How wide is the net? Lessons for offshore trustees after Gorbachev v Guriev

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Cases cited
Dawson-Damer v Taylor Wessing LLP [2020] EWCA Civ 352; [2020] Ch. 746; [2020] 3 WLUK 138 (CA (Civ Div))
Gorbachev v Guriev [2022] EWCA Civ 1270; [2023] 2 W.L.R. 1; [2022] 9 WLUK 240 (CA (Civ Div))

Legislation cited
Senior Courts Act 1981 (c.54) s.34
CPR r.31.17
CPR r.6.39

***P.C.B. 1** English solicitors acting for trustees resident overseas should already be aware that a request for documents under the Data Protection Act 2018 may be a headache for them in the light of the Dawson-Damer case briefly mentioned in this article. Now they also need to consider the possibility of disclosure applications under the Civil Procedural Rules permitting service out of the jurisdiction, addressed not to their clients but to themselves personally. As this article explains, this new approach was approved in decisions of the High Court and the Court of Appeal made during the current year. An application is pending for permission **P.C.B. 2** to appeal further to the Supreme Court, but that application has yet to be decided. Meanwhile, these demands for disclosure remain far from straightforward, and solicitors need to be prepared.*

Introduction

Once in a while a decision comes along that sends shockwaves through the trust industry. *Schmidt v Rosewood*, [1] *Pugachev*, [2] *Dawson-Damer* [3] and *Re X Trusts* [4] come to mind. To that list must now be added *Gorbachev v Guriev* ("*Gorbachev*"). [5]

In *Gorbachev* the High Court held that:

> (1) It has jurisdiction to permit service of a third-party disclosure application on a trustee outside of the jurisdiction, in the context of a commercial dispute between a beneficiary of the relevant trust and a third party, where that trustee may have documents relevant to that dispute; and that
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> (2) Service of the application could be effected by "alternative means" by delivering the application to the trustee's English solicitors, Forsters, in London.

Now the Court of Appeal has upheld that decision, confirming that:

> (3) The High Court has jurisdiction to permit service of a third-party disclosure application on a trustee outside of the jurisdiction when the documents in question are located within England and Wales; and that
>
> (4) There was no error in the High Court's exercise of jurisdiction in exercising that jurisdiction or in ordering service by alternative means.

The decision is likely to be reverberating around the English trust industry and, if it is not, it should be. The ruling:

> (1) Opens the door to litigants seeking disclosure against a party's trustee outside the jurisdiction in any claim in England and Wales—this was not a trusts claim—by permitting direct applications to the High Court to obtain permission to serve such an application on the overseas trustee, by-passing the trouble of serving a letter of request on the relevant overseas court;
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> (2) Allows for the service of that application on the foreign trustee's solicitors in London; and
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> (3) Emphasises why trust lawyers need to know their way not only around *Lewin*,[6] but also the darker corners of the Civil Procedure Rules (CPR). It illustrates that claims relating to trusts are more intertwined with principles and strategies of commercial litigation than perhaps ever before.

The facts

The application related to a commercial dispute. The issues included how and why the claimant was financially supported through two Cyprus trusts, which were alleged to have been operated by the defendant's associates. ***P.C.B. 3***

The trustees of those trusts were advised by Forsters LLP. Forsters are a well-known London firm without a Cyprus office. Forsters had documents in its possession that were likely to be relevant to the issues and, crucially, were physically located within the jurisdiction of England and Wales.

In 2021 the claimant's solicitors sought disclosure from Forsters directly. Forsters refused to provide disclosure, and the claimant issued an application seeking non-party disclosure from Forsters under CPR r.31.17 and s.34 of the Senior Courts Act (SCA) 1981. At the initial hearing, before HH Judge Pelling QC, the claimant then sought permission, and was granted permission, to serve the application for non-party disclosure on the trustees outside the jurisdiction and by alternative means.

