IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

2013 Folio 354

BETWEEN:

VICTOR MIKHAYLOVICH PINCHUK — Claimant

-and-

(1) GENNADIY BORISOVICH BOGOLYUBOV
(2) IGOR VALERYEVICH KOLOMOISKY — Defendants

DEFENCE OF THE FIRST DEFENDANT

Abbreviations used in the Particulars of Claim are adopted in this Defence. References in this Defence to paragraph numbers are to paragraph numbers of the Particulars of Claim unless the contrary is indicated.

Save as expressly admitted below, the First Defendant joins issue with the Claimant and denies each and every allegation in the Particulars of Claim as if each of them were set out and specifically traversed.

Jurisdiction

1. Paragraphs 1 and 2 are not Particulars of the Claim against the Defendants and no admissions are made as to the facts, matters and conclusions of law stated in them. The First Defendant has submitted to the jurisdiction of the Court.

The Parties

2. No admissions are made as to paragraph 3 save that the parties are all Ukrainian businessmen.

The Claimant

3. Paragraph 4 is not admitted. So far as is relevant to the facts and matters pleaded in this Defence, the Claimant is (or was at all material times) interested in:

   a. Scientific Production Investment Group "Interpipe" Corporation ("Interpipe");

   b. Ukrainian-American limited company with foreign Investments Bipe Co Ltd ("Bipe");

c. PJSC "Bank Credit Dnepr" (formerly known as Joint Stock Bank Credit Dnepr) ("Bank Credit Dnepr");

d. OOO Pridneprovye ("Pridneprovye"); and

e. The Industrial and Financial Consortium of Pridneprovye ("PFK").

4. Between 1997 and 2005, as was well-known in Ukraine, the Claimant enjoyed a close relationship with Leonid Kuchma, the former President of Ukraine:

a. from 1997, the Claimant has had a relationship with Elena Franchuk (the daughter and only child of Mr Kuchma) whom he married in 2002; and

b. the Claimant was a member of the Ukrainian parliament for two consecutive terms from 1998 to 2006 during which time, until 2005, Mr Kuchma was in office.

5. While President Kuchma was in power, the Claimant enjoyed a privileged position in relation to a number of privatisations of Ukraine's state-owned assets which were sold by the State Property Fund of Ukraine ("SPFU"). In particular,

a. a consortium led by Bank Credit Dnepr purchased a controlling interest in Nikopol (the largest ferroalloys producer in Europe) at an undervalue for around USD 77 million in 2003; and

b. a consortium called Investment-Metallurgical Union in which Interpipe was involved purchased Kryvorizhstal (Ukraine's largest integrated steel company) at an undervalue for USD 800 million in 2004.

6. In January 2005, Viktor Yushchenko was elected President of Ukraine and pledged to review the cases of dozens of enterprises suspected of being illegally privatised during President Kuchma's presidency.

7. Among the transactions which President Yushchenko's government headed by Yulia Tymoshenko sought to reverse were the sales of Nikopol and Kryvorizhstal:

a. the sale of Kryvorizhstal was reversed in 2005; the SPFU subsequently sold Kryvorizhstal to Mittal Steel for approximately USD 4.81 billion (6 times the price paid by the Claimant and his co-investors a year earlier); and

b. the Claimant's interest in Nikopol referred to in paragraph 5 and the challenge made to it are addressed further in this Defence below.

8. The Claimant had no legitimate commercial bargaining position to use to cause either of the Defendants to agree to acquire shares in KZhRK or transfer shares to him once acquired. The Claimant nevertheless attempted unsuccessfully to exploit his relationship with President Kuchma to acquire the KZhRK Stake as outlined in this Defence.

The Defendants

9. So far as paragraph 6 is concerned, the term "business partners" is vague. It is not disputed that the Defendants have certain mutual business interests and would describe themselves as "business partners" but it is denied that they formed a partnership as a matter of law if that is what the Claimant intends to allege. It is admitted that the Defendants were among those who established PrivatBank in 1992 as alleged in paragraph 7; the Defendants are both shareholders in the PrivatBank Group which includes PrivatBank Ukraine. Save as otherwise referred to in this Defence, the Defendants' relationship since the 1980s and their respective interests in the companies referred to in paragraphs 7, 8 and 9 are not relevant to the issues in the case given the concession made by the First Defendant in paragraph 12 below.

