Neutral Citation Number: **[2021] EWHC 1790 (Comm)**

Case No: **CL-2019-000238**

**IN THE HIGH COURT OF JUSTICE**
**QUEEN'S BENCH DIVISION**
**COMMERCIAL COURT**

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: **7 May 2021**

**Before** :

**Mr Justice Waksman**

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**Between :**

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|---|---|
| **The State of Qatar** | **Claimant** |
| **- and -** | |
| **Banque Havilland S.A. and Vladimir Bolelyy** | **Defendant** |

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**David Quest QC and Philip Hinks** (instructed by **Reed Smith LLP**) for the **Claimant**
**Mr David Mumford QC and Mr Thomas Munby** (instructed by **Macfarlanes LLP**) for the **Defendant**

Hearing dates: **7th May 2021**

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# APPROVED JUDGMENT

## Ruling at end of judgment

**Mr Justice Waksman:**

1. I will give a very short judgment on this application made by the defendant for further disclosure. It is made pursuant to either paragraph 17.1 or paragraph 18.1 of PD 51U. Whatever technical differences there are between those two provisions, it is not something which has been highlighted between counsel. Quite sensibly they focused on the question of relevance in the context of the model D disclosure which is the governing one here, and on questions of the reasonableness and proportionality of the search in any event.
2. The claimant, the State of Qatar, brings a claim in conspiracy against two particular defendants, though others are said to have formed part of the conspiracy, effectively to damage the financial institutions and structures of Qatar in 2017 in various different ways but including manipulations of one kind or another in relation to securities or to the currency which is pegged -- in other words it has a fixed conversion rate -- to the US dollar.
3. Qatar says that as a result of the conspiracy and the depletion of the foreign currency reserves QCB, the Qatar Central Bank, was compelled to dispose of about $16 billion worth of its securities portfolio. It was necessary for Qatar itself to support QCB so that US$1.65 billion was injected into it and in addition there were $19 billion of foreign currency to replenish the foreign currency reserves.
4. There was a further deposit by QCB of $13 billion and then the QIA, the Qatar Investment Authority itself deposited about $20 billion with onshore Qatari banks and although the amount of damages is not yet quantified, it is said to be at least $100 million, which is unsurprising in the light of the steps which Qatar said it had to take to avoid the consequences of the conspiracy.
5. The conspiracy is denied by the defendants, but one point which does arise and is an important causation point is even if these steps were taken, were they taken as a result either in whole or in

part of that conspiracy or in reaction to the general blockade of Qatar's economy at the time which was well known and severe and well publicised, as opposed to any question of a conspiracy.

6. I now deal with the disclosure sought. First of all, so far as the QCB is concerned, the defendant says that while a number of custodians, I think eight, have been chosen, it had originally suggested that they may be too junior. Qatar denied that. The matter was not taken any further at that stage but it is now. And the defendants say that the custodians that should be added are at least the governor and the deputy governor and then otherwise the members of the Board of QCB, none of whom are current custodians.

7. I am with the defendants so far as the governor and deputy governor are concerned. The basis on which it says that disclosure is not appropriate is unsatisfactory. Here Mr Lavender, a solicitor for Qatar, says he has been instructed but does not say by whom, but it is not likely that the governor would have had any responsibility or operational responsibility in relation to these decisions. As a matter of common sense, given the amount of money that had to be pumped out by the QCB, I do not find that particularly plausible and in any event he does not indicate what the source of his information and belief is, and, therefore, his evidence is defective so far as that is concerned.

8. As a matter of common sense, it seems to me, without any proper rebuttal evidence, there must at least be the possibility that the governor and the deputy governor were themselves involved in the decision-making process to take the various steps and not simply the recipients of what lower level executives had decided to do.

9. Therefore the governor and the deputy governor will be custodians. I am not satisfied having regard to reasonableness and proportionality that one needs to go any lower than that.