The order of HH Judge Pelling

By order dated 11 April 2021 HH Judge Pelling granted permission to the claimant, pursuant to CPR PD6B, to serve the application for third-party disclosure out of the jurisdiction on the trustees. The basis for the application was gateway (20) in PD6B para.3.1. This provides:

> 3.1 "The claimant may serve a claim form out of the jurisdiction with the permission of the court under rule 6.36 where— …
>
> (20) A claim is made—
>
> (a) under an enactment which allows proceedings to be brought and those proceedings are not covered by any of the other grounds referred to in this paragraph."

HH Judge Pelling also granted permission for the application to be served by alternative means pursuant to CPR r.6.15, namely by delivery to Forsters' offices within the jurisdiction and by email. Service was effected the next day, 12 April 2022.

The trustees sought to set aside the order, and the set aside application was heard by Jacobs J, who noted that the application gave rise to the following issues:

(1) Does an application under s.34 of the SCA 1981 and CPR r.31.17 fall within PD6B gateway (20), or does the court have no ability to permit service of such an application outside of the jurisdiction?

(2) If the court has jurisdiction, is it appropriate for the court to exercise its discretion to serve out? This question was considered in *Nix v Emerdata*, [7] with the court ruling that, even if the court did have jurisdiction, applications for third-party disclosure against overseas non-parties should be effected by a letter of request upon the relevant overseas court, rather than by direct application pursuant to CPR Pt 6.

(3) Was ordering service by alternative means (i.e. on Forsters in London) appropriate? This question was also considered in *Nix v Everdata*, in which Cockerill J ruled that the court had no jurisdiction.

The legal framework

The SCA 1981

Dealing with s.34 of the SCA 1981 first, this provides: ***P.C.B. 4***

"On the application, in accordance with rules of court, of a party to any proceedings, the High Court shall, in such circumstances as may be specified in the rules, have power to order a person who is not a party to the proceedings and who appears to the court to be likely to have in his possession, custody or power any documents which are relevant to an issue arising out of the said claim—

(a) to disclose whether those documents are in his possession, custody or power; and

(b) to produce such of those documents as are in his possession, custody or power to the applicant or, on such conditions as may be specified in the order …"

The CPR

The rules of court contemplated by s.34 of the SCA 1981 are contained in CPR r.31.17:

(1) "This rule applies where an application is made to the court under any Act for disclosure by a person who is not a party to the proceedings.

(2) The application must be supported by evidence.

(3) The court may make an order under this rule only where—

(a) the documents of which disclosure is sought are likely to support the case of the applicant or adversely affect the case of one of the other parties to the proceedings; and

(b) disclosure is necessary in order to dispose fairly of the claim or to save costs.

(4) An order under this rule must—

(a) specify the documents or the classes of documents which the respondent must disclose; and

(b) require the respondent, when making disclosure, to specify any of those documents—

(i) which are no longer in his control; or

(ii) in respect of which he claims a right or duty to withhold inspection.

(5) Such an order may—

> (a) require the respondent to indicate what has happened to any documents which are no longer in his control; and
>
> (b) specify the time and place for disclosure and inspection."

Such an application must be made by application notice (see *White Book para.31.17.2*) and would have to actually be served on the non-party.

CPR Pt 6 provides for service of application notices. CPR r.6.38(1) provides:

> (1) "Unless paragraph (2) or (3) applies, where the permission of the court is required for the claimant to serve the claim form out of the jurisdiction, the claimant must obtain permission to serve any other document in the proceedings out of the jurisdiction."

This provision could not, however, apply. First, there is authority that CPR r.6.38 is only applicable to service upon existing parties. Second, this was not a case where permission was required to serve the original claim form (relating to the substantive dispute) out of the jurisdiction.

