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# England and Wales High Court (Queen's Bench Division) Decisions

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**Neutral Citation Number: [2013] EWHC 3876 (QB)**

Case No: HQ13X03761  
HQ13X03762  
HQ13X03763

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

Royal Courts of Justice  
Strand, London, WC2A 2LL  
09/12/2013

**Before:**

**MR JUSTICE TURNER**

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**Between:**

**(1) KONSTANTIN KAGALOVSKY  
(2) WILCOX VENTURES LIMITED**

**Claimants**

**- and -**

**(1) BALMORE INVEST LIMITED  
(2) INVEST INFO ONE LIMITED  
(3) INVEST RATING TWO LIMITED  
(4) INVEST MEDIA THREE LIMITED  
(5) INVEST CREATIVE FOUR LIMITED  
(6) INVEST ACTIVE FIVE LIMITED  
(7) CREDIT INVESTBANQUE Plc  
(8) ALEXANDER ALTMAN**

**Defendants**

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**Mr James Ramsden & Miss Rebecca Drake (instructed by Messrs Bryan Cave) for the Claimants  
Mr Robert Levy QC & Mr Daniel Warents (instructed by Kerman & Co) for the 8th Defendant  
1st to 7th Defendants were unrepresented**

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HTML VERSION OF JUDGMENT

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**The Hon Mr Justice Turner :**

INTRODUCTION

1. The claimants bring this application to commit Alexander Altman, the eighth respondent, to prison for contempt of court. They allege that he is in continuing breach of successive orders of this court relating to disclosure and to the prohibition of the transfer of assets.
2. The first claimant, Konstantin Kagalovsky, is a Ukrainian businessman. In 2008, together with one Vladimir Gusinsky, he launched a television station in the Ukraine, "TVi". He alleges that earlier this year Mr Altman played a central part in a corporate raid the effect of which was to strip Mr Kagalovsky of control over TVi. This coup was accomplished using forged documents comprising fake powers of attorney, board resolutions and board minutes which were deployed in a process referred to colloquially as the "Ukrainian Method"<sup>[1]</sup>.
3. Mr Kagalovsky commenced proceedings in the Ukraine to challenge the validity of the transfers.<sup>[2]</sup> The orders which Mr Altman is alleged to have breached were made in the High Court in support of the substantive Ukrainian proceedings. The jurisdiction of this court was first engaged when it became apparent that the shares in TVi's holding company Media Info LLC ("Media Info") had been transferred to a company domiciled in the UK, Balmore Invest Limited ("Balmore"). Subsequent freezing orders were made with the purpose of preventing further redistribution of the Media Info shares and requiring seven companies alleged to have been involved in such redistribution to disclose information relating to such shares.
4. In summary, the claimants allege that Mr Altman is the controlling mind behind these seven companies each of which is alleged to have failed to comply with the orders of this court. Mr Altman denies this. The first issue to be determined, therefore, is as to whether he is the driving force behind some or all of these companies or, alternatively, the innocent dupe of third parties who have sought to implicate him in a plot to which he owes no allegiance.
5. In the event that the court were to find that Mr Altman had the requisite degree of control over some or all of the companies it must then go on to consider whether his acts or omissions put him in breach of any of the orders of the court.
6. The burden of proving contempt is upon the claimants and the standard is the criminal standard of proof beyond reasonable doubt. Where, therefore, I make material findings of fact in the course of this judgment it is to be inferred in each case, to avoid laborious repetition, that I do so following the application of the requisite burden and standard of proof.
7. The central events with which this application is concerned all took place this year and all dates referred to in this judgment are to be taken to relate to events occurring in 2013 unless expressly stated otherwise.

BACKGROUND

8. Prior to 19 April, the second claimant, Wilcox Ventures Limited ("Wilcox"), which was under the control of Mr Kagalovsky, held 99% of the issued share capital of Media Info. The balance of 1% was held by one

Oleg Radchenko. All that was to change.

9. On 19 April, the state registrar in Kiev responsible for maintaining Media Info's records amended them to provide that Balmore now held 95% of its issued share capital within which Mr Radchenko's holding had been subsumed. On the face of the record, it appeared that Mr Kagalovsky had lost or relinquished control of TVi at the metaphorical stroke of a pen.
10. The claimants' case is that Wilcox had not consented to the transfer of the shares or to the amendment of Media Info's corporate records and was not put on notice of Balmore's application. Wilcox had a right to purchase Mr Radchenko's holding in Media Info but contends that it was not notified by Mr Radchenko of any intention to sell or otherwise transfer his holding in Media Info and it did not consent to any transfer of the shares held by Mr Radchenko to any other party.
11. The transfer was effected by the deployment of allegedly forged minutes of a meeting of the board of directors of Wilcox recorded to have taken place on 15 March and in which the company purported to declare its intention to sell its shares in Media Info. The minutes appeared to have been signed by one Orthodoxia "Doxia" Nikia, a close associate of Mr Kagalovsky. They both contend that the document is a forgery and that the signature appended thereto is a fake.
12. The forged documentation having been prepared and deployed, it was now time for physical control of the TVi premises to be accomplished. On 23 April, the TV station management was locked out of the premises.
13. On the same day, five companies were incorporated: Invest Info One Limited, Invest Rating Two Limited, Invest Media Three Limited, Invest Creative Four Limited and Invest Active Five Limited ("the Invest companies"). The directors of the Invest companies were as follows:
  - i) Invest One: Mr Ian Taylor (usually resident in Australia);
  - ii) Invest Two: Mr King Howard Cordero Enriquez (usually resident in the Philippines);
  - iii) Invest Three: Mr King Howard Cordero Enriquez (as above);
  - iv) Invest Four: Mrs Angelique Elizabeth Lilley (usually resident in New Zealand);
  - v) Invest Five: Mrs. Rachel Amy Erickson (usually resident in Australia).

The companies had been incorporated by one Olena Turevych, a Ukrainian national working as an incorporation agent in the UK. Her direct instructions had been issued by a company by the name of Prime Consulting Ltd ("PCS"). Mr Altman was recorded to be the sole shareholder of each of the Invest companies.

14. At this time, Balmore was in the precarious position of having been served with a notice that it was to be struck off the company register for failing to submit an annual return. Accordingly on the same day as the TVi premises were commandeered, an annual return for Balmore was prepared. Subsequently it was filed and the striking off process was discontinued.
15. On 24 April, the shares in Media Info were transferred to Balmore. They were subsequently distributed equally between the Invest companies. Between 10 May and 14 May, this transfer was registered with Companies House.
16. On 25 April, Mr Altman held a press conference in the company of Mr Radchenko which was recorded on film. A translation of what was said on this occasion had been agreed between the parties to be accurate. During the course of the conference, Mr Altman described himself as the ultimate beneficial owner of Balmore. He said that he could foresee that there would be litigation not only in the Ukraine but also in

England and the United States. Upon direct questioning, he denied any knowledge of the Invest companies.

