Monteagle International Ltd v Grocery Market Research Ltd

Jurisdiction:	Jersey
Judge:	Matthew John Thompson
Judgment Date:	23 November 2020
Neutral Citation:	[2020] JRC 244
Date:	23 November 2020
Court:	Royal Court

Text

Between
Monteagle International Limited
First Plaintiff
Monteagle International (UK) Limited
Second Plaintiff
and
Grocery Market Research Limited
First Defendant
Anthony Dumas
Second Defendant

[2020] JRC 244

Before:

Advocate Matthew John Thompson, Master of the Royal Court.

ROYAL COURT

(Samedi)

Companies.

Authorities

Royal Court Rules 2004, as amended

Practice Direction RC17/04

Holmes v Lingard [2018] JRC 184

A&B Trusts [2018] JRC 068

Booth v Collas Crill [2017] JRC 038

W v JFSC [2015] JRC 017

Advocate J Harvey-Hills **for the Plaintiffs**.

Advocate M Pallot **for the Defendants**.

CONTENTS

THE MASTER:

Introduction

1 This judgment contains my decision in respect of an application by the plaintiffs for further and better information about the defendants' answer and counterclaim.

Background

2 The first plaintiff is a company incorporated under the laws of Jersey. The second plaintiff is a company incorporated under the laws of England. The plaintiffs are part of a large multijurisdictional group of companies defined in the order of justice as the MM Group which carries on business in the trading of fast-moving consumer goods abbreviated to FMCG.

3 The first defendant is also a company incorporated under the laws of Jersey. The second defendant is an individual who was previously involved at a senior level with the FMCG activities of the plaintiffs and the MM Group.

4 The claims brought by the plaintiffs against the defendants relate to alleged breaches of a consultancy agreement and an alleged breach of contract and misuse of confidential information of the plaintiffs and the MM Group for the purposes of the defendants setting up and operating a business known as Omni Global Sourcing Solutions/Omni (“Omni”).

5 The first defendant owns Omni. The first defendant is owned by a structure of which the second defendant and his family are beneficiaries.

6 The defendants dispute the plaintiffs' claims and assert a significant ownership interest in the first plaintiff and other companies in the MM Group; the failure to recognise this interest is also raised as a defence to the claims in the order of justice.

7 I refer in more detail to certain parts of the answer and counterclaim later in this judgment.

8 The proceedings were issued on 9 th December, 2019. On 18 th March, 2020 the defendants filed and served a request for further information. While the plaintiffs responded to that request on 22 nd May, 2020 it was a matter of dispute between the parties about the adequacy of that response. However, that issue was not before me and so I have not considered the same beyond noting the criticism.

9 The defendants' answer and counterclaim was served on 14 th July, 2020.

10 On 7th August 2020 the plaintiffs served a request for further information on the defendants. The defendants provided certain further information on 4th September 2020. The defendants also refused to answer a number of requests. This has led to the present application, albeit the plaintiffs have only chosen to pursue some of the unanswered requests.

11 The order of justice runs to 31 pages and the answer and counterclaim runs to 48 pages.

The requests

12 In his skeleton argument, Advocate Harvey-Hills grouped his requests into four categories:-

(i) The nature of the interests claimed by the defendants;

(ii) Particulars of the agreements alleged by the defendants to have been made between the parties;

(iii) Issues of foreign/governing law; and

(iv) The unique pricing/business model of Omni.

13 This was a helpful categorisation and I have therefore approached matters in this judgment by reference to those categories.

Relevant legal principles

14 While the skeleton arguments of both parties set out at some length the relevant legal principles in relation to requests for information, as well as the requirements of a pleading, for the purposes of this judgment I propose to focus on the relevant applicable principles to requests for information as these were at the heart of the dispute. I am of course familiar with the requirements for a pleading and the relevant legal principles.

15 The power to order a party to provide further information is set out in Rule 6/15(1) of the Royal Court Rules 2004, as amended, ("RCR") as follows:-

"6/15 Obtaining further information [54]

(1) The Court may at any time of its own motion or on application order a party to –

(a) Clarify any matter which is in dispute in the proceedings; or

(b) give additional information in relation to any such matter ,

whether or not the matter is contained or referred to in a pleading."