The Dispute

10. In this Defence:

    a. the First Defendant will use the term "the KZhRK Stake" to refer to the shares acquired in 2004 and identified as the "KZhRK Stake" in paragraph 13 of the Particulars of Claim;

    b. KZhRK issued new shares in August 2005, some of which were purchased by companies owned or controlled by the Second Defendant as stated in his Defence;

    c. the Claimant uses the term "KZhRK Shares" in paragraph 24(2) without explaining how these are to be differentiated from the shares forming the KZhRK Stake; the First Defendant will use the term "KZhRK Shares" to refer to the shares in KZhRK retained by the Second Defendant after the transfer of shares (including half of the KZhRK Stake) to Mr Rinat Akhmetov in March 2006;

    d. further shares in KZhRK were acquired in May 2007 as mentioned in paragraph 43 of the Particulars of Claim; references to the KZhRK Shares after that acquisition includes such shares; and

    e. for the avoidance of doubt,

        i. the Claimant alleges (and the First Defendant denies) that he paid for the KZhRK Stake;

        ii. the Claimant does not claim to have paid for the shares in KZhRK acquired in August 2005 nor does he even refer to them in his Particulars of Claim; and

        iii. the Claimant has not pleaded any basis upon which he might claim to be entitled to any of the shares in KZhRK purchased in May 2007.

11. The Claimant alleges that an agreement was made between him and the First Defendant relating to the KZhRK Stake in July 2004 and in February 2005. The First Defendant denies that these or any agreements were made by him but notes that in any event the Claimant seeks no relief in relation to these alleged agreements.

12. The Claimant seeks relief based on allegations of breach of agreements or declarations of trust made by the Second Defendant at meetings which were not attended by the First Defendant specifically meetings in April 2006 and September 2006 referred to in paragraphs 27 and 31. The First Defendant understands from paragraphs 6, 10, 11, 24 and 25 of the Particulars of Claim that the Claimant seeks to hold the First Defendant jointly liable to him with the Second Defendant for the alleged breaches by alleging that they were partners and/or that the Second Defendant acted as agent for the First Defendant. As to these allegations:

    a. for the purpose of these proceedings only and not otherwise, and in order to limit the issues to be tried, the First Defendant will not dispute that he is jointly and severally liable with the Second Defendant in relation to any relief granted to the Claimant in respect of such agreements or declarations;

    b. the First Defendant denies that he is liable to the Claimant on two main grounds:

        i. in his Defence the Second Defendant denies making any of the agreements or declarations on which the Claimant's claims depend;

        ii. if, contrary to the First Defendant's primary case, an agreement or declaration was made by the Second Defendant, it was governed by Ukrainian law, not English law as alleged, and any claim would be barred by a three year period of limitation which expired before these proceedings were issued;

    c. having made the concession referred to in (a) above, the First Defendant limits his response to paragraphs 7-11 as set out in this Defence, any other allegations made in them being redundant.

The Nikopol Agreement

13. In 1999, the SPFU announced a privatisation of a 4.6% shareholding in Nikopol.

14. Having learned that the Defendants were intending to bid for the shares through PrivatBank, the Claimant, who was also interested in the shares, telephoned the First Defendant during the night of 13 – 14 April 1999 (the eve of the bid) asking him to withdraw PrivatBank's bid but the First Defendant declined. In the course of a subsequent telephone conversation that night (and after the First Defendant had agreed the position with the Second Defendant), it was agreed that both the Claimant and the Defendants (through PrivatBank) would bid for the shares so that, as nearly as possible, 50% of the available shares should be purchased by each of them.

15. Pursuant to the agreement reached on 13 April 1999 the Claimant on the one hand and the Defendants on the other each acquired approximately half of the 4.6% shares in Nikopol.

16. Prior to the subsequent privatisation of a further 26% shares in Nikopol, on or shortly after 4 June 1999, a written agreement and a supplement thereto were signed by the Claimant and the First and Second Defendants recording the parties' agreement to co-operate in relation to the acquisition of shares in Nikopol and their agreement in principle to share profits equally from Nikopol and two manganese mines (Marganetskiy and Ordzhonikidze) in which the Defendants were interested ("the Nikopol Agreement").