17. On 26 April, Ms Turevych, the incorporation agent, sent an email to Mailboxes Etc, a business which provides accommodation address services, asking for the Company Authentication Code for Balmore stressing the urgency of the request and pointing out the risk that the company might be dissolved if she did not have the code. She evidently required the code to enable her to submit the overdue annual return. There was no immediate response to this request but, on 29 April, PCS sent an email to Ms Turevych attaching a copy of Mr Altman's passport.
18. In the aftermath of these developments, the claimants took the first of a series of steps in this jurisdiction with the stated intent of preventing the dissipation of the raided shares.
19. On 8 May, the first hearing in this matter took place before Blair J. who granted a freezing order at the behest of the claimants which, in essence, prohibited Balmore from transferring its shares in Media Info to any third party. The order included a penal notice drafted in the usual terms. It went on to provide that:

"It is a contempt of court for any person notified of this order knowingly to assist in or permit a breach of this order. Any person doing so may be imprisoned, fined or have their assets seized."
20. Five days later, on 13 May, Mr Altman paid "Companies in the UK" the sum of £17.97 for copies of certain corporate documentation relating to Balmore comprising: a first gazette notice filed on 16 April 2013; a second notice to remove the striking off application filed on 4 May 2013 and the annual return which had been filed on 3 May 2013.
21. The claimants allege that the timing of Mr Altman's enquiries was not coincidental. The day after the freezing order was granted was "Victory Day" in the Ukraine which is a national holiday. Some businesses did not reopen until the following Monday which was the day upon which Mr Altman requested the Balmore documentation. Mr Altman denies that any adverse conclusions can be drawn from the timing. He states that he was not aware of the order of the court at this stage and points out that he was in the United States, not the Ukraine, over this period.
22. Meanwhile, on 14 May shortly after 3 pm, Ms Turevych sent an email to Mailboxes Etc further chasing Balmore's Company Authentication Code to which the recipient responded with the required information within the hour.
23. On the morning of the following day, Ms Turevych emailed Mailboxes Etc: *"I need very urgently a letter from the court addressed to Balmore Invest Limited. Will you be able to find it, open, scan and send to me by email?"* Shortly afterwards Mailboxes Etc replied: *"Hi Olena, We have found the letter and scanned it. The scan is attached..."*
24. Ms Turevych replied almost immediately asking that the order of Blair J. should be scanned and sent to her by email. Shortly afterwards, Mailboxes Etc sent Ms Turevych an email attaching a letter from Bryan Cave, the claimants' solicitors, together with a transcript of the judgment of Blair J. of 8 May 2013 setting out the grounds upon which he had acceded to the application to make the orders sought against Balmore.
25. On 17 May, the matter came back before Blair J. who granted freezing orders against the Invest companies upon being satisfied that Balmore had previously transferred the Media Info shares to them.
26. On 19 May, Mr Altman emailed Bryan Cave, the claimants' solicitors, requesting materials to be sent to his US address and to aka5662@gmail.com. On the following day, Carl Robinson, a partner in Kerman & Co, wrote to Bryan Cave saying that they expected to be instructed on behalf of the Respondent companies but needed to agree terms and *"conduct due diligence on all six companies before any formal steps can be taken on their behalf"*.

27. In the normal course of events, communications at this stage between Mr Altman and Kerman & Co might reasonably have been expected to have been covered by legal professional privilege and, initially, no disclosure was made of documentation evidencing what had passed between them. However, during the course of the hearing I acceded to an application made by the claimants and held that that Mr Altman had waived his privilege and that the relevant documentation should be disclosed. My order was the subject of an unsuccessful application to the single judge of the Court of Appeal made on behalf of Mr Altman for permission to appeal. The documents eventually disclosed in response to my order may conveniently be referred to as the "waiver disclosure".

28. The waiver disclosure reveals that it was Mr Altman who authorised Kerman & Co to send the email of 20 May to Bryan Cave. Mr Altman accepted in cross examination that he did not obtain higher authorisation from Mr Radchenko or anyone else. On the same day Mailboxes Etc emailed Ms Turevych:

"We received two boxes: one for King Howard Cordero Enriquez plus envelope and the second one for Ian Taylor plus envelope. Would you like us to forward them to you today or should we wait till Friday?"

Mr Enriquez and Mr Taylor, as we have seen, were, between them, nominee directors of three of the Invest companies.

29. Later that day, Mr Altman emailed Mr Robinson:

"Dear Carl, I instructed the Balmore office in London to send all received original court papers to your office..."

30. On the following day, Mr Altman emailed Mr Robinson:

"Have you received the file on Balmore?"

To which Mr Robinson responded:

"I have not received anything from Balmore yet. If you can ensure that the papers are forwarded to us that would help."

Later on the same day, Mr Altman paid "Companies in the UK" for copies of the annual returns for Invest Info One Ltd filed on 15 May 2013 and for Balmore Invest Limited dated 23 April 2013.

31. Shortly thereafter Mr Altman emailed Mr Robinson attaching information from Companies in the UK:

"Dear Carl, as you can see, I am sole shareholder of all "Invest" companies as of 24 of April. Based on that I can provide you the instructions and retain. Please send me a retainer agreement..."

32. Mr Robinson in response told Mr Altman that he could only accept instructions from him on behalf of the companies if he were a director or authorised representative. He emailed requesting that he be provided with the necessary authority from each of the directors of the respondent companies:

"Dear Alexander, ... In terms of formalities, just like every law firm in England we are required to conduct due diligence on our clients, which for corporate clients means confirming the identity of all directors and shareholders. We will need you to bring to our meeting (on Tuesday 28th May at 4pm) your passport and an original recent utility bill sent to your current address. In the meantime please arrange for notarised copies of passports and utility bills to be provided for each of the directors, namely:

- o Ian Taylor

- o King Howard Cordero Enriquez
- o Angelique Elizabeth Lilley
- o Rachel Amy Erickson...

Please can you therefore provide in respect of Balmore Invest Limited and each of the five Invest companies a certified copy of authority which has been granted to you by the director of each of those companies and which allows you to instruct us on their behalf..."

33. In the early hours of the morning of 22 May, Mr Altman emailed Mr Robinson stating:

"Everything will be done ASAP."

