Neutral Citation Number: [2023] EWHC 2064 (KB)

Case No: KB-2023-002982

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Wednesday, 9 August 2023

Before:

MR. NIGEL COOPER K.C. SITTING AS A HIGH COURT JUDGE

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Between:

CITY SITE SOLUTIONS LIMITED	**Claimant**
- and –	
(1) LIAM BAKER **(2) DANIEL GRIFFITHS** **(3) JOSH SARTAIN** **(4) CORNERSTONE PROJECT SOURCE LIMITED**	**Defendants**

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Mr. Daniel Northall (instructed by **South Bank Legal**) for the **Claimant**
Ms. Emily Husain (instructed by **Boddy Matthews**) for the **First and Fourth Defendants**
Mr. Saunak Irani-Nayar (instructed by **Capstick-Dale**) for the **Second Defendant**
Mr. Josh Sartain in person

Hearing dates: 28 July 2023

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APPROVED JUDGMENT

MR. NIGEL COOPER K.C.:

Introduction

1. In this action, the Claimant seeks injunctive relief and damages from each of the Defendants arising out of the circumstances of the termination of the employment of the First, Second and Third Defendants, who were employees of the Claimant. In essence, the Claimant says that, in breach of the express and implied terms of their contracts of employment and in breach of duty, each of the Defendants misappropriated confidential information and documents from the Claimant so as to be able to set up a rival business operating through the Fourth Defendant, a business established by the First Defendant who was the sole shareholder and managing director.

2. The hearing before me was the hearing of an application made by the Claimant by notice dated 21 July 2023 for injunctive relief and directions for a speedy trial. During the hearing, consent orders were agreed between the Claimant and the Second and Third Defendants such that it was finally only necessary for me to make orders in relation to interim injunctive relief between the Claimant and the First and Fourth Defendants. The consent order between the Claimant and the Second Defendant is on a final basis so that no further directions are necessary in relation to the claims made against the Second Defendant. The consent order between the Claimant and the Third Defendant is on an interim basis so that the directions made for a speedy trial also apply to him.

3. For the purposes of considering the application as between the Claimant and the First and Fourth Defendants, I heard oral submissions from Mr. Northall and Ms. Husain as well as considering the skeleton arguments lodged by them. In terms of evidence, I had a witness statement from Mr. Tom Armitage, the Managing Director of the Claimant and Mr. Liam Baker, the First Defendant together with the documents exhibited to their statements and additional correspondence included in the bundle.

4. I also heard brief submissions from Mr. Irani-Nayar on behalf of the Second Defendant and from the Third Defendant in person. Although the Third Defendant appeared in person, he had previously taken legal advice from Backhouse solicitors and was able to contact them during a short adjournment for the purposes of deciding whether to agree and sign the consent order, which was put before the court.

5. At the end of the hearing, I granted the Claimant injunctive relief albeit on terms, which were not as restrictive as originally sought. I also gave directions to lead to a speedy trial. Time did not allow me to deliver judgment during the hearing and I indicated that I would give reasons for my decision in writing following the hearing. This judgment sets out those reasons.

6. Before the hearing the First and Fourth Defendants objected to the hearing going ahead on the basis that they were not given adequate notice of the hearing and did not have sufficient time to put in evidence and a skeleton argument in opposition to the application. In the end, the First and Fourth Defendants lodged both a witness statement and a skeleton argument. Ms. Husain confirmed at the

start of the hearing that the First and Fourth Defendants wished to go ahead and were not seeking an adjournment of the application.

7. By the time of the hearing, the following matters were the principal issues, which I had to determine:

   i) Did the Claimant pass the threshold for injunctive relief.

   ii) Was the Claimant entitled to disclosure by Affidavit from the First and Fourth Defendants?

   iii) Was the Claimant entitled to an order for imaging and inspection of devices belonging to the First and Fourth Defendants on which confidential information was held?

   iv) Was the Claimant entitled to an order enforcing post-termination restrictions on the First Defendant?

   v) Was the Claimant entitled to an order for springboard relief against the First and Fourth Defendants?

8. There was no issue before me as to the definition of confidential information for the purposes of the order made. It was also accepted by the First and Fourth Defendants that if the Claimant passed the threshold for injunctive relief it was entitled to orders for the preservation and delivery up of confidential information.

9. Before dealing with each of the matters, which were in issue before me, I will set out the background to the present dispute. In doing so, I make no final findings of fact, which are a matter for determination at trial.

Background

The Claimant's business

10. The Claimant is an employment business involved in placing candidates for clients in the construction sector. It presently operates through seven offices, with a centralised head office providing support services.

11. The business has two core workstreams: (1) sales, through which teams of employees seek to win and retain work from construction sector clients; and (2) resourcing, through which teams of employees (known as 'resourcers') find candidates to fill jobs on behalf of clients.

12. The Claimant employed the First to Third Defendants at its Essex office located in Billericay. It established the office at the First Defendant's request in 2018. Prior to his resignation, the First Defendant was employed by the Claimant as a Business Development Manager and had *de facto* responsibility for the Billericay office. The Second and Third Defendants were recruited by the First Defendant and he had management responsibility for them. Both were recruited as resourcers.

13. There is a dispute between the Claimant and the First Defendant as to the terms of the First Defendant's employment and whether, in particular, his contract of employment contained enforceable PTRs. The contract terms relied on by the Claimant are found in an undated contract of employment provided to the First Defendant on or about 20 September 2021 ("the September 2021 contract"). There is no copy of that contract signed by the First Defendant.