16 This rule is supported by Practice Direction RC17/04. Paragraph 5 of that RC17/04 provides as follows:-

"5. The Request should be concise and should only relate to matters that

are reasonably necessary and proportionate for a requesting party to prepare its own case, or to understand the case it has to meet."

17 At paragraph 9 of *Holmes v Lingard* [2018] JRC 184 I stated as follows:-

"9. Rule 6/15 was introduced by Royal Court (Amendment No.20) Rules 2017. The new Rule 6/15 replaced requests for further and better particulars, interrogatories and requests for further and better statement of case. The intended effect of Rule 6/15 (which is identical to an equivalent found in the Civil Procedure Rules) is that each party is required to make its case clear if its pleading does not do so."

18 In paragraph 10 I made this observation:-

"10. Rule 6/15 should not however open the floodgates to numerous or lengthy requests. The court has previously rejected for further and better particulars in similar fashion. The court also rejected requests amounting to evidence as not being an appropriate way to proceed e.g. *Crociani & Anor v Crociani & Ors* [2015] JRC 177. ***Nor will requests that go beyond an understanding of a case be granted (e.g. see*** *Booth v Collas Crill* [2017] JRC 038). ***The touch stone is whether a party's pleading is understandable or not."***

19 In the matter of *A&B Trusts* [2018] JRC 068 the Royal Court stated at paragraph 24 as follows:-

"Ultimately, a party's pleading must make their case clear so that the party required to respond to it understands what the case is."

20 It is also well known that requests for information will not be granted where they relate to matters known to the requesting party, or where they are requests for evidence.

21 In *Booth v Collas Crill* [2017] JRC 038, one of the criticisms made of the defendant was that it had served an extensive request for further and better particulars which comprised 138 separate requests for a 9-page order of justice. At paragraph 48 I stated the following:-

" The defendant could have put its requests much more plainly and simply." [Emphasis Added]

22 I have referred to the above authorities because in evaluating requests for information made of particular paragraphs, I consider that the court should not just analyse the particular paragraph but also the pleading as a whole to see whether the case is clear. This is because, while there may be ambiguity in a particular paragraph, that ambiguity may be answered or clarified in another paragraph of the pleading. When drafting requests for

information, parties and their advisers should stand-back and focus on what it is they do not understand having regard to the pleading as a whole, not just a particular sentence or paragraph. This approach may narrow the number of requests. It may also avoid repetition of largely the same requests where a sentence by sentence or paragraph by paragraph approach only is applied to the framing of requests. The focus should therefore be on clarification of an issue being sought which may be raised in a number of different parts of a pleading, issues that are not understood or the key material facts supporting those issues. Parties should avoid descending into the minutiae or repeating requests in respect of the same issue. Brevity and clarity are to be encouraged.

23 With these observations in mind I now turn to each category of requests made by the plaintiffs as set out in paragraph 12 above.

The nature of the interests claimed by the defendants

24 This category related to requests 1.4, 1.5, 1.6, 2.1, 2.3, 4.2, 5.2, 6.2, 6.5, 10.1, 12.4, 14.1, 14.2, 16.4, 22.3, 24.2, 36.1 and 42.1.

25 The broad clarification that the plaintiffs were seeking related to what interests the defendants were claiming in the MM Group. At paragraph 72 of the counterclaim which ran to 57 sub-paragraphs and was 14 pages in length, the defendants set out their counterclaim.

26 At the outset of the hearing, in response to a question from me, Advocate Pallot confirmed that his clients were not seeking anything beyond the claims made in paragraph 72. To the extent therefore that requests focused on earlier paragraphs of the answer which did not identify the interests sought, he accepted that his case was as set out in paragraph 72 and all its sub-paragraphs and he could not claim anything else at trial. He also argued this was clear from the pleading when read as a whole in any event.