34. Shortly after, Mr Altman followed this up with a further email to Mr Robinson:

"Dear Carl, do you think it will be prudent if I decide to remove the present nominee director of Balmore and replace her for

1. Myself

2. Someone else with British or Ukrainian domicile."

35. The nominee director of Balmore was one Rachel Ericson who lived in Australia. Disclosure from Companies House has revealed that on 3 May Ms Erickson had sent an email to Companies House in which she alleged that she had been made director of Balmore without her knowledge or consent. On Saturday 18 May, she sent an email to the claimants' solicitors alleging that she had no connection with or responsibility for the company and was the victim of identity theft.
36. On the very day upon which Mr Altman had suggested that the nominee director of Balmore might prudently be removed, Companies House recorded the termination of the appointment of the directors of Balmore and each of the Invest companies (save for Invest Creative Four Limited in respect of which the corresponding transaction was delayed until 28 May) and their replacement by Mr Altman as sole director.
37. On 23 May, Ms Turevych emailed Mailboxes Etc: *"Could you please send all these big folders received from BRYAN CAVE SOLICITORS directly to the following address: Carl Robinson, Litigation Department ... Kerman & Co."*
38. On 29 May, the claimants discovered that ownership of the Ukrainian company, TRS, a wholly owned subsidiary of Media Info and which held the broadcasting licence for TVi, had recently also been transferred to a UK domiciled company, Credit Investbanque Plc ("Credit"), the seventh respondent. Accordingly, on the following day the claimants obtained, inter alia, a freezing order against Credit.
39. On the afternoon of 3 June, Mailboxes Etc emailed Ms Turevych:
- "We just received a letter for Mr Gunther Jens and Mr Kuster Carsen, Credit InvestBanque PLC. From Bryan Cave. Please advise what you want us to do with it."
- Ms Turevych promptly told them to send it to Kerman and Co which they did.
40. On 5 June, the claimants issued an Application Notice for leave to issue a contempt application and grounds of contempt upon the alleged failure of the respondent companies to comply with the orders of the court. Mr Altman was named as the Eighth Respondent and was alleged to be and, at all material times, to have been the *de facto* controlling mind of the defaulting companies.

41. On 7 June, a hearing took place before Blair J. who granted permission to serve Mr Altman at the email address [aka5662@gmail.com](mailto:aka5662@gmail.com) with the application for committal for contempt.
42. On 19 June, Flaux J. made Orders granting the claimants permission to issue witness summonses on Ms Turevych and Mr Robinson.
43. On 20 June, Kerman & Co wrote to the claimants' solicitors to say that they were instructed on behalf of Mr Altman.

### MR ALTMAN'S CASE

44. Mr Altman contends that the evidence in the case falls far short of demonstrating beyond reasonable doubt that he was the controlling mind of any or all of the respondent companies and that he cannot, therefore, be liable to be held in contempt in respect of any of their alleged breaches of the relevant court orders.
45. Mr Altman first articulated his response to the claimants' application to commit him in an affidavit dated 29 July. He contended that his appointment as director of Balmore and as director and shareholder of the Invest companies was done without his knowledge and consent. He said that on 12 April he had received a telephone call from Mr Radchenko offering him an opportunity to become an investor in TVi because Mr Kagalovsky wanted to give up most of his stake in the holding company, Media Info. It was proposed that Mr Altman would become the beneficial owner of a 95% shareholding in Media Info through a corporate entity called Balmore.
46. On about 15 April, he received from Wilcox by DHL a document purporting to be a power of attorney which appeared to have been signed by Ms Nikia, a trusted associate of Mr Kagalovsky, and which he believed to be genuine. Mr Altman handed the Wilcox power of attorney to Mr Radchenko on 17 April at the Tarantino bar in Kiev. He went on to assert that Mr Radchenko then produced a number of documents which he said he needed Mr Altman to sign on behalf of Wilcox to register the transfer of the Media Info shares and which he said the power of attorney authorised Mr Radchenko to sign. One of these documents was the minutes of meeting which was later to be used to effect the transfer of control to Balmore.
47. In paragraph 19 of his First Affidavit of 28 July 1013 Mr Altman says:

"I first became aware of High Court proceedings when I received a letter dated 17 May 2013 from the Claimants' solicitors, Bryan Cave, which attached the two Orders of Mr Justice Blair of the same date. I could see that the Orders were against Balmore and the five Invest companies rather than me personally but because I had agreed to become beneficial owner of Balmore I wanted to check my legal position. I made enquiries of an acquaintance in England who recommended I speak to Kermans."

He went on to say that he first called Kerman & Co on 17 or 18 May. Mr Kerman's affidavit purported to confirm this stating that Mr Altman first contacted his firm on 17 May. Mr Altman said that he gave Mr Kerman the contact details of Mr Radchenko. Mr Altman insists that he was unaware, at that stage, that Mr Radchenko may not have had the legitimate authority to act as he did. (Subsequently, both Mr Altman and Mr Kerman changed their evidence as to the date upon which they first made contact - stating that in fact it was some days later, on 20 May.)

48. When Mr Altman first became aware of Mr Kagalovsky's claims that he had been defrauded of his shares in Media Info and that the Wilcox power of attorney was a forgery he said that he had immediately contacted Mr Radchenko who said that he was as shocked as Mr Altman was by Mr Kagalovsky's apparent U-turn and that he would deal with Mr Kagalovsky directly to resolve it.

### DIFFICULTIES WITH MR ALTMAN'S CASE

#### **Giving instructions**

49. Mr Altman asserted in his first affidavit that he was made a director of Balmore and director and shareholder in the Invest companies without his knowledge and consent and, therefore, fraudulently. Mr Kerman drew attention in his affidavit to the absence of evidence that Mr Altman had control over anything that Balmore did.
50. In contrast, in the email to Mr Robinson of 21 May, revealed only during the course of the hearing as a result of the waiver disclosure, Mr Altman said that he was able to retain him and provide instructions on behalf of all the Invest companies in his capacity as sole shareholder. Notwithstanding the fact that he forwarded to Mr Robinson the annual return for Invest Info One Limited at the same time, he did not even hint that his status as shareholder had been brought about without his knowledge or consent.
51. In my judgment, it is inconceivable that if Mr Altman had been made shareholder involuntarily then he would not have brought this clearly to the attention of Kerman and Co. in order to find out what the legal consequences might be. The fact that Mr Altman denied knowledge of the existence of the Invest companies at the press conference does not, in my view, make it any less likely that he was instrumental in their formation and subsequent operation. He did not expect to be asked about the Invest companies at the press conference because he thought that no-one would know about them and, upon challenge, he defaulted to mendacity.
52. There is even less weight in the point that Mr Altman twice referred to Balmore as "Balmore Investment Limited" rather than its correct name "Balmore Invest Limited" at the press conference. I can draw no legitimate inferences from this very minor error which could cast doubt upon the conclusion that he was the controlling mind of the company.
53. Mr Robinson agreed in cross examination that nothing Mr Altman had said to him about his status led him to suspect for one moment that he could not become a director of Balmore and nothing Mr Altman had said to him in their various conversations led Mr Robinson to think that there might be any impediment or difficulty in him doing so.
54. Mr Altman authorised the email Kerman & Co sent to Bryan Cave of 19 May which stated that they expected to be instructed by the companies. Mr Altman confirmed in cross examination that he did not obtain authorisation from Mr Radchenko or anyone else before this was sent. It may readily be inferred from this that Mr Altman did not need to seek authority or permission to permit Kermans to send that letter on behalf of the companies because he already had that authority and he could give that permission.
55. In the email of 22 May to Mr Robinson, Mr Altman volunteered to remove the nominee director and replace her with someone else. This would be a bold step to propose if, in reality, he had no legitimate control over the company.