CPR r.6.39 was, however, potentially applicable. Headed "Service of application notice on a non-party to the proceedings", it provides:

> (1) "Where an application notice is to be served out of the jurisdiction on a person who is not a party to the proceedings rules 6.35 and 6.37(5)(a)(i), (ii) and (iii) do not apply.
>
> (2) Where an application is served out of the jurisdiction on a person who is not a party to the proceedings, that person may make an application to the court under Part 11 as if that person were a defendant, but rule 11(2) does not apply. ***P.C.B. 5***

(Part 11 contains provisions about disputing the court's jurisdiction.)"

Both the High Court and Court of Appeal held that CPR r.6.39 implicitly applies the ordinary rules for service out of the jurisdiction to cases where the application notice is to be served out of the jurisdiction on a non-party. This is presumably because CPR r.6.39(1) specifically excludes a number of provisions in CPR r.6.37 but not those relating to the threefold requirements an applicant must show to obtain permission to serve proceedings out of the jurisdiction. So, an application for permission to serve an application notice on a non-party must satisfy the same three requirements as an application for permission to serve a claim form out of the jurisdiction, namely that:

> (1) There is a good arguable case that the application against the foreign respondent falls within one or more of the heads of jurisdiction for which leave to serve out of the jurisdiction may be given, as set out in PD6B para.3.1;
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> (2) In relation to the foreign respondent to be served with the application, there is a serious issue to be tried; and
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> (3) In all the circumstances: (i) England is clearly or distinctly the appropriate forum; and (ii) the Court ought to exercise its discretion to permit service out of the jurisdiction.

The relevant gateway, under which permission was sought, was gateway (20). One important case considering gateway (20) is *Orexim Trading v Mahavir*.[8] In that case it was said that the gateway should be given a "neutral" construction:

"bearing in mind a change in judicial attitude towards the service of proceedings outside England and Wales … [The court is therefore] less cautious than before in contemplating service out of England and Wales."[9]

Lewison LJ considered that the only limitation on the scope of gateway (20) is that the enactment (i.e. the SCA 1981) must allow proceedings to be brought against persons not within England and Wales. This was held to be a matter for the true construction of the relevant enactment. It was held not to be necessary that the enactment expressly authorise the bringing of such proceedings. If, as a matter of construction, the enactment satisfies that requirement, the court has power to allow the proceedings to be served out of the jurisdiction. It must then decide whether it should exercise its power to do so. This discretionary stage is "a strong pointer against implying any restrictions into the ordinary meaning" of gateway (20). [10]

Lack of previous authority

The High Court noted that there was

"no previous authority which suggests that a combination of gateway 20 and s.34 SCA can be employed to enable proceedings to be brought directly against an overseas party for the purposes of an order under CPR 31.17." [11]

The usual route for obtaining third-party disclosure from overseas parties is in fact for the English court to make a letter of request to the relevant overseas court. [12] This involves making an application against the trustees under the Evidence (Proceedings in Other Jurisdictions) Act 1975, accompanied by a letter of request to the courts of Cyprus. ***P.C.B. 6***

The parties' arguments in the High Court

For the trustees it was said that there was no jurisdiction to allow a CPR r.31.17 application to be served out of the jurisdiction under gateway (20) because:

(1) An application under CPR r.31.17 is not a "claim";

(2) A CPR r.31.17 application under s.34 of the SCA 1981 did not fall within the words "which allows proceedings to be brought", because a CPR r.31.17 application could not be described as the bringing of "proceedings";

(3) Applying *Orexim*, an application under s.34 of the SCA 1981 and CPR r.31.17 could not be brought against persons other than those within England and Wales;

(4) Alternatively, even if gateway (20) is satisfied, the court should not exercise its discretion to permit service out—it would trespass on the letter of request regime under the Hague Service Convention. This was the proper, respectful and courteous method of obtaining evidence within a foreign jurisdiction from a foreign party.

For the claimant it was said that:

(1) An application under s.34 of the SCA 1981 and CPR r.31.17 was a "claim". It did involve the bringing of proceedings;

(2) *Orexim* requires gateway (20) to be given a neutral and non-restrictive interpretation. The court had to construe the terms of s.34 of the SCA 1981, including its purpose and effect. There was no reason to read into gateway (20) a restriction that proceedings fall within it only if they are free-standing and independent of other proceedings. This would cut across CPR r.6.39, which contemplates applications against a non-party. As far as that non-party was concerned, the application did originate proceedings.