27 In my judgment, this confirmation dealt with a large number of the requests because, to the extent that particular paragraphs of the answer did not make it clear what interests the defendants were claiming in the MM Group, any concerns about the extent of the counterclaim the plaintiffs are facing are addressed by this confirmation.

28 I should however add that in my judgment when the counterclaim is read as a whole, it is clear what is being claimed by the defendants.

29 I also wish to add, if there was any doubt on the part of the plaintiffs and their advisers, they could have addressed that doubt by seeking the same clarification that I sought at the outset of the hearing, rather than making 18 separate requests. The approach taken in respect of this category was therefore disproportionate because it was not concisely

confined to matters to enable the requesting party to understand the case it faced. The filing of 18 requests was also a costly way of seeking a clarification that was ultimately straightforward to ask for and was readily given.

30 Nevertheless, despite the above conclusion which is sufficient to deal with this category of requests, given the number of requests I will provide brief comments on each of them as follows:-

(i) In request 1.4 I consider the pleading is clear, i.e. NCT owned 50% of MCG. The precise legal arrangements pursuant to which this interest was may have held is a matter of evidence.

(ii) I consider that request 1.5 is not necessary. The pleading sets out that NCT owned 50% of MCG. Precisely how they may have held that interest is a matter of evidence. I also consider that paragraph 7.3.1 of the answer and counterclaim is clear in saying that each of the four shareholders in NCT therefore want held 12.5% of MCG pursuant to the joint venture arrangement. Again, how they may have held that interest is a matter of evidence.

(iii) Request 1.6 is duplicative of request 1.5. I should also add that to the extent that Advocate Harvey-Hills suggested that both NCT and its shareholders were each claiming a 50% interest in addition to the 50% interest held by the MM Group, there was no basis for such a concern on the face of the relevant part of the pleading when read as a whole.

(iv) In relation to request 2.1, which concerned paragraph 7.3.3 of the answer and paragraphs 72.2.1 and 72.2.2 of the counterclaim, it is clear from paragraph 7.3.5 that NCT's business was separate from the 50% interest claimed in MCG. The pleading that CB sold his 25% shareholding in NCT but retained an interest in MCG is accordingly clear. The pleading is also clear that 10% of CB's interest was then purchased by MCG. Therefore, I am satisfied that the defendants do not need to answer this request for the plaintiffs to understand the answer and counterclaim.

(v) Likewise requests 4.2 and 5.2 are also not justified. These requests relate to individual sentences within paragraphs 7.3.4 of the answer rather than reading that paragraph as a whole. When read as a whole, that paragraph does not require any further information in order to be understood. Any additional information asked for is therefore seeking evidence.

(vi) The same analysis applies to requests 6.2 and 6.5 both of which also concern paragraph 7.3.4.

(vii) Likewise, paragraph 14 of the answer does not require any additional information in order to be understood. Request 10.1 is not therefore justified.

(viii) In respect of 19 of the answer, in light of the concession of Advocate Pallot, request 12.4 is not necessary.

(ix) In respect of request 14.1 which related to paragraph 72.37, the relationship between the first and second defendants was pleaded at paragraph 72.6 and 72.14. The request is not therefore necessary for the plaintiffs to understand the counterclaim.

(x) Request 14.2 is duplicative of request 12.4 and is not justified for the same reasons.

(xi) Request 16.4 is also duplicative of requests 14.2 and 12.4.

(xii) Request 24.2 is not necessary in light of the Advocate Pallot's concession. It is also a duplicative request.

(xiii) The same applies to request 36.1.

(xiv) In respect of request 42.1 concerning paragraph 72.40 there is nothing unclear about paragraph 72.40 in the context of the pleading when read as a whole.

Requests concerning arrangements, agreements or understandings

31 This part of the judgment deals with requests 1.2, 1.3, 2.4, 3.2, 4.1, 5.1, 6.4, 6.6, 7.2, 9.1, 9.2, 12.1, 12.2, 12.3, 16.2, 16.3, 22.1, 22.1, 24.1, and 37.1.