17. By an Agency Contract dated 31 August 1999, the Dnepropetrovsk Regional State Administration entrusted the management of the SPFU's shareholding of 50% + 1 shares in Nikopol to Bank Credit Dnepr which thereby obtained the power to manage the SPFU's 151,768,991 (50% + 1) shares in Nikopol. Bank Credit Dnepr was a small financial institution owned or controlled by the Claimant which had little or no experience of running state assets or operating in the ferroalloy industry. It is to be inferred that there was no good reason for the grant of the Agency Contract to Bank Credit Dnepr and that it was granted to the Claimant as a favour because of his relationship with President Kuchma.

18. Consistently with the Nikopol Agreement:

    a. on or about 16 July 1999, the Claimant (through Bipe) acquired the 26% shareholding in Nikopol from the SPFU and subsequently transferred half of those shares to PrivatBank at cost price;

    b. on 26 October 2000, a company owned and controlled by the Second Defendant purchased 12.2% of the Nikopol shares from companies owned or controlled by Konstantin Grigorishin and sold 50% of that block to a company owned or controlled by the Claimant at cost price;

    c. between 2000 and 2001, Privatbank acting as broker for a company owned or controlled by the Second Defendant bought another 3.1% and sold 1.5% to a company owned or controlled by the Claimant at cost price; and

    d. until the end of December 2001, the Claimant and the Defendants shared the profits derived from Nikopol.

19. Shortly after the Claimant married the President's daughter, in December 2002 the Ukrainian government lifted a moratorium on the further privatisation of Nikopol and by August 2003, PFK had purchased the State's 50%+1 shares at around USD 77 million (a substantial undervalue).

20. However, in breach of the Nikopol Agreement, from January 2002:

    a. the Claimant stopped sharing profits derived from Nikopol with the Defendants; and

b. the Claimant refused to cause half of the 50%+1 shares acquired by him in Nikopol to be transferred to the Defendants.

The Ukrnafta Agreement

21. Ukrnafta is the largest company involved in extracting oil and gas in Ukraine.

22. At the end of 2002:

a. the Ukrainian State held a shareholding of 50% + 1 share in Ukrnafta through National Joint Stock Company Naftogaz ("Naftogaz"); and

b. the Defendants (among others) were the beneficial owners of 40.1% of the shares in Ukrnafta the voting rights attached to which were sufficient to prevent a shareholders meeting from being quorate in the event of their non-attendance.

23. At the end of November 2002, the Claimant approached the Second Defendant and advanced a proposal which would allow the Defendants to obtain the benefit of their corporate rights in relation to the management of Ukrnafta, citing his influence both over 50% +1 shares of Ukrnafta through Naftogaz and over representatives of the State and Ukrnafta's Supervisory Board due to his relationship with President Kuchma.

24. The Second Defendant expressed his interest in this proposal following which the Claimant reverted with terms and conditions. After further negotiations, a written agreement entitled "Agreement to Co-operate in Attaining Operational Control of Ukrnafta" dated 25 January 2003 (the "Ukrnafta Agreement") was made between:

a. the First and Second Defendant both of whom signed the agreement and who are together identified as "Party 1"; and

b. the Claimant identified as "Party 2".

25. Pursuant to the Ukrnafta Agreement, it was agreed (among other matters) that:

a. Party 2 would facilitate the appointment of (a) the Chairman of the Board and (b) five of the eleven members of the supervisory board of Ukrnafta nominated by the Party 1;

b. until November 2004, Party 1 would:

i. pay no less than USD 5 million per month into a "Special Fund"; and

ii. pay to Party 2, 50% of the profits derived from the business of Ukrnafta net of these monthly payments.

26. The First Defendant understood that, at a meeting held in late November 2002, the Claimant had explained to the Second Defendant that the "Special Fund" was to be used to receive funds to finance the forthcoming Presidential election campaign in

2004.

27. Between April 2003 and September 2004, the Defendants caused a total of USD 100 million to be paid to companies owned or controlled by the Claimant for onward payment to the Special Fund setting up Share Purchase Agreements as a mechanism pursuant to which the Defendants would transfer those sums of money to disguise the reason for the payments.