(3) Section 34 of the SCA 1981 did allow "proceedings" to be brought. The purpose of the enactment was to provide a direct statutory jurisdiction by which a party to existing proceedings may obtain disclosure from non-parties;

(4) Section 34 of the SCA 1981 allowed proceedings to be brought against persons outside England and Wales. There was nothing in the text that limited its application to persons within the jurisdiction. If Parliament had intended a limitation, then the section would have provided one;

(5) A territorial limitation in s.34 of the SCA 1981 would undermine its purpose and efficacy.

The High Court's ruling

Section 34 of the SCA 1981 empowered the making of rules of court concerning disclosure applications against a non-party. The relevant rule is CPR r.31.17, which applies where an "application" is made under any Act (such as the SCA 1981) for disclosure by a non-party.

The court concluded that an application under CPR r.31.16 is an application that originates proceedings. Such applications are both a "claim" and the bringing of "proceedings" within gateway (20). But does the same apply to CPR r.31.17 ?

The court noted that neither the SCA 1981 nor CPR r.31.17 identifies the manner in which an application under CPR r.31.17 is to be served.

Under Pt 6 "claim form" has a wide interpretation according to CPR r.6.2. It can include proceedings started other than by a "classic" claim form issued pursuant to Pt 7 and extends to "claims" that are of a procedural, rather than substantive character. The court held that the application under CPR r.31.17 could be construed as a "claim". ***P.C.B.** 7*

With regards to the rules on service out of the jurisdiction, certain provisions state that permission is not required (CPR rr.6.33 –6.35), but those rules did not apply here. Likewise, CPR r.6.38 does not apply for the reasons considered above. Whereas CPR r.6.39 is applicable—concerning applications against non-parties—it is implicit in that rule that permission to serve applications against non-parties out of the jurisdiction may be granted, applying CPR rr.6.36 and 6.37, in appropriate cases. There was no reason why the application against a non-party at hand, namely an application for disclosure, would be excluded from the scope of CPR r.6.39.

The question then was, could a non-party be served out of the jurisdiction? This depended on whether there was an applicable gateway in para.3.1 of PD6B—namely gateway (20).

Was the application a "claim" pursuant to gateway (20) in PD6B para.3.1?

The court held that it was. There is no reason to give the broad definition of "claim" a narrow meaning. An application under CPR r.31.17 involves the applicant seeking to invoke the court's jurisdiction and could be construed as a "claim". CPR r.6.39 could be described as being of a procedural rather than substantive character. However, as above, CPR r.6 contemplates that "claims" that are of a procedural character are within its scope, and so there was no reason to confine "claim" to a claim form, for example.

Does s.34 of the SCA 1981 "allow proceedings to be brought"?

Yes. The concept of a claim and proceedings are closely interlinked. Proceedings are what is consequent on a claim, and a claim is what leads to proceedings. In this case the application notice is the originating process that commences proceedings. An application under CPR r.31.17 pursuant to s.34 of the SCA 1981 could therefore be regarded as the commencement of proceedings.

The court considered the precedential value of *Nix v Everdata*, where the court was unpersuaded that gateway (20) gave the court jurisdiction to order service out in respect of an application under s.34 of the SCA 1981 and CPR r.31.17. However, the court considered that that conclusion was based on very different legal submissions to those made by the claimant in this case, and without the court's attention being brought to the important Court of Appeal decision in *Orexim*. Against this backdrop the court determined that, as a matter of judicial comity, it was able to depart from *Nix v Everdata* on the question of whether there was jurisdiction.

Does s.34 of the SCA 1981 allow proceedings to be brought against persons not within England and Wales?