14. The First Defendant says that he was not prepared to agree to this contract because it did not contain terms providing him with an 'exit' bonus, which he says was something he had agreed with Mr. Armitage. The First Defendant also says that Mr. Armitage's failure to agree the terms of his exit bonus was one of the factors behind his resignation and why he considers that he was constructively dismissed.

15. The First Defendant continued discussions over the terms of his exit bonus with Mr. Armitage through 2022 and into 2023 but the evidence before me does not suggest any wider refusal to accept the terms of the September 2021 contract. He continued to work for the Claimant for nearly two years after being provided with the September 2021 contract.

16. In correspondence between the First Defendant's solicitors and the Claimant's solicitors, the First Defendant put forward a proposal for undertakings he was prepared to give the Claimant which expressly referred to the definition of confidential information as defined in clause 16.1 of his employment contract. The reference to clause 16.1 was a reference to the corresponding clause of the September 2021 contract.

17. The Billericay office has a niche specialism in 'facades and steel' (i.e., construction involving the external face of a building and steel erection). It was the only office within the City Sites business that serviced the specialism.

18. It is the Claimant's case that the combination of the First, Second and Third Defendants provided a self-contained team capable of servicing the needs of clients and candidates. The Claimant has estimated that the trio were responsible for 85% of the revenue generated by the Billericay office.

Departure of the First, Second and Third Defendants

19. The First, Second and Third Defendants resigned their employment with the Claimant over the course of 29 and 30 June 2023. The Claimant says that the circumstances of their resignation strongly indicate that their departure was a 'team move', long in the planning and orchestrated by the First Defendant for his own benefit and that of his newly incorporated business, Cornerstone, the Fourth Defendant. The Claimant says that their departure showed a disregard for their employment obligations, their duties of confidentiality and for City Site's commercial wellbeing. The First Defendant says that he resigned in circumstances such that he was constructively dismissed.

20. The Second and Third Defendants tendered their resignation in writing late on 29 June 2023. CSSL allege that in breach of contract, neither gave notice.

21. The Claimant's Managing Director, Tom Armitage, attended the Billericay office in person on the morning of 30 June 2023. None of the First to Third Defendants were there. The remaining staff told Mr Armitage that they had not been seen for 'a couple of days' and did not know where they were.

22. Mr Armitage met the First Defendant by arrangement at the Billericay office. Mr. Armitage says that the First Defendant originally wanted to meet offsite in London, but that he, Mr Armitage, insisted that he attend the office. In the conversation between them that ensued, Mr. Armitage says that the First Defendant was truculent and uncooperative. He refused to assist Mr Armitage in handing over the office's key tasks and responsibilities. The Claimant say that unbeknown to Mr Armitage at that time, assisted by the Second and Third Defendants, the First Defendant had already cannibalised the Claimant's confidential business information and taken steps to harm the ongoing business of the Billericay office.

23. Mr. Armitage's account of events on 30 June 2023 is disputed by the First Defendant, who says that Mr. Armitage became aggressive and emotional such that he feared for his safety.

24. For the purposes of the application before me, I do not have to decide whose account of events on 30 June is correct. What is not in dispute is that the First Defendant handed a resignation letter to Mr Armitage. The letter claimed that Mr Armitage had failed to honour an earlier agreement as to Mr Baker's bonus and that the circumstances of the First Defendant's departure amounted to a constructive dismissal.

IT Investigation

25. Mr Armitage commissioned the Claimant's IT consultant to interrogate its systems for evidence of wrongdoing. It appears that those investigations began on 30 June 2023.

26. The Claimant says that the First Defendant was careless enough to leave his work computer logged into his personal Hotmail email account, with the email address for that account. The Claimant also says that much of the First Defendant's wrongdoing has been shown through his use of the Hotmail account. The evidence of Mr. Armitage includes a number of examples of e-mails sent by the First Defendant from his personal Hotmail account to his-email account with the Fourth Defendant to which are attached documents and information, which on the evidence presently available belongs to the Claimant.

27. The First Defendant disputes the Claimant's account of how it came to access messages on the First Defendant's Hotmail account. The First Defendant alleges that the Claimant has accessed his e-mail account and

taken information and documents from that account by effectively 'hacking the account' and acting in a way which is unlawful. I return to this issue below when considering whether the Claimant has met the threshold for interim injunctive relief.

28. The Claimant says their investigations reveal that that the First Defendant has been engaged in the wholesale misappropriation of its confidential information and deliberate efforts to harm its ability to retain business at its Billericay branch. The First Defendant acknowledges that he has taken information and documents from the Claimant but disputes how much of that information is confidential information. The First Defendant disputes the allegations made against him by the Claimant. However, the witness statement provided by the First Defendant for the purposes of this application does not offer any detailed rebuttal of the actions said by the Claimant to have been taken by the First Defendant to take information and documents from the Claimant's systems. On the evidence before me, it does appear that the First Defendant was engaged in a process of transferring documents and information belonging to the Claimant and which were confidential information within the meaning of the First Defendant's employment contract to his personal e-mail accounts and then on to the Fourth Defendant.

29. The First Defendant incorporated the Fourth Defendant on 31 May 2023. The Standard Industrial Classification Code (SIC) given for the company is "*Other activities of employment placement agencies*" The First Defendant is Cornerstone's sole director and controlling shareholder. A small minority share is held by Recruithub Platform Ltd (a recruitment platform business through which new recruitment business launch and seek early growth). It is not in dispute that each of the First to Third Defendants resigned their employment with City Site to take up employment with the Fourth Defendant.