32 Request 1.2 does not arise out of paragraph 7.3.1. This paragraph clearly pleads that discussions leading to the joint venture arrangement were between Warwick Marshall and the second defendant. The pleading is also clear in stating that each of the MM Group and NCT would have an equal interest in MCG. How that interest may have been held is a matter of evidence for both parties to adduce in due course.

33 In relation to request 1.3, the request is justified to this extent. Paragraph 7.3.1 pleads that the joint venture arrangement arose out of discussions and that MCG was incorporated as a result of it, with each of the MM Group and NCT having a 50% interest. What is not summarised is what the essential terms of the joint venture arrangement were as far as the defendants understood them. The defendants should as far as they can now recall plead the material particulars of the joint venture arrangement. Otherwise request 1.3 is refused.

34 In respect of request 2.4 and paragraph 7.3.3, the defendants plead that CB's interest of 2.5% was *"rounded up"* to 3%. However, whether this occurred and how it occurred is a matter of evidence. As it is alleged that this rounding up was carried out by Warwick Marshall, he is able to give instructions to the plaintiffs to enable them to plead to this paragraph. If he states he has no knowledge of this arrangement, there is no difficulty with the allegation being denied on that basis.

35 In respect of request 3.2, paragraph 7.3.4 is clear. It summarises the terms of the joint venture arrangement which two other shareholders were dissatisfied with, namely carrying

out all importing and exporting through MCG. Otherwise request 3.2 is duplicative of request 1.3.

36 In respect of request 4.1, the defendants should clarify whether the agreement was oral or in writing that the MM Group buy out certain shares in NCT held by CW and GA and if in writing produce a copy of the same. The defendants should also attempt to be more precise about when this occurred than *"thereafter"* and should set out when it was agreed that the MM Group buy out these shares. The material particulars of this agreement are pleaded however namely that shares would be bought out.

37 There is no ambiguity in relation to request 5.1 when paragraph 7.3.4 of the answer is read as a whole. It is clear that the defendants plead that the second defendant gave up his shares in NCT in return for an interest in the first plaintiff and other entities within the MM Group. The nature of the interest claimed is set out in paragraph 72 and the defendants cannot go beyond their claim as pleaded as they accept.

38 In respect of request 6.4, this request falls away because of the clarification given by Advocate Pallot that what is claimed is set out in paragraph 72. The same applies to request 6.6 which is duplicative of request 6.4.

39 In relation to request 7.2 and paragraph 72.3 of the answer and counterclaim, I accept that the defendants should clarify what is meant by shares being acquired on a joint basis. While it is implicit in the pleading that the defendants' case is that these shares were acquired by the MM Group including the second defendant relinquishing his shares leading to the defendants' claim for the interest as set out in paragraph 72, nevertheless the defendants should expressly make clear whether the joint basis referred to is as I have summarised it in this part of my judgment.

40 In relation to request 9.1, I have already required the defendants to set out the material particulars of the joint venture arrangement referred to in paragraph 7.3.1 of the answer arising out of request 1.3. Request 9.1 does not therefore take matters any further and is also a duplicative request.

41 Request 9.2 is not justified. The pleading is clear that the parties started discussions in 1995 and that there were subsequent discussions with the joint venture arrangement being the product of the discussions. All that is needed, which I have already ordered, are the material terms of that arrangement. Request 9.2 is therefore also duplicative.

42 In respect of request 12.1, paragraph 19 of the answer when read as a whole is clear and does not require any additional information to be understood. The understanding of the second defendant that he believed he had a 28% interest in the first plaintiff and MCG is clear and is pleaded. This request is also a request for evidence. The same applies to requests 12.2 and 12.3. The only point of clarification required is for the first part of request

12.3. Although it is implicit in the pleading, the defendants should clarify that the understanding was an oral one.

43 Requests 16.2 and 16.3 are duplicative of requests 12.1, 12.2 and 12.3. All that is needed is clarification whether the discussions were oral as is implicit in the defendants' pleading.

