

Inadvertent Waiver of Privilege

Re Yurov [2022] EWHC 2112 (Ch)

This case involved the complex bankruptcy of a Russian individual in respect of unpaid judgment debts in the region of US\$900 million. It was found that, prior to his bankruptcy, the bankrupt had effected various transfers to his wife, Mrs Yurova, in circumstances that invoked section 423 of the Insolvency Act 1986. In pursuance of various claims against the bankrupt and his wife, the trustees in bankruptcy issued an application under section 366 against Mrs Yurova's various banks.

The trustees' application was supported, in the usual way, by a witness statement made by one of them. The witness statement outlined broadly the substance of Russian law advice that the trustees had obtained in relation to the couple's competing matrimonial rights. Mrs Yurova's lawyers demanded a copy of the full advice on the basis that privilege had been waived. The trustees' lawyers denied that privilege had been waived but nonetheless proffered various gobbets from the advice that they had received. Mrs Yurova's lawyers were not satisfied and applied to the court for specific disclosure.

Given that the trustees' section 366 application was an insolvency application, the usual CPR rules on disclosure did not apply and there would only be disclosure at all to the extent that it was positively ordered by the court.

Apart from a deliberate, express waiver, there are a number of ways in which a party to litigation can waive privilege and one of these occurs where he deliberately deploys privileged material in court proceedings. In *Yurov*, the issue arose as to whether the material had been "deployed" at the time of the disclosure application given that it had merely been referred to in a witness statement but no submission had yet been made to the court.

Importantly, the trustees' witness statement contained an express statement that privilege was not being waived generally. Deputy ICCJ Parfitt found, however, that the privileged material *had* been "deployed" since it had been put in evidence with the implication that it would be relied on.

It is trite law that where privilege is waived, the waiver relates to "*the whole of the material relevant to the issue in question*". In this case, therefore the trustees were ordered to disclose not just the entirety of their Russian law advice but also all correspondence with their Russian lawyers leading to the giving that advice.

As a footnote, we note that it is not uncommon for partial disclosure of privileged material to be disclosed in correspondence subject to an express non-waiver of privilege. The question now arises whether, in reliance on *Yurov*, a recipient of such a letter could demand full disclosure of the privileged material. We would say not because a reference in correspondence does not amount to deployment in the course of court proceedings. This is nonetheless an area in which great care must be taken and guidance from litigators sought to avoid making the same mistake as Mr Yurov's trustees.



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