



Neutral Citation Number: [2024] EWHC 1527 (Comm)

Case No: CL-2018-000297, CL-2018-000404, CL-2018-000590,
CL-2019-000487, CL-2020-000360

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
KING'S BENCH DIVISION
COMMERCIAL COURT

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

Date: 17 June 2024

Before :

Mr Justice Andrew Baker

Between :

**SKATTEFORVALTNINGEN (THE DANISH
CUSTOMS AND TAX ADMINISTRATION)
("SKAT")** **Claimant**

- and -

**SOLO CAPITAL PARTNERS LLP (IN SPECIAL
ADMINISTRATION) & OTHERS** **Defendants**

**Charles Graham KC, Jamie Goldsmith KC, Abra Bompas, KV Krishnaprasad and
Matthew Hoyle (instructed by Pinsent Masons LLP) for the Claimant**

**Nigel Jones KC, Lisa Freeman, Sarah McCann, Miguel Henderson and Thomas Mitty
(instructed by Meaby & Co Solicitors LLP) for the Shah Defendants**

**David Head KC, Christopher Bond, Hannah Glover and Sophia Dzwig (instructed by DWF
Law LLP) for the DWF Defendants**

**Arthur Hogarth, a partner in the LLP, for Lindisfarne Partners LLP, with the permission of
the court**

(other Defendants either attending remotely or not attending)

Hearing date: 17 June 2024

RULING
(Approved Transcript)

Mr Justice Andrew Baker Monday, 17 June 2024
(10:09 am)

Ruling by **MR JUSTICE ANDREW BAKER**

1. My view in relation to the application to adduce this third witness statement of Mr Horn as supplementary evidence in chief is as follows.
2. Firstly, there is within the third statement (at paragraph 6) what would be a correction to a date. The provision in written form – preferably, if time is available, the form of a supplemental statement that therefore bears a statement of truth – of corrections of that kind or other types, to what would otherwise be the evidence in chief sworn to when the witness is called, is obviously welcome. I can see no reason not to allow that correction to be made.
3. I take next the section (at paragraphs 8 and 9), under a heading, “**NCB Credit and Debit Advice Notes**”. It deals with Mr Horn’s recollection of the degree to which he was or was not aware at the time of, specifically, debit advice notes being generated by the NCB version of the processing of these trades. It seems to me – so this is, secondly – that it is fair to observe that no attention was being paid really by anybody in the case, as far as I can recall it, to what may in any event be a somewhat peripheral detail, namely whether there were indeed debit advice notes for short sellers within the custodians’ systems and, if so, whether they were sent to short sellers, that were the equal and opposite advices to the credit advice notes or dividend credit advices, as we have been calling them, issued to the long buyers.
4. That additional evidence therefore deals with a point of relatively small detail in the case which may ultimately not matter at all – it certainly feels at the moment, provisionally, a little peripheral – but on which I raised an enquiry, for completeness, during the course of Mr Sanjay Shah’s evidence as to whether he was correct in the PowerPoint presentation, which itself is only a recent addition to the case, in suggesting a recollection that they were routinely prepared. Against that background, it would not have been surprising if, equally for completeness, and in case it should matter ultimately, Mr Head KC might have sought to ask Mr Horn in chief what,

if anything, he remembered about any dividend debit advices being generated at NCB. I would have allowed that, and I therefore allow those paragraphs.

5. However, and thirdly, I consider the position is different in relation to the other two substantive sections, headed respectively, “**Norton Rose Advice**”, and “**Role of Brokers**”. Although the statement asserts in general terms (at paragraph 3) that Mr Horn wants to supplement his evidence in chief because of things that have occurred only in the course of preparing to give oral evidence or things that have arisen during the course of the trial, as it seems to me neither is a realistic claim.
6. In the case of the Norton Rose advice, Mr Head KC acknowledges that if there was a specific trigger, it was SKAT’s reliance on that in its written opening submissions, provided some time in advance of the start of trial. In the case of the role of brokers, the proposed content is not in any real sense triggered by anything particular that has happened at trial that might explain a desire now to say more about that point in chief than it was decided between Mr Horn and his legal advisers in the process of preparing his trial witness statements he would wish to say.
7. Both of those topics, I would add, are of such potential significance that, on the way in which SKAT has opened its case, provisionally it seems unlikely that they will not feature in cross-examination. It is unlikely, therefore, that Mr Horn will not be given a fair and sufficient opportunity, through the normal process we were following, to give further evidence, if he has got additional evidence to give, because of the way questions will then be asked in cross-examination.
8. In both respects, far from there being compelling evidence, there is in substance no evidence put before me to explain what is then substantial delay in the provision of the proposed supplemental evidence in chief. We are embarking on sitting Day 27 of a trial that has now been running for a substantial number of weeks, including additional reading days, and in which, at

the latest, I would have thought, any desire on Mr Horn's part to amplify what he had said on either of those topics was plainly going to be triggered by his reading of SKAT's written opening, to the extent that it affected him.

9. In those circumstances, and although it makes very slightly awkward the evidence in chief to which we now need to proceed, as a substantive ruling, I do not grant permission for paragraphs 7 and 10 to 14 of the third statement to be adduced in evidence.
10. I propose, subject to any further observations from Mr Head KC, since the document now exists, and all involved in the proceedings this morning have seen it and know where it now finds its home on the Opus 2 system, that the procedure for evidence in chief probably ought to be that Mr Horn is invited to swear to or affirm his first and second statements after being shown the third statement and paragraph 6 for that point of correction, and then in relation to paragraphs 8 and 9 of the third statement he can properly be taken again to the start of the document to identify that it was a statement he had prepared with a view to supplementing his evidence in chief and he can then be invited to verify, if he is happy to do so, the accuracy of paragraphs 8 and 9.
11. It may then be, so that the digital documentary record matches what he has been asked to swear to, that it would be better to put a replacement copy of the third statement on the system, with paragraphs 7 and 10 to 14 shown struck through, but I leave to that discussions behind the scenes between the parties.
12. As I have indicated, and without, obviously, anticipating exactly how questions will be put or exactly how Mr Horn may answer them, this may ultimately prove to have made a bit of a mountain out of a molehill because questions which will naturally arise out of the case that is being put against Mr Horn to which proper answers on his part may include, if the content of it be his true recollection, broadly the substance of what would have been in those paragraphs. But on the basis that I am not persuaded that they have been in any real sense triggered by anything

that has happened recently, or at all during the course of the active sitting days of the trial, and on the basis that, far from compelling evidence, there is in truth no real evidence in those circumstances to explain why it was only produced now and not what is now some months ago, at the very least quite a number of weeks ago, I do not think it would be fair to admit, and I do not grant permission for, those additional paragraphs.