

Tuesday, 17 January 2012

(10.30 am)

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

Closing submissions by MR RABINOWITZ

MR RABINOWITZ: My Lady, when I opened this case in October, I submitted that there were four points in particular which your Ladyship would wish to bear in mind when considering the inherent probabilities of each side's case. These four points have not changed and they bear repeating.

First, your Ladyship will wish to consider whether Mr Abramovich's case relating to the events of late 2000 and 2001 can be squared with the sudden and dramatic end of his friendship with Mr Berezovsky at this time. In particular, Mr Abramovich claims that he was being generous in agreeing to pay \$150 million to Mr Berezovsky and Mr Patarkatsishvili for a 49 per cent stake in ORT at the end of 2000, and generous in agreeing to pay Mr Berezovsky and Mr Patarkatsishvili \$1.3 billion in May 2001. If that were true, one would expect Mr Berezovsky to have been eternally grateful to Mr Abramovich.

But what in fact happened was quite the opposite, with Mr Berezovsky's friendship with Mr Abramovich coming to a conclusive end at exactly this time.

Mr Berezovsky's case of course makes sense of this, but Mr Abramovich's case makes no sense of it at all.

Our second point was that if Mr Abramovich has been shown, as we say he has been, to have put forward an entirely false case as regards the ownership interests in Sibneft and Rusal, then this begs this question: if Mr Abramovich had nothing to hide in terms of the allegations made, then why would he, Mr Abramovich, have chosen to put forward a dishonest case? The question remains, and remains unanswered, in our submission.

The only explanation for Mr Abramovich's continued denial is because once ownership interests in each of Sibneft and Rusal are established, Mr Abramovich has no coherent defence to the claims made.

Our third point referred to the inherent probabilities. Mr Abramovich's case is difficult to square with the sale of Sibneft at what our experts will say was a massive undervalue. Now, given that expert valuation evidence has been postponed, we cannot and do not ask the court at this time to make any findings about the true value of Sibneft. But we do rely, my Lady, on the unchallenged evidence of Mr Berezovsky, supported incidentally by contemporaneous interviews and the like, that he believed 50 per cent of Sibneft to be worth very far in excess of \$1.3 billion.

For my Lady's note, we have given the references to Mr Berezovsky's belief in this regard at paragraph 867, subparagraph 3(b) of our written closing, which is behind tab 1 in volume 2 at page 522.

As to our fourth point, this related to Mr Abramovich's claim that the Cap d'Antibes meeting did not take place, or at least that it took place prior to the arrest of Mr Glushkov. The difficulties for Mr Abramovich, however, include -- and I shall be returning to these later -- first, that he originally admitted that the meeting took place after Mr Glushkov's arrest; second, that the meeting was recalled by both Mr Berezovsky and Mr Patarkatsishvili; third, that the meeting was witnessed by others, Ms Gorbunova and Mr Giroud, an undeniably independent witness -- I'm sure I've mispronounced his name, I hope he will forgive me; and fourth, that Mr Abramovich's attempt to prove that the meeting could not have taken place have foundered, relying on hearsay evidence of witnesses not called by Mr Abramovich, and Mr Abramovich's own changing and frankly dishonest reconstruction of events.

My Lady, what has changed most significantly since October of course when the trial began is that the court has seen and heard from the witnesses in this case. Whilst of course your Ladyship will have formed

your own view of the witnesses, in our submission, the dishonesty of Mr Abramovich and his key witnesses, their cynical manipulation of evidence and indeed of the trial process, is the fifth and perhaps the most important of the general points which my Lady will wish to have in mind when weighing up the evidence and making findings of fact in this case.

We have devoted a good deal of our written closing to this point and I shall be spending a little more time on it today. After that, I shall return to the Sibneft claim and then to the Rusal claim.

But my Lady, while it is undoubtedly convenient to consider the two claims separately, I would respectfully suggest that there is one overarching question that the court will want to ask itself, and it is this. As Mr Abramovich on his case provided a plausible explanation for the enormous and indeed admitted payments made to Mr Berezovsky and Mr Patarkatsishvili, my Lady might think that this case is perhaps marked out by the very few facts that are not in dispute, but, as your Ladyship will be aware, the payments made are one of the matters that are largely not disputed. This being the case, your Ladyship may well consider that those payments provide an important anchor point in the analysis of the other issues that arise for

determination.

Of course, if, as Mr Berezovsky says is the case, Mr Berezovsky and Mr Patarkatsishvili had ownership interests in Sibneft and Rusal then there is a ready explanation for the size of the huge payments made. On Mr Abramovich's case, of course, they had no such ownership interests, and I would respectfully suggest that the court will want to test that contention that they had no ownership interests by considering taking Sibneft and Rusal in turn, but again emphasising that the matter has to be considered together: whether Mr Abramovich's version of the alleged agreement with Mr Berezovsky regarding Sibneft could ever have accounted for the huge payment of \$1.3 billion he says he agreed to make to terminate that agreement when, on his case, he had absolutely no obligation whatsoever to make any payment at all, and whether Mr Abramovich's version of the alleged agreement with Mr Patarkatsishvili regarding Rusal could ever have accounted for the equally eye-watering payment of \$575 million he says he agreed to pay to Mr Patarkatsishvili in relation to Rusal in 2004 when again, on his case, he had no obligation whatsoever to make a payment of that size.

My Lady, we suggest that the total disconnect

between the agreements alleged by Mr Abramovich and the size of the payments he says he made in connection with them provides the strongest possible evidence that the agreements were not as alleged by Mr Abramovich.

Mr Abramovich was not, as he would have to be on his version of events, making these huge payments out of generosity and appreciation. He made them because they related to ownership interests in Sibneft and Rusal, and that, we say, is what explains their size.

My Lady, having introduced that point, it is one I shall need to return to later.

Before I turn to make comments on the credibility of Mr Abramovich and his witnesses, which is the topic to which I propose to turn first, there is one final introductory point that I should make and it is this. We have put together, on this side of the court, what is in the context of this case a relatively short document which flags up the more egregious of the many factual inaccuracies and inaccurate citations in my learned friends' written closing, to the extent that we have not already dealt with them in our written closing.

I am not going to go through that on my feet but I would respectfully invite my Lady to pay it close regard, particularly when considering criticisms made of the witness evidence of Mr Berezovsky and his witnesses

because, as my Lady will see, a very great number of the criticisms of Mr Berezovsky and his witnesses are simply incorrect. My learned friends have unfortunately, and I'm sure this was inadvertent, seen inconsistencies where there are none, misstated the facts and ignored evidence inconsistent with their case, even when it comes from their own witnesses.

My Lady, can I just then hand up that document.

I've put it in a nice 1 Essex Court file.

MRS JUSTICE GLOSTER: Yes. (Handed)

I think I've seen this.

MR RABINOWITZ: I don't think so, my Lady, it was completed last night. What your Ladyship will have seen, I think, is the next document that I need to say something about, the monster document, as we have been calling it on this side.

Your Ladyship will recall --

MRS JUSTICE GLOSTER: What, the defendant's schedule?

MR RABINOWITZ: That's the one, the 175 pages.

MRS JUSTICE GLOSTER: I've certainly seen that -- okay, no, I haven't seen this.

MR RABINOWITZ: Your Ladyship sees it adopts an approach of identifying particular paragraphs in the closing, my learned friends' closing. It sets out what is there said and then identifies what is wrong with it.

MRS JUSTICE GLOSTER: Yes, I see.

Just a second. (Pause)

MR RABINOWITZ: The references to paragraphs are obviously to Mr Abramovich's closing. And I can tell your Ladyship that it will go on Magnum, if that's where your Ladyship would rather have it.

MRS JUSTICE GLOSTER: Thank you.

MR RABINOWITZ: I do also want to say something about that document which your Ladyship has seen, called the defendant's schedule, which my learned friends served I think on Wednesday afternoon of last week.

I don't know whether my Lady has had a look at this document or not --

MRS JUSTICE GLOSTER: Yes, I've had what I might call a superficial read through, but obviously I ...

MR RABINOWITZ: Your Ladyship will recall that although it was billed in advance as a document that would identify inaccuracies in our written closing, what it is rather is simply a reply closing submission presented in boxes.

Now, that is not what it was supposed to be but, be that as it may, your Ladyship has it. It runs to 175 pages, pages which are making points which largely repeat my learned friends' written and oral closing, and indeed then goes on to repeat itself.

Be that as it may, my Lady, with a view to assisting

the court we have been going through this document, box by box and page by page, in order that we may be able to provide your Ladyship with an annotated version of this schedule with our commentary on their comments to our closing, and we hope to have that document available for your Ladyship before the end of the week.

MRS JUSTICE GLOSTER: So it will have box 1215 --

MR RABINOWITZ: It will simply go across. It will be a schedule, because again, with respect, it is a rather --

MRS JUSTICE GLOSTER: Otherwise it's indigestible.

MR RABINOWITZ: It's indigestible, and your Ladyship needs to see why we say what they say is either wrong or unhelpful. So that your Ladyship will get.

Can I then move more substantively on to the first of the topics that I would wish to address in my oral closing, and that relates to our submissions on the testimony of Mr Abramovich and his witnesses.

My Lady, this is of course a topic we've dealt with in section B of our written closing which begins at page 62 and, as your Ladyship will be aware from what we have said, we say that Mr Abramovich, whilst undoubtedly a smooth and well-prepared witness, proved himself to be a thoroughly dishonest and cynical witness as well,

willing to perpetuate a false case, not only by giving evidence which he knew to be untrue, but also by calling as witnesses his associates who again, as Mr Abramovich well knew, gave, as they were intended to do, thoroughly untrue evidence designed only to mislead the court.

As your Ladyship will know, we have in our written submissions identified a number of matters that were, we submitted, relevant to the issue of the credibility of Mr Abramovich and his witnesses.

I'm not proposing to go through all of those now, but I do just want to say something further on some aspects of the matters we have there dealt with. The first matter I would like to say something further about is the question of collusion between witnesses. Your Ladyship will find that we have dealt with that at paragraph 98 and following of our written closing.

MRS JUSTICE GLOSTER: Yes, I'm there.

MR RABINOWITZ: The point that we address there relates to the fact that, as the evidence has established, Mr Abramovich and his witnesses discussed their recollections and Mr Abramovich's case amongst themselves at length before preparing their witness statements.

In response to this evidence, and indeed our submission about this, your Ladyship may recall that in

his closing speech Mr Sumption suggested to your Ladyship that this discussion of recollections by witnesses before putting their evidence in a witness statement was, in his words:

"... 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 learnt from someone else."

That, for my Lady's note, was Day 39, page 15, line 23 to page 16, line 2.

My Lady, while it may well be the case, as Mr Sumption said, that one does often find witnesses, prior to making a witness statement, discussing the matter and indeed the issues arising with other witnesses, the point about the present case is that this is not at all what happened here. Because what is clear from the evidence is that there was here not simply a discussion of the evidence but in fact a coordinated effort to ensure that everyone's evidence was the same on particular points. In other words, there was here precisely the failure of the witnesses to apply their own minds to the issue and give their own evidence, rather than taking it from someone else, that even Mr Sumption accepts was indeed unacceptable.

And perhaps I can just give my Lady an example of

this. We have, at paragraphs 105 to 109 of our written closing, on page 71 and onwards, set out extensive references to the evidence of Mr Abramovich's witnesses at the strike-out application, and again at trial, which makes this point. And as my Lady will recall, the focus of these paragraphs relates to the way in which the evidence of Mr Abramovich's witnesses changed between the strike-out application where the allegation made by Mr Abramovich was that the payments were all ORT related, and indeed that the agreement was to fund ORT, to the situation at trial where there was a transformation in this and we were now talking about krysha.

This was a change that one saw not just in the evidence of one witness but rather in the evidence of each of Mr Abramovich, Mr Shvidler, Mr Tenenbaum, Ms Goncharova and Ms Panchenko.

Now, your Ladyship may recall that in his closing speech Mr Sumption again sought to brush aside this issue by suggesting that this change in the evidence of all of the witnesses was, he said, no more than a great deal of fuss. Day 39, page 30. He appeared to try to dismiss this on the basis, so he asserted, that it had never been suggested by Mr Abramovich that the fact that the money was to be paid to ORT was, on Mr Abramovich's

case, a term of the agreement made between Mr Abramovich and Mr Berezovsky; and that is what he said at Day 39, page 31.

In other words, the point he seemed to be making was we were making a great deal of fuss about this and, indeed, upgrading the significance of this because he claimed, or he said in his closing submissions, the money being paid to ORT was not a term of the agreement.

One can see why Mr Sumption needed to say that, my Lady, because if on Mr Abramovich's case this funding of ORT was indeed a key term of the agreement, if it was what the agreement was all about from Mr Berezovsky's side, then any shift from this to some different type of agreement would be very damaging both to Mr Abramovich's credibility and to his case overall.

Unfortunately for Mr Abramovich, and indeed for Mr Sumption, however, it is plain that contrary to what Mr Sumption told your Ladyship, the funding of ORT was, on Mr Abramovich's case, very much a term of the agreement that he had originally claimed to have made with Mr Berezovsky, and indeed it was what the agreement was all about on Mr Abramovich's original case.

So we have, for example, in Mr Mitchard's third witness statement, that was the main witness statement made on behalf of Mr Abramovich for the purposes of the

strike-out, this is at paragraph 15 of that statement --

MRS JUSTICE GLOSTER: Yes, I have it in front of me.

MR RABINOWITZ: Your Ladyship sees, it says in terms:

"Mr Abramovich says that his agreement with Mr Berezovsky was that, in exchange for the assistance Mr Berezovsky provided in the formation of Sibneft, Mr Abramovich would fund certain cash requirements of ORT."

Your Ladyship has that, I don't need to give your Ladyship the reference to that, J2/2.11. J2/2.11/182

In other words, my Lady, the suggestion that the payments to be made were with a view to funding ORT was, indeed, claimed to have been a term of the agreement, indeed what the agreement was all about.

If there were any doubt about what Mr Abramovich's original case was at that stage, I can remind your Ladyship -- this is a point we note at I think footnote 87, page 71 of our closing -- that Mr Abramovich's counsel at the strike-out application actually went so far as to refer to the 1995 agreement as the ORT funding agreement. Indeed, your Ladyship will recall that the justification that Mr Abramovich was originally giving for the payment of the 1.3 billion in 2001, in the context of the strike-out application, was that this was being paid in part because Mr Berezovsky, having got rid

of his interest in ORT, there was no longer a need to fund it. So it was all about the ORT and the funding of ORT. That was supported by all of Mr Abramovich's witnesses at that stage.

But then of course, once it became clear that that was a hopeless argument, because, as Mr Abramovich and his witnesses all knew, and as was becoming clear from the disclosure which was being made, the payments which were being made were not to fund ORT, or not simply to fund ORT, there were a great many other payments which had nothing to do with ORT; as it became clear that that argument was simply hopeless what one then had was, for the purposes of this trial, a collective shift in the recollection of all of Mr Abramovich's witnesses who, to a man and indeed woman, suddenly changed their evidence on this point. So that no longer was this, on Mr Abramovich's case, an ORT funding agreement but now, so they said in unison, it was a krysha agreement instead.

It is, we would submit, very difficult to see how this could occur without collusion in the unacceptable sense that Mr Sumption identified of the witnesses failing to apply their own minds to this and instead putting forward evidence that they had been asked or agreed to put forward. That is why we submit, my Lady,

that in the present case the fact that there has been collusion between Mr Abramovich's witnesses about what evidence to give, including in relation to the central point about what the agreement in 1995 was about, is a matter of some significance.

Can I turn next, my Lady, to what we have generically referred to as the smears and innuendo issue. Again, your Ladyship sees that in our written closing, beginning at paragraph 120, page 88 and following.

Your Ladyship will recall that the first smear which we identify is the Chechen elements smear, the wholly unwarranted and untrue allegation that Mr Berezovsky had links to organised crime. That's at paragraph 123. Without going back into the detail of the sorry story, my Lady, your Ladyship may recall that only one individual was identified by either Mr Shvidler or Mr Abramovich in their statements as being a Chechen whose connection with Mr Berezovsky or Mr Patarkatsishvili carried, in Mr Shvidler's words, "connotations of gangsterism", was the way he put it. That was a person called Mr Maghamet Ismailov.

Your Ladyship will recall that this allegation really just collapsed after Ms Gorbunova was able to dig up from her photo collection a photograph of

Mr Shvidler's wife and children, and young child, at a birthday party hosted by Mr Ismailov. Indeed, my Lady may recall Mr Abramovich told the court in terms, "Mr Ismailov is not a gangster". That was at Day 7, page 76. Your Ladyship may also recall that, perhaps unsurprisingly, my learned friends made no reference whatever to Chechnya, Chechens or gangsterism in either their written or oral closing submissions.

Sorry, that should have been Day 17, I'm told, not Day 7, page 76.

My Lady, while my learned friends might be keen to sweep this allegation and this issue under the carpet, we would suggest that the matter, that is to say the willingness of Mr Abramovich and Mr Shvidler in particular, to try to smear Mr Berezovsky in this way is something that retains relevance to the credibility of Mr Abramovich and his witnesses generally. Because it is a clear example, and there are others, it's a clear example of their willingness cynically to give false and damaging evidence, if they think they can get away with it, where they think it will suit their ends.

But of course, no sooner did one attempt to smear Mr Berezovsky die a death than another one reared its ugly and cynical head. I have in mind of course what we referred to as the dressing gown allegation. And again,

your Ladyship knows we've dealt with this in some detail at paragraph 126, page 92 and following. We've set out there the genesis and development of that allegation and I don't propose to rehearse that.

My Lady, I would suggest that, as with the Chechen smear, so too with the dressing gown smear, once again it has become clear that the evidence that Mr Abramovich and Mr Shvidler, and indeed Mr Deripaska, were willing to give on this issue has been shown to be utterly false. We've set out at paragraphs 131 to 134 of our written closing the relevant timings of 13 March 2000, timings which we submit establish very clearly that the story made up by Mr Abramovich and his witnesses simply cannot be true.

The evidence on this, as we explain there, is that Mr Abramovich, Mr Shvidler and Mr Deripaska arrived at the Dorchester on 13 March at about 1.00 pm on that day, and Mr Berezovsky, by contrast, arrived at about 2.00 pm having had an unplanned lunchtime visit to the Horseguards Hotel with his legal team having been in the House of Lords that morning. There was evidence before the court on this, which indeed was --

MRS JUSTICE GLOSTER: I remember that, it came in after.

MR RABINOWITZ: It came in afterwards, and Mr Sumption just waved it in.

Mr Berezovsky therefore did indeed, as Mr Abramovich and Mr Shvidler had both said in their witness statements, arrive at the Dorchester suite one hour after they did, and that had been their evidence in their witness statements. It follows that Mr Berezovsky did not get to Mr Patarkatsishvili's suite before these men and busy himself in some different room while they, apparently, on their evidence, for over an hour waited for him to emerge from this room which he eventually did in a dressing gown. That was, I submit, pure invention of the most cynical and unpleasant kind.