Express and implied contractual terms, fiduciary duties and duties of confidentiality

30. There is a dispute about the precise terms of the First Defendant's employment, whether the PTRs found in the September 2021 contract are enforceable and to what extent, if at all, the First Defendant owed the Claimant fiduciary duties. There was, however, no real challenge to the Claimant's position that the First Defendant owed it express and implied obligations of confidentiality (clause 15 of the September 2021 contract) and implied duties of good faith and fidelity, a duty of cooperation and a duty to preserve the relationship of trust and confidence.

31. The express confidentiality provisions found at clause 15 of the September 2021 contract require the First Defendant to deliver up confidential information (as defined) and not to use, copy or disclose confidential information other than where expressly authorised in writing by the Claimant.

32. So far as the PTRs are concerned, these are set out at clause 16 of the September 2021 contract. In brief, their effect was to prevent the First Defendant from competing with the Claimant by carrying on business from a location within half a mile of any of the Claimant's offices for a period of three months post-termination and from using the Claimant's trade connections and goodwill for a period of nine months post termination.

The Claimant's protectable legitimate interests

33. On the question of whether the Claimant has a protectable legitimate interest, the Claimant referred me to a passage from the speech of Lord Wilberforce in Stenhouse Australia Ltd. v. Phillips [1974] 1 All ER 117 (at 122) in the following terms:

> "*the employer's claim for protection must be based upon the identification of some advantage or asset inherent in the business which can properly be regarded as, in a general sense, his property, and which it would be unjust to allow the employee to appropriate for his own purposes, even though he, the employee, may have contributed to its creation. For while it may be true that an employee is entitled - and is to be encouraged - to build up his own qualities of skill and experience, it is equally his duty to develop and improve his employer's business for the benefit of his employer. These two obligations interlock during his employment: after its termination they diverge and mark the boundary between what the employee may take with him and what he may legitimately be asked to leave behind to his employers."*

34. The Claimant summarised the advantages or assets, which it was seeking to protect in the following terms:

    i) Long-term, stable relationships with clients are vital to the success of the business and require significant investment in terms of time and money.

    ii) Such a relationship may lead to exclusivity of use (typically in relation to smaller clients) or access to preferred supplier lists (in relation to larger clients).

    iii) Clients with a stable, long-term relationship with the Claimant account for a disproportionately large percentage of its revenue.

    iv) Reliable, up to date information relating to candidates (including their skills, availability, experience, location and the like) and clients (including their current activities, pay rates and key contacts) is the difference between success and failure.

    v) The Claimant and its competitors are currently within the summer season, in which demand far outstrips supply due to a general lack of candidate availability. Accurate, reliable candidate information is therefore critical to filling roles on behalf of clients at this time.

    vi) The industry is fast paced. Given the speed with which roles need to be filled, using accurate information in relation to known candidates is more efficient than advertising to fill roles.

35. Relying on the evidence of Mr Armitage, the Claimant argues that it has protectable legitimate interests in respect of:

    i) its trade connections and goodwill;

    ii) its confidential information; and

    iii) the stability of its workforce.

36. Having considered the evidence of Mr. Armitage and the rebuttal evidence of the First Defendant, I accept for the purposes of this application that the Claimant can establish to the requisite standard (discussed further below) that it has a protectable legitimate interest.

Breach of Contract and/or Duty

37. Mr. Armitage set out in some detail in his witness statement, the material which the Claimant relied on for the purposes of establishing the necessary breaches by the First Defendant and Fourth Defendant. Mr. Northall for the Claimant in his oral and written submissions provided me with what he described as the highlights, as follows:

    i) On 16 May 2023, the First Defendant copied 72 internal Claimant emails. Around half of these emails included details and logins for third-party service providers, such as recruitment sites. One of the emails included the Claimant's access credentials for "Googlesheets", where the company keeps commercially sensitive information, including details of advertisement responses and of the candidates finishing an assignment. The Claimant says it is reasonable to infer that the First Defendant secretly transferred the information with the intention of exploiting it for his and the Fourth Defendant's benefit, but to the Claimant's detriment.

    ii) On 10 June 2023, the First Defendant sent from his personal email to his email account with the Fourth Defendant a copy of a document entitled "2029 Client List.xlsx". The file is 7MB in size and the Claimant says is likely to contain a significant amount of information relating to City Site's clients. The Claimant cannot presently access the file because it is password protected and the First Defendant has not given the Claimant the password.

    iii) On 3 May 2023, the Third Defendant sent from his personal email to the First Defendant's personal email account a spreadsheet including much of the work output of Chloe Gladwin and Ben Pittman (the employees of the Billericay office responsible for stand-alone and permanent placements) and the contact databases from which they worked. The Claimant says that the email was sent without the Claimant's knowledge or consent and that it is reasonable to infer that the Third and First Defendants secretly transferred the information with the intention of exploiting the sales opportunities to their and the Fourth Defendant's benefit, but to the Claimant's detriment.

iv) On 14 and 21 June 2023, the First Defendant sent from his personal email to his email account with the Fourth Defendant details of sales opportunities developed in the course of his employment with the Claimant in respect of the clients Archbell Greenwood and Advanced Roofing. The Claimant says that the email was sent without the Claimant's knowledge or consent and that it is reasonable to infer that the First Defendant secretly transferred the information with the intention of exploiting the sales opportunities to his and the Fourth Defendant's benefit, but to the Claimant's detriment.

