Neutral Citation Number: [2020] EWCA Civ 11

Case No: A4/2019/0264

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
QUEEN'S BENCH DIVISION
COMMERCIAL COURT
Mrs Justice Moulder
[2019] EWHC 3 (Comm)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/01/2020

Before:

LORD JUSTICE LEWISON
LORD JUSTICE BAKER
and
LORD JUSTICE MALES

- -

Between:

RAIFFEISEN BANK INTERNATIONAL AG	**Appellant**
- and -	
1) ASIA COAL ENERGY VENTURES LTD	
2) ASHURST LLP	**Respondents**

- -
- -

David Foxton QC & Emily Wood (instructed by **Stephenson Harwood LLP**) for the **Appellant**
David Wolfson QC & Michael Watkins (instructed by **Mayer Brown International LLP**) for the **Second Respondent**
The First Respondent took no part in the appeal

Hearing date: 17th December 2019

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Approved Judgment

Lord Justice Males:

Introduction

1. While acting for an Indonesian company which was to provide finance in connection with a share sale agreement, the respondent firm of solicitors ("Ashurst") provided a written confirmation to the appellant bank ("the Bank") that it had been put in funds in an amount not less than US $85 million and that it had received irrevocable instructions to transfer these funds into an escrow account or, in the event that the proposed escrow agreement was not signed within 30 days, to continue to hold the funds pending agreement between the parties on an alternative arrangement. The Bank says that, in reliance on that confirmation, it agreed to release its security to enable the transaction to proceed. It is now apparent, however, that although Ashurst did receive the US $85 million into its client account, within about 2 ½ months the money was no longer there and the balance of the client account had been reduced to zero.

2. In the event, although it obtained the shares, the buyer failed to pay the agreed price and the Bank has commenced this action, not only against the buyer but also against Ashurst, claiming that by issuing the confirmation, Ashurst undertook obligations of which it is in breach and made representations which were untrue.

3. This appeal arises as a result of requests by the Bank for disclosure of documents and Further Information relating to the instructions which Ashurst had received from its client. Moulder J ordered Ashurst to disclose the balances on its client account during the relevant period, but otherwise refused the Bank's applications, holding that the material sought was privileged. This is an appeal against that refusal.

The facts

4. The Bank, Raiffeisen Bank International AG, is a corporate and investment bank registered under the laws of Austria. It had made loans to various entities and, as security for the repayment of those loans, held or controlled a 23.8% shareholding in Asia Resource Minerals Plc ("ARM"), a company traded on the London Stock Exchange which owned indirectly a substantial holding in PT Berau Coal, one of Indonesia's largest coal producers.

5. The first defendant, Asia Coal Energy Ventures Ltd ("ACE"), is a special purpose vehicle incorporated in the British Virgin Islands on 17th January 2014 for the purpose of a proposed takeover of ARM.

6. Finance for this transaction was provided to ACE by an Indonesian company called PT Sinar Mas Multiartha TBK ("SM Multiartha"), for whom Ashurst acted as solicitors.

7. The Bank was only prepared to release its security over the ARM shares which it controlled if the outstanding loans were purchased. In order to achieve this, a series of connected agreements and documents dated 7th May 2015 were concluded. These included a "Framework Agreement", a "Sale and Purchase Agreement", and a "Solicitor's Confirmation".

8. Pursuant to these agreements, ACE was to purchase the 23.8% shareholding in ARM controlled by the Bank together with the loans made by the Bank and other associated collateral for a total price of US $120 million. This comprised two elements. The "Share Purchase Price" was the price to be paid by ACE for the Bank's ARM shares pursuant to a public offer, while the "Purchase Price" was to be US $120 million less whatever the "Share Purchase Price" turned out to be.

9. Clauses 4.1 and 4.2 of the Sale and Purchase Agreement provided for the setting up of an Escrow Account:

> "4.1 As soon as reasonably practicable, the Purchaser and the Seller shall enter into the Escrow Agreement.
>
> 4.2 If the Escrow Agreement is not entered into by all parties thereto within 30 days from the date of this Agreement, the parties shall discuss in good faith an alternative arrangement to achieve the same commercial purpose."

10. Clause 3 of the Sale and Purchase Agreement provided for Ashurst to provide the Solicitor's Confirmation in the following terms:

> "1. We refer to the escrow agreement, the current form of which is set forth as Schedule 2 of the [Sale and Purchase Agreement] (referred to in this letter as the "Escrow Agreement") ...
>
> 2. We confirm that:
>
> (a) we have been put in funds in an amount that is not less than US$85,000,000 (the "Escrow Amount"); and
>
> (b) we have irrevocable instructions as follows:
>
> (i) to transfer the Escrow Amount to the Escrow Agent upon the signing of the Escrow Agreement in accordance with the terms thereof; and
>
> (ii) in the event that the Escrow Agreement is not signed within 30 days of the date hereof, to continue to hold the Escrow Amount pending agreement by the Parties contemplated by clause 4.2 of the [Sale and Purchase Agreement].
>
> 3. This confirmation and any non-contractual obligations arising out of or in connection with it are governed by English law."

11. As is apparent from clause 3 of the Confirmation, although it would be clear in any event, by giving the Confirmation in these terms, as it did, Ashurst would be undertaking legal obligations towards the Bank.

12. The proposed Escrow Agreement was intended to provide the Bank with security for payment of the amounts due to it up to the sum of US $85 million. This was its obvious commercial purpose. The provision of equivalent security was therefore the "same commercial purpose" which the "alternative arrangement" contemplated by clause 4.2 of the Sale and Purchase Agreement would need to achieve.

13. In the event the contemplated Escrow Agreement was not entered into by all parties either within 30 days of 7th May 2015 or at all and the parties did not enter into any such "alternative arrangement". Despite this, the transaction proceeded.

14. On 8th June 2015 ACE's public offer was increased to 56p/share (from its previous level of 41p/share). By 29th June 2015 the approvals required by the City Code on Takeovers and Mergers had been obtained and the conditions to Completion of the Sale and Purchase Agreement had been satisfied. On or about 30th June 2015 the Bank released its security over the shares. On 1st July 2015 ACE announced that its offer had become unconditional. Thereafter the Bank transferred the shares to ACE and received US $50 million. It followed this with a demand dated 9th July 2015 for payment of the Purchase Price, that is to say for US $70 million (being US $120 million less the US $50 million already received).

