

***NBT and Bank Otkritie v. Vadim Wolfson***

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May 4, 2021

### Plaintiffs are **Russian Banks** owned by the **Central Bank of Russia**

- Plaintiffs' choice of forum "is not dispositive . . . particularly when none of the plaintiffs is a New York resident." *Filho v. Borges*, 2019 WL 1877212, at \*3 (N.Y. Sup. Ct. Apr. 26, 2019) (Cohen, J.).
- Indeed, "where none of the plaintiffs is a New York resident . . . dismissal on forum non conveniens grounds may be appropriate." *BSR Fund, S.A. v. Jagannath*, 2020 WL 1274236, at \*3 (N.Y. Sup. Ct. Mar. 17, 2020) (Cohen, J.).
- "[T]he residence of a plaintiff . . . has been held to generally be the most significant factor in the equation." *High Street Capital Partners, LLC v. ICC Holdings, LLC*, 2019 WL 2106093, at \*5 (N.Y. Sup. Ct. May 14, 2019) (Cohen, J.).
- The Defendant's residence at the time of filing, whether in New York or elsewhere in the U.S., does not change the analysis. These claims lack any "substantial nexus" to anywhere in the U.S.

### The transactions alleged were executed in **Russia** by **Russian** entities and **Russian** individuals

- Plaintiffs *concede* that "many of the substantive events may have taken place in Russia." Opp. at 16.
- "[T]he critical events at issue here are not alleged to have taken place in New York." *Filho* at \*4.
- "[D]ismissal on forum non conveniens grounds is still appropriate if the underlying transaction occurred primarily abroad." *BSR Fund* at \*5.
- "The fact that the transactions out of which the cause of action arose occurred primarily in a foreign jurisdiction weighs strongly in favor of dismissal." *Foster Wheeler Iberia S.A. v. Mapfre Empresas S.A.S.*, 15 Misc.3d 1112(A), at \*3 (Sup. Ct., N.Y. County 2007).

### All four causes of action are pled under **Russian** law and governed by **Russian** statutes

- "The applicability of foreign law is an important consideration in determining a forum non conveniens motion and weighs in favor of dismissal." *Flame S.A. v. Worldlink Int'l (Holding) Ltd.*, 967 N.Y.S.2d 328, 331 (1st Dep't 2013).

### The relevant witnesses and evidence are in **Russia** and will require **Russian** translation

- Witnesses and evidence identified by *both* sides are located in Russia. See *Tseshinskiy Aff.* ¶¶ 6–7; *Sup. Wolfson Aff.* ¶¶ 7–16.
- "[T]he fact that key witnesses are located overseas places great hardship . . . on Defendant" and "weighs heavily in favor of dismissal." *Norex Petroleum Ltd. v. Blavatnik*, 22 N.Y.S.3d 138, at \*31 (N.Y. Sup. Ct. Aug. 25, 2015), *aff'd* 59 N.Y.S.3d 11 (2017).
- The State Department's website reports that "the Russian Federation . . . declines to give consideration to U.S. requests to obtain evidence." <https://travel.state.gov/content/travel/en/legal/Judicial-Assistance-Country-Information/RussianFederation.html>

### **Russia** is an alternative forum where these **Russian** Banks have already brought related claims

- "Without doubt, the availability of another suitable forum is a most important factor to be considered in ruling on a motion to dismiss." *Islamic Republic of Iran v. Pahlavi*, 62 N.Y.2d 474, 481 (1984); *id.* at 478-79 (stating multi-factor test; affirming dismissal).
- The claims arise from the same nucleus of facts and law—a Russian bank "liquidity crisis" allegedly resulting from mismanagement or misconduct by alleged "control persons," including the Defendant.
- Dismissal is appropriate where "alternative fora for this dispute not only exist, but are currently in use." *BSR Fund* at \*4 (Cohen, J.)

"[O]ur courts need not entertain causes of action **lacking a substantial nexus with New York.**" *BSR Fund* at \*2 (Cohen, J.)

# Plaintiffs fail to show any New York nexus to this Russian dispute. They claim only that:

## Defendant resided in New York at the time of filing

- Defendant was temporarily in New York to be near his ex-wife and kids. Opp. at 8–10; Suppl. Wolfson Aff. ¶¶4–5. That does not create a “substantial nexus” between Plaintiffs’ claims and New York.
- “[T]he forum non conveniens analysis calls for more than just a tally of the parties’ respective residences.” *Filho* at \*3.
- Defendant’s mere presence in New York is “insufficient to create a factual connection between New York and the dispute.” *Becker v. Federal Home Loan Mortg. Corp.*, 114 A.D.3d 519, 520 (1st Dep’t 2014).