44 In respect of requests 22.1 and 22.2, paragraph 40.2 when read as a whole is clear. In relation to this request Advocate Pallot also drew to my attention to an email sent by Warwick Marshall on 27 th July 2018 to the second defendant which followed the meeting in Zug and which stated "if you to keep a 28% of Monteagle International and Consumer then I think it would only be fair if Monteagle to have a pre-agreed option to buy a 20% share of OMNI so that we are not excluded from China, HK and the USA going forward. I hope and trust you agree." Requests 21.2 and 22.2 also appear to be matters known to Warwick Marshall. He is therefore able to give instructions as to whether he agrees or disagrees with the pleaded case and the understanding of the second defendant.

45 Request 24.1 relates to paragraph 42. The defendants' case is pleaded and has been made clear by the confirmation given by Advocate Pallot at the commencement of the hearing. An answer to request 24.1 is not therefore necessary.

46 Request 37.1 is duplicative. The interests are clearly pleaded and as is the joint venture arrangement apart from the obligation to provide particulars arising out of request 1.3.

47 In relation to this group of requests, apart from the limited clarifications I have ordered should be given, these requests are refused because they are not necessary to understand the defendants' pleading. As with the requests in respect of the nature of interests claimed by the defendants, the plaintiffs have fallen into the trap of making requests of specific paragraphs without looking at the pleading or the paragraph as a whole. The limited points of clarification I have ordered to be provided could also have been dealt with on a much more straightforward basis.

Issues of foreign/governing law

48 This section can be dealt with much more briefly. The issues relate to request 17.1, 18.1, 39.1, 40.1 and 41.1. While the relevant parts of the pleadings to which these requests relate concern a pleading that a particular agreement was governed by a foreign law, Advocate Pallot confirmed that no particular provision of foreign law was being relied upon. Rather he was simply pleading that the agreements were governed by a foreign law because the plaintiffs had failed to do so in the order of justice as they should have done. He accepted that the lack of any identification of any particular principle of foreign law that his clients were going to rely on meant that expert evidence could not be adduced of that foreign law because there was no issue of foreign law which required determination. The Royal Court trial would therefore proceed on the basis that, although particular agreements were

governed by a law of a country other than Jersey, the Royal Court could treat the law of that other country as being the same as the law of Jersey because there was no pleading to the contrary.

49 Advocate Pallot also accepted that, if that position were to change, any relevant principle of foreign law concerned would have to be identified and pleaded.

50 On the basis of this concession the requests under this category all fall away. Again, I have to observe that this issue could have been dealt with much more simply by an exchange of letters rather than five separate detailed requests.

The unique pricing/business model

51 These requests related to paragraphs 54.7, 58.1 and 64 of the answer. These paragraphs provide as follows:-

> *"54.7 Paragraph 52.7 is denied.* It is averred that the business of OMNI has been developed and operated by lawful means. The confidential information of the Plaintiffs or the MM Group has not been unlawfully used, misused or disclosed by the Defendants or OMNI in order to develop the business of OMNI. OMNI operates through a business model which is distinct from that of the Plaintiffs. The services and pricing models of OMNI are dissimilar to those used by the Plaintiffs and the MM Group. OMNI conducts business through a unique pricing model. The success which has been enjoyed by OMNI is further as a result of the strong business relationships which AD and OMNI staff have cultivated in the relevant FMCG markets, which dated back to before AD joined the MM Group. All business won by OMNI has been fair and lawful.
>
> *54.8 Paragraph 52.8 is admitted under explanation to follow.* It is averred that:
>
> > *54.8.1 in respect of La Doria, the supply of La Doria product lines to Shoprite was put out for tender among suppliers in the FMCG industry.* Those suppliers included OMNI and the MM Group. OMNI tendered for that business following the Resignation of AD. OMNI submitted its unique pricing model in respect of the supply of La Doria products to Shoprite on or around 15 June 2019. OMNI was successful in that tender. OMNI was awarded the business in respect of the supply of La Doria product lines to Shoprite on or around 8 August 2019. No confidential information of the Plaintiffs was used, misused or disclosed by the Defendants or OMNI in order to obtain that business.
>
> *64.1 In relation to Shoprite:*
>
> > *64.1.1 the Defendants have caused no loss to the Plaintiffs through*

any use, misuse or disclosure of any confidential information of the Plaintiffs in breach of any duties purportedly owed by the Defendants. The Defendants won business from Shoprite through lawful means. Shoprite were attracted to the unique business model operated by OMNI. The unique model operated by OMNI was a decisive factor in the decision taken by Shoprite to award business to OMNI. The unique model operated by OMNI was devised and submitted to Shoprite without any unlawful use, misuse or disclosure of any confidential information of the Plaintiffs.