Perhaps unsurprisingly, Mr Sumption, as my Lady may recall, in his oral closing made no real attempt to deal with the evidence on this point. What he did say, however, in closing, and this was at Day 40, page 47, was that he didn't want it to be suggested that he had, by silence, conceded the point. He then commented that there was not a trace of any evidence to suggest that there had been any collusion about this dressing gown evidence, and he suggested to your Ladyship, and these were his words, that this was a matter that could, to use his expression, be safely ignored. That's the way he put it.

My Lady, we would respectfully disagree about that and we would submit that the dressing gown allegation

cannot and should not be ignored. As with the Dr Evil text message allegation, to which I shall turn shortly, it is not open to Mr Abramovich's counsel to take the position that allegations made against Mr Berezovsky, which are subsequently shown to be untrue, when made cynically in this way can simply be ignored.

Furthermore if, as I suggest appears from the evidence, Mr Berezovsky arrived at Mr Patarkatsishvili's Dorchester suite meeting from the House of Lords after Mr Abramovich and Mr Shvidler were already there, it must follow from this finding that the evidence of Mr Abramovich, Mr Shvidler and Mr Deripaska, as well as being false and knowingly false evidence, must necessarily have been produced as a result of collusion between them. I say this because it is inconceivable that Mr Abramovich, Mr Shvidler and Mr Deripaska could, independently, have made up that story.

My Lady, can I turn next to the third example of evidence that one might include in the category of smear and that has, in the event, proved utterly false, and that is of course the Dr Evil text message evidence that Mr Tenenbaum gave. Again, for the first time, just as with the dressing gown allegation, in re-examination -- this was a constant thing which kept happening, it emerged in re-examination and again, as your Ladyship

knows, we have set out the genesis and development of this allegation at paragraph 136 and following of our closing, and I'm not proposing therefore to go over this in enormous detail. But in brief, as my Lady will recall, Mr Sumption in re-examination asked Mr Tenenbaum the question as to how he, Mr Tenenbaum, could be certain that no note was taken at the meeting in Georgia at which the Curtis notes were written. This solicited, as it was plainly designed to do, a suggestion never made previously in five witness statements from Mr Tenenbaum and six witness statements from Mr Shvidler that this was something that Mr Fomichev had told Mr Shvidler.

Your Ladyship may recall that I then cross-examined Mr Tenenbaum as to why the suggestion had not been made in any one of the 11 witness statements previously produced by himself and Mr Shvidler, and Mr Tenenbaum, who plainly understood that I was suggesting that his story was a total fabrication, then came up with the story of the text message. Your Ladyship will recall that Mr Tenenbaum then told the court that Mr Shvidler had the supposed text message on his phone and that he had shown it to Mr Tenenbaum.

We of course then asked to see the text message only to be met with what I would suggest was the wholly

incredible suggestion that Mr Shvidler, and indeed Mr Fomichev as well, had deleted the message, and it appears that no one had bothered to ensure that a copy of this was kept in existence.

We then asked for the mobile number to which it was alleged that the text message had supposedly been sent, and we then checked on Mr Berezovsky's phone bill to see whether any message had been sent by him to that number and, surprise surprise, we were able to establish that none had been sent.

In other words, my Lady --

MRS JUSTICE GLOSTER: Well, I haven't had any of this evidence before me, it's just in correspondence, isn't it?

MR RABINOWITZ: It is in a letter which confirms the position from Addleshaws which I shall give your Ladyship the reference to know.

In other words, my Lady, the investigations reveal that there was nothing whatever to support the suggestion that any such text had been sent.

Against that background, my Lady will recall that in his closing speech Mr Sumption told the court that the allegation that this Dr Evil story was an invention, which of course is exactly the allegation we make, was, he said, a suggestion that he at least rejected

entirely. What he said in this regard was that the only evidence in support of this being an invention on the part of his client's witnesses was, as he put it, the assertion of Addleshaws in correspondence.

My Lady, we submit that that was, with respect, a wholly inadequate answer. The letter from Addleshaws confirming that Mr Berezovsky had sent no text message was a letter dated 15 December 2011 which, for your Ladyship's note is at L(2011) --

MRS JUSTICE GLOSTER: I've got the reference, paragraph 145.

MR RABINOWITZ: I think it may be set out there what it says. It actually confirms:

"There is no record of any text being sent by Mr Berezovsky to Mr Fomichev."

That was --

MRS JUSTICE GLOSTER: Mr Rabinowitz, where are we going with all this? I mean, it could have come from another phone. I haven't heard any evidence about it.

MR RABINOWITZ: Well, it's not just that your Ladyship hasn't heard any evidence about it --

MRS JUSTICE GLOSTER: A text message can come from anywhere.

MR RABINOWITZ: Well, it can come from -- and if it does come from any phone then it might have been that they would have said, "This is the number that it came from." But they didn't; they gave us a number and we checked.

But that wasn't all, as your Ladyship knows. If that was all then it may be that someone could suggest that someone else's phone was used, or Mr Berezovsky picked up the phone of one of his associates and sent it from that. That wasn't what was said.

But there was another point that arose from this, and it was the point that my Lady made to Mr Sumption. Your Ladyship will recall that when Mr Sumption said, "Well, that's the only point that there is," your Ladyship said, "Well, there is also the fact that if such a text message had been sent, it would exist and be there for anyone to look at."

That was the point that your Ladyship made to Mr Sumption at Day 40, page 59.

The point that -- with respect, my Lady, the point that you put to Mr Sumption is exactly the point, the point that you made at Day 40, page 59, line 2, because if there was such a text it would be there for someone to look at and it plainly isn't.

The only response that Mr Sumption could give to your Ladyship was to suggest that this would depend, he said, on what your practice is about keeping text messages on your mobile. With respect to my learned friends, that really doesn't meet the point at all. Your Ladyship will recall that Mr Tenenbaum claimed that

the text message was produced just a few months before the trial began. We were told in correspondence it was around the time of the witness statements, May 2011.

If there had been such a text received at that time, that is to say when the parties were gearing up for trial, when witness statements were being served and the like, it would have been plain and obvious to Mr Shvidler, who was very much involved in assisting with the conduct of this litigation, that this was potentially an important document. The claim that this would have been deleted is, I suggest, little short of ludicrous, whatever might have been Mr Shvidler's normal practice in relation to texts.

This is especially so, my Lady, if as Mr Tenenbaum suggested in his evidence Mr Shvidler actually considered the text sufficiently relevant to show it to him and, indeed, to discuss the whole issue with his solicitors. It is simply ludicrous that it would have been deleted by him as well as by Mr Fomichev.

All of this, as your Ladyship will recall, was supposed to support a suggestion by Mr Tenenbaum that so scared was Mr Fomichev of Mr Berezovsky that it was felt by Mr Abramovich and his team that no evidence from Mr Fomichev adverse to Mr Berezovsky, not even a reference to what he allegedly told Mr Shvidler about

the Curtis notes, and your Ladyship will appreciate that the authenticity of the Curtis notes is really one of the absolutely key issues in this litigation, not even a reference to what he allegedly told Mr Shvidler about the Curtis notes could be included in any of the witness statements which were being produced for the trial.

I would respectfully submit that the suggestion that this is the reason why no reference was made is simply nonsense. After all, as your Ladyship knows, Mr Fomichev has been busy with his own litigation against Mr Berezovsky and has not been scared to oppose Mr Berezovsky or to say his evidence is untrue, judgment having been given against Mr Fomichev --

MRS JUSTICE GLOSTER: Has Mr Fomichev paid up?

MR RABINOWITZ: He hasn't.

MRS JUSTICE GLOSTER: I think that's what I was told previously.

MR RABINOWITZ: He is doing his best to evade judgment.

Mr Fomichev is not scared of Mr Berezovsky. The very idea that out of the concern for Mr Fomichev's nerves, or something, Mr Tenenbaum or Mr Shvidler didn't want to put a reference to this in their witness statement is just, in my respectful submission, ridiculous. So once again, my Lady -- and indeed desperate, because this was seen as just one of the ways

in which they could deal with the authenticity of the Curtis notes when all else was failing.

So, my Lady, once again we have Mr Abramovich's trusted associates and witnesses, and I include in this both Mr Tenenbaum and Mr Shvidler, who has been happy to support this allegation, dishonestly and cynically concocting a story knowing, as they obviously did, that it was utterly untrue.

Just on Mr Fomichev, I've been handed a note saying there was a hearing last week seeking to enforce against property in Mr Fomichev's wife's name. So that continues.

The point about this giving of cynical and dishonest evidence is this, my Lady: we would respectfully submit that the fact that the cynical willingness to produce false and dishonest evidence has yet again been exposed is a matter that your Ladyship should take into account when evaluating any of the evidence that Mr Abramovich and his witnesses have given.

Can I turn next to say something very briefly, again relating to the credibility of Mr Abramovich and his witnesses, concerning the failings to give proper disclosure. There is just one particular example of this that I would like to say something about, and that is the holding back of the bolshoi balance by

Mr Abramovich's team for a period of some six months before they decided to disclose it.

The only reason I'm raising this again, it's a point I think we make in our written closing, I don't have the reference --

MRS JUSTICE GLOSTER: Yes, I'm just trying to find out.

MR RABINOWITZ: 175 and following. Paragraph 175.

The reason I mention this now, my Lady, is because this was something that came up in Mr Sumption's closing where, yet again, he sought to explain it away in really rather dismissive language.

The first point to make about this issue of the disclosure of the bolshoi balance, it was not disclosed when general disclosure was made, it was only disclosed when witness statements were exchanged, and there doesn't appear to be a dispute that it was sat on in the sense of not disclosed for a period of six months after it was identified as something which was relevant to the trial. This is Ms Panchenko's evidence; at paragraph 178 we've set all that out.

Now, your Ladyship may recall that when dealing with the bolshoi balance, Mr Sumption told the court that the six month delay was due, and these were his words:

"... to the need to translate the spreadsheet from Russian ..."

This is at Day 39, page 17, lines 12 and following:

"... 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."

Now, I have to say, my Lady, that that explanation by Mr Sumption for this delay is, with respect, simply hopeless. If my Lady looks at the bolshoi balance, and I'm not inviting --

MRS JUSTICE GLOSTER: I've got it up on the screen.

MR RABINOWITZ: Okay. You will see that it is a ten-page document largely made up of numbers.

MRS JUSTICE GLOSTER: It was originally in Russian though, wasn't it?

MR RABINOWITZ: It was originally in Russian, and I'm not disputing that it needed to be translated but the numbers didn't need to be translated. And, as your Ladyship sees, the vast majority of the document is in numbers, and other than the numbers what your Ladyship sees the balance sheet contains, contains in the main, are column headings, which are simply all the months of the year, and row headings, which are generally names like Runicom, Sibneft and the like, or commonplace phrases such as "cash in" or "payments out".

It is, with respect, difficult to believe that

translating that document could be the work of any more than two or three afternoons, at most.

As for the suggestion that the bolshoi balance required detailed explanations which were quite complex, with respect, this also utterly fails to justify the failure to disclose. Disclosure could and should have been given immediately. If it were felt useful to put explanations for the document before the court, that could be done later. In any event, insofar as it is said we needed to understand the document in order to decide what to disclose, your Ladyship should know that Mr Shvidler has summarised the content of the bolshoi balance in two pages in his witness statement, that's at paragraphs 133 to 145 in his third witness statement E3/10/39. That again hardly supports the suggestion of a complexity of a sort that would justify suppressing this document for six months.

My Lady, it is, I would suggest, difficult to explain the delay in disclosing the bolshoi balance, other than on the basis that Mr Abramovich and his loyal team were using the time to decide whether or not they wanted to disclose it. But at least this was a document that they did eventually decide to disclose.

There are of course other documents where we say there is an absence of an adequate explanation for their

nondisclosure, including, of course, missing mobile phone bills, bank statements, credit card statements and, in particular, diaries. That, as your Ladyship will have seen, we deal with at paragraphs 180 to 183 of our written closing and I don't propose to get into the detail of that now.

Can I then move on, again to say something very shortly, about the drawing of adverse inferences from Mr Abramovich's failure to call certain witnesses to support his case. Again, for your Ladyship's note, this is dealt with in our written closing at paragraphs 194 and following, page 142.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Your Ladyship will see there that the three witnesses in respect of whom we say adverse inferences should be drawn are Mr Smolensky, Mr Fomichev and Mr Bosov. There is nothing I propose to add on my feet about Mr Smolensky or, for that matter, Mr Bosov, although there are some points relating to the position of those two witnesses that we will pick up in responding to my learned friend's latest 175-page effort.

MRS JUSTICE GLOSTER: Sorry, just before you go any further, the schedule you've produced, what are we going to call the document that you handed up today?

MR RABINOWITZ: We could call it schedule --

MRS JUSTICE GLOSTER: Shall we call it schedule 1?

MR RABINOWITZ: Claimant's --

MRS JUSTICE GLOSTER: I'm anticipating I'm going to be getting quite a lot of documents and I want to be clear what you're calling it.

Shall we call it claimant's schedule 1?

MR RABINOWITZ: Claimant's schedule 1.

MRS JUSTICE GLOSTER: I mean presumably there are some schedules --

MR RABINOWITZ: Claimant's schedule of errata.

MRS JUSTICE GLOSTER: Okay.

MR RABINOWITZ: I'm told its Magnum reference will be in B2 but your Ladyship will still want to have a title for that.

MRS JUSTICE GLOSTER: Right, thank you.

MR RABINOWITZ: That is not the document which will respond to the position of Mr Bosov and Mr Smolensky, that will be a document which responds to the 175-page document. We're not going to -- the document which we produce will simply take their schedule that they have produced and add another box at the end.

MRS JUSTICE GLOSTER: Yes, fine. So I'm calling the thing you've handed up today claimant's schedule 1.

MR RABINOWITZ: My Lady, having identified Mr Smolensky,

Fomichev and Bosov, as I've made clear, I'm not going to say anything further on my feet about Smolensky and Bosov. We are going to say something about what the defendants have said about them in their 175-page document in our response to that. I do however want to say something about the position of Mr Fomichev.

As we have identified in our written closing, Mr Abramovich and his team have plainly been in reasonably regular contact with Mr Fomichev for some years in the lead-up to these proceedings, and indeed have on occasion claimed to have relied before this court on information that it is alleged he has given to them. We identify some of those examples at paragraph 197 of our written closing.

My Lady, in the face of the obvious access that Mr Abramovich has had to Mr Fomichev, and indeed Mr Fomichev's apparent willingness to assist, if he could, Mr Abramovich and his cause, Mr Sumption was able to give just one reason, in his oral closing, for not calling Mr Fomichev. That was at Day 40, page 59.

What he said was that he was not prepared to call Mr Fomichev because, so he said, and these were his words:

"Mr Fomichev was directly engaged in the preparation of sham documents evidencing bogus transactions for the

purpose of laundering Mr Berezovsky's money [so that] it would [so he said] have been perfectly absurd for me to call Mr Fomichev bearing that in mind."

My Lady, can I make two observations about this as an attempt to justify Mr Abramovich's decision not to call Mr Fomichev. The first observation is this. It is of course Mr Abramovich's own case that both the Devonia agreement and indeed the Rusal second sale documentation, or at least some of it, were sham documents produced to assist in getting money into the western banking system. This being the case, it is difficult to see why it would have been absurd for Mr Abramovich to call Mr Fomichev; indeed by calling Mr Fomichev, Mr Abramovich would simply have been further proving his own case. I suggest therefore that this is obviously not a reason for not calling Mr Fomichev.

The second difficulty that there is with Mr Sumption's reason for not calling Mr Fomichev is that Mr Sumption had no difficulty in calling Mr Gorodilov, Ms Panchenko and Ms Khudyk, and indeed Mr Abramovich himself, all of whom had been engaged in one way or the other "in the preparation of sham documents evidencing bogus transactions", to use Mr Sumption's expression, for the purpose of misleading banks and others.

Indeed, the fact that documents were produced which were sham documents is in a sense Mr Abramovich's main defence in seeking to deal with some of the documentation produced in relation to Rusal and the second Rusal sale, and Ms Khudyk and Ms Panchenko have expressly acknowledged doing this, both in relation to certain of the Devonia transaction documents but also in relation to the commission agreements.

Mr Gorodilov, Mr Abramovich's trusted friend, was of course the architect behind the sham documents produced in relation to the ORT sale, suggesting that there had been a sale for 10 million with the remaining \$140 million consideration being paid by way of an option, your Ladyship will remember that. That was Mr Gorodilov who was the architect behind all this.

So all of these witnesses Mr Sumption did call were involved in producing sham documents, or had some involvement in sham documents, and they were called. That also suggests that the fact that a witness might have been involved, on Mr Sumption's case, with sham documents really was not the reason not to call that witness. That suggests that there is a different reason for not calling Mr Fomichev.

A third point to make about the non-calling of Mr Fomichev is that it appears to be inconsistent with

what Mr Tenenbaum was saying. Mr Tenenbaum seemed to be suggesting that they couldn't call Mr Fomichev or even ask him to give a witness statement because of his fear of Mr Berezovsky which, as I've already suggested, is utter nonsense.

Now, I don't need to remind your Ladyship that there can be no doubt that Mr Fomichev as a witness could have given evidence on a number of matters of central importance to the issues in this case. Your Ladyship will recall that Mr Fomichev was involved with Mr Berezovsky and Mr Patarkatsishvili almost throughout the time relevant to the issues in this case up to and including 2001. So he would have been able to give evidence about, among other things, the real nature of the relationship between Mr Berezovsky and Mr Abramovich in relation to their dealings in Sibneft and Rusal, as well as in relation to the intimidation issue, because he was at some of those meetings. Mr Fomichev could obviously also have given evidence about what was said by Mr Abramovich to have been a number of proposals allegedly made by him directly to Mr Abramovich or his team, and of course he was present at the meeting in Georgia when the Curtis notes were made.

MRS JUSTICE GLOSTER: Mr Rabinowitz, at paragraph 194 of your closing you refer to a case where the principles

relevant to the drawing of an adverse inference are set out. Are there any cases that lay down the principles as to whose obligation, if any, it is to call a witness? Or is that so fact-dependent that it's impossible to lay down principles?

MR RABINOWITZ: I don't know the answer as to whether there's any case which deals with the question of whether it's an obligation or not, but in my respectful submission, my Lady, it's unlikely that there will be a case because it is going to be fact-dependent.

MRS JUSTICE GLOSTER: But I mean in circumstances such as the present, is there any assistance that I can get from authority as to whom, if anybody, had the job of calling Mr Fomichev?

MR RABINOWITZ: We will look it up, my Lady.

MRS JUSTICE GLOSTER: I would be quite interested to know if there was any guidance.

MR RABINOWITZ: Indeed. In my respectful submission, it's very likely to be entirely fact-dependent. Of course, in the present case, this person may have had some connection with Mr Berezovsky but they're in the middle of litigation against each other.