It was clear from *Orexim* that, for the purposes of gateway (20), it is not necessary that the enactment (the SCA 1981) must expressly authorise the bringing of proceedings against persons outside England and Wales. Nor did the SCA 1981 provide that an application under it could only be brought against persons in England and Wales. Section 34 of the SCA 1981 did allow proceedings to be brought against persons outside the jurisdiction.

Discretion

Finally, it was noted that *Nix v Everdata* set out powerful arguments as to why applications against overseas third parties should be made using the letter of request regime.

However, in *Nix v Everdata* the court was dealing with a case where the only party against whom the application was made, and the documents, were overseas. In this case, the documents were in England, and were held by officers of the English court. This was not a result of chance—they were held by Forsters ***P.C.B. 8*** because they concern transactions on which the trustees had asked an English firm of solicitors for advice. They related to transactions within the jurisdiction.

Proceedings were taking place in England and Wales. The effect of the order for disclosure was that all relevant parties would be before the court when the application was determined, and this was generally desirable in litigation.

In many cases the availability of the letter of request regime would be a powerful argument. But that did not apply in the present case, where the documents were physically within the jurisdiction. Further, the letter of request regime is slow and would take at least 12 months, jeopardising the trial date, which is listed for January 2023.

This was therefore an appropriate case for the court to exercise its discretion.

Service by alternative means

Finally, the court noted that in *M v N* the court had identified different situations in which orders for alternative service can be made. These included:

"Cases in which an attempt is being made to join a new party to existing proceedings, where the effect of delay in effecting service on the new party under the [Hague Service Convention] will be either substantially to interfere with directions for the existing trial, or require claims which there is a good reason to hear together to be held separately." [13]

This applied in this case, the imminence of the substantive proceedings considered earlier in this article, and so it was appropriate to order service by alternate means.

The appeal

The issues to be determined on appeal were threefold:

> (1) Does the court have jurisdiction to make an order for disclosure of documents against a third party outside England and Wales? The appellant trustees submitted that, contrary to findings of Jacobs J in the High Court, the court did not have jurisdiction for two reasons. First, an application for third-party disclosure neither constitutes a "claim" nor "proceedings" for the purposes of gateway (20). Second, applying the principle of territoriality, as a matter of construction, s.34 of the SCA 1981 does not allow proceedings to be brought against persons outside England and Wales.
>
> (2) If such a jurisdiction exists, whether the judge was wrong to exercise his discretion to permit service out of the jurisdiction.
>
> (3) Whether the judge was wrong to permit alternative service on the trustees.

Gateway (20)—"claim" and "proceedings"

The Court of Appeal repeated and endorsed the analysis of Jacobs J in the High Court without further elaboration.

The principle of territoriality

The focus of the Court of Appeal's analysis was on the application of the principle of territoriality to the construction of s.34 of the SCA 1981 and therefore whether the latter is an enactment that allows *P.C.B. 9* proceedings to be brought against a party out of the jurisdiction for the purposes of falling within gateway (20).

The principle of territoriality is a principle of statutory interpretation whereby it is presumed that legislation is generally not intended to have extra-territorial effect.

The trustees submitted that, applying the principle of territoriality to s.34 of the SCA 1981, the English court never has jurisdiction to order the production of documents by a third party outside the jurisdiction. Whereas the claimant submitted that the court always has jurisdiction to do so, albeit that in the majority of cases that jurisdiction will not be exercised as a matter of discretion.