28. In October 2004, the Defendants learned that the money which the Defendants had paid had not reached the Special Fund.

29. In breach of the Ukrnafta Agreement, the Claimant had failed to ensure that the USD 100 million paid by the Defendants was paid to the Special Fund and the First Defendant infers that the Claimant kept the money for himself.

KZhRK

30. Paragraphs 12-14 are admitted. The privatisation law passed in April 2004 provided for a restricted tender process according to which persons or corporations owning a stake of not less than 25% in any company within the Ukrrudprom group would have priority over other bidders.

31. The Second Defendant had made an agreement with Mr Akhmetov in March 2004 that a company owned or controlled by the Second Defendant would bid for the KZhRK Stake and that once acquired it would be held as to 50% for the Second Defendant and as to 50% for Mr Akhmetov.

32. The Second Defendant's company, Solaim (referred to in paragraph 9(7) of the Particulars of Claim) qualified to participate in the bidding process since it owned more than 25% of the shares in Sukhaya Balka which was part of the Ukrrudprom Group at that time.

The Alleged "Yalta Agreement"

33. As to paragraph 15:

    a. it is admitted that on or around 26 July 2004, the Defendants attended a business forum in Yalta where they were among a large group of Russian and Ukrainian businessmen and politicians. After the forum, the Claimant, the Defendants, Mr Akhmetov and Mr Grigoriy Surkis went for lunch together at Tiflis restaurant;

    b. it is denied that any agreement was made between the Claimant and the Defendants (or either of them) at this meeting as alleged or at all; and

    c. accordingly, there is no such thing as the "Yalta Agreement".

The Claimant's Attempts to Purchase the KZhRK Stake

34. As to paragraph 16:

a. as alleged in subparagraph (1), on 4 August 2004, the Second Defendant caused Solaim to acquire the stake in KZhRK for the sum of UAH 689,419,880 (the equivalent of around USD 129.8 million);

b. as for subparagraph (2), it is admitted that deposits in the total amount of UAH 689,420,000 and UAH 44,134,400 were made by Pridneprovye and Interpipe respectively to accounts held by them with Privat Bank on or around 17 August 2004, (the total amount being the equivalent of around USD 138.1 million);

c. the funds deposited by Interpipe and Pridneprovye were not used to pay for the stake in KZhRK and did not constitute payments to the First or Second Defendant; as alleged by the Claimant in footnote 1 to the Particulars of Claim, the money deposited could be withdrawn at any time;

d. subparagraph (3) is not admitted save that Mr Karamanits was replaced by the Claimant's representative, Mr Pak, as Chairman of KZhRK at an extraordinary general meeting on 15 November 2004 ("the KZhRK EGM");

e. the First Defendant was not involved in the exchange of draft documentation referred to in subparagraph (5) as this took place between people acting on the instructions of the Second Defendant and the Claimant, and he denies that he made any agreement (whether "in principle" as alleged in subparagraph (4) or otherwise) with the Claimant or any company owned or controlled by him pursuant to which the KZhRK Stake would be sold in November 2004 or at any time and it is denied that the KZhRK Stake was sold directly or indirectly; the First Defendant is unable to plead further in the absence of particulars; and

f. the agreement alleged to have been made in subparagraph (6) is denied and the meeting between the Claimant and the First Defendant there referred to is further addressed in paragraph 36 below.

Events After January 2005 Before the creation of the Ferroalloys Holding

35. The Claimant's political influence was in rapid decline by January 2005 by which time the Defendants had received no share of Nikopol's profits for over two years; on 23 January 2005, President Kuchma left office and was succeeded by President Yuschenko.

36. It is admitted that the First Defendant met the Claimant at the Claimant's offices in Kiev in late February 2005 as alleged in paragraph 16(6); at that meeting, a number of issues were discussed:

a. it is admitted that the Claimant asked for the KZhRK Stake to be sold to him;

b. it is denied that the First Defendant told the Claimant he could buy the KZhRK Stake from the Defendants for USD 130 million plus a 10% commission as alleged;

c. the First Defendant raised the issue of the debts owed by the Claimant to the Defendants in relation to the Nikopol and Ukrnafta Agreements; in particular, the First Defendant was concerned to recover the USD 100 million that had been destined for the Special Fund pursuant to the Ukrnafta Agreement referred to above; and

d. the Claimant acknowledged his breach of the Nikopol Agreement but only in so far as he admitted that the Defendants were entitled to 25.6% of the profits from January 2002 reflecting the shares in Nikopol owned or controlled by them; the Claimant denied the Defendants' claim to half of the shares he had acquired in 2003 and profits attributable to them and the meeting ended when he refused to discuss the payments made by the Defendants which had been intended for the Special Fund.