MRS JUSTICE GLOSTER: Of course.

MR RABINOWITZ: That's what we'd say anyway.

Now, as I say, those are the matters in relation to

which Mr Fomichev could have given evidence. He was plainly, in a sense, around at a lot of the key incidents in this case. As I've already mentioned, as your Ladyship recalls, there has of course been a substantial and very bitter falling out between Mr Berezovsky and Mr Fomichev, so much so that there is the litigation that your Ladyship has referred to earlier.

Plainly Mr Abramovich or his team, who appear to be on perfectly good terms with Mr Fomichev, could have called him, and indeed it is clear from what Mr Sumption said that they made a decision not to call him. And the question for your Ladyship is whether a good reason has been put forward for them not calling Mr Fomichev.

In our respectful submission, no good reason has been put forward for not calling Mr Fomichev. The reason suggested by Mr Sumption in closing is plainly not a good reason. Mr Tenenbaum's reason about Mr Fomichev being scared is plainly a hopeless reason. In those circumstances, my Lady, we respectfully submit that your Ladyship can and should draw the following inferences from Mr Abramovich's failure to call Mr Fomichev, and they are these.

First, that if called he would have been unable truthfully to support Mr Abramovich's case that there

was no partnership between Mr Abramovich on the one hand and Mr Berezovsky and Mr Patarkatsishvili on the other.

Secondly, that if called he would have been unable truthfully to support Mr Tenenbaum's evidence that the Georgia meeting with Mr Curtis, as recorded in the Curtis notes, did not occur.

And, thirdly, that if called he would have been unable truthfully to support Mr Abramovich's evidence as to the proposal supposedly made by him in advance of the Le Bourget meeting.

Since we have set all this out in writing I wasn't proposing, subject to your Ladyship, to say anything further about it.

MRS JUSTICE GLOSTER: Yes. You've formulated it slightly differently from ...

MR RABINOWITZ: We have, my Lady. I thought I needed to do something differently or your Ladyship might get bored.

MRS JUSTICE GLOSTER: No no.

So what you've just said doesn't include 1 and 2, does it?

MR RABINOWITZ: It does include 1 because I mentioned the proposals.

MRS JUSTICE GLOSTER: Oh, right.

MR RABINOWITZ: 2 is the corollary of -- well, to some extent it's the corollary of 55.1. It's encapsulated --

MRS JUSTICE GLOSTER: Anyway, I've got a note of what you now say are the inferences to be drawn.

MR RABINOWITZ: Can I just enquire whether your Ladyship proposes to take a morning break?

MRS JUSTICE GLOSTER: Yes, I will. I'll take a break now. Ten minutes.

(11.28 am)

(A short break)

(11.45 am)

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

MR RABINOWITZ: My Lady, I turn now to the Sibneft claim.

By way of a road map, I can tell your Ladyship that I propose to deal first with the 1995 and 1996 agreements, then with the ORT and Sibneft intimidation, and finally with the choice of law issues. Since these again are all topics that we've covered in detail in our written closing I can take most of these fairly shortly, I hope.

So, my Lady, the 1995 agreement, you will have seen from section E of our written closing, that begins at around page 172, that we say that a number of disputes concerning the 1995 agreement, for example those relating to whether there was indeed an agreement, and as to what Mr Berezovsky did by way of contribution to the creation and acquisition of Sibneft, were largely

resolved over the course of the trial. And what is left in issue can be described in different ways but essentially it comes down to this question: did Mr Berezovsky, Mr Abramovich and Mr Patarkatsishvili in 1995 agree a partnership in respect of the creation and acquisition of Sibneft, with all the usual incidents of such an agreement, or did Mr Berezovsky and Mr Abramovich alone enter into some other relationship, a non-binding relationship, where Mr Berezovsky provided protection for a fee. That of course is Mr Abramovich's case.

Can I begin by reminding your Ladyship of what we would respectfully submit is the key evidence that will assist your Ladyship in relation to determining the nature and content of the 1995 agreement. There are seven aspects of the evidence that, in our respectful submission, are particularly important in this regard.

First and foremost we have the Le Bourget transcript. We set that out in section E2 of our written closing, paragraphs 259 and following, where we deal with the significance of the Le Bourget recording. We deal there, of course, also with the fact that for some five months after receiving the Le Bourget transcript Mr Abramovich initially refused to accept the authenticity of that document, no doubt hoping to find

a way to avoid the transcript becoming evidence at trial.

Ultimately, of course, Mr Abramovich had no choice but to accept the authenticity of the document. And when the attempt to challenge the authenticity of the document disappeared, what one had instead, as your Ladyship will recall, was a persistent attempt by Mr Sumption throughout the trial to seek to diminish the importance of the Le Bourget transcript, and one well understands why it was in Mr Abramovich's interests that he should do so. "Rambling, obscure and possibly incomplete", was how Mr Sumption described it in closing, having described it earlier as "rather turgid". That was at Day 7, page 44.

But my Lady, whether or not Mr Sumption regarded the transcript as a gripping read, the fact is that it is, we would submit, plainly a key if not the key piece of evidence before the court in relation to a number of issues. That is because it is one of the few pieces of evidence available to the court that provides a contemporaneous and indisputably genuine window into the nature of the relationship that existed and the arrangements that had been made between Mr Abramovich and Mr Berezovsky and Mr Patarkatsishvili at that time.

Of course, we submit that the exchanges between the

parties at Le Bourget, including of course the references to Mr Patarkatsishvili and Mr Berezovsky's entitlement to dividend payments in respect of Sibneft, and with the repeated reference by Mr Abramovich and Mr Patarkatsishvili to the Sibneft interests as being "our interests", and with the discussion of Mr Patarkatsishvili and Mr Berezovsky about their wishing to have their interests in Sibneft formally and legally recognised, provides very strong support for Mr Berezovsky's case and is very difficult indeed to square with Mr Abramovich's case unless, as Mr Abramovich continually sought to do, one ignores or distorts the words the parties used.

Now, your Ladyship has our submissions on Le Bourget set out from page 177. Put shortly, my Lady, we would submit that Mr Abramovich was simply unable to provide any satisfactory explanation for the exchanges at Le Bourget which suggest that, contrary to his case, Mr Berezovsky and Mr Patarkatsishvili were indeed his partners in Sibneft.

But, of course, it's not just the Le Bourget transcript that we would submit presents an insurmountable obstacle to Mr Abramovich's case. Can I then turn to the second key piece of evidence supporting Mr Berezovsky's case on the 1995 agreement, and that is

of course the Curtis notes, because they are not only relevant to Rusal but they're also relevant to Sibneft. Those, as your Ladyship will recall, were produced at a meeting in Georgia attended by, among others, Mr Patarkatsishvili, Mr Curtis, Mr Fomichev and Mr Tenenbaum.

I say that this is another key piece of evidence because, as your Ladyship will recall -- and I think we've set this out at paragraphs 1309 and following, it's actually in volume 2, my Lady, at page 749 -- the Curtis notes expressly refer to Mr Berezovsky, Mr Patarkatsishvili and Mr Abramovich as all being shareholders of Sibneft. And there is also the express statement in the notes that "we", referring to Mr Patarkatsishvili and Mr Berezovsky, sold Sibneft.

Now, if that is right and those notes are genuine, Mr Tenenbaum is not recorded as having suggested in any way any disagreement with that, again that provides a major problem for Mr Abramovich's contention that he and he alone was the owner of Sibneft. That is why, of course, as your Ladyship will recall, a strenuous effort was made, especially by Mr Tenenbaum, to seek to challenge the authenticity of the Curtis notes, including, as I've already been submitting, the attempts by Mr Shvidler and Mr Tenenbaum to claim some knowledge

of their falsity from Mr Fomichev, an attempt that I would respectfully submit was discreditable.

Now, as your Ladyship knows, still on the Curtis notes, it is not disputed -- this is a point we make at paragraph 1309 and following -- it is not disputed that those notes are in Mr Curtis's handwriting. It is also not disputed that Mr Curtis handed those notes to his secretary at some time after the meeting in Georgia prior to his death on 3 March 2004. And it's also not disputed that there was a meeting of the sort described in the Curtis notes, attended by Mr Patarkatsishvili, Mr Tenenbaum and Mr Fomichev, and that it took place in Georgia on 25 August 2003.

Now, your Ladyship will recall that Mr Tenenbaum says that whilst he was in Georgia at that time, the discussions that he was a party to were not as recorded but, he says, instead related to a prospective Brazilian football investment. My Lady, that being the case, that being Mr Tenenbaum's evidence, it follows that there is no possibility that the Curtis notes are simply a misinterpretation of the meeting which Mr Tenenbaum says took place. Either they are accurate, as we submit they are, or they are a deliberate forgery created by an English solicitor, Mr Curtis, and created for some reason which has never been adequately explained by

Mr Abramovich. Those are the choices.

Now there are, as we set out in the written closing, three particular features which point to the authenticity of the Curtis notes, point to them being authentic.

The first feature in terms of significance is how uncannily accurate the Curtis notes are. In particular, your Ladyship will recall the Curtis notes recalled --

MRS JUSTICE GLOSTER: I'm just going to get them up actually. I've got the reference.

MR RABINOWITZ: H(A)59/110.001.

MRS JUSTICE GLOSTER: Perhaps they could come up on the screen.

MR RABINOWITZ: They perhaps want to take it from the typed version of that which your Ladyship will have at H(A)59/110.005.

Does your Ladyship have them?

MRS JUSTICE GLOSTER: I'm just getting it.

Okay, what's the reference to the typed page?

MR RABINOWITZ: H(A)59/110.005 is where they start.

MRS JUSTICE GLOSTER: Thank you. Yes, I have them now.

MR RABINOWITZ: I was making points addressed to the three particular features which point to the Curtis notes being authentic, and the first point in terms of significance is how uncannily accurate the Curtis notes

are. In particular, as your Ladyship sees, the Curtis notes record that Rusal was at that time owned by six BVI companies, each of which were bearer share companies owned 50/50 by Mr Abramovich and Mr Deripaska.

Your Ladyship, I think, has that on page 006, H(A)59/110.006, card two, side three.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: This information we submit -- well, there's no doubt that this information was information which Mr Tenenbaum had, but it's also information which Mr Curtis would not have had. My Lady, no credible explanation has been advanced by Mr Abramovich for how else Mr Curtis might have acquired this knowledge, if not from Mr Tenenbaum at this meeting.

Some attempt has been made to suggest that Mr Fomichev might have provided this information to Mr Curtis, as your Ladyship may recall, but there are three points which might be made about this and they are these. First, that there is no proper explanation for how Mr Fomichev would himself have acquired this information. Secondly, that there is no document or other corroborative evidence which gives any reason to believe that this is what occurred. Third, Mr Abramovich chose not to call Mr Fomichev, and so the court may infer that this is not the evidence which

Mr Fomichev could truthfully have given.

Now, I should also refer to card two, side four as well as card two, side three. Your Ladyship sees the first line of card two, side four:

"T -- Problem -- shareholders of R.A -- all of shareholders in holding [company] we are partners of third party -- BVI's held 50/50 NOT RA."

Your Ladyship may also have picked up the suggestion, this is at paragraph 440, sub-paragraph 5 of Mr Abramovich's written closing, that Mr Fomichev or Mr Curtis might have learnt about the structure of the holdings in Rusal in two particular ways, either because it was said the \$1.3 billion payment to Devonian had been structured through dividend payments from Mr Abramovich's aluminium interests, or because of a letter dated 8 August 2003 which confirmed the source of funds for payments from Espat, and your Ladyship may recall those letters.

My Lady, when your Ladyship comes to consider this issue I would invite your Ladyship to follow up the references given by my learned friends in support of that submission because I would submit that it is perfectly clear that neither Mr Fomichev nor Mr Curtis could possibly have learnt of the information in that way.

The first reference that is given by my learned friends is to the evidence of Ms Panchenko, at paragraphs 84 to 92 and 97 of her witness statement. But when your Ladyship looks at that, your Ladyship will see that those paragraphs refer to the \$1.3 billion payment coming from Rusal Trade Limited, which Ms Panchenko describes as the trading company of the Rusal group, and in these paragraphs Ms Panchenko explains that Mr Abramovich held his interests in Rusal through Madison, and that Pax was designated to become a shareholder in Madison in order to receive dividends.

In other words, my Lady, there is no information provided here that would have enabled Mr Fomichev to know about the use of various shares, nor as to the fact that the holding companies were held on a 50/50 basis between Mr Abramovich and Mr Deripaska, which are the two features of the Curtis notes which we've identified as containing information not otherwise available to Mr Curtis.

The second bit of evidence referred to here by my learned friends is the letter from Mr De Cort and Mr Curtis dated 8 August 2003 which, for my Lady's note, is to be found at H(A)62/26.

Your Ladyship may recall that that letter --

MRS JUSTICE GLOSTER: Just a second, I'm just trying to find

that in your closing.

MR RABINOWITZ: I think it's dealt with in the Rusal section, my Lady, so presumably under section --

MRS JUSTICE GLOSTER: Is this at 1326, round there, 1327?

MR RABINOWITZ: My Lady, this won't be dealt with in this way in our closing because, although it appears in the written closing, I'm not sure we had time to deal with it in detail.

MRS JUSTICE GLOSTER: Right, just a second.

Okay, thank you.

MR RABINOWITZ: So, my Lady, the second bit of evidence referred to here by my learned friends, as I say, is the letter from Mr De Cort to Curtis & Co dated 8 August 2003 which, for your note, is at H(A)62, page 26 H(A)62/26.

What your Ladyship will see from that letter is that it states that Bluewater holds 50,000 shares of Espot Ventures Limited. It says that Espot has a 100 per cent subsidiary, Madison Equities Corporation. And it says that Madison has a 50 per cent shareholding in Rual Trade Limited, but that is all. And again, there is no information provided in that letter as to the use of bearer shares, nor as to the fact that the holding companies were held on a 50/50 basis between Mr Abramovich and Mr Deripaska. So the suggestions by

my learned friends really go nowhere.

But of course, as your Ladyship may recall, it's not just the way in which the Rusal shares were held that would have been known to Mr Tenenbaum and not the other people at this meeting. Just looking at the Curtis notes, if your Ladyship still has it, your Ladyship will see, at the bottom of page 006 going on to 007, if your Ladyship has that --

MRS JUSTICE GLOSTER: I have that.

MR RABINOWITZ: Your Ladyship sees there the statements by Mr Tenenbaum recorded in the Curtis notes that Mr Abramovich's team had made disclosures in the market, and if your Ladyship goes over the page you'll see that it's to banks and insurance companies about the way in which interests were held in Rusal. What is striking about that, my Lady, is that your Ladyship will recall that an almost identical statement was made by Ms Panchenko to Mr Streshinsky in June 2004 after Mr Curtis's death.

If your Ladyship has H(A)76, page 51T H(A)76/51T, and your Ladyship will recall cross-examination about this:

"As we discussed on the telephone, in order to abide by the assurances to the banks that you made previously..."

So again, one has this point about things that have been said to banks which prevent dealing with Rusal in a particular way.

Now, again, Mr Tenenbaum plainly would have known about what had been said to banks about Rusal, but no one else at that meeting would have known about that. Certainly it's difficult to see how Mr Curtis could have known about that or even Mr Fomichev. And that, in our respectful submission, again reinforces the authenticity of the Curtis notes because there is no way Mr Curtis could have known about this point, about what had been disclosed to banks.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: My Lady, the next feature of the Curtis notes in terms of significance, or in terms of, we submit, showing that they are authentic, is what we would submit is the obvious falsity of Mr Tenenbaum's alternative explanation for what was discussed at the Georgia meeting.

As your Ladyship will recall, Mr Tenenbaum's evidence was that the meeting in Georgia was actually to discuss the possibility of investing in a Brazilian football club.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: But again, as your Ladyship may recall from

the cross-examination, the difficulty with that is that this meeting predated Mr Patarkatsishvili's interest in Brazilian football by almost a year which makes Mr Tenenbaum's suggestion simply impossible.

Now, Mr Sumption in his closing speech, and this was at Day 40, page 53, sought to cast doubt on the suggestion that Mr Patarkatsishvili's first connection with Brazilian football was nearly a year later. But with respect to him, there really was no evidential basis at all for the submission that he was making. And the fact -- and I say that because the fact that Mr Patarkatsishvili's first contact with Brazilian football was only a year later is something that is recorded in an official document produced in Brazil, commencing proceedings there, page 5 of that note.

I think we've dealt with this in our written closing, my Lady, at paragraph 1329.

That document, the official Brazilian document, at H(G)28, page 218 H(G)28/218, records that the introduction of Kia Joorabchian to representatives of Corinthians Football Club was in a meeting in Sao Paulo in mid-2004. And on page 6 of that document H(G)28/6 it is explained that thereafter in August 2004, Joorabchian and the Corinthians men travelled to London in what was described as the first of their trips to

England. And it was there that they met Mr Berezovsky, that's to say in August 2004, and then after that they travelled with him to Georgia where they were introduced to Mr Patarkatsishvili.

So there is, in my respectful submission, no real doubt as to the timing of Mr Patarkatsishvili's involvement in Brazilian football.

In addition, my Lady, and this is a point that we note at paragraph 1329, subparagraph 3 of our written closing, there's not a single document which anyone has been able to produce, including the family defendants who would have had to make disclosure of this, which shows any earlier contact by Mr Patarkatsishvili with Brazilian football. This further cements the conclusion that at the time Mr Tenenbaum went to Georgia, Mr Patarkatsishvili was still nearly a year off anything to do with Brazilian football.

Now added to that, as your Ladyship will recall, Mr Tenenbaum in his cross-examination, in what I would respectfully submit was a rare example of him being honest about the position, in fact accepted that in 2003, Brazilian football was still a twinkle in Mr Patarkatsishvili's eye. That was at Day 28, page 118, line 5.

So as I say, my Lady, there really is no basis for

the suggestion by Mr Sumption of some earlier contact in 2003 by Mr Patarkatsishvili with Brazilian football, which again suggests, as I've submitted, that Mr Tenenbaum's story is untrue.

Finally, as regards the Curtis notes and the authenticity issue, we also rely on the weak attempt by Mr Tenenbaum in his written evidence to seek to put forward a variety of reasons why the meeting could not have taken place as recorded by Mr Curtis; an attempt which I submit was further weakened by the obvious untruths in Mr Tenenbaum's witness statement on the strike-out application where, as your Ladyship may recall, he had claimed to have not performed any direct role in relation to the acquisition or establishment of either Rusal or Sibneft. Your Ladyship will recall that.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: You also I think have there, paragraph 1333 and following of our written closing --

MRS JUSTICE GLOSTER: Yes, I have it.

MR RABINOWITZ: -- where we identify in how many respects we submit Mr Tenenbaum's evidence in his strike-out application evidence was obviously untrue.

