Neutral Citation Number: [2021] EWHC 236 (Comm)

Case No: CL-2019-000023

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 09/02/2021

Before :

MR JUSTICE JACOBS

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Between :

(1) GLOBAL DISPLAY SOLUTIONS LIMITED **Claimant**

(2) GDS TECHNOLOGY LIMITED

(3) GLOBAL DISPLAY SOLUTIONS SPA

(4) GLOBAL DISPLAY SOLUTIONS (SUZHOU) CO LIMITED

- and -

(1) NCR FINANCIAL SOLUTIONS GROUP LIMITED **Defendant**

(2) NCR GLOBAL SOLUTIONS LIMITED

(3) NCR CORPORATION

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Stuart Ritchie QC and David Lascelles (instructed by **Stevens and Bolton LLP**) for the **Claimant**
Orlando Gledhill QC (instructed by **Ashurst LLP**) for the **Defendant**

Hearing dates: 01-04 and 08 February 2021

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JUDGMENT

"Covid-19 Protocol: This judgment will be handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down will be deemed 10:00 AM Tuesday 9th February 2021"

The proceedings

1. The Claimants in these proceedings seek to re-amend their claim in certain respects. The proposed amendments were to some extent foreshadowed in submissions made at the start of the trial when the counsel for the Defendants, Mr. Orlando Gledhill QC, submitted that the Claimants' written opening (which was delivered some days prior to the commencement of the trial) went beyond the Claimants' pleadings in certain respects.

2. The claim in these proceedings arises from the termination of a long-standing relationship between two global groups of companies. The Claimants ("GDS") are part of the GDS group which manufactures screen displays and component parts thereof, including for use in bank automatic teller machines and retail point of sale systems. The Defendants ("NCR") are part of the of the NCR group which manufactures ATMs used by banks and point of sale systems. Until January 2013 GDS had supplied NCR or its associated companies for many years.

3. An aspect of the contractual supply relationship between the parties was the provision of regular forecasts from NCR setting out NCR's projected demand from GDS for the supply of products to NCR's plants around the world. The forecasts were provided on a rolling 12-month basis. GDS's case is that it used these forecasts in making decisions as to its manufacturing plans.

4. NCR provided forecasts over many years. NCR's last forecast was provided on 14 January 2013. In line with previous forecasts, it was for over 176,000 displays over the next 12 months. This included over 11,000 displays in December 2013. The forecast demand had a value of over US$51 million.

5. Two days after this forecast had been supplied, on 16 January 2013, there was a telephone call in which NCR informed GDS that it had taken the manufacture of displays in-house. NCR cancelled or (as GDS contends) claimed to cancel over $4.6 million of purchase orders. It also reduced all its forecasts to zero.

6. GDS contends that it had received no prior warning from NCR that this cancellation and reduction of projections would happen. NCR accepts that this is so, although it contends that GDS had its suspicions. GDS contends that the result of NCR's action was that it faced an imminent and potentially fatal liquidity crisis for which it was unprepared. It had a substantial pipeline of stock and was geared up to meet the outstanding purchase orders and the substantial future demand indicated by NCR's forecasts.

7. Discussions took place between NCR and GDS at the end of January and in February 2013 concerning whether NCR would take a "last time" supply of products and if so at what price. After discussions, including a meeting in New York in January 2013, the parties signed a "Letter of Agreement, Release and Waiver" ("the Release"). The construction of the Release, and specifically whether it precludes the claims made by GDS in these proceedings, is a central issue in the proceedings. NCR contends that GDS's present claims have been settled. The circumstances leading to the Release, including the discussions at the New York meeting, have been explored in considerable detail during the cross-examination (lasting over 2 days) of GDS's two witnesses. Those circumstances are relevant to arguments advanced by NCR

concerning the factual matrix in which the Release was concluded, and claims by NCR for rectification for mutual or unilateral mistake.

8. GDS's claims are advanced on various bases: breach of contract, deceit, procuring breach of contract (although this claim is no longer pursued), conspiracy, and the tort of intimidation. It disputes NCR's case that these claims are precluded by virtue of the Release.

9. There are substantial factual and legal issues between the parties. These include a dispute between the parties as to the legal requirements of the tort of intimidation. The case advanced in GDS's opening submissions in the context of that tortious claim was that:

> [307] Cs were coerced into entering into the Letter of Agreement [i.e the Release]. They needed cash, had no negotiating leverage and no other practical option. Cs had been placed in such a position because of Ds' unlawful conduct vis-à-vis the forecasts as well as the cancellation of the POs [Purchase Orders]. That unlawful conduct had been intended to place Cs in the position in which they found themselves. Ds' intention all along had been to mask Project Dynamo and then to pull the rug from under Cs including through the use of deliberately false forecasts which it would then zero out and the cancellation of POs.
>
> [308] Cs were also coerced into entering into the Letter of Agreement by Ds' threats not to comply with their obligations (including their obligation to purchase products under the cancelled POs and their secondary obligation otherwise to pay damages).

10. NCR contends, in particular, that paragraph 307 puts forward a legally unsustainable case of intimidation. It says that threats are necessary ingredients of that tort, whereas GDS says that the essence of the tort is coercion. The above passages in GDS's opening submissions were the origin, or at least a significant origin, of NCS's case that GDS's case went beyond its pleadings.

The existing pleadings and the issues arising

11. It is not necessary for me to describe the pleadings in detail: they are well-known to the parties. So far as relevant to the present arguments, the following features seem to me to be significant.

12. First, the Particulars of Claim are divided into 11 sections, headed A- K. These include:

> C – The Forecasting Process;
>
> D – The Representations;
>
> F – NCR's Decision to Cease Taking Products from GDS;

G – False Forecasts and Representations;

H – Meeting in New York and the Final Purchase Letter;

I – Causes of Action;

J – Loss and Damage.

13. These sections are not, however, hermetically sealed from each other. There is therefore a considerable amount of internal cross-reference between sections. For example, in Section I(4) (headed "Intimidation"), GDS pleads that by virtue of the facts and matters set out in sections G and H, NCR is liable to GDS in intimidation for the losses caused to GDS. The opening paragraph of Section G refers to Sections F as well as C and D.

14. Secondly, the knowledge and intentions of relevant identified individuals at NCR, over the period of the false forecasts, are squarely raised by the pleaded case. In fact, it is now accepted by NCR that false forecasts were given, to the knowledge of NCR, for a period of 8-9 months between around April 2012 and January 2013, until shortly before the 16 January telephone call took place. The principal factual issue in this connection, for resolution at the present trial, is whether the false forecasts were given (to NCR's knowledge) from an earlier time. GDS's case is that this happened from no later than July 2011, whereas NCR's case is that the false forecasting only began in around April 2012.

15. Thirdly, the issues as to knowledge and intention during the period of false forecasting (whenever it began) include, but are not confined, to those which would ordinarily arise in the context of a claim for deceit. Thus, paragraph 54 of the Particulars of Claim pleads that:

> "Due to the Defendants' unlawful conduct as set out herein, and as they had no doubt intended by such unlawful conduct, at this point in time the Claimants had no bargaining power."

16. That plea occurs within Section H, which addresses the events in January and February between the 16 January call and the signing of the Release. GDS therefore asserts that the unlawful conduct relied upon elsewhere in the pleading, including the deceit alleged in relation to the false forecasts, was intended to produce the result that GDS had no bargaining power. This aspect of the case is reflected in the agreed List of Issues:

> "57. Did Cs have no bargaining power due to Ds' unlawful conduct set out in the PoC and if so had Ds intended that by their unlawful conduct? Cs say yes. Ds say no, but that even if Ds had a stronger bargaining position it would not have been unlawful or illegitimate to take advantage of that".

17. Fourth, it is not only GDS's case that gives rise to issues as to the knowledge and intention of the relevant individuals at NCR. NCR itself seeks to advance a positive case that they had:

> "reasonable justification for procuring such breach of the Second Defendant's forecasting obligation as the Court may find to be established. They will rely, in particular, on the risks to NCR's business of an unlawful retaliation by GDS to being made aware that NCR might cease to source displays from GDS, including the immediate cessation of supply by GDS".

Although that plea was put forward in relation to the case of procuring breach of contract, NCR indicated on the first day of the hearing that it wished to rely upon it in relation to the conspiracy case as well. That has now been reflected in a draft amendment to the NCR defence, to which there is no objection in principle.

18. Against this background, it is unsurprising that the NCR witnesses explain in their witness statements their knowledge and intentions during the period with which the case is concerned, including their justification for the projections which were provided to GDS during that time.

19. That evidence includes, for example, an explanation by Mr. Evangelos Kaparis (the most senior NCR individual to have provided a statement in these proceedings) of an e-mail which he sent to his colleagues on 18 January 2013, shortly after the call in order to give an update on where they were with GDS. Mr. Kaparis clearly (and rightly) anticipated that GDS would rely upon this email in support of its case as to NCR's intention in the context of issue 57, and has therefore provided an explanation of his statement that:

> "Giovanni [Cariolato of GDS] should pick his next words to us very carefully. His company can and most likely will go belly up in less than 30days. We have all the aces in our sleeves and the deck is stacked to our favour. That was not an accident. That was engineered".

The approach to amendments

20. A number of authorities were cited by Mr. Gledhill in support of NCRs case that permission to amend should be refused. It is sufficient to refer to the decision of Carr J in *Quah Su-Ling v Goldman Sachs International* [2015] EWHC 759 (Comm):

> [38] Drawing these authorities together, the relevant principles can be stated simply as follows :
>
> a) whether to allow an amendment is a matter for the discretion of the court. In exercising that discretion, the overriding objective is of the greatest importance. Applications always involve the court striking a balance between injustice to the applicant if the amendment is refused, and injustice to the opposing party and other litigants in general, if the amendment is permitted;
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> b) where a very late application to amend is made the correct approach is not that the amendments ought, in general, to be allowed so that the real dispute between the parties can be

adjudicated upon. Rather, a heavy burden lies on a party seeking a very late amendment to show the strength of the new case and why justice to him, his opponent and other court users requires him to be able to pursue it. The risk to a trial date may mean that the lateness of the application to amend will of itself cause the balance to be loaded heavily against the grant of permission;

c) a very late amendment is one made when the trial date has been fixed and where permitting the amendments would cause the trial date to be lost. Parties and the court have a legitimate expectation that trial fixtures will be kept;

d) lateness is not an absolute, but a relative concept. It depends on a review of the nature of the proposed amendment, the quality of the explanation for its timing, and a fair appreciation of the consequences in terms of work wasted and consequential work to be done;

e) gone are the days when it was sufficient for the amending party to argue that no prejudice had been suffered, save as to costs. In the modern era it is more readily recognised that the payment of costs may not be adequate compensation;

f) it is incumbent on a party seeking the indulgence of the court to be allowed to raise a late claim to provide a good explanation for the delay;

g) a much stricter view is taken nowadays of non-compliance with the Civil Procedure Rules and directions of the Court. The achievement of justice means something different now. Parties can no longer expect indulgence if they fail to comply with their procedural obligations because those obligations not only serve the purpose of ensuring that they conduct the litigation proportionately in order to ensure their own costs are kept within proportionate bounds but also the wider public interest of ensuring that other litigants can obtain justice efficiently and proportionately, and that the courts enable them to do so.

[39] The Commercial Court has a long tradition of pro-actively managing litigation brought before it for the benefit of all users (as recognised, for example, in Worldwide Corp Ltd (supra)). The timetables laid out in and the requirements of the Admiralty and Commercial Court Guide, such as the requirement in D12.2 for provision of a progress monitoring information sheet, are designed precisely to avoid last minute problems which delay the start of trials or cause adjournment."

The shape of the parties' arguments

21. The detail of the proposed amendments will be apparent from the discussion below, but I will start by setting out the shape of the parties' arguments.

22. Mr. Stuart Ritchie QC for GDS submitted that it was not the intention of GDS fundamentally to extend the factual scope of the case, nor to extend the legal scope of it into areas which were not otherwise legally under the microscope of the court already. He described the amendments as the smallest of incremental moves to ensure that everything was fully pleaded. His submission was that he was doing no more than tidying up GDS's pleadings to make sure that its legal case was in line with the factual case that had already been pleaded. He supported this submission by referring in particular to the issues raised by the existing pleadings, the internal cross-references which already existed, and the list of issues. The incremental tidying-up exercise was, he submitted, far from unusual in circumstances where a case had been pleaded at the start of a case, without the benefit of disclosure and witness evidence, and where thoughts were refined when it came to arguing the case at trial.

23. Mr. Gledhill submitted that no satisfactory reason had been given for any of the amendments. He then addressed each of the amendments in turn. He said that the most concerning amendments were those to paragraphs 53 and 56. He said that they involved a serious expansion of the intimidation case beyond its current ambit as regards the time period, the facts relied upon and the pleaded intentional wrongdoing. The original intimidation case had focused on threats in January and February 2013 following the 16 January 2016 phone call. That case was now changing so as to look back further in time, so that the case was to be based on placing GDS in a position in which it had no bargaining power as a result of actions taken months and years earlier.

24. In relation to the conspiracy case, he said that the case had previously been focused on events prior to the January 2013 call, but that it now sought to encompass events in January and February.

25. He advanced various other arguments, including concerning: the clarity of the proposed amendments; the lack of particularisation as to the individuals concerned; and the introduction of a new plea relating to a factory visit in November 2010.

26. He submitted that the amendments placed NCR's legal team in difficulties. They would have to reconsider the documentation in the light of the case now advanced, having prepared to defend the case as currently pleaded. The resources of NCR's legal team were already stretched by ordinary trial activities. They were being "mucked around", to use an expression in one of the cases. The court should be aware of difficulties arising from the illness of one of their main witnesses, Mr. Kaparis, which would potentially inhibit discussions with him and which might indeed prevent him from giving evidence at all.

Discussion

27. I will deal with each amendments in turn below. Generally speaking, I agree with Mr. Ritchie's characterisation of the proposed amendments as involving at most small incremental steps. Except for the amendment concerning the November 2010 factory visit, I do not consider that any of the amendments raises any factual questions which are outside the scope of the existing issues and facts which are to be explored at trial in any event.

28. As it seems to me, the principal effect of disallowing the amendments would be to constrain GDS as to the way in which it can present legal arguments based upon facts already pleaded and evidence that will be before the court in any event. To my mind, this will produce an artificial and inappropriate constraint on the determination of the existing issues in the case, in circumstances where no new cause of action is being introduced and where the facts relied upon are not being expanded at all, or to any material extent. It also involves what in my view is an unnecessary and sterile debate as to the precise impact of the cross-referencing which already exists within the existing sections of the Particulars of Claim.

29. This is illustrated by the objection taken to the amendment to paragraph 68 of the Particulars of Claim. The proposed amendment, under the heading "Intimidation", reads:

> "By virtue of the facts and matters set out in sections F to ~~G and~~ H the Defendants are liable to the Claimants in intimidation for the losses caused to the Claimants thereby which losses are set out in the following section below."

30. It will therefore be seen that GDS seeks to add, as part of its intimidation claim, facts which are already pleaded in Section F, in addition to those in Section G and H. It does so in circumstances where the opening paragraph of Section G already refers to Section F. Furthermore, as Mr. Gledhill pointed out in his opening on the first day of the trial, there is a further cross-reference to earlier sections in Section H as well: paragraph 57 pleads that GDS entry into the Release was, amongst other things a consequence of "the continuing influence of the deceit".

31. I do not consider that the constraint which NCR's objection seeks thereby to impose is consistent with the overriding objective which is, as Carr J said in paragraph [38 a] of *Quah Su-Ling*, the matter of the greatest importance. Where relevant facts have already been pleaded, and those facts are either accepted or issue joined, there can in my view be no real objection to a party seeking to rely upon all of those facts in support of its existing causes of action. This remains the case even if – on one (but by no means the only) possible reading of the pleading in circumstances where there is extensive cross-referencing between sections – a pleaded cause of action previously referred only to a subset of those pleaded facts.

32. If a contrary view were taken, there would, on the one hand, be significant potential injustice to GDS were it to be precluded from putting forward its legal argument relating to its existing causes of action by reference to the facts already pleaded. This would potentially cause an otherwise successful claim to be dismissed, because the merits of the claim would fall to be determined by reference only to a subset of the facts which had been pleaded and were to be explored and determined at trial. On the other hand, there would be no real injustice to NCR if the amendments were to be permitted. The pleadings in this case necessitated investigation and consideration of the relevant facts pleaded. The effect of the amendment, if permitted, would be to require NCR to respond to legal argument based on the full set of already pleaded facts, rather than a subset. I see no injustice in this, and certainly no injustice which would mean that the balance would come down in favour of NCR. Both parties will be given time after the conclusion of the argument to prepare their legal arguments following conclusion of the evidence at the end of next week. The existing timetable

contemplates that there will be a number of days for the preparation of written submissions followed by oral submissions.

33. Against this background, I turn to the particular amendments to which objection is taken.

34. *Paragraph 41.8.* Paragraph 41.8 makes an amendment to the facts and matters relied upon to support factual matters set out in paragraphs 37 – 40. Those paragraphs appear within Section F. Paragraphs 37 – 40 include allegations that a number of individuals combined with the NCR companies and other individuals "in relation to the deliberate concealment of NCR's plans". Those plans, as set out in paragraph 37, were for NCR to cease taking products from GDS, and to conceal its decision from GDS for as long as possible by, in essence, making false forecasts. The individuals are identified: Ms Ma, Mr. Mannion, Mr. Canadas, Ms. Lappin, Mr. Kaparis, Mr. Ciminera and Mr. Delamater. NCR has served witness evidence from 4 of these individuals, but not Ms. Ma, Mr. Ciminera and Mr. Delamater.

35. The existing paragraph 41.8 refers to a factory meeting in February 2011, which GDS alleges was used by NCR to further its own manufacturing plans including by identifying manufacturing processes and procedures so as to replicate the same for its own purposes. The final paragraph of the existing plea foreshadowed the possibility of an amendment to plead, for example, a claim for breach of confidence. But Mr. Ritchie has made it clear that no such claim is advanced. The facts set out in paragraph 41.8 are therefore an aspect of the case of concealment.

36. NCR does not make any substantial objection to what in my view can fairly be described as the tidying up aspects of this plea. The substantial objection is to the reliance which GDS now seek to place by way of pleading "an earlier visit in November 2010" as well as the February 2011 meeting.

37. I do not consider that the addition of a plea concerning the earlier visit is a tidying-up exercise. I think that it is too late to make the November 2010 visit a pleaded issue. I bear in mind that it is now over 10 years since that particular visit took place, and that the existing pleading did not require NCR and its advisers to consider the documentation relating to that visit, or to address the issue with witnesses. I therefore disallow the amendment in so far as it pleads "(and an earlier visit in November 2010)".

38. It does not follow, however, that cross-examination will be wholly impermissible in relation to November 2010 visit. It may be that questions can legitimately be asked of the existing witnesses, for example, in order to place the pleaded February 2011 visit in its factual context, or because they go to the credit of a particular witness. However, I will not seek (and it is not possible) to decide the permissible bounds of cross-examination in advance. Such cross-examination must of course relate either to a pleaded issue or to credit, although in the latter event there are of course limits to the extent of permissible questioning.

39. *Paragraph 53*. This proposed amendment arises in section H, dealing with the January 2013 meeting in New York and the events leading to the Release. The amended plea is as follows:

> "The Defendants threatened that if the Claimants did not accept NCR would simply not purchase the Products (including not making payment in respect of the failure to take the same) despite (a) NCR having entered into binding purchase orders in respect of some of the same; and (b) NCR having provided fraudulent forecasts of its requirement in relation to the Products (intending from no later than April 2012 that at notification to GDS it would reduce such forecasts to zero)."

40. The first part of this amendment ("including …") is, as Mr. Ritchie explained, intended to identify what is encompassed by the threat not to "purchase" the Products. There are factual issues as to what was said in the relevant discussions between the parties. These have already been explored in the cross-examination of GDS's witnesses, with particular focus on the New York meeting and a subsequent telephone call between Mr. Bisognin and Mr. Kaparis which was recorded. They will be further explored in cross-examination of the NCR witnesses. Whether or not the evidence of GDS is sufficient to support the plea of a threat in the terms pleaded, whether originally or by way of amendment, is not something that it is appropriate to address at the present stage, bearing in mind that the evidence as to the discussions between the parties is incomplete.

41. This aspect of the amendment is, in my view, unobjectionable in circumstances where: (i) the question of what NCR said to GDS in the relevant discussions is already squarely in issue, (ii) NCR's witnesses, Mr. Kaparis and Mr. Mannion, have given statements which address the relevant discussions between the parties in early 2013, and (iii) the additional words do no more than explain the nature of the already pleaded threat.

42. The second part of the amendment ("intending …") is also unobjectionable. The existing issues in the case will, as previously described, require consideration and resolution of disputes as to NCR's intention in relation to the forecasts given to GDS. Those issues already include the question, pleaded in paragraph 54, of whether it was NCR's intention that GDS would be put in a position in which they had no bargaining power. The additional words are in my view simply a facet of the existing case. They focus on the mechanism – which was indeed adopted by NCR in January 2013 – by which the true position would be revealed to GDS. If the pleaded words add to the case at all, it is only by way of a very minor increment. NCR's witnesses are bound to be asked questions relating to how they were planning to reveal their intentions to GDS, and in my view these would be legitimate questions which go to existing issues in the case (for example, concealment and intention) even without an amendment. The effect of the amendment is therefore to give advance warning of an aspect of the questions which the witnesses were bound to be asked in any event.

43. Furthermore, Mr. Ritchie has also identified for NCR the document on which reliance will be placed. This document is in the "Core Bundle" of materials with which I was provided at the start of the trial, and it was referred to in GDS's opening submission. The document is headed "Dynamo Exit Strategy", and is dated 12 April 2012. It states:

> "GDS and Benchmark demand/ forecast reduction to Zero for all NCR Sites and CFC (Stuart)"

44. NCR's witnesses will therefore be able to consider that document prior to giving their evidence.

45. I therefore consider that the second part of the amendment in this paragraph is also permissible. I do not accept that there is any substance in Mr. Gledhill's complaint that this aspect of NCR's intention does not identify the individuals who had the relevant intention. The same could be said about the first sentence of the next paragraph ("… and as they had no doubt intended by such unlawful conduct …"). It is apparent that the plea of intention in paragraph 54 refers, in context, to those individuals who, as pleaded earlier, participated in the concealment. It is equally apparent that the plea of intention of paragraph 53, in context, refers to the same individuals. Mr. Ritchie confirmed that this was so. There is in my view no lack of clarity about this amendment, and no need for further particularisation as to the individuals whose intention is in issue.

46. *Paragraph 56*. In its original form, this paragraph was as follows:

> "In acting as set out above, the Defendants made unlawful and illegitimate threats to the Claimants intending thereby to coerce the Claimants to enter into the final purchase letter. Such pressure coerced the Claimants to so enter into the final purchase letter".

47. The focus of the existing plea in this paragraph, as Mr. Gledhill correctly submitted, is upon threats made as set out in the earlier paragraphs of Section H; ie in the period after the 16 January call. It should also be noted, however, that the consequence of those threats was alleged to have operated in conjunction with earlier matters. Thus, paragraph 57 (to which I have already referred) pleaded that

> '… in such circumstances, including due to the continuing influence of the deceit, the Claimants had no realistic alternative but to agree to the terms of the final purchase letter in mitigation of its losses".

48. The amended plea in paragraph 56 is as follows:

> "~~In acting as set out above~~, the Defendants (i) by their unlawful conduct as pleaded in Sections F-H above as summarised in Sections I (1) – (3) below acted unlawfully, and/or (ii) in acting as set out in paragraphs 51 – 55 above made unlawful and/or illegitimate threats to the Claimants intending by such acts and/or threats ~~thereby~~ to place the Claimants in a position where they had no bargaining power, to coerce the Claimants to enter into the final purchase letter, and to cause the Claimants loss. Such pressure coerced the Claimants so to enter into the final purchase letter."

49. The effect of these amendments, when viewed in conjunction with proposed amendments to paragraphs 66 (unlawful means conspiracy) and paragraph 68 (intimidation) is broadly as follows. The focus of the conspiracy case in the existing pleading is upon the events prior to the 16 January call, whereas the focus of the

intimidation case is upon events subsequent to that call. The amendments seek to make the later (post 16 January 2013) events relevant to the conspiracy case, and the earlier (pre 16 January 2013) events relevant to the intimidation case.

50. It does not seem to me that the amended plea in paragraph 56, when viewed in conjunction with the other amendments, results in any material expansion of the case. Its principal effect is to permit GDS to rely upon the full substratum of underlying fact, already in issue, in relation to both the conspiracy and intimidation causes of action. I have already explained, in the context of the amendment to paragraph 68, why I consider that this should be permitted.

51. I do not consider that the expansion of the intimidation case "backwards", so as to cover the earlier time period, raises any issues which are not already in play – particularly bearing in mind that the existing intimidation plea refers to Sections G and H both of which already cross-refer to earlier relevant pleas. I do not need to address questions concerning the legal sustainability of this argument. Mr. Gledhill submits that intimidation requires a threat, and that there is no basis for an intimidation claim in the absence of such a threat (which is not asserted in relation to the earlier time period). He says, in substance, that GDS's case seeks to dress up a case of economic duress (which is not being advanced) as a case of an economic tort. This issue will require resolution in due course, and nothing in this judgment should be taken as accepting that the amended case is legally sustainable. However, it was common ground that I should not seek, at the present stage, to seek to resolve these and similar issues.

52. Nor do I consider that the expansion of the conspiracy case "forwards", so as to encompass the later time-period, raises issues which are not already in play. NCR's conduct during that later period has already been placed squarely in issue, as has the intention of the individuals involved. The existing pleading includes an allegation that unlawful and illegitimate threats were made with the intention of coercing GDS to enter the final purchase letter. There is also an existing plea, in the context of conspiracy, that NCR used unlawful means (namely breaches of contract and deceit) with the intention of causing loss and damage.

53. In these circumstances, I permit the amendments to paragraph 56 and what I consider to be related amendments to paragraphs 66 and 68.

54. In relation to all the amendments which I have permitted, I consider that the balance between injustice to GDS if the amendment were refused, and injustice to NCR if the amendments were permitted, strongly favours GDS. These are not amendments which will require the adjournment of the trial. They do involve a tidying up of the pleadings, with only minor increments, so as conform GDS's case which was advanced in its written opening. They do not involve, in my view, substantial consequential work on the part of NCR, because they relate to facts which are already pleaded and which will have been considered by NCR's advisers and witnesses. I have taken into account the information that I have received as to the medical condition of Mr. Kaparis, but note that the current evidence does not suggest that he will be unfit to give evidence remotely (as all witnesses in the case are doing). There is nothing which suggests to me that the witness statement of Mr. Kaparis, giving his recollection of events, would be materially different if GDS's amended case had been pleaded at an earlier stage. Indeed, Mr. Gledhill has been at pains to emphasise that

NCR's approach to its witness evidence has been to focus on what the witnesses actually remember, rather than putting forward a recitation of material to be found in the contemporary documents.

55. NCR does of course have permission to serve responsive amendments if it considers it necessary to do so, although it may well form the view that its case is sufficiently covered by its existing defence. If, consequent on the amendments, NCR wishes to ask any questions of its witnesses by way of examination in chief, then it is permitted to do so – and it is not necessary for NCR to put such evidence into written witness statements.