The Alcross Agreements

37. As to paragraphs 17 and 18:

a. the First Defendant did not attend the meeting on 5 March 2005 and makes no admissions as to what was discussed;

b. the First Defendant was not involved in the discussion, negotiation or making of the Alcross Agreements; and

c. as the Claimant does not make any claim against either of the Defendants for misrepresentation or breach of contract in relation to the Alcross Agreements, the First Defendant does not plead further to these paragraphs.

38. As to the conversation between the Claimant and the First Defendant referred to in paragraph 19, it is admitted that Rabbi Kaminetsky ("the Rabbi") took a call from the Claimant while the First Defendant was in the company of the Rabbi at the opening of the Jerusalem Museum on 15 March 2005 but First Defendant denies that he assured the Claimant that the KZhRK Stake would be transferred to him. The First Defendant did not communicate directly with the Claimant. The Claimant phoned the Rabbi, who told him that he was next to the First Defendant, and the Rabbi relayed from the Claimant a question, namely whether the Defendants would discuss the acquisition of "the plant" by the Claimant if he were to transfer the monies due to the Defendants, to which the First Defendant replied yes. By "the plant", the First Defendant understood the Claimant to be referring to the KZhRK Stake.

39. As to paragraphs 20-22, no admissions are made save that:

a. the deposits worth around USD 138.1 million when made on 17 August 2004 referred to above were withdrawn by Interpipe and Pridneprovye in March 2005;

b. Ralkon transferred the entire issued share capital of Alcross to the Alcross

Buyers;

c. USD 143 million was received by Ralkon as alleged; and

d. in their calculations of the amount due to them the Defendants have given the Claimant credit in the amount of USD 143 million received in March 2005 to reduce the sum claimed in respect of the share of Nikopol's profits to which they are entitled.

The Claimant's Loss of Control over KZhRK

40. As to paragraph 23, no admissions are made save that:

a. it is admitted that the Claimant lost the ability to exercise management control of KZhRK on 3 March 2005:

i. in January 2005 proceedings had been commenced by Mr Karamanits in the Zhovtenevyi District Court of Dnipropetrovsk to invalidate the resolution at the KZhRK EGM as a result of which Mr Karamanits had been removed from the office of Chairman;

ii. on 25 February 2005 the Zhovtenevyi District Court of Dnipropetrovsk made an Order in those proceedings reinstating Mr Karamanits as Chairman of the management board;

iii. any entry to the premises of KZhRK in March 2005 occurred with the authority of the Zhovtnevyi office of the State Enforcement Office of the Kryvyi Rih City Justice Directorate pursuant to its Order of 2 March 2005;

b. it is denied that the Claimant had any right to exercise management control over KZhRK.

The Reversal of the Kuchma Privatisations

41. On 22 April 2005, the Kiev Commercial Court declared the privatisation of Kryvorizhstal to be illegal. Investment-Metallurgical Union appealed.

42. On 25 July 2005, the Kiev Commercial Court of Appeal declared the privatisation of the State's 50% + 1 shares in Nikopol to be illegal. PFK appealed.

The Meeting in Sardinia in August 2005

43. As to paragraphs 24 and 25,

a. no admissions are made as to any specific meetings and conversations between August 2005 and April 2006 save as appears below as the Claimant has not provided any particulars of any other such discussions on which he relies;

b. at this time, the Claimant was concerned to retain his 50% + 1 share in Nikopol following the decision in July 2005 of the Kiev Commercial Court of

