**Monday, 19 December 2011**

**(10.15 am)**

**MRS JUSTICE GLOSTER: Yes, Mr Sumption.**

**I thank all counsel for the delivery of the skeleton arguments.**

**Closing submissions by MR SUMPTION**

**MR SUMPTION: My Lady, certainly so far as we're concerned, the essence of our case is contained in that document but there is of course a very large number of issues in this case and many of them only arise on the parties' alternative or further alternative cases, so I am not, on my feet, going to even attempt to deal with all of them, which is the function of the written document.**

**What I would like to do, if I may, is to deal with those issues, mainly of fact, which seem in practice most likely to determine the outcome, to try where I can to offer a pathway through the conflicting claims and to address the main points of principle which are taken from Mr Berezovsky's own written closing.**

**MRS JUSTICE GLOSTER: Yes.**

**Just before you start, the letter from your solicitors dated 16 December, which I saw referred to in the press today, I don't know how that's got into the press, but unless any party is going to take any point on it I wasn't proposing to say anything about it.**

**MR SUMPTION: No. I don't know the answer to the question of how it got into the press.**

**My Lady, the issue which is fundamental to the whole of the present claim, in our submission, is what were the terms on which Mr Berezovsky agreed in 1995 to make available to Mr Abramovich his political influence in the Kremlin. It is common ground that that is what Mr Berezovsky actually did, and indeed what he agreed to do. This was, in other words, a trade in political influence.**

**It seems equally clear that Mr Berezovsky contributed nothing else to the Sibneft project apart from his political influence in the Kremlin and possibly his initial contacts with senior members of the management of SBS Bank and Menatep Group.**

**Mr Berezovsky does not claim to have contributed cash. If he had any management expertise in this area of business he certainly does not claim to have contributed it to the Sibneft project, and he assumed no financial risk of his own.**

**The question is whether his agreed reward for what he did was to be a share of Sibneft or straight cash. If the answer to that question is that Mr Berezovsky was doing this for cash, then that is, in our submission, not only the end of his claim in respect of Sibneft, it**

**is also the end of his claim in respect of Rusal. The reason for that is that Mr Berezovsky's claim to have had an interest in Rusal is intimately dependent on his theory that he and Mr Patarkatsishvili had previously owned half of the aluminium assets which were contributed to the merger with Mr Deripaska. That suggestion in turn depends upon his contention that there was an agreement to give him the same interest in the pre-merger aluminium assets as he claims to have had in Sibneft. It is also, of course, a case which depends upon his contention that the aluminium assets were acquired with Sibneft assets or out of his, Mr Berezovsky's, supposed share in Sibneft profits.**

**So if Mr Berezovsky never had a share of Sibneft or its profits all of these arguments fall away. As a matter of fact, they fall away anyway even if he did have a share of Sibneft profits, for other reasons. I will come to the other reasons, but the point which I make at this stage is that unless Mr Berezovsky can establish at the outset that the agreement of 1995 gave him an interest of some relevant kind in Sibneft, then the whole of this elaborate confection of mutually supporting arguments, by which he claims to have acquired a large proportion of the Russian oil and aluminium industries without paying a penny for them,**

**simply collapses.**

**Now, the alleged threats in relation to ORT and then Sibneft, the Devonia agreement, the Dorchester Hotel meeting, the terms of the second tranche of the Rusal sale in 2004, all of those issues have taken up days of court time but none of them arises unless he is right on this issue. Now, if he can make good his claim about the terms of the 1995 agreement, that is in our submission only the beginning of his problems.**

**On the Sibneft side he would then have to show, first of all, that he was blackmailed into selling his supposed interest in Sibneft; secondly, that he sold his interest in Sibneft to Devonia by a real contract and not just a sham device designed to deceive the Clydesdale Bank; and thirdly, if the tort claim is governed by Russian law, he must also establish that the Russian limitation period falls to be extended or not applied at all on the ground of personal disability or abuse of rights under the Russian Civil Code.**

**On the Rusal side, if he succeeds in his case on the terms of the 1995 agreement, then he has to show principally, first, that it was at some stage agreed to share out the KrAZ and Bratsk assets on the terms of the 1995 agreement, assuming that there was a 1995 agreement in the terms alleged; secondly, he has to show either**

**that it was agreed at the Dorchester Hotel that Mr Berezovsky's share would be held by Mr Abramovich as trustee of an English law trust, or else that English law applies as a matter of legal implication. He has to show that because it is common ground that, if Russian law applies, then, one, the arrangements by which Mr Berezovsky claims he held his indirect interest in Rusal were legally ineffective, and, two, that any Rusal claim is time-barred in Russian law.**

**The third thing that he would have to show on the Rusal side is that there was some breach of duty on the part of Mr Abramovich in selling the Rusal shares to Mr Deripaska. Unless those shares were subject to a trust, that will depend on his establishing that everybody agreed at the Dorchester Hotel meeting that nobody should be entitled to sell out without the consent of the others.**

**Fourth, Mr Berezovsky has to show on the Rusal side that there is some reason why the mutual releases in the contractual documentation of July 2004 should not be given effect according to their terms if, as he says, he was a real principal behind those agreements.**

**Now, all of these questions, with the exception of the last one, are questions of fact. All of them depend critically on Mr Berezovsky's evidence about occasions**

**of which there is no documentary evidence.**

**In the face, in our submission, of a large number of anomalies about Mr Berezovsky's story, your Ladyship would have to have a very high degree of confidence in the quality of his recollection and in his objectivity and truthfulness as a witness in order to accept that case. Now, there are in fact quite serious problems about the way that Mr Berezovsky has set about devising his case and giving his evidence. Some of these apply also to the evidence of his supporting witnesses, in particular Dr Nosova and Mr Glushkov.**

**In our submission, Mr Berezovsky was a persistently and deliberately untruthful witness. There are so many occasions when he can be shown to have made up the facts in which he had no positive belief or which he positively knew to be false, but it is simply not possible to take his word for anything without proper corroboration independent of Mr Berezovsky himself.**

**Now, in the first place, there is the regular pattern by which Mr Berezovsky molds his allegations of fact to what he thinks he needs to prove. Thus, Mr Berezovsky is told that Russian law does not recognise equitable proprietary interests. Behold his case about what was agreed in 1995 changes to suit a different case, that his rights were purely**

**contractual. References to beneficial interests and the like are deleted from the pleading.**

**Mr Berezovsky thinks, in fact wrongly, that in 1995 he and Mr Patarkatsishvili, or companies controlled by them, were the legal owners of Sibneft shares. So in order to explain how they ended up with Mr Abramovich's companies, he claims that there was an express agreement in 1996 to transfer them to Mr Abramovich to be held for them. It subsequently turns out that Mr Abramovich's companies always held the shares, so Mr Berezovsky's case about the 1996 agreement suddenly changes to accommodate this new fact.**

**He is told that threats are not actionable if they are merely warnings about what a third party will do. At once, he claims to have understood that what was said to him at Cap d'Antibes in December 2000, and at Munich to Mr Patarkatsishvili in May 2001, was understood by him as a threat to procure the Russian State to act against his interests.**

**In his press statements from 2003 onwards, Mr Berezovsky claims that Mr Abramovich had made him sell out of Sibneft by telling him that the association of Mr Berezovsky with the company was exposing the company itself to attacks by the state.**

**That remained Mr Berezovsky's position right up to**

**the second edition of the particulars of claim served in September 2007 when he seems to have realised that it was unlikely to be regarded as a threat of adverse action by Mr Abramovich because he would hardly wish to damage the interests of his own company. So the threat suddenly becomes something different, namely a threat not against the company but against Mr Berezovsky's interest in it.**

**He realises then that it's going to be difficult to persuade an English court that English law applied to the arrangements made about aluminium in 2000, and he is told that under Russian law his claim against Rusal is bound to fail, as he now concedes as a matter of Russian law. So he suddenly says, in the face of a striking out application, that he distinctly recalls conversations in which the parties expressly chose English law.**

**Now, that a party's case should develop and call for amendment in the course of complex litigation is perfectly normal, and the forensic indignation that it often provokes is usually bogus. That I entirely accept. But the persistence with which Mr Berezovsky's recollection of the facts varies as a direct response to his changing understanding of what he needs to prove is too striking to be ignored.**

**A particularly remarkable example of his rather**

**special attitude to truth is provided by his conduct of the Forbes litigation in which his relations with the Kremlin were also under scrutiny. Mr Berezovsky made statements of truth denying that he had ever lobbied Boris Yeltsin or made use of Yeltsin's daughter, Tatyana Dyachenko, as a channel of influence. Both of these propositions are admitted, indeed asserted in the present litigation; the only difference, which is relevant, between the Forbes action and this one is that it suited him to say different things in each case.**

**In the Forbes case, Mr Berezovsky was suing a journal for libel for accusing him of being corrupt, so it suited him to say that he'd never lobbied Mr Yeltsin or used Mr Yeltsin's daughter as a channel of influence. In this litigation, he is trying to prove that his influence at the Kremlin was the key that unlocked all doors to Mr Abramovich, so it suits him to say precisely the opposite.**

**He has absolutely nothing to say in his own defence when taxed with this. His answers range from "It's a good question" to "I don't have an answer" or "I can't say anything". The references to that evidence are matters that your Ladyship will find at page 11, note 3 of our written opening.**

**Mr Berezovsky is a man for whom the truth is**

**whatever serves the purposes of the moment. In the course of his cross-examination, whenever he felt the need to do so to sustain his case, he would contradict his pleadings, his instructions, as recorded by the successive solicitors who have acted for him, the statements made by him in countless interviews, transactions which bear his signature, his witness statement for the trial, indeed on a large number of occasions oral evidence that he had given only minutes before.**

**Now, I don't want to be unfair to Mr Berezovsky. Not all of these falsehoods are necessarily dishonest. Some of them are attributable to Mr Berezovsky's truly prodigious powers of self-deception.**

**A large part of this problem, which colours the whole of his evidence in this case, is his vanity and his self-obsession. Mr Berezovsky has found it very difficult to accept that, for all his former importance as a power broker and for all the great wealth that he has obtained by that means, in business terms he was a relatively marginal player. He has a constant and palpable desire to portray himself as the central indispensable figure in every venture that he has touched.**

**In the case of the aluminium deals in early 2000,**

**the contrast between the pretensions and the reality is humiliating. If I may pursue the Shakespearian analogy just once more, here is Glendower in Henry IV Part I, "I can summon spirits from the vasty deep". "Yes," says Hotspur, "but will they come?"**

**But if that is part of the problem it's certainly not the whole of it, for a great deal of Mr Berezovsky's evidence can frankly only be described as dishonest. The Forbes lies are one example. Another, which is one of the issues that your Ladyship has to decide, is the sale of ORT and the supposed threats made at Cap d'Antibes in December 2000.**

**The whole of this issue is extremely odd. Having decided that he couldn't bring a claim in respect of ORT, there was in fact absolutely no reason for Mr Berezovsky to say anything about it. Instead, what he did was artificially and quite gratuitously to introduce the ORT occasion into this case, which he did by contending that because of Mr Abramovich's behaviour at Cap d'Antibes, he regarded Mr Abramovich's warnings about what the state would do to him if he didn't sell out of Sibneft as an indirect threat of adverse action by Mr Abramovich himself.**

**Yet the evidence that has been given at this trial shows that the Cap d'Antibes meeting is a fabrication.**

**What Mr Berezovsky appears to have done was to work back from the date of the ORT sale agreements of 25 December 2000, and to fabricate a meeting a few days before that at which he says that he was bullied into agreeing the sale of ORT by threats to expropriate his interest and to ensure that Mr Glushkov rotted in jail for a long time.**

**The facts show that the ORT transaction had been under active negotiations since October, well before Mr Glushkov's arrest, and had been approved by Mr Berezovsky at the latest at the time of the Le Bourget meeting of 6 December. Even on Mr Berezovsky's own evidence, he decided to sell ORT within minutes of hearing about Mr Glushkov's arrest from his lawyers on 7 December 2000.**

**He is then presented with irrefutable evidence that at the time when he says that Mr Abramovich was blackmailing him in Cap d'Antibes, Mr Abramovich was actually at Chukotka and Mr Berezovsky himself was holding press conferences in Washington and skiing in Colorado.**

**So we are told, a couple of weeks before the trial, that actually the meeting happened earlier in December, and then we are told in the course of Mr Berezovsky's cross-examination that he has an actual recollection, of**

**which he says he is almost 100 per cent confident, of Mr Abramovich turning up at Cap d'Antibes on 7 December itself followed by Mr Patarkatsishvili on whose plane he had flown down from Paris.**

**Now, in cases like this one, one can actually observe Mr Berezovsky making up the facts as he goes along. It would be ridiculous if the allegations which he is making were less serious, but what he is actually alleging is that my client deliberately used his supposed influence in the Kremlin to keep a sick man in jail so as to blackmail his victim's closest friend. That is a very serious allegation.**

**In fact, Mr Berezovsky went further, because he also suggested that Mr Abramovich had actually arranged for Mr Glushkov to be arrested after failing to get Mr Berezovsky's signature on a sale contract at the Le Bourget meeting. Now, that particular allegation required Mr Berezovsky to resile from his own evidence given in his witness statement and in his evidence in various asylum proceedings that Mr Glushkov's arrest had been a foregone conclusion for five weeks before it actually happened.**

**Mr Glushkov himself, who had given similar evidence beforehand about the circumstances of his arrest, sat in the back of the court while Mr Berezovsky was giving**

**that evidence and then came into the witness box and performed a similar volte face himself. Mr Berezovsky's written closing says nothing at all about this discreditable aspect of his and Mr Glushkov's evidence, and that discretion seems, with respect, to be appropriate.**

**This ORT episode, which was introduced to the case in order to give verisimilitude to the threat said to have been made afterwards in relation to Sibneft has therefore become the extreme test of Mr Berezovsky's personal credibility. What it shows is two things. First of all, it shows that some of the more serious allegations made by Mr Berezovsky in this action have been made, it seems, for show. He wants to make a point against the Russian Government, he wants to discredit a man who he believes, in fact wrongly, to have supplanted him by occupying the sort of position in the Kremlin of Mr Putin that Mr Berezovsky himself once occupied under Boris Yeltsin.**

**But the second thing this shows is that nothing that Mr Berezovsky says can be taken at face value simply on his own say-so. And in a case where so much does depend on Mr Berezovsky's say-so, that is a very significant problem.**

**I would suggest by comparison that Mr Abramovich was**

**a measured and thoughtful witness. He made concessions where they were due, for example about the backdating of documents. He was not looking for opportunities to embarrass or humiliate Mr Berezovsky, as your Ladyship may recall from his refusal to discuss one aspect of his conversation with Mr Berezovsky at Megeve, and from the very low-key way in which, in his evidence in cross-examination, he referred to Mr Berezovsky's attire at the Dorchester Hotel meeting, until I pressed him to expand on it in re-examination, because it is of course relevant to the question of how significant and businesslike that meeting really was.**

**Now, we have called every one of Mr Abramovich's staff who was concerned with these matters, as well as a number of witnesses independent of Mr Abramovich, such as Mr Deripaska and Mr Hauser. Their evidence has been broadly consistent. They have been attacked in my learned friends' written closing on the basis that they are loyal employees of Mr Abramovich, as if that somehow meant that they were likely to tell lies for his benefit. They have been attacked on the basis that they have discussed their evidence in the course of preparing their witness statements, but that of course is a practice to which no possible objection can be taken provided that the witness applies his own mind to his**

**evidence and distinguishes between what he can recall and what he has learned from someone else.**

**Dr Nosova in fact described a very similar process within the inner circle of Mr Berezovsky's advisers, the attempt to reconstruct events from documents, which is exactly what one would expect to happen. But the result is a defence to the claim which we put forward, and which I submit has been impressive in its detail, and which has sought to inform the court in as much detail as possible about what happened.**

**By comparison, Mr Berezovsky's evidence has been presented at an imperial level of generality and most of his supporting witnesses have been giving derivative evidence based on their conversations with him about matters of which they had little or no direct evidence of their own.**

**The only other general point which I would make at this stage about the evidence concerns Mr Berezovsky's surprising suggestion at paragraph 173 of his written closing, that there has been a deliberate policy on our part of destroying documents in order, it is said, to impede investigations into Mr Abramovich's dealings.**

**Now, that is, in our submission, an extravagant allegation which should not have been made without better support than that document actually provides.**

**The selective references which appear in that paragraph to Ms Goncharova's evidence leave out her detailed explanation of why she destroyed documents at a time when this action had not been begun and there was no business need to keep them. This is, of course, as your Ladyship is aware, a stale claim, and the companies involved have over the years been dissolved or sold and matters have moved on well before the action started.**

**The delay in disclosing the bolshoi balance, another subject of a prolonged bleat in this part of the claimant's submissions, was due, as we have explained on a number of occasions, to the need to translate the spreadsheet from Russian and to get detailed explanations, which were quite complex, of each line of it in order to establish which parts were disclosable. In the event it was disclosed in its entirety and all of this was fully explained, among other places, in annex 11 of our written opening.**

**Mr Abramovich has no diaries for the relevant period, mobile phone records only go back to four years. All this has been fully explained in long and tedious correspondence between the solicitors.**

**As for the, I would suggest, extraordinary allegation appearing at paragraphs 185 to 193 of those submissions, that Mr Abramovich has manufactured the**

**evidence that shows that he was in Chukotka between 10 and 26 December, since it is not disputed that he was in Chukotka in that period, I really fail to understand in what sense that evidence is supposed to have been misleading.**

**Now, my Lady, we are well aware that all witnesses make mistakes, they forget, they confuse different occasions, they persuade themselves of things. It is in the nature of the process and of the passage of time that this happens. But if this is the best that Mr Berezovsky's team can do to undermine the integrity of our evidence, then your Ladyship may take it that it is on the whole a fair presentation of the facts so far as they can now be ascertained many years later.**

**I want to start, if I may, with the issue which I have suggested is fundamental to the entire case, for Mr Berezovsky has to succeed on it to get either of his two claims off the ground. What was he getting in return for the political influence that he agreed to exercise within Boris Yeltsin's administration in 1995?**

**Now, I ought to say something at the outset about the whole concept of krysha. Krysha is an alternative system of obligation. It's the classic product of a society where businessmen cannot count on the protection of the law, either because the law is itself**

**defective or because the administrative and judicial agencies charged with applying it simply cannot be relied upon. It is common ground among the historical evidence witnesses that that was the situation in Russia at the time with which we are concerned. It is the experience of almost all societies that where there is no law, relationships are governed instead by power.**

**The existence of that phenomenon does not appear to be disputed. The point was in fact succinctly put by Mr Berezovsky's historical expert, Professor Fortescue, I don't propose to make a habit of citing chunks of documents or reports, but it is worth turning up this one at G(B)1/1.01/52, which is Professor Fortescue's first report.**

**Does your Ladyship have that on the Magnum screen?**

**MRS JUSTICE GLOSTER: Yes.**

**MR SUMPTION: Paragraphs 188 to 190:**

**"The term first came into use in everyday usage in Russia in the early to mid-1990s when the world was taken over by racketeers and took on criminal overtones. In that context, it meant 'protection'. Protection racketeering was a very large part of the activities of criminal gangs in the 1990s although with all the violent and involuntary connotations of the word protection, a criminal krysha was likely to also provide**

**services beyond the immediate one of keeping other criminal groups away from your business. These included debt collection, ie contract enforcement, and conflict resolution. In the absence of an effective state, the krysha fulfilled some of the functions of the state, and collected tax for doing so.**

**"As I noted above, in the late 1990s the Russian state began to assert itself and to operate more effectively. This not only reduced the role of criminal groups but also led to a new application of the word krysha (which was not in general usage in the early and mid-1990s). It was now bureaucrats and politicians who provided a krysha. Like the criminal gangs, they also provided protection from a business person's enemies and competitors. They also advanced the interests of their business client within the bureaucracy and political arena and were well remunerated for doing so. Volkov says of this more recent usage of the word krysha that:**

**"'In current Russian business parlance [it] is used to refer to agencies that provide institutional services to economic agents irrespective of the legal status of providers and clients. Such agencies are not necessarily criminal groups but are composed of a variety of criminal, semilegal (informal), legal, and state organisations.'**

**"Used in this way, the term krysha does not carry the necessary implication that the services in question will be criminal or illegal."**

**Now, the basic concept therefore does not appear to be substantially disputed. Another briefer account of it appears in the article in the Economist, which your Ladyship may recall my referring to in the course of Mr Berezovsky's cross-examination, where it's observed that businessmen know that their best protection is not law but their krysha, a well-connected power broker.**

**Now, as far as the power broker is concerned, this is a system for trading inside influence within government for cash. The functions of the protector, on the strength of the evidence that your Ladyship has heard in this case, are essentially these. First of all, to procure favourable treatment for the protege's interests in the formulation of state policy or the exercise of state discretions. Secondly, to protect his client against arbitrary action by state authorities. And third, in some cases most significant of all, to provide the client with a known and visible link to influence and power whose mere existence provided that it is sufficiently public will serve to deter adverse action against him by third parties.**

**This is not a kind of contract for services. It**

**certainly isn't a standard lobbying operation, nor is it a relationship based on some kind of quantum meruit or any other kind of relationship known to the law. It's a relationship of honour that cannot be broken without serious repercussions. And it is not terminable at will but by agreement and at a price.**

**Mr Berezovsky, in our submission, was the classic power broker. He described himself as one of the most influential oligarchs in Russia. His influence derived, as Professor Fortescue stated and as he himself confirmed in his evidence, primarily from his connections within the Kremlin but also from his ability to operate in conjunction with other oligarchs and, critically, from the control which he was, in 1995, in the process of acquiring over the national television network in Russia, formerly owned by the state corporation Ostankino.**

**Everything that Mr Berezovsky did for Mr Abramovich was characteristic of a relationship of protector and client rather than investor and manager.**

**Mr Berezovsky's own evidence, as well as Mr Abramovich's, shows that Mr Abramovich did not have a hope of amalgamating the two Siberian oil businesses and turning them round, as he did, without political influence. And it shows that it was Mr Berezovsky who**