v) On 20 June 2023, the Third Defendant sent from his personal email to the First Defendant's personal email account an updated version of "Liam's Plan.xlsx" document, which the First Defendant in turn forwarded to his email account with the Fourth Defendant. The email also attached a document entitled "LB Daily Bookings – NEW.xlsx". Mr Armitage describes the document as a daily planner, showing what placements were live at the time and those that were upcoming. It was an account of part of the branch's work in progress. The Claimant says that the email was sent without the Claimant's knowledge or consent and that it is reasonable to infer that the First Defendant secretly transferred the information with the intention of exploiting the sales opportunities to his and the Fourth Defendant's benefit, but to the Claimant's detriment.

vi) On 20 June 2023, the Third Defendant sent from his personal email to the First Defendant's personal email account (in turn forwarded to the First Defendant's email account with the Fourth Defendant the next day) an email giving the contact details, payment terms and supplier form for Dearnside Fabrications. Dearnside Fabrications is a major architectural metalwork company which the Claimant says it brought on as a new client in June 2023 and has three current assignments with them. The Claimant also says that the email was sent without the Claimant's knowledge or consent and that it is reasonable to infer that the First Defendant secretly transferred the information with the intention of exploiting the sales opportunities to his and the Fourth Defendant's benefit, but to the Claimant's detriment.

vii) On 26 June 2023, the First Defendant sent the login details for 15 City Site email accounts from his personal email to his email account with the Fourth Defendant. The Claimant says that the email was sent without the Claimant's knowledge or consent and that the First Defendant had no claim to the accounts, which are the Claimant's property. The Claimant further says that the only reasonable inference is that the First Defendant secretly transferred the login details with the intention of harvesting information from the accounts for his and the Fourth Defendant's benefit. The Claimant has now changed the passwords but says that it has no way of knowing what information had already been extracted.

38. Mr. Armitage's witness statement contains details of further evidence that the Claimant relies on to show that the First and Fourth Defendants are actively

soliciting the Claimant's clients with a view to obtaining their business to the Claimant's detriment.

39. Against, the background of the above evidence, the Claimant says that it has claims against the First and Fourth Defendants in the following terms.

    i) Against the First Defendant:

        a) In respect of the pre-termination preparation to compete and misappropriation of confidential information: breach of fiduciary duty, breach of the implied duties of fidelity, cooperation and trust and confidence, breach of the express and implied duties of confidentiality and breach of the equitable duty of confidence.

        b) In respect of the team move: inducement of breach of contract and unlawful means conspiracy.

        c) In respect of the post-termination misuse and retention of confidential information and competitive activity: breach of the express and implied duties of confidentiality, breach of the equitable duty of confidence, breach of the express PTRs and unlawful means conspiracy.

    ii) Against the Fourth Defendant:

        a) In respect of the pre-termination preparation to compete and misappropriation of confidential information: knowing receipt of confidential information, inducement of breach of contract and unlawful means conspiracy.

40. The First and Fourth Defendants deny that the Claimant has claims against them as outlined by the Claimant. It is also right to note that the First Defendant had had at the date of the hearing only limited time to respond to the detailed evidential account put forward by Mr. Armitage in his witness statement. Nevertheless, it is notable that the First Defendant has not, either in correspondence or in his witness statement, sought to dispute the account of events as described in paragraphs 37 and 38 above or to offer any credible explanation for those events.

41. Accordingly, I am satisfied to a high degree of assurance that the Claimant is likely to establish its claims for breach of contract and duty against the First Defendant and for breach of duty against the Fourth Defendant.

Inference of dishonesty

42. The Claimant relied on various matters to invite me to infer that the First and Fourth Defendants had been dishonest in their dealings with the Claimant and its representatives since this application was first intimated. However, it is not necessary for the purposes of this application for me to make any such findings of dishonesty and I do not do so.

Principles for the grant of interim relief

43. There was a dispute between the Claimant and the First and Fourth Defendants as to the principles I should apply when determining the Claimant's entitlement to injunctive relief.

44. The Claimant relied on the familiar American Cyanimid guidelines as laid down in American Cyanimid Co. v. Ethicon Ltd [1975] AC 396, namely that it is necessary for the Claimant to establish (i) a serious issue to be tried, (ii) that damages are not an adequate remedy and (iii) that the balance of convenience lies in favour of the grant of interim injunctive relief.

45. In relation to each of the above guidelines, the Claimant submitted and I accept:

    i) The test for a serious issue to be tried sets a low hurdle, which does little more than exclude claims which might be characterised as frivolous or vexatious; see per Patten J (as he then was) in BSW v. Baltec [2006] EWHC 822 (Ch).

    ii) That on the issue of adequacy of damages, I should be guided by the observations of Underhill LJ in Sunrise Brokers LLP v. Rodgers [2015] IRLR 57 at [53]:

        In a case of this kind there are evident and grave difficulties in assessing the loss, which an employer may suffer from the employee taking work with a competitor; even where it is possible to identify clients who have transferred their business (which not always be straightforward, particularly where the new employer is outside the jurisdiction) there may be real issues about causation and the related question of the length of the period for which the loss of the business could be said to be attributable to the employee's breach. If the sums potentially lost are large they will not be realistically recoverable from the employee in any event … There may be other intangible but real losses to the employer's reputation.