### **Boxes**

56. The extent to which Mr Altman presented himself to Kerman & Co. as being able to act on behalf of the companies can, to a degree, be gauged from what was revealed on the waiver disclosure. In particular, the role played by Mr Altman with respect to documentation served upon the companies sheds some light on this.
57. In his first affidavit, Mr Altman, in summary, related how he had been telephoned by his solicitors some time after 22 May to be informed that boxes of papers had arrived at their offices which appeared to have been forwarded by the companies. They were reluctant to open the boxes because they had not been formally instructed by the companies. The clear impression given by Mr Altman is that the boxes arrived unheralded and unsolicited. This account, if true, would have served to distance Mr Altman from the suggestion that he exercised any control over what the companies were doing.
58. The Waiver Disclosure, however, reveals a very different picture.



59. On 20 May, Mr Altman emailed Mr Robinson saying: "*Dear Carl, I instructed the Balmore office in London to send all received original court papers to your office...*" He followed up this email on the following day with a further email enquiring if Mr Robinson had received the Balmore file. Mr Robinson replied that he had not received anything from Balmore yet and asked Mr Altman to ensure that the papers were forwarded.
60. In Mr Kerman's first affidavit he stated that he assumed that Mr Altman had contacted Mr Radchenko who had given the companies the address of Kerman & Co. There is, however, no reference in the waiver disclosure to Mr Radchenko concerning the delivery of the boxes (or, indeed, as we shall see, anything else). On the contrary, Mr Altman had unequivocally told Mr Robinson that it was he (Mr Altman) who had told the Balmore office to send them. Ms Turevych gave instructions to Mailboxes Etc to send the documents to Kerman & Co. She did not say that such instruction was given by Mr Radchenko and it was not suggested to her in cross-examination on behalf of Mr Altman that it was.
61. During the course of cross-examination, Mr Kerman said that boxes kept on arriving at his offices and that he asked Mr Altman to arrange for this to stop. This is difficult to reconcile with the waiver disclosure which reveals that Kerman & Co. asked for the papers to be sent to them. The waiver disclosure contains no documented account of any request to Mr Altman to arrange for the deliveries to cease.

### **Inaction on learning of the fraud**

62. Hard to explain in a way that is consistent with his case, is Mr Altman's apparently supine response to his allegedly eventual realisation that he had been appointed a director of Balmore and the Invest companies and shareholder of the latter without his knowledge or consent. One might reasonably have expected that he would have taken prompt steps formally to rectify or at least seriously to investigate the position. Mr Altman relies upon a letter written by Kerman & Co. to Companies House dated 24 July but this is entirely generic in content revealing neither Mr Altman's identity nor that of any of the companies involved. It is also worthy of note that the letter was written over two months from the date upon which Mr Altman first made contact with his solicitors and several weeks after Mr Altman had said in his first affidavit that he realised "something very sinister was going on" when he was informed by Bryan Cave that he had been appointed director of Balmore and the Invest companies. Both the timing and the content of the letter are redolent of expediency.
63. In a letter dated 16 September, Kerman and Co. assert that they telephoned Companies House on 21 June to be told that in cases of fraud a full written report should be filed. The inquiry also appears to have been entirely generic and no such report has been filed. It does nothing to salvage Mr Altman's credibility on the point.
64. Mr Kerman gave oral evidence at the hearing. He suggested that the reluctance to press the matter with Companies House was attributable to a concern that the companies might be "frozen" and that this might prevent Mr Altman from being able to fulfil an offer to transfer the shares back. This was an unconvincing explanation. An offer to transfer shares allocated to Mr Altman in consequence of fraudulent activity was hardly likely to be legitimised by silence. The proper resolution of the position would clearly demand openness with the court and with Companies House. In the circumstances, Mr Kalagovsky's lack of enthusiasm to accept the offer to return the shares is not difficult to understand.

### **Counsel's concession**

65. A further difficulty arises from Mr Altman's claim that he was the beneficial owner only of Balmore. No satisfactory explanation has been tendered of the assertion by counsel, Mr De Marco, on his behalf at the hearing of 2 July that his beneficial interest was in the companies without limiting his observation to Balmore. The relevant exchange proceeded as follows:

"MR JUSTICE BLAIR: Are you going to be complying with the orders?"

MR DE MARCO: My Lord, we are complying in so far as we are able to comply with the orders. In so far as the obligation is not on my client [Mr Altman], the obligation is on companies over which he has no control and is not a director, and that will be his evidence, he is not complying.

MR JUSTICE BLAIR: Is your client the beneficial owner?

MR DE MARCO: He is the beneficial owner, my Lord, but he has no control over them, and he will show that in his response."

66. Mr Kerman's evidence on this aspect of the case could, perhaps generously, be described as being confused. At first he denied that the concession had been made but had to retract this assertion when he was shown the transcript. Thereafter, he contended that although it had been made it was not on instructions and then he appeared to retreat from this position too. Ultimately, there was no material presented to the court from which it could be concluded that counsel was not during the course of this dialogue speaking other than in accordance with his instructions.
67. I should add, however, that I do not wish to overstate the extent to which I found this evidence to be helpful. My conclusions in this case as to the status of Mr Altman with respect to the companies would have been the same regardless of counsel's concession and, conversely, the concession without more would not have been sufficient to sustain my conclusions.

### **The disappearing Mr Radchenko**

68. There is no written evidence of communications passing between Mr Altman and Mr Radchenko at any point after the press conference. Mr Altman attempted to explain this by saying that Mr Radchenko did not use email and computers much and that he would get his secretary to write. There was, however, no document disclosed which was written by Mr Radchenko's secretary either. The obvious conclusion is that no communications were evidenced because either there were no such communications to evidence or that the content of any such communications if disclosed would, in fact, be inconsistent with Mr Altman's case.
69. The appearance of Mr Radchenko at the press conference certainly provides some evidence of his possible involvement in the alleged corporate raid. It does not, however, support the assertion that he was, as Mr Altman would seek to persuade the court, "pulling the strings".
70. Indeed, Mr Altman's description of the nature of his relationship with Mr Radchenko was implausible in the extreme. Despite the fact that he had, on his own account, met with him on only one previous social occasion, he made no attempt to verify Mr Radchenko's alleged story that Mr Kagalovsky was unilaterally handing over to him control of TVi on a plate. Such passivity and lack of curiosity are simply not credible.
71. Furthermore, the waiver disclosure reveals that Mr Altman was giving instructions to his solicitors with apparent confidence that he had authority to replace the nominee directors without the need to defer to or even to consult with anyone else including Mr Radchenko.

### **The suspicions of Mr Devlin**

72. When Mr Altman offered to replace the director of Balmore, there was some internal discussion within Kerman & Co.
73. On 22 May, Mr Robinson emailed a colleague, one Mr Devlin:

"There's no restriction on being able to change directors, so it can be done. In terms of whether it should do you have any thoughts? I guess as he is a named shareholder up the chain there is nothing to hide so he might as well, unless there is financial remuneration which might affect his tax position?? Let's discuss later"

It is to be noted that no concerns were expressed as to Mr Altman's capacity to change directors and the emphasis is upon the potential fiscal consequences.