Appeal referred to in paragraph 42 above;

c. paragraph 24(1)(a) is denied;

d. paragraph 24(1)(b) is admitted save that the Defendants' claim to "dividends" was a reference to their share of the profits that had been made by the Claimant through Nikopol and was not limited to the share relating to their 25.6% holding but extended to half of the profits derived from the 50% + 1 stake acquired by the Claimant and kept for himself in breach of the Nikopol Agreement;

e. so far as the Claimant alleges that requests were made to the First Defendant paragraph 24(2) is denied pending provision of further information;

f. in the absence of particulars, the First Defendant cannot plead to paragraph 25 but given:

   i. that the issues in these proceedings are confined to contracts concerning KZhRK as stated by the Claimant in paragraph 36 of the Particulars of Claim; and

   ii. the concession made by the First Defendant in paragraph 12 above,

   save for the allegation in paragraph 25(2) the allegations are irrelevant; and

g. as to paragraph 25(2), for the avoidance of doubt:

   i. neither Defendant has held the KZhRK Stake on behalf of the Claimant at any time;

   ii. neither Defendant told the Claimant that the KZhRK Stake was held on his behalf; and

   iii. as the Claimant well knows, he had no interest in or any legitimate claim to the KZhRK Stake.

44. As to paragraph 26,

a. as to subparagraphs (1) and (2):

   i. it is admitted that the First and Second Defendants attended a meeting at a hotel in Sardinia in August 2005 to which the Claimant brought Mr Babakov and Mr Voevodin;

   ii. Mr Babakov and Mr Voevodin explained that they had been asked by the Claimant to try to resolve the disputes between the Defendants and the Claimant concerning Nikopol and KZhRK;

   iii. the First Defendant did not participate in the substantive discussion between the Second Defendant, the Claimant and Mr Voevodin and makes no admissions as to what was discussed; instead of

participating in the discussion, the First Defendant socialised with Mr Babakov on the terrace of the hotel;

b. as to paragraph (3), it is admitted that there was no agreement by March 2006 but the reference to terms offered by the Defendants is not understood as the First Defendant is not aware of any terms having been offered and the Claimant has provided no particulars of the allegation that terms were offered;

c. no admissions are made as to subparagraph (4) save that the RICO Claim referred to was brought by the Second Defendant to assert the rights of the claimants in those proceedings arising out of the Claimant's actions in relation to Nikopol.

The Creation of the Ferroalloy Holding

The Meeting in Geneva in April 2006

45. No admissions are made as to paragraph 27 save that the First Defendant admits that a meeting took place and it is denied that the Second Defendant told the Claimant that the Defendants were holding the KZhRK Shares for the Claimant.

46. At the time when he approached the Second Defendant the Claimant's bargaining position was significantly weakened:

a. in January 2006, the appeal relating to the reversal of the Nikopol privatisation having been dismissed by Ukraine's Supreme Court in September 2005, the case was closed. As matter of Ukrainian law, at that time, the Claimant no longer had any legitimate claim to be entitled to retain the 50%+1 of the shares in Nikopol; and

b. had Ms Tymoshenko returned to power as expected at this time, it was to be anticipated that she would have taken steps to ensure that the 50%+1 shares in Nikopol were re-registered in the name of the SPFU.

Events After the April 2006 Meeting

47. Paragraph 28 is denied save that Mr Kutsin was reinstated as Chairman of the managing board of Nikopol pursuant to a Court Order made on 7 March 2006 and any entry of the plant occurred with the authority of the state enforcement officer. With the reinstatement of Mr Kutsin, the Claimant lost management control of Nikopol.

48. As to paragraph 29, no admissions are made as to when representatives of the Claimant may or may not have produced the Draft Partnership Terms there referred to but it is denied that the First Defendant was provided with a copy of any dated on or around 16 April 2006 at that time or at any other time, save as stated in paragraph 50(b) below.

49. As to paragraph 30, it is denied that the First Defendant was involved in any discussion with the Claimant, Mr Voevodin, Mr Spektor or any of their agents or representatives in relation to the Draft Partnership Terms.

The Meeting in Geneva in September 2006

50. No admissions are made as to paragraph 31 save that:

a. the First Defendant adopts the account of the alleged meeting and discussions given by the Second Defendant in his Defence and accordingly denies the making of any binding oral agreement referred to there as the "Constitution"; and

b. it is denied that at any relevant time the Claimant handed the First Defendant a copy of the Partnership Terms prepared after the meeting in September 2006 or that a copy of any draft of them was ever in the First Defendant's possession; at a meeting in late 2012, the Claimant brought with him a document to which he referred as a 'partnership agreement' but the First Defendant did not read that document or agree to its terms and makes no admissions as to whether it was a draft of the Partnership Terms to which the Claimant now refers.