**provided that political influence.**

**Other major Russian businessmen built up industrial or commodity empires in the 1990s but relied on their own influence: Mr Khodorkovsky in the oil industry, Mr Potanin in the metals industry, and others like them. These were already very rich and influential men when they acquired the businesses that were included in the loans-for-shares scheme in 1995 and 1996, and in the privatisation programme. Indeed Mr Potanin was the main creator of the loans-for-shares scheme in March 1995.**

**Now, the process by which Mr Abramovich acquired control over Sibneft involved the alliance of a 28-year-old businessman with money but not enormous sums of money and with no political influence, an alliance between him and a powerful politician with a business background but no current interest in business at all. The natural form of their relationship was therefore that of protector and client.**

**The suggestion is made in my learned friends' written closing, it's at paragraphs 367 to 369 for the transcript, that we only have fleetingly relied upon and then abandoned our allegation that the relationship between Mr Abramovich and Mr Berezovsky was based on krysha. Elsewhere in this document it's suggested that we only hint at the problem of corruption by way of**

**innuendo.**

**I wish to disabuse my learned friends of that idea. I don't want to raise the temperature any more than I need to, but the true nature of Mr Berezovsky's so-called lobbying activities is relevant to quite a number of issues in this case. It's relevant to the nature of his relationship with Mr Abramovich, it's relevant to the question whether their bargain was legally certain as a matter of Russian law, it's relevant to the question whether the agreement was intended to be legally binding. And it is certainly our case that the relationship between Mr Berezovsky and Mr Abramovich was founded on krysha or political protection, and that the activities of a krysha or protector are inherently corrupt.**

**But what is more, as a general proposition, that was accepted by Mr Berezovsky himself at the outset of his cross-examination. Your Ladyship may recall that I put to him the hypothesis that a businessman approaches an elected official and says "I'm going to support your reelection campaign so please will you exercise your official powers in a way that favours my business interests and those of my associates", and the elected official says "Yes". And I asked Mr Berezovsky whether in his view that was corrupt, and his answer was, "Yes,**

**it's corrupt". Yet that is exactly what Mr Berezovsky in his witness statement claims to have done.**

**As became clear later in his evidence, Mr Berezovsky only declined to regard it as corrupt when it was done by him. The references I've just been referring to are at Day 4, pages 12 to 13, and then later at page 44.**

**Now, it's also suggested by Mr Berezovsky in his written closing that it is common ground that the provision of krysha was only relevant at the outset in 1995. It is not common ground, nor was that proposition accepted by Mr Abramovich when it was put to him.**

**Mr Abramovich's evidence --**

**MRS JUSTICE GLOSTER: Can you give me a paragraph number for where the allegation of common ground is made.**

**MR SUMPTION: That is made at paragraph 374, subparagraph 2 of my learned friends' written closing.**

**Now, Mr Abramovich's evidence is that he was concerned to maintain his connection with a known and influential political protector right through to the time when Mr Berezovsky fell out with Mr Putin in 2000, and that even then he did not regard the relationship as unilaterally terminable. What is more, although this isn't directly relevant to any issue before your Ladyship, it is Mr Abramovich's evidence -- and has always been our case -- that the physical protection**

**provided by Mr Patarkatsishvili was also valuable and, indeed in relation to the Rusal side in 2000, essential.**

**Now, direct evidence of the agreement of 1995 comes only from the two principals. I am not going to summarise their evidence on my feet since I've already done it at some length in my written closing, but your Ladyship's analysis of that evidence is obviously likely to depend heavily on your views about the quality of the witnesses and I have said enough for the moment on that subject.**

**What I would like to do is to say something about the circumstantial evidence, all of which very strongly suggests that Mr Abramovich's version of what was said in 1995 is likely to be correct. Now, I'm not going to go through all the background circumstances, they are actually exhaustively described with references in our written closing, but it is right to identify the main ones.**

**The first point to be made is that the agreement was made at a stage when it is most unlikely to have been in the terms alleged by Mr Berezovsky. I'm certainly not going to suggest that the terms were all agreed at one moment. It is actually quite likely that some of them evolved over a period of time.**

**But it isn't true, as Mr Berezovsky's counsel have**

**suggested, that it is common ground that after initial agreement in about February the final agreement was really made in August. Mr Abramovich's evidence is that the basic features of the parties' relationship was settled at the outset, in particular his evidence is that the basis on which Mr Berezovsky was going to be remunerated, which is the critical point for present purposes, was agreed at the outset.**

**I say that, that that must be so, because -- well, there are a number of reasons. First of all, Mr Abramovich's evidence was that the financial arrangements were agreed at the outset. Mr Berezovsky, as your Ladyship will recall, questioned Mr Abramovich about his means, by which he can only have meant at that stage the means that he derived from his existing business interests in oil trading. What Mr Berezovsky then said was that he would expect $30 million a year.**

**Now, that evidence is summarised, I'm not going to ask your Ladyship to turn it up, at paragraph 20, subparagraph 4 of our closing with references.**

**Secondly, it must be true, in our submission, because we know that Mr Berezovsky was actively engaged in promoting the project within the Kremlin as early as February 1995. His own witness statement accepts that and so does his oral evidence. We have given**

**references at paragraph 25.**

**Thirdly, the first payment was made in February 1995 in bank notes delivered personally to Mr Berezovsky by Ms Goncharova at the Logovaz Club, followed by a number of similar deliveries in the course of February and March amounting in total to $5 million of folding money. Now, if Mr Berezovsky was performing his part, and being paid for it in cash from the outset, then the basis of his remuneration must have been agreed, at least in general terms, from the outset. It is hardly likely that Mr Berezovsky would give Mr Abramovich the benefit of his inside track at the Kremlin, without any agreement about his remuneration.**

**Now, remuneration agreed at that stage cannot have involved a share in Sibneft which, at that stage, didn't exist, and whose ultimate creation and privatisation was as yet undecided. None of the terms alleged by Mr Berezovsky make a great deal of sense as applied to the sort of agreement that he says was made. The creation of Sibneft was not provided for by law until late August. The privatisation of 49 per cent was not approved until the end of September, although provision for it had been made in the decree creating Sibneft. The loans-for-shares scheme was not even proposed until the end of March 1995 and was not adopted until August.**

**Sibneft was not included in it until the end of November.**

**Now, it must be most unlikely that interests in Sibneft were being shared out between Mr Abramovich, Mr Berezovsky and Mr Patarkatsishvili as early as January and February 1995. The terms which are alleged by Mr Berezovsky are terms which have been devised to suit a situation that actually came into being a considerable time after the agreement is likely to have been made.**

**Indeed, there is another reason why they couldn't have been agreed as early as January and February 1995, when it is quite clear that the basic terms were agreed, and that is that the partnership between Mr Berezovsky and Mr Patarkatsishvili, and it's a crucial part of Mr Berezovsky's case that this was an agreement between them as partners and Mr Abramovich, but that partnership is not alleged by Mr Berezovsky to have come into being until August 1995. That is his case in the main Chancery action. The references are at paragraph 26.3 of our document.**

**It must be equally unlikely I would suggest, and isn't in fact alleged by Mr Berezovsky, that the basis of Mr Berezovsky's remuneration was something that changed in the course of 1995. It is perfectly true**

**that there were other aspects of this relationship which were modified as time went on in the course of 1995. I will mention two of them because they feature quite significantly in the evidence.**

**One change concerned the nature of the control which Mr Abramovich hoped to acquire. His evidence is that he was originally interested only in procuring the creation of Sibneft and acquiring management control over it within the state sector, his object being to increase the trading volumes of his trading companies by increasing the proportion of the Siberian companies' business which went through the trading companies. It was only gradually, with the beginning of the loans-for-shares scheme and the privatisation programme of August 1995, that Mr Abramovich's ambitions began to expand to embrace the actual acquisition of a large stake in the company. This process is traced in his witness statement, that's his third witness statement. I'll just give your Ladyship the principal paragraphs, paragraph 49 to 50, 59 to 61, and 71.**

**Now, another respect in which the arrangements were modified over time was the purpose for which the money paid to Mr Berezovsky was used by him. My learned friends have made a great deal of fuss about a suggested change in Mr Abramovich's case. The point is that it is**

**said that the understanding between Mr Abramovich and Mr Berezovsky was originally said to be that the money would be used to fund ORT, and it later came to include substantial volumes of personal expenditure.**

**Now, it has never been suggested that it was, so to speak, a term of the agreement that the money paid to Mr Berezovsky must be used to fund ORT. The term was that Mr Abramovich was to pay Mr Berezovsky money. Funding ORT was simply the reason why Mr Berezovsky said he particularly wanted money in 1995. But ultimately, there was nothing to stop Mr Berezovsky spending what he got from Mr Abramovich on whatever he liked. It made no difference to Mr Abramovich who had no particular interest in the financial health of ORT.**

**This development is traced again in Mr Abramovich's third witness statement, the main paragraphs are paragraphs 55-6 and 67-9. Initially, most of the money did in fact go on ORT although precise figures are difficult to establish. There was then a gradual increase in the proportion of personal expenditure which became particularly noticeable after Boris Yeltsin's victory in the 1996 presidential elections, an outcome to which Mr Berezovsky's broadcasting empire contributed very significantly.**

**By 1997 it is Mr Berezovsky's own evidence that, in**

**addition to ORT funding, his entire personal expenditure was in fact being funded by Mr Abramovich. So the first of the surrounding circumstances to which I draw attention as tending to suggest that Mr Abramovich's version of the 1995 agreement is right is the stage in 1995 when that agreement appears most likely to have been made.**

**The second surrounding circumstance is the absence of a written record. Now, we do not dispute that oral agreements may have been less uncommon in Russia in the 1990s than they would have been in New York or London, although the evidence certainly does not go so far as to suggest that they were the norm. Kinut, the practice of denying unrecorded agreements, was a well-known hazard in Russia, and both Dr Nosova and Mr Berezovsky accepted that in their evidence. But what seems clear is that oral agreements for major transactions are unlikely to be made, even in Russia in the 1990s, except between people who have a high degree of confidence and trust in each other based on experience.**

**One can illustrate that by reference to Mr Berezovsky's relationship with Mr Patarkatsishvili. In our opening written statement at paragraph 29 we have given your Ladyship the references to what is known about Mr Patarkatsishvili's early relationship with**

**Mr Berezovsky, but it looks as if they had been business colleagues for over six years before they actually became partners in 1995.**

**Now, Mr Berezovsky's case is that he achieved that sort of relationship with Mr Abramovich within a few weeks of having met him and before they had done any business together at all. All of his evidence, however, tends to contradict that suggestion. According to Mr Berezovsky, his attitude in 1995 was that Mr Abramovich was a small-time oil trader with no track record in business, of whose affairs he had no knowledge and no interest, and he consistently, in the early part of his evidence in cross-examination, spoke of Mr Berezovsky's (sic) talents with contempt, "He was not even smart".**

**Now, in a revealing aside in the course of his cross-examination, Mr Berezovsky remarked that the only reason why he was prepared to agree to Mr Abramovich managing Sibneft at all was that he was too busy; he, Mr Berezovsky, was too busy on the more important question of getting Mr Yeltsin reelected as president. He said -- the reference is at paragraph 17 and note 63 of our written opening:**

**"Could you believe that say, 'Mr Abramovich, young boy, fantastic boy, manage please enormous business'?**

**Only because I had the other priority ..."**

**Of course the answer to Mr Berezovsky's forensic question is, no, Mr Berezovsky did not graciously permit Mr Abramovich to manage Sibneft, he wasn't interested in Sibneft at all. That was Mr Abramovich's affair. What Mr Berezovsky was interested in was cash.**

**Now, this view of the situation, and this particular explanation of why it is unlikely that the agreement would be recorded in writing and why in fact it was not, is confirmed by Mr Patarkatsishvili's remarks to Mr Berezovsky's solicitors in 2005 which tells us something about the nature of the relationship between Mr Abramovich and Mr Berezovsky in 1995. According to Mr Patarkatsishvili, Mr Berezovsky introduced Mr Abramovich to him as a nice boy who would discuss some commercial projects. Mr Lankshear's note of that interview, and the draft proof prepared immediately afterwards, also records Mr Patarkatsishvili as saying that Mr Abramovich was looking for what Mr Patarkatsishvili called refuge, ie protection, or as we have been using it in this action, krysha.**

**The reason for the absence of any written record of this deal was precisely that it was not an oil industry partnership. It was a political arrangement, a trade in influence for money. It was an arrangement of the kind**

**that no sensible person in Mr Berezovsky's position would want to see recorded in writing.**

**Now, that had absolutely nothing to do with fears of a Communist victory in 1996 as Mr Berezovsky sought to suggest. There were genuine fears of a Communist victory in 1996, but there is probably much to be said, at least in a figurative sense, for the view which Mr Berezovsky attributes to George Soros, that if the Communists won in 1996 Mr Berezovsky was going to be strung up from a lamp post anyway. What seems absolutely clear is that, if the Communists won, any arrangement that these parties might make about Sibneft would be reversed irrespective of whether or not it was recorded in writing. The absence of writing simply reflected the murky character of any deal based on krysha.**

**Now, the third circumstantial element which needs to be taken into account is the complete absence of interest shown by Mr Berezovsky in the successive auctions at which, first, the privatised 49 per cent of Sibneft and then the retained 51 per cent were sold by the Russian State. It's common ground, on the evidence, that all of these sales resulted in the acquisition of shares by companies owned and controlled by Mr Abramovich, and that Mr Berezovsky contributed zero**

**to the cost of their acquisition.**

**We know, because both sides agree, that Mr Berezovsky put a good deal of effort into the loans-for-shares auction of 28 December 1995 at which Mr Abramovich acquired management control of Sibneft. Now, Mr Berezovsky did not provide the funding for that auction, that came from Runicom and from the Siberian oil companies themselves who put up the counterdeposits with SBS that enabled SBS to participate without any financial risk to themselves. But Mr Berezovsky's efforts were nevertheless considerable. They were mainly by way of behind-the-scenes political machination, but he also, as we accept, made valuable use of his contacts with groups like Menatep and SBS. Yet Mr Berezovsky did absolutely nothing about the sales at which Sibneft shares were actually acquired.**

**This indifference is very much what one would expect if Mr Berezovsky was providing political patronage for cash. Mr Berezovsky had used his political influence to create the opportunity and that is why these auctions were occurring at all. So it was now up to Mr Abramovich to make use of that opportunity by buying.**

**On the other hand, Mr Berezovsky's complete indifference to the actual sales of Sibneft shares is very surprising if the real object of the deal that he**

**had made with Mr Abramovich was to acquire shares in Sibneft in partnership as he is suggesting. On the face of it these sales of Sibneft shares, of the 49 per cent and then the 51 per cent, were the prime means by which the acquisition of Sibneft shares would come about. Yet Mr Berezovsky, on his own evidence, did not lift a finger. He did nothing to participate in them directly and he did nothing to participate in them indirectly through Mr Abramovich either.**

**The contrast between Mr Berezovsky's active concern with the loans-for-shares auction and his indifference to the sales at which Sibneft shares actually changed hands is, I would suggest, particularly striking in the case of the very first sale of shares which occurred on 4 January 1996 at which 15 per cent of Sibneft was on offer as part of the privatisation programme and just over 12 per cent was acquired by Mr Abramovich's companies.**

**Now, that sale, the 4 January sale, occurred just one week after the loans-for-shares auction. The process that led to the sale opened on 1 November 1995. Your Ladyship will find the dates incidentally at paragraph 43, sub 4 of our document.**

**So the loans-for-shares auction and the first cash sale of Sibneft shares were proceeding, for practical**

**purposes, simultaneously in the final weeks of 1995. Now, the successful bidder in the loans-for-shares auction, as we know, was NFK, a consortium company owned 50 per cent by an Abramovich vehicle and 50 per cent by Consolidated Bank which was, in effect, the in-house bank of the Logovaz Group. However, the successful bidder in the cash sale of 4 January, the first occasion on which Sibneft shares were actually acquired, was Mr Abramovich's principal trading company Runicom SA, a company in which Mr Berezovsky had no interest at all.**

**It's possible to understand why Mr Berezovsky was interested in the loans-for-shares auction on Mr Abramovich's version of what was agreed. It is impossible to understand why, if the 1995 agreement was really concerned with the acquisition of shares of Sibneft in partnership, that difference between these two virtually simultaneous sales was allowed to exist. If that was the agreement, then why was a consortium company not used in the 4 January sale as well?**

**It is worth adding that at this stage, in late 1995 and early 1996, not even Mr Berezovsky claims that there were arrangements in place for his interest to be held for him indirectly by Mr Abramovich or his companies. The terms which Mr Berezovsky says were agreed in 1995 included no arrangements for holding any interest of**

**Mr Berezovsky or Mr Patarkatsishvili indirectly for them. He accepts that in his fourth witness statement, the reference is paragraph 166 D2/17/232. He accepts there that nothing was said about that in 1995. His case is that that was only agreed in terms in late, or later in 1996, around May or June.**

**That being so, it's very hard to understand what Mr Berezovsky thought that he was doing if he and Mr Patarkatsishvili were supposed to be half owners of Sibneft shares and had made no arrangements for Mr Abramovich to hold Sibneft shares for them. In that case, why weren't they out there participating in the purchase of Sibneft shares?**

**All of this, of course, is readily explicable if the agreement was in terms alleged by Mr Abramovich, and what they were getting was money. That view of the matter is consistent with the fact that even Mr Berezovsky does not say that there were any terms agreed in 1995 about how Sibneft shares were going to be acquired if they were sold, who was going to pay for them, how the auction was going to be managed and so on.**

**On Mr Berezovsky's case, there never was any obligation on him or on Mr Patarkatsishvili to pay, for example, a single cent towards the acquisition of shares which they claim were going to be half theirs.**

**Mr Berezovsky certainly doesn't plead any such terms. He says nothing about terms of that nature in his witness statement. His evidence on the point is limited to an absurd suggestion in the course of his cross-examination that he expected Mr Abramovich to sort all that out in his capacity as the manager of Sibneft's business.**

**Mr Berezovsky does not suggest that that was actually agreed, he only suggests that it was, in his view, implicit in the agreement that Mr Abramovich was going to be the manager of Sibneft's business. It is of course no part of the function of the manager of a company's business to buy shares in the company on behalf of potential investors unless perhaps he has actually agreed to do that.**

**What is more, Mr Berezovsky's evidence on this point doesn't explain how shares acquired by Mr Abramovich for him and Mr Patarkatsishvili, in his capacity as manager, were actually going to be paid for. Judging by his evidence in cross-examination, Mr Berezovsky's position is that Mr Abramovich should have set the cost off against his and Mr Patarkatsishvili's 50 per cent share of Sibneft's at that stage nonexistent profits, or else that he should have come and asked them for money which, on this hypothesis, they had absolutely no obligation to**

**pay to him.**

**Now, the net result is said to be that although Mr Abramovich's companies paid for these shares themselves, Mr Berezovsky and Mr Patarkatsishvili are said to own half of them. Mr Berezovsky is in effect claiming to have invented a kind of financial perpetual motion machine under which he can acquire ever more valuable assets for nothing. We shall see exactly the same conceit at work in 2000 when we come to the way in which the aluminium interests were acquired.**

**Now, the fourth circumstantial matter pointing to Mr Abramovich's version of the agreement is, in our submission, by far the most significant, and that is the absence of any correlation between the payments made to Mr Berezovsky and the profits of Sibneft. Now, for this purpose, it's the profits of Sibneft and only the profits of Sibneft which are relevant. It is not the profits of the trading companies, it's not the total income of Mr Abramovich, it is not some nebulous concept of similar profits. If your Ladyship has my learned friends' written closing at hand and would turn to paragraph 401 at subparagraph 3, one will see what is now for the first time being suggested by way of submission, it's at page 265 of the document. "The suggestion", they say, and this is referring to the**

**sources of profit-sharing other than Sibneft profits:**

**"The suggestion that there is any contradiction or lack of clarity because this was not spelt out in Mr Berezovsky's pleaded case is clearly not right. It would almost certainly be implied as a term in any contract among partners under which they agreed to share profits of an enterprise that if one or more of those partners had the power to cause profits of that enterprise to be earned through another corporate vehicle, those profits would also be shared. This would certainly fall to be implied into a Russian law simple partnership agreement because the partners under such an agreement owe each other fiduciary duties: see Rozenberg..."**

**MRS JUSTICE GLOSTER: I have actually got that on page 263, just for the transcript. It doesn't matter.**

**MR SUMPTION: I'm reading from the printed version --**

**MRS JUSTICE GLOSTER: Yes, so am I.**

**MR SUMPTION: I see. Well, I hope there aren't two pages missing which I haven't --**

**MRS JUSTICE GLOSTER: It doesn't matter, it's just for my purposes later on.**

**MR SUMPTION: Yes, thank you.**

**Now, the problem about this, one of the many problems about this, is that this is an arrangement**

**which, although categorised as a matter of law by Mr Berezovsky's advisers as a partnership agreement, is said to depend on express agreement. Mr Berezovsky says there was an express agreement about what profits he was going to earn, it's not a matter of implication. His pleaded case is that this was something whose goal was to be the acquisition and management of Sibneft.**

**There is no pleaded allegation that any other profits than Sibneft's were to be shared. There are no implied terms alleged in the pleading expanding the scope of this profit entitlement, nor is it supported by Mr Berezovsky's witness statement. His principal witness statement number four at paragraph 98 is the only place where he says what he claimed to be entitled to. It's part of his evidence where he deals with the 1996 agreement, and he explains that that agreement was to the effect that the previous arrangements were to continue and those agreements entitled him, according to Mr Berezovsky's evidence, to "dividends and other payments made by Sibneft to its owners".**

**That is the right that Mr Berezovsky claims was expressly accorded to him, and we propose to hold him to that part of his case. We cannot reasonably be expected after the evidence has closed to start chasing Mr Berezovsky through the twists and turns of whatever**