74. Mr Devlin responded:

"I see a real risk that AA's only asking this question because our compliance procedures put him in a pickle in terms of getting directors' signatures – much easier if he signs everything himself."

75. Mr Devlin also observed presciently:

"I don't think we can or should advise him on the directors point until we know the full circumstances of why and how the six companies were set up. If there was something not altogether straightforward about the directors' appointment then we can assume that their removal will not be handled properly either, which will only add grist to the other side's mill."

These expressions of concern raise the issue as to what it was about the firm's instructions from Mr Altman which was causing anxiety. Mr Robinson was unable to proffer any clear explanation during the course of his oral evidence on the topic.

### **Timing**

76. It has already been observed that there is no suggestion in the waiver disclosure that, over the period which it covered, Mr Altman had told his solicitors that it appeared that he had been "set up". Throughout, he acted as if his authority to act on behalf of the companies was both legitimate and untrammelled.

77. Mr Altman said in cross examination, that he informed Kerman & Co that he had been made shareholder without his knowledge or consent but that he did so only after 19<sup>th</sup> June (after the period covered by the waiver disclosure). It is difficult to understand why there was such a delay in mentioning this save that by the time Mr Altman had chosen to instruct them to act for him as an individual he had become anxious tactically to distance himself from the companies in the face of the legal developments in the High Court.

78. Mr Altman was the person who called off the prospective retainer by the companies just as he had invited it in the first place. It was also Mr Altman who wrote to Mr Robinson to say that he was not coming to London and wanted to "disassociate" himself from the Respondent Companies.

### **The magnanimity of Mr Kagalovsky.**

79. Mr Altman's account clearly raises the question as to what he thought could have been Mr Kagalovsky's motive in seeking to relinquish his interest in TVi. After all, Mr Altman volunteered the fact when giving evidence that the two of them were not "on easy terms" and not even the most indulgent observer could, on the evidence in this case, conclude that Mr Kagalovsky was a man generally susceptible to altruistic whim.

80. The explanation Mr Altman gave in his first affidavit for what might otherwise be seen as an uncharacteristic burst of generosity was that Mr Kagalovsky's company, Tomkins Ltd, owed Mr Altman's company Unix s.r.o. ("Unix") over €305,000 and that he may have relinquished his control of TVi to take this into account.

81. Mr Kagalovsky responded to this contention by disclosing documents which demonstrated that the sum represented not a loan but consideration passing for the transfer of a debt.

82. Mr Altman subsequently conceded that the relevant transaction was not a loan but said that he had used the expression as a simple form of shorthand for what actually occurred. He agreed that the sum was paid for the transfer of a debt but alleged that the debtor company was in a poor financial state and that the assignment was worthless. The debtor company was Energokom LLC ("Energokom"). The loan had not

been repaid despite the fact that at the time of assignment it was more than 16 months overdue. There was no dispute that Energokom was in a poor financial condition. Unix assigned the loan to Bedford Asset Management LLC ("Bedford"), a company solely owned by Mr Altman. Energokom had previously loaned Bedford a sum in excess of \$160,000 which could then be set off against the value of the assigned loan.

83. He contended that Mr Kagalovsky promised that if the purchase of the debt went through then he would start a new energy business with Mr Altman and, using his political influence, ensure that he got his money back with interest. This agreement, said Mr Altman, was reached on a handshake during a trip on Mr Kagalovsky's private jet. It was not evidenced in writing.
84. I warn myself not to assume that business practices in the Ukraine are identical to those commonly adopted in the United Kingdom but I am unable to accept that this factor involves the abandonment of all rational analysis.
85. Even assuming that the assignment was next to worthless, I do not believe that:
  - i) Mr Kagalovsky would have been so naïve as to attempt to redress the balance by carrying out a unilateral transfer of his interest in TVi without giving at least the merest hint to Mr Altman as to what he was up to; or
  - ii) Mr Altman could seriously have believed that this is what he was doing.
86. As to the alleged deal on the jet, having had the opportunity to witness both men giving evidence, I was satisfied that neither would be so naïve as to trust the other's undocumented and unwitnessed word on an issue of such relative importance.
87. It is to be noted that the closing submissions on behalf of Mr Altman concede with respect to the transfer of control of TVi in general that the offer is one which "the Court might on reflection, consider too good to be true". It was and I do.<sup>[3]</sup>

## **Incorporation**

88. Ms Turevych asserted that Mr Altman incorporated Balmore (and the Invest companies) as is evinced by the photocopy of his passport with which she had been provided as proof of his identity. The instructions had been given by Prime Consulting Services Ld ("PCS"). Mr Altman states that he took a photograph of his passport and gave it to Mr Radchenko and that this is the one supplied to Ms Turevych. I do not discount this possibility altogether but Mr Radchenko's involvement and that of Mr Altman are not mutually exclusive. To be sure that the evidence justifies the conclusion that Mr Altman exercised the necessary level of control over the companies it is not necessary for me to find, in addition, that Mr Radchenko had no role to play.
89. On 23 August Ms Turevych sent an email to PCS asking for details concerning the person on whose behalf they had acted. On 4 September, PCS, following further prompting from Ms Turevych, indicated that it had forwarded an abusive email to the only address it knew, [lumpex@lenta.ru](mailto:lumpex@lenta.ru) asking for the recipient to reply either to PCS or Ms Turevych directly.
90. On 5 September 2013 an email sent by one Andey Andreyev from the [lumpex@lenta.ru](mailto:lumpex@lenta.ru) address said that all instructions relating to Balmore and the Invest companies had been received from the email address [aka5662@gmail.com](mailto:aka5662@gmail.com). It is not in dispute that this is the email address of Mr Altman.
91. It is said on behalf of Mr Altman, with justification, that some care must be exercised when considering the value of this email. There is a lack of evidence as to its provenance. The contents are not corroborated by any other documentary evidence. Subsequent efforts on behalf of Mr Kagalovsky to make further enquiries as to its pedigree could have been more enthusiastically pursued. Complaint is also made that the

point was not put to Mr Altman in cross examination but the force of this criticism is diluted by the fact that counsel for the claimants fully articulated the issue and the conclusions he was inviting the court to draw during the course of opening.