At trial Mr Tenenbaum in fact had to accept that, contrary to the impression he had tried to convey in his

evidence to the court in the context of the strike-out application, he was involved in the original aluminium acquisitions, he was involved in drafting and indeed initialling every page of both the 15 March 2000 share purchase sale agreement, and the 15 May 2000 version, and he was involved in the shareholders agreement between Mr Abramovich and Mr Deripaska, and indeed he was involved in the proposals from May 2003 onwards to restructure Rusal.

My Lady may also recall from the evidence Mr Tenenbaum's pious assertion that he would not discuss Mr Abramovich's matters in front of people he did not know, a point I would submit that was also shown to be of no significance given that he was at the meeting in the place of Mr Abramovich who had been invited but could not attend, and that he had in fact met both Mr Patarkatsishvili and Mr Fomichev previously, and that Mr Curtis was there as Mr Patarkatsishvili's lawyer and was in any event a person well known to both Mr Abramovich and Mr Shvidler, each of whom had had previous dealings with Mr Curtis.

Finally, of course, there was the bogus suggestion of a language barrier, which was really the primary suggestion when the trial started, some language barrier which it was suggested meant that one couldn't -- that

the Curtis notes couldn't be authentic. My Lady, that was a suggestion that rather collapsed once it became clear that everyone who spoke at the meeting in fact spoke English.

We therefore submit that there is no basis for the contention that the Curtis notes are anything other than genuine. That being the case, my Lady, we submit that they really do provide another very substantial hurdle to the attempt by Mr Abramovich to deny that the effect of the 1995 agreement was to make Mr Patarkatsishvili and Mr Berezovsky and himself partners in Sibneft.

Now, I wasn't going to say anything else about the Curtis notes in relation to Sibneft. I'm going to come back to them in relation to Rusal.

MRS JUSTICE GLOSTER: Yes, fine.

MR RABINOWITZ: That was the second area of evidence that I would wish to emphasise.

The third matter that I would wish to emphasise in the context of your Ladyship's consideration of what was agreed in 1995 is the nature of the relationship between Mr Abramovich and Mr Berezovsky. Again, for your Ladyship's note, this is something we deal with I think beginning at page 247 of our written closing, paragraph 376 and onwards, 247 of volume 1.

My Lady, the fact that Mr Abramovich and

Mr Berezovsky were indeed friends was something that was well evidenced at trial and, indeed not seriously disputed by Mr Abramovich's counsel in closing. You will recall the extensive evidence of Mr Berezovsky and Mr Abramovich holidaying together and the close friendship of their families, not to mention Mr Abramovich's admission in paragraph D4 of his defence that he and Mr Berezovsky were indeed friends.

In our submission, such evidence is very much more -- such evidence which points to the friendship between these men is very much more consistent with there having been a partnership relationship between them than it is with the sort of relationship between them that Mr Abramovich suggests, which is a relationship of protector and protectee.

My Lady, I would submit that this, the fact that they were friends was damaging to Mr Abramovich's case, was a point well understood by Mr Abramovich which is why, in his witness statement, he made a tentative attempt to claim that he and Mr Berezovsky had never really been friends. Your Ladyship will recall him being cross-examined on this.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: But by the end of his evidence that suggestion again had really rather disappeared and, in

my submission, the suggestion was always a rather hopeless one.

My Lady, the fourth aspect of the evidence that we would submit is strongly supportive of Mr Berezovsky's case, and contrary to that of Mr Abramovich, is the fact that, as again became clear from the evidence, the work of Mr Berezovsky and Mr Patarkatsishvili in 1995 went well beyond the provision of mere political lobbying or protection which is, of course, what Mr Abramovich claims the agreement was about. He says that was the only contribution that Mr Berezovsky was to make for which he'd be provided with a fee.

Again, my Lady, just so that the point is clear, what Mr Abramovich says was agreed is that Mr Berezovsky would lobby and provide krysha. Now, if the facts show that what Mr Berezovsky did went well beyond just lobbying; if, as I submit, the facts show that Mr Berezovsky was involved in funding or in seeking to fund the bid, and indeed in seeking to ensure that the bid succeeded, that, in our respectful submission, is again entirely consistent with what Mr Berezovsky says had been agreed but it is not consistent with what Mr Abramovich says had been agreed. In our respectful submission, the evidence does show that Mr Berezovsky's contribution went well beyond just lobbying.

Your Ladyship may recall, for example, the evidence relating to the role Mr Berezovsky played in securing funding for the Sibneft bid. The evidence went to that point in three different ways. Your Ladyship will recall first the evidence showed that Mr Berezovsky was actually vital in securing the support of the management of the Noyabrskneftegas and Omsk Oil Refinery, which was key for funding, and your Ladyship sees the evidence on this set out at paragraphs 313 and 314 of our written closing, that's at pages 208 onto 212 of volume 1.

Indeed, we also set out at paragraphs 321 and following the evidence of Mr Abramovich which explained how the 1995 auction was financed on the strength of long-term guaranteed oil supply contracts granted by the companies(?). The point being this: without -- Mr Abramovich acknowledged that without Mr Berezovsky, he would not have got the cooperation of the management of Noyabrskneftegas and Omsk Oil Refinery which was absolutely critical for the purposes of financing the acquisition.

The second way in which Mr Berezovsky was involved in funding was, as your Ladyship will recall from the evidence, he introduced Mr Abramovich to SBS Bank, and indeed gave Mr Smolensky a personal assurance, something that was, as Mr Smolensky told the Russian

investigators, a necessary part of Mr Smolensky and thus SBS's willingness to become involved in the deal. Your Ladyship has that evidence set out at paragraphs 201 to 208 of our written closing, that's at pages 146 to 149. It is also dealt with at paragraphs 325 to 327 of the written closing. The earlier paragraphs deal with the evidence of Mr Smolensky to the Russian investigators and the later paragraphs deal with the evidence of Mr Abramovich and Mr Grigoriev relating to SBS's involvement in the Sibneft auction.

My Lady, the third particular way in which Mr Berezovsky was important in raising funding for the Sibneft auction was in his persuasion of Mr Khodorkovsky of Bank Menatep that he should risk Bank Menatep's own funds. This is at paragraph 328 of our closing, page 221. He was the one who persuaded Mr Khodorkovsky of Bank Menatep that he should risk Bank Menatep's own funds in two ways. First, by providing a necessary back-to-back guarantee for SBS's bank guarantee of the NFK bid and, second, by lodging its own bid with its own deposit and its own guarantee in the Sibneft auction which would ensure that the 1995 auction was formally valid.

My Lady, there is another example of Mr Berezovsky being involved in funding which undermines

Mr Abramovich's case, and it is this, because it wasn't just those three ways which were in fact successful attempts by Mr Berezovsky to assist with the funding, there was also Mr Berezovsky and Mr Patarkatsishvili's involvement in seeking funding which was not successful. But the mere fact that they were involved in that again is a point against Mr Abramovich, because why would they be involved in this on Mr Abramovich's case? They wouldn't be involved in this at all.

The evidence I have in mind, my Lady, is for example Mr Berezovsky's unsuccessful attempt to raise funds from Mr Soros, for which Runicom prepared a package of documents. For your Ladyship's note, the package of documents prepared, so that Mr Berezovsky could see if he could go and get funds from Mr Soros, is at H(A)02, page 194 H(A)02/194.

But it isn't only just in relation to funding where Mr Berezovsky was involved in a way which is inconsistent with Mr Abramovich's case. There was other work that Mr Berezovsky and his team did with regard to the bid which suggests that his role plainly did go beyond lobbying, and your Ladyship -- and indeed beyond even Mr Abramovich's elastic description of krysha. Your Ladyship will recall, for example, the evidence that Dr Nosova was involved in going through the bid

documents, and he was the one, I think the evidence did show, who discovered the flaw in Inkombank's bid for the 1995 auction. We set that out in I think paragraph 339 of our written closing, page 225.

So there is Dr Nosova becoming involved in reviewing the documentation and indeed being instrumental certainly in the elimination of Inkombank, and also there is Mr Patarkatsishvili flying to Sameko to persuade them not to lodge their own rival bid. Both, I would submit, activities not consistent with Mr Abramovich's case about krysha but entirely consistent with what Mr Berezovsky says was agreed, namely that there was to be a partnership and they would both work towards this.

My Lady, that was the fourth aspect of the evidence in relation to the 1995 agreement to which I would draw your attention. The fifth aspect of the evidence that I would emphasise as strongly supportive of Mr Berezovsky's case is the large number of people who believed, based on their contemporaneous involvement with the parties, that Mr Berezovsky and Mr Patarkatsishvili did indeed have an interest in Sibneft. Now, of course, it may be said that they were wrong, but the fact that they did believe this, in our respectful submission, is a strong pointer towards this,

namely that Mr Berezovsky and Mr Patarkatsishvili did have an interest, being true.

Just going through the list of people who did so understand, first and foremost of course is Mr Berezovsky himself.

MRS JUSTICE GLOSTER: Where do I find this? Have you set this out somewhere or not? It doesn't matter if you haven't but, if you have, I'll just make a note.

MR RABINOWITZ: I think this is largely responsive, my Lady. This is very likely spread around the --

MRS JUSTICE GLOSTER: Okay, don't worry. I'll just make a different --

MR RABINOWITZ: Insofar as I can give your Ladyship I will. I tend to have the references --

MRS JUSTICE GLOSTER: It's no problem. It's just if you have dealt with it somewhere, I'll go there.

MR RABINOWITZ: No, I will give your Ladyship it if I get to one.

So first and foremost among the people who believe Mr Berezovsky and indeed Mr Patarkashivili had an interest in Sibneft is Mr Berezovsky himself.

Now, your Ladyship will recall that, at paragraph 61 of Mr Abramovich's written closing, there is, we say, in fact a concession that Mr Berezovsky may have believed that Sibneft was his company. Your Ladyship will also

recall that Mr Sumption, in his closing speech -- this is at Day 39, page 76 -- sought to suggest that this was not a concession. In our respectful submission, it's difficult to see what else it could be. It does actually say, "Mr Berezovsky may have believed that Sibneft was his company".

In any event, my Lady, the fact that Mr Berezovsky plainly did and indeed does believe that he acquired a stake in Sibneft in 1995 was, in any event, clear from the evidence, which is of course why Mr Sumption, at paragraph 61, was led to acknowledge that Mr Berezovsky may have believed this.

It wasn't just Mr Berezovsky who believed he had an interest in Sibneft as a result of the 1995 agreement, Mr Abramovich in his written closing also accepts that Mr Patarkatsishvili was also, and the word he uses was "likely" to have believed that he and Mr Berezovsky did have an interest which they sold in 2001. That, for my Lady's note, is at paragraph 61.3 of my learned friends' written closing. So it's not just a concession relating to Mr Berezovsky maybe believing this but saying that Mr Patarkatsishvili is likely to have believed this. Again, I would submit that the concession was rightly made, given that the Patarkatsishvili -- the Badri proofing sessions and in particular his evidence given

to Ms Duncan and Mr McKim reflects this, as does their overall impression of his evidence.

Now, of course consistently with this, your Ladyship will recall that Mr Patarkatsishvili's widow and family have, in other proceedings, given evidence that Mr Patarkatsishvili had owned stakes in Sibneft and in Rusal, as indeed in other proceedings did Mr Fomichev, the individual who of course managed the finances for both men. For that, your Ladyship does have a reference in the written opening rather than the closing. In our written opening, that is set out at paragraphs 246 to 256, page 131 and following; there's a cross-reference to this, my Lady, at paragraph 386.4 of our written closing at page 253. We give the reference to the evidence given in those proceedings by Mr Patarkatsishvili's widow and family and indeed to Mr Fomichev's evidence.

We also give the reference in our written opening -- this is at paragraph 270 to 272 -- to the affidavits of Mr Fomichev and Mr Kay confirming their belief that Mr Berezovsky and Mr Patarkatsishvili owned a very substantial percentage of Sibneft. That's at page 145 of our written opening.

In addition to Mr Berezovsky and Mr Patarkatsishvili so believing, and indeed to Mr Patarkatsishvili's family

so believing and Mr Fomichev and Mr Kay as well, there are also, as your Ladyship may recall, the various Russian businessmen with whom Mr Berezovsky and Mr Patarkatsishvili had dealings in relation to Sibneft who seem uniformly to have taken the view that Mr Berezovsky was at least a part-owner in Sibneft. There was, for example, Mr Smolensky who thought that Mr Abramovich was, to use his words, playing a supporting role compared to Mr Berezovsky. That, as your Ladyship will recall, is what he told the Russian investigators.

There was also Mr Viktor Gorodilov who, again, in evidence he gave to the Russian investigators, told them that he considered Abramovich and Berezovsky to be the actual owners of Sibneft. Again, that was, your Ladyship will recall, the documents which we obtained from the French proceedings which related to interviews conducted with the Russian authorities. Again, we've given a reference to Mr Gorodilov's evidence at paragraph 386.4 of our written closing, that's at page 254. If your Ladyship is there, your Ladyship may want to note that it is set out and dealt with more fully in our written opening at paragraphs 258 and 259, page 139.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Then there was Mr Nevzlin who told the court that he had had many discussions with Mr Abramovich and Mr Shvidler in which they both said not only that Mr Berezovsky had an interest in Sibneft but that he had the last word when it came to taking decisions for the company. That was paragraph 23 of his statement which, for my Lady's note, is at D1, tab 4, page 64. If your Ladyship also notes paragraph 20 of his statement, Mr Nevzlin explains what he meant by "interest" when he said that Mr Khodorkovsky had told him that Mr Berezovsky and Mr Patarkatsishvili had a 50 per cent stake in Sibneft. So that's Mr Nevzlin who believed it.

There is also, of course, Mr Reuben who, when he sold aluminium assets, explained to my Lady that he thought he was selling to Sibneft shareholders, by which he meant, as he explained, Mr Patarkatsishvili, Mr Berezovsky and Mr Abramovich. That is covered, for my Lady's note, in our closing submission at paragraphs 1120 to 1122, volume 2, page 643.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Then there was Mr Anisimov. We say, as my Lady knows, that Mr Anisimov regarded Mr Berezovsky and Mr Patarkatsishvili as owners of Sibneft. As your Ladyship may recall, we say this is clear in particular from Mr Moss's attendance note of 5 June 2001. Your

Ladyship may recall that, it's at H(A)35, page 161 H(A)35/161. It's Mr Moss's attendance note where he went to, I think it was Baden Baden, and went through the Devonia agreement with Mr Anisimov sitting there, the Devonia agreement of course recording that Mr Patarkatsishvili and Mr Berezovsky had an interest in Sibneft. We've dealt with that at paragraphs 952 to 956 of our written closing. I don't know whether your Ladyship wants to turn the document up but it is, I think -- what we say about it is set out in our written closing.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Of course, it's right to acknowledge, as your Ladyship may recall, that Mr Anisimov pleads a combination of ignorance and amnesia in relation to his interaction with Mr Moss and the Devonia agreement but, in our submission, it's difficult to see how one can give much weight to his evidence, and no one suggests that Mr Moss made up his attendance note. This is then a further example of a Russian businessman in fact believing that Mr Patarkatsishvili and Mr Berezovsky did have a stake in Sibneft in 2001.

So, my Lady, that is the point about everyone they come into contact with thinking they have an interest in Sibneft and that was the fifth aspect of the evidence

that I wanted to stress.

The sixth aspect of the evidence that I would wish to stress is this, and that is again the question of the payments made by Mr Abramovich to Mr Berezovsky and Mr Patarkatsishvili because, in our submission, these payments clearly support Mr Berezovsky's partnership case rather than Mr Abramovich's krysha case. The points on this your Ladyship is aware of and they can therefore be shortly stated, and I repeat them only because of their significance.

The first point to make about the payments is that the payments made by Mr Abramovich to Mr Berezovsky were clearly not correlated with any activity of Mr Berezovsky.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Your Ladyship will recall that the payments increased over time, a fact which is utterly inconsistent with the krysha allegation. The reason I say it's inconsistent with the krysha allegation is because Mr Abramovich could not name a single act of krysha provided by Mr Berezovsky after 1995. Notwithstanding that, we have an increase in the level of payments. By contrast, of course, the payments were correlated with profits made by Mr Abramovich from his control of Sibneft, as would be expected from

a partnership arrangement. That is the first point.

Secondly, and this is obviously a closely connected issue, there is again the \$1.3 billion payment and that is the overarching point I referred to when I began my closing submissions. As my Lady is aware, you are faced with two alternative explanations for that \$1.3 billion payment. On the one hand, Mr Berezovsky says that he and Mr Patarkatsishvili sold their shares in Sibneft for \$1.3 billion in 2001; I would submit that that is an obviously plausible story. On the other hand, by contrast, Mr Abramovich has come up with a range of explanations for why, when in a position of great power and influence in Russia, he should pay \$1.3 billion to a political exile and enemy of the Russian president in order to terminate a nonbinding agreement.

Your Ladyship has this dealt with and analysed at paragraphs 914, that's page 545 of volume 2, so it's 914 and following. We set out a summary and an analysis of the various explanations which Mr Abramovich came up with from time to time. I would submit that those explanations range from the utterly bizarre, such as the fear that Mr Berezovsky might bounce back because he previously had recovered from Hepatitis C, as providing a reason for a payment at that level, to the wholly implausible, such as that Mr Abramovich paid

\$1.3 billion to Mr Berezovsky out of loyalty and respect. My Lady, \$1.3 billion is, in anyone's language, a huge sum and that is so even before any account is taken of the 25 per cent further top-up payment which Mr Abramovich says he agreed to make when he paid a further \$375 million in June 2002.

Leaving aside that by June 2001 Mr Berezovsky had been in exile for many months and leaving aside the fact that he had provided no services in relation to Mr Abramovich in respect of Sibneft for many years, it is, we submit, quite inconceivable that Mr Abramovich would have thought that he had to agree to pay \$1.3 billion to terminate an arrangement that he had with Mr Berezovsky. In fact, we would submit that the suggestion is, with respect, absurd.

Your Ladyship will have in mind that this was something like double the total amount that, on anyone's case, Mr Abramovich had ever previously paid to Mr Berezovsky. Indeed, according to evidence that Mr Shvidler was happy to give in one of his witness statements, this was an amount which Mr Shvidler in his evidence was claiming was equal to the whole value of Sibneft at that time. I would submit that that evidence was utter nonsense, but this is what Mr Shvidler was happy to say. That was at paragraph 203 of his third

witness statement, E3, tab 10, page 58 E3/10/58.

Even assuming that Mr Abramovich is a generous man, and he may well be, but even assuming that he is a generous man this would have been the most remarkable act of largesse on his part, under which the sum bore no relation to the amount initially contemplated as payable, or the services then being provided, which of course were zero, or even the amount paid to Mr Berezovsky when his powers were at their zenith, all of which was being paid to a man who, according to Mr Abramovich, was not someone he was even close to and for whom, according to Mr Abramovich in another part of his evidence, he had lost respect given the manner in which Mr Berezovsky had dealt with the Kursk incident in the summer of 2000, that is just a few months earlier.