**case he feels he needs to make in order to meet the difficulties of the evidence.**

**Now, the undisputed evidence is that neither Mr Berezovsky nor Mr Patarkatsishvili ever tried to ascertain at the time what these profits actually were, of which they claim to be half owners. The procedure was that at about the beginning of each year, Mr Abramovich would have a discussion with Mr Patarkatsishvili about how much Mr Berezovsky would be expecting to receive in that year. There would then be a continuous process of ad hoc negotiation in which Mr Berezovsky or Mr Patarkatsishvili would demand that Mr Abramovich arrange for some particular payments to be made either to them or to third parties at their direction.**

**Now, I say that that evidence is undisputed because it is the system described by Dr Nosova and by Mr Jenni in their witness statements. We've given the references at paragraphs 56 and 57 of our document. Indeed it's the system which Mr Berezovsky himself described in his oral evidence to your Ladyship.**

**If I could ask your Ladyship, in one of the rare forays into the transcript, again I promise not to make a habit of this, to turn up Day 6, page 86, what Mr Berezovsky had to say about the method of arriving at**

**these sums was this. It's page 86 of Day 6 starting at line 17:**

**"No, again, I describe you the method which company use to obtain the profit directly or indirectly and the way was absolutely the same for all the company.**
**I never calculate numbers and my relations was absolutely simple: I made request directly to Abramovich or Shvidler or indirectly through Badri. If Abramovich was able to pay, calculating what is [in] our interest, Badri and me together, he paid that. If he was not able to do [it], he said, 'Boris, we don't have money now to spend because we invest it to buy something or because company didn't generate this money'.**

**"I never demand Abramovich to do that, never, because it was responsibility of Abramovich,**
**100 per cent, to manage the company and I'm not crazy to destroy my company just thinking to buy another house, yes? I understood priority. If we don't have money, we don't have money. If we have money, I want to spend this money how I like to..."**

**So the system as described here is:**

**"If [Mr] Abramovich was able to pay, calculating what is [in] our interest ..."**

**Now, that isn't a profit share, it's rather closer to the classic kind of protection, "Nice place you've**

**got here".**

**Now, Mr Berezovsky on the opposite page, at page [92], line 10, is taken up on that point by your Ladyship. The question is:**

**"... I know you say that. We're just now looking at the amounts you get paid and how -- the money doesn't [seem to] come to you automatically; you generate some sort of request for payment, presumably?**

**"Yes ... mainly the way was as I described before. I told Badri, 'Badri, we need that and that', for reason of ORT or for reason of charity or for personal reason to buy jewellery [for] Elena, yes? And Badri calculate with Roman what is opportunity to pay or not. That's it."**

**Now, whatever else one might say, in our submission, that is not a profit share. The most that one can say about it is that Mr Berezovsky's requirements became more exorbitant as Sibneft prospered and Mr Abramovich's ability to pay increased. This was essentially a demand-led system limited by Mr Abramovich's capacity to pay, and that is very different from what is described in Mr Berezovsky's witness statement.**

**Now, this is, in our submission, crucial because Mr Berezovsky has got to say that the huge payments made to him between 1995 and 2000 were his shares of those**

**profits.**

**My Lady, could your Ladyship give me an indication of when you wish to take the break?**

**MRS JUSTICE GLOSTER: Yes. Well, have we got to the end of this section yet?**

**MR SUMPTION: No, shall I get to the end of that?**

**MRS JUSTICE GLOSTER: Get to the end of the section, please.**

**MR SUMPTION: Now, the global figures are set out in the table which appears at paragraph 47 of our closing document.**

**MRS JUSTICE GLOSTER: Yes, I have that.**

**MR SUMPTION: Which compares Mr Berezovsky's receipts, or Mr Berezovsky's and Mr Patarkatsishvili's receipts, with the figures for Sibneft profits over the relevant period. Now, the source of those figures is this: the figures for the payments made to Mr Berezovsky and Mr Patarkatsishvili are estimates derived from the evidence of Mr Abramovich and Ms Goncharova up to the end of 1999, and they are based on the actual figures for the year 2000, the one year for which we have actual figures derived from the bolshoi balance.**

**Mr Rabinowitz says that his client puts forward no positive case about what he received, but Mr Berezovsky's own evidence is that, by 1997, it covered not only part of the funding gap at ORT but the**

**entire cost of his somewhat exuberant lifestyle.**

**However, since these figures, the figures for his receipts, were put forward by Mr Berezovsky to the investigating magistrate earlier this year as representing the amount of his receipts from Sibneft, we must take it that Mr Berezovsky was satisfied that they were at least broadly correct, or at any rate that he was not in a position to quarrel with them.**

**The figures in the table for Sibneft's profits are derived from its audited financial statements. Now, I've already made the point that the payments began before any control over Sibneft was acquired, about 30 million in 1995. Now, those payments are denied by Mr Berezovsky, they are denied precisely because they are fatal to his case that what was received was a profit share since Sibneft didn't exist in 1995 and certainly wasn't under the control of Mr Abramovich.**

**Mr Berezovsky's preference for leaving other people to deal with the financial side of his affairs, and his professed lack of any detailed recollection, means that his evidence on this point is not going to assist your Ladyship very much. But the payments of February and March have, in our submission, been amply proved in particular by the evidence of Ms Goncharova. Your Ladyship may recall her graphic account of dragging**

**a heavy hold-all full of bank notes up the steep staircase at the entrance to the Logovaz Club and trying to deliver it personally to Mr Berezovsky as he barked angrily down the phone and threw the telephone at his assistant. She simply could not have made that up.**

**Nor could she have got the date wrong. The date was fixed in her mind by the extraordinary circumstances of these deliveries and the fact that it immediately followed the move of Mr Abramovich's premises to a new address in Moscow. The details of that are given with references at paragraph 51.**

**Now, in my learned friends' written closing, and the reference for the record is paragraph 108 sub 4(c), there is a suggestion that Ms Goncharova's evidence cannot be true because she referred to Mr Berezovsky's assistant as Ivan, and what is said is that this refers to Ivan Surov who, they say, began working for Mr Berezovsky in December 1996, nearly two years later, and, in support of that, they have produced an annual contract of employment beginning 4 December 1996 and subsequently renewed at annual intervals.**

**Now, that document was disclosed by my learned friends on 22 November, six days after Ms Goncharova had given her evidence. It was not put to her in cross-examination and no application was made to recall**

**her so that it could be and so that she could address it. If it had been, we would certainly have made the necessary arrangements.**

**Ms Goncharova does not identify Ivan by his surname but I can tell your Ladyship that we accept that the reference was to Ivan Surov. We do not accept that Mr Surov only started working for Mr Berezovsky on 4 December 1996, although it may well be that that was when his employment with the particular entity identified in the contract of employment did begin, but he was working for Mr Berezovsky for some time before that contract of employment with that particular entity was made.**

**Now, in Mr Berezovsky's written closing --**

**MRS JUSTICE GLOSTER: The Logovaz Club was a kind of club that operated in the daytime? It was a club in the sense of, I don't know, White's or ...**

**MR SUMPTION: I think not exactly in the sense of White's. It was basically the headquarters of the Logovaz Group, which was a place set up by Mr Berezovsky where essentially food and wine could be had in more or less unlimited quantities without payment, and it was therefore a popular resort with anyone who wished to see Mr Berezovsky and, I dare say it, to some people who didn't wish to see him.**

**MRS JUSTICE GLOSTER: But it was a members club, was it?**

**MR SUMPTION: No, it's a sort of proprietary -- it was basically where Mr Berezovsky held court. I don't think it had a formal membership. It was called a club, it was actually a palatial headquarters building installed in an early 19th century classical house where you could do business over a rather more enjoyable setting than most modern architecture allows.**

**At any rate, the description we've had of it is that this was where all sorts of agents, factors and courtiers would go if they had business of any kind with Mr Berezovsky, and it's where he had his office.**

**Now, in my learned friends' written closing the evidence of the 1995 payments is attacked as late reconstruction occurring after disclosure, and as the product of collusion, it is said, between Mr Abramovich and Ms Goncharova. Now, neither of these criticisms has any weight frankly. Well before disclosure Mr Mitchard, in his witness statement for the summary judgment proceedings, gave evidence that he had been told by both Mr Abramovich and Ms Goncharova that the payments had started in 1995. This is not therefore late invention. Of course, Mr Abramovich did consult Ms Goncharova, among other sources, as he perfectly freely admitted in cross-examination. It was the obvious thing to do since**

**Ms Goncharova was in charge of handling these payments.**

**Now, turning to the figures for 1996 to 2000, there were no profits in 1996, a year in which Mr Berezovsky received, on Ms Goncharova's estimates, between 80 and $85 million. Payments to Mr Berezovsky exceeded the entire profits of Sibneft in both of the next two years. The first year in which payment could have been covered from audited profits was 1999 and 2000, and in neither of those years were the payments 50 per cent of those profits or anything like 50 per cent.**

**At no point, in other words, between 1995 and 2000, could payments to Mr Berezovsky have been covered by distribution to shareholders. That is because all profits were reinvested until the year 2000 when Sibneft declared its first dividend in the sum of just $50 million. That was declared in November of 2000. Now, there have been a number of more or less ingenious attempts to square this particular circle, much of which turned in the course of the evidence on arguments about transfer pricing, although one cannot help noticing that transfer pricing plays a very limited part in my learned friends' written closing, and their points about it are unsupported by any evidence that they have been able to point to.**

**The point is really this, however: on the terms**

**alleged by Mr Berezovsky, Mr Abramovich had no actual obligation to pay him a share of profits emanating from any other company than Sibneft. No obligation to engage in manipulative transfer pricing for Mr Berezovsky's benefit. No obligation to pay him and Mr Patarkatsishvili a cent more than half of the profit attributable to the shareholding that they claim to have had in Sibneft. That is Mr Berezovsky's claim. "We were shareholders, we were entitled to half the amount which was distributed by Sibneft to its owners."**

**Now, Mr Abramovich could, therefore, under the agreement alleged by Mr Berezovsky, have declined to pay Mr Berezovsky or Mr Patarkatsishvili a single cent until Sibneft started paying dividends in 2000. He could then have paid them no more than their due proportion of $50 million, and if they had claimed more than that, legally they wouldn't have had a leg to stand on. And remember, Mr Berezovsky says this is a legal agreement.**

**If Mr Abramovich actually paid them more than half the profits attributable to the shares they claimed to own, then there is only one possible explanation. That explanation is that Mr Berezovsky had some hold on Mr Abramovich extending beyond any entitlement that Mr Berezovsky might have had as shareholder, beyond any legal entitlement in fact of any kind. What could that**

**hold, extending beyond their position as shareholders and beyond legal entitlement, have been if it was not krysha, the hold that Mr Berezovsky derived for his status as Mr Abramovich's political godfather?**

**For that reason, it would not actually matter whether the arguments about transfer pricing were soundly based on fact, but actually these allegations about transfer pricing have no factual basis at all. The audited accounts of Sibneft specifically deal with related party transactions, as they are required to do by the general principles of accounting in accordance with which they were drawn up. The course of trading between Sibneft and the trading companies is described in detail in the Eurobond circular of 1997, a document which was cleared after due diligence by Salomon Brothers and Cleary Gottleib, and presumably by Mr Patarkatsishvili as well since he was a director of Sibneft at the relevant time. We've given the references to all of that at paragraph 48 sub 4.**

**What it shows is that there was no transfer pricing between Sibneft and Mr Abramovich's trading companies, and no evidence has been produced to persuade your Ladyship that that is wrong.**

**Turning to the ZATOs, they seem to have disappeared as an issue judging by my learned friends' written**

**closing. There is a full description of how they operated in Mr Gorodilov's witness statement, and some further observations on the subject in the witness statement of Mr Shvidler. In short, they were companies interposed in the chain of contracts which were entitled to tax relief on their profits under Russian legislation which remained in force until 2000. These companies transferred back to Sibneft sums which ensured that Sibneft was no worse off than it would have been if they had not been interposed.**

**Mr Abramovich was asked about this in cross-examination but did not know the details. Neither Mr Shvidler nor Mr Gorodilov, who did know the details and indeed were responsible for that part of Sibneft's affairs, was cross-examined about it at all. So that would appear to be the end of that particular issue.**

**The only attempt which Mr Berezovsky's counsel have made to correlate the profits of Sibneft with the receipts of their client is at paragraph 445 of their written closing where the suggestion is made that Mr Abramovich made payments that were related to profits in 1995 and 2000.**

**Now, it is slightly odd to see Mr Berezovsky relying in this part of his argument on the payments made in 1995 as being a due proportion of Sibneft's profits**

since his case is that no payments were ever made in 1995. But two things are, I would suggest, clear about the 1995 payments. One is that the $30 million cannot have been calculated as a proportion of Sibneft's profits since Mr Abramovich did not control Sibneft until 1996. The other is that the $30 million figure did not come from Mr Abramovich at all. On the evidence, it was the sum which Mr Berezovsky demanded at the outset of their relationship in return for his services.

Now, in relation to the year 2000, the only other year for which it's suggested that there was any correlation, the suggestion is based on the proposition that Sibneft made $900 million in profits in 2000, which is substantially more than its actual profits as disclosed by the audited accounts, and that the amounts paid, according to the bolshoi balance, were about half of that, which in fact they were not.

This is a particular issue in relation to 2000 which is dealt with in our written closing at paragraph 55, and in our submission there is no substance in it at all.

My Lady, that is a convenient point to break if that's convenient to your Ladyship.

MRS JUSTICE GLOSTER: That's the end of the section, is it,

**on that?**

**MR SUMPTION: Yes. There's one other circumstantial matter I need to deal with but it's better dealt with after the break.**

**MR ADKIN: Before your Ladyship rises, my Lady asked about the Logovaz Club. Mr Berezovsky himself gives a brief description of the Logovaz Club at paragraph 34 of his witness statement, which is D2/17/203. I don't understand that description to be controversial.**

**MRS JUSTICE GLOSTER: It's not in dispute. Thank you.**

**MR SUMPTION: I think your Ladyship will also find a description of it in Dr Nosova's evidence.**

**MRS JUSTICE GLOSTER: Yes, very well. Thank you. I'll take ten minutes.**

**(11.45 am)**

**(A short break)**

**(12.01 pm)**

**MRS JUSTICE GLOSTER: Yes, Mr Sumption.**

**MR SUMPTION: My Lady, the next circumstantial point that I wanted to draw attention to, pointing towards Mr Abramovich's version of what was agreed, is that a partnership agreement of the kind alleged by Mr Berezovsky would not in fact have served what Mr Berezovsky accepts was the purpose for which he was entering into this arrangement in the first place.**

**Mr Berezovsky's own evidence, and we summarise this at paragraph 31 to 34 of our document, is that the logic of entering into this arrangement with this young untried businessman was to generate a source of funds for ORT. Now, at a later stage, Mr Berezovsky's appetite for money may have been driven very much more by his personal expenditure, but at this stage there seems to be no doubt that ORT was the principal financial requirement, and it was an urgent requirement because ORT had to be funded in time to mount a major publicity campaign in support of Boris Yeltsin's re-election campaign in elections that were due to be held in June 1996.**

**The evidence, mainly from Mr Berezovsky himself and to some extent from Dr Nosova, was that the other private investors in ORT were not willing to pay up. Mr Berezovsky's main business, the Logovaz Group, was unable to do so. Mr Dubov came to Mr Berezovsky and said, if he demanded the money from Logovaz Group, it would be the last payment they ever made before folding. And attempts to borrow from commercial banks, according to Dr Nosova, had also failed.**

**Now, Mr Berezovsky needed money to fund ORT much faster than he could ever have got it out of Sibneft dividends. His only answer to this point is that it**

**would have been perfectly simple to integrate the component businesses of the two Siberian companies into one with their old-style Soviet management and their billion dollars of accumulated debt, as Mr Abramovich described, and then to start extracting large sums of money from the combined business almost at once.**

**Now, that evidence, in our submission, was absurd. Mr Berezovsky cannot possibly have believed it and, indeed, his own admitted ignorance of the oil trade makes it difficult to attach any weight to it. The evidence is that from the very outset of their relationship, at the end of 1994 and the beginning of 1995, Mr Berezovsky questioned Mr Abramovich about how much he could pay and said he would require 30 million a year. At that stage, as I pointed out, this must have been an enquiry about what Mr Abramovich could pay from the proceeds of his existing oil trading businesses.**

**Now, the payments to Mr Berezovsky had to be made out of funds generated by the trading companies at that stage and, in fact, they continued to be made out of funds generated by the trading companies up to 2000. Mr Berezovsky cannot say at this stage, in 1995, he was expecting to receive money from so-called transfer pricing by Sibneft because his evidence is that he knew nothing about transfer pricing until the Khodorkovsky**

**trial in 2003. We give the references to that evidence at paragraph 33, sub 1.**

**Now, in their written closing, my learned friends, this is at paragraph 374 of their written closing, ask forensically why they say should Mr Berezovsky have wanted to enter into a krysha relationship with Mr Abramovich in 1995? What possible reason could there be for Mr Berezovsky not to enter into a partnership with Mr Abramovich for the acquisition and sharing of Sibneft? The answer to that question is perfectly simple: the only way that Mr Berezovsky was going to get cash at the time that he needed it was by selling his influence in the Kremlin.**

**That's why he was interested, when he first discussed the arrangements with Mr Abramovich, in the amount that Mr Abramovich's trading companies could generate, and not in the amount that might in future be generated by Sibneft which was as yet a distant project. It's also, incidentally, the reason why Mr Abramovich and Ms Goncharova must be right in saying that the $30 million which Mr Berezovsky said he would require was paid to him in 1995 before Sibneft was ever acquired. That is when he needed it.**

**Now, in hindsight, it is reasonably clear that Mr Berezovsky in 1995 seriously underestimated**

**Mr Abramovich's business talents. Mr Abramovich took over a pair of bankrupt and inefficient state-run businesses, with accumulated historic debts of enormous proportions, and transformed them into a highly successful integrated enterprise. But it took him five years to do that, five years before any dividend was declared and three years before any significant profits were made. And that was simply not the timeframe on which Mr Berezovsky was operating in 1995 and he knew it.**

**Now, the high point of Mr Berezovsky's case appears to be the transcript of the Le Bourget tape. I'm not going to subject your Ladyship to yet another detailed exegesis of this rambling, obscure and possibly incomplete transcript, which appears to be the only tape recording which was worth selling to Mr Berezovsky out of the many which we are told that Mr Patarkatsishvili was in the habit of making of meetings that he attended. A detailed exegesis of the tape transcript is supplied in Mr Abramovich's commentary at bundle E6 E6/01/1, and by way of summary on this issue in our closing at paragraphs 58 and 59.**

**What I will do, if I may, is make a number of brief points about it. The first is that the exchanges at Le Bourget are incomprehensible without knowing about**

**their context in the previous discussions, all of which had been between Mr Abramovich and Mr Patarkatsishvili with the exception of some that had concerned Mr Fomichev. Mr Berezovsky himself was unfamiliar with that context, as he acknowledged in his cross-examination. He was unfamiliar with the context of the discussions which he was present at because he hadn't been party to the previous discussions, and it was his practice to leave the management of his financial affairs to Mr Patarkatsishvili and Mr Fomichev. His own commentary on the transcript is really therefore argument rather than evidence.**

**The second point that has to be made about this is that the context which is chiefly important in understanding the Le Bourget tapes is the dominant role which western anti-money laundering regulations had by now come to assume in the conduct of Mr Berezovsky's and Mr Patarkatsishvili's affairs. And "dominant" is not, I would suggest, an exaggeration.**

**By the time of the Le Bourget meeting, Mr Berezovsky was an exiled fugitive living in France and Mr Patarkatsishvili expected very shortly to become a fugitive in his turn. In fact he did when he removed himself from Russia to Georgia in April 2001. The vast income that was required to fund the lifestyles of these**

**two gentlemen came entirely from Russia. Now, previously, Mr Berezovsky and Mr Patarkatsishvili had received an income stream from two non-Russian sources. Andava produced an income stream which was derived from Aeroflot's treasury operations in Switzerland, and the references to that matter your Ladyship will find in our closing at paragraph 64, in particular note 394. The other income stream outside Russia was the Runicom companies which had been used in 1997 to pay most of the sums which Mr Berezovsky received from Mr Abramovich, in particular the sums he received for buying and doing up his palace on the Cote d'Azur.**

**Now, the Andava stream had dried up by 2000. Indeed it was the allegation of the Russian public prosecutors that the Andava monies had been stolen by Mr Berezovsky from Aeroflot, which had led to Mr Berezovsky's flight from Russia at the end of October.**

**The Runicom stream was about to dry up, as Mr Abramovich explained at the Le Bourget meeting, because of changes to the Russian tax system which had led to the decision to consolidate the operations of the trading companies into Sibneft itself. The evidence on this point is summarised at paragraph 59, sub 3.**

**So the prospect that Mr Berezovsky and Mr Patarkatsishvili were facing in December 2000 at the**

**time of the Le Bourget meeting was that every dollar that they spent would now have to be got out of Russia. That would involve, to use the delicate phrase which they constantly employed in this context, legalising the money, by which they meant providing a documented explanation of its origins to whatever western bank or asset manager they wanted the money paid to.**

**That was a particularly acute problem in 2000 and in the following years for reasons that were described in an interesting and unscripted part of the evidence of Mr Ivlev. Your Ladyship may recall that he told you that at the time of the ORT transaction, western financial institutions were particularly, ie more than usually, sensitive to large money funds(?) coming out of Russia because of the scale on which wealthy Russians had been seeking to export their assets, and that these suspicions were at their highest when associated with Mr Berezovsky. This was Mr Ivlev's evidence, who was of course a fugitive from Russian justice. That had resulted in Mr Ivlev's phrase of what he called an "extreme level of control from banks", and the reference to that is at paragraph 267 and note 1077 of our written document.**