## Defendant’s ex-wife and kids live in a New York apartment previously rented by Defendant

- That Defendant’s ex-wife and kids live in New York, or rent an apartment Defendant once rented, is irrelevant. Opp. at 5, 9; Sur-Reply at 3. That does not create a “substantial nexus” between Plaintiffs’ claims and New York.

## Defendant has a U.S. Social Security Number

- That Defendant, as someone legally in this country, has a U.S. Social Security number is irrelevant. Opp. at 5, 9. That does not create a “substantial nexus” between Plaintiffs’ claims and New York.

## Defendant posts online in English

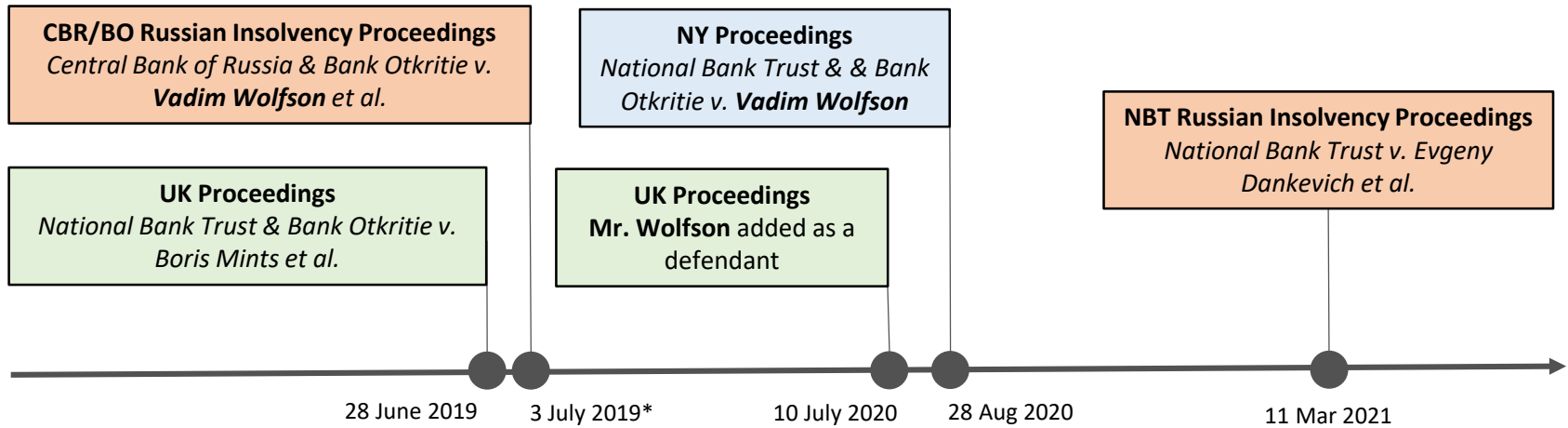
- That Defendant may post “articles and other content” online in English is irrelevant. Opp. at 6, 9 n.5. That does not create a “substantial nexus” between Plaintiffs’ claims and New York.

## Defendant has not proven his connections to any other U.S. state

- That too is irrelevant. Sur-Reply at 3. These Russian claims lack any “substantial nexus” to *anywhere* in the U.S.

**The “relative ease of enforceability” is not a factor NY courts consider. Plfs.’ Mar. 29 Ltr. “It is not the business of our courts to assume responsibility for supervising the integrity of the judicial system of another sovereign nation.” – *Overseas Media, Inc. v. Skvortsov*, 441 F.Supp.2d 610, 618 (S.D.N.Y. 2006) (finding “Russian court” an adequate forum where “at least one plaintiff” was “a Russian entity” and a “related” action was “pending in Russia”).**

# Timeline of Parallel Proceedings



	UK Proceedings	CBR/BO Russian Insolvency Proceedings	NY Proceedings	NBT Russian Insolvency Proceedings
<b>Claimants</b>	<ul style="list-style-type: none"> <li>NBT</li> <li><b>Bank Otkritie</b></li> </ul>	<ul style="list-style-type: none"> <li>CBR, on behalf of:</li> <li><b>Bank Otkritie</b></li> </ul>	<ul style="list-style-type: none"> <li>NBT</li> <li><b>Bank Otkritie</b></li> </ul>	<ul style="list-style-type: none"> <li>NBT</li> </ul>
<b>Defendants</b>	Evgeny Dankevich Boris Mints Dmitry Mints Alexander Mints Igor Mints Mikail Shishkhanov <b>Vadim Wolfson</b>	Evgeny Dankevich Gennady Zhuzhlev JSC Otkritie Holding Elena Budnik Ruben Aganbegyan <b>Vadim Wolfson</b>	<b>Vadim Wolfson</b>	Evgeny Dankevich Gennady Zhuzhlev JSC Otkritie Holding Mikhail Nazarychev

\* Statement of Claim dated 28 June 2019