

Dispute Resolution  
Case Law Update  
Rosling King LLP



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### Background

The claim involves a protracted and long-standing dispute between Navigator Equities Ltd and Vladimir Anatolevich Chernukhin (the “**Claimants**”) and Oleg Vladimirovich Deripaska (the “**Defendant**”) in relation to a joint venture formed between Mr Chernukhin and the Defendant, to develop a real-estate site in Moscow.

During arbitration proceedings, the Defendant was found to have paid its principal witness a multi-million-dollar bribe to advance a false case. The Claimants subsequently issued an application for committal (the “**Committal Application**”) against the Defendant on various grounds. Despite the Defendant making a successful application to strike out the Committal Application, this was eventually overturned following an appeal by the Claimants.

A four-day trial of the Committal Application was first listed to commence in May 2022. However, in March 2022, the Defendant’s assets were frozen under the Russia (Sanctions) (EU Exit) Regulations 2019, and he was unable to pay legal fees. Also, his longstanding solicitors, RPC indicated that they would terminate the retainer in any event. It was therefore ordered that the trial should be adjourned and relisted in November 2022 to allow the Defendant to obtain legal representation so that a fair trial could take place.

The Defendant instructed new solicitors, Peters and Peters (“**P&P**”), who required a specific licence to act for him. However, P&P were unable to obtain the licence ahead of the adjourned trial, so the Defendant made another application to further adjourn the trial. A directions hearing then took place in November 2022 (the “**November Hearing**”) where the Defendant was asked to provide dates convenient to his legal representatives. The Defendant was not present at the hearing and P&P informed the Court that they would not go on the record or instruct Counsel before the Defendant confirmed he would be able to pay their legal fees. Given this, the trial was relisted for March 2023.

### The Adjournment Application

The Defendant instructed a third law firm, Quillon Law LLP, who made an application to adjourn the trial yet again (the “**Adjournment Application**”). The grounds on which the third adjournment was sought included the fact the Defendant’s preferred leading and senior junior Counsel were unable to attend the March 2023 dates which, the Defendant asserted, meant that a fair trial was at risk, and infringed his rights under Article 6 of the ECHR.

### The Decision

In determining the Adjournment Application, the Court was tasked with balancing the need to allow for a fair trial with the fact that contempt proceedings should be heard with as little delay as possible.

The Court noted that the Defendant and his legal team had been given the option at the November Hearing to provide their availability and had failed to do so. In addition, the fact that the Defendant’s preferred legal team was unavailable on the proposed trial dates, did not prevent the Defendant from obtaining alternative, competent legal representation. The Court took into consideration that whilst there is case law which suggests that a litigant has a right to

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a Counsel of choice, this is not absolute and must be balanced against all other factors relevant to the issue of a fair trial.

The Commercial Court refused the Adjournment Application.

#### Commentary

A litigant has a right to choose a specific Counsel, and the Courts will often accommodate their availability. However, there were good reasons to depart from that principle in this case where the Appeal Court had urged a swift resolution, previous adjournments had been given and, when funds became available to secure representation, the Defendant had what the Court said was 'ample preparation time' to obtain competent alternative legal representation. A fair trial was still possible.

For further information, please contact [Helen Thurkettle](#) or the Partner with whom you usually deal.