**Now, both Mr Berezovsky and Mr Patarkatsishvili were uncomfortably aware of this, as Mr Berezovsky accepted**

**in his evidence. They had been grappling with this problem of money-laundering enquiries ever since the beginning of 2000 when they first conceived the idea of putting their resources into offshore structures outside Russia. Now, that idea, when originally conceived of, had been a luxury, but by the end of 2000, once they had left Russia or were about to, it had become a necessity. Almost all of these people's income was derived from Mr Abramovich on a basis which was wholly undocumented and quite incapable of satisfying the money-laundering enquiries that they knew they were bound to face every time they received it.**

**So from this time on, the great majority of the financial documents disclosed by Mr Berezovsky were in fact generated by attempts to resolve this particular problem, and indeed it never was completely resolved, and it is some indication of the continuing significance of the money-laundering issue that, for example, after Clydesdale Bank required Mr Berezovsky and Mr Patarkatsishvili to close their account in August 2001, it took them 18 months to find a new home for it, more than 27 banks having refused to touch the money. The references to that will be found in our written opening at paragraph 184.**

**Another indication is the scale of judicial**

**investigation. There have been official or judicial enquiries into allegations of money-laundering by Mr Berezovsky and/or Mr Patarkatsishvili in no less than four western countries in addition to Russia over the past decade: Switzerland, The Netherlands, Brazil and most recently France. Most of the relevant parts of the Le Bourget transcript are concerned with methods of generating documents for the purpose of legalising Mr Berezovsky's and Mr Patarkatsishvili's receipts from Mr Abramovich.**

**There are essentially three respects in which the Le Bourget transcripts are said to support Mr Berezovsky's claim to have an interest in Sibneft. The first is that the transcript has a number of references to the possibility of Mr Berezovsky and Mr Patarkatsishvili being registered as shareholders in Sibneft and receiving dividends. These arise from a proposal previously made by Mr Fomichev for legalising their receipts from Mr Abramovich by transferring shares to Mr Berezovsky and Mr Patarkatsishvili, or else to a bank acting as their nominee, so that they could have a documented right to receive dividends by way of cover for the payments that Mr Abramovich was making to them.**

**Now, that was unacceptable to Mr Abramovich because it would have made them the owners in perpetuity of**

**a significant proportion of his company(?), as well as, as he pointed out, discrediting Sibneft by its association with a fugitive from Russian justice.**

**Now, the second aspect of the transcript that is relied upon is that there are three references in it by Mr Abramovich to him holding 44 per cent of the company with the rest being, and I quote, "in trust with the management". These references will be found listed for your Ladyship at paragraph 59, sub 6.**

**Mr Berezovsky's suggestion is that the 44 per cent said to be held in trust with the management of Sibneft must be the half that he says was being held for him and Mr Patarkatsishvili. It is in fact, as became apparent in the course of the evidence of Mr Abramovich and Mr Shvidler, a standard formula that both of them used in order to disguise, for security purposes, the fact that Mr Abramovich was effectively the sole substantial shareholder in Sibneft. And there are press interviews, which were referred to in their cross-examinations and re-examination, in which they used that formula. So there doesn't appear to be any room for argument about that.**

**It would also, I suggest, be very odd for Mr Abramovich to be referring to 44 per cent as being held in trust with management if he meant that they were**

**being held in trust by him for the very people that he was talking to in the meeting room at Le Bourget Airport.**

**The third respect in which these transcripts are relied upon is that there are references in the early parts of the tape to the payment of $305 million to Mr Berezovsky and Mr Patarkatsishvili, of which 30 million is said to be coming from aluminium and the rest from oil. Now, there is no doubt from the transcript that the payment of this sum had been agreed at some stage before the meeting between Mr Abramovich and Mr Patarkatsishvili. The transcript itself makes that clear, and Mr Abramovich's evidence about that is that it had in fact been agreed in about October when it was increasingly likely that Mr Berezovsky would have to flee from Russia and when he was becoming anxious about the funds that would be available when he did. That is in fact confirmed by the bolshoi balance, because the bolshoi balance shows a very significant increase in the payments to Mr Berezovsky and Mr Patarkatsishvili from October onwards, which is exactly the time when, on Mr Abramovich's evidence, the agreement with Mr Patarkatsishvili had been made.**

**According to Mr Abramovich's evidence, Mr Patarkatsishvili, when they made that agreement, had**

**wanted to satisfy himself that the money, 305 million(?), would be paid and he had asked where it was coming from. An understandable question since these sums were far larger than any that had previously been paid over a comparable period of time by Mr Abramovich, to either Mr Berezovsky or Mr Patarkatsishvili.**

**So he said "Where is it coming from?" And he was told that 30 million would be coming from the aluminium side and the rest from oil. Now, it is fair to say that several parts of the Le Bourget transcript, and in particular some of the statements of Mr Patarkatsishvili, suggest a sense of entitlement on his part. They also suggest a feeling that the more money Mr Abramovich was making, the more he could be required to pay up to him, Mr Patarkatsishvili, and Mr Berezovsky. But whether that entitlement that Mr Patarkatsishvili seems to have felt was an entitlement based on a shareholding, or some equivalent contractual right, or on krysha, is something that the transcript itself does not disclose even incidentally. For that you have to go back to the evidence of the 1995 agreement itself and the evidence of the way in which it was performed, in particular the timing and the amounts of the payments to Mr Berezovsky and Mr Patarkatsishvili.**

**Now, the irony is that although the Le Bourget meeting was in December 2000, Mr Berezovsky never publicly claims to have any substantial holding in Sibneft until June of 2001, and did so then in the most extraordinary circumstances, which I will come to. Between 1996 and his flight from Russia at the end of October 2000, Mr Berezovsky did not claim to have an interest in Sibneft. At least in the early part of it, it is fair to say that he allowed it to be supposed that he did, and Mr Abramovich's evidence was that he had no problem with that because he was anxious that he should be publicly associated with a protector as influential as Mr Berezovsky.**

**Now, holdings in Russian companies are very often deliberately made opaque by interposing complex networks of holding companies whose exact ownership is often very difficult to penetrate. There was certainly some press speculation that Mr Berezovsky did own part of Sibneft, and neither he nor Mr Abramovich denied it for the reason that I have just indicated.**

**In 1997, however, it was necessary now to deal formally with the question of Mr Berezovsky's relationship with Sibneft because the Eurobond issue of that year was traded on the New York Stock Exchange and marketed in the west. It therefore had to satisfy**

**western standards of due diligence. And while an association with Mr Berezovsky was undoubtedly a salutary and valuable thing within the disordered framework of Russian society, it was not something which would be received with unalloyed enthusiasm by the average western investor. So the prospectus had to clarify the position to the standards of due diligence required in western securities markets.**

**Now, the prospectus for the Eurobond issue was, as I've told your Ladyship, done as a result of due diligence by Salomon Brothers and Cleary Gottleib, and that said that while Mr Berezovsky maintained close relations with the senior management on the board of Sibneft, he does not own or control or have any other interest in the shares of Sibneft.**

**Now, it is perfectly clear that this statement was cleared with Mr Berezovsky before it was published. Mr Berezovsky has predictably denied that in his evidence, but it is in my submission clear. I say that for this reason. First of all, Mr Berezovsky told Ms Duncan at the interview with Mr Patarkatsishvili in November 2007 that he had been consulted about the circular and had approved this passage because he said Mr Abramovich had asked him to. And his response, when this was put to him in cross-examination, was simply to**

**suggest that Ms Duncan has got it wrong, although it is impossible frankly to understand how she could have recorded this in her note if Mr Berezovsky didn't say it.**

**Your Ladyship will find the references to this particular episode at paragraph 63, sub 3(c) of our written document.**

**Secondly, according to Dr Nosova's witness statement, Mr Berezovsky had told her that Mr Abramovich had consulted him about the statement before it was published. Mr Berezovsky's response when that was put to him was that Dr Nosova was wrong. When Dr Nosova, who had of course been present in court to hear him give that evidence, was in turn asked about it, she claimed that she had in fact been referring to an earlier draft of the statement which referred to his having only no legal interests and was not in such all-embracing terms.**

**Now, quite apart from the fact that the document she was talking about was actually identified by its Magnum reference in the document, there in fact was no earlier draft in different terms, and Dr Nosova's statement makes it perfectly clear, her witness statement makes it perfectly clear that it was to that very document that she was referring and not to a draft of it. This is, in our submission, a good example of the forensic**

**dishonesty to which both Mr Berezovsky and Dr Nosova were happy to resort when they were cornered on some particular issue of fact.**

**What seems quite clear is that for four years after the publication of that circular in 1997 Mr Berezovsky freely admitted to having no interest in Sibneft. He relied, in his action against Forbes, on an affidavit in which it was said by Mr Shvidler that he had no shareholding. He himself made similar statements in the press. His own evidence is that these statements were technically true because he had no registered shareholding. But if he is right in what he says were the terms of the 1995 and 1996 agreements, these statements were, as he must have appreciated, wholly misleading.**

**Now, there was in fact no public claim to have been a shareholder in Sibneft until 27 June 2001 when Mr Berezovsky made a statement to this effect in the press. References will be found at paragraph 65 of our document. Now, that was a statement that occasioned considerable surprise as the newspapers which reported it observed. It occasioned surprise because of the formal denial of such an interest in 1997 and on a number of occasions since.**

**The circumstances in which, in late June 2001,**

**Mr Berezovsky made a press statement to the effect that he owned a large part of Sibneft are not at all creditable to him. By that time Mr Berezovsky, according to his own account, had actually parted with whatever interest in Sibneft he had ever had by selling it to Devonia just three weeks before. When asked about this, he said rather engagingly that it wasn't exactly a lie, just "disinformation", was his phrase.**

**There is in fact strong circumstantial evidence that the reason why Mr Berezovsky made that statement at that stage was in order to generate newspaper copy that Mr Curtis could supply to Clydesdale Bank in support of his claim that the Devonia monies came from the sale of shares in Sibneft. What had happened, as we saw in the course of cross-examination, was that in his letter of 1 June to 2001 to Mr Fomichev, Mr Curtis had asked Mr Fomichev to find some suitable copy to show to the bank, and the bank's files show that Mr Curtis duly supplied him with cuttings of this particular press statement.**

**The inference, in our submission, is overwhelming that the reason why Mr Berezovsky made a press statement that he owned a large part of Sibneft, three weeks after he claimed to have disposed of it in favour of Devonia, was in fact that he wanted to generate deceptive press**

**copy which could be used to satisfy Clydesdale Bank.**

**Now, this press statement was one of many made over the following years which arose directly out of Mr Berezovsky's and Mr Patarkatsishvili's need to launder their funds, and these statements are on a par with the very similar untruths for which Mr Berezovsky and Mr Patarkatsishvili were responsible in the case of Aeroflot. The claim to own a large part of Aeroflot was made by Mr Berezovsky or his staff to Valmet in September 2000, it was made by Mr Curtis to Clydesdale Bank in early 2001, presumably on the basis of what Mr Berezovsky or Mr Patarkatsishvili or their staff had told him. It was recorded in the so-called explanatory memorandum which appears to have been prepared by Mr Joseph Kay but which for some inexplicable reason is attributed by my learned friends to Mr Streshinsky. It was made again to PricewaterhouseCoopers when they were preparing their report for the purposes of the Inland Revenue investigation of Mr Berezovsky's tax affairs from a source which can only have been either Mr Berezovsky himself or one of his immediate staff. The references to all of this will be found in paragraph 64 of our document, in particular at notes 393 and 394.**

**Now, that statement in relation to Aeroflot was**

**completely untrue. It's acknowledged that Mr Berezovsky did not own a significant part of Aeroflot. What Mr Berezovsky and Mr Patarkatsishvili appear to have had was not a shareholding in Aeroflot but an income stream derived from the treasury operations carried out for Aeroflot by Andava. In other words, these were lies told in order to launder an undocumented and arguably illicit income stream by presenting it as the income(?) generated from a capital asset, exactly what they repeatedly did in the case of the income stream derived from Sibneft.**

**Now, in my learned friends' written closing, it's paragraph 221, it is said that we have conceded the honesty of Mr Berezovsky's recollection that he owned a share of Sibneft and the most elaborate argument is founded on this supposed concession between paragraphs 390 and 396 of their written closing. I must make it clear that we have not and do not concede any such thing.**

**What we have said, and it's at paragraphs 61 and 62 of our document, is that it is possible, possible, that Mr Berezovsky may have persuaded himself that in some sense Sibneft was his company. We then go on to say in what sense he may possibly have persuaded himself of that. When one looks at the evidence of Mr Berezovsky's**

**frame of mind, available in the transcripts of his evidence to this court, it becomes, I would suggest, quite obvious that Mr Berezovsky considered that he owned not so much Sibneft as Mr Abramovich.**
**Mr Berezovsky, presumably, at some stage came to think rather better of Mr Abramovich's business talents than he had done in 1995, but Mr Abramovich's evidence is that Mr Berezovsky never treated him as an equal, even though his lavish personal expenditure was entirely funded by him.**

**Now, in a revealing passage of his evidence, and we give the reference to this at paragraph 61, sub 2, it's at note 365 but the actual transcript reference is Day 5, page 15. Mr Berezovsky observed that it was easy, he said, to make money out of Sibneft; all you needed to do was to put the two component businesses together, take management control of it and immediately a great stream of cash would appear. Now, Mr Berezovsky really seems to have believed that his political contribution in procuring the original creation of Sibneft and its inclusion in the loans-for-shares scheme was not just a pre-condition of Mr Abramovich's ability to make money out of it but was actually the only thing that mattered.**

**As Mr Berezovsky saw it, he had personally created Mr Abramovich out of nothing and put him in a position**

**where he had only to sit there for vast sums of money to flow into his lap. On that footing, Mr Abramovich was simply Mr Berezovsky's manager whom he generously allowed to keep half of Sibneft to inventivise him but effectively as a matter of largesse.**

**There is, I would submit, a valuable clue to Mr Berezovsky's way of thinking about these matters, and it's dealt with in this part of our written closing, in his attitude to NFK which, of course, was the jointly owned vehicle company that successfully bid for the loans-for-shares contract. NFK never acquired any shares in Sibneft. It only ever acquired a security interest in the state's retained 51 per cent holding and a right of management for three years. NFK, as we know, was 50 per cent owned by Consolidated Bank which was a company in the Logovaz Group over which Mr Berezovsky had effective management control but of which he only owned 14 per cent. The calculation -- I don't think this is disputed -- the calculation of Mr Berezovsky's stake, indirect stake in Consolidated Bank is set out at paragraph 43, at sub 2, of our written document which also refers to a fuller account of this in the opening document.**

**Now, it seems clear that Mr Berezovsky regarded this state of affairs, by which NFK was 50 per cent owned by**

**a company he controlled, namely Consolidated Bank, as equivalent to him and Mr Patarkatsishvili owning 50 per cent of Sibneft, even though they never bought or paid for any shares in Sibneft. The clearest statement to this effect was, I would suggest, made as recently as June of this year in Mr Berezovsky's evidence to the French investigating magistrate. One of the main issues under investigation by the magistrate in Marseilles was whether Mr Berezovsky was a part owner of Sibneft. That was crucial because Mr Berezovsky was claiming that the money that he used to buy up and do up his property in France in 1997 had been derived from dividends attributable to his possession of those shares. When asked for his evidence about this, and the reference is H(C)8/182 but we give it in paragraph 61, sub 2(a) of our document, when asked for evidence of this he said this:**

**"I represented my interest with [Badri] by ... Consolidated Bank. It is clear evidence [he said] that I was formally shareholder of Sibneft."**

**That seems to have been the view that Mr Berezovsky took: "Because I owned Consolidated Bank and Consolidated Bank owned half of NFK, and NFK had won the loans-for-shares contract, I owned 50 per cent of Sibneft". In his witness statement, he appears to be**

**making the same suggestion because what he says, and it's at paragraph 179 of his fourth witness statement, is that his interest in Sibneft arose from a transfer of NFK's rights in respect of Sibneft to FNK, FNK being the company that acquired the state's retained 51 per cent holding when it was eventually sold in 1997.**

**Now, references to his lengthy cross-examination on this question will be found at paragraph 61, sub 2(b) of our document. But what it all amounts to is a claim that his control over Consolidated Bank's 50 per cent of NFK conferred on him and Mr Patarkatsishvili an interest in FNK. Interestingly enough, Mr Jenni said that that was his understanding too. He thought NFK was the vehicle through which Mr Berezovsky owned part of Sibneft. That was an understanding which, on the face of it, he could only have derived from Mr Berezovsky or Mr Patarkatsishvili.**

**Now, some indication to the same effect, although the figures are somewhat different, can be found in Mr Berezovsky's statement to the press in 2000 -- we refer to this in our document at paragraph 61, sub 2(c) -- his statement to the press that he owned 7 per cent of Sibneft through what he called some Logovaz structures. Now, 7 per cent was of course 50 per cent of Mr Berezovsky's 14 per cent holding in**

**Consolidated Bank, so he was again viewing his supposed shareholding in Sibneft as arising from Consolidated Bank's role in the loans-for-shares auction.**

**Now, of course, all of this is a legal muddle and nonsense. FNK, which won the 51 per cent auction in 1997, was a separate company owned by Mr Abramovich. There was no transfer of rights from NFK to FNK. However, it does look as if Mr Berezovsky thought that because a company 50 per cent owned by Consolidated Bank had won the loans-for-shares auction and thereby given Mr Abramovich his opportunity, he, Mr Berezovsky, owned part of Sibneft without the tiresome need to buy any shares.**

**Now, Mr Patarkatsishvili may very well, for all we know, have thought the same. His interview notes certainly suggest, although it's not entirely clear, that he did think in this way because he seems to suggest in those notes that Mr Berezovsky's interest in Sibneft had been acquired by way of their indirect participation in the loans-for-shares auction. That seems to be why Mr Berezovsky and Mr Patarkatsishvili felt that sense of entitlement that is manifest in parts of the Le Bourget transcript and in many of Mr Berezovsky's statements in the course of giving evidence.**

**The problem is that an inchoate sense of entitlement based on the fact that Mr Abramovich only owned Sibneft because of what Mr Berezovsky had done to bring about the loans-for-shares auction, that is not the same thing as a legal interest in Mr Abramovich's shares and not the same thing as a contractual right equivalent to a legal interest. What Mr Berezovsky has tried to do in this case is to dress up as a legal interest something that was nothing of the sort by asserting all sorts of oral agreements and we do not accept that this was an honest process. This is not based on his honest recollection; it is Mr Berezovsky saying what he now realises he has got to say if his claim is to stand up in a court of law.**

**Now, Mr Berezovsky, of course, didn't need to worry too much about that before 2000. He was Mr Abramovich's political godfather and before 2000 that was quite enough to ensure the continuing flow of cash. But the difference between an inchoate sense of entitlement and a legal right became extremely important for the first time in 2000 as a result of two parallel developments. First, he started trying to shift his income abroad and found himself having to grapple with money-laundering enquiries which required that he did have legal ownership and, secondly, he fled from Russia and lost**

**his political influence. Suddenly therefore, around 2000, it did become rather important to present what had previously been a reliable source of income from an undocumented source as a legal interest in the company and that, of course, is when he started saying that.**

**Now, there are two aspects of this particular issue, the existence or nonexistence of an interest in Sibneft, which I should deal with, however briefly. One is the so-called 1996 agreement and the other is the impact of Russian law. I can deal with the 1996 agreement very briefly indeed because, in my submission, it is an irrelevance. It was devised at a time when Mr Berezovsky had persuaded himself that he had originally owned a share in Sibneft through his own companies, and that is what he pleaded right up to the summary judgment application.**

**On that footing, the 1996 agreement was necessary in order to explain, in a manner that was consistent with his current claims, how these shares subsequently came to be registered in the name of Mr Abramovich's companies. Now, once Mr Berezovsky discovered that actually his companies had never owned any shares in Sibneft, and Mr Abramovich's companies had always owned them, the 1996 agreement was redundant. What he had done previously was to invent an agreement under which**

**he could claim to have an interest in them, notwithstanding that they were transferred back to Mr Abramovich, and that actually never happened.**

**This issue, the 1996 agreement, on which my learned friends are commendably brief(?) in their written closing, only survives as part of this case in order to salve Mr Berezovsky's credibility as a witness. But it is a fiction. No distinct agreement was made in 1996, and whatever the nature of the arrangements made between Mr Abramovich and Mr Berezovsky in 1995, they did not change in 1996.**

**It is common ground, if I may turn for a moment to Russian law, that whatever agreement was made in 1995 was governed by Russian law. However, no issues of Russian law arise unless the 1995 agreement was in substantially the terms alleged by Mr Berezovsky. On that footing, the question which arises is whether an agreement in those terms would be effective in Russian law.**

**Our submissions on this are set out in detail in section A2 by reference to the reports and oral evidence of the experts.**

**There are perhaps three points that it is worth making on my feet and which may assist your Ladyship in cutting through the thicket. The first is that much of**

**the expert evidence on this question was concerned with the question of legal certainty on which the basic principle is not seriously disputed. The dispute related to the application of the principle to the facts of this case rather than to the principle itself, and the application of the principle is of course a matter for your Ladyship. The experts identify the principles of foreign law, your Ladyship then applies them.**

**The principle is that obligations of the parties must be sufficiently defined to be capable of enforcement by a court. For that purpose, the primary mode of enforcement is specific performance, and a Russian court would require the terms to be capable of specific performance. Professor Maggs was in fact the only expert who made that point in terms but his evidence was neither contradicted by the other experts nor challenged in cross-examination. My learned friend said in advance he didn't wish to cross-examine Professor Maggs. I indicated that he should nevertheless appear because I wished to ask him what the basis of this particular part of his report was. He explained in detail what the basis of it was, and my learned friend did not challenge that evidence.**

**Nobody suggests that the lobbying obligation in the 1995 agreement, which was a critical part that**

**Mr Berezovsky was to play, nobody suggests that that was sufficiently defined to be specifically enforceable. Even Mr Rachkov disowned any suggestion of that kind. His evidence on this point, and perhaps I could invite your Ladyship if you have a hard copy of our document at paragraph 75, to just note in the margin "Day 34, page 31", which is where that point is acknowledged by Dr Rachkov.**

