

## Reservation of rights preserves jurisdiction challenge

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**CATEGORY:**  
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In a definitive judgment handed down on 20 June 2016 in *JSC VTB Bank v Alexander Katunin* [BVIHCMA2015/004 & 007], the Eastern Caribbean Supreme Court of Appeal confirmed that the correct test in determining conduct amounting to submission to the jurisdiction of the court is that it must be considered by a disinterested bystander to be wholly unequivocal, following English High Court precedent in *SMAY Investments Ltd & another v Sachdev & ors 2003* [EWHC 474]. The judgment was the outcome of a successful interlocutory appeal by Withers BVI client Alexander Katunin in BVI proceedings brought by VTB Bank to enforce an award of US\$ 30 million obtained by default in the Meschansky District Court in Russia. Stephen Rubin QC was instructed to appear for Mr. Katunin.

In so doing, the Court of Appeal set aside the judgment of Bannister J. sitting in the BVI Commercial Court who had held – despite numerous reservations of his right to challenge jurisdiction, including in an application to extend time and adduce foreign law evidence, and notwithstanding making a formal application to challenge jurisdiction within the time stipulated by EC CPR 9.7 – that Mr. Katunin had submitted to the Court’s jurisdiction. The Court of Appeal found that the application to extend time and adduce foreign law evidence was made for the additional purpose of allowing Mr. Katunin to file his jurisdiction challenge and thus, when all the circumstances were taken into account, the steps taken by him did not amount to a wholly unequivocal submission to the Court’s jurisdiction. Accordingly, the question of the jurisdiction of the BVI Court to hear and determine the disputed enforcement proceedings remains at large.

In a further reversal, the Court of Appeal found that VTB Bank had not satisfied the test of ‘impracticability’ when obtaining an ex parte order for alternative service pursuant to EC CPR 7.8A. At the time of filing BVI proceedings, the bank obtained an order permitting service of the Claim Form in Russia under Hague Convention rules but in fact subsequently made no effort to serve the Claim Form in Russia. Instead, some six weeks later the bank sought and obtained an order for alternative service upon BVI companies that were thought to be beneficially owned by Mr. Katunin. The bank’s legal practitioners submitted that it would be ‘impracticable’ to serve Mr. Katunin in Russia as, they said, it could take an inordinate amount of time to do so (6 months or more) and he had attempted to evade service of the Russian proceedings upon which the current BVI proceedings were based.

Apart from whether it could be properly argued that service pursuant to the mandatory provisions of the Hague Convention was ‘impracticable’ in circumstances where no efforts at such service had been made, Mr. Katunin’s evidence that he had been unaware of the Russian proceedings was not contradicted. The Court of Appeal found that there was no evidence to show that Mr. Katunin had been evading service, merely a failure to attend the Court in Russia at which the default judgment was obtained. This conflict of evidence was one which Bannister J. had acknowledged could not be resolved on the application. As a result, the Court of Appeal decided that the judge had erred in adopting the bank’s version and that there was no evidential basis for the exercise of judicial discretion to make an alternative service order. Accordingly, the Court of Appeal set aside that order also.

A consequence of Mr. Katunin’s successful appeal, apart from VTB Bank being liable for his costs of the appeal and in the court below, is that the Claim Form, filed two years ago but not extended, has now expired without having been served.

Alexander Katunin was represented by [Niki Olympitis](#), [Sara-Jane Knock](#) & [Lauren Peaty](#) of Withers BVI, acting together with Justin Michaelson and Christiane Deniger of Fried, Frank, Harris, Shriver & Jacobson (London) LLP and instructing Stephen Rubin QC of Fountain Court Chambers.

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