The Court of Appeal only decided this point in the atypical case—namely, where the documents whose production is sought from third parties abroad are located in the jurisdiction of England and Wales. In those circumstances:

> (1) The principle of territoriality has little or no application. Requiring the production of documents located within the jurisdiction does not involve any illegitimate interference with the sovereignty of the state where the owners are located.
>
> (2) By sending the documents to England, the trustees "accepted the risk that, like any other documents within the jurisdiction, they may be subject to production in the courts". [14]
>
> (3) It is unlikely that the letter of request procedure could be used to obtain documents located within the jurisdiction because the foreign court might well take the view that the production of such documents is a matter for the English courts. Therefore, if the Trustees' documents cannot be obtained pursuant to s.34 of the SCA 1981 and CPR r.31.17, "it may well be that they cannot be obtained at all." [15]

What of documents held electronically? The trustees submitted that it was of little or no consequence that the documents were held electronically within England and Wales, where the physical copies were held out of the jurisdiction. The Court of Appeal rejected this argument. Seemingly, it did not matter whether the documents in question were sent to Forsters in England as a physical copy or by electronic means. In both instances the documents are held within the jurisdiction of England and Wales.

The Court of Appeal considered that the "critical fact" in this case was that the documents in question were located in England. However, in the writers' view, the judgment discloses a further "critical fact". As considered by Jacobs J in the High Court, and re-iterated by Males LJ in the Court of Appeal, [16] it was "not the result of chance" that the documents were held within the jurisdiction. The documents in question were sent to Forsters so that they could advise the trustees on various transactions —*some* of which occurred within the jurisdiction of England and Wales. Likewise, the Court of Appeal considered an example, canvassed in submissions, of an English doctor in private practice who retires abroad but whose documents, including a claimant's medical records, remain here. Males LJ was of the view that ordering the production of such medical records would neither infringe the sovereignty of any other state nor breach comity. [17] In the writers' view, as with the facts of this case, there are *two* critical facts. First, that the documents in question are located in the jurisdiction of England and Wales. Second, that the documents in question relate (wholly or in part) to transactions or matters that took place within the jurisdiction of England and Wales.

The Court of Appeal declined to decide the broader question, considered by the High Court in the affirmative, of whether the court would have jurisdiction to make an order permitting service out of the jurisdiction even if the documents had been located elsewhere. In such circumstances, contrary to the above, the principle of territoriality would have an important role to play in considering the scope of s.34 *P.C.B. 10* of the SCA 1981. The Court of Appeal has left this question to be determined in a case where it makes a difference. In any event, even if the court does have jurisdiction to permit service of a third-party disclosure application on a trustee outside of the jurisdiction where the documents in question are also outside of the jurisdiction, it appears that this discretion would only be exercised in order to do "justice in an exceptional case". [18] Further, there is also a warning that, even if such a jurisdiction were available, and even if the court exercised its discretion to utilise such a jurisdiction, the application for third-party disclosure "could not readily be enforced unless the persons against whom they were made chose to come within the jurisdiction". [19]

As to Jacobs J's exercise of discretion to permit service out of the jurisdiction, and enabling service by alternative means, the Court of Appeal found no error in his conclusions.

Conclusion

How many firms of solicitors in London representing overseas trustees anticipate being served in London with an application for third-party disclosure against their overseas trustee clients, in respect of a claim which does not directly relate to the trusts in question? The answer must be: not many.

The effect of these decisions is that overseas trustees who may think that their documents are outside the grasp of the English courts by virtue of the fact that they themselves are overseas are in fact at risk of a disclosure order that may be made in England and Wales, may be served on them without recourse to the letter of request regime, and may in fact be served on their English solicitors in London instead of on them personally in the overseas jurisdiction, if their documents are held (either electronically [20] or physically) by their solicitors in London.

The Court of Appeal's decision will alleviate concerns to an extent. It restricted its determination to affirming the High Court's jurisdiction to permit service out of a third-party disclosure application to when the documents in question are located *within* England and Wales. The decision may be narrower still—in circumstances where the documents in question, although located in England and Wales, have no other links to the jurisdiction, this may point against the court's exercise of discretion to serve out. Where documents are located outside of the jurisdiction, the Court of Appeal has declined to provide a definitive answer, albeit the High Court affirmed the jurisdiction. In any event, the exercise of discretion would likely militate against an order permitting service out in all but exceptional cases.