**Now, the second point to be made about the Russian law issues concerns the principle of public policy which is embodied in the Makayev case. Now, this is directly related to the facts that we have been discussing in the course of this morning. It's also a point on which there is a measure of common ground between the experts although it is very far from total. It is first of all common ground that the contribution of partners to an alleged simple partnership agreement must be lawful. The problem about the agreement alleged by Mr Berezovsky is that if he is right, then his reward for using his political clout in the Kremlin was going to be a share of the spoils in the event that his efforts were crowned with success and a favourable decision was obtained on the creation and privatisation of Sibneft. Only in that event would Mr Berezovsky, according to his own version of the agreement, get half of Sibneft and half of its**

**profits.**

**Now, the law in Russia is that parties may not make an agreement under which payment is contingent on the favourable decision of a judge or official. There is no evidence that the parties -- the parties, that's to say Mr Berezovsky and Mr Abramovich -- agreed the exact methods which Mr Berezovsky was going to employ in order to persuade Mr Yeltsin and his entourage to do what he asked. The crude jobbery described in Mr Berezovsky's witness statement, by which Sibneft was created and included in the loans-for-shares scheme as a means for enabling Mr Berezovsky to fund a television campaign in Mr Yeltsin's favour, out of funds provided by Mr Abramovich, was not, so far as the evidence shows, something that Mr Berezovsky and Mr Abramovich discussed or specifically agreed would happen. The agreement was more general than that, lobbying.**

**But the point about the Russian rule of public policy is that it is not the reality of corruption which engages the principle of public policy, but the potential for contingency rewards to lead to corruption that constitutes the vice. It doesn't seem to have been suggested in the case about lawyers' contingency fees that the lawyer in question had actually bribed the judge. The suggestion was, however, that arrangements**

**of that kind had the potential to encourage people to do that and were therefore contrary to public policy.**

**Now, both experts were in fact agreed on what appear to be the essential points in this area. First of all, they were agreed that the decision of the Constitutional Court in Makayev states a principle which expressly applies to all governmental authorities and not just to officials. Dr Rachkov points to the dissenting judgment of Judge Kononov, the only dissentient in the court. It was not of course a decision of the court, but its significance is this. Judge Kononov at least acknowledged in terms that what the court had decided extended to rewards contingent on the decision not just of judges but of officials, and that was one of the points on which he criticised the reasoning of his colleagues. But it is the reasoning of his colleagues, who assented to the outcome, which makes the law. Other side opinions by concurring judges emphasise, I would suggest, the general application of the rule of public policy, particularly perhaps the concurring judgment of Judge Gadziev. Now, that is one point on which there appears to be agreement, that Makayev applies not just to court proceedings but to decisions of public officials.**

**Secondly, both experts agree that the object of the**

**rule of public policy is to make unenforceable a type of agreement with a significant potential for corruption which is, of course, a very serious social and economic issue in Russia. In this country we once banned contingency fee arrangements for a completely different reason, namely its possible effect on the forensic honesty of counsel. It had never occurred to the authors of the common law rule against Champerty that it might be necessary in order to avoid problems associated with the corruption of judges. But one should not close one's eyes to the fact that judicial and administrative corruption is a very real problem in Russia, or at any rate was in the 1990s.**

**Thirdly, both experts agree that the decisions of the Constitutional Court are binding on other courts. It is fair to point out that the Constitutional Court is charged with interpreting the constitution, and nobody was suggesting in Makayev that the constitution itself prohibited rewards contingent on the decisions of public officials. But that, in our submission, is beside the point because what they were dealing with was a rule of public policy that had constitutional effect. It had constitutional effect because the result of that decision was that legal restrictions on lawyers' contingency fees were constitutional, notwithstanding**

**the constitutional freedom of contract which the lawyer in that case was trying to invoke.**

**Now, of course, my learned friend says it was about lawyers' contingency fees, and that's quite true. But Russian courts, like English ones, apply legal principles to particular facts. Both the principle and the mischief at which the principle is aimed extend beyond fees payable for legal representation before a judge to arrangements which are contingent on the outcome of an official decision.**

**Now, the third point that I ought to make about Russian law in the context that I am presently concerned with, namely the 1995 agreement, concerns the requirement that a contract of this kind should be in writing, and the closely related question whether this contract was intended by its parties to be binding at all. Ultimately, the experts were agreed on the principle underlying Articles 161 and 162 -- it's pointed out to me that at [draft] line 8 I said the contingency fees were constitutional, I meant the ban on contingency fees was constitutional, notwithstanding the freedom of contract enshrined in the constitution.**

**Returning to my point, ultimately the experts were agreed on the principle which underlies the two relevant articles of the Russian Civil Code: Articles 161 and**

**162. The real differences, once again, concerned the application of the principle to the facts. Now, the principle established by the evidence of both Dr Rachkov and Mr Rozenberg is this. One, in a Russian court, a party would not be able to prove by oral evidence either the fact that an agreement had been made or what its terms were; both experts were ultimately agreed upon that. Secondly, a litigant would however be permitted to prove by oral evidence what the parties had done by way of subsequent performance, and in some cases that might be sufficient to establish either the original agreement or a variation of it by conduct. Three, the exclusion of oral evidence does not prevent the parties from putting forward explanations which are essentially unsworn statements that may be taken into account by the court but these have got to be verified. The result is that in a case where the only evidence about the fact or the terms of an agreement is the oral evidence of witnesses, the agreement cannot be proved. We have given the references to that at paragraph 112 of our document. I would invite your Ladyship to add opposite note 522 a reference to Day 34, pages 95 to 97, where Dr Rachkov acknowledged that, if the only evidence about the fact or terms of the agreement was the oral evidence of witnesses, the agreement could not be established.**

**Now, in these circumstances, it seems clear that the present claim could not be proved by oral evidence unless subsequent performance established its existence. The difficulty about that suggestion is that what is relied upon as subsequent performance is equivocal. It is at least as consistent with payment for the services of a krysha as with payment under a contract in the terms alleged by Mr Berezovsky. Indeed the timing and amount of the payments show that it's a good deal more consistent with payment for the services of a krysha.**

**The real issue, I would suggest, in the absence of writing, is a question which both sides agree is one for English law, namely whether this is a rule of substance or a rule of procedure. Our submissions about that are at paragraphs 113 to 116 of our document but, broadly speaking, the rule of English private international law is that the court takes a nontechnical approach to these questions with a view to giving effect to the foreign law rather than undermining it.**

**MRS JUSTICE GLOSTER: That was the question I think I asked in the course of evidence.**

**MR SUMPTION: Indeed. Now, if your Ladyship -- I'm not going to take up much time referring to authority but I wonder if we can hand up --**

**MRS JUSTICE GLOSTER: There's quite a lot there in the**

**footnotes, do you want me to go off and read these?**

**MR SUMPTION: Can I take your Ladyship to the quite short passages from Dicey, Morris and Collins, because I think that is probably the quickest way of dealing with this. (Handed)**

**If your Ladyship would take page 177 in the clip that I've just handed up. The general principle is described at paragraph 7-003:**

**"While procedure is governed by the lex fori, matters of substance are governed by the law to which the court is directed by its choice of law rule. Dicey wrote that English lawyers gave the widest possible extension to the meaning of the term 'procedure'. As a matter of history this is true, and a court may even today be tempted to extend the meaning of 'procedure' in order to invade an unsatisfactory choice of law rule. But in general the attitude expressed by Dicey has fallen into disfavour precisely because it tends to frustrate the purpose of choice of law rules. In John Pfeiffer v Rogerson, the High Court of Australia stated:**

**"'Matters that affect the existence, extent or enforceability of the rights or duties of the parties to an action are matters that, on their face, appear to be concerned with issues of substance. Thus some questions which were at one time thought of wholly in terms of**

**procedure are now considered to be procedural in some of their aspects only. The development of the law as to damages illustrates this process.'**

**"The difficulty in applying this rule lies in discriminating between rules of procedure and rules of substance. The distinction is by no means clear cut. In drawing it, regard should be had in each case to the purpose for which the distinction is being used and the consequence of the decision in the instant context. The rule under examination is to be considered as a whole without giving undue weight to verbal formulae as suggested by previous judges or by the draftsman of a statute to introduce the rule. So the words 'where proceedings are taken in any court' have been held to introduce a rule of substance.**

**"The mechanistic approach sometimes found in English cases of relying on the classification of the introductory verbal formula, as used in a quite different statute, or of accepting a classification as procedural or substantive made for some purpose quite unrelated to the conflict of laws is also now discredited. The distinction may have to be drawn in one place for the purposes of this rule but in another place for the purpose of the rule that statutes affecting procedure are, while statutes affecting**

substance are not presumed to have retrospective effect. This is not to say that the distinction may not be drawn in the same place for many purposes, it is merely to deny that it must necessarily be drawn in the same place for all purposes."

MRS JUSTICE GLOSTER: So it's up to me to get on with it, basically.

MR SUMPTION: My Lady, yes.

The other passage I wanted to read, which your Ladyship may wish to look at over the break, is at pages 183 to 184, paragraphs 7-015 to 7-016, but primarily 7-015. If your Ladyship has time to read that, that would assist.

MRS JUSTICE GLOSTER: Yes certainly, I'll read that over the break.

Very well. Two o'clock.

(1.00 pm)

(The short adjournment)

(2.00 pm)

MR SUMPTION: I see your Ladyship clutching Dicey and Morris.

MRS JUSTICE GLOSTER: I've read it.

MR SUMPTION: Obviously the critical point that I'm taking from this is in 7-015, that it's not everything that appears in the treatise on the law of evidence that's to

**be classified internationally as adjectival law. The flexible approach that is described there is representing the modern alternative to the rather narrower approach taken by Dicey 100 years ago.**

**Now, in deciding the question of English law, as I think both parties are agreed, the court obviously takes account of the characteristics of the foreign law rule established by the foreign law experts. The way that the foreign law would itself classify its own rule is not decisive but it may of course assist the court in establishing what the relevant characteristics of the foreign law really are and what its purpose is.**

**Now, the decisive points in this context I would suggest are these. First of all, Article 161 is now agreed to be substantive as a matter of Russian law. That appeared at one stage to be a matter of dispute between the experts, but the reference as given at paragraph 115, and in particular note 535 of our document, established that it is no longer in issue.**

**At common law this provision, 161, would be regarded as substantive because it has a normative purpose, ie a purpose outside the regulation of the procedure of the court, namely the protection of parties from being held to oral agreements without unequivocal evidence connecting them with it and establishing their consent.**

**This is not, in other words, a rule which exists for the better regulation of the court's proceedings but for the protection of parties alleged to have entered into contracts.**

**The real issue --**

**MRS JUSTICE GLOSTER: I think I should just get up 161 and 162.**

**MR SUMPTION: Yes, of course. Your Ladyship will find the relevant parts actually quoted verbatim at paragraph 110 of our closing which may be the quickest way --**

**MRS JUSTICE GLOSTER: Yes, that's fine.**

**MR SUMPTION: -- to arrive at it. 161 is the rule, and 162 is the consequences of breach of the rule. The real issue concerns the impact of 162 on the way that an English court should treat these articles. Now, essentially, Article 162 lays down the mode of giving credit(?) to a substantive rule of law to be found in 161.**

**The object of Article 162 is not to determine how court proceedings are to be conducted, it is in reality to determine in what circumstances a particular obligation is to be recognised. For that reason, in our submission, it cannot be regarded as part of the law of evidence at all. Having regard to its purpose, it can really only be regarded as part of the law of**

**obligations, something which is by its nature substantive.**

**Now, it follows, I would suggest, that unless the English court applies a corresponding restriction on the mode of proof, it will in fact not be giving any effect to the substantive law of the Russian Federation as laid down in 161, or to the underlying purpose of Article 161. This is, I would suggest, for that reason a classic instance of the class of case referred to in the extract from Dicey, Morris and Collins where the proper law determines, to use the expression in 7-015, what evidence need or may be given to prove a particular kind of obligation, in this case an obligation exceeding the value threshold in 161.**

**Now, this provision, 161 and 162, taking them together, is simply the Russian equivalent of the restrictions on proof of oral agreements above a threshold value, which are in fact quite common to civil law systems, and this one seems fairly clearly to be derived from Article 1341 of the French Civil Code, which your Ladyship may recall being referred to in the textbook by Luntz on Russian law, and which we produced in the course of Dr Rachkov's evidence.**

**Now, that is why this particular rule, 161 and 162 taken together, is classified in Professor Luntz's**

**treatise on the Russian conflict of laws as substantive, and we give the reference to that at paragraph 115 of our document, and in fact exactly the same rule is taken by the principal textbook relied upon by my learned friends, which is the textbook of Professor Zhuikov. The reference is given in 116 sub 2, in particular at note 538.**

**Now, it's right to say that there is English authority that section 4 of the Statute of Frauds, which provides that "no action shall be brought" on an oral guarantee, should be classified as procedural. The case --**

**MRS JUSTICE GLOSTER: I was going to ask you about the Statute of Frauds, or the LPA. I can't remember what the relevant section -- section 40 or something?**

**MR SUMPTION: The LPA is introduced in exactly the same way, and the same case, so far as it's still good law, would apply to it. The leading case so far as the Statute of Frauds is concerned is Leroux v Brown, a decision of 1852, in which the Statute of Frauds was applied on this ground to a French law contract, on the grounds that although the Statute of Frauds was no part of the proper law of the contract, which was in fact valid and enforceable in France, it was procedural and therefore the English court was bound as part of its own**

**procedural law to apply it.**

**Now, that is a decision which was expressly made on the construction of the Statute of Frauds, and in particular on the opening formula, which is also to be found in the Law of Property Act, no action shall be brought. It has no bearing on the classification, therefore, of the Russian law rule. It's essentially based on the construction of the English statute and on the question whether those introductory words have the effect, because they regulate the circumstances in which one can bring an action, as part of the procedural law.**

**Now, in fact, even in the reverse situation, the application of a foreign law rule about forms of contract in England, Leroux is a very much criticised decision. I do not doubt that it is good law this side of the Supreme Court, but it has in fact been much criticised academically and it has almost certainly been overruled by the enactment into English law of the Rome Convention.**

**This point is made, if your Ladyship would take back the clip of extracts from Dicey, Morris and Collins, at page 185 of the extract. There's a heading at the bottom of the page, "Requirement of Written Evidence":**

**"Section 4 of the Statute of Frauds 1677 provided that no action shall be brought on a number of contracts**

**unless the agreement, or a note or memorandum thereof, was in writing. Section 4 now applies only to contracts of guarantee. It was held in Leroux v Brown that section 4 contained a rule of procedure and therefore prevented the enforcement in England of an oral contract governed by French law which could have been sued on in France. This decision has been severely criticised by writers on the ground that no serious procedural inconvenience would be caused by admitting oral evidence of a contract within section 4. Indeed the court is bound to admit such evidence if the contract is not set up for the purposes of enforcement but as a defence. To characterise the section as procedural merely because it says no action shall be brought is to regard the form of the section as more important than its substance. To characterise it as --"**

**MRS JUSTICE GLOSTER: Okay, I've read that. I've read down to 7-21.**

**MR SUMPTION: That is the relevant part, my Lady, and there's a reference to the significance having been reduced by Article 14.2 of the Rome Convention.**

**If your Ladyship will turn on in the clip to page 1607, there is also --**

**MRS JUSTICE GLOSTER: That seems to have trumped it, doesn't it?**

**MR SUMPTION: -- an observation about 14.2, which is --**

**MRS JUSTICE GLOSTER: Is that right, that Article 14.2 has made it irrelevant?**

**MR SUMPTION: In our submission, that is so. Article 14.2 has trumped it, but Article 14.2 is of course a provision which my learned friends rely on in itself and I will show your Ladyship that. But paragraph 32.179 deals with the application of Article 14.2 as reversing the effect of Leroux v Brown.**

**MRS JUSTICE GLOSTER: Mm.**

**MR SUMPTION: My Lady, since my learned friends refer to 14.2 as itself supporting their position, perhaps I might invite your Ladyship to turn that up. If we can hand these up, these are all either already on Magnum or will be uploaded to it, but it seems convenient simply to pass one up for the moment. (Handed)**

**Your Ladyship will find Article 14.2 --**

**MRS JUSTICE GLOSTER: I've got it.**

**MR SUMPTION: In order to see the background to 14.2 you need to start at 9.1 which deals with formal validity:**

**"A contract concluded between persons who are in the same country is formally valid if it satisfies the formal requirements of the law which governs it under this convention or the law of the country where it is concluded."**

**14.2, which is rather misleadingly headed "Burden of Proof Et cetera", the sting being in the "Et cetera", says:**

**"A contract or an act intended to have legal effect may be proved by any mode of proof recognised by the law of the forum, or by any of the laws referred to in Article 9 under which that contract or act is formally valid, provided that such mode of proof can be administered by the forum."**

**Now, 14.2, in our submission, has nothing to do with the question now before your Ladyship. It's concerned with formal validity, and its effect is that if the formal validity of a contract is governed by a foreign law under Article 9 then in England it may be proved either by a method recognised by the law of England or by a method recognised by one of the Article 9 laws.**

**The result therefore is, as Dicey, Morris and Collins say, to reverse the decision in Leroux by providing that a contract valid under the law governing its formal validity is not to be treated as invalid simply because a similar contract would not be formally valid in England.**

**MRS JUSTICE GLOSTER: Why does that have nothing to do with the question which I've got to decide?**

**MR SUMPTION: Well, Article 14.2 is concerned with formal**

**validity because it operates by reference to Article 9 which unquestionably is concerned with formal validity. It is dealing with a situation in which an agreement is not enforceable because it isn't regarded as formally valid in England or -- sorry, 14.2 is dealing with a situation in which the law of the forum in England, ie the procedural law, would not recognise a particular agreement as enforceable, and essentially provides that if it would be formally valid under a relevant foreign law then it may be proved under that law.**

**Now, what this means is that if a contract of guarantee, for example, made between persons in France were unenforceable in England because of section 4 of the Statute of Frauds --**

**MRS JUSTICE GLOSTER: It can be proved orally.**

**MR SUMPTION: -- it could be proved orally.**

**Suppose, therefore, to take an invented example but not an implausible one, that under French law you can imagine the thing being the other way around. Suppose that under French law, a contract was enforceable in France provided that it was made in the presence of a huissier, or in front of at least two witnesses, you would be entitled to prove it in England by calling a huissier and two witnesses.**

**Article 14.2, therefore, is a provision which saves**

**contracts valid under the relevant foreign law from being treated as invalid under the procedural law of England, but it only deals with a case where a contract is formally valid according to the law governing its formal validity. It doesn't authorise the English court, in other words, to recognise a contract which is formally invalid under the relevant foreign law, and it's not concerned at all with the case where what is at issue is not formal validity but a restriction on the circumstances in which a court can recognise informal contracts.**

**Now I observed, in introducing this point, that it was closely related to the question whether there was any intention to create legal relations, and I made that statement for this reason. The distinction between substantive and procedural law of course only arises for consideration because a Russian law dispute is being heard in an English court. Both kinds of rule would be applied as a matter of course in a Russian court without any need to distinguish between them.**

**Now, a Russian court is of course the only court which the parties can possibly have envisaged, at 1995, would be deciding disputes. And Russian law, on the evidence of both experts, recognises the concept of agreements which either expressly or by virtue of the**

**surrounding circumstances are intended to be binding in honour only and not in law.**

**Now, it's agreed between the experts that the test for an agreement intended to be binding in honour and not in law only is objective, like any other aspect of the application or interpretation of agreements. So the fact that an agreement is not in writing in a jurisdiction whose case law requires high value agreements to be in writing is, in our submission, a very powerful indication, objectively speaking, that it wasn't intended to be binding in law.**

**Articles 161 and 162 arise not only as defences in themselves but as a strong evidential indication that, looking at the matter objectively, the parties cannot have intended that this should be binding in law because in circumstances where they would have thought as a matter of course that if it was binding any contract of this sort was going to come before a Russian court, they must be taken to know that it would not be enforceable there by oral evidence.**

**Now, that is in our submission an indication which is borne out by the vagueness of the alleged agreement and by its subject matter. In our submission, it is hardly conceivable that these parties could have intended, on either version of what was agreed, that**

**obligations of this kind involving, as far as Mr Berezovsky was concerned, the use of his political connections and political influence behind the scenes at the highest levels of the Russian State, could ever have been intended by the parties to come before the court.**

**And that is, as I have submitted, in another jurisdiction, because they were dealing with an arrangement made under an alternative system of obligation. This was not intended to be legally binding. Its subject matter, its informality and its vagueness all point to that conclusion.**

**My Lady, may I turn to the next of the issues --**

**MRS JUSTICE GLOSTER: I don't need to be worried then about what on earth is constituted by the explanations of the parties?**

**MR SUMPTION: In our submission, no, because we don't dispute that explanations are matters which a party precluded from giving oral evidence is entitled to put before the court. It doesn't have the status of sworn evidence. But the problem is, as both expert witnesses have agreed, the problem is that an explanation is only entitled to wait so far as it is verified by evidence. And that was why Dr Rachkov, in the passage whose reference I invited you to write in the margin, accepted that if there's no other evidence of the existence of**

**the agreement, and if future performance cannot establish the existence or terms of the agreement, then the agreement is a non-starter and that's an end of it.**

**MRS JUSTICE GLOSTER: Yes, I see.**

**MR SUMPTION: Now, my Lady, may I turn to the next of the major issues which I identified as critical when I stood up this morning, which is the question of the threats that are said to have induced Mr Berezovsky to sell his interest in Sibneft, if indeed he had an interest in Sibneft.**

**Now, it's one of the oddities of this part of the case that most of the attention at the trial has been devoted to the Cap d'Antibes meeting and to the alleged threats relating to ORT even though, as I've pointed out, no relief is actually claimed in respect of these matters. I've already made some general observations on this subject. There is a very full summary of the evidence about the alleged ORT threat at paragraphs 161 to 205 of our closing.**