    iii) That in Lansing Linde Ltd v. Kerr [1991] 1 WLR 251, the Court of Appeal described the balance of convenience as an exercise in identifying the *"lesser evil: will it do less harm to grant an injunction which subsequently turns out to be unjustified, or to refuse one if it subsequently turns out that an injunction should have been granted."*

46. I accept the Claimant's submissions as to the approach I should take in applying the American Cyanimid test.

47. In contrast, the First and Fourth Defendants submitted that to the extent the Claimant was seeking mandatory relief, the principles to be applied were those set out in the judgment of Chadwick J. in Nottingham Building Society v. Eurodynamic Systems [1993] FSR 468 at 474:

    In my view the principles to be applied are these. First, this being an interlocutory matter, the overriding consideration is which course is

> *likely to involve the least risk of injustice if it turns out to be 'wrong' in the sense described by Hoffmann J.*
>
> *Secondly, in considering whether to grant a mandatory injunction, the court must keep in mind that an order which requires a party to take some positive step at an interlocutory stage, may well carry a greater risk of injustice if it turns out to have been wrongly made than an order which merely prohibits action, thereby preserving the status quo.*
>
> *Thirdly, it is legitimate, where a mandatory injunction is sought to consider whether the court does feel a high degree of assurance that the plaintiff will be able to establish this right at a trial. That is because the greater the degree of assurance the plaintiff will ultimately establish his right, the less will be the risk of injustice if the injunction is granted.*
>
> *But finally, even where the court is unable to feel any high degree of assurance that the plaintiff will establish his right, there may still be circumstances in which it is appropriate to grant a mandatory injunction at an interlocutory stage. Those circumstances will exist where the risk of injustice if this injunction is refused sufficiently outweigh the risk of injustice if it is granted.*

48. The First and Fourth Defendant relied on these principles especially in relation to the Claimant's claim for interim relief to enforce the PTRs (and it seems to me by association the claims for springboard relief).

49. For the reasons set out below, I am satisfied that this is an appropriate case to grant the injunctive relief sought by the Claimant in a modified form whether I apply the principles laid down in American Cyanimid or whether I am applying the arguably more onerous principles in the Nottingham Building Society test. In other words, I am satisfied to a high degree of assurance that the Claimant will establish its right at trial to the relief sought (and by necessary corollary that, if the appropriate test is one of a serious issue to be tried, then that test is also satisfied), that damages will not be an adequate remedy and that the balance of convenience favours granting the relief in the form of the draft order, which I have approved. To the extent that the Claimant seeks mandatory relief, I am satisfied that the risk of injustice is greater if I refuse to grant the relief than the risk of injustice if I do grant the relief.

Threshold issues

50. The First and Fourth Defendants raised threshold issues, which they say precluded the grant of interim relief to the Claimant.

51. The threshold issues identified by the First and Fourth Defendants were:

    i) That the Claimant was in fact seeking final rather than interim relief on the basis that any trial of the action would be unlikely to come on before the expiry of the nine-month time term in the PTRs. Accordingly, the appropriate test for relief should be that for a final injunction, namely the balance of probabilities.

ii) The need for the Court to have regard to the underlying merits of the claims at an interim stage given the likelihood that no trial would come on before the expiry of the nine-month term.

iii) The failure of the Claimant to articulate its claims either in the correspondence or by the issue of a claim form and draft particulars of claim.

iv) Short notice of the application and a failure to mention the undertakings offered by the First Defendant and the Fourth Defendant.

52. The First and Fourth Defendants also challenged:

i) Whether there was a contract of employment in place between the First Defendant and the Claimant.

ii) Whether, even if the First Defendant was otherwise bound by PTRs, he had a strong claim for constructive dismissal which would nullify the PTRs.

iii) Whether the material relied on by the Claimant for the purposes of this application had been obtained by unlawful access to the personal e-mail account and personal data of the First Defendant.

iv) Whether a condition precedent to the enforcement of the PTRs was the provision of a list of relevant entities and individuals with whom the First and Fourth Defendants cannot do business.

53. For the reasons set out below, none of the threshold issues raised by the First and Fourth Defendants justify the refusal of interim relief in this case.

54. I have given directions for a speedy trial so it is not inevitable that the relief I grant will be final. In any event, given the evidence before me and the submissions made, I am satisfied to a high degree of assurance, that the Claimant is likely to succeed in its claims, including the claim to enforce the PTRs. I do not consider that the present application requires me to go further and be satisfied on the balance of probabilities that the Claimant is entitled to the relief sought. The authority relied on by the First and Fourth Defendants in support of the proposition that I should be so satisfied, Re R-Squared Holdco Ltd & Anor. V. MML Capital & Ors [202] EWHC 23 (Ch) at [24] to [27], is a decision on a very different set of facts and is not concerned with the enforcement of PTRs. The judge's conclusion that he should treat part of the application before him as being an application for final injunctive relief was a decision made on the facts of the case and does not purport to set down principles of general application.

