising 281 Christie’s items and 34 non-Christie’s items to him and jewellery worth 426 million roubles to Olga. He says the Deed was not a forgery and at paragraph 16(2) sets out in detail the circumstances in which it was prepared and executed.
- (5) Alexey’s counterclaim records that he has issued the additional claim against Olga by which he seeks an order awarding him sole title to the Collection pursuant to powers contained in Articles 38 and 39 of the RF Family Code.

- (6) He alleges that Nataliya has retained items from the Collection (“the Retained Items”) and provides a list of those items that he is currently able to identify. He says an ‘audit’ is needed to determine the full extent of the Retained Items.
 - (7) Alexey counterclaims for a declaration that the Deed of Settlement is valid, declarations concerning title to the Collection that are consequential upon the various ways in which his claim is put, an order for delivery up of the Retained Items and damages in the alternative.
25. Nataliya puts in issue between herself and her father the validity of the Deed of Settlement. Both it and the Deed of Gift are central to the main claim. The way in which paragraph 18 of the particulars of claim is pleaded make it inevitable, if it were not already inevitable, that Olga will have to give evidence in the main claim to support Nataliya’s assertion that the Deed of Settlement is invalid. Furthermore, at the risk of stating the obvious, Nataliya can only bring the main claim because her mother has made that possible by the transfer of such rights as she may have to the Chattels in the Deed of Gift: but for the Deed of Gift the dispute would be solely between Alexey and Olga.
26. It will also be necessary as a result of the way in which the main claim is pleaded for the court to examine and make findings about the way in which the family finances between Alexey and Olga operated. The court will need to examine whether there was a transfer of funds in light of the Yukos investigation and how the family expenses were financed in order to establish whether the Collection was acquired using Alexey’s or Olga’s money, or joint funds.

The Additional Claim

27. Unsurprisingly, the defence and counterclaim and the additional claim overlap. Alexey seeks declarations that Olga had no interest in the items that are identified in the Appendix to the Deed of Gift, or the majority of them, for the same reasons he relies upon in his defence and counterclaim. He also alleges that over the course of the marriage he and Olga acquired a valuable collection of jewellery and the 18 most valuable items were listed in the Deed of Settlement (“the Deed of Settlement Jewellery”).
28. The principal relief he seeks is a declaration that the Deed of Settlement is valid and resulted in him becoming the sole owner of what he describes as the Deed of Settlement Artwork which formed part of the Collection and Olga becoming the sole owner of the Deed of Settlement Jewellery. This is the same issue that Nataliya has raised in the main claim.
29. In the same way as in the main claim, Alexey sets out his case that he was the source of funds that were used to acquire the Collection. Alexey also pleads in some detail the circumstances in which the Deed of Settlement was prepared and signed by Olga.
30. If the Deed of Settlement is not found to be valid, Alexey seeks:
- (1) A declaration that he owns half the Collection and orders under the RF Family Code and RF Civil Code that he be awarded the other half of the Collection and invalidating the Deed of Gift.
 - (2) A declaration that he is 50% owner of the Collection under a constructive trust.
 - (3) A declaration that he is the owner of the entire Collection under a resulting trust.

31. The relief Alexey seeks against Olga in relation to the family jewellery, if the Deed of Settlement is not valid is:
- (1) A declaration under the RF Family Code and the RF Civil Code that he is entitled to a portion of the jewellery that Olga has kept possession of.
 - (2) Alternatively, a declaration that he and Olga are equal beneficial owners of the jewellery pursuant to a constructive trust based upon similar factual and legal considerations as the claim related to the Collection.
 - (3) Alternatively, that he is sole beneficial owner of the jewellery under a resulting trust.
 - (4) An order for delivery up of the Deed of Settlement items and other items from the Collection that remain in Olga's hands.