The Agreements

51. Paragraph 32 is denied:

a. there was no such agreement as that referred to as "the Constitution";

b. written agreements were produced so as to document and implement the agreement pursuant to which the Ferroalloys Holding was created;

c. the transaction documentation executed on or about 7 November 2006 included:

i. a Beneficiaries Agreement which identified the parties as including the Claimant and the Second Defendant and Mr Spektor ("the Third Party");

ii. a Share Swap and Purchase Agreement was made pursuant to which shares in companies holding shares in Nikopol, Stakhanov, Ordzhonikidze, Marganetskiy and Zaparozhye would be swapped;

iii. Shareholders Agreements (pursuant to which a Share Purchase Agreement was later entered into on 7 May 2007);

iv. a Settlement Agreement on the terms of which the RICO Claim instituted by the Second Defendant was terminated;

d. none of the signed written agreements refer to KZhRK.

52. Paragraph 33 and 34 are denied:

a. the terms of the draft Partnership Terms were not agreed;

b. there is no "Constitution"; and

c. there are no implied terms arising from non-existent express terms.

53. Further or alternatively, it is denied that any declaration such as that referred to in paragraph 33(1) was made or would, had it been made, constitute a declaration of trust under English law.

54. As to paragraph 35, there is no "Constitution" and no such agreement has been performed. The Beneficiaries Agreement was not a subsidiary agreement. The steps referred to were performed pursuant to the Beneficiaries Agreement and the other signed written agreements made in November 2006 referred to above which relate to the creation of the Ferroalloys Holding.

55. Paragraph 36 is noted and the First Defendant makes no response to the unparticularised allegations in the circumstances given that the Claimant has specifically stated that they are not the subject of his claim in these proceedings.

Events After November 2006

The Attempted Reckoning

56. The Third Party was not interested in the dispute between the Claimant and the Defendants as to the sharing of profits made by Nikopol prior to the creation of the Ferroalloys Holding and the accounting between the parties was dealt with separately.

57. The First Defendant did not participate in the attempted reckoning referred to in paragraphs 37, 38 and 39 and makes no admissions in relation to the allegations.

58. Paragraph 40 is denied. There was no agreement to transfer any shares in KZhRK to the Claimant to which the parties' agreement as to the sum owed by the Claimant representing the Defendants' share of Nikopol's profits could have been a condition precedent. Alternatively, any such condition precedent failed before March 2007.

59. As to paragraph 41,

a. neither the Claimant nor the Third Party has requested calculations of the revenue from the KZhRK Stake from the First Defendant;

b. it is admitted that the First Defendant has not provided the Claimant with any calculation of the revenue derived from the KZhRK Stake; and

c. the Defendants have no obligation to account to the Claimant for revenue derived from the KZhRK Stake.

60. Paragraph 42 is denied. In the premises the Claimant is not entitled to the relief sought in relation to KZhRK.

No Claim in Relation to other KZhRK Shares

61. As to paragraph 43:

a. the first sentence is admitted; PrivatBank acted only as broker and the purchase was made on behalf of a company jointly and equally owned by the Second Defendant and Mr Akhmetov; and

b. the second sentence is noted but the Claimant has no valid claim to the effect that such shares as were purchased in May 2007 are held on trust for him as is evident from his inability to plead any such case.

Transfer of Shares in KZhRK to Mr Akhmetov

62. Paragraph 44 is denied. On 24 March 2006, 50% of all shares in KZhRK held by companies owned or controlled by the Second Defendant (including 50% of the KZhRK Stake) were transferred to companies owned or controlled by Mr Akhmetov. News of the transfer of some shares to Mr Akhmetov was first published in Ukraine in December 2006 following the shareholders' meeting which had taken place on 4 December 2006 when Mr Akhmetov's management was introduced to KZhRK. Had the Claimant genuinely believed that he had an agreement with the Second Defendant relating to the KZhRK Stake as alleged he would have known by then or shortly afterwards that it had been breached. Accordingly it is denied that the completion of the reckoning which the Claimant alleges continued thereafter was understood by him to be a condition precedent to the transfer of the KZhRK Stake to him.