10. So far as the QIA is concerned, there are no present custodians in relation to that. The overall submission that is made is that this is effectively -- the QIA is effectively reacting to instructions given by the QCB Bank, and it is fair to say that if the only purpose of the QIA disclosure was on issue (41), which is to do with the mechanics of how much was put forward, that would not help.

11. However, Mr Quest reminds me that it is accepted at least that another relevant issue would be issue (33) which was this whole question of causation. Were the losses suffered as a result of the blockade or only as a result of the blockade as opposed to the conspiracy? The QIA, as I indicated, itself injected very considerable funds and it seems to me that it is right that there should be at least one custodian from that important institution. So that is what I order as far as that is concerned.

12. I then come to QFCRA which is Qatar's financial regulatory institution.

13. Mr Muller there produced four reports which have been disclosed. I have seen sufficient of them to indicate to me, particularly having regard to the various third party sources to which one of them, the sample one, refers, that this is very much a high level report compiled from other sources, and I do not see that that, or the sources of those reports, or Mr Muller himself is going to shed any light on the question of why the particular funds were injected in the way that they were or who was involved in the decision-making process. So I am not going to permit anything in relation to QFCRA.

14. Then we come to Mr Al-Khulaifi. He is the lawyer who signed the relevant disclosure statement. He is a lawyer. He is an academic. He has nothing to do with this case as such, and I accept -- and here there are specific instructions to Mr Lavender from that lawyer -- that the only thing that he would have is effectively what others would have had as well, and that sounds entirely plausible to me, so I am not going to make him a custodian.

15. We then come to the financial stability sub-committee and also the high-level committee which have met and at least in relation to one of them, the high-level committee, at least as a partial response to these circumstances. But so far as that is concerned, there is already, I think it is Mr Al-Kuwari who is already a custodian of the sub-committee, and if that is right it is difficult to see why he should not be disclosing information relating to the committee of an informal kind of which he is a part.

16. So far as the high-level committee is concerned, I think the position is, if I have it correct, that there are already at least four members of that committee (strictly a working group) who are custodians. I cannot really see that insofar as that working group produces something which relates to the issues it is not going to be picked up by at least one of those four custodians. Accordingly, I make no order so far as those two particular committees are concerned.
17. Then that takes us finally to the Board documents. It is surprising, in my judgment, that there has been no disclosure of Board documents, Board minutes, at all of the QCB and the QIA which are the two organisations that I think are relevant here. It is not sufficient to say, well, the members there are not likely to have been involved in any decision-making process or whatever they deliberated as filtered through to other documents.
18. These are important primary documents, and it seems to me to be perfectly correct that the Board minutes themselves, which I do not believe it will be difficult to find and nor do I believe that they will be inaccessible or have not been made, the Board minutes themselves of both of those entities should be produced.
19. I do not consider at this stage that it is necessary for the Board packs or any of the other documents submitted to the Board to be looked for.
20. If it turns out on perusal of the Board minutes that, for example, a decision relating to the disclosure issues has been taken or considered and has been influenced by something produced to the Board which is not already disclosed, then at that point the defendants can come back to the claimants.

Ruling by **MR JUSTICE WAKSMAN**

1. I am afraid I am with Mr Quest on this one. (a) I cannot understand why, given the sort of allegations that were made, this was not made first time round in the responsive evidence; and (b) according to Mr Quest's calculations it was made 36 days after the evidence to which it responds, and under two clear days before this hearing, and I certainly have not had a chance to look at it. Some of it is argument. Insofar as any of the material there can be identified because you can say, well, if you look at, for example, Mr Muller's report, you can see that the documents he refers to are documents which have already been disclosed, that is a point which can be made as a matter of submission. But I am afraid on something like this one has to stick to the rules. If there is no good reason for it I am not prepared to allow it. I suspect in any event that it may not make much difference going forward, but I am not prepared to deal with it now, I am afraid.
2. So as I say, apart from actually as a matter of submission showing where certain documents have already been disclosed, you are going to have to rely on the existing material, Mr Mumford.