55. Of more relevance is the decision of Edwin Johnson J. in Planon Ltd v. Gilligan [2021] EWHC 3162 (Ch), in which the Judge said at [21]:

> *There is, however, an important addition or qualification to the application of these principles in the present case. So far as Clause 17.1 is concerned,*

> *the PTRs therein contained are, with one exception, imposed for 12 months. It follows that the trial of this action is likely to take place after the 12 month period has expired or at a time when little of the 12 month period will remain. It follows that the grant of an interim injunction based on the terms of the PTRs which run for this period of 12 months will have the effect of granting to the claimant a substantial part at least of the substantive relief which the claimant will, I assume, seek in this action. Even if an order for an expedited trial was to be made, it strikes me that not much of the 12-month period would be left once the expedited trial had been finally determined. In such circumstances, it is legitimate for the court to make some assessment of the claimant's prospects of success (see Staughton LJ in Lansing Linde v. Kerr [1991] 1 WLR 251 [258] B-C]. Indeed Miss Bone accepts on behalf of the claimant that the present case is a case of this kind."*

56. The Judge went on at paragraphs [24] to [30] to make a preliminary assessment that the claimant's prospects of upholding the PTRs in that case were not that good and therefore he was not prepared to grant interim relief enforcing those restrictions. It is clear from the judgment that he was not purporting to make any final determination of the issues before him or to apply a test of balance of probabilities. The Judge put the position in the following terms at [25]:

> *"So it seems to me, as I have said, that there is a serious issue to be tried in this action. However, as I have already explained, I am also entitled to make some assessment of the prospects of success of the claimant's case, given my views, on the effect of granting an interim injunction in the terms sought by the claimant. I stress two points in respect of this assessment. First, I am not making any final decisions on the claimant's case, nor am I saying anything which should be seen as binding the judge at trial. Second, and mindful of what Staughton LJ said in Lansing, I am only making some assessment. I am not making any in-depth analysis of the claimant's case and, indeed, in the absence of a pleaded case it seems to me that it would be difficult to do so."*

57. When it comes to considering the individual aspects of relief sought by the Claimant in this case, I will adopt the same approach as that taken by Edwin Johnson J in reliance on the approach taken by Staughton LJ in Lansing Linde Ltd v. Kerr.

58. There is some force to the criticisms that the ability of the First and Fourth Defendants to address the claims made against them has been made more difficult by the failure of the Claimant to serve the Claim Form or to provide draft Particulars of Claim, although the criticism that the Claimant has failed to give full and frank disclosure is not made out. The Claimant's answer to these criticisms is that (i) the service of the Claim Form and draft Particulars of Claim is not a pre-requisite to its' application and that (ii) it was concerned that the nature of the claim and the parties to it might change as a consequence of this hearing thereby requiring amendment of the Claim Form and revision of the Particulars of Claim. Overall, I do not consider that the failure to serve the Claim Form or provide draft Particulars of Claim so hindered the First and Fourth Defendants in their defence that I should not grant interim relief. I am satisfied

that the First and Fourth Defendants knew the case they had to meet and that the Court can sufficiently identify the nature of the claims made for the purposes of determining this application. Likewise, I consider that the criticisms made of the Claimant's articulation of its claims in correspondence does not assist the First and Fourth Defendants. As an example, the letters of 07 July 2023 from South Bank Legal to the First and Fourth Defendants set out clearly the allegations being made against both defendants. As noted at paragraph 5 above, when I queried whether they were ready to proceed or wished to seek an adjournment, Ms. Husain confirmed that the defendants wished to proceed.

59. More critical for the purposes of this application is the question of whether the Court can sufficiently identify the terms of the First Defendant's employment. The Claimant relies on the September 2021 contract as containing the relevant terms of the First Defendant's employment. The First Defendant states that he did not sign these terms and that the contract does not reflect the terms of a verbal agreement between Mr. Armitage and the First Defendant as to the terms of an exit bonus if Mr. Armitage were to sell the Claimant.

60. The evidence before me on the terms of the First Defendant's employment contract can be summarised as follows:

i) The First Defendant was employed from about 06 June 2018 as a recruitment consultant on terms, which included both express confidentiality obligations (cl. 17) and PTRs (cl. 19) albeit in a different form to those found in the September 2021 contract. Although the First Defendant did not sign the contract itself, he signed the data protection statement attached to it.

ii) The First Defendant was employed from about September 2021 or possibly earlier as a Business Development Manager.

iii) The correspondence from September to October 2021 exhibited to Mr. Armitage's statement shows that apart from two amendments to the September 2021 contract dealing with the date of commencement of employment and how the First Defendant's annual bonus would be paid, the First Defendant did not take issue with the terms of the September 2021 contract. It appears from the correspondence that the First Defendant's exit bonus was to be the subject of a second contract.

iv) The First Defendant continued to work for the Claimant until the end of June 2023. There is no correspondence in the period from September 2021 until June 2023 challenging the confidentiality obligations in that contract (cl. 15) or the PTRs (cl. 16). During this period, there were on-going negotiations as to the terms of the First Defendant's exit bonus. It is of note that the First Defendant continued to describe the terms of that bonus as being a second contract and that the draft contract which the First Defendant sent Mr. Armitage was headed as a Deed of Gift/Bonus Arrangement rather than being a revised contract of employment. The same draft contract describes the First Defendant as an employee of the Claimant.

v) The First Defendant recruited both the Second and Third Defendants to work for the Claimant. Both were employed on contracts in similar terms to those of the September 2021 contract.

vi) The First Defendant's letter of resignation dated 30 June 2023 does not raise any question as to the terms of his employment. It does refer to the First Defendant not working out his notice period. The September 2021 contract provides for a four-week notice period at clause 12.1.2.

vii) The letter from Boddy Matthews on behalf of the First and Fourth Defendants dated 12 July 2023 states that the September 2021 contract does not reflect the terms of the First Defendant's employment and had been varied since August 2021. However, it is of note that the only changes mentioned are the salary and commission arrangements and that the letter states:

a) In relation to clauses 4.1 and 4.2 of the employment contract, the First Defendant worked tirelessly for the Claimant.

b) In relation to clause 12.1 of the employment contract, the First Defendant was not obliged to give notice to the Claimant.

c) In view of his constructive dismissal, the First Defendant is entitled to treat himself as discharged from any ongoing obligations to the Claimant, including any post-termination restrictions under clause 16.

d) That the First Defendant will give certain confidentiality undertakings in relation to clients or potential clients as defined in clause 16.1 of the employment contract.