15. However, ACE refused to complete the transaction, claiming that there were various "deliverables" due from the Bank, each of which had to be delivered before ACE was under any obligation to pay the outstanding US $70 million. The Bank denies that ACE was entitled to withhold this payment.

16. Thus ACE appears to have obtained the ARM shares previously held by the Bank free of the Bank's security, but without having to pay the Bank the sums due in respect of the loans.

The proceedings

17. The primary claim in this action is a claim by the Bank against ACE for payment of the outstanding Purchase Price.

18. In addition, the Bank makes a claim against Ashurst. That claim is formulated in what appear to me (with respect) to be somewhat elaborate pleadings, which include claims extending over many pages that Ashurst made various representations about the instructions which it had received from its client and the way in which it intended to act, claims for breach of fiduciary duty and (by an amendment made since the hearing below) claims for rectification of the Solicitor's Confirmation. At the heart of the Bank's case, however, is a claim that, by giving the Solicitor's Confirmation, Ashurst undertook that it would continue to hold the Escrow Amount as security for payment of the Purchase Price unless either (1) the Escrow Agreement was signed or (2) an alternative agreement was concluded as contemplated by clause 4.2 of the Sale and Purchase Agreement; and that, as neither of these things had happened, that security should still have been held by Ashurst and available for enforcement of any judgment against ACE.

19. Ashurst denies that it undertook any such obligation. Its pleaded case is as follows:

"6. Clause 4.1 of the SPA provided that "*as soon as reasonably practicable*" RBI and ACE would enter into an escrow agreement for the purpose of funding payment of the Purchase Price. Clause 4.2 of the SPA provided that if RBI and ACE did not enter into the Escrow Agreement within 30 days from the date of the SPA (i.e. by 6th June 2015) then the parties to the SPA "*shall discuss in good faith an alternative arrangement to achieve the same commercial purpose*". This provision was plainly unenforceable as a matter of English law (being the governing law of the SPA) and if no such arrangements were agreed prior to satisfaction of the conditions precedent to completion in clause 8.1 of the SPA (the "Conditions"), RBI would be left to claim the purchase price directly from ACE, without the protection of an escrow or similar arrangement.

7. The contemplated escrow or similar arrangement was supported by a Solicitor's Confirmation dated 7th May 2015 (the "Solicitor's Confirmation"), in which Ashurst warranted to RBI as follows …

[The text of the Confirmation is then set out.]

…

9. In any event, on a true construction of the Solicitor's Confirmation, the warranty referred to in limb (b)(i) above applied only if the parties signed the Escrow Agreement within 30 days of the date of the SPA. The warranty referred to in limb (b)(ii) above applied only for so long as the alternative arrangement contemplated by clause 4.2 was "*pending*". Ashurst did not warrant that it had instructions to continue to hold the funds if such an agreement ceased to be pending (for example, because there was no realistic prospect of any such agreement being reached). Nor did Ashurst assume any other contractual or tortious duties to RBI. Still less did the Solicitor's Confirmation give rise to a trust or other security interest in RBI's favour. …

10. In the event, the Escrow Agreement was not signed within 30 days of the date of the SPA and the Conditions under the SPA were satisfied on 29th June 2015 without the parties having put in place any alternative arrangement. By this stage, a disagreement had arisen between ACE and RBI concerning the collateral that was to be delivered under the SPA including as to the very existence of material components of that collateral and it was clear to all concerned, and evidenced in correspondence, that there was no prospect whatsoever of any alternative arrangement being agreed. This notwithstanding, RBI agreed to release its security over the ARM Shares so as to allow the sale of the ARM Shares to proceed, receiving approximately US$50 million for that sale. RBI did so with its

> eyes wide open to the risk that ACE would not complete under the SPA and without any warranty from Ashurst as to the nature of its instructions in that situation."

20. Thus Ashurst accepts that, by giving the Confirmation, it undertook contractual obligations to the Bank. The issue is as to the scope of those obligations. Ashurst accepts that, if the parties signed the Escrow Agreement within 30 days, it was obliged to pay the money to the Escrow Agent. It accepts also that if the parties did not sign the Escrow Agreement, it was obliged to retain the money, but only for so long as "an alternative arrangement to achieve the same commercial purpose" was "pending", which it interprets as meaning for so long as there remained a realistic prospect of such an arrangement being reached. It says that there had ceased to be any such prospect by at the latest 29th June 2015.

21. Ashurst does not accept that, if the parties succeeded in concluding "an alternative arrangement to achieve the same commercial purpose", it would be obliged to pay the money in accordance with that alternative arrangement. It pleads at paragraph 36 of its Defence that the Confirmation "did not address what would happen in the event that the parties did reach agreement as contemplated by clause 4.2 of the [Sale and Purchase Agreement]" and that in that event it would be for its client, SM Multiartha, to decide what instructions to give. That seems somewhat odd. It means that Ashurst accepts that it was obliged to retain the money "pending" an alternative arrangement, but under no obligation in the event that such an alternative arrangement was successfully concluded. However, in the event there was no alternative arrangement and it is unnecessary to pursue that oddity further in this appeal.

22. As is now known, the balance on Ashurst's client account as at 21st April 2015 was US $120 million, but this had been reduced to US $85 million by 14th May 2015. The statement in the Solicitor's Confirmation that Ashurst had been put in funds in an amount not less than US $85 million as at 7 May 2015 was therefore true. However, a series of payments were made out of the account between 23rd June and 13th July 2015, the result of which was to reduce the balance to zero.

23. Whether Ashurst is under any liability to the Bank will therefore depend, as I see it, on two issues. The first issue is whether the Bank is entitled to recover the Purchase Price from ACE. If it is not, the question whether the Escrow Amount should have been available to it as security will be academic. But on the assumption that it is so entitled, the second issue is as to the meaning and effect of the Solicitor's Confirmation. If, as the Bank contends, Ashurst undertook that it would continue to hold the Escrow Amount unless either (1) the Escrow Agreement was signed or (2) an alternative agreement was concluded, so that it would be available as security for payment of the Purchase Price, Ashurst is in breach of that obligation. On the other hand, if the effect of the Confirmation was as pleaded by Ashurst, Ashurst was entitled to return the funds to its client or at its client's direction once it became apparent that no "alternative arrangement" would be concluded and the claim against it will fail.