64.1.2 Shoprite do not enter into fixed or long term contracts with any of their suppliers including OMNI and the MM Group. Shoprite maintains an informal system with all of its suppliers whereby Shoprite may switch or terminate a contract with less than three months' notice (if any notice is given at all). This informal system accords with industry standards. That same informal system is applied to OMNI and to the Plaintiffs and the MM Group. Any alleged loss of business from Shoprite on the part of any of its suppliers cannot thus be forecasted beyond a three-month period if at all.

64.2 In relation to SPAR, paragraph 56.6 of this Answer and Counterclaim is repeated."

52 Advocate Pallot contended in relation to these requests that insofar as what was sought was more detail of the business model and the pricing model operated by OMNI, this was a request for evidence and an attempt to cross-examine the defendants. It was also an application to obtain material which was highly sensitive confidential information belonging to a third party, and which was a trade secret.

53 In relation to the requests seeking information about how OMNI conducts its business, this was a request for evidence which it was not appropriate to order.

54 In relation to the unique pricing model, he emphasised strongly that these proceedings are a dispute between competitors.

55 I start by reference to the pleadings where in paragraphs 54.7, 58.1 and 64 there are clear references to the unique pricing model. These references do beg the question as to what is meant by *"unique"*.

56 It is also clear to me that the unique pricing model has been referred to expressly in paragraph 54.8 because that model was submitted to a business called Shoprite on or around 15 th June 2019. This is a reference to a specific document. Likewise, in paragraph 64 the defendants plead "that the unique model operated was devised and submitted to Shoprite". This is also a reference to a specific document. This was confirmed by Carey

Olsen in their letter dated 10 th August, 2020 to Mourant. In that same letter Carey Olsen objected to production of this document because it would infringe third party confidentiality.

57 However, I am concerned that to require the defendants to plead why OMNI's pricing model is unique would be requiring the defendants to plead commercially sensitive matters that belong to a third party. I also have to guard against the risk of such statements being made use of for purposes other than the present proceedings.

58 In my judgment the right way to deal with this aspect of the hearing before me is to order inspection of the unique pricing model rather than to order a pleaded case in respect of what that model was. The latter step involves risks of a breach of commercially sensitive confidential information to a competitor.

59 The reason for ordering discovery is that the defendants have pleaded a positive case that they have not misused confidential information belonging to the plaintiffs (reserving their position as to what confidential information they are alleged to have misused and why it is confidential). They have also pleaded that a unique pricing model was one of the factors as to why OMNI was successful in attracting business. This positive case requires the court to evaluate in part what that unique pricing model was. The pleading refers to specific documents about this model as set out in paragraph 56 above.

60 As both counsel accepted, ultimately the requirement for the court to determine issues overrides any confidentiality concerns. In *W v JFSC* [2015] JRC 017 at paragraph 34 the Royal Court summarised the approach that should be taken to confidentiality in contested litigation as follows:-

> ***"34. Those who provide information relating to their business and affairs do so in the knowledge and understanding that it will be treated confidentially. Discovery of confidential information was considered by the House of Lords in*** *Science Research Council v Nasse*, ***a case in which an employee alleged discrimination for being passed over for promotion and sought an order from the industrial tribunal for discovery by the employer of confidential reports on the other two colleagues selected for interview (and which they had not seen). The objection of the employer to such disclosure was upheld. Lord Wilberforce said at page 1065 line 3:-***
>
> > ***"1. There is no principle of public interest immunity, as that expression was developed from*** *Conway v Rimmer* [1968] A.C. 910, ***protecting such confidential documents as those with which these appeals are concerned. That such an immunity exists, or ought to be declared by this House to exist, was the main contention of Leyland. It was not argued for by the S.R.C.; indeed that body argued against it***.
> >
> > ***2. There is no principle in English law by which documents are***

protected from discovery by reason of confidentiality alone. But there is no reason why, in the exercise of its discretion to order discovery, the tribunal should not have regard to the fact that documents are confidential, and that to order disclosure would involve a breach of confidence. In the employment field, the tribunal may have regard to the sensitivity of particular types of confidential information, to the extent to which the interests of third parties (including their employees on whom confidential reports have been made, as well as persons reporting) may be affected by disclosure, to the interest which both employees and employers may have in preserving the confidentiality of personal reports, and to any wider interest which may be seen to exist in preserving the confidentiality of systems of personal assessments .

3. As a corollary to the above, it should be added that relevance alone, though a necessary ingredient, does not provide an automatic sufficient test for ordering discovery. The tribunal always has a discretion. That relevance alone is enough was, in my belief, the position ultimately taken by counsel for Mrs Nassé thus entitling the complainant to discovery subject only to protective measures (sealing up, etc.). This I am unable to accept. The ultimate test in discrimination (as in other) proceedings is whether discovery is necessary for disposing fairly of the proceedings. If it is, then discovery must be ordered notwithstanding confidentiality. But where the court is impressed with the need to preserve confidentiality in a particular case, it will consider carefully whether the necessary information has been or can be obtained by other means, not involving a breach of confidence.”””

61 Both parties accepted that discovery could be made subject to a confidentiality club i.e. it could only be seen by certain categories of persons.

62 During the course of argument Advocate Harvey-Hills indicated that he would be content for the discovery, if ordered, to be provided to him and his colleagues at Mourant Ozannes and to a Mr Edward Beale. Subsequent to the hearing I was provided with Mr Beale's C.V. which was also provided to Advocate Pallot. Advocate Pallot in response indicated he would prefer a Jersey based director to Mr Beale, if I was minded to order discovery.

63 I consider that ordering disclosure to a confidentiality club is the fairest way to proceed so that those advising the plaintiffs and selected individuals on behalf of the plaintiffs can see the relevant information without it being disseminated more widely, thus running the risk of a third party's confidentiality being breached or the information being used other than for the present proceedings.

64 In relation to such a club, I consider that a locally based director alone may well not have sufficient information to assess whether the pricing model of Omni is unique or not. Such a person is likely to hold a number of directorships and will rely upon individuals working full time or mainly for the MM Group to make such an assessment. I also understand the defendants' concerns, if the information was provided to Mr Beale alone, when he resides outside Jersey. Yet, without his input or input from someone senior within the MM Group, the plaintiffs may unfairly be prevented from evaluating the documents that should be disclosed.

65 To address these rival concerns, I consider that the club should include both Mr Beale and a Jersey based director. The former can provide input based on his knowledge of the MM Group and its activities; the latter can also provide input based on that person's knowledge as a director and a specialist in financial services. That person can also ensure compliance with my orders as the person is within this jurisdiction. I therefore require written undertakings from the plaintiffs, the nominated Jersey director and from Mr Beale that the documents disclosed will only be seen by Mr Beale and the Jersey director and by partners and employees of Mourant Ozanne and will not be shared with anyone else within the plaintiffs or the MM group. I will not require similar undertakings from Mourant Ozannes because of the status of Advocate Harvey-Hills as an officer of the Royal Court. Any breach of any orders creating a confidentiality club and/or any undertaking will be referred to the Royal Court as a contempt of court. A breach may also attract other sanction including the remedy of strike out. Arrangements will also have to be made to keep the confidentiality of the discovery required. This will extend to any reply and any evidence filed by either party on this issue. I wish to be addressed on this point when this judgment is handed down.

66 Subject to any arguments to the contrary when this judgment is hand down, I propose that this discovery is provided within 14 days.

67 I also propose that the limited requests for information I have ordered are also provided at the same time.