The Definitions

32. There is a surfeit of definitions in use by the parties relating to a large number of chattels. In some case they are defined by reference to specified items and sometimes they refer to a class of chattels that is not so specified. Before considering whether Deputy Master Lloyd's order should be set aside, it is worth recapping and seeing how far the definitions overlap.
33. Nataliya uses the term "the Collection" to describe the total body of artworks and antiques that were acquired by Olga (on Nataliya's case) between 1995 and 2016. The items that are comprised in that definition are not specified.
34. "Chattels" is the term used in the Deed of Gift to describe the items gifted by Olga to Nataliya. It overlaps with the "Missing Items", a term used in the particulars of claim to describe items that formed part of the Collection belonging to Olga, prior to the Deed of Gift, that were removed by Alexey from the house in Hammersmith: unhelpfully, the Missing Items are also referred to as the "Appendix A Items" and elsewhere as the "Schedule Artworks". The Deed of Gift was executed to enable Nataliya to bring the claim in respect of the Missing Items.
35. The "Retained Items" were comprised with the Collection and are the residue of the Collection disregarding the Missing Items. Alexey alleges that Nataliya holds the Retained Items and he seeks their return. He is only able to partly identify the items that have been retained and seeks an 'audit'.
36. The "Deed of Settlement Artwork" is part of the Collection and partially overlaps with the Missing Items, but not completely.
37. The Deed of Settlement Jewellery is listed in the Deed of Settlement.

The Issues

38. Olga's application was originally listed to be heard in April 2021 and full skeletons were prepared and filed for that hearing which was adjourned. It is clear from Mr Emmett's April 2021 skeleton that the two issues for the court were whether Olga is a necessary or proper party to the claim or the additional claim and the issue of *forum conveniens*. The question whether there is a serious issue to be tried on the merits appears to have been assumed in favour of Alexey. In his supplemental skeleton the court is invited to consider the serious issue to be tried and the necessary or proper party issue together. He makes two principal submissions:
- (1) The claim between Alexey and Olga relating to the Missing Items (otherwise the Chattels) is unnecessary and serves no useful purpose.

- (2) The elements of the additional claim that are wider than the main claim relating to items other than the Missing Items is “hopelessly vague”.

Serious issue to be tried/necessary or proper party

39. I will adopt the same approach as the parties and take these two issues together.
40. Mr Emmett submits that Olga has divested herself of any interest in the Missing Items/Chattels and she has no interest in a dispute between Alexey and Nataliya about those items. The Deed of Gift recites that Olga is the legal and beneficial owner of the Chattels and does not expressly contemplate the possibility that she is a joint owner with Alexey. Mr Emmett submits that the terms of clause 1 are wide enough to transfer a partial interest in the Chattels so that whatever Olga’s interest in the Chattels may have been, legal or equitable, whole or partial, it became vested in Nataliya. If at the time she executed the Deed of Gift she had no interest in the chattels there would be no issue between her and Alexey. The Deed of Gift in that circumstance would have no effect at all.
41. Recital C records an agreement made between Alexey and Olga made in 2008 that legal ownership of 28 Upper Mall would be transferred to Alexey on condition that the property and all of its contents would belong to Nataliya once she started a family. Recital D records that Nataliya became the legal owner of 28 Upper Mall in 2017. She became a mother before the Deed of Gift was executed. It is notable that Recital C does not precisely match Nataliya’s case in the main claim that Olga was the sole owner of the Chattels. At least it is not clear that the agreement in 2008 is based upon that premise. It would not have been necessary for Alexey and Olga to have agreed in 2008 that the contents of 28 Upper Mall “would belong to” Nataliya if Olga was the sole owner of the Chattels (albeit there may not be a precise overlap between the Chattels and contents of the property) at that time.
42. I accept the general principle that if a legal issue is presented to the court upon considering an application for permission to serve out of the jurisdiction the court may determine it. In this case the terms of the Deed of Gift are uncomplicated and clause 1 is drafted in wide terms. Despite some uncertainty about the stated premise upon which the Deed of Gift is based, clause 1 must have intended to gift all of Olga’s legal and beneficial title to the Chattels, whatever it may have been, so that Olga divested herself of her entire interest upon execution of the deed.
43. This conclusion does not lead, however, to the conclusion that Olga is not a proper party to the claim and additional claim. Nataliya’s claim involves a chain of title. It will be necessary to establish what title Nataliya received. Olga should be a party to that claim. If that were not so, she would not be bound by the determination made by the court about items that once belonged to her. Furthermore, it is a central part of Nataliya’s case that the Deed of Settlement is invalid. Clearly she feels that is an issue the court needs to determine and naturally it is taken up in the counterclaim and the additional claim. It would be odd indeed if the court on determining the main claim were to conclude that the Deed of Settlement is valid, or invalid, but for Olga, who inevitably will be a witness in relation to that issue, not to be bound by the determination.
44. A number of further submissions are made including issues as to limitation:
 - (1) Alexey seeks an order for specific performance of the Deed of Settlement and Olga says the claim is barred by the doctrine of laches.
 - (2) In relation to Alexey’s claim for an order for delivery up of the Remaining Items under section 3(2) of the Torts (Interference with goods) Act 1977,

alternatively damages, it is said that the first alleged conversion took place more than six years before the additional claim was issued.

45. Both of these issues will require a full investigation into the facts and the law to be determined. Neither would entitle the court to conclude that the additional claim has no real prospect of success.
46. Olga makes a number of further submissions about Alexey's additional claim and I accept that the claim descends into further alternatives, there are some elements that are less compelling than others. It is not necessary, however, for Alexey to show that every element of the additional claim has a real prospect of success. I am satisfied that overall he is able to show that it has a real prospect of success.
47. It seems to me that the proper party test is relatively easy for Alexey to establish. Nataliya is only able to bring the main claim because her mother entered into the Deed of Gift. In determining the main claim the court will have to decide, amongst other issues, on Nataliya's case:
 - (1) Upon what basis the Collection was made? Who paid for the items as between Alexey and Olga and was there a common understanding between them about ownership, legal and beneficial?
 - (2) What did the Collection comprise and to what extent did it overlap with the Chattels/Missing items? To the extent that there is not a complete overlap who is the owner of the remaining items as between Alexey and Olga, or do they own the items jointly?
 - (3) Is the Deed of Settlement a valid document and, if so, what are its effects?
48. The additional claim covers much the same territory as the main claim as well as further issues in dispute between Alexey and Olga. All the disputes concern either that part of the Collection that was dealt with in the Deed of Settlement or the jewellery. It is obvious that there is a common thread between the main claim and the additional claim. The claims are between members of the same family and Nataliya is only a party because Olga has made that possible by executing the Deed of Gift. Whilst it may be convenient for Olga to say that there is no purpose served by her being a party to the additional claim, this overlooks the desirability of her being a party in order that she can be bound by the determinations made by the court.
49. I do not accept that no purpose will be served by the grant of the declaratory relief that is sought. It is of course a matter of discretion of the trial judge to decide what declaratory relief should be granted but it would be wrong for this court to reach any conclusions on that point at this stage. The trial judge will form a view after having heard all the evidence and in light of the determinations of fact and law that are to be made.
50. I turn to consider the elements of the additional claim that are said to be hopelessly vague.
51. Alexey makes two claims that relate to chattels that are not included in the definition of Chattels in the Deed of Gift (or Missing Items in the particulars of claim). First, he adopts the definition "the Collection" that is used in the particulars of claim by Nataliya. It includes the Missing Items but is not otherwise defined by reference to a list of items. In the particulars of claim, it is averred that:

"8. At all material times up until the Deed of Gift ... the Collection was legally and beneficially owned by Olga."
52. In the defence paragraph 8 of the particulars of claim is denied and Alexey alleges that the Collection, or a significant part of it, belonged to him due to the effect of the Deed of Settlement, or alternatively, if the Deed of Settlement is invalid, due the provisions of the RF Family Code he pleads, it and the collection of jewellery were

jointly owned. He also relies in the alternative on the common intention constructive trust or a resulting trust. The essential point is that the case Alexey is making is in direct response to the case made by Nataliya and adopts the definition she uses. Mr Emmett is correct to point out that it is not part of the court's function to provide an audit of chattels and there is no claim for an account made by Alexey.

53. A similar point can be made about Alexey's claim in relation to the jewellery.
54. I am not persuaded that what may be a deficiency in the relief that is sought in Alexey's claim can be elevated to a basis for saying that it has no real prospect of success. It is easily resolved by a minor amendment to add a claim for an account. The court is familiar with an investigation into the identity of assets acquired and held by a party in the context of business disputes. The difference between such a claim and this one is slight.
55. I am satisfied that Olga is a proper party to the additional claim. Stepping back from the detail, that conclusion is unsurprising. Olga is a proper party to litigation brought by her daughter against Olga's former husband concerning assets that were largely acquired during their marriage in circumstances in which, as a minimum, Olga has facilitated the claim being made.
56. It is not essential for me to decide whether Olga is a "necessary" party to that claim.

Forum

57. I start by considering the judgment of the Deputy Judge who dismissed Alexey's application for an anti-suit injunction. For the reasons I have already given, I reject the notion that it is abusive for Alexey to maintain that England is clearly or distinctly the correct forum for the issues raised in the additional claim to be litigated. It is right however to have regard to the views formed by the Deputy Judge on that subject because they are capable of shedding light (I put it no higher than that) upon the circumstances present at the date when Deputy Master Lloyd made his decision and, in any event, it is appropriate to do so as a matter of judicial comity.
58. Clearly, the hearing before the Deputy Judge concerned very different circumstances. Olga issued the Presnenskiy Proceedings after service upon her of the additional claim but before applying to set aside Deputy Master Lloyd's order. The Deputy Judge considered that the determination he had to make involved Alexey satisfying him on two points, one of which concerned forum. This can be seen from paragraphs [27]-[28] of the judgment:
 - “27. There are two crucial questions which in my judgment must be answered by Mr Golubovich in order for him to succeed on his application. The first is whether England is the “natural forum” for the determination of the matters raised in the Presnenskiy Declaration Proceedings; the second is whether the prosecution of those proceedings in parallel is something that this court should act to prevent.
 28. I pose the first question because it seems to me that embarking upon The enquiry as to whether the Presnenskiy Declaration Proceedings are vexatious or an interference, ultimately leads to the same point: should Ms Mirimskaya be restrained from proceeding in Moscow because England is the proper and natural forum for the determination of the matters in issue?” [emphasis added]
59. The scope of the issue about forum can be seen from paragraph [27]. It concerned whether England is the natural forum for the determination of the matters raised in the

Presnenskiy Proceedings, not whether England is the natural forum for determination of the issues in the additional claim. Where the Deputy Judge refers to the “matters in issue” in paragraph [28] he is clearly referring to the Presnenskiy Proceedings. Those proceedings only concerned whether Olga had signed the Deed of Settlement and its validity. They do not concern any of the other issues that are included in the main claim and the additional claim. For example, the Presnenskiy Proceedings do not concern issues that are consequential upon a finding of validity or invalidity.

60. The Deputy Judge had the narrow scope of the Presnenskiy Proceedings in mind as can be seen from paragraphs [36]-[37] of his judgment. Later remarks in his judgment about the appropriate forum must be read in light of the way he framed the question of forum he had to decide.
61. The determining factor about forum the Deputy Judge had in mind can be seen from paragraph [29] of his judgment:

“29. The dispute which Ms Mirimskaya seeks to have resolved in Russia relates to a matter which, as Mr Emmet points out, has already involved the Russian Courts and legal system for many years. To see the matter determined in England will involve moving one aspect of the divorce litigation from the forum which has had the conduct of all the relevant matrimonial litigation hitherto. In effect it would be the English Court and not the Russian that would be resolving questions of ownership of matrimonial assets.”
62. It is right to note that the Deputy Judge expressed some scepticism about the grant of permission to serve the additional claim out of the jurisdiction. At paragraph [31] he suggested that Deputy Master Lloyd may not have had the benefit of the materials that were available at the hearing of Alexey’s application for an anti-suit injunction. However, the Deputy Judge does not say that the Deputy Master Lloyd’s order was wrongly made and, in any event, it was not relevant for him to consider whether subsequent material could be deployed on an application by Olga to set aside the order.
63. In summary:
 - (1) The decision of the Deputy Judge did not determine the same issue of forum that is before me. Olga’s application to set aside Deputy Master Lloyd’s order had not been made when the application for an anti-suit injunction was considered.
 - (2) The issue about forum before the Deputy Judge was narrower than the issue before this court.
64. I do not consider that the decision of the Deputy Judge and the reasons for it shed any light on the circumstances at the date Deputy Master Lloyd made his order.
65. I have already determined that Olga is a proper party to the additional claim and that on the view expressed by Cooke J in *Credit Agricole Indosuez v Unicof* “virtually concludes” the issue of forum. It is significant that Nataliya with the assistance of Olga has brought the main claim in England. Although she resides at 28 Upper Mall, she also resides in Russia. Her parents are both resident in Russia. Olga and Nataliya entered into the Deed of Gift and agreed that it would be subject to English law. Nataliya subsequently issued the main claim in England concerning chattels that are partly held in other jurisdictions. Nevertheless, Alexey has accepted the jurisdiction of the English Court. Having determined that Olga is a proper party to the additional claim it would be odd for the court to conclude that England is not obviously the proper forum for the additional claim given the choice of jurisdiction Nataliya, with Olga’s support, has made.

66. It seems to me that the way in which Nataliya's claim is pleaded made it inevitable that there would be a counterclaim and an additional claim against Olga. She asserted that:
- (1) The Collection was created during her parents' marriage;
 - (2) Olga was the sole source of funds used by her parents to acquire the Collection; and
 - (3) The Deed of Settlement, an agreement that formed part of the resolution of matrimonial issues between Alexey and Olga, was invalid.
67. Both Alexey and Olga have demonstrated a propensity to litigate with enthusiasm. It is plainly desirable (and proper) that issues between them relating to the Collection and the jewellery are resolved in one place. The undesirability of fragmentation of disputes is often referred to in decisions about jurisdiction.
68. Both Alexei and Olga have provided lists of indicative factors that are relevant to the decision about forum. Olga points principally to the following factors:
- (1) Alexei and Olga are both Russian citizens and residents. Their dispute relates to a marriage made and dissolved in Russia, under Russian law.
 - (2) There have been and are extensive proceedings in Russia relating to the marriage. These include but are not limited to the Presnenskiy Proceedings.
 - (3) The Deed of Settlement is a thoroughly Russian document. It is Russian, it refers to the RF Family Code, it was concluded in Russia, it relates to two individuals who live in Russia and relates to chattels some of which are in Russia.
 - (4) The additional claim is essentially a claim under Russian family law. Most of the relief is sought under provisions of the Russian family code.
 - (5) Most witnesses reside in Russia.
69. Alexey points to:
- (1) The Collection having been acquired to furnish a house in England.
 - (2) The majority of the items (186 out of 345) are still located in England.
 - (3) Both Nataliya in the main claim and Alexey in the counterclaim and the additional claim raise claims in relation to proprietary rights arising in England and governed by the Torts (Interference with Goods) Act 1977.
 - (4) Two of Alexey's four defences in the main claim, his counterclaim and his claims in the additional claim namely the constructive trust and resulting trust claims, are governed by English law.
 - (5) Alexey's counterclaim and his additional claim are founded upon breaches of his proprietary rights to the Collection arising from the Deed of Gift which has an express English choice of law clause.
70. It is undoubtedly right that there are factors pointing towards the Russian jurisdiction. However, I am satisfied, having taken as a starting point the determination that Olga is a proper party to the additional claim, that having regard to considerations at the date of Deputy Master Lloyd's decision, England is clearly or distinctly the most appropriate jurisdiction in which the claims in the additional claim should be determined.

Conclusion

71. Olga's application to set aside Deputy Master Lloyd's order will be dismissed.