24. It seems to me that if the true meaning of the Confirmation was as pleaded by Ashurst, it will probably not assist the Bank to formulate its case as a claim for misrepresentation in circumstances where the only representation made consisted of

the Confirmation itself. Conversely, if the Bank's primary case succeeds, it is unlikely to need a claim in misrepresentation, which will add nothing.

25. It is in any event hard to imagine that Ashurst did not have instructions from its client to provide the Confirmation in the terms which it did. Mr David Foxton QC for the Bank accepts that it must have had such instructions. Equally, it is obvious that Ashurst will have paid away the funds from its client account in accordance with instructions given by its client. The question will be whether, by providing the Confirmation, Ashurst had undertaken to the Bank not to comply with such instructions in the events which occurred.

26. That does not strike me as a particularly difficult question having regard to the terms of the Confirmation and its obvious commercial purpose, but the judge did not (and was not asked to) decide it. She said at [16] that it was a matter for trial. It is, however, relevant when considering the applications for Further Information and documentary disclosure which have given rise to this appeal, to appreciate that Ashurst's liability is likely to turn entirely on the true meaning and effect of the Solicitor's Confirmation. The complexity of the Bank's pleadings has tended to obscure this and has given rise to the elaborate Request for Further Information and disclosure of documents to which I now turn.

The Request for Further Information

27. The Further Information sought by the Bank on this appeal is set out in Requests 1 to 8, 9 to 21 and 23 and 24 of a Request for Further Information dated 10th July 2018. These are as follows:

> "1. What is Ashurst's case as to:
>
> (a) the truth of the statement in limb (a) of the Solicitor's Confirmation;
>
> (b) the basis on which Ashurst had been 'put in funds', as stated in limb (a) of the Solicitor's Confirmation;
>
> (c) what the instructions which Ashurst had received, referred to [in] limb (b) of the Solicitor's Confirmation were;
>
> (d) whether those instructions were 'irrevocable', as stated in limb (b) of the Solicitor's Confirmation; and
>
> (e) the basis on which ACE had the 'funds available' to complete the transaction?
>
> 2. Which company or companies, and which individual(s), gave any 'irrevocable instructions' to Ashurst?
>
> 3. To whom at Ashurst were such 'irrevocable instructions' given?
>
> 4. What were the 'irrevocable instructions' which had been given to Ashurst?
>
> 5. When were the 'irrevocable instructions' given to Ashurst?

6. Were such 'irrevocable instructions' given in writing?

7. If the answer 6 above is 'yes', please provide a copy of such written instructions pursuant to CPR r.31.14.

8. To the extent that your client asserts that any particular fact, matter, document or communication relevant to Requests 1 to 7 above is privileged, please explain the precise basis on which privilege is asserted in relation to that fact, matter, document or communication.

9. What is Ashurst's case as to:

(a) the nature of SM Multiartha's relationship with ACE;

(b) whether SM Multiartha funded ACE; and

(c) SM Multiartha's involvement in the negotiations and discussions which RBI had with ACE?

10. On Ashurst's case, what is the significance of the alleged absence of Ashurst's consent to the Solicitor's Confirmation being released to RBI prior to the other transaction documents being executed?

11. On what basis does Ashurst plead that a direct duty of care on its part to RBI would conflict with Ashurst's duties to its client under its engagement?

12. Had ACE made a Utilisation Request or Requests to SM Multiartha, pursuant to Section 3 Clause 5 of the SPA Facility (as defined in paragraph 6.3.1 of ACE's Defence and Counterclaim), prior to the transfer by SM Multiartha of US$85m to Ashurst on or about 7th May 2015 (as pleaded at paragraph 23.3.1 of ACE's Defence and Counterclaim)?

13. Did ACE make such a Utilisation Request or Requests to SM Multiartha at any time after the transfer of the US$85m to Ashurst?

14. If the answer to either 12 or 13 above is 'yes', please state the date of such request(s) and provide a copy or copies pursuant to CPR r.31.14.

15. Were any such Utilisation Requests accepted by SM Multiartha?

16. If the answer to 15 above is 'yes', please state when, and by what means, any Utilisation Request was accepted by SM Multiartha.

17. To the extent that your client asserts that any particular fact, matter, document or communication relevant to Requests 12 to 16 above is privileged, please explain the precise basis on which privilege is asserted in relation to that fact, matter, document or communication.

18. What is Ashurst's case as to the 'purpose' and 'substance' of the Solicitor's Confirmation?

19. What is Ashurst's case as to:

(a) whether and when Ashurst received the Escrow Amount;

(b) which company or companies, and which individual(s), gave any 'irrevocable instructions' to Ashurst;

(c) to whom at Ashurst such 'irrevocable instructions' were given;

(d) what the 'irrevocable instructions' which had been given to Ashurst were;

(e) when the 'irrevocable instructions' were given to Ashurst;

(f) whether such irrevocable instructions were given in writing;

(g) whether the instructions received by Ashurst from SM Multiartha in respect of the Escrow Amount were ever varied or revoked following the transfer by SM Multiartha of US$85M to Ashurst on or about 7th May 2015;

(h) whether Ashurst still holds the Escrow Amount and, if not:

(i) when it ceased to do so;

(ii) on whose instructions it ceased to do so;

(iii) when such instructions were issued; and

(iv) to whom the Escrow Amount was paid away?

20. If the answer to 19(f) above is 'yes', please provide a copy of such written instructions pursuant to CPR r.31.14.

21. To the extent that your client asserts that any particular fact, matter, document or communication relevant to Requests 19 and 20 above is privileged, please explain the precise basis on which privilege is asserted in relation to that fact, matter, document or communication.

….

23. Does Ashurst admit or deny that:

(a) it was not put in funds and/or it did not receive the instructions as warranted in the Solicitor's Confirmation; and/or

(b) it transferred the US$85m received from SM Multiartha on or about 7th May 2015 away in circumstances that were inconsistent with its instructions as referred to in the Solicitor's Confirmation?

24. To the extent that your client asserts that any particular fact, matter, document or communication relevant to Request 23 above is privileged, please explain the precise basis on which privilege is asserted in relation to that fact, matter, document or communication."

28. The arguments on the appeal were concerned mainly with disclosure of documents. I would note, however, that these Requests appear to have been drafted without regard to the terms of CPR 18 PD 1.2 which provides:

> "A Request should be concise and strictly confined to matters which are reasonably necessary and proportionate to enable the first party [i.e. the party making the Request] to prepare his own case or to understand the case he has to meet."