92. If the email of 5 September had stood alone as evidence of the role played by Mr Altman I would not have concluded that it was sufficient to found a conclusion on the application of the criminal standard of proof that Mr Altman was the prime mover. However, the email does not stand alone and provides further support for the other evidence against Mr Altman. For the avoidance of doubt, however, this email was neither a necessary nor a sufficient evidential basis for my eventual findings in this case.
93. Mr Altman now applies (after the trial has concluded) to adduce late evidence concerning the electronic signature which was provided to Companies House to effect his appointment as director of Balmore and the Invest companies. I allow the application despite the claimants' objections.
94. The electronic signature incorporates certain personal details including: eye colour, place of birth and passport number (last three digits). The signature would appear to have been presented by Ms Turevych. The signature correctly records the relevant details concerning Mr Altman's passport number but the eye colour and place of birth information is asserted to be wrong. Even assuming wrong information was submitted this does not show that Mr Altman was not the controlling mind of the companies. The accuracy of the information submitted could not have been checked by Ms Turevych or Companies House and the details were therefore not such as would demand particular attention. Overall the value of this point fell far short of undermining the strength of the evidence pointing in the other direction.
95. It is contended on behalf of Mr Altman that there is a dearth of documentary evidence linking him with the activities of Ms Turevych and that there are no emails directly to him or from him. This is true but neither are there emails to any other individual (including Mr Radchenko) and ultimately the likely explanation is that the instigator of the process was attempting to distance himself from it as much as possible. I am sure on the evidence that this individual was Mr Altman.
96. Mr Altman relies on the fact that the address given in the company filings is an old address 11 Kingdom Bridge Road when at the material time his address had changed to 9 Kingdom Bridge Road. Had the evidence in the case been less strong then this disparity may have been sufficient to raise some doubt but for all the reasons given in this judgment I find that the evidence implicating Mr Altman is otherwise overwhelming and that the difference in address can adequately be explained by simple error or breakdown in communication. Its significance falls far short of raising a reasonable doubt in my mind on the central issues.
97. It is further argued that the involvement of the Invest companies does not seem to make any sense because a more obvious mechanism for dissipating control of TVi would have involved the use of jurisdictions in which there is less transparency than the UK. Be that as it may, I have found that there was a fraud perpetrated in this case and that the possibility that it could have been perpetrated more effectively makes it no more nor less likely that Mr Altman was responsible for it.

### **The power of attorney**

98. In support of the suggestion that Mr Radchenko had been instrumental in "setting up" Mr Altman, reliance has been placed upon a "power of attorney" dated 9 December 2011 and purportedly granted to Mr Radchenko in respect of Balmore. The value of this document in sustaining Mr Altman's position has been thoroughly undermined. In particular, its terms do not preclude others (including Mr Altman) from exercising any independent power or control over Balmore and it does not, in any event, have any application to any of the other corporate respondents. Mr Kerman's attempts in cross examination to sustain the argument that this document was of significant assistance to Mr Altman's case were unpersuasive. His continued faith in the validity of the document long after its signatory, Rachel Erickson, had, to his knowledge, complained that she had been the victim of identity fraud was, to say the least, tenaciously optimistic.

99. In his affidavit, Mr Kerman argued that the fact that Mr Altman became a de jure director is a point in his favour. If he were, indeed, a de facto director then what need would there have been for him to formalise his position? The waiver disclosure, however, provides the answer to this question. Mr Devlin's suspicions that Kerman & Co.'s compliance procedures were putting Mr Altman "in a pickle" were, in my judgment, well founded. Mr Altman wanted, at that stage, to give instructions on behalf of the companies but knew full well that the directors were bogus and had to resort to removing them to equip him to give instructions himself.
100. No other more plausible explanation for Mr Altman's initiative has been tendered. The replacement of Ms Erickson was effected on the same day by instructions from PCS to T&T, which was the same chain of communication through which, I am satisfied, Mr Altman had requested the papers be sent to Kerman & Co. on 20<sup>th</sup> May. Nowhere in the evidence are the fingerprints of Mr Radchencko to be found on this transaction.

### **A change of plan**

101. I am entirely satisfied that Mr Altman began to row back from his involvement with the companies having consulted lawyers in Kiev at the end of May. Prior to that point, he appeared to be only too willing to do all in his power to instruct Kerman & Co. on their behalf. His denials are incredible.
102. In an email of 22 May 2013, Mr Kerman makes specific reference to "*the extensive details which we will need so you can make sure that your lawyers in Kiev provide all this material to you.*" Mr Altman does not then suggest that he does not, in fact, seek to engage with lawyers in Kiev. On the contrary, he states in an email of 24 May: "*I will hold all necessary meetings in Kiev today.*"
103. I am sure that, despite his denials on oath, Mr Altman did indeed see his lawyers on 24 May and that it was on their advice that he performed a volte face with respect to his role within the companies.
104. In cross examination, Mr Altman asserted that the only person he met in Kiev with respect to the relevant issues was Mr Radchencko who supposedly assured him that matters were in hand with his own lawyers. I do not believe him.

### **Credit**

105. The evidence implicating Mr Altman as the controlling mind of Credit is more circumstantial but ultimately compelling. The evidence supporting Mr Altman's control over the Invest companies is conclusive. The registered address of Credit (and in fact the registered address of all the other Respondents) is at premises owned by "Mailboxes Etc". Credit's ultimate contact address through its incorporation agent is also Kerman & Co. The Invest companies and Credit were involved in the same fraud. The Credit documentation was sent to Kerman and Co. at the request of Ms Turevych in the same way as that coming from the Invest companies and, it can be legitimately inferred, from PCS and ultimately Mr Altman. Finally, it will be recalled that at the hearing of 2 July, counsel for Mr Altman referred to him as the beneficial owner of the companies without attempting to carve out Credit as an exception.

### **Payment**

106. The invoice from Kerman & Co was addressed to Mr Altman himself and Mr Altman's own company, MAOT LLC, paid Kerman & Co for the work they had done in respect of the companies.

### **OTHER ISSUES**

107. A considerable amount of time was taken up during the course of the hearing with the enthusiastic exploration in cross examination on behalf of Mr Altman on aspects of the case some of which were to prove to be forensic culs-de-sac and others to be of borderline relevance. I propose, therefore, to apply

proportionate brevity when dealing with those aspects of the evidence which I found to be of little or no assistance to me in deciding whether the claimants have discharged the burden of proving that Mr Altman was and is in contempt of court.

108. In addition, I do not consider that it would be helpful for me to seek to analyse every point raised by the parties on the more peripheral issues generated by this application to the extent that my findings of primary fact and the proper inferences to be drawn are not such as would have been disturbed by the results of such analysis. The fact that I have not referred to every contention made in the voluminous skeleton arguments and written submissions should not, therefore, be taken as a slight against the industry of their authors nor as an indication that I have not assimilated the contents of these documents. However, to lengthen an already lengthy judgment in an attempt to include every nuance of argument would in my view produce diminishing, if not negative, returns.

### **Mr Kagalovsky's credibility**

109. Mr Kagalovsky was cross-examined at length about his own character and, in particular, about the findings of Justice Ramos in proceedings brought against Mr Kagalovsky by Mr Gusinsky who alleged that that Mr Kagalovsky had stolen his interest in TVi from him. It is indeed the case that Mr Kagalovsky's conduct in this regard was severely criticised in the judgment. Taking this evidence at its highest, it was capable of supporting the assertion that Mr Kagalovsky is a ruthless, unscrupulous and predatory businessman whose evidence, in that case at least, was not credible.