Notwithstanding, the decisions have wide-ranging ramifications for the trust industry and are a salutary warning that parties outside of England and Wales are not out of this court's jurisdictional reach. Whilst the decisions should of course not deter non-UK trustees from obtaining necessary English advice, there is a need, in potentially contentious situations, for non-contentious and contentious lawyers to coordinate to help trustees manage the risks of holding electronic copies of documents in England and Wales. More broadly, it is a helpful reminder of the fact that it is always in the trustees' long-term interests to produce documents mindfully (i.e. having in mind the possibility of others seeing those documents in the future).

It is a further lesson that for trust practitioners the intricate provisions of the CPR must be at our fingertips. The rules within the CPR can sometimes appear overly complex and open to differing interpretations, but the rules within Pt 6 provide for sensible and effective means of achieving the overriding objective, which is that the court should deal with cases justly and at proportionate cost. These rules can work to our clients' advantage, and disadvantage. What the court did in this case was use the CPR rules to provide for early disclosure by an efficient mechanism, so as to allow for the documents in question to be produced before trial, thus allowing the claim to proceed without serious disruption. No doubt that ***P.C.B. 11*** furthers the overriding objective, but furtherance of that objective is likely to be quite low down on an offshore trustees' list of priorities when instructing London counsel. The lesson in this case is that, in order to advance our clients' interests, a clear and purposive understanding of the CPR 's darkest corners is essential.

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Footnotes

1 *Schmidt v Rosewood Trust Ltd [2003] UKPC 26; [2003] 2 A.C. 709*.

2 *JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev [2017] EWHC 2426 (Ch); 20 I.T.E.L.R. 905*. See also C. Moss "A sham trust and an illusory trust but not in those terms; Pugachev explained" [2018] 4 P.C.B. 126.

3 *Dawson-Damer v Taylor Wessing LLP [2020] EWCA Civ 352; [2020] Ch. 746*.

4 *Re X Trusts [2021] SC (Bda) 72 Civ*. Compare *Re Piedmont and Riviera Trusts [2021] J.R.C. 248*. See also R. Christie, "Resisting the siren song of the narrower view of protectors" [2022] 1 P.C.B. 7; for legible bi-lingual versions of the Odyssey text, see [2022] 2 P.C.B. 29.

5 *Gorbachev v Guriev [2022] EWCA Civ 1270 (30 September 2022); on appeal from [2022] EWHC 1907 (Comm) (20 July 2022)*.

6 *N. Le Poidevin, L. Tucker and J. Brightwell (eds), Lewin on Trusts, 20th edn (London: Sweet & Maxwell, 2020)*.

7 *Nix v Emerdata Ltd [2022] EWHC 718 (Comm)*.

8 *Orexim Trading Ltd v Mahavir Port and Terminal Private Ltd (formerly Fourcee Port and Terminal Private Ltd) [2018] EWCA Civ 1660; [2019] B.C.C. 179*.

9 *Orexim Trading Ltd v Mahavir Port and Terminal Private Ltd [2019] B.C.C. 179* at [33].

10 *Orexim Trading Ltd v Mahavir Port and Terminal Private Ltd [2019] B.C.C. 179* at [47].

11 *Gorbachev [2022] EWHC 1907 (Comm)* at [28].

12 See *Nix v Everdata [2022] EWHC 718 (Comm)*.

13 *M v N [2021] EWHC 360 (Comm)* at [9].

14 *Gorbachev [2022] EWCA Civ 1270* at [84].

15 *Gorbachev [2022] EWCA Civ 1270* at [87].

16 In a judgment with which Nicola Davies and Lewis LJJ agreed.

17 *Gorbachev [2022] EWCA Civ 1270* at [86].

18 *Gorbachev [2022] EWCA Civ 1270* at [90].

19 *Gorbachev [2022] EWCA Civ 1270* at [82].

20 This raises an important point: if documents are not printed, but only held electronically, where are those documents really physically located? For example, would it matter if, in this case, Forsters' documents were in fact held on a server out of the jurisdiction?