29. Nobody could describe the Requests set out above as concise. They are prolix, repetitive, unnecessary and disproportionate. In fairness Mr Foxton did not contend otherwise. Such an interrogation should have no place in modern commercial litigation. I would not order Ashurst to answer these Requests irrespective of the issue of privilege to which I shall come.

The disclosure sought by the Bank

30. The Bank seeks disclosure of:

(1) any document containing the "irrevocable instructions" referred to in paragraph 2(b) of the Solicitor's Confirmation;

(2) any document containing any variation or change of these "irrevocable instructions"; and

(3) any documents which disclose the identity of the party or parties crediting monies to Ashurst's client account and/or giving instructions to make payments from that account from the date on which the Escrow Amount was paid into the account until the date on which it left it.

31. Before the judge, the Bank sought in addition disclosure of "all instructions given to the individuals at Ashurst concerning what was to be done with the US $85 million including instructions concerning the transfer of the amount upon signing of the escrow agreement, concerning the basis on which the amount was to be held in the account if the escrow agreement was not signed and any instructions as to when and where the amount was to be moved from the account". That very wide request has not been pursued on appeal.

Relevance and necessity

32. The judge did not address the questions whether the documents sought were relevant or necessary, no doubt because there was no dispute about these matters before her. In this court, Mr David Wolfson QC for Ashurst has made clear that disclosure is not resisted on the ground that the documents are irrelevant but solely on the ground of privilege. That may be, as he suggests, because Ashurst would wish to disclose the documents if it is free to do so, but takes the view that it has a duty to its client to assert any properly arguable claim for privilege in circumstances where (as we are told) the client has declined a request to waive privilege (cf. *Nationwide Building Society v Various Solicitors* [1999] PNLR 52 at 69B-C).

33. Be that as it may, I should not be taken to accept that the documents are relevant or that their disclosure is (in the terms of CPR 31.5(7)) "necessary to deal with the case

justly". There is no doubt, and it is common ground, that by giving the Solicitor's Confirmation, Ashurst undertook an obligation to the Bank. The only real issue is as to the scope of that obligation, which will depend on the meaning and effect of the Confirmation. That must be determined objectively by reference to the language of the Confirmation set in its commercial context. It seems to me that none of the documents sought are relevant to that issue. What instructions Ashurst in fact received cannot affect the true construction of the Confirmation. If on that true construction it undertook to retain the money but failed to do so, it will be liable. If not, it will not be liable.

34. However, as Ashurst does not take any point on relevance but resists disclosure only on the ground of privilege and (despite Mr Foxton's scepticism about this) may even wish to rely on some of the documents if free to do so, it is necessary to address the privilege issue.

Legal advice privilege – general principles

35. It is common ground that the relevant principles for the application of legal advice privilege are as set out by Taylor LJ in *Balabel v Air India* [1988] 1 Ch 317 at 330D-G:

> "Although originally confined to advice regarding litigation, the privilege was extended to non-litigious business. Nevertheless, despite that extension, the purpose and scope of the privilege is still to enable legal advice to be sought and given in confidence. In my judgment, therefore, the test is whether the communication or other document was made confidentially for the purposes of legal advice. Those purposes have to be construed broadly. Privilege obviously attaches to a document conveying legal advice from solicitor to client and to a specific request from the client for such advice. But it does not follow that all other communications between them lack privilege. In most solicitor and client relationships, especially where a transaction involves protracted dealings, advice may be required or appropriate on matters great or small at various stages. There will be a continuum of communication and meetings between the solicitor and client. The negotiations for a lease such as occurred in the present case are only one example. Where information is passed by the solicitor or client to the other as part of the continuum aimed at keeping both informed so that advice may be sought and given as required, privilege will attach. A letter from the client containing information may end with such words as 'please advise me what I should do'. But, even if it does not, there will usually be implied in the relationship an overall expectation that the solicitor will at each stage, whether asked specifically or not, tender appropriate advice. Moreover, legal advice is not confined to telling the client the law; it must include advice as to what should prudently and sensibly be done in the relevant legal context."

36. This passage was approved by the House of Lords in *Three Rivers District Council v Bank of England (No.6)* [2004] UKHL 48, [2005] 1 AC 610 at [38] (Lord Scott), [58] to [60] (Lord Rodger) [62] (Lady Hale) and [111] (Lord Carswell) and has been applied in many cases since (e.g. *Director of the Serious Fraud Office v Eurasian Natural Resources Corpn Ltd* [2018] EWCA Civ 2006, [2019] 1 WLR 791 at [65]).

37. For present purposes, the cases emphasise that in order for a communication to attract legal advice privilege, two conditions must be satisfied. First, the communication between solicitor and client must be confidential. Second, the communication must be "for the purpose of legal advice" (or, which is the same thing, it must occur in a "relevant legal context"). However, if these two conditions are satisfied, communications between solicitor and client will be privileged notwithstanding that some of them may not themselves be concerned either to seek or to provide legal advice. It is sufficient that they form part of a "continuum" of communications so that such advice can be sought or given when appropriate – or as Lord Carswell put it in *Three Rivers (No.6)* at [111]:

> "… all communications between a solicitor and his client relating to a transaction in which the solicitor has been instructed for the purpose of obtaining legal advice will be privileged, notwithstanding that they do not contain advice on matters of law or construction, provided that they are directly related to the performance by the solicitor of his professional duty as legal adviser of his client."

38. It is relevant to note also that although legal advice privilege has existed for many years, the fundamental nature of the privilege as an absolute right of the client only came into full focus with the decision of the House of Lords in *R v Derby Magistrates' Court ex p B* [1996] 1 AC 487. After a review of the authorities Lord Taylor of Gosforth CJ concluded at 507D that:

> "The principle which runs through all these cases, and the many other cases which were cited, is that a man must be able to consult his lawyer in confidence, since otherwise he might hold back half the truth. The client must be sure that what he tells his lawyer in confidence will never be revealed without his consent. Legal professional privilege is thus much more than an ordinary rule of evidence, limited in its application to the facts of a particular case. It is a fundamental condition on which the administration of justice as a whole rests."

39. Thus, although there are statements in some of the cases which refer to two fundamental principles being in play, namely (1) that it is in the interests of justice that all relevant material should be before the court and (2) that a client should be able to obtain legal advice in confidence, there is no question of these two principles having to be balanced against each other in order to determine whether a communication must be disclosed. As Lord Taylor put it in *Derby Magistrates* at 508E:

> "… if a balancing exercise was ever required in the case of legal professional privilege, it was performed once and for all

> in the 16th century, and since then has applied across the board in every case, irrespective of the client's individual merits."