My Lady, the truth is this was not an act of largesse on Mr Abramovich's part at all because the payment was not made in relation to the agreement falsely asserted by Mr Abramovich. The payment made was made to acquire Mr Berezovsky's and Mr Patarkatsishvili's ownership interests in Sibneft, and that of course explains the otherwise inexplicable size of the payment.

I will return in due course to why Mr Abramovich's case on Rusal, which also requires him to assert

unbelievable largesse on his part in agreeing to pay Mr Patarkatsishvili \$575 million, should also be rejected.

In our respectful submission, if your Ladyship is with us in relation to whose explanation for the \$1.3 billion is more likely, that I would suggest goes a long way towards assisting your Ladyship with the resolution of this issue.

My Lady, the seventh matter to which I would refer, in the context of seeking to determine whether it is Mr Berezovsky or Mr Abramovich's version of the 1995 agreement that is to be preferred, is in fact the krysha allegation itself. Now again we've dealt with this, for your Ladyship's note, at page 236, volume 1. Page 236 at paragraph 367 and following.

There are just two further observations I would wish to make about the krysha allegation. The first observation is this: as your Ladyship is aware, the case that is put forward by Mr Abramovich in effect involves the suggestion of there being an either/or choice between there being a krysha relationship between Mr Berezovsky and Mr Abramovich on the one hand, whatever that means, and there being, on the other hand, a partnership between them in relation to Sibneft. What is perhaps somewhat unclear, my Lady, is whether this

notion of there having to be a dichotomy between these two choices -- sorry, is where this notion of there having to be a dichotomy between these two choices comes from.

In other words even assuming, contrary to what I would suggest is all the evidence, that Mr Abramovich and Mr Berezovsky were not friends and that, rather, the nature of the relationship had its roots in Mr Berezovsky providing political cover for Mr Abramovich, in other words even assuming that the nature of his contribution, and the relationship, was to do with him providing political cover and lobbying, why, your Ladyship may ask, does it follow from this that the parties could not have agreed that in return for Mr Berezovsky's assistance in this regard they were to be partners, that is to say that Mr Berezovsky would have a share in Sibneft?

What is it that suggests that even if Mr Abramovich's evidence is right about what it was that Mr Berezovsky was to provide, why does it follow from that that the only agreement that could have been made was one which involved Mr Abramovich paying Mr Berezovsky cash?

The answer to this, my Lady, is that there is little or no evidence for this at all. The point about this is

that even if your Ladyship does accept what we would submit is this untrue case about krysha, that really is nothing more than a red herring because it begs the real question, which is as to what the parties agreed, in August 1995, Mr Berezovsky would be entitled to for working with Mr Abramovich in relation to the creation and acquisition of Sibneft.

The second point about the krysha concept that I would wish to make a comment on is this, and it arises in the context of Mr Sumption in his oral closing seeking to offer your Ladyship some sort of better explanation for why Mr Abramovich would have been willing to pay Mr Berezovsky and Mr Patarkatsishvili \$1.3 billion in mid-2001 at a time when Mr Berezovsky was in exile and without any influence. What your Ladyship may recall is that Mr Sumption suggested in the course of his closing that a krysha relationship, he said, is a relationship of honour which he said:

"... cannot be broken without serious repercussions. And it is not terminable at will but by agreement and at a price."

That is the assertion he made at Day 39, page 22.

But as your Ladyship will appreciate, other than the suggestion that this was the case made by Mr Abramovich himself, who as we have observed sought to make krysha

mean whatever at any particular point in time he needed it to mean for the purposes of his case, there is again simply no evidence whatever to support this suggestion.

We would submit that it is in fact a fanciful -- I'm so sorry. We would submit that it is a fairly unreal suggestion, and I say that first because it suggests that there are somewhere some rules about termination, just as one would have of a legal obligation, that are said to govern this relationship which we are told is a relationship of honour.

Secondly, because it suggests that these rules require an agreement and a price, both of course legal concepts, or concepts generally associated with legal agreements, and not generally associated with a relationship of honour, which is how Mr Sumption described it, in order to terminate a nonlegal relationship.

The third reason we submit that this is a faintly unreal suggestion is because it appears to presuppose, as Mr Abramovich must make it do if it is to make sense to his argument, that the obligation to make payments and the need to terminate the arrangement by making a huge termination payment can carry on even at a time when nothing at all has been done in relation to that arrangement for many years to warrant any payment at all

having been made. In other words, it involves the suggestion that even though the krysha relationship, which is Mr Abramovich's case, was set up for the purposes of creating Sibneft, and even though Mr Berezovsky had done nothing for many years before this, he had to make a payment of 1.3 billion to terminate an arrangement which was in effect, in a sense, frustrated because Mr Berezovsky plainly was not in any position to do anything at all.

My Lady, we submit that it is very unlikely to be the case that there were any such rules of the sort that Mr Abramovich needs to assert in order to make sense of his case.

So for these reasons, as well as for the other reasons we develop in our written closing, we respectfully submit that your Ladyship should conclude that it is Mr Berezovsky's case about the 1995 agreement that is to be accepted.

My Lady, before I leave this topic, I do, I think, need to deal with four observations that Mr Sumption made in his closing speech in an attempt to meet the case advanced by Mr Berezovsky about the nature and content of the 1995 agreement. The four observations Mr Sumption made were, first, related to the question of the timing of the 1995 agreement; secondly, the question

of Mr Berezovsky's involvement in the 1996 auctions; third, the question of the correlation between payments and profits; and fourth, the question of the purposes of the 1995 agreement.

My Lady, so far as concerns Mr Sumption's point on timing, Mr Sumption told your Ladyship, this is at Day 39, page 26, that, so he said:

"... the agreement was made at a stage when it is most unlikely to have been in the terms alleged by Mr Berezovsky."

The point that we understood Mr Sumption to have been seeking to make is that if the agreement, including as to remuneration, was made in February 2005 -- sorry, 1995, which is Mr Abramovich's case, then that would have been made at a time before Sibneft was included as a loans-for-shares company. So it is unlikely that there could have been any discussion about a partnership in relation to the acquisition of Sibneft. That seemed to be his point.

But of course, my Lady, there is a dispute about when in fact this agreement was made and concluded. As your Ladyship may recall, contrary to Mr Abramovich's case, Mr Berezovsky's evidence was that in fact it was only in July or August that it was agreed that they would each be -- what they would each be entitled to in

connection with the arrangement that was being made. Indeed, your Ladyship may recall the cross-examination of Mr Abramovich in relation to the August date, he having started off saying that the agreement was made very much earlier, and eventually accepting that the agreement indeed was still in the process of being formed all the way up to August 1995.

In any event, my Lady, the essence of the dispute about timing between the parties is therefore this. Mr Berezovsky's case is that the three men were partners and that they agreed the partnership in July or August 1995, after working together for many months, and that is when they agreed that they would split their interests in Sibneft 50/50. By contrast, Mr Abramovich says that as early as February 1995 a deal was reached between the parties under which Mr Abramovich in effect agreed that, in return for Mr Berezovsky's assistance, he would agree to pay Mr Berezovsky in effect unlimited sums depending entirely on Mr Berezovsky's demands, but in any event, just looking at that first year, a payment of 30 million, or 75 per cent of Mr Abramovich's entire profits in the previous year.

Now that is the issue for your Ladyship, and I would submit that whilst Mr Berezovsky's case on the timing has the ring of truth to it, Mr Abramovich's case is

really rather bizarre. And I say that because it would, I submit, be truly odd for Mr Abramovich to have reached an agreement of the sort that he suggests with a man that at the time he barely knew, with whom he had never worked, at a time when the value of Mr Berezovsky's future contribution was wholly unknown, under which he was willing to pay him whatever Mr Berezovsky might in the future demand.

For your Ladyship's note on that, the reason I say that that is the agreement that Mr Abramovich is saying he was willing to make is this: his evidence is that in the first year, he says Berezovsky indicated he would require approximately \$30 million per year for ORT and his personal expenses. That's what he says at paragraph 56. But he says of subsequent years:

"... I was expected to continue to meet whatever payment demands he made."

In other words, you ask and I have to pay. That's paragraph 70 of his third witness statement E1/03/55.

Just for your note, my Lady, the reason I say he was -- on Mr Abramovich's case, he was agreeing to pay 75 per cent of his entire profits in the previous year, he made \$40 million total from the oil business in 1994, that is Day 16, pages 155 and 156, and I think it also reflects what he says in his third witness statement at

paragraph 56.

My Lady, just moving on to the second of Mr Sumption's observations. The second observation that Mr Sumption made in relation to the 1995 agreement was to point to what he said was the complete lack of interest of Mr Berezovsky in the subsequent cash auctions, that is the 1996 auction, and to suggest that, in his words, "Mr Berezovsky contributed zero" to those auctions. For your Ladyship's note, that was at Day 39, page 35.

My Lady, that might perhaps have been a point of at least some substance had the position been that it was Mr Abramovich himself who had contributed all or even most of the funding for the purposes of the 1996 auction. But of course that was not the case at all.

As we've set out in Mr Berezovsky's written closing, this is between paragraphs 350 to 353, volume 1, page 213, as we set out there, based on the evidence of Mr Abramovich's own witnesses, in fact just \$1.5 million of the sums paid in the 1996 auctions came from Mr Abramovich. All the remainder, that is to say some \$132.5 million, 98.9 per cent of the funds used in fact came from SBS loans, secured by guarantees of Sibneft companies, or from within Sibneft itself. And neither SBS's involvement, nor the assistance of

Noyabrskneftegas and Omsk Oil Refinery, could have been obtained without the efforts of Mr Berezovsky in 1995.

In other words, my Lady, in terms of the contribution to the funding for the 1996 auctions, if anything it was Mr Berezovsky's contribution that was very much more significant than that of Mr Abramovich.

While it is true that Mr Berezovsky was not involved in the process of these cash auctions, this was for very good reason. As Mr Berezovsky told your Ladyship, he had left Mr Abramovich to manage Sibneft, and that didn't just mean running Sibneft itself but also managing the partners' interests in Sibneft. So once again, my Lady, we submit that there really is nothing in Mr Sumption's second point.

MRS JUSTICE GLOSTER: Right. Before you go on to the third point, can you just give me, and I'm not in any way putting pressure on you, just give me an idea of the timetabling, not just of your submissions but also of other counsel, just so I have an indication.

MR RABINOWITZ: My Lady, indeed. At present rate I will finish in a day and a half, so I will finish around lunchtime tomorrow.

MRS JUSTICE GLOSTER: Right.

MR RABINOWITZ: Mr Malek has suggested he'll be around --

MRS JUSTICE GLOSTER: Don't feel you're under any pressure

from the court because, as it were, my time is yours.

MR RABINOWITZ: It's very nice of your Ladyship to say so.

Mr Malek has indicated to me he will be half a day, maximum half a day. Mr Adkin I don't know.

MRS JUSTICE GLOSTER: Well, I'll ask Mr Adkin.

Mr Adkin, how long do you --

MR ADKIN: My Lady, about one and a half to two hours.

MRS JUSTICE GLOSTER: So let's say half a day, under.

MR RABINOWITZ: And Ms Davies, I suppose it depends on whether I say anything new, but I'm endeavouring to say as little as possible which is new.

MRS JUSTICE GLOSTER: Ms Davies, can you give me any indication?

MS DAVIES: My Lady, it's very difficult. There are some things that have been said today that I do need to address because they have been put in a new way, but I would anticipate certainly an hour maybe, tops, but we'll have to see as matters progress.

MRS JUSTICE GLOSTER: Yes, very well.

So that would be Thursday. And then any further reply from you on Friday.

MR RABINOWITZ: Indeed.

MRS JUSTICE GLOSTER: So we're looking at possibly finishing by the end of this week.

MR RABINOWITZ: I think everyone's expectation and hope, my

Lady, is that we will finish this week. It may not be your Ladyship's expectation and hope, but certainly from the discussions that the parties have had we anticipate that your Ladyship will be finished with the submissions by the end of this week.

MRS JUSTICE GLOSTER: Right, thank you. And it's helpful just to know when the court will be available for other court users.

MR RABINOWITZ: Indeed.

MR MUMFORD: My Lady, I should of course say that misses me out.

MRS JUSTICE GLOSTER: I know, I'm very sorry. I'm conscious that I've missed you out.

MR MUMFORD: Rightly so. Unless my Lady wants to hear from me on anything, I wasn't actually proposing to do an oral closing.

MRS JUSTICE GLOSTER: No, thank you. I'm sorry, I didn't mean to miss you out, Mr Mumford.

Very well, I'll sit again at 2 o'clock.

(1.00 pm)

(The short adjournment)

(2.00 pm)

MR RABINOWITZ: My Lady, I was dealing with the four observations that Mr Sumption made in relation to the 1995 agreement, I just dealt with the second of those.

The third point made by Mr Sumption in this context related to what he suggested was an absence of any correlation between the payments made to Mr Berezovsky and the profits of Sibneft, is how he put it. But again, my Lady, this is an entirely false point, and that is because it is a point that depends entirely upon Mr Sumption's incorrect assertion that Mr Berezovsky only ever claimed to be entitled to a portion of the profits made by Sibneft.

My Lady, that was never Mr Berezovsky's case, not in his pleadings and not in his evidence. Mr Berezovsky's case was always that the three partners had agreed to share the profits which they made from obtaining ownership and control of Sibneft. And that case plainly extends to profits made by companies owned by Mr Abramovich through Sibneft contracts.

In other words, my Lady, if by virtue of Mr Abramovich obtaining control of Sibneft he generated the profit in, for example, a ZATO, the suggestion that is made appears to be that that was not part of what it was agreed would be shared by way of profits. Any profits that Mr Abramovich would be able to make in another company, it seems to be suggested, was never a profit in which Mr Berezovsky claimed he was entitled to a share.

MRS JUSTICE GLOSTER: Is there any evidence, remind me, of the three partners, or two of them, sitting down together and working out what 100 per cent is of the gross profits and what a third of the gross profits is, or half the gross profits is?

MR RABINOWITZ: My Lady, the closest one gets I think to that is, your Ladyship will recall in the Le Bourget transcript there's the \$900 million where Mr Abramovich appears to be saying, in response to Mr Patarkatsishvili's question "What are we going to be making?" he says "900 million". So that --

MRS JUSTICE GLOSTER: Can you give me the page reference or the box reference for that?

MR RABINOWITZ: It's Le Bourget, it's in E6 --

MRS JUSTICE GLOSTER: I know where the transcript is, but if you could give me the specific reference to that.

Are there any other references in the evidence to the calculation method of what was the 100 per cent of the profits that were being made, and therefore what was the 50 per cent that, as Mr Berezovsky says, was to go to him and Mr Patarkatsishvili?

MR RABINOWITZ: I think, my Lady, there is -- if there is, there is minimal evidence. I don't have it off the top of my head.

MRS JUSTICE GLOSTER: And what's your case as to why that

sort of exercise was never engaged in?

MR RABINOWITZ: We're not saying they were never engaged in.

In fact the evidence was that that was something that Badri would do with Mr Abramovich, indeed possibly with one of Mr Abramovich's people. They would sit down, I think even Mr Abramovich suggested this, they would sit down with a paper which would set out what was owed one way or the other. And Le Bourget is an example of that, because your Ladyship will recollect in Le Bourget they're addressing some document which sets out what it is that is due to go to Mr Patarkatsishvili and Mr Berezovsky. And they're talking about --

MRS JUSTICE GLOSTER: I'd be quite interested to have, apart from the Le Bourget reference, the references to the evidence as to the procedure by which you say the partners or alleged partners went through the business of working out what their profit share was.

MR RABINOWITZ: I will --

MRS JUSTICE GLOSTER: I would quite like them in one place, I'm sure they're in here somewhere.

MR RABINOWITZ: We will put them in a note for your Ladyship and we will collect the references together.

For my Lady's note, just dealing with the point I was making about Le Bourget, it's paragraph 266 of -- our written closing sets out, that's at page 181.

MRS JUSTICE GLOSTER: Yes, thank you.

MR RABINOWITZ: The reason this is, we would respectfully submit, particularly helpful is because the 900 million figure ties in with broadly what it is said by Mr Abramovich he paid over in that year, or at least what is I think also shown in the bolshoi balance to have been paid over in that year, which I think we try to explain at paragraph 266 and the paragraphs that follow. And that does support the 50 per cent split.

Of course, one of the difficulties one has with this is the lack of documentation coming from Mr Abramovich's side. Your Ladyship will recall, some of that appears to have been destroyed following an inspection, I think was the evidence.

MRS JUSTICE GLOSTER: I think I'd like, at paragraph 266 -- perhaps you set it out at 265. This is the evidence about how the calculation was done, is it?

MR RABINOWITZ: Yes.

MRS JUSTICE GLOSTER: You said I think a moment ago that there was evidence that Mr Berezovsky's people sat down with -- or Mr Patarkatsishvili's people sat down with Mr Abramovich's people to do the calculation. I'd be quite interested to have the references, if there are any in the evidence.

MR RABINOWITZ: My Lady, we will put something together.

MRS JUSTICE GLOSTER: Thank you.

MR RABINOWITZ: My Lady, on this profits point,

Mr Sumption's suggestion that one of the problems with our case is there's no correlation between the profits made by Sibneft and what was distributed to Mr Berezovsky. As I've said, that was never our case. This appears to be -- Mr Sumption's suggestion that this was our case appears to be a pleading point.

I can tell your Ladyship that we respectfully submit that that is not a submission which is borne out by the pleadings, and for your Ladyship's note, the relevant pleading is at paragraph C34 and C34B, which is at A1, tab 2, page 11 A1/02/11. And, for example, at paragraph C34B we talk about profits resulting from the joint activity. There certainly was not, and there certainly wasn't intended to be -- I say there wasn't -- any limiting of that to profits generated by Sibneft itself.

Indeed, my Lady, it would in fact have been irrational for Mr Berezovsky and Mr Patarkatsishvili to have agreed that they would receive only a share of Sibneft's profits given that they knew that Mr Abramovich was making -- planning to make the large profits outside of Sibneft by acting as Sibneft's oil trader. For your Ladyship's note again, that was

Mr Abramovich's own evidence that he told Mr Berezovsky about this, that's Abramovich 3, paragraph 53, E1, tab 3, page 48 E1/03/48.

That is why, my Lady, it follows that the true question of correlation is whether payments made to Mr Berezovsky and Mr Patarkatsishvili correlated with 50 per cent of the profits which Mr Abramovich made as a result of his control of Sibneft. My Lady will have seen what we say in this regard at paragraphs 439 to 445 of our written closing where we analyse the limited evidence which there is available on this point, which tends to suggest that there was just such a correlation, but that this can't be proven one way or the other on the evidence just because of the missing documentation.

Now, finally on this point, the point about correlation, Mr Sumption made mention of transfer pricing, claiming that our points on transfer pricing are unsupported by any evidence that we had been able to point to. That was at Day 39, page 52, line 23. That, with respect, was a rather curious submission, and the reason I say it was a rather curious submission is because we do not and never had a transfer pricing point, whether in our written opening or in our written closing or indeed in our witness evidence. We looked rather at the question of how Mr Abramovich made money

out of his control of Sibneft, and we did this solely in order to demonstrate that the sums involved meant that the payments to Mr Berezovsky and Mr Patarkatsishvili could be correlated with those sums.