61. The letter of 12 July 2023 does not suggest on behalf of the First Defendant that there were no PTRs in his contract of employment only that he regarded himself as being discharged from any restrictions due to his alleged constructive dismissal.

62. It is correct that during the correspondence in September and October 2021, the First Defendant e-mailed Mr. Armitage on 20 September 2021 to say, among other things, that he would not sign the September 2021 contract without the second contract. However, the evidence before me shows that after this date, the First Defendant continued to work for the Claimant as a Business Development Manager and that he did so on the terms of the September 2021 contract, while continuing to try and negotiate a second contract dealing with his exit bonus.

63. I am therefore satisfied to a high degree of assurance that the Claimant is likely to succeed at trial in establishing that the First Defendant was employed on the terms of the September 2021 contract which include the express confidentiality obligations and post-termination restrictions found at clauses 15 and 16 respectively.

64. The First and Fourth Defendants also relied on circumstances, which they say constitute unfairness, broken promises and threatening behaviour by Mr. Armitage and the extraction of funds from the First Defendant without a justifiable basis as justifying the First Defendant's claim to have been constructively dismissed. The evidence in support of the First and Fourth Defendants' case in this regard was set out in the witness statement of the First Defendant but is contested by Mr. Armitage and the Claimant. Bearing in mind that this is an interim application, I cannot and do not make any final findings of fact as to the events, which are said by the First Defendant to justify him considering that he has been constructively dismissed.

65. The Claimant says that, given the evidence that the First, Second and Third Defendants planned a 'team move' taking with them confidential information and documents belonging to the Claimant, I should treat the First Defendant's allegations as being a self-serving attempt to avoid the effect of the express PTRs. There is considerable force in this submission.

66. Further, even taking the First Defendant's evidence at face-value, there remains sufficient uncertainty as to the strength of that evidence when measured against the evidence of Mr. Armitage that I am not persuaded that the First and Fourth Defendants' case on constructive dismissal should override the degree of assurance, which I otherwise have that the Claimant will made good its case on the terms of the First Defendant's contract of employment and the enforceability of the PTRs. In this regard, I do not consider that the evidence so far put forward by the First Defendant will enable the First Defendant to establish at trial an irretrievable breakdown in his relationship with the Claimant and Mr. Armitage. The evidence does show discussions between the Mr. Armitage and the First Defendant about expenses, which were being charged to the First Defendant and about the commission structure for the First Defendant. They also show discussions about the terms of any exit bonus and it is fair to say an apparent degree of reluctance on the part of Mr. Armitage to sign or discuss the bonus contract put forward by the First Defendant. However, I do not accept the characterisation of that evidence in the skeleton argument served on behalf of the First Defendant as showing that the First Defendant was *'forced by threats and induced by promises into accepting disadvantageous changes to his commission structure which were effectively forced upon him'*. Overall, the evidence so far before the court does not establish behaviour by the Claimant which would suggest that his claim for constructive dismissal is sufficiently strong at this time to undermine the assurance that I otherwise have as to the likelihood of the Claimant succeeding at trial to establish that there were enforceable PTRs in the employment contract for the First Defendant. In other words, I am not satisfied that the evidence presently before the Court suggests that the First Defendant has a compelling case as to:

i) Deliberate over-charging of expenses to the First Defendant or on-going failures to pay him his remuneration properly, which would constitute a fundamental and repudiatory breach of the employment contract; or

ii) An irretrievable breakdown of the employment relationship between the First Defendant and the Claimant.

67. The First Defendant also relies for his case on constructive dismissal on what he describes as the Claimant's unlawful and potentially criminal access to the First Defendant's personal e-mail and personal data as justifying his claim for constructive dismissal. There is a clear conflict of evidence as to how the Claimant came to be able to access the First Defendant's personal e-mail account. The evidence of Mr. Armitage is that the Claimant's IT consultant was able to access the First Defendant's account through an open browser window on the First Defendant's work computer. The First Defendant disputes that this is what occurred and does not believe he left a browser window open. Ultimately, it is not for me to reach any final conclusion as to how the Claimant accessed the First Defendant's personal e-mail account or whether the manner by which the Claimant obtained access justifies a claim for constructive dismissal. However, even on the First Defendant's evidence, I am not persuaded at this stage that there is sufficient evidence of unlawful conduct by the Claimant that it would undermine the assurance I otherwise have as to the likely strength of the Claimant's case for the enforceability of the PTRs. In this regard:

i) Mr. Northall points to clause 20 of the September 2021 contract which provides in terms:

> *"…*
>
> *20.2 You acknowledge that calls that you make and receive using our equipment, use of the e-mail system, use of the internet and any social media platforms may be monitored and/or recorded by Us to establish compliance with regulatory procedures, to prevent or detect crime, to investigate or detect the unauthorised use of the company's systems, to ascertain compliance with the [sic] Our practices or procedures and to check that all communications are relevant to the Company's business. Accordingly, the [sic] You acknowledge that the content of communications using Our systems will not be private and confidential to You."*

ii) There is force to the Claimant's submissions concerning the self-serving nature of the First Defendant's evidence on this issue as well.

iii) The First Defendant pointed me to s.1 of the Computer Misuse Act 1990 (unauthorised access to computer material) and to potential breaches of the UK GDPR and the Data Protection Act 2018 (as set out in the letter from Boddy Matthews dated 26 July 2023) as the basis for his allegation that the Claimant had unlawfully accessed his personal e-mail account and data. But these submissions were not developed by reference to the relevant legislation, authority or commentary.

iv) Overall, the First Defendant has not established any sufficient case that the Claimant has unlawfully accessed his personal e-mail account and personal data to persuade me either that he has a compelling case that the Claimant has acted unlawfully or that such conduct would justify his claim for constructive dismissal.