40. In a similar vein, Lord Hoffmann described legal advice privilege in *R (Morgan Grenfell & Co Ltd) v Special Commissioner of Income Tax* [2002] UKHL 21, [2003] 1 AC 563 at [7] as "a fundamental human right long established in the common law".

41. Thus, if a communication attracts legal advice privilege, the privilege is absolute unless waived by the client: *Addlesee v Dentons Europe LLP* [2019] EWCA Civ 1600, [2019] 3 WLR 1255.

The judgment

42. The judge stated the applicable principles in much the same terms as I have just summarised them, noting that in order to be privileged a communication had to be both confidential and made in a relevant legal context in the sense explained in *Balabel* and *Three Rivers (No.6)*.

43. She dealt first with the question of the confidentiality of the instructions which Ashurst had when it gave the Confirmation on 7th May 2015. She distinguished *Conlon v Conlons Ltd* [1952] 2 All ER 462, which was relied on by the Bank for the proposition that "legal professional privilege did not extend to a communication which the client instructed the solicitor to repeat", and held that the instructions were confidential for three reasons:

> "40. … in my view the documents which 'contain' the irrevocable instructions remain confidential for the following reasons:
>
> (a) unlike in *Conlon*, Ashurst was not acting as agent of the client in giving the Confirmation;
>
> (b) in *Conlon* the plaintiff put in issue the authority of his solicitor and the decision in that case may be viewed as a form of waiver by the client;
>
> (c) the underlying instructions do not cease to be confidential merely because the client authorises his solicitor to divulge information which has passed in the course of confidential communications; the question is what authority the client has given to his solicitors (*Nationwide* at p72). In my view in the circumstances of this case SM Multiartha did not give authority to disclose the underlying communications."

44. The passage from the judgment of Blackburne J in *Nationwide* to which the judge referred was as follows:

> "The fact that the borrower authorises his solicitor to divulge to the Nationwide, or its solicitor, information which he has passed to his solicitor in the course of confidential communications does not mean that the communication in question ceases to be confidential or that it ceases to be

> privileged. … The question in each case is whether the communication in question is confidential; and, if it is, what information contained in the communication the borrower has authorised the solicitor to disclose to the lender?"

45. The judge held that documents, if any, containing any variation or change of the instructions were also confidential because, in saying that the instructions originally given were irrevocable, Ashurst was not making a representation on behalf of its clients but was giving an independent assurance:

> "42. … There is no relationship between the client, SM Multiartha and [the Bank] and the purpose of the instructions, as discussed above, was not to instruct Ashurst to convey to [the Bank] that there were no variations or changes to the instructions."

46. The judge rejected the Bank's alternative analysis that confidentiality and privilege had been waived as a result of the client authorising Ashurst to make statements describing the instructions which it had received. She held that the nature of the instructions was to put Ashurst in a position where it could give an independent confirmation to the Bank, but that there was no waiver of confidentiality in the underlying instructions.

47. Turning to the question whether the instructions were given in a "relevant legal context", the judge noted that communications concerning the Confirmation were part of the completion arrangements for the transaction in which Ashurst's role was to provide legal advice to its client:

> "53. In this case, communications regarding the transfer of the funds to be held by Ashurst and the confirmation to be provided by Ashurst to [the Bank], were part of the completion arrangements for the purchase by ACE of the loans and the provision of finance by SM Multiartha. The role and duty of Ashurst was to provide legal advice to SM Multiartha in relation to the provision of that finance. Ashurst had a duty as its legal adviser to reduce the risk to its client that the money was transferred by SM Multiartha without the assets having been received in return, or a condition remaining unsatisfied such that its client was exposed to a financial loss for legal liabilities which did not reflect the commercial deal. The Confirmation from Ashurst has to be viewed in the context of the transaction viewed as a whole and the advice that Ashurst would give as to the necessary steps in order to achieve the commercial objectives of its client and protect its client."

48. Viewing them in that context, the judge concluded that the instructions given to Ashurst were given in a relevant legal context and were inextricably bound up with the legal advice which Ashurst would have given. That would be so irrespective of whether the particular instructions to give the Confirmation would themselves have contained or revealed advice on matters of law. It was wrong to focus narrowly on the

Confirmation rather than the transaction of which it formed part when determining whether the instructions were given in a relevant legal context:

> "55. In my view the role of Ashurst is distinct from the scenario where a bank may be instructed to receive and hold monies and to give a confirmation. Ashurst in advising SM Multiartha on the transaction, and in particular the transfer of the funds, is applying its legal knowledge and advising the client on a legal matter, namely how best to safeguard the interests of SM Multiartha in paying away funds in order to complete the acquisition. It is wrong in my view to focus narrowly on the Confirmation when determining whether or not the underlying communications are made in a relevant legal context. The underlying communications which contain the irrevocable instructions are inextricably bound up with the legal advice of Ashurst to protect the interests of its client. Unlike the example of the bank, the context here is an inherently legal context, namely legal advice given to SM Multiartha in relation to the financing. Ashurst were not advising on the wisdom of giving the instruction or merely lending their name to provide [the Bank] with confidence; they were advising SM Multiartha in relation to the financing as a whole and in particular on how to protect its position in paying over the money at completion."

49. Accordingly the judge held that documents containing or evidencing the instructions were privileged.

The submissions on appeal

50. For the Bank, Mr Foxton submitted (in outline) that the instructions lacked the confidentiality which is necessary for privilege to be claimed, and in any event were not concerned with the giving or receiving of legal advice, for three related reasons:

(1) the client had authorised Ashurst to make promises and representations to the Bank as to what its instructions were concerning the terms on which it held the money, which meant that those instructions could not be confidential;

(2) by authorising Ashurst to enter into a legal relationship with the Bank and to make statements about its instructions, the client impliedly authorised Ashurst to disclose what its instructions were in the event of a dispute and thereby waived confidentiality and privilege; and

(3) an instruction to make a statement about the terms on which money would be held was not the kind of communication which attracted legal advice privilege but was akin to an instruction to collect rent (an example of a non-privileged communication given in *Balabel*) or was the kind of thing which could easily be done by a bank rather than a solicitor.

51. For the purpose of the first two of these submissions Mr Foxton relied strongly on the decision of this court in *Conlon*.

52. For Ashurst, Mr Wolfson supported the reasoning of the judge. He submitted (again in outline) that:

(1) a statement by a solicitor to a third party as to the substance of its instructions from its client does not automatically and without more give rise to a loss of confidentiality in the documents which contain or evidence those instructions;

(2) confidentiality in those documents will only be lost if the client expressly or impliedly agrees to the solicitor providing those documents to the third party (in effect, if there is a waiver of confidentiality);

(3) that is the true basis on which the decision in *Conlon* should be understood; and

(4) the instructions as to the terms on which the money should be held were given in a relevant legal context as part of a continuum of legal advice relating to the financing transaction and the protection of the client's interests; for the reasons given by the judge, it was wrong to focus on those instructions in isolation.

The approach of this court

53. The approach which this court should take in circumstances such as these was described by Tomlinson LJ in *Rawlinson & Hunter Trustees SA v Akers* [2014] EWCA Civ 136, [2014] All ER 627, a case concerned with litigation privilege:

> "20. Although we are in as good a position as was the judge to reach a conclusion on the question whether the dominant purpose test was in each case satisfied, I need hardly point out that this court will hesitate long before interfering with a careful assessment of this nature by a judge experienced in the relevant field, who has correctly directed himself as to the applicable legal principles."

Confidentiality

54. In view of the central role in the parties' submissions played by the decision of this court in *Conlon*, it is appropriate to begin by considering what that case must be taken to have decided. It arose out of the alleged settlement of a personal injuries claim. When the claimant issued proceedings for damages, the defendant pleaded that the claim had been settled by acceptance of terms of settlement offered in correspondence by the claimant's solicitors. In his reply the claimant denied making any settlement agreement and asserted that if his former solicitors had purported to conclude a settlement on his behalf, they had done so without his authority. The defendant sought to administer interrogatories requiring the claimant to say whether the former solicitors had been acting as his solicitors as at the date when they had offered the terms of settlement, whether the claimant had authorised them to negotiate settlement terms with the defendant, and whether or when any such instructions had been withdrawn. The claimant objected to answering each of these interrogatories "on the ground that it is an inquiry as to the communications passing between me and a solicitor confidentially and in his professional character and is thereby privileged".

55. The Court of Appeal held that the claimant must answer the interrogatories. After referring to the principle that communications between solicitor and client with a view to the conduct of litigation are privileged, Singleton LJ said:

> "There is another rule of equal importance, and that is a rule as to public policy. If two parties come to an agreement, *prima facie* they ought to be bound by the agreement at which they have arrived. Equally, if two parties come to an agreement through their authorised agents the agreement ought to be binding between the principals of agents who had authority to enter into the agreement. If the agents be solicitors on each side, there may be a danger of the two rules or principles appearing to be in conflict. That which the client says to the solicitor normally is privileged, but if the client says to the solicitor: 'Settle this case for me on these terms', and the solicitors does so, a different position arises, for it may be that that which the client says to the solicitor is an instruction to the solicitor: 'Tell this to the other side', and, if the solicitor, acting on his client's instructions, tells the solicitor on the other side: 'I have my client's instructions to accept £1,000 and costs', and as a result of that an agreement is arrived at between the two solicitors in complete accord and satisfaction of the claim, I do not think that the first client can claim privilege in respect of that which he has said to his solicitor and at the same time has told his solicitor to communicate to the other side.
>
> …
>
> It seems to me it would be legitimate and proper to put to the plaintiff in these circumstances a question of this nature:
>
> > 'Did you authorise your solicitors to accept £1,000 and costs, or to settle the case for £1,000 and costs?'
>
> I do not think that the putting of interrogatories on those lines or the putting of a question on those lines would go against the rule of privilege in any sense whatever. The very object of the plaintiff in so instructing his solicitors would be that they should make that communication to the other side. If he had not instructed them so to do the answer is simply 'No'. If he had instructed them, to the plain question which I suggest the answer would be 'Yes'. I do not think that the rule as to privilege which has been brought to our notice applies to the interrogatories which the defendants seek to administer to the plaintiff, and for these reasons I consider that this appeal should be dismissed."

56. Morris LJ agreed, saying:

> "In my judgement, these are not inquiries as to communications passing between the plaintiff and his solicitors confidentially. It

> is, I think, plain that, if there are professional communications between a solicitor and his client of a confidential character for the purpose of getting legal advice, then, in general, there is privilege and protection. But that is not the case here. The interrogatories are directed to the three letters, and the plaintiff is invited to look at the three letters. When those letters are examined a fair and reasonable reading of them is: 'My client authorises me to say to you that he will accept such and such an amount in settlement'. That being so, an inquiry whether the plaintiff did or did not authorise his solicitor to write those letters is not an inquiry as to communications passing between the plaintiff and his solicitor confidentially. There is no suggestion in this case of asking for the disclosure of anything that the solicitors may have said to the plaintiff in regard to his claim generally or by way of giving advice as to the prospects of the action. The inquiry that is raised is whether the plaintiff did or did not authorise his solicitor to write certain letters which state that the plaintiff will accept a certain sum."

57. It seems fair to say that the textbook writers have struggled with this decision. *Hollander, Documentary Evidence,* 13th Edition (2018) describes it at para 17-14 as a "difficult" case. *Thanki, The Law of Privilege,* 3rd Edition (2018) suggests at para 2.85 that it "is perhaps a decision at the margins". *Passmore, Privilege,* 4th Edition (2019) suggests at paras 2-234 and 2-235 that its reasoning is "not convincing" and "not without problems".

58. It is instructive to see how facts such as those which occurred in *Conlon*, and indeed the case itself, have been dealt with in Australia. In *Benecke v National Australia Bank* (1993) 35 NSWLR 110, a decision of the Supreme Court of New South Wales, the facts were similar to those in *Conlon*. After judgment in court proceedings had been entered in accordance with the terms of a settlement signed by the claimant's counsel, the claimant commenced further proceedings alleging that the settlement was not authorised by her and gave an account of what she contended were the instructions which she had given to her former counsel. The defendant sought to contradict that account by calling the claimant's former counsel as a witness, but the claimant contended that the communications between her and counsel were privileged. The court held that privilege had been lost because the claimant herself had put in issue the content of the communications in question. Gleeson CJ said at 111F-112A:

> "It would be inconsistent with the reason for the existence of the privilege to permit it to operate in the manner for which the appellant contends. But for her own actions, the privilege would have enabled the appellant to insist that nobody should be able to give evidence of the confidential communications between the appellant and her senior counsel about the settlement of the first proceedings, without the consent of the appellant. However, it did not enable the appellant to make public her version of those communications and, at the same time, to enforce silence on the part of others who disagreed

> with that version. The law permits the search for the truth in legal proceedings to yield, in certain circumstances, to the public interest in preserving the secrecy of communications between lawyer and client. In the present case, however, the appellant herself lifted the veil of secrecy by giving her version of the communications. Thereafter, there was no reason in principle why the pursuit of the truth should not take its course, or why the court should be inhibited in seeking to ascertain the true facts concerning those communications."