As we make clear at paragraphs 439 to 442 of our written closing, that's at volume 1, page 287, there is no dispute between the parties as to how Mr Abramovich made his money and, as I have already submitted, the evidence does indeed demonstrate that the payments to Mr Berezovsky can be correlated with the profits made by Mr Abramovich from his control of Sibneft. Your Ladyship has that in particular at paragraph 445, page 293.

That then brings us to the fourth of Mr Sumption's points which I can deal with very briefly. He made this at Day 39, page 57, where he said that:

"... a partnership agreement [he said] 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 [agreement] in the first place."

Namely, to generate cash.

Mr Sumption's point, my Lady, as we understood it, was that Sibneft itself did not make profits for some years and so Mr Berezovsky could have received no money for some years. But with respect to Mr Sumption, that

was simply a rehash of the previous point because it depends upon treating the partnership as one that limited Mr Berezovsky to an entitlement to share in the profits of Sibneft rather than the profits generated by the partners thanks to their control of Sibneft, which is what the agreement was really about.

Now, having dealt with Mr Sumption's four points, that was all I was proposing to say on my feet, my Lady, about the 1995 agreement.

MRS JUSTICE GLOSTER: Well, not only have I read your submissions on this point, but obviously before or during the course of writing the judgment I will go away and read them --

MR RABINOWITZ: I'm grateful, my Lady, and your Ladyship will, as I say, get another document from us.

MRS JUSTICE GLOSTER: You can assume that about all parts of your skeleton.

MR RABINOWITZ: My Lady, indeed that is precisely what we have assumed which is why I'm taking the closing in the way that I am.

MRS JUSTICE GLOSTER: Yes, thank you, that's very helpful.

MR RABINOWITZ: Can I then deal with the 1996 agreement which I can take relatively shortly. We, as your Ladyship knows, submit that there was a 1996 agreement under which it was agreed between the three partners

that their interests in Sibneft would thereafter be held in companies registered in Mr Abramovich's name alone. This was a change from the previous position because, previously, the major interest which they had had in Sibneft shares, namely the 51 per cent of Sibneft pledged to NFK, which gave NFK the right to vote 51 per cent of the company's shares, had been held in a vehicle which was 50 per cent Abramovich and 50 per cent Consolidated Bank which, as your Ladyship may recall, was a Berezovsky/Patarkatsishvili vehicle.

Sure enough, when the 50 per cent shares were auctioned under the chairmanship of Mr Patarkatsishvili, as is recorded at paragraph 106 of Mr Abramovich's third witness statement E1/03/67, when those shares were auctioned to a friendly vehicle, FNK, this new vehicle was one which was solely in Mr Abramovich's name. The net result was that by 2001, all shares were held in Mr Abramovich's name alone.

As your Ladyship may recall, there were factual issues raised by Mr Abramovich about Mr Berezovsky's case on the 1996 agreement. We've dealt with all of those in our written closing at section F and also in our corrections document, and I don't propose to spend time on that now, my Lady, subject to your Ladyship.

Can I then turn to deal with the next major issue

which concerns ORT and the circumstances which led to Mr Berezovsky giving up his stake in ORT.

Again, your Ladyship will find this in our written closing in section 8, volume 2, page 420, where we deal with ORT. Your Ladyship will see we set out in that section a number of reasons why we submit that Mr Abramovich's case as to why he bought and as to why Mr Berezovsky and Mr Patarkatsishvili agreed to sell 49 per cent of ORT for \$150 million makes no sense at all.

My Lady, just by way of a brief overview, there are, we submit, at least four main reasons why Mr Abramovich's case on this issue, that is the ORT intimidation issue, is, we say, incoherent.

The first of these reasons arises out of the fact that, as does not appear to be disputed, Mr Berezovsky had previously refused to sell his ORT interest to the state even when offered \$300 million.

My Lady, if, as is not disputed, Mr Berezovsky had been unwilling to sell his interest to the state when offered \$300 million, why then would he have agreed to sell his shares to Mr Abramovich for half of that, for \$150 million, if not because, as Mr Berezovsky says, there was some added inducement which of course we say was the imprisonment of Mr Glushkov? He refuses for

300, and yet it is said that with nothing else, nothing significant else happening, he agrees to sell to Abramovich for half of that.

My Lady may recall that Mr Sumption's only substantive response to this point, in his closing speech, was to assert at Day 39, page 109, that Mr Lesin's offer of \$300 million was pursued at the time, but that, according to Mr Sumption, shortly afterwards, Mr Lesin's offer was reduced to \$150 million whereupon the negotiations with Mr Lesin were broken off.

In other words, my Lady, in Mr Sumption's submissions what he suggested was that the government negotiations themselves had reached the point where the 300 million was halved to 150 million, and it was at that point that, in Mr Sumption's portrayal of the evidence, negotiations broke off.

Of course, the fact that Mr Sumption appreciated the need to deal with this point reflects the fact that he appreciates that this is a real problem for Mr Abramovich's case. In our respectful submission, however, Mr Sumption's attempt to deal with the point is one that entirely fails to assist his case. I say that because the version of events that Mr Sumption puts forward is simply not supported by the evidence.

Mr Sumption, when he made this submission, and my Lady may not find all of this referred to in our note because it arises out of what Mr Sumption said orally, but Mr Sumption, when he made this submission, referred to Mr Patarkatsishvili's proofing notes. But as your Ladyship will see, if you look at those notes, and I do invite your Ladyship in due course to go back to these --

MRS JUSTICE GLOSTER: Shall we go there now?

MR RABINOWITZ: Indeed. You will find them at R(D)1, tab 2, page 20 R(D)1/2/20. There are three notes, my Lady, R(D)1, tab 2, page 20; there's one at tab 3.

MRS JUSTICE GLOSTER: Yes, I've got page 20.

MR RABINOWITZ: If your Ladyship looks on page 20, your Ladyship sees:

"Badri met Lesin ..."

Does your Ladyship have that? It's about a third of the way down on page 20.

MRS JUSTICE GLOSTER: Page 20, sorry.

MR RABINOWITZ: R(D)1/2, page 20.

MRS JUSTICE GLOSTER: Yes, I've got it.

MR RABINOWITZ: Your Ladyship sees:

"Badri met Lesin -- he negotiated -- agreed 300m. That's all they had -- need to pay for Gusinsky and ORT. Badri wanted to sell first -- BB stubborn -- not going

to sell -- did not go back to Russia. Agreements breached by gov. Don't trust them. So we needed trustworthy man -- recd invitation from Roman to meet -- met in Paris. [Roman] said for your sake -- I will buy shares and give them to government -- offered \$150 m -- before that agreement with [Roman] -- for election campaign for Putin. \$50m -- our share was \$25m -- RA paid -- so we sold for \$175m -- inc \$25m."

So these are Mr Stephenson's notes in 2005.

"NG mentioned one of main reasons to sell -- before meeting -- even if not paid -- we will give free for NG release. Didn't hesitate -- evidently he couldn't. Voloshin promised in personal conversation with Badri later -- not easy to persuade BB -- thought would deceive -- Badri believed should keep."

MRS JUSTICE GLOSTER: This is Mr Stephenson's notes of briefing Badri, is it?

MR RABINOWITZ: Indeed, of 2005.

The point for present purposes, my Lady, is your Ladyship sees there is no suggestion in this note at all that the price went down while Mr Lesin was negotiating from 300 to 150, which appears to have been what Mr Sumption was suggesting.

If your Ladyship then goes to the next tab, so R(D)1/3, to page 39.004 R(D)1/3/39.004, these are

Mr Lankshear's notes, again from 2005. On page 9, the extract under the heading "Page 9", your Ladyship sees:

"Badri met Lessing. He negotiated with Lessing. Price agreed at \$300 [million]. That's all Lessing had at his disposal. BP wanted to sell. BB stubborn, no we are not going to sell. As time passed, didn't go back to Russia. Many agreements breached ... Didn't trust them anymore..."

Then we get Abramovich coming into the picture, and then you have the offer for 150 million instead.

Then the third of the notes, and again this is simply not consistent with what Mr Sumption has submitted; the third of the notes, if your Ladyship goes to tab 6 in the same file, page 77 R(D)1/06/77, and this is the draft proof which was put together on the basis of those notes, from line 320, your Ladyship sees what is set out there.

So what one has as reflected in these notes is, first, an offer from Mr Lesin of \$300 million, second a refusal by Mr Berezovsky to agree to sell even at that price, and the notes record alternatively: "BB stubborn, so we're not going to sell", "BB stubborn, not going to sell", "I wanted to sell at this price but BB was adamant that we should not". And then third, Mr Abramovich's offer to pay only \$150 million after

Mr Glushkov's arrest.

So just standing back, one has a 300 million offer from Mr Lesin on the table, Mr Berezovsky rejects that. The only other offer mentioned that was made was that subsequently made of half of that of \$150 million.

So, my Lady, what appeared to be the main point that Mr Sumption sought to make in trying to explain away this difficulty is, we would submit, a false point for which there is no evidence.

I think also in this context that Mr Sumption also suggested that at this time, that is to say after Mr Berezovsky left Russia, he had left with, as Mr Sumption said -- this is Day 39, page 110 -- "very little money" and "badly needed to raise funds".

In other words, my Lady, the suggestion appeared to be that Mr Berezovsky sold ORT for half the amount he had originally turned down because he was short of cash. That seems to be what's being suggested.

My Lady, there are, I would submit, two reasons why this argument also has no merit. The first reason this argument from Mr Sumption has no merit is because, as your Ladyship heard from Mr Berezovsky when he gave evidence, this was simply not the position, the suggestion that he didn't have any money.

Mr Berezovsky's evidence was that he was not short of

cash. He told your Ladyship, this is at Day 6, page 97, line 9, he said that he had:

"... more than enough to stay for thousand years in London ..."

My Lady, that evidence was not contradicted.

The second reason that Mr Sumption's point is, we would respectfully submit, a bad point is that it involves an inherent inconsistency with Mr Abramovich's case. Mr Abramovich's case, my Lady, is that the arrangement that he had with Mr Berezovsky was that whenever Mr Berezovsky wanted money, Mr Berezovsky would come to him and ask for money, and he, Mr Abramovich, would give that money.

Now, in that context your Ladyship should note that Mr Berezovsky and Mr Patarkatsishvili received \$460 million, plus or minus \$460 million in 2000 from Mr Abramovich on Mr Abramovich's case. If the arrangement was as Mr Abramovich says it was, namely if Mr Berezovsky needed money he would just come to Mr Abramovich and ask for the money and be given it, why on earth is it said that Mr Berezovsky would, in order to get that money, have been willing to sell shares he had refused previously to sell for \$300 million? All that he needed to do was to ask Mr Abramovich and, according to Mr Abramovich, he'd give him the money for

nothing, without Mr Berezovsky having to surrender an asset which, on anyone's case, was very dear to him, namely his shares in ORT.

With respect, Mr Abramovich's case on this makes no sense at all. If Mr Berezovsky was short of funds Mr Abramovich would give them to him on Mr Abramovich's case. And it simply doesn't explain why Mr Berezovsky would, to get money, have been willing to sell his ORT shares.

So, my Lady, our question, we would submit, remains both valid and unanswered: why should Mr Berezovsky agree to sell 450 million to Mr Abramovich if not because there was some added inducement, such as the imprisonment of Mr Glushkov, which made him sell?

My Lady, the second major flaw with Mr Abramovich's case in relation to ORT is that, even now, he has been able to give no satisfactory or plausible explanation for why he would wish to buy a stake in ORT. Your Ladyship will remember that Mr Abramovich claims, and we've set these citations out at paragraph 750, subparagraph 2 of our closing --

MRS JUSTICE GLOSTER: Yes, I have it.

MR RABINOWITZ: He says that only ORT was of absolutely no interest to him, and he also says that President Putin didn't want the shares.

If this is the case, why did he buy the shares?  
Now, Mr Abramovich claims that the reason why he bought the shares was, he says, because he was associated closely with Mr Berezovsky and that, so he says, if Mr Berezovsky didn't stop using ORT in his fight with the government, "I", Mr Abramovich, "would suffer personally".

My Lady, given the fact that Mr Abramovich had managed to become close to all those people in power, including Mr Voloshin and President Putin, one might doubt whether Mr Abramovich would really have worried that he would have been held responsible by his friends in the administration for what Mr Berezovsky was doing. But perhaps a much more significant problem for Mr Abramovich's case, and indeed his explanation, is that Mr Abramovich's own witness, Mr Voloshin, in effect the government, was insistent that the government was able to stop Mr Berezovsky's influence in ORT without any need for the state even to acquire Mr Berezovsky's shares.

Your Ladyship may remember asking Mr Voloshin about this, whether the shares were needed in order to stop Mr Berezovsky, and Mr Voloshin saying, "We didn't need the shares, we were in a position where we could control the company anyway, we just had to tell Berezovsky to

stop".

Now, if it is the case, as Mr Voloshin says, and indeed as Mr Abramovich's case generally suggests, if it is the case that the government could stop Mr Berezovsky using ORT without acquiring the shares, they didn't need the shares to stop it, then again it makes a nonsense of Mr Abramovich's explanation.

His explanation is, "I had to get the shares from him because if he didn't stop using ORT in the fight with the government, I would suffer personally". His own case appears to be, however, that they didn't need the shares to stop him, they had stopped him.

Mr Voloshin told him to get out of ORT and they didn't need to acquire the shares.

If that is right, my Lady, that removes the only other explanation that Mr Abramovich has come up with in order to explain why he was willing to acquire the shares. So one is then still left in the position that his case on this is incoherent, he has no sensible explanation for why he was willing to buy those shares, if not because he was perfectly happy to intercede on the side of the government to take the shareholding out of Mr Berezovsky's hands, and that he was assisting the state in that endeavour by approaching Mr Berezovsky in Cap d'Antibes, following Mr Glushkov's arrest, as

Mr Berezovsky has suggested.

My Lady, the third major flaw with Mr Abramovich's case in relation to ORT is Mr Abramovich's repeated insistence that Mr Berezovsky had decided to sell his ORT shares before Mr Glushkov's arrest on 7 December 2000, and especially before meeting Mr Abramovich following Mr Glushkov's arrest at that time. We of course say that this is simply not true.

Taking this in stages, the question of whether or not there is a basis for Mr Abramovich's case that Mr Berezovsky decided to sell the ORT shares before Mr Glushkov's arrest on 7 December. Taking it in stages, my Lady, we submit that the Le Bourget transcript makes clear that Mr Abramovich knew full well that no deal had yet been agreed between him and Mr Berezovsky on 6 December 2000, which is obviously when they met at Le Bourget. Your Ladyship may recall the repeated references by Mr Abramovich at Le Bourget to his wishing to finalise the deal so that he could go and tell President Putin that the deal was done.

Your Ladyship may recall that there was some encouragement from Mr Patarkatsishvili, but consistently with Mr Patarkatsishvili's proofing notes, where Mr Patarkatsishvili explained that he was willing to sell but Mr Berezovsky was stubborn, there is no

confirmation from Mr Berezovsky that the deal was indeed done.

Now, your Ladyship will have seen that Mr Abramovich's written closing, at paragraphs 185 and following, seek to demonstrate a willingness by Mr Berezovsky to sell ORT before any meeting with Mr Abramovich following Mr Glushkov's arrest, and they seek to do so first by suggesting that it was well known that Mr Glushkov was going to be arrested for some time before his actual arrest; secondly, by suggesting that Mr Berezovsky announced the sale of ORT immediately after Glushkov's arrest and before meeting with Mr Abramovich; and, third, by suggesting that there was no date after Mr Glushkov's arrest when Mr Abramovich and Mr Berezovsky could have met at Cap d'Antibes.

Now, we would respectfully submit that it is clear from the evidence that your Ladyship has that each of these points is wrong. My Lady, as regards whether it was certain prior to 7 December that Mr Glushkov would be arrested, in fact I would suggest that just the opposite is clear, namely that it was not known for sure that Mr Glushkov would be arrested on 7 December 2000.

As your Ladyship may recall, the best possible evidence of this is to be found in the Le Bourget transcript itself where, on the day before Mr Glushkov's

arrest, Mr Berezovsky asked Mr Abramovich whether he thought Mr Glushkov would be arrested and Mr Abramovich said not.

That is set out, the relevant references are set out at paragraph 775.3 of our written closing, that's in volume 2, page 440 --

MRS JUSTICE GLOSTER: Yes, I've got it.

MR RABINOWITZ: -- where we set out the relevant exchange from Le Bourget.

Mr Berezovsky asks Mr Abramovich:

"Do you think Mr Glushkov will be arrested?"

And his response is:

"I don't think they would."

Box 641 and box 642.

So the suggestion that it was certain that he was going to be arrested is simply wrong. Indeed, as your Ladyship sees at subparagraph (d), Mr Abramovich told the court:

"I thought, I assumed, guessed that he would not be arrested."

Now, how it is consistent with that for my learned friends to say it is certain that he would be arrested, I do not know.

My Lady, so far as the second of my learned friend's points as to why the sale must have taken place -- the

agreement to sell must have taken place before 7 December -- sorry, before Mr Abramovich and Mr Berezovsky could have met following the arrest of Mr Glushkov, contrary to what appears to be suggested by my learned friends it is also wrong to suggest that Mr Berezovsky's interview on Ekho Moskvyy on 7 December 2000 involved him making it clear that he was selling ORT.

For my Lady's note, the interview is set out at paragraph 776 of our written closing, also beginning at the bottom -- beginning on page 441. It is worth having this one open.

MRS JUSTICE GLOSTER: I have it open.

MR RABINOWITZ: Your Ladyship sees towards the bottom -- well, actually at the bottom of page 441, the whole interview pays re-reading. He's talking, as your Ladyship sees towards the top of the interview, about the arrest of Glushkov;

"The actions against Krasnenker [Krasnenker was I think released] are absolutely consistent with the authority's ..."

He wasn't arrested but he certainly wasn't detained in the way that Glushkov was.

"The actions against Krasnenker are absolutely consistent with the authority's action. My assessment

is as follows: this is pure blackmail, blackmail against me, and it is blackmail in the best KGB tradition, so to speak. In other words, the president said he would bash my head with a cudgel. The cudgel turned out to be too short. He cannot reach me here so he started hitting people close to me. In other words, it is in the very worst tradition, blackmailing someone by putting pressure on their relatives, their associates and their friends."

Then later on, towards the bottom of the page,  
Boris Abramovich:

"Did I understand you correctly that you basically plan to cancel your proposal with respect to setting up Teletrast?"

Mr Berezovsky:

"Not only that, I plan to withdraw it -- to withdraw it officially. I have now spoken with the majority of the shareholders of Teletrast and told them about my decision and I am going to implement this decision.

"So what will actually happen to the shares?"