63. Subject to paragraph 59 above responding to paragraph 41, paragraph 45 is admitted. The Claimant had no right to receive any of the KZhRK Stake, the KZhRK Shares or the proceeds of the sale of shares in KZhRK to Mr Akhmetov.

Other Proceedings Instigated but Abandoned

64. Paragraph 46 is admitted.

65. No admissions are made as to paragraph 47 save that it is admitted that the Claimant withdrew the reference to arbitration and allowed the Claim Form in the Commercial Court proceedings to expire un-served.

66. Paragraph 48 is noted but it is denied that the First Defendant ever participated in any reckoning as described in paragraph 33(2).

No Entitlement to Relief

67. Paragraph 49 is denied for the reasons stated above.

68. Paragraph 50 is otiose.

69. The First Defendant is not liable to the Claimant for any breach of contract as alleged in paragraph 51 for one or all of the following reasons:

a. The First Defendant is not a party to any relevant agreement with the Claimant.

b. The governing law of any agreement made in relation to KZhRK alleged to have been discussed on 4 September 2006 would have been Ukrainian law since it was concerned exclusively with Ukrainian assets and there was no oral agreement that English law should apply.

c. Any claim for breach of a contract subject to Ukrainian law would have to be brought within three years of the alleged breach of contract as required by Articles 256 and 257 of the Civil Code of Ukraine with the result that any claim the Claimant might have had arising from a breach of contract occurring on or before 12 March 2010 (including all those pleaded) would now be time barred.

d. Further or alternatively, any claim for breach of a contract subject to English law had expired by the time proceedings were issued in March 2013.

70. The First Defendant is not liable to the Claimant for any breach of trust as alleged in paragraphs 52-54 for one or all of the following reasons:

a. Neither the First Defendant nor the Second Defendant acting on his behalf declared the First Defendant a trustee of any shares in KZhRK.

b. The legal effect of any declaration made would have been determined as a matter of Ukrainian law.

c. Ukrainian law does not recognise the concept of a trust.

d. Any cause of action under Ukrainian law would be barred by the expiry of a limitation period of three years.

e. It is denied that any English law trust was created by any of the facts and matters alleged in the Particulars of Claim.

f. The Hague Convention would not apply to any declaration such as that alleged as it was not in writing.

71. It is denied that the Claimant has suffered the loss and damage referred to in paragraph 55 or any loss and damage as a result of the matters complained of.

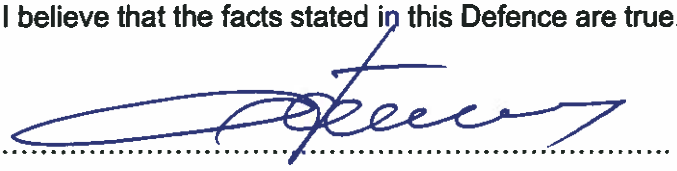
72. In the premises, it is denied that the Claimant is entitled to the relief claimed or to any relief and paragraphs 56 and 57 are denied.

73. Unless expressly admitted in this Defence, the First Defendant denies each and every allegation contained in the Particulars of Claim as if each were set out and specifically denied.

MARK HOWARD Q.C.

ALEC HAYDON

I believe that the facts stated in this Defence are true.



.....

Gennadiy Borisovich Bogolyubov, the First Defendant.

Date: 30.09.2013

Served on 30 September 2013 by Skadden, Arps, Slate, Meagher & Flom (UK) LLP, 40 Bank Street, Canary Wharf, London, E14 5DS, Solicitors for the First Defendant

Claim No. : 2013 Folio 354

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

COMMERCIAL COURT

BETWEEN:

VICTOR MIKHAYLOVICH PINCHUK

Claimant

-and-

(1) GENNADIY BORISOVICH BOGOLYUBOV

(2) IGOR VALERYEVICH KOLOMOISKY

Defendants

DEFENCE OF THE FIRST DEFENDANT

Skadden, Arps, Slate, Meagher & Flom (UK) LLP
40 Bank Street
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Solicitors for the First Defendant

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