59. Clarke JA said at 116C-D:

> "The appellant, in making her assertions that her lawyers compromised the proceedings without her consent, opened up the question of the authority of the lawyers to act as they did and thereby waived her privilege. I take this to be clear as a matter of legal principle on grounds of basic fairness."

60. *Conlon* was not referred to in *Benecke*, but was cited in *Moreay Nominees Pty Ltd v McCarthy* (1994) 10 WAR 293, a decision of the Supreme Court of Western Australia. Here too the issue was whether a solicitor had acted with his client's authority in purporting to settle the client's claim and it was the client who denied the solicitor's authority. As in *Benecke* the defendant sought to call the solicitor, and the client objected that his instructions to the solicitor were privileged. Owen J cited both *Conlon* and *Benecke* and continued at 306:

> "There is no indication from the report whether *Conlon* was cited to the court in *Benecke*. Certainly, it was not referred to in the judgments. The difference in approach may simply be a function of the way in which the cases were argued. For my part, the approach taken in *Benecke* is preferable. It is not hard to imagine circumstances in which settlement discussions between lawyer and client might be far reaching and cover a variety of subjects. When the result of those discussions is made known to a third party, privilege might continue to attach to part of the discussions. In those circumstances it may be difficult to segregate the discussions into aspects that did, and those that did not, attract privilege. It seems to me to be preferable to approach the matter by looking at the end result. On this basis the correct approach is to assume that privilege initially applied to the discussions and then to ask whether the conduct of the parties (particularly the client), the nature of the dispute that has since arisen and the interests of justice generally require a conclusion that privilege was waived in relation to all or part of the discussions. This also accords with the simple proposition that waiver itself may be partial or total: see *Lyell v Kennedy (No 3)* (1884) 27 Ch D 1 at 24.
>
> I believe that this view flows from the principles underlying the privilege. The aim is to encourage uninhibited communication between lawyer and client. Confidentiality is an indispensable

> feature of that requirement. In my opinion, the fact that at the conclusion of the discussions both solicitor and client knew that the result was to be communicated to the other side does not mean that the discussions were never of a type that would attract the seal of confidentiality. It means that the course of events has been such that something which initially may have been confidential can no longer be regarded in the same light. In other words, the privilege that once attached to the communication has been waived.
>
> Privilege cannot and should not be used to blindfold justice. The privilege belongs to the client. However, it can be waived, either expressly or by implication from the circumstances. If privilege were to prevent inquiry as to settlement instructions, no settlement effected by a legal representative would ever be certain because the client could later dispute the authority of his solicitor.
>
> In *Benecke* the client not only raised the issue of authority but made serious allegations against the lawyers and went into evidence concerning the terms of the disputed discussions. However, I think that the fact that authority is put in issue is sufficient to raise the question of waiver."

61. Thus the Australian cases have treated the initial instructions given by the client as confidential and therefore covered by privilege, but have held that privilege will be waived if the client puts in issue the content of those instructions. I respectfully agree with that analysis. The question then arises whether it is open to us to say that *Conlon* should be understood in this way. I would hold that it is. While it is true that the judgments are not expressly reasoned in this way, these were *extempore* judgments somewhat shortly expressed and it is axiomatic that any decision must be understood by reference to the facts of the case in question. The fact that it was the client who put in issue the instructions which he had given to his solicitors was obviously a striking and important feature of the case. I doubt whether Singleton and Morris LJJ were seeking to lay down any general rule which would apply when that feature was not present but, if they were, they went further than was necessary for the decision in the case. It is also worth bearing in mind that *Conlon* was decided before the decision of the House of Lords in *Derby Magistrates* which confirmed the absolute nature of privilege and ruled out any scope for a balancing of competing principles.

62. It is true that in *Balabel* Taylor LJ cited *Conlon* at 331C as an example of a case where documents were not disclosable (although in fact it was about interrogatories), but it was unnecessary for him to discuss the reason why that was so and he did not do so. He said merely that it was a case where "privilege was held not to extend to a communication from a client to his solicitor authorising him to offer terms of settlement". I would not regard this brief comment as precluding the analysis of the case which I have proposed.

63. I would therefore hold, in agreement with the judge, that *Conlon* does not stand for the proposition that legal advice privilege does not extend to a communication containing information which the client instructs the solicitor to repeat. On the

contrary, as Mr Wolfson submitted, a statement by a solicitor to a third party as to the instructions he has from his client does not automatically and without more give rise to a loss of confidentiality in the documents which contain or evidence those instructions. It is by no means uncommon for solicitors to make such statements and it would be surprising if, by their doing so, privilege in their underlying instructions was lost.

64. It is not suggested in the present case that the client, SM Multiartha, has said or done anything to call into question the fact that it instructed Ashurst to give the Confirmation in the terms which it did. Rather it is the Bank which seeks to put in issue what instructions Ashurst had, in order to advance a case that, in describing its instructions, Ashurst was making some kind of misrepresentation. That is very different from the situation dealt with in *Conlon* and in my judgment the Bank can derive no support from that case for its contention that the instructions were not confidential.

65. Once *Conlon* is understood as confined to a situation where it is the client who has put in issue what instructions were given to the solicitor, the question arises whether there is any other basis on which it can be said that the instructions to Ashurst in this case were not confidential or that confidentiality has been lost. In my judgment there is not.

66. In this regard it is helpful to consider what it is that the Bank is (presumably) seeking to obtain. The argument is that the instructions were not confidential because the client authorised Ashurst to make the statements contained in the Confirmation. But Mr Foxton accepts that Ashurst must have had instructions to provide the Confirmation. The Bank is not interested in seeing (for example, and if it exists) a letter from SM Multiartha saying merely, "We authorise you to provide the Solicitor's Confirmation". That would tell it nothing which it does not already know. What the Bank appears to want is more detail of the communications between SM Multiartha and Ashurst, going beyond what is apparent from the Confirmation itself, and which will provide it with information which it does not already have. But I can see no reason why such matters should cease to be confidential as between solicitor and client merely because the client authorised Ashurst to make the statements contained in the Confirmation. In making those statements Ashurst was, as the judge said, undertaking an independent obligation to the Bank and (adopting what Blackburne J said in *Nationwide*) there was no question of the client authorising Ashurst to say any more about the instructions which it had received or the communications between Ashurst and its client.

67. As the judge put it:

> "39. Unlike the position in *Conlon* in this case Ashurst were not acting as agent of the client in giving the Confirmation to [the Bank] but gave an independent legal commitment. Properly analysed, it was not an instruction by SM Multiartha to tell [the Bank] what the client's instructions were but was an instruction by SM Multiartha to enable Ashurst to give an independent confirmation, for which Ashurst was solely liable, regarding the holding of the funds and their subsequent payment out of the Ashurst account. As distinct from the position in *Conlon*, the

> purpose of the underlying instructions was not to pass on the instructions given by SM Multiartha to [the Bank] but to enable Ashurst to be in a position where it could give the independent confirmation which would allow the transaction to be completed. The essence of the instructions from SM Multiartha was not that Ashurst should tell [the Bank] that the instructions were irrevocable but that Ashurst should be in a position to provide independent and legally binding representations on its own behalf to [the Bank], irrespective of the position as between Ashurst and SM Multiartha which was a matter for Ashurst."

68. If that is so, as in my judgment it is, at the time when the Confirmation was given on 7th May 2015, the position is even clearer thereafter. If there were changes or variations to the instructions initially received, there is nothing at all to suggest that those changes or variations were not confidential. Whether by giving the Confirmation Ashurst had undertaken not to comply with such varied instructions is a separate question.

For the purpose of legal advice/relevant legal context

69. In order to consider whether the instructions were given in a relevant legal context, it is useful to recall the formulation of the test approved by Lord Carswell in *Three Rivers (No.6)* at [111]:

> "… all communications between a solicitor and his client relating to a transaction in which the solicitor has been instructed for the purpose of obtaining legal advice will be privileged, notwithstanding that they do not contain advice on matters of law or construction, provided that they are directly related to the performance by the solicitor of his professional duty as legal adviser of his client."

70. In this case Ashurst was instructed by SM Multiartha in connection with the acquisition of the ARM shares by ACE, a transaction in which SM Multiartha was to provide financing. As the judge said, that will have involved Ashurst in providing legal advice (including advice as to what should prudently and sensibly be done in the relevant legal context, as Taylor LJ put it in *Balabel*) to ensure that its clients' interests were protected and its commercial objectives were achieved. This is the core business of City solicitors such as Ashurst. Its role will no doubt have included negotiating and reviewing the terms of the documentation, including the Solicitor's Confirmation, and advising its client as to the meaning and effect of that Confirmation. Such advice is likely to have included advising as to the significance of the statement that the instructions which it had received were "irrevocable" and the circumstances, if any, in which the client would be entitled to the return of the money. It would to my mind be surprising if Ashurst had not given such advice.

71. This is almost inevitably the context in which Ashurst will have received its instructions as to the basis on which the money should be held in its client account and the Confirmation should be provided. It is by its nature a legal context directly related to the performance by Ashurst of its professional duties as the client's

solicitor. It would be wrong in my judgment to seek to isolate specific communications as constituting "the instructions" for the purpose of disclosure without regard to that context, even assuming that it would be practicable to do so (Mr Wolfson suggested that, at least in some cases, it may not be). Rather those instructions formed part of a continuum of communications in a relevant legal context, which were therefore privileged.

72. Similar reasoning applies to any later changes to the instructions or to instructions by the client that the money should be returned to it or paid out of the client account in accordance with its instructions. It is almost inevitable that Ashurst will have considered whether it was entitled to comply with such instructions and will have advised its client accordingly. That is the context in which the money will have been paid away. It would be surprising if Ashurst were to have paid the money away without first having formed the view, and advised its client, that it was entitled to do so. Whether that view will turn out to be correct is another matter.

73. Like the judge, I would not accept that Ashurst was doing no more than a bank might have done in making a statement as to the basis on which it was holding money. While it may be, I suppose, that a bank or any other third party could have been asked to make such a statement, it was not merely fortuitous that the statement came to be made by a respected firm of City solicitors, whose probity and reliability were unquestioned, and which was already involved in and familiar with the transaction.

74. Nor would I accept Mr Foxton's submission that the instructions given to Ashurst were like an instruction to a solicitor to collect rent on behalf of his client. This was an example discussed by Taylor LJ in *Balabel* of a situation in which the solicitor's instructions would not be privileged:

> "A hypothetical instance put in argument by Mr Burton would be a case in which a client going on extended holiday instructed his solicitor to collect rent from his tenants. If an issue subsequently arose as to whether the landlord had waived any right to forfeiture, the communication of those instructions to his solicitor would be disclosable and admissible because there would be no question of their being related to the obtaining of legal advice."

75. That is some distance from the facts of the present case, but in any event the example appears to assume that the client was seeking to forfeit the lease for non-payment of rent by denying that he had authorised his solicitor to collect the rent in question and thereby waived the right to forfeiture. It is therefore an example which is consistent with the approach of the Australian cases referred to above and with what I have held to be the correct understanding of the decision in *Conlon*.

Disposal

76. For the reasons which I have given, which are essentially the same as those of the judge, I would hold that the documents sought are privileged and would dismiss the appeal.

Lord Justice Baker:

77. I agree.

Lord Justice Lewison:

78. I also agree.

ORDER

UPON the Claimant's appeal by appellant's notice dated 4 February 2019

AND UPON hearing Leading Counsel for the Claimant / Appellant and Leading Counsel for the Second Defendant / Second Respondent

AND UPON there being no attendance for the handing down of the judgment at 10:30am on Tuesday 21 January 2020

IT IS ORDERED THAT:

The appeal is dismissed.

The Claimant do pay the Second Defendant's costs of the appeal on the standard basis summarily assessed in the amount of £105,000, such costs to be paid to the Second Defendant by 4 p.m. on 4th February 2020.

Dated 21st January 2020