"You know, despite all the talk, all the speculation that I sold these shares, all 49% of these shares currently belong to me and my partner, Mr Patarkatsishvili, and in this situation I believe it absolutely makes no sense to struggle against such

risks, and risks to me personally but to my friends and families, therefore I will decide within the next two days what to do with these shares."

Now, Mr Berezovsky is saying then, following the arrest: I will decide what to do with these shares. That is not, as my learned friends have suggested, a declaration that he was selling ORT, and it is also flatly inconsistent with their case that he had already agreed to do so.

He's making it clear that in light of the arrest of Glushkov he will cancel the Teletrast scheme and decide what to do with the shares.

He then, we submit, has his meeting with Mr Abramovich in Cap d'Antibes and, following that meeting, agrees to sell the shares. In other words, my Lady, this interview is entirely consistent with Mr Berezovsky's case, and I would respectfully submit entirely inconsistent with Mr Abramovich's case.

Now I will come to the third of these suggestions, which is that there was no date on which the meeting at Cap d'Antibes could have taken place after the arrest of Mr Glushkov, but I'll deal with it separately because it does warrant stand-alone attention.

Before I deal with that, can I just say something about what we would suggest or we would submit is the

fourth major difficulty with Mr Abramovich's case on ORT, and that is his complete inability to provide any credible explanation for why he and Mr Berezovsky stopped talking to each other from the time of the ORT sale.

My Lady, there can, I would suggest, be no real doubt that Mr Berezovsky and Mr Abramovich were on good terms up until -- certainly up until and including the Le Bourget meeting on 6 December 2000. So far as the period leading up to that meeting is concerned, we know that over the course of 2000 Mr Berezovsky and Mr Abramovich had met on a number of occasions, whether in France or in London, and we also know that at this time Mr Berezovsky continued to regard Mr Abramovich as his friend, as someone who could be trusted -- could act as a trusted intermediary with the state. And as your Ladyship will recall, the fact that they were friendly all the way up to December 2000 is clear also from the Le Bourget transcript which, even in Mr Abramovich's own words, was a candid and amiable meeting.

That, for your Ladyship's note, is Mr Abramovich's evidence in his fourth witness statement at paragraph 98 E5/11/42.

Then one has the rupture in the relationship that seems to occur at around this time. As my Lady knows,

Mr Berezovsky says that he and Mr Abramovich never met, indeed never spoke again, from the time when ORT was sold. Of course Mr Abramovich suggests that there was this meeting in Megeve, which we deal with in our witness statement. We say that that never happened. But even Mr Abramovich says that that was the last time they ever had contact, proper contact with each other.

Now, Mr Berezovsky's explanation for this is perfectly clear and straightforward. He says they had a falling-out at Cap d'Antibes after the Le Bourget meeting, as a result of which he regarded himself as having been so utterly betrayed by his friend and partner that he never wanted to speak to him again. I would submit that Mr Abramovich, on the other hand, simply has no real explanation for this at all.

Now, among the attempts to explain it, your Ladyship will recall that at one point Mr Abramovich suggested in his evidence that, from his point of view at least, he regarded Mr Berezovsky as having behaved dishonestly -- dishonourably, in relation to the way in which ORT had covered the Kursk incident. That was what he said at Day 22, page 124, and we cite that passage in our written closing at paragraph 865.5(c) on page 520 of volume 2.

But, of course, my Lady, that was in August, many

months before, and it is clear that that was not what gave rise to the split, given that the two men did meet, on everyone's case, at least once and I think at least twice thereafter, in meetings that no one suggests were anything other than cordial. So we know that that wasn't the reason for the split.

Indeed, my Lady, it's Mr Abramovich's own case that after that Kursk incident he says he bought ORT for more than it was worth, in effect as a favour to Mr Berezovsky, some time after the Kursk incident, and he says that in early January 2001, at Courcheval or Megeve, he agreed to make a pay-out to Mr Berezovsky which would dwarf all previous payments, that's the \$1.3 billion. And your Ladyship will recall Mr Sponring saying that these men were hugging each other, that was Mr Sponring's evidence. All of which, if remotely true, would again suggest that Mr Berezovsky would be treating, and indeed was treating, Mr Abramovich as an even closer friend than before, rather than the opposite. After all, he'd helped him out, on Mr Abramovich's case, with ORT, he'd given him this astonishingly generous -- he'd agreed to make this astonishingly generous payment of 1.3 billion in effect for nothing. Plainly, that is just not consistent with them falling out after this.

But the fact that there was some rupture in the relationship is clear, and the extent of it is clear, from the fact that after this point, my Lady, when their paths did subsequently cross in Israel they did little more than acknowledge each other's existence and then move on. And that, we would submit, is extraordinary unless, of course, something had happened between them. And Mr Abramovich is simply unable to explain that.

Now, Mr Abramovich, who I have to accept is no fool, well understood the difficulty for his case if, as Mr Berezovsky had said and consistently said, there had been this irreparable falling-out because, of course, on Mr Abramovich's case, Mr Berezovsky really should have remained indebted to him, Mr Berezovsky (sic), for ever more. He was very generous with him.

Of course that is why Mr Abramovich came out with what we would submit was the utterly false evidence in the course of the strike-out application of -- your Ladyship will recall this evidence, we've set it out at paragraph 157 of our written closing, page 113, volume 1.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: It was suggested that -- this is really in response to Mr Berezovsky saying, "After this we never met again", your Ladyship sees:

"The meeting at which ORT was discussed was not the last meeting between Mr Berezovsky and Mr Abramovich. There had been at least two meetings in Israel since then."

Now, we know that that is utterly false because not even Mr Abramovich is suggesting that that is true anymore.

Indeed your Ladyship will recall -- and I think we've set this out, indeed we have, in the next paragraph of our closing -- it then became clear that there was only one occasion where they had even come across each other. I think Mr Abramovich began by calling that a meeting but by the end it was perfectly clear that it wasn't a meeting at all. It was an acknowledgement of each other's existence. I think they may have said hello and then they moved on.

MRS JUSTICE GLOSTER: Where did that take place, remind me?

MR RABINOWITZ: That was in Israel, I think it was at a hotel in Israel.

Did your Ladyship ask me when or where?

MRS JUSTICE GLOSTER: Where.

MR RABINOWITZ: In Israel, my Lady.

MRS JUSTICE GLOSTER: So there was an encounter in Israel?

MR RABINOWITZ: An encounter in Israel which, far from suggesting that there hadn't been a falling out, in my

respectful submission supports the case that there was a falling-out given what actually happened there, where they acknowledge each other's existence and they move away.

Now, given the shared history that these two men had, my Lady, going back any number of years, the fact that this was all that they could manage, acknowledging each other's existence and moving on, reinforces the point that they were no longer friends. Because even someone who you -- frankly, someone who you were at school with, you would do more than these two people did when they met in Israel, whether you liked the person at school or not. But they couldn't even manage a conversation.

So, in our respectful submission, it's perfectly clear that the evidence that Mr Abramovich gave for the purpose of the strike-out, to meet Mr Berezovsky's point, proved to be false.

One is then left with really there being no proper answer to Mr Berezovsky's point that something happened which made them fall out and that this is what it was, the ORT issue. And this final flaw in Mr Abramovich's case, my Lady, is in our submission a fatal flaw in Mr Abramovich's case on ORT.

His story of the generous purchaser and the grateful

vendor just falls apart when one sees the impact that the sale of ORT had on the relationship between the two old friends and partners.

MRS JUSTICE GLOSTER: Had Mr Berezovsky been reported as making disparaging remarks about Mr Abramovich in the press? I'm looking at your paragraph 1574. I just don't remember what those were saying.

MR RABINOWITZ: I can't remember what there was either, my Lady, but Mr Abramovich's general position in this litigation has been that Mr Berezovsky had never complained about Mr Abramovich so I'm not clear what that is.

MRS JUSTICE GLOSTER: What I would be interested to have, if there are any, are the page references to the limited comments in the press made by Mr Berezovsky about Mr Abramovich.

MR RABINOWITZ: We will get those for your Ladyship.

MRS JUSTICE GLOSTER: It doesn't matter now.

MR RABINOWITZ: We will see if there is anything that fits that description, my Lady.

That then brings us to the Cap d'Antibes meeting which, for my Lady's note, we've dealt with in our written closing at paragraphs 847 and following at volume 2, page 492. Again --

MRS JUSTICE GLOSTER: Is the chronology now in a pretty much

agreed state?

MR RABINOWITZ: I think so.

MRS JUSTICE GLOSTER: Because I am going to be using that, and maybe some work will have to be done in the next week or so by your respective teams because I really don't want to be going to a document that doesn't make it clear to me where you agree and where you disagree. Because I think it's moved on from certainly the original hard copy.

MR RABINOWITZ: My Lady, both sides have heard what your Ladyship says and we will endeavour to do that.

MRS JUSTICE GLOSTER: Yes. I really do need that document.

MR RABINOWITZ: So in Cap d'Antibes, and the first point to make about the Cap d'Antibes meeting is, as we submit, that the timing of the meeting is, or at least certainly was, we say, in fact at one stage admitted on the pleading by Mr Abramovich. We have explained why we say this at, for your Ladyship's note --

MRS JUSTICE GLOSTER: Yes, I have it.

MR RABINOWITZ: It's in the written opening as well, I don't know whether your Ladyship has it. Can I give your Ladyship a reference to that. It's paragraph 618 to 626 of our written opening, that's at page 305 of that.

The point that we make there, my Lady, is that it is clear that when Mr Abramovich signed off on his original

pleading, he was accepting that there had indeed been a meeting at Cap d'Antibes following Mr Glushkov's arrest on 7 December but before 25 December. That's to say, the meeting was after Glushkov's arrest at some point in December, and it was admitted that it was some time in December. What he didn't admit was the location of the meeting.

Perhaps I can just give your Ladyship also a reference to the pleadings where your Ladyship will find this. It is, as I say, all set out in our written opening, but it's also at A1, tab 2, page 9 A1/02/9, that's paragraph C27 of the points of claim, particulars of claim, and then A1, tab 3, page 42 A1/03/42, for the defence, paragraph 27, D27.

Now, my Lady, in light of that pleading and that pleading position, my solicitors wrote to Mr Abramovich's solicitors to put them on notice some months before the trial -- this was on 12 August 2011, the letter is at L(2011), 14, page 59 L(2011)14/59 -- that unless Mr Abramovich could provide evidence to the contrary, we would be inviting the court to infer that Mr Abramovich's instructions in 2007 had been that he did recall that the meeting took place after Mr Glushkov's arrest on 7 December.

I can tell your Ladyship that no contrary evidence

has been produced, which means that I do therefore ask that the court, in light of this, infer that Mr Abramovich, in 2007, remembered that he had met Mr Berezovsky and Mr Patarkatsishvili in December 2000, after Mr Glushkov's arrest, in France.

What this means therefore is that this court has evidence before it that in 2007, at least, the people who recalled Mr Berezovsky, Mr Patarkatsishvili and Mr Abramovich meeting in relation to ORT, after Mr Glushkov's arrest, included, first, Mr Berezovsky, whose evidence is before the court, secondly, Mr Patarkatsishvili, whose evidence to that effect is in his proofing materials where he describes discussing the sale of ORT in return for the release of Mr Glushkov, evidence that would make no sense at all if the sale had been concluded prior to Mr Glushkov's release.

I don't know whether that point is clear to your Ladyship, but in the Badri proofing notes, and we can look at this, when he's talking about the negotiations to sell ORT with Mr Abramovich, he talks about the Glushkov release being part of the package. That makes no sense at all if that negotiation had all been concluded prior to Mr Glushkov's arrest.

So the Badri proofing notes again strongly indicate that Mr Patarkatsishvili's evidence was that the

negotiations with Mr Abramovich about the sale of ORT must have been after Glushkov's arrest.

My Lady, Mr Gillis is pointing out that at [draft] page 118, between lines 7 and 9, it's recorded, probably accurately, that I said:

"It would make no sense at all if the sale had been concluded prior to Mr Glushkov's release."

That should say "if the sale had been concluded prior to Mr Glushkov's arrest".

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: So one has Mr Berezovsky saying that he recalls that it must have been after Glushkov's arrest, we have Mr Patarkatsishvili telling the solicitors that it must have been -- well, giving the solicitors evidence which is consistent only with it being after the Glushkov arrest. And, as I've suggested in light of the pleading point, Mr Abramovich as well at that stage recollected that the discussion about ORT would have concluded after the Glushkov arrest and not before.

So those three gentlemen -- there is of course also Ms Gorbunova, whose evidence is before the court, who, as your Ladyship knows, was at the Cap d'Antibes when Mr Abramovich was there. And there is Mr Giroud, the French bodyguard, whose evidence I would submit about a meeting at that time was both clear and compelling.

In other words, my Lady, everyone who is known to have been at Cap d'Antibes that day, with the possible exception of Mr Berezovsky's aged mother, recalls the meeting at that time.

Now, in responding to what I would call the eye witness evidence of a meeting at Cap d'Antibes at that time, Mr Sumption in his oral closing adopted two particular lines of attack with which I can deal briefly. First, Mr Sumption attempted to dismiss the evidence of Ms Gorbunova by suggesting -- this was at Day 39, page 117, he suggested that her evidence was unreliable because, as he suggested:

"She claimed for the first time in cross-examination to have actually overheard part of the conversation on the terrace of Chateau de la Garoupe when [according to Mr Sumption], in her witness statement, she had said nothing about this except that she had learnt of the threats later from Mr Berezovsky."

My Lady, in fact Mr Sumption was entirely wrong about this and entirely wrong to criticise Ms Gorbunova in this way, and indeed the point doesn't enable him to attack the credibility of Ms Gorbunova who, I would suggest, was a patently honest and truthful witness.

My Lady, at paragraph 40 of her witness statement, this is her first witness statement, which for your

Ladyship's note is at D4, tab 8, page 66 D4/08/66, Ms Gorbunova said, and I'll give your Ladyship the exact words she used:

"I heard the men talking about Boris and Badri's interest in ORT. I recall Roman saying that the government wanted to pay significantly less for the ORT shares than he was going to pay, and that it was only thanks to Roman that they would pay more. I think Roman also said that he was personally paying some of the sale price as he was fed up with the story with Boris and Badri."

In other words, my Lady, it was always Ms Gorbunova's evidence that she overheard the conversation about ORT. So Mr Sumption's first line of defence, attacking the credibility of Ms Gorbunova on the basis of some suggested shift in her evidence, was we submit unfounded and unfair.

The second line of defence, of course, was Mr Abramovich's alibi evidence, evidence that we've dealt with in some detail at paragraph 849 of our written closing. It's a paragraph that extends over a number of pages from page 500 to 506 of volume 2. I would submit that it is clear from what we have set out there that Mr Abramovich cannot in fact establish an alibi for the Cap d'Antibes meeting, especially of

course when his diaries, mobile phone records, credit card statements and phone bills have all not been provided to the court for consideration.

Now, my Lady may recall that Mr Sumption's response to this volume of evidence directed to the difficulties with Mr Abramovich's alibi evidence was to make just two substantive points. First he said, and this was at Day 39, page 115, that we have made no attempt to explain "the automatic record of passport swipes at entry and exit which match the stamps in Mr Abramovich's passport and show that [Mr Abramovich] didn't leave Russia in the whole of the relevant period". That's what Mr Sumption said.

But, my Lady, that is wrong for at least three reasons. First and foremost, because there was no such automatic record adduced in evidence at all. What there was, my Lady, was the bare assertion in a letter from a Russian official that there was an automatic registration system accompanied, as your Ladyship may recall, by a refusal to disclose or really to tell your Ladyship anything at all about this system, refusal to disclose either the means used to collect such information or the relevant registration records themselves. For your Ladyship's note, that is the letter from a Mr Mochalov, dated 13 October 2011.

MRS JUSTICE GLOSTER: Yes, I remember that.

MR RABINOWITZ: The second reason this was a bad point is because, contrary to what Mr Sumption submitted, we do in fact deal with the suggestion that such record might exist and we do so for my Lady's note at paragraph 849.5, that's page 500 of volume 2 of our written closing.

The third reason why Mr Sumption is wrong is because, as we there explain, the evidence given by Mr Pronichev and Mr Mochalov suggesting that such record might exist, we submit, is unreliable. We've set that out at paragraph 849.5.

Allied to all of this, my Lady, there is the feature of Mr Abramovich's evidence relating to his presence in Chukotka on which we have already made submissions which demonstrate, we submit, a willingness and an ability on his part, and on the part of his team, to manufacture travel evidence where they think that this might assist Mr Abramovich. We deal with this, as my Lady knows, at paragraphs 185 to 193 of our written closing, that's at page 138 and following.

We submit that, when taken together with Mr Abramovich's obvious political influence in Russia, these letters about some automatic system which shows that Mr Abramovich could not have been in Cap d'Antibes

really can't be given any weight at all by the court.

My Lady, the second substantive point taken by Mr Sumption in his response to our submissions on Mr Abramovich's alibi evidence was to allege that, for the Cap d'Antibes meeting to have taken place, what he said was 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, he said, would have, by some oversight or administrative lapse, not to have appeared. That was at Day 39, page 115, at line 22 and following.

Again, my Lady, we submit that this also was a point of very little substance. I say that because even with the very few meetings which we are able to test against in Mr Abramovich's passport, we have noticed that there are at least four missing stamps. We've set all this out in paragraph 849.4 of our written closing.

MRS JUSTICE GLOSTER: Yes, I have it.

MR RABINOWITZ: There is a missing Russian exit stamp for when Mr Abramovich left Russia on 6 December for the Le Bourget meeting. There is a missing Russian entry stamp for when he arrived in Russia on 30 May, after the Cologne meeting, 30 May 2001, and there is a missing French exit stamp for when he left France after the

Le Bourget meeting on 6 December. There is also a missing French exit stamp for when he left France after his skiing holiday in January 2001. We don't have very many meetings to test against but even by reference to the ones that we do have, one can find a great number of missing stamps. It appears, my Lady, that when one is travelling into and out of countries on a private jet, as Mr Abramovich was, passport stamping is not something that always happens. That is why, in our respectful submission, there is little weight to be given to Mr Sumption's second point.

In the end, my Lady, we would respectfully submit that the eye witness evidence about Cap d'Antibes is much more reliable than the attempt by Mr Abramovich to create alibi evidence. We submit that your Ladyship should find that there was indeed a meeting that took place at Cap d'Antibes following Mr Glushkov's arrest on 7 December. My Lady, that was all I was going to say about the Cap d'Antibes meeting. Your Ladyship obviously has our detailed submissions on that.

MRS JUSTICE GLOSTER: Yes. Just a second, Mr Rabinowitz.

Do the shorthand writers want a break?

MR RABINOWITZ: I'm getting an indication "yes", my Lady.

MRS JUSTICE GLOSTER: Very well. I'll take ten minutes.

(3.07 pm)

(A short break)

(3.28 pm)

MRS JUSTICE GLOSTER: Yes, Mr Rabinowitz.