**MRS JUSTICE GLOSTER: I've read that.**

**MR SUMPTION: All I propose to do by way of addition to this well-worn subject is to deal with what appear to be the main points made in Mr Berezovsky's written closing about the alleged ORT threats before moving on to what really appears to matter, which is the alleged Sibneft**

**threats.**

**Now, the first point that they make is that there must have been intimidation because otherwise why would Mr Berezovsky have agreed to sell when he would obviously have preferred to hang on to ORT, and why would he have agreed, they ask forensically, to sell for $150 million when they had been offered $300 million by the Russian Government through Mr Lesin shortly after the interviews which they refer to with Mr Voloshin and President Putin? Why indeed, they ask, would Mr Abramovich have wanted to have ORT unless he was acquiring it as a tool of the Russian Government?**

**Now, the answer to these questions, in our submission, are largely to be found in Mr Patarkatsishvili's interview notes. They establish that the Lesin offer was in fact pursued at a time, but shortly afterwards was reduced to $150 million, whereupon the negotiations with Mr Lesin were broken off.**

**The references to all this will be found in our closing at paragraphs 173, 174 and 196.**

**Now, what happened was that after Mr Lesin had halved his offer, Mr Patarkatsishvili, who was handling this matter, then approached Mr Abramovich because, as he described in his notes, he saw Mr Abramovich as**

**a more trustworthy negotiating partner. "We needed a trustworthy man", he said. And ultimately, a price was agreed with Mr Abramovich corresponding to the reduced price offered by Mr Lesin.**

**At about this time Mr Berezovsky of course fled from Russia with very little money, and at the same time badly needed to raise funds. Now, what Mr Patarkatsishvili's interview notes record is that Mr Abramovich was willing to buy in order to help them, and in his oral evidence he said that the row between Mr Berezovsky and Mr Putin was now beginning to hurt his interests because of his public association with Mr Berezovsky, and he saw the purchase of ORT as a way of reducing the temperature.**

**So there is actually no particular mystery about why a price of 150 million should have been acceptable and why the deal was done with Mr Abramovich.**

**Mr Berezovsky's whole case depends upon the proposition that he had never intended to sell his stake in ORT until 7 December, because that appears now to be his case, or possibly the 8th -- or we're told by my learned friends in their written closing the 9th -- until he was threatened on the terrace of his house at Cap d'Antibes. The evidence, in our submission, clearly establishes that the deal was agreed in principle**

**beforehand and that the meeting at Cap d'Antibes did not occur.**

**Now, those conclusions are supported by a considerable volume of corroborative evidence including, rather strikingly, the evidence of Mr Goldfarb whose evidence in cross-examination was that he must have been at Mr Berezovsky's property during 7 and 8 December, but did not, while he was there, either see or hear of any visit by Mr Abramovich.**

**The two points which seem critical, that the deal was agreed in principle before the arrest of Mr Glushkov and that the meeting in December never happened, are both supported by that evidence, both of them are challenged, but the challenge can fairly be described as thin.**

**In relation to the negotiations before the arrest of Mr Glushkov my learned friends suggest that the SBS notification document, which was served in accordance with the pre-emption rights for a private company, was prepared in December or January, although the metadata in fact show that it was prepared on 16 November. They assert that the Logovaz board minute was backdated and that that was actually prepared in December or January, although absolutely no reason is given why Logovaz should have wanted to backdate its own board minutes,**

**and there is in fact no evidence that they did, other than Mr Dubov's evidence that they must have done because otherwise it would be inconsistent with his own evidence that nothing was done within Logovaz until the end of December.**

**Now, nothing is said by my learned friends about the fact that Mr Abramovich actually began to meet ORT's costs from October 2000 onwards. That is a fact to which Mr Abramovich spoke in the course of his cross-examination, and it is confirmed by the terms of the bolshoi balance which reflected the fact, of which Mr Abramovich also spoke, that agreement in principle had in fact been reached by the end of October.**

**At paragraph 180 your Ladyship will find the relevant references to that.**

**Now, Mr Abramovich --**

**MRS JUSTICE GLOSTER: Hang on, just let me check that. 180?**

**MR SUMPTION: 180, yes.**

**Paragraph 178 Ms Davies tells me, I apologise for that.**

**MRS JUSTICE GLOSTER: 178. Yes, I see. The reference is there to the bolshoi balance so I can get it from that. Yes, very well.**

**MR SUMPTION: Absolutely nothing, of course, is said about the fact that Mr Abramovich began to put quite**

**substantial sums of money into a company which he considered that he had, although the deal hadn't been signed off, agreed in principle he was buying with Mr Patarkatsishvili back in October.**

**Now, there appears to be a suggestion in my learned friends' closing that Mr Patarkatsishvili was dealing with Mr Abramovich without Mr Berezovsky's authority, but there is absolutely no evidence to support that and it doesn't seem very likely, not least because one thing which the Le Bourget transcript plainly establishes, and the relevant extracts are summarised at paragraphs 171 to 182 of our document, but the Le Bourget transcript plainly establishes that the deal had been done in principle by 6 December.**

**Particularly important in this context are the private conversation between Mr Berezovsky and Mr Patarkatsishvili recorded at boxes 408-11, referred to in those paragraphs, which occurred while Mr Abramovich was speaking on the phone, and are simply left out of the discussion of this question in my learned friends' written closing. Their significance is that of the many passages which indicate that Mr Berezovsky was perfectly happy with what Mr Patarkatsishvili had negotiated, that was one which can't be presented as a funny game that they were**

**playing together on Mr Abramovich because, at the time, Mr Abramovich was not dealing with them at all, he was on the phone to somebody else and this was something that they were saying among themselves.**

**MRS JUSTICE GLOSTER: Was he out of the room?**

**MR SUMPTION: No, he wasn't out of the room, and technically, therefore, he could have had one ear to Mr Gorodilov on the phone and another ear to what was being muttered between Mr Berezovsky and Mr Patarkatsishvili in the same room, and it was a small room.**

**At the same time, it does seem bizarre that these parties, clearly addressing each other, they couldn't actually have been addressing Mr Abramovich, should have exchanged words which indicated that they were happy to go ahead if in fact Mr Berezovsky was adamant that Mr Patarkatsishvili was not authorised to deal with this.**

**Now, the record of Mr Abramovich's movements between 6 December and the beginning of January is the other aspect of this matter that counts. Paragraph 849 of my learned friends' written closing is all that they have to say on that subject, and I have to say it's clutching at straws.**

**There is a misrepresentation of Mr Abramovich's**

**evidence about the time required to have an aircraft made ready, to obtain flight clearance, and to fly to France and then back to Moscow, which effectively assumes that Mr Abramovich could have done it, but that would assume that he had an aircraft on stand-by when no such suggestion was in fact ever made.**

**The correct position on this we have summarised at paragraph 193 sub 3 of our own document.**

**There is in this part of my learned friends' closing --**

**MRS JUSTICE GLOSTER: Just a second, Mr Sumption.**

**MR SUMPTION: Sorry. (Pause)**

**MRS JUSTICE GLOSTER: Yes.**

**MR SUMPTION: In this, there is no attempt to explain by my learned friends the automatic record of passport swipes at entry and exit which match the stamps in Mr Abramovich's passport and show that he didn't leave Russia in the whole of the relevant period. They say, well, occasionally you can leave Russia and for some reason that's not explained, no stamp appears.**

**It would be necessary, of course, for this to be a correct hypothesis, that four passport stamps should fail to appear on the passport, namely the Russian and French stamps on entry into France, and the French and Russian stamps on departure. All four of them would**

**have, by some oversight or administrative lapse, not to have appeared. Moreover, this is a theory that does not explain the evidence which is given by the Russian border service that whether or not a stamp appears in the passport, a passport is invariably swiped through a machine and an automatic computerised record generated which shows that in fact Mr Abramovich did not leave Russia, after arriving there on night of 6 December, until the beginning of January.**

**There is then a series of pot shots taken by my learned friends at the evidence of Mr Abramovich's doings in Moscow between 7 and 10 December, suggesting ever more remarkable theories about how all of this evidence, not just a bit of it but all of it, which points to Mr Abramovich being in Russia at the time is wrong and is, as I understand it, suggesting that your Ladyship should prefer to that evidence a theory about Mr Abramovich's movements which is supported by no evidence at all.**

**Now, the most charitable thing that one can say about Dr Nosova's evidence on this point is that she learnt of the threats -- her evidence, as your Ladyship will recall, was that she learnt of the threats from Mr Patarkatsishvili in the middle of December over breakfast at the George V Hotel in Paris. Perhaps the**

**most charitable thing one can say about that is that she is mistaken. A more realistic view of her evidence is that, having said nothing at all about this, at a time when Mr Berezovsky was claiming that the meeting happened after the middle of December, shortly before Christmas at Cap d'Antibes, she made up that part of her evidence when Mr Berezovsky's choice switched to 7 December in order to support it. Dr Nosova's enormous financial interest in the outcome of this trial and her absence of candour in disclosing that interest must inevitably, I would suggest, reduce even further the confidence that one can have in her evidence, especially when it is produced in her final witness statement the night before she actually gave evidence.**

**I regret to say that the same point can fairly be made of Ms Gorbunova's evidence. She claimed for the first time in cross-examination to have actually overheard part of the conversation on the terrace of the Chateau de la Garoupe when, in her witness statement, she had said nothing about this except that she had learnt of the threats later from Mr Berezovsky.**

**It's unfortunately impossible, however charitable one is going to be about Ms Gorbunova's evidence or Dr Nosova's evidence, to be particularly charitable about Mr Berezovsky's evidence. He, in our submission,**

**has made up the whole of this incident in order to lend verisimilitude to what he says about the subsequent Sibneft threats, and to those threats, which are the substance of the matter which your Ladyship has to decide, I now turn.**

**The material going to the Sibneft threats is within a rather narrower compass than the ORT threats, in part because Mr Berezovsky has no direct evidence to give about these threats at all; they were made, according to him, to Mr Patarkatsishvili. We have dealt with the evidence on these points between paragraphs 205 and 207 of our document.**

**Again, I don't intend on my feet to duplicate material which is much more conveniently summarised in writing. What I may --**

**MRS JUSTICE GLOSTER: I've read your skeleton argument.**

**MR SUMPTION: If I may simply identify what appear to be the salient points in the light of what my learned friends say in their document. There are really three salient points. The first is that neither the alleged threat that Sibneft would be expropriated, nor the alleged threat that Mr Glushkov would be kept in jail, are, on their face, threats of adverse action by Mr Abramovich. They are both threats of adverse action by the Russian State. So on the face, therefore, of these allegations**

**they are not actionable threats at all.**

**Mr Berezovsky says that it is implicit, although not actually stated, that Mr Abramovich was threatening that he himself would bring those consequences about, and he says that Mr Berezovsky understood -- Mr Berezovsky says that he himself understood it in that way.**

**Now, that of course is based entirely on the suggestion that this is the inference which Mr Berezovsky reasonably drew from Mr Abramovich's conduct at Cap d'Antibes. So that if that meeting did not occur, the basis on which Mr Abramovich is saying one thing is interpreted as meaning another appears to vanish. In fact I would suggest there is actually nothing, even on the footing that the Cap d'Antibes meeting occurred, which could possibly justify the inference anyway, but the point falls away if the meeting never happened.**

**The second salient point is that the Sibneft expropriation threat, which is alleged by Mr Berezovsky, is quite different from the one that he had consistently made between 2003 and the beginning of these proceedings four years later in 2007. Before he began these proceedings the allegation was that Mr Abramovich told Mr Berezovsky that Sibneft, as a company, would be attacked by agencies of the state -- sorry, that**

**Mr Abramovich told Mr Patarkatsishvili that Sibneft would be attacked by agencies of the Russian State if Mr Berezovsky continued to be associated with it.**

**The evidence for that is set out in our document at paragraphs 208 to 209.**

**The allegation was put in that way in successive press interviews. It was put in that way in Mr Berezovsky's witness statement in support of Mr Chernoi's application for permission to serve the writ in his own action out of the jurisdiction of Mr Deripaska. And in fact it was put in that way in the letter before action written to my clients by Carter Ruck.**

**Now, that is a statement that Sibneft would be attacked by the agencies of the state which really can't be viewed as a threat of adverse action by Mr Abramovich since Mr Abramovich could not conceivably threaten to bring his own company down, even on the footing that Mr Berezovsky and Mr Patarkatsishvili owned half of it. The allegation was in fact only restated as a threat by Mr Abramovich himself in the second edition of the particulars of claim which was served in September 2007. It is obvious that what happened in the autumn of 2007 is that somebody looked at what Mr Berezovsky would have to say in order to make out a claim in tort, and**

**Mr Berezovsky simply said that.**

**The third salient point is that Mr Berezovsky's allegation that he was threatened is in fact inconsistent with what Mr Patarkatsishvili, who was there -- indeed the only person who was there apart from Mr Fomichev who has not been called, and Ms Panchenko and Mr Abramovich -- with what Mr Patarkatsishvili told Mr Berezovsky's solicitors.**

**His evidence, as recorded by those solicitors, was given on the basis, as we accept, that he was assuming that he and Mr Berezovsky did have an interest in Sibneft which they sold out, and that much is of course consistent with Mr Berezovsky's case in this action. But what Mr Patarkatsishvili had to say is not at all consistent with the alleged threats.**

**He said, one, that Mr Patarkatsishvili and Mr Berezovsky wanted, as he put it, to sell out of Sibneft because they needed the money and it was therefore they who initiated the negotiations. Secondly, he said that Mr Abramovich had said that he personally was under pressure from the Kremlin to bring an end to his relations with Mr Berezovsky and Mr Patarkatsishvili, which is not equivalent to a threat to expropriate their interests.**

**Thirdly, Mr Patarkatsishvili said that he thought**

**that the company, rather than their interest in it, would become a target if that didn't happen. Fourth, Mr Patarkatsishvili said that Mr Glushkov wasn't mentioned at the Munich meeting, the only meeting that was referred to in the interviews. And at the 2007 interviews which occurred rather later, in Mr Berezovsky's presence, that statement is embellished with the suggestion that Mr Glushkov was actually indirectly mentioned when Mr Patarkatsishvili asked Mr Abramovich at these meetings whether he was aware of "our main issue", and Mr Abramovich said that he was. Well, whether or not that exchange actually occurred, it certainly doesn't amount to any kind of threat to Mr Glushkov's position.**

**Fifth, Mr Patarkatsishvili said that Mr Glushkov was not a person who Mr Abramovich had the influence to assist anyway. And sixth, he says that he, Mr Patarkatsishvili, thought that the terms relating to Sibneft were in fact fair.**

**Now, if Mr Berezovsky was blackmailed by Mr Abramovich in and before May 2001, if that is what happened, then Mr Patarkatsishvili was being blackmailed as well, indeed far more directly blackmailed because he was, on this view of the matter, the conduit to Mr Berezovsky. It's therefore extremely unlikely that**

Mr Patarkatsishvili would have forgotten or overlooked that fact when he was being interviewed by Mr Berezovsky's solicitors, and equally unlikely that Mr Abramovich would actually have said such a thing.

MRS JUSTICE GLOSTER: Was Mr Patarkatsishvili a friend of Mr Glushkov?

MR SUMPTION: My understanding is that he was.

MRS JUSTICE GLOSTER: I can't remember what the evidence was about that.

MR SUMPTION: The evidence was that they were both friends of Mr Glushkov. I think it's fair to say that Mr Berezovsky's connection with Mr Glushkov was older and, so to speak, more intimate, but Mr Patarkatsishvili was also extremely concerned with Mr Glushkov's position, and your Ladyship may recall that it was Mr Patarkatsishvili who engaged in the prolonged negotiations in 2001 with various rather shadowy emissaries of the Russian Government in relation to the possible release.

What Mr Glushkov himself says at paragraph 23 of his witness statement is:

"Badri and my family also became close. We spent a fantastic summer on the Black Sea together. Badri's daughters were quite often guests of mine along with their parents."

So there is a connection with him also.

Mr Glushkov also says at paragraph 22 that Mr Berezovsky introduced him to Badri in about 1992:

"... although I knew of him before then."

MRS JUSTICE GLOSTER: Yes, thank you.

MR SUMPTION: They became great friends.

The fourth salient point is that the whole notion of a threat is, in our submission, inherently bizarre in the circumstances in which these people found themselves.

How do you expropriate something that isn't a proprietary interest at all but merely a personal contractual right against Mr Abramovich, which is the case that is now being made? Is it seriously being suggested that Mr Abramovich threatened that, unless Mr Berezovsky and Mr Patarkatsishvili abandoned their contractual rights, he would use his influence to ensure that those contractual rights against him were transferred to the state? This is a particularly strange suggestion, but it is what it would have to amount to if this allegation were even to be coherent.

Now, what my learned friends in their closing say about this is, well, there were all sorts of unpleasant things the state could have done: tax raids, investigations, Maski raids and all the rest of it, but

**all of that consists of unpleasant things that could have been done to the company and not expropriatory acts against Mr Berezovsky's and Mr Patarkatsishvili's interests. That could only have happened by the Russian State substituting itself for Mr Berezovsky and Mr Patarkatsishvili as Mr Abramovich's so-called partners, and that is hardly something that Mr Abramovich is likely to have been threatening.**

**The next salient point, and the last one to which attention should be drawn, is this: how do you explain the absence of any paper if this was really a sale or release of Mr Abramovich's contractual obligations to Mr Berezovsky and Mr Patarkatsishvili? Mr Berezovsky is saying, he says this in his witness statement, that by May 2001 he was well aware that it was vitally important to document the transaction, and he gives in his witness statement various reasons why he and Mr Patarkatsishvili were satisfied that it would have to be documented. It would have to be documented so that it could be enforced against Mr Abramovich, it would have to be documented so that they would have, or Mr Berezovsky would have, evidence that he could use in the proceedings that he claims he intended to bring in due course against Mr Abramovich, and it would have to be documented in order to satisfy the western banks to**

**which the proceeds were going to be transferred.**

**Mr Berezovsky went to great lengths with Mr Curtis and Mr Fomichev and Mr Patarkatsishvili to produce a bogus document trail for this purpose. Yet the evidence suggests that he never so much as asked Mr Abramovich to supply a document. Mr Abramovich was asked whether -- well, he gave evidence in his witness statement and said:**

**"I was never asked for a document recording the terms on which I was paying over 1.3 billion."**

**Now, if that 1.3 billion was being handed over pursuant to a sale agreement and a release of Mr Abramovich's contractual obligations, one would certainly have expected that they would want that fact documented, and one would have expected that Mr Abramovich would have wanted it documented, because, according to Mr Berezovsky, Mr Abramovich made him sell out by threatening him. If Mr Abramovich had really done that, then surely he would have wanted to ensure that he got a contractual release. Mr Curtis in fact drafted a contractual release for Mr Berezovsky and Mr Patarkatsishvili to get from Mr Abramovich. But, so far as the evidence shows, they never even proposed that to him.**

**In our submission, this story simply doesn't stack**

**up, quite apart from the fact that there is no evidence to support it other than the uncorroborated hearsay evidence of a particularly unreliable witness, namely Mr Berezovsky himself.**

**My Lady, may I turn at this point to the Devonia agreement which is the sole basis, apart from a mystifying estoppel claim, on which Mr Berezovsky claims to have suffered by the supposed intimidation which Mr Patarkatsishvili experienced in May 2001.**

**MRS JUSTICE GLOSTER: Before you do that, Mr Sumption, may I ask this question: what, if anything, is the relevance of the allegation of sale at an undervalue? I know that valuation issues aren't being decided at this stage for various reasons, but is it relevant to liability that, as Mr Berezovsky alleges, the interest was sold at an undervalue? And if so, is it right that the decision or the issue of intimidation should be decided absent that evidence?**

**MR SUMPTION: Well, I understood it to be agreed between the parties that it was in fact perfectly possible for your Ladyship to decide it in the absence of the valuation evidence because the valuation evidence is concerned with producing, on a basis which is admittedly disputed, but it's concerned with producing a discounted cashflow valuation of the company. Nobody is suggesting that**

**Mr Berezovsky and Mr Patarkatsishvili, or anyone else for that matter, actually carried out any kind of valuation, even a back of the envelope calculation. It was simply their general impression, to which Mr Berezovsky gives evidence as far as he is concerned, that Sibneft was worth a lot more than 1.3 billion.**

**MRS JUSTICE GLOSTER: The point I'm making is it could be said that in certain circumstances, one of the aspects of a sale as a result of intimidation was that the asset was sold for much less than it was objectively worth.**

**MR SUMPTION: I can see that entirely.**

**MRS JUSTICE GLOSTER: And as I understand it, apart from the subjective evidence about what Mr Glushkov and Mr Berezovsky thought, there is no other evidence -- or sorry, Mr Patarkatsishvili thought, there is no other evidence about the relevance of the 1.3 billion to the actual value, whatever it might have been, of Sibneft.**

**MR SUMPTION: Apart from what they -- there is first of all Mr Berezovsky's subjective evidence, there is also the evidence given by Mr Shvidler.**

**MRS JUSTICE GLOSTER: Yes, I remember that.**

**MR SUMPTION: And Mr Tenenbaum.**

**MRS JUSTICE GLOSTER: About the market cap.**

**MR SUMPTION: About the market cap. My learned friend rubbishes that on the ground that the market cap of an**

**illiquid 12 per cent that was floating in the market is of no relevance.**

**Of course, the difference between a 12 per cent in the market and a 44 per cent interest in value terms is likely to depend on whether the 44 per cent stake had a strategic value. The problem is that if you acquired the 44 per cent stake, you would be acquiring a stake that would make you not -- the strategic value of it would be much diminished by the fact that the other 44 per cent was owned by a man who had dominated the company since 1995.**

**MRS JUSTICE GLOSTER: No, I think my question is much simpler. Are you asking me to come to any conclusion about the objective value of Sibneft at the time?**

**MR SUMPTION: No.**

**MRS JUSTICE GLOSTER: In relation to the issue on intimidation?**

**MR SUMPTION: No, I'm not, and indeed if I were asking your Ladyship to do that, I could not properly have supported the suggestion that the valuation evidence should be deferred to see whether it arises after judgment.**

**I understood that it was on the basis that your Ladyship did not need to arrive at an objective value that both parties were content with that course.**

**Of course, it's fair to say that if one is trying to**

**explain why Mr Berezovsky sold out of an interest in Sibneft, if indeed he had one, what would matter was not the objective evidence, assuming that Mr Berezovsky didn't have any objective evidence at the time, but what he thought. Suppose that objectively Sibneft was worth 1 billion, but Mr Berezovsky mistakenly believed that it was worth 3 billion, on that hypothesis his view of the value would be just as relevant in determining whether he was intimidated into selling out of it.**

**MRS JUSTICE GLOSTER: Yes, I can see all those sort of sophisticated hypotheses, I was just putting the simple point that if in fact it was obviously at an undervalue that might feed into the question as to whether or not there had been an intimidation.**

**MR SUMPTION: Well, it might. In our submission, it would be impossible to contend that the undervalue was obvious, even if there was an undervalue, which we deny. But of course, before you can get to the question whether it was at an undervalue, you have to satisfy yourself that it is a sale that is happening in May 2001. And that, of course, is where the real hurdle lies.**

**MRS JUSTICE GLOSTER: Yes, I see.**

**MR SUMPTION: Now, we have submitted in section A4 of our written closing that the Devonia agreement does not**

**actually purport to transfer the only right which Mr Berezovsky now claims to have acquired under the 1995 agreement, namely a contractual right under a simple partnership agreement. Even the most liberal interpretation of Chartbrook v Persimmon would not justify the view that what is purported to be a proprietary equitable interest, and a contract purporting to transfer a proprietary equitable interest in a company, can in fact be effective to -- can transfer something which was not proprietary at all but simply a contractual right against Mr Abramovich.**

**One is bound to ask oneself, what would the sheikh have thought if he had been told: actually, although this contract says you're getting an equitable interest, of which Mr Abramovich is the trustee, what you're actually getting is an unsecured contractual right which you will have to enforce by suing him in Russia or wherever he may be found. Now, one can imagine a somewhat bad tempered response to that enquiry, which is perhaps a good way of illustrating the extreme difference between the two things.**

**Now, what this agreement therefore purports to transfer is not something that Mr Berezovsky now claims to have had but, in our submission, none of this actually matters because the evidence is frankly**

**overwhelming that this was simply a sham designed to deceive banks. If your Ladyship in due course, not now, goes through the narrative of the transaction, starting at paragraph 275 of our closing, as well as the information about the Spectrum transaction on which it was modelled, that in our submission will become obvious.**

**The essential point is quite simple. The transaction, as described to the court, and indeed to the Clydesdale Bank at the time, involved a sale to the sheikh's company of an undocumented equitable interest in $1.3 billion worth of shares in a Russian company, said to be held by a trustee who declined to acknowledge their interest. That was the version of the facts that Mr Curtis gave to Clydesdale Bank in his letters of 1 June. It's absolutely astonishing that Clydesdale Bank should ever have accepted such a cock and bull story, and they certainly don't appear to have accepted it when the papers hit their head office in Australia sometime in about August.**

**But as it was, it's clear that they only did that because of assurances by Mr Curtis that the sheikh would be selling on to Mr Abramovich, on terms that Mr Abramovich would be paying the money upfront by way of security and, therefore, that pending the on-sale the**

**sheikh would be paying Mr Berezovsky and Mr Patarkatsishvili out of his own funds.**

**Now, Mr Jacobson told your Ladyship that the most likely source of that information was Mr Berezovsky's financial factotum, Mr Fomichev. But whatever the source, it's manifestly untrue. There wasn't an on-sale to Mr Abramovich, there wasn't an advance deposit. It wasn't even put to Mr Abramovich in cross-examination that there was an on-sale. So the only things that made the transaction credible to Clydesdale Bank are revealed to be bogus.**

**Now, in my learned friends' closing document they have sought to resurrect the argument that Mr Abramovich was in fact involved in the Devonia transaction, and they have even sought to assert that there was in fact an on-sale. Now, I respectfully submit --**

**MRS JUSTICE GLOSTER: Can you give me the paragraph, please?**

**MR SUMPTION: Yes. It is at paragraphs 957 onwards. 962 is where it is said that there was an on-sale.**

**Now, in our submission, they simply cannot be permitted to do that, not having put those matters to Mr Abramovich in cross-examination. I don't wish to suggest that every smallest point necessarily has to be put to a witness, but a point which is of this significance and which represents the sole basis on**

**which loss is being claimed, and which would, if true, be within the knowledge of that witness, must be put to him, and this one was not.**

**There is also an assertion, which is to be found earlier in their closing document at paragraphs 905-6, that it was Mr Abramovich or one of his staff who rejected the plan originally proposed by Mr Curtis for a direct contract with him, with the result that the transaction had to proceed as a sale to Devonia rather than Mr Abramovich.**

**Your Ladyship will recall Mr Curtis originally drew up direct documentation and it was then scrapped towards the end of May.**

**That assertion is made in that part of the closing document, but there is absolutely no evidence for it, there is no documentary support for it, and their witness evidence on the point was given to support that, except that given by Mr Abramovich who denied it. In addition, it's right to point out that Mr Jacobson said he did not know why the change of plan occurred. So, in our submission, your Ladyship cannot possibly accept the proffered invitation to conclude that the change of plan was brought about by a decision by Mr Abramovich.**

**What the evidence actually shows is that there was no contact between anyone on Mr Berezovsky's side, and**

**Mr Abramovich or his team, with the exception of the relatively low level involvement of Ms Khudyk in setting up the paperwork associated with the opening of the account at Latvian Trade Bank.**

**Now, your Ladyship will recall the evidence on this point, it's actually summarised in our closing at paragraphs 277 and 279, but Ms Khudyk was only involved because Mr Abramovich's companies, who were going to be paying the 1.3 billion, had an existing relationship with the Latvian Trade Bank. It was therefore suggested that whatever vehicle Mr Fomichev designated to receive the money should open an account for that purpose at the Latvian Trade Bank. That would make the payment process easier. But all that Ms Khudyk knew about the Devonia transaction was that she had been required to pay the funds to a company called Devonia, which had been nominated as the payee by Mr Fomichev, and she had assisted in the opening of an account for that company at the Latvian bank.**

**No other evidence was put forward for the suggestion that Mr Abramovich was involved, apart from the bare assertion by the sheikh, in short formal letters written some years later, which we have analysed in paragraph 302 of our closing. And of course nobody was called to address this point by my learned friends, on**

**whom it is incumbent to prove it. Dr Jumean was not called, the sheikh was not called, not even hearsay statements were put in from them, apart from those short formal letters.**

**Absolutely no documentation has been forthcoming from the sheikh's administration or disclosed by any party, and Mr Jacobson confirms that the Curtis files disclosed no evidence of the involvement of anyone on my client's side apart from the low level involvement of Ms Khudyk, and we summarise the evidence for that at paragraph 283, and in particular note 1142.**

**Now, the 1.3 billion was paid into the Devonia account at Latvian Trade Bank in the stages agreed between Mr Abramovich and Mr Patarkatsishvili in Cologne on 29 May 2001. Those stages bore no relation to the timetable envisaged in the Devonia agreement and it is difficult, if not impossible therefore, to relate the payments that were actually made into that account to anything contained in the Devonia agreement. This was simply a money-laundering scheme and that was no doubt why some $200 million in commissions was paid to the sheikh on top of 18.3 million to Mr Curtis personally, and smaller sums which were shared out between the in-house financial managers of the three principals involved, namely Mr Fomichev, Mr Kay and Dr Jumean.**

**This is a most unattractive transaction.**

**Now, not only was there no sale to Devonia, but the attempts to pretend that there was one is, in our submission, yet another item of circumstantial evidence against Mr Berezovsky's claim to have had an interest in Sibneft at all.**

**The Devonia agreement or the Devonia scheme worked by generating documents which suggested that Mr Berezovsky and Mr Patarkatsishvili had an interest in Sibneft which they had sold to Devonia. The only reason why it was necessary to engage in all these shenanigans at a cost of about 15 per cent in commissions was that Mr Berezovsky and Mr Patarkatsishvili knew perfectly well that genuine documents would not be obtainable. They would not be obtainable because Mr Berezovsky and Mr Patarkatsishvili had no interest in Sibneft and had made no agreement to sell anything with Mr Abramovich.**

**Now, your Ladyship has seen all the documents, particularly in Mr Curtis's letters, assertions that Mr Abramovich was refusing to execute such documents because he had always in the past denied the existence of such an interest. But the truth is that no attempt has been made in this trial to prove that the question of documenting a sale, if there was a sale, was ever broached with Mr Abramovich, as it surely would have**

**been if a sale had been discussed with him. These letters were written by Mr Curtis precisely because Mr Berezovsky and Mr Patarkatsishvili in fact knew perfectly well, without having to ask Mr Abramovich, that they weren't going to get a contract because that wasn't the deal that Mr Patarkatsishvili had made with Mr Abramovich. So they invented a contract with someone else.**

**MRS JUSTICE GLOSTER: Is there any evidence about the reason why Curtis got a fee or commission of 18.5 million?**

**MR SUMPTION: The evidence consists of the minutes of the meetings of the relevant trusts which consented to the payment, and the documents by which Mr Curtis sought Mr Berezovsky's consent to it. There are also documents, these were gone through in cross-examination --**

**MRS JUSTICE GLOSTER: I remember, but did they suggest any rationale for the commission payment?**

**MR SUMPTION: They did. What they suggested was that these were commission payments, I think "introductory fee" is the description given at one stage, but what they were plainly not is a reward for Mr Curtis's professional services. We know that because the earliest of the documents in which he sets out his demands from the sheikh records that the commission payment was in**

**addition --**

**MRS JUSTICE GLOSTER: To professional fees.**

**MR SUMPTION: -- to the 400,000-odd of professional fees.**

**So the only inference one can draw is that this was in fact a payment made to Mr Curtis for his services in doing something that was distinctly underhand, indeed, as far as Mr Curtis was concerned, both unprofessional for a solicitor and unlawful.**

**MRS JUSTICE GLOSTER: It couldn't be characterised therefore as a commission for introducing an intermediate purchaser?**

**MR SUMPTION: No. I mean, the sheikh of course was already a client of Mr Curtis's, and your Ladyship may recall that in May 2001, Mr Curtis went to counsel in order to get advice on aspects of the ORT transaction. But the instructions also seemed to have covered, at least the advice covered, aspects of this transaction, and counsel noticed the commissions that were being paid to Mr Curtis personally and pointed out that this was a very unsatisfactory aspect of the transaction, not least because it might well be suggested that this was in fact a money-laundering transaction and that there's no other reason why Mr Curtis should be receiving money personally upfront on top of his professional fees. That was a point which, in our submission, was extremely**

**pertinent.**

**Your Ladyship will find that all the relevant documents are referred to in paragraph 296 of our written document, in particular at subparagraph 7 and in the footnotes to that subparagraph.**

**MRS JUSTICE GLOSTER: Yes, thank you.**

**MR SUMPTION: Now, the last of the critical issues on the Sibneft side -- my Lady, would your Ladyship want to take the break at this stage because I'm turning to limitation.**

**MRS JUSTICE GLOSTER: Very well. Ten minutes.**

**(3.14 pm)**

**(A short break)**

**(3.30 pm)**

**MR SUMPTION: Could I give your Ladyship two other references to our closing which respond to points raised by your Ladyship before we took the break. At paragraph 256 we deal, under the heading "No Need to Posit Intimidation", with a number of factors of which the first is the question of undervalue, which is substantially what I said to your Ladyship orally, but the others consist of other reasons why, in any event, this is not something one needs to posit in order to explain what happened.**

**The other reference is to paragraph 273. That, in**

**addition to the reference I gave your Ladyship earlier, is where your Ladyship will find the information and references about the instructions given to counsel on the propriety of the commission, or the advice given by counsel; I don't think he was asked to expressly but he did.**

**MRS JUSTICE GLOSTER: Yes, I was just trying to remember what the rationale was.**

**MR SUMPTION: This was actually, rather oddly, because the transaction had already gone through, an enquiry about the application of the money-laundering regulations to the Spectrum money, which of course also enjoys a 15 per cent commission, and it was in that context that counsel advised that he thought that that was an unattractive aspect of the transaction on money-laundering grounds, and that some care should be taken to ascertain that it was consistent with the Law Society's rules.**

**May I turn to the question of limitation, which was the last of the critical issues on the Sibneft side of the claim. It's common ground that under the Foreign Limitation Periods Act, the limitation period to be applied is that of the substantive law governing the alleged tort.**

**In his pleading, Mr Berezovsky has put as his**

**primary case that the tort was governed by English law, alternatively he says French law, but in any event not on Russian law, please.**

**Now, at English law, the intimidation claim is plainly time-barred unless Mr Berezovsky can sustain the Devonia agreement as a genuine agreement. The claim form was issued on 1 June 2007, time runs from the incurring of the loss. Mr Berezovsky says that the loss was incurred when he submitted to Mr Abramovich's threats by agreeing to the sale of his alleged interest in Sibneft. Now, if there was an interest in Sibneft, he says that he agreed to sell it when he entered into the Devonia transaction which was fully executed on 11 June, the approximate date when the Devonia agreement appears to have been executed by the sheikh. The document had already been executed by Mr Patarkatsishvili and Mr Berezovsky a week earlier on 5 June but, at any rate, in June.**

**Now, on the footing that the Devonia agreement was a genuine transaction, that is his case. But of course on the footing that the Devonia transaction was a sham, the relevant date would be not the date of execution of that contract but the date on which final agreement was made between Mr Abramovich and Mr Patarkatsishvili, ie the meeting at Cologne on 29 May 2001 when the mode of**

**payment was finally agreed and the transaction went forward. The first instalment of the monies agreed to be paid on 29 May was in fact paid into Devonia's account on 31 May. It follows therefore that if the Devonia agreement was not a genuine transaction of sale, the intimidation claim was statute-barred in English law even on Mr Berezovsky's analysis of the law.**

**Now, there seems to be a certain lack of confidence on the part of my learned friends about their ability to sustain the proposition that the Devonia transaction was a genuine transaction, because in their written closings, as your Ladyship will have seen, French law has overtaken English law as their preferred option. Now, it is accepted by us that the claim would not be time-barred at French law. Indeed it's the only law under which it wouldn't be time-barred.**

**The choice of law issue is therefore somewhat critical to this question, and that issue is dealt with in section A5 of our written closing. The basic principles are not disputed, and it may assist your Ladyship to have open paragraph 310 of our written closing which sets out the statutory provisions. Under section 11, the primary rule is that the tort is governed by the law of the country where all of the events constituting the tort happened or, if they**

**happened in more than one country, then the law of the country where the most significant of them happened. I think that's probably an uncontroversial precis of section 11. So the primary rule depends on the geographical location of the facts constituting the cause of action.**

**The secondary rule in section 12, which is sometimes called the rule of displacement, allows for the law chosen in accordance with section 11 to be displaced in favour of another law if the application of the latter would be substantially more appropriate. In other words, appropriate by virtue of some more substantial connection with a particular law or jurisdiction than the mere geographical location of the facts.**

**If Mr Berezovsky's pleaded case is taken at face value, then the general rule in section 11 points to Russia. That is because the factual elements of the tort are, one, a threat, two, submission, and three, loss. The alleged threat is said to have been made by Mr Abramovich to Mr Patarkatsishvili in Moscow, so far as concerns the expropriation threat. The Glushkov threat is said to have been made to Mr Patarkatsishvili in Germany at Munich, that is what is said in the pleading, although my learned friend floated the possibility that it might have been Cologne. Nobody is**

**contending for German law.**

**Now, none of the threats are alleged to have been made in France, neither in relation to Mr Glushkov or in relation to the expropriation of their interest. The only thing that is said to have happened in France, as far as the elements of the tort are concerned, is that Mr Berezovsky received a report of the threats that were allegedly uttered by Mr Abramovich to him in Germany on the telephone at his house in France and is said to have decided there and then to accept the $1.3 billion.**

**So the position therefore is that the threats were not in France, the submission is alleged to have been in France in the sense that that is when Mr Berezovsky decided that he would submit, although the submission would actually have been communicated to Mr Abramovich at Cologne on the 29th when Mr Patarkatsishvili said, "Yes, go ahead".**

**Mr Berezovsky's supposed loss, to take the third element of the tort, was incurred not in the place where he submitted to the threat but in the place where the assets that he says he was forced to relinquish were located. That, surely, is the place where, if he lost those assets, he must have lost them, and that is plainly Russia, Sibneft being a Russian company.**

**Where the factual elements of the tort occur in**

different countries, your Ladyship is enjoined by the statute --

MRS JUSTICE GLOSTER: Wouldn't it depend on the situs of the claim he has against Mr Abramovich in relation to the Sibneft agreement?

MR SUMPTION: No -- well, my question is where the situs of that claim would be. As it turns out, he's brought it in England, but that wouldn't determine the situs of the claim. But my Lady, what matters surely is the situs of the asset he claims to have lost. He says "I lost my shareholding in Sibneft and I got back much less than it was worth".

As regards his contractual claim, what he says that he lost is an entitlement contractually as against Mr Abramovich to be registered as a shareholder in Sibneft. The value of that, he said, was equivalent to the value of the shares, and he lost it.

MRS JUSTICE GLOSTER: And what was the -- if there is a situs for that chose, what does he claim the situs is?

MR SUMPTION: That's plainly Russia, because Sibneft --

MRS JUSTICE GLOSTER: What does Mr Berezovsky say about that?

MR SUMPTION: I don't think Mr Berezovsky can...

My Lady, if your Ladyship looks at page 279 of our written closing, there's a reference at note 1257 to the

**decision in Kwok Chi Leung v Commissioner of Estate Duty, which suggests that rights in respect of a company incorporated in jurisdiction A are rights situated in that jurisdiction.**

**MRS JUSTICE GLOSTER: I can see that if you've got a claim against the company, I don't know, against the company to be issued with shares. What I'm raising is where is the situs of the contractual rights as against Mr Abramovich?**

**MR SUMPTION: Russia. My Lady, it is Russia for a number of reasons. First of all, the right to be registered, which is the contractual right that Mr Berezovsky claims to have, is a right which arises on his case under an agreement which, by common consent, is governed by Russian law, the agreement of 1995. Secondly, the situs is Russia because the substance of that right was a right to be registered as a shareholder of a Russian company, a right which is only capable of being exercised in Russia. It must stand to reason that a court outside Russia could not possibly enforce a registration right in another country. Thirdly, the situs is Russia because Sibneft is a Russian company. And if you ask yourself: where has a loss been incurred which consists in an interest, whether contractual or proprietary, in a Russian company? The answer must be**

**Russia.**

**The case which I referred your Ladyship to --**

**MRS JUSTICE GLOSTER: Yes, Kwok.**

**MR SUMPTION: Kwok. The relevant part of it, which is at page 1040, deals with --**

**MRS JUSTICE GLOSTER: Is it in your authorities?**

**MR SUMPTION: It's at P(A)1/10 on the Magnum system P(A)1/10/314. If your Ladyship would look at page 1040 of the report P(A)1/10/319:**

**"The matter falls, in their Lordships' opinion, to be determined by reference to first principles. In the first place the notion that a debt or other chose in action [and shares of course are the chose in action], because incorporeal, can have no situs was laid to rest by the House of Lords in English, Scottish and Australian Bank Ltd v Inland Revenue Commissioners. It is clearly established that a simple contract debt is locally situated where the debtor resides -- the reason being that that is, prima facie, the place where he can be sued ... A debt which is payable in futuro is no less a debt and there is no logical reason why it should, as regard its locality, be subject to any different rule. It is simply a chose in action and like any chose in action is subject to the general rule which is conveniently stated ... in Dicey and Morris on the**

**Conflict of Laws ..."**

**MRS JUSTICE GLOSTER: Well, this is a promissory note, isn't it, so it's slightly different.**

**MR SUMPTION: Yes.**

**MRS JUSTICE GLOSTER: Okay, I don't think that takes this particular point --**

**MR SUMPTION: My Lady, it does, with respect. Because what Mr Berezovsky claims to have lost is shares, which are a chose in action against the company, or contractual rights to be registered as the owner of shares, which are a chose in action against Mr Abramovich. Now, that is a right which is only enforceable in Russia because the value of a share consists in the rights that it confers against a Russian company, and a right of registration is something that is only exercisable or enforceable in Russia.**

**Now, in those circumstances, in our submission, the situs of a chose in action, whether you classify it as property in the shares or a contractual right of registration, has got to be Russian --**

**MRS JUSTICE GLOSTER: Well, it's not a contractual right of registration as against the company.**

**MR SUMPTION: No.**

**MRS JUSTICE GLOSTER: What we're looking at is a contractual right, on this hypothesis, as against Mr Abramovich.**

**MR SUMPTION: Yes.**

**MRS JUSTICE GLOSTER: And you say because the debtor, or the alleged debtor, resides in Russia, therefore the situs of the chose is in Russia.**

**MR SUMPTION: I say that, but that's not all I say. First of all I say that because Mr Abramovich resided in Russia, the situs of that claim is Russia. But I also say --**

**MRS JUSTICE GLOSTER: It relates to a Russian company.**

**MR SUMPTION: -- that the particular nature of it -- suppose that he were to begin proceedings, managed to serve them in the Hermes shop in Sloane Street in the traditional fashion against Mr Abramovich, asking for an order that he, Mr Berezovsky, be registered as the owner of these shares, the court would surely say that this was not justiciable in England in accordance --**

**MRS JUSTICE GLOSTER: Yes, with Lufkin or something.**

**MR SUMPTION: Yes. My Lady, whichever way you classify it --**

**MRS JUSTICE GLOSTER: Anyway, I get the point, I get your submission.**

**MR SUMPTION: My Lady, when the factual elements of the tort occur in different countries, the court is required by the statute to apply the law of the country where the most significant elements occurred. Now, the only**

**element which is said to have occurred in France is Mr Berezovsky's decision to submit, because that's where he was sitting when he was telephoned by Mr Patarkatsishvili with news of the alleged threat. Now, the location of Mr Berezovsky at the time that he took the call from Mr Patarkatsishvili is, in our submission, a matter of no significance at all for two reasons. First of all, the actual submission to the threat occurred, in our submission, when the deal was done by Mr Berezovsky's agent, Mr Patarkatsishvili, at Cologne, and not where Mr Berezovsky happened to be when he learnt about the threat and made the decision to submit.**

**The second reason why it's a matter of no significance is that it's purely adventitious. Mr Berezovsky might have taken the call in London or in New York or on his skiing holiday in Switzerland, or in any of the other places where he was wont to travel. The fact that he happened to be in his sitting room, or wherever, at Cap d'Antibes is of no significance at all.**

**One can, I suggest, test this by asking oneself hypothetically: what would happen if Mr Berezovsky and Mr Patarkatsishvili were co-plaintiffs, as Mr Berezovsky plainly at one stage hoped that they would be? Now, would one be positing that the tort was governed by**

**French law in the case of Mr Berezovsky, and by German law in the case of Mr Patarkatsishvili, simply because when the news of the threat came through, and they agreed to submit to it, one of them happened to be in Germany at one end of a telephone line and the other in France at the other?**

**MRS JUSTICE GLOSTER: You say this all goes back to Russia because that's where the substantial connection is.**

**MR SUMPTION: Indeed, it's the only substantial connection.**

**In our submission the rule of displacement in section 12 would apply even in the event that it were to be held that under section 11 the choice of law was French, or for that matter English. Section 12 admits a wider range of factors because it's not confined to the geographical distribution of the facts constituting the cause of action. But in addition to the geographical distribution of the relevant facts, for the purposes of section 12, first both the alleged perpetrator of the tort and the alleged victims were either domiciled or resident, or both, in Russia.**

**Mr Abramovich was both domiciled and resident there; Mr Patarkatsishvili was at the time resident in Russia although probably domiciled in Georgia; Mr Berezovsky was currently resident in France but domiciled in Russia. We know that because his tax returns, the**

**references are given at paragraph 335, sub 2 of our closing, assert that he desires to return to Russia and has many connections with it. He therefore has, on his own admission, the animus revertendi, which is the legal hallmark of domicile, a particularly significant factor in relation to tax. But it's the same test for all aspects of domicile.**

**The principal business interests of all three men at this stage were located in Russia, including those in connection with which the tort actually arose. Now, that's therefore the first factor which would be relevant for section 12.**

**The second is that the substance of both of the alleged threats was to do unpleasant things in Russia. Those things are said to be illegal or illegitimate and, in our submission, if you threaten to do something in a foreign country, the question whether they are illegal or illegitimate has to be determined by the standards of the place where you are threatening to do them.**

**Now, there is an ingenious argument in my learned friends' submission which says suppose that in Ruritania the dictator passed a law through a compliant parliament which said that he was allowed to kill people at his whim, and in England you threatened somebody that, unless he complied with your demands, you would**

**perfectly lawfully persuade the dictator in question to kill the victim's relative in Ruritania.**

**This extreme case is hardly a useful guide to the law of the area. The question of repugnant laws is a very familiar area of the law of confidence. There is a well-established doctrine, from which the principal authority is Oppenheimer v Cattermole, under which a repugnant law -- contrary to the public policy of, in the relevant respect, the United Kingdom, or contrary to the practice of nations, and Oppenheimer v Cattermole was about the German law, perfectly lawful, a deprivation of Mr Oppenheimer's citizenship by the Nazis in the 1930s -- is simply ignored as a proposition of law, it is treated as non-law. That would be the answer to the sort of extreme cases that my learned friends envisage.**

**Now, the second relevant factor therefore for the purpose of section 12, in our submission, is that Russian standards would apply to the legitimacy or lawfulness of what it was that, according to Mr Berezovsky, Mr Abramovich was threatening to do or to procure.**

**The third relevant factor for section 12 purposes, in addition to the geographical location of the elements of the tort, is the whole background to this issue is**

**Russian. The explanation of how the problem arose is Russian.**

**Did Mr Rabinowitz not submit to your Ladyship that you would need, in order to understand the inherent probabilities, to hear experts on conditions in Russia from authorities on modern Russian history, because the experience of an English judge would not be enough. In our submission, it is ridiculous to suggest that this issue can be determined otherwise than in the context of Russian politics and Russian ways.**

**Now, the arguments which are now advanced in support of French law, in our submission, can fairly be described as disingenuous, and I would invite your Ladyship for this purpose to open paragraph 969 of my learned friends' written closing where there are conveniently listed --**

**MRS JUSTICE GLOSTER: Yes, I have it.**

**MR SUMPTION: We can briefly go through them. The word "France" is underlined wherever it appears. Item 1 is 31 October --**

**MRS JUSTICE GLOSTER: Yes, I've read this.**

**MR SUMPTION: Well, Mr Berezovsky did not remember that meeting with Mr Abramovich having occurred at all. The evidence on that point is Day 7, page 1.**

**Mr Abramovich's evidence was that he was not in France**

**at all at the time, and his travel documents demonstrate that he in fact left France a few days before 31 October.**

**If your Ladyship in due course turns to paragraph 131 of our written opening, the references to that are listed. This meeting was a matter on which evidence was given by Ms Gorbunova but it cannot, with respect, have happened. In any event, what Ms Gorbunova says occurred at the meeting doesn't amount to a threat and the meeting is not pleaded as one of the occasions when any threat was uttered. So that is irrelevant.**

**We then have the Le Bourget meeting. That is specifically pleaded on the basis that nothing said at Le Bourget is to be treated as itself constituting a threat, nor was it in fact, as the transcript of the occasion shows.**

**Number 3 is the Cap d'Antibes meeting which, if it happened, was a threat in relation to ORT but not a threat in relation to Sibneft but that hardly matters since it did not happen.**

**Item 4 is the alleged expropriation threats. Now, this is very disingenuous, because what is said here is that there is no evidence of where they happened, and that is not an acceptable submission for my learned friends to make because their pleading is that it**

**happened in Moscow. In answer to a request for further information on this very point, they pleaded that the threats in question were uttered between August and October 2000 at the offices of Logovaz or Sibneft in Moscow.**

**The references to that, we hadn't anticipated this point so we haven't got them in our closing --**

**MRS JUSTICE GLOSTER: Just give me the reference.**

**MR SUMPTION: The references are paragraph C41, and the request for information, request 17, the references to the bundle numbering are A1/02/16 and A2/10A/28.**

**Now, the timescale given there, which is August to October 2000, was subsequently extended in their pleadings to May 2001 but the location remained Moscow, A2/11/64.**

**MR RABINOWITZ: Your Ladyship has these references in our submission at paragraph 982, subparagraph 4, if that's any help.**

**MRS JUSTICE GLOSTER: Thank you.**

**MR SUMPTION: My Lady, that, in our submission, is the end of that suggestion that your Ladyship can somehow assume that those things may not have happened in Moscow.**

**Item 5 refers to the decision to open negotiations with Mr Abramovich, a decision that Mr Berezovsky says was made between him and Mr Patarkatsishvili at**

**Cap d'Antibes. But that is not an element of the tort, nor is it a connection for section 12 purposes of the slightest significance. It is purely fortuitous where Mr Berezovsky and Mr Patarkatsishvili discussed that matter.**

**Item 6 concerns the possible meeting in Paris on 15 May. Now, this meeting has something of a question mark over it. The documents show that Mr Abramovich and Ms Panchenko flew to Paris on 15 May, and Mr Patarkatsishvili's credit card receipts suggest that he was also in Paris at that time. Neither Mr Abramovich nor Ms Panchenko can in fact remember a meeting in Paris with Mr Patarkatsishvili but they acknowledge that there may well have been one, and that appears from paragraph 284 of Mr Abramovich's principal statement and paragraph 91 of Ms Panchenko's second witness statement.**

**Now, it is possible, as my learned friends suggest, that if the meeting occurred, the final figure of 1.3 billion was agreed at it, and that would be consistent with the stages at which one first sees the figure of 1.3 billion appearing in the documentation relating to the opening of the account with Latvian Trade Bank. But the fact that this meeting in Paris happened, if indeed it did happen, is no more**

**significant than the fact that the previous meeting happened in Munich or the next one in Cologne. On the face of it, both German meetings were more significant for the tort because the threats are alleged to have been uttered at Munich and the deal was finalised in Cologne.**

**All of this, in our submission, this six-part catalogue of things that happened in France, is so much special pleading. What matters for the general rule is the place where the threat, the submission and the loss happened, which was respectively Russia and Germany, Germany and Russia, the three elements of the tort.**

**What matters for the rule of displacement is the national connections of the parties, the nature of the threat, the location of the thing threatened and the surrounding circumstances. Very little that is relevant to the threat happened in France, and what did happen in France could in fact have happened anywhere. A great deal that is relevant happened in Russia, but whereas what happened in France could have happened anywhere, what happened in Russia could not have happened anywhere but Russia. This tort is, in our submission, quite plainly governed by Russian law.**

**English law is now an alternative case, but the sole basis on which it is said to apply, according to**

**Mr Berezovsky's pleading, is that the Devonia agreement was negotiated there and provided for payment in England and for English law. Those points are pleaded in the particulars of claim at paragraph C54(a). Now, in our submission, this must be a hopeless argument if the Devonia agreement was not actually a genuine transaction, but it's right to point out that it's a weak argument even if it was a genuine transaction.**

**The choice of English law to govern the Devonia agreement can't possibly be relevant in view of the fact that Mr Abramovich was not party to that agreement. It was in fact suggested to Mr Abramovich in cross-examination, as your Ladyship may recall, that he would have expected there to be some agreement, and that he would have expected it to be governed by English law.**

**Mr Abramovich did not accept those propositions and no basis was put forward to support them. In fact, the Devonia agreement seems to have been devised between Mr Fomichev and Mr Patarkatsishvili and Mr Berezovsky and Mr Curtis, partly in France and partly in England.**

**MRS JUSTICE GLOSTER: And partly at Baden Baden.**

**MR SUMPTION: Well, that is where it was executed. It was in fact executed by Mr Berezovsky at Nobu restaurant in Park Lane.**

**MRS JUSTICE GLOSTER: I'm looking at paragraph 323(3) of**

**your closing.**

**MR SUMPTION: Yes. And Baden Baden was where Mr Patarkatsishvili executed it. The sheikh's place of execution seems to be uncertain but appears to be Abu Dhabi. That at any rate was the assumption made by Mr Jacobson.**

**Now, my Lady, on the basis that Russian law applies, the only issue is whether the three-year limitation period in Russian law can be extended under Article 205 of the Civil Code or ignored under Article 10.**

**Now, your Ladyship has only recently been treated to an analysis of these provisions of the Civil Code, and I don't therefore propose to go through it laboriously. As with so much Russian law evidence in this case, the experts did not differ so much on the principle as on its application which is ultimately a matter for your Ladyship.**

**There is, however, one difference between this and other Russian law issues. The relevant legal principle in England is that your Ladyship applies the principles governing the issue under the foreign law, subject to the fact that in a case where the foreign law vests a discretion in the foreign court, your Ladyship is required to exercise it in the way that, on the evidence, the foreign court would exercise it. That's**

**the effect of section 1.4 of the act, quoted in paragraph 377.**

**This means that the scope for expert evidence on what happens in practice is rather wider in this area than in others that we have looked at. In other words, so far as the principles of Russian law allow for a range of possible decisions, your Ladyship should decide where within that range a Russian court would in practice be likely to decide a comparable case to this one.**

**Now, the relevant legal principles for this purpose can be quite shortly stated and are not significantly disputed. As far as Article 10 is concerned, that's the general principle about abuse of rights which is common to almost all civil law systems.**

**MRS JUSTICE GLOSTER: Yes.**

**MR SUMPTION: It's common ground between the experts, one, that the mere taking of a limitation point is not an abuse of rights; two, that in exceptional cases a party may be prevented by Article 10 from relying on an otherwise applicable limitation period, and "exceptional cases" is Dr Rachkov's phrase; three, that one of these exceptional cases, the only one alleged to be relevant here, is the case where the wrong complained of has itself prevented the claimant from bringing his claim**

**within the limitation period. In other words, it's a variant of what in English law one would say was the principle that a party may not take advantage of his own wrong.**

**Now, the only difference between the experts, as we understand it, is that Mr Rozenberg considers that reliance on Article 10 requires proof of intention to cause the claimant to miss the limitation period, although he also points out that that requirement will be satisfied if, on an objective test, the intention existed even if it was not subjectively present. But that is not a difference that appears to make much difference on the facts of this case.**

**Turning to the principles of Article 205, the essential difference between the two provisions, ie 205 and 10, is that Article 10 is focusing upon the conduct and state of mind of the defendant invoking limitation and asking whether his behaviour is such that invoking limitation constitutes an abuse of rights. By comparison Article 205 is focusing on the behaviour of the claimant who has missed the limitation period and asking why he has done so.**

**Now, Article 205, which is what we're on now, provides for the extension of the limitation period in exceptional cases relating to a personal characteristic**

**of the claimant. That is the principle that is expressly laid down in the article itself and it's the principle which your Ladyship is applying.**

**There is an issue between the experts about whether the Russian courts take a permissive or a restrictive view in practice, although it's actually very difficult for your Ladyship to take a view about that, except by reference to specific examples which have some relevant analogy with the facts of the present case. I doubt whether your Ladyship is going to be assisted by evidence about the degree of generosity which the Russian courts show in dealing with cases about the illness of one's wife or impoverished miners in the Ukraine. Rather different would be cases which seem to bear some resemblance to the present one.**

**What seems to be clear is, first of all, that the exceptional nature of the extension available under Article 205 is a requirement of the article itself, and therefore one which your Ladyship can hardly ignore.**

**Secondly, that the necessity of proving that the delay arises from a personal characteristic of the claimant is also written into Article 205, and that is applied strictly. In particular, matters affecting some third party can only be invoked by the claimant if their effect is to incapacitate the claimant, which is why the**

**cases involving illnesses of a family member require evidence that it incapacitated the claimant, usually by requiring him to give full-time care to the family member in question, or possibly by psychologically paralysing him.**

**Thirdly, the experts differ, as we read the evidence, on the question whether a claimant can obtain an extension of the limitation period if he is perfectly capable of bringing the proceedings but is afraid of the consequences of doing that.**

**Now, the only remotely comparable case from which your Ladyship can derive any assistance as to the practice of the Russian courts in such a case is Guseletov, the case which is referred to by both parties, in our submission, at paragraph 380.**

**MRS JUSTICE GLOSTER: Yes, I recall that.**

**MR SUMPTION: This is the threat to murder case which was held to be not good enough in the absence of medical evidence that his fear had actually incapacitated him.**

**MRS JUSTICE GLOSTER: Just remind me, when did Mr Glushkov leave prison?**

**MR SUMPTION: July 2006 is when he left Russia.**

**MRS JUSTICE GLOSTER: When did he leave prison?**

**MR SUMPTION: He left prison in March 2004, because in March 2004 he was convicted but the sentence was such**

**that the time he had spent in prison to date warranted his release. There was then a retrial -- your Ladyship will find the relevant dates are all set out at paragraph 375 of our document.**

**MRS JUSTICE GLOSTER: Right.**

**MR SUMPTION: He hopped it from Russia before the outcome of the retrial was enforced.**

**MRS JUSTICE GLOSTER: Yes, yes, thank you.**

**MR SUMPTION: Now, Guseletov, of course, is the only remotely comparable case, otherwise there's no case which either expert has identified in which fear for the safety of somebody else, or even the claimant himself, has been treated as justifying an extension. And although Dr Rachkov maintained his position on this point, even he accepted that a fear in order to be relevant has got to be both genuine, ie subjectively felt by the claimant, and objectively well-founded. We've given the reference to that evidence in paragraph 365, in particular note 1358.**

**MRS JUSTICE GLOSTER: Yes.**

**MR SUMPTION: Now, fourthly, both experts agree that where there is a ground for extending the limitation period, the claimant must bring his action promptly after the disabling circumstance has ceased to operate.**

**Essentially the same facts are relied upon for both**

**articles, namely the position of Mr Glushkov, but they are, in our submission, a very long way from satisfying even the loosest tests for applying these principles.**

**We have dealt with the facts at paragraph 369 and following of our document. They all depend on Mr Berezovsky's claim that he was prevented from bringing his action earlier by his concern for the position of Mr Glushkov, and that is, in our submission, a suggestion that is absurd. The fear on which Mr Berezovsky relies was, in our submission, not genuine, he never entertained such a fear, and it was certainly not well-founded, there was no reason for him to entertain it.**

**Now, in the first place, the only ground put forward for Mr Berezovsky's fears is the threat which he says Mr Abramovich uttered in May 2001 that, unless Mr Berezovsky sold out of Sibneft, he, Mr Abramovich, would use his influence to keep Mr Glushkov in jail. Mr Berezovsky claims that he submitted to that threat, which is the whole hypothesis on which this question arises.**

**Mr Berezovsky has never suggested, even in his most expansive moments, that Mr Abramovich ever threatened to keep Mr Glushkov in jail even if Mr Berezovsky and Mr Patarkatsishvili did sell out of Sibneft.**

**So on the hypothesis on which the limitation question arises, it is frankly very difficult to see that anything in Mr Abramovich's conduct could have led Mr Berezovsky to think that he was going to do anything unpleasant to Mr Glushkov.**

**Secondly, Mr Berezovsky's conduct wasn't actually affected by his fear for Mr Glushkov's safety, even on the assumption, contrary to our submission, that he entertained such a fear. We've dealt with this at paragraphs 371 to 373. Mr Berezovsky has maintained a persistent, venomous and highly public campaign against the Russian Government ever since he arrived in this country at the end of 2001. This campaign has included making public allegations that from 2003 onwards he was forced out of Sibneft by the Russian State acting through Mr Abramovich.**

**In July 2005, Mr Berezovsky announced his intention of bringing these proceedings in what one can only describe as a carefully planned programme of press conferences and press statements to agencies and media organisations, both inside and outside Russia. That campaign was deliberately calculated to achieve the maximum impact in Russia, and in these statements what he said was that he was actively preparing these proceedings.**

**Now, in his fourth witness statement, the reference is to paragraph 402, Mr Berezovsky says that he tried to avoid blaming Mr Abramovich publicly for what had happened until after Mr Glushkov left Russia. It is, however, a matter of public record that that statement is clearly untrue. Mr Berezovsky's behaviour in the four years before the commencement of this action is completely inconsistent with the suggestion that any fears for Mr Glushkov's position affected his conduct in the slightest. Indeed, in his statement of support of Mr Glushkov's asylum application, a statement served in September 2008, Mr Berezovsky dealt in detail with the reasons why he had not previously mentioned his allegations against Mr Abramovich. And his explanation of that delay is concerned entirely with the position of Mr Patarkatsishvili, it doesn't mention the supposed fear for Mr Glushkov's safety.**

**Thirdly, Mr Glushkov actually left Russia in July 2006 but Mr Berezovsky didn't bring this action until June 2007. Now, in no possible sense of the word can that be described as prompt. Dr Rachkov, although without any authority or law in support of what he says, suggests that the delay might be longer if the case was complex. But Mr Berezovsky's particulars of claim are not particularly complex. Indeed, an unkind spirit**

**might possibly describe them as rather on the thin side.**

**According to Dr Nosova's evidence, he had nevertheless been preparing material for this litigation since 2004. We know that Carter Ruck's interviews with Mr Patarkatsishvili were conducted in 2005, and it is quite obvious from their letter before action, and from the original points of claim, that large parts of that were based on notes and proofs prepared two years earlier in 2005.**

**Now, the explanation given by Mr Berezovsky for his delay after Mr Glushkov's departure from Russia is not that the case was particularly complex. His explanation is that he had a continuing fear that Mr Abramovich would procure the Russian Government to interfere with Mr Glushkov's application. He has, however, made no attempt to suggest that this fear was well-founded. What he suggests is that the Russians did interfere with his own asylum application by simultaneously bringing extradition proceedings, which effectively were the other side of the same coin. They were decided on the same basis.**

**What seems clear is that no such fear in fact affected Mr Berezovsky for the simple reason that Mr Berezovsky did bring this action while Mr Glushkov's asylum application was still pending. Mr Glushkov's**

asylum application was not decided until I think 2010. This action was brought in 2007.

Now, what Mr Berezovsky says about that is that he was advised that, if he didn't bring the action in 2007, he would be time-barred. Well, all we can say about that is that if his desire to avoid being time-barred prevailed over his concern for Mr Glushkov's safety in 2007, there is no earthly reason why it should not have prevailed over his concern for Mr Glushkov's safety in 2006, 2005 or indeed 2001.

My Lady, it's 4.20 and the next subject is Rusal.

MRS JUSTICE GLOSTER: Well, I think that might be a time to stop.

How are we doing for time?

MR SUMPTION: We're doing not badly. I would expect to require about two to two and a half hours tomorrow. If your Ladyship were to sit tomorrow at the same time as today I would pretty well guarantee to finish before the short adjournment.

MRS JUSTICE GLOSTER: Well, you've certainly got all of tomorrow, and you've got such time on Wednesday as you need.

MR SUMPTION: I won't need to go into Wednesday, that I promise.

MRS JUSTICE GLOSTER: Mr Rabinowitz, you're not going to be

**starting this week?**

**MR RABINOWITZ: No, my Lady. I wasn't proposing to.**

**MRS JUSTICE GLOSTER: You haven't changed your views on that one?**

**MR RABINOWITZ: Not since we served our 930-page submission.**

**MR SUMPTION: I shall expect my learned friend to speak from memory to that at once.**

**MR RABINOWITZ: If my learned friend is prepared to sit here and listen, I will.**

**MRS JUSTICE GLOSTER: Very well. Then I'll start at 10.15 tomorrow. Thank you all very much.**

**(4.20 pm)**

**(The hearing adjourned until**

**Tuesday, 20 December 2011 at 10.15 am)**

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