110. All of this would have been highly relevant in the event that there had been any serious dispute of primary fact upon which this court had been called upon to adjudicate and upon which Mr Kagalovsky's evidence was material. However, the evidential basis upon which the allegations of contempt against Mr Altman were founded is, to a very considerable degree, independent of Mr Kagalovsky's input.

111. Mr Levy QC on behalf of Mr Altman asked Mr Kagalovsky whether he had instructed anybody to effect registrations with respect to Balmore or the Invest companies. Upon persistent enquiry from the bench, he was unable to identify any evidence which might support the conclusion and conceded that Mr Altman was not advancing a positive case to that effect. Quite why Mr Kagalovsky, as a hard-nosed businessman, would be motivated to transfer away his own control over TVi only to commence proceedings shortly thereafter to recover it remains predictably unexplained. I am sure having heard Mr Kagalovsky give evidence that, notwithstanding the findings of Justice Ramos, he was not implicated in the process by which control of TVi was seized in May of this year.

112. An issue arose during the cross examination of Mr Kagalovsky as to the status of Mr Radchenko and of the relationship between them. Mr Kagalovsky maintained that Mr Radchenko enjoyed a very low status and that nothing could be read into the fact that he had enjoyed a 1% shareholding in and was a director of Media Info. It is suggested on behalf of Mr Altman that, on the contrary, it can readily be inferred that Mr Radchenko was one of Mr Kagalovsky's trusted lieutenants. In my judgment, however, even if this were true it does not materially improve Mr Altman's position. In the absence of any credible rationale behind Mr Kagalovsky choosing unilaterally to divest himself of control of the television station it matters little whether one of those likely to be involved in the process of stripping him of that control had previously enjoyed an influential and trusted position or not. The free-standing evidence that Mr Altman was in control of the companies is simply too strong to be displaced by the collateral consideration of Mr Radchenko's role whatever that might have been.

113. Counsel on behalf of Mr Altman explored in his cross examination of Mr Kagalovsky the issue as to how the journalists at the press conference could have been aware of the existence of the Invest companies. Mr Kagalovsky said that the information had been passed on by Mr Knyazinsky, one of Mr Kagalovsky's associates, to a journalist. He was reluctant to name the journalist but eventually identified him to be one Mr Bigus. Much has been made on behalf of Mr Altman of the lateness of this piece of evidence and alleged shortcomings in disclosure of what Mr Kagalovsky had previously said about this matter to his solicitors.

114. However, in Mr Altman's favour, I do not attach any weight whatsoever to what is alleged to have been said to Mr Bigus as evidence of Mr Altman's involvement with the Invest companies. That involvement is amply demonstrated by the other evidence in the case to which I have referred and which is not, in turn, dependent upon the truth or accuracy of the Bigus evidence.
115. In summary, all attempts to challenge Mr Kagalovsky's credibility failed to persuade me that, however black a picture of his character could be painted, it provided me with any real assistance with respect to the resolution of the important issues in the case.

### **Ms Nikia's Credibility**

116. Ms Nikia was also subject to strongly adverse comment in the New York judgment. She was cross examined robustly on the subject of her credibility and reference was made to the level of wrongdoing which had been laid at her door in those proceedings. She denied signing the power of attorney and her denials were apparently supported by an expert's report proffered on behalf of the claimants. Mr Altman challenges the admissibility of the report but, even in the absence of this report, I would have accepted Ms Nikia's evidence on the point. Again, the absence of motive is a powerful factor in my considerations and I had the advantage of hearing her giving oral evidence on the issue. I am satisfied that her signatures were forged.

### **Ms Moskalenko's credibility**

117. Ms Moskalenko, Mr Kagalovsky's Ukrainian lawyer was cross-examined on behalf of Mr Altman. The admissibility of her evidence, her independence and her professional judgement were all called into question. However, I fail to see what material difference her evidence makes to the strength of the case against Mr Altman and so I decline to adjudicate further upon its status.

### **The conduct of Bryan Cave LLP**

118. Persistent and strenuous efforts have also been made on Mr Altman's behalf to impugn the good faith of the claimants' solicitors. Allegations have ranged from misrepresenting evidence on the application for a freezing order to the deployment of improper means to acquire evidence. The most sustained attack has been directed to the means by which it was discovered that Mr Altman had used the [companiesintheuk.co.uk](http://companiesintheuk.co.uk) website to access information about Balmore and Invest One in May. I found none of these allegations to be made out and, even if they had been, they would have been of little assistance to me in resolving the issues relating to Mr Altman's alleged contempt.

### **SUMMARY**

119. The detail of my analysis is set out above but, for ease of reference, the most salient factors which lead me to conclude that Mr Altman was the controlling mind of the relevant companies can be summarised thus:
- i) If Mr Altman had really been "set up" as he claimed then he would have made far more strenuous efforts to find out what had happened. His prolonged passivity indicates a lack of curiosity adequately explicable only by concluding that he knew full well why the companies had been formed and what function it was that they were intended to perform.
  - ii) Mr Altman's counsel, Mr de Marco, conceded that his client was the beneficial owner of the companies and no adequate explanation has been given as to how this concession came to be made, if not on instructions.
  - iii) Mr Radchenko ceases to be visible after his appearance at the press conference. It is not credible that there is no evidence corroborating Mr Altman's account that they continued to be in touch thereafter. The explanation that Mr Radchenko did not use email and computers too much was as convenient as it was mendacious.



iv) The waiver disclosure reveals that it was Mr Altman who directed the delivery of the boxes of documents from the companies.

v) Mr Altman took on the responsibility of taking steps to retain Kerman and Co. on behalf of the companies without recourse to anyone else.

vi) Mr Altman paid for the work done on behalf of the companies through his own company MAOT LLC.

vii) Throughout the period covered by the waiver disclosure Mr Altman is recorded to have expressed no misgivings whatsoever as to the risk that he had been set up notwithstanding the fact that he deposed in his first affidavit to a realisation that "something sinister was going on" by 5 June.

viii) Mr Altman's explanations as to why he thought Mr Kagalovsky would be motivated to pass on control of TVi were neither credible nor consistently articulated.

120. In the face of the combined effect of this evidence, the various points made on behalf of Mr Altman, to the most significant of which I have already specifically referred, were insufficient to raise a reasonable doubt in my mind that Mr Altman was, at all material times, the controlling mind of the companies. The question remains, however, as to whether his acts and omissions in this capacity put him in contempt of court in those respects relied upon by the claimants.

### CONTEMPT

121. I propose to deal with each of the first three allegations of contempt in turn.

#### **1. Dealing in the shares of Balmore Invest Limited as its *de facto* director and directing mind in breach of paragraph 4 of the Order of 8<sup>th</sup> May 2013 by transfer of those shares in equal tranches to the Second to Sixth Respondents.**

122. Paragraph 4 of this Order provided:

*"Until the Return Date on 7<sup>th</sup> June 2013, the Respondent must not-*

*(1) transfer to any third party, nominee, proxy or agent any shares in the Ukrainian company Media Info LLC;*

*(2) Mortgage, pledge, lend or otherwise deal in the shares of Media Info LLC so as to lose direct and continued control over those shares."*

123. The issue of timing is central to this allegation. Although I am satisfied that Mr Altman was responsible for transferring the entire issued share capital in Balmore to each of the Invest companies in equal tranches I consider that this transaction had already been completed before the order of 8 May was made. The claimants contend that between 10 and 14 May Balmore "completed" the transfer of its shares in Media Info to the Invest companies including the registration of that transfer with Companies House. However, I accede to the argument raised on behalf of Mr Altman that a transfer of shares is effected at the latest when that transfer has been registered by the company in its register of shareholders. Filing the annual return at Companies House is not the completion of the transaction. The transaction was already complete before the order of 8 May was made. Accordingly, on this allegation I find in favour of Mr Altman.

#### **2. Failing to provide the disclosure ordered from Balmore Invest Limited under paragraph 5 of the Order of 8<sup>th</sup> May 2013 as *de facto* director and directing mind and then from on or around 30<sup>th</sup> May 2013 as sole Director.**

124. For the reasons I have given, I find that Mr Altman was the "responsible officer" within the terms of the order. However, the order required confirmation that transfer of shares in Media Info had not occurred. I

find that such transfer had already occurred by the time Mr Altman was on notice of the order and that, therefore, no such confirmation could be given. Had the order been made in wider terms to include for example a requirement that the responsible officer should give details of any transfer that had already taken place then Mr Altman would have been in breach, However, in the context of a committal application it would be wrong of me to interpret the order as encompassing more than a straight forward reading would allow.

**3. Transferring ownership in the Ukrainian company TRS to the Seventh Respondent whilst acting as its *de facto* director and directing mind in breach of the Orders of 8<sup>th</sup> and 17<sup>th</sup> May 2013 when TRS was wholly owned and therefore comprised within the shareholding of Balmore Invest Limited and/or the Second to Sixth Respondent of which Alexander Altman was also by then Sole Director.**

125. Paragraph 4 of the Order of 17 May provides:

*"Until the return date or further order of the court, the Respondents must not-*

*(1) transfer to any third party, nominee, proxy or agent any shares in the Ukrainian company Media Info LLC or in the English company Balmore Invest Limited or any of their own share capital;*

*(2) Mortgage, pledge, lend or otherwise deal in the shares of Media Info LLC, Balmore Invest Limited or any of their own share capital so as to lose direct and continued control over those shares."*

126. The claimants contend that the transfer of the shares in TRS to Credit amounted to a breach of these orders.

127. It will be recalled that TRS held the domestic licence under which TVi was permitted to broadcast and was a wholly owned subsidiary of Media Info LLC. Ownership of the licence was, say the claimants, an essential part of the assets and goodwill of Media Info LLC. This I am prepared to assume to be correct but the hurdle which they face is that the orders refer to shares and not to assets or goodwill.

128. The claimants rely on the case of Templeton Insurance Limited v Thomas [2013] EWCA Civ 35 in which the freezing injunction prevented the disposal of "the property and assets of" the company towards which it was directed. The alleged contemnors in that case had created a phoenix company to siphon off the business of the company named in the order. They argued that that goodwill was not within the freezing order, or at any rate, that without it being explicitly mentioned in the order, there was insufficient particularity or certainty in this respect.

129. The Court of Appeal disagreed. Rix L.J. held at paragraph. 18:

*"The fact that goodwill is an intangible makes it no less an asset than other intangibles, such as choses in action. There is nothing in this point."*

130. However, this authority is unable to sustain the weight which the claimants seek to place upon its shoulders. Had the orders in this case been worded so as to extend to assets rather than shares then I would have had little difficulty in concluding that the transfer of shares in TRS amounted to a breach. However, the orders are restricted in scope to shares of the named companies and do not extend to their assets generally. Accordingly, despite the fact that the transfer was against the spirit of the order it did not amount to a breach and in the context of a committal application it would be improper to apply an unduly purposive interpretation.

131. I propose to deal with the remaining allegations of contempt together for, although I have given them separate consideration, there is a degree of overlap which in my view means that simply as a matter of

presentation my findings are most easily understood by expressing my conclusions in the same section of my judgment.

**4. Failing to provide the disclosure ordered against each of the First to Sixth Respondents after becoming sole Director of each of those companies by at the latest 30<sup>th</sup> May 2013.**

**5. Failing to direct each of the First to Seventh Respondents to provide the disclosure ordered from them on 8<sup>th</sup>, 17<sup>th</sup> and 31<sup>st</sup> May 2013 whilst acting at all times as *de facto* director and directing mind of each of those companies and as Director of each of the First to Sixth Respondents by at the latest 30<sup>th</sup> May 2013.**

**6. Directing and conniving in the breaches of the Orders of 8<sup>th</sup>, 17<sup>th</sup> and 31<sup>st</sup> May 2013 whilst acting as *de facto* director and directing mind of the First to Seventh Respondents and from 30<sup>th</sup> May 2013 as Director of the First to Sixth Respondents.**

132. Paragraph 5(1) of the relevant order of 17 May required the Invest companies to provide "confirmation that they still hold the shares recorded as held by them in Companies House on 15 May 2013, whether as principal, agent or nominee, stating in what capacity they hold those shares."

133. Paragraph 5 of the order of Globe J. of 31 May 2013 provided in respect of Credit:

"Within 3 days of the making of this Order, the Respondents shall provide to the Applicants by a responsible officer of the company, which subject to confirmation by a responsible officer of the company, may be given by a shareholder, the following information and disclosure:

(1) Confirmation that they still hold the shares recorded as held by them in Companies House on 30 May 2013, whether as principal, agent or nominee, stating in what capacity they hold those shares."

134. On my analysis, Mr Altman was the controlling mind and de facto director of the Invest companies at all material times and was the de jure director from 30 May. The decision not to comply with this order was his. He could and should have made the disclosure and chose not to. I therefore find that this ground is made out.

135. I have also found that Mr Altman was the controlling mind of Credit and that the decision not to comply with the order of Globe J. was his as de facto director. He could and should have made the required disclosure and chose not to. I therefore find that this ground is made out. For the reasons already given, I am not satisfied that Mr Altman has acted in breach of the orders made against Balmore in so far as they are included within these allegations of contempt.

136. With respect to the appropriate sanctions to be imposed in consequence of these findings of contempt the matter will be listed for a further hearing for a determination of this issue.

Note 1 Or, alternatively, "the Russian method". [\[Back\]](#)

Note 2 These proceedings were unsuccessful at first instance and it remains a matter of speculation (upon which it is unnecessary for me to embark) as to whether or not an appeal may result in a reversal of fortunes for Mr Kagalovsky. [\[Back\]](#)

Note 3 To the extent that the "reflection" referred to was intended to be that of Mr Altman and not the court, I am sure that for Mr Altman's account to be true he would have to have been gullible to a degree which defies belief. [\[Back\]](#)