MR RABINOWITZ: My Lady, I'm going to move next to the question of Sibneft intimidation. As your Ladyship will have seen, we set out our positive case on this in our written closing at volume 2, page 522. I wasn't going to repeat what we've said now. What I did want to do in relation to this issue again, if I may, is to deal very quickly with what Mr Sumption described in his closing speech as his salient points on this. We haven't dealt with this in our written closing, my Lady, because they arise out of his oral submissions.

I think he identified five points, each of which we would submit is of limited weight. What Mr Sumption called his first salient point, which for my Lady's note is found in the transcript at Day 39, page 118, involved the contention that, on their face, the words used by Mr Abramovich did not threaten Mr Berezovsky but rather warned him of adverse state action. My Lady, in fact, this so-called salient point turns out, with respect, not to be a point at all. We have always accepted that the words used by Mr Abramovich, on their face, did not purport to threaten Mr Berezovsky but rather warned him of adverse

state action. Indeed, as your Ladyship will know, it has never been Mr Berezovsky's case that Mr Abramovich said in terms that, unless Mr Berezovsky handed over Sibneft, then Mr Abramovich himself would cause the loss of his interests and cause Mr Glushkov to remain in prison indefinitely.

Rather, it has always been Mr Berezovsky's case that Mr Abramovich said this, in effect made that threat, in effect using other words and that Mr Abramovich was more subtle than to put his point expressly. He was, in the words that Mr Patarkatsishvili used when speaking to the solicitors, playing a game. But his clear message, which he intended to deliver and which Mr Berezovsky and Mr Patarkatsishvili well understood, was a threat.

So this point that there was here not a threat but just a warning, your Ladyship should know, is a point that Mr Abramovich's counsel have always had a difficulty with. Indeed it is a point that they have aired both before Sir Anthony Colman and before the Court of Appeal and on each occasion the point has failed, because, as your Ladyship knows, the question whether or not there was a threat or just a warning is, as it always has been, this: in context, is what Mr Abramovich said properly to be understood as a threat or a warning?

In our respectful submission, the most important piece of context in this case is Mr Abramovich's twin denials, first, that Mr Berezovsky ever had an interest in Sibneft and, secondly, his denial that he even said the relevant words. We say that, had Mr Abramovich's words been a mere warning or been intended as a mere warning, then he would not have denied Mr Berezovsky's interest in Sibneft and he would certainly not have denied that he said the relevant words. He would just have said, no, they were intended as a warning. But he didn't, he denied saying anything.

We have of course in our written closing, also identified further elements of context, in particular Mr Abramovich's conduct in the Le Bourget meeting where he repeatedly emphasised his access to and influence with the Kremlin and where he denied Mr Berezovsky and Mr Patarkatsishvili the opportunity to formalise their interests in Sibneft and where Mr Berezovsky and Mr Patarkatsishvili demonstrated their vulnerability to state action. For your Ladyship's note, we've set all this out at paragraph 872 and following of our written closing.

MRS JUSTICE GLOSTER: Yes, I've got that.

MR RABINOWITZ: But, my Lady, the short answer to

Mr Sumption's first point is that it goes nowhere

because, in context, the words used by Mr Abramovich were indeed intended to convey a threat and were so understood.

Now, the second of what Mr Sumption labelled his salient points, in effect, involved the suggestion that Mr Berezovsky had not made an allegation about a threat of adverse action by Mr Abramovich until the second round of the particulars of claim in September 2007. Again, there seemed to be a suggestion that there was some fluctuation in his saying that there was a threat of adverse action by Mr Abramovich. This was a point made by Mr Sumption at Day 39, page 120.

Again, my Lady, we submit that this point also is not correct. Without turning this up, I can tell your Ladyship that paragraph 17 of the original particulars of claim, which for my Lady's note can be found at K2, tab 3, page 9 K2/03/9, contained an allegation about a threat having been made by Mr Abramovich in terms very similar to that contained in the second version of the particulars of claim which, again for my Lady's note, I can tell you the Court of Appeal said very clearly was perfectly sufficient to constitute an allegation of a threat of action on the part of Mr Abramovich.

So Mr Sumption's second salient point also does not advance Mr Abramovich's case.

MRS JUSTICE GLOSTER: What's the paragraph number in the Court of Appeal's decision?

MR RABINOWITZ: Can I come back to that, my Lady?

MRS JUSTICE GLOSTER: Yes, sure.

MR RABINOWITZ: I do have it but I've put it away somewhere.

Can I then just deal with the third of Mr Sumption's points. Mr Colton will get out that reference for you.

What Mr Sumption identified as his third salient point related to whether Mr Patarkatsishvili regarded himself as having been threatened or subjected to pressure by Mr Abramovich. That third salient point is one that Mr Sumption identified at Day 39, page 121. More particularly, my Lady, it appears to have been the submission of Mr Sumption that Mr Patarkatsishvili, the person to whom the words were conveyed, did not regard himself as having been threatened. Mr Sumption sought to support this contention by a series of unreferenced statements as to what Mr Patarkatsishvili believed or felt, presumably based, although Mr Sumption didn't say so, on a particular reading of Mr Patarkatsishvili's proofing materials. In other words, Mr Sumption said it didn't appear that Mr Patarkatsishvili felt himself to be pressured by Mr Abramovich, and he didn't identify where he got this from, but we assume that he was taking it from Mr Patarkatsishvili's proofing materials.

Once again, my Lady, we submit that Mr Sumption's point about this is just not justified by the evidence.

Your Ladyship may recall that Ms Duncan and Mr McKim together interviewed Mr Patarkatsishvili in 2007 and they were able to form a clear view as to his recollections relevant to the claim. And while, as is inevitable with a draft note of the meeting, or draft proof, some of their notes are susceptible to multiple interpretations if taken in the abstract, the real value of the evidence given by the solicitors of their meetings with Mr Patarkatsishvili lies in the impression which the solicitors gained overall as to Mr Patarkatsishvili's recollection of these matters. I can tell your Ladyship that none of their evidence on this was challenged.

My Lady, before I show you the evidence, which I'm proposing to do, I can give you the reference to Lord Justice Longmore's judgment, 02/8.099/26, page 26 and following. It's paragraphs 80 to 84. I apologise that I didn't have that reference.

On the question of the impression formed by Ms Duncan and Mr McKim as to whether Mr Patarkatsishvili felt he was being pressured by Mr Abramovich, can I invite your Ladyship to go to bundle D1, tab 6, page 88 D1/06/88 where we have Ms Duncan's understanding.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: If I can just show your Ladyship paragraph 27, which as I say wasn't challenged:

"I set out below my understanding of Mr Patarkatsishvili's stance based on my meeting with him.

"(a) That Sibneft was acquired 50/50 between Mr Abramovich on the one part and Mr Berezovsky and Mr Patarkatsishvili on the other.

"(b) Mr Berezovsky and Mr Patarkatsishvili would not have sold their interest in Sibneft but for the pressure from Mr Abramovich conveyed to them at several meetings.

"(c) They did not get a fair price for the interest in Sibneft but felt that they had no choice but to take what was on offer.

"(d) Mr Berezovsky and Mr Patarkatsishvili had a 50% interest in Rusal which they shared 50/50 with Mr Abramovich.

"(e) It was agreed that no partner in Rusal could sell his interest without the agreement of the others, and that Mr Patarkatsishvili, on learning that Mr Abramovich had sold his stake in Rusal, objected to this at a meeting with Mr Abramovich in Tbilisi."

I'm showing your Ladyship material here which also goes to Rusal just so that we don't have to come back to

this later on.

Mr McKim set out his views in his witness statement for trial at paragraph 31, and if I can invite your Ladyship to go to bundle D2, tab 14, page 63 D2/14/63.

MRS JUSTICE GLOSTER: I'm there.

MR RABINOWITZ: So Mr McKim says:

"My understanding of Mr Patarkatsishvili's position following the meeting included:

"(a) That the most important principle of the arrangement with Mr Abramovich was that their interests in Sibneft and any future businesses would be split 50:50, with 50% for Mr Abramovich and the other 50% for Mr Berezovsky and Mr Patarkatsishvili;

"(b) That there was no good commercial reason for Mr Patarkatsishvili and Mr Berezovsky to sell their interests in ORT or Sibneft;

"(c) That Mr Abramovich was playing a game by claiming that he was also a victim (or potential victim) of the pressure being exerted by the Kremlin and Mr Patarkatsishvili did not believe that Mr Abramovich was under any such pressure;

"(d) That they only agreed to sell their interests in Sibneft and ORT as a result of the pressure exerted on them by Mr Abramovich, and in particular:

"(i) The concern that, if they did not sell, their

interests would be expropriated and that Mr Abramovich was in a position to do so if he so wished; and

"(ii) Based on Mr Abramovich's assurances that, if they did sell Mr Glushkov would be released from prison."

And (e) --

MRS JUSTICE GLOSTER: I have read all that.

MR RABINOWITZ: Yes. So, my Lady, that is a clear understanding of Mr Patarkatsishvili's position.

Can I just show your Ladyship paragraph 32 and invite your Ladyship to read paragraph 32.

MRS JUSTICE GLOSTER: Yes, I've read it.

MR RABINOWITZ: Then finally Ian McKim, if I can ask your Ladyship to go to paragraph 48, page 71. It starts before page 72, it starts at page 69.

MRS JUSTICE GLOSTER: Yes, I've got it.

MR RABINOWITZ: Can I invite your Ladyship to look at that, and in particular subparagraphs (a), (f) and (i).

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: So that's the evidence that the solicitors give of their understanding of Mr Patarkatsishvili's position. In light of that, we would respectfully submit it's difficult to see on what basis Mr Sumption felt able to say that Mr Patarkatsishvili did not consider that there had been any intimidation. That

then is Mr Sumption's third so-called salient point.

Can I then deal with his fourth point, and that was the suggestion at Day 39, page 124, where he said that this whole notion of a threat was, he asserted -- what he said it was was:

"... inherently bizarre in the circumstances in which these people found themselves."

My Lady, this point was one which Mr Sumption made very briefly and to which I can respond equally briefly. Mr Sumption's suggestion appeared to be that it made no sense to threaten to expropriate what was, he said, merely a personal contractual right. With respect, this point, which also surfaced from time to time in the strike-out application, is not correct at all. As a matter of legal technicality it would, of course, be possible for the Russian State to interfere with personal contractual rights and deprive a person of them.

That could be done in a variety of ways. For example, the state could declare that all of Mr Berezovsky's assets were forfeit to the state and so any contractual obligation due to them were now due to the state. Or it could declare that his contractual rights no longer existed. Or it could put pressure on prosecutors and judges to refuse to recognise

Mr Berezovsky's rights or to create fake obligations on his part against which those obligations could then be set off.

In any event, my Lady, Mr Berezovsky has never suggested that he is alleging that Mr Berezovsky actually used the word "expropriation" in his discussions with Mr Patarkatsishvili -- sorry, that Mr Abramovich actually used the word "expropriation" in his discussions with Mr Patarkatsishvili. Nor does Mr Berezovsky allege that the precise way in which his interests would be taken were spelt out in so many words. It didn't need to be. As Mr Berezovsky explained in his first witness statement, that's Berezovsky 4, paragraph 373 D2/17/278, Mr Berezovsky had no doubt that a range of strategies using criminal investigations, court procedures, insolvency procedures, tax investigations and the like could be used if Mr Abramovich wanted. So we submit the point Mr Sumption makes is a bad one.

But it is in any event, my Lady, a red herring, because when it comes to threats, as your Ladyship knows, the court need not enquire into the question of whether the threat was in fact possible to carry out. Your Ladyship will know the loaded gun example. The fact that someone points a gun at you which is unloaded

doesn't mean that because it was not loaded and you couldn't actually be shot, no threat to shoot you was made.

What matters here is only that the person to whom the threat was made believed that this was possible, and my Lady, there is clear law on this, and it's common ground. We've referred to this at paragraph 929 of our written opening.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: Significantly, I can tell your Ladyship that Mr Berezovsky was not even challenged on his evidence of what he believed in this regard.

Now, the final point that Mr Sumption made in this context involved him asking rhetorically, this was at Day 39, page 125, how it is that one is to explain the absence of any paper if this really was a sale or release of Mr Abramovich's contractual obligation to Mr Berezovsky and Mr Patarkatsishvili.

My Lady, I would submit that this point is, with respect, a little bit difficult to follow. If the interests were originally held under an oral agreement and, in particular, given that the interests were already all under Mr Abramovich's own control, the shares all being registered in his name, it's difficult to see why a paper would be needed for this transfer.

Mr Abramovich would have been very confident that he was secure, not least given the fact that he'd paid over \$1.3 billion. How, one might ask rhetorically, could Mr Berezovsky have imagined that he could have denied having agreed a transfer or waiver of his interests in light of his receipt of so substantial a payment?

And of course it is a point --

MRS JUSTICE GLOSTER: I'm not sure I'm following this. Even if the transfer of, what, initial -- or might be regarded as an equitable interest was done orally, one might have expected some sort of receipt that referred to the transaction; is that the point that's being made against you?

MR RABINOWITZ: That might be the point which is being made against me. The point that I'm making in response to that is that, if that were in England now, one might well expect a receipt. But of course this was --

MRS JUSTICE GLOSTER: Hasn't a transfer in equitable interest got to be done in writing anyway?

MR RABINOWITZ: If we're talking in England it always has to be done in writing.

Of course, we're dealing here with two people who had made an agreement orally, a situation where the shares were already in Mr Abramovich's name. I'm not suggesting that in fact it wouldn't be a good idea for

there to be paper, indeed I suggest that there was paper because there was the Devonia agreement. But I'm suggesting that even if one ignored the Devonia agreement the point really doesn't go very far, given that these parties had operated until then on the basis of an oral agreement, and the notion that Mr Berezovsky would be able to dispute that he had waived his interests in Sibneft, given his receipt of \$1.3 billion, is in my respectful submission not a realistic point to make.

Now as I say, my Lady, Mr Sumption's whole point presupposes that there is no paper here and that entirely ignores the existence of the Devonia agreement, which, as your Ladyship may recall, includes a number of recitals and operative clauses which do record Mr Berezovsky and Mr Patarkatsishvili giving up their interests in Sibneft.

For your Ladyship's note, that's recital E and clause 2(a) of the Devonia agreement, which your Ladyship will find at H(A)35, pages 215 and 218 H(A)35/215.

Your Ladyship also has the vendor certificate to be completed separately by each of the vendors for each part of the interest being sold, which is at H(A)35, page 234 H(A)35/234.

Of course, that does bring us on to the Devonia agreement, and again, as your Ladyship knows, we've set out in our written closing, section J, our detailed submissions on Devonia. We respond there to the points that are made in my learned friends' written closing, and Mr Sumption in his closing speech really largely rehashed those points so there's nothing new to add about that.

There is just one point I do -- my Lady, there is just one point I need to pick up from what Mr Sumption said about this issue in his oral closing and it's this. Your Ladyship may recall that Mr Sumption, as part of his attempt to suggest that the Devonia agreement was an obvious sham, referred in very damning terms to the due diligence that -- does your Ladyship --

MRS JUSTICE GLOSTER: No, I'm fine, go on.

MR RABINOWITZ: He referred in very damning terms to the due diligence that Clydesdale Bank had done, and he was very critical of the fact that Clydesdale were willing to accept that Mr Berezovsky and Mr Patarkatsishvili were selling their interests in Sibneft to Mr Abramovich.

What he said, this is at Day 39, page 132, he said:

"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."

That's what he said.

Now, Mr Sumption didn't support this assertion about Clydesdale head office with any reference, nor is any to be found in Mr Abramovich's written closing. Indeed I can tell your Ladyship that Mr Abramovich's only analysis of Clydesdale's decision to close Mr Berezovsky's accounts is to be found at annex 8 to Mr Abramovich's written opening at B(D)/179 and following. And perhaps inconveniently for Mr Abramovich's case, that analysis demonstrates the exact opposite of Mr Sumption's submission, because what this makes plain is that the Clydesdale Bank were closing Mr Berezovsky's account, a process which took many months, not because of any doubts as to the accuracy of the explanations given to them concerning the Devonia agreement, but only because they had changed their policy regarding large foreign payments.

As my Lady may recall, the Clydesdale Bank provided to the parties, under a court order, a good deal of documentation relating to the bank's dealing with Mr Curtis and others. That's at bundle H(D). And there is nothing which supports Mr Abramovich's attempts, or indeed Mr Sumption's assertion, that Clydesdale had any

concerns about the due diligence which it had performed on that transaction.

My Lady, so far as concerns the question of the authenticity of the Devonia agreement, again, the point that we would want to emphasise to your Ladyship is the one that we make at paragraph 933 of our written closing, and it is this. If the court concludes, as we respectfully say it should, that Mr Berezovsky and Mr Patarkatsishvili had an interest in Sibneft from 1995 onwards, and that they relinquished it in 2001, as evidenced in particular by the final large payment being made to Mr Berezovsky and Mr Patarkatsishvili in 2001, then there is no possible basis for Mr Abramovich's allegation that the Devonia agreement is a sham, because it would, in that situation, reflect the realities of the transaction which the circumstantial evidence, not to mention Mr Berezovsky's direct evidence, demonstrates occurred at that time.

My Lady, subject to one point, that is all I was proposing to say about the facts relating to the Sibneft claim.

MRS JUSTICE GLOSTER: Yes.

MR RABINOWITZ: There is just one other point to make about the Sibneft facts, and I can make it very shortly because I am repeating the point, and that relates to

the \$1.3 billion.

The only point I'm going to make is this: your Ladyship will perhaps not recollect, but Mr Sumption in his oral closing, what screamed out about Mr Sumption's oral closing is he offered no explanation at all for this. He simply stayed away from the 1.3 billion. In our respectful submission, that reflects the fact that there really is no answer to the point that we make --

MRS JUSTICE GLOSTER: What, why it was paid?

MR RABINOWITZ: Indeed. There's simply nothing in his oral closing about that, and we submit that that really holds the key to the whole of the Sibneft factual issues.

Now, my Lady, what I'm going to go on to next is choice of law issues, and I don't know whether your Ladyship wants me to carry on. I am making good progress.

MRS JUSTICE GLOSTER: I've got to go to a meeting at 5.00, I've got quite a lot to do before then. If it would suit you to stop now it would certainly suit me but I don't want to interrupt.

MR RABINOWITZ: No, my Lady, I would rather stop now and then start fresh tomorrow.

MRS JUSTICE GLOSTER: Very well.

Just a second, I just want to make a note of this.

Very well. What time would suit you, Mr Rabinowitz,

to start tomorrow?

MR RABINOWITZ: My Lady, I would expect to finish either just before or just after lunchtime, so, subject to your Ladyship, I think we can start at 10.30, and I feel very secure that we'll finish before the end of the week.

MRS JUSTICE GLOSTER: Very well. 10.30 tomorrow.

(3.55 pm)

(The hearing adjourned until  
Wednesday, 18 January 2012 at 10.30 am)

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