68. The First and Fourth Defendants also rely on the Claimant's unlawful conduct to deprive the Claimant of injunctive relief on the basis that the Claimant does not come to court with clean hands. I accept that in an exceptional case a party seeking equitable relief may deprive themselves of the right to such relief if *"they have put themselves beyond the pale by reason of serious immoral and deliberate misconduct such that the overall result of equitable intervention would not be an exercise but a denial of equity"* (per Hildyard J. in CF Partners (UK) LLP v. Barclays Bank Plc [2014] EWHC 3049 (Ch) at [1133]).

69. However, for the reasons discussed in paragraph 67 above, I do not consider that the First Defendant's evidence does establish a case of serious immoral and deliberate misconduct on the part of the Claimant such as to deprive the Claimant exceptionally of its right to equitable relief. This is particularly the case in circumstances where the evidence appears to show deliberate steps on the part of the First Defendant prior to his resignation to take confidential information and data from the Claimant and no sufficient explanation (even at this interlocutory stage) has been provided for the First Defendant's actions.

70. Finally, the First and Fourth Defendants suggest that the terms of the PTRs are so wide that they cannot comply with them without detailed lists of the entities with whom neither Defendant must be engaged or concerned to do business with.

71. For reasons set out below in relation to the orders I was prepared to make in relation to the PTRs, I do not accept this submission. The definitions of Client, Prospective Client, Candidate and Prospective Candidate found in Schedule C to the draft order are not so complex that the First Defendant cannot easily know with whom he is restricted from dealing not least because each of the relevant definitions limits the entities concerned to ones with whom the First Defendant was materially involved or had personal dealing during the relevant time period (12 months for Candidates and Clients and six months for Prospective Clients and Prospective Candidates).

Confidential Information

72. On the basis that I reject the First and Fourth Defendants' threshold challenges to the relief sought by the Claimant, the defendants did not otherwise specifically challenge the Claimant's entitlement to orders in relation to the use, preservation and delivery up of confidential information and documents in the form found in the draft order, which I have approved.

Affidavit Evidence

73. The Claimant also sought an order for the provision of an Affidavit from the First Defendant and an authorised officer of the Fourth Defendant in the following terms:

> *"(13) The First and Fourth Respondent (and in the case of the Fourth Respondent, an authorised officer) shall by 16h00 on [insert date] each provide an Affidavit to South Bank Legal Limited setting out full particulars of, respectively:*

a. Their compliance with paragraph (12) above;

b. any Confidential Documents that each has in their possession or control or have at any time had in their possession or control;

c. any Device or Account upon which each stores, or has at any time stored, Confidential Information;

d. the use of Confidential Documents by them other than for the purposes of their employment with the Applicant;

e. any person to whom they have provided Confidential Documents, including: (1) details of the Confidential Document(s) supplied, (2) when the Confidential Document(s) were supplied; (3) to whom the Confidential Document(s) were supplied; and (4) the means by which the Confidential Documents were supplied;

f. details of the steps taken by them prior to 30 June 2023, alone, together with the First, Second, Third or Fourth Respondents, or any of them, and/or any other person or entity in relation to the establishment of a business, in whatever form, to compete with the Applicant, including, but not limited to, details of contact with Recruithub Platform Limited;

g. details of any Client, Prospective Client, Candidate or Prospective Candidate that each have had contact with in connection with the Fourth Respondent's business at any time;

h. details of any approach or solicitation of any Key Employee, including without limitation the Second and Third Respondent;

i. details of the password or other access credentials for all electronic documents falling within the following description:

Computer file "2029 Client List.xlsx""

74. The Claimant justified the need for Affidavit evidence on the above terms on the basis that it needs to know where its information has been stored, and the extent to which the Defendants have divulged information to third parties, or it has become integrated within the Fourth Defendant's information management systems.

75. The Claimant submitted that the purpose of the Affidavit evidence was to support the primary provisions of the draft order, which aim to detain and preserve relevant evidence, wherever it may now be, and put the Claimant in a position to limit future damage. The Claimant submitted that to achieve that aim, the Claimant needs and is entitled to know whom its information and documents have been passed and by whom it has been used. The Claimant further submitted:

i) That the information required by the Claimant is proportionate to the First and Fourth Defendants' unlawful actions.

ii) That providing the disclosure affidavits should not be an onerous or expensive task and there is no risk of any statement by the Respondents exposing or risking exposure of sensitive or personal information to parties not entitled to it.

76. I accept that in principle the Court has jurisdiction to grant a disclosure order of the type sought by the Claimant provided that the purpose of the order is to obtain information which is required to either to assist in giving effect to the injunctive relief or to assist a claimant in undoing the harm, which has been unlawfully done. However, I also take on board the warning in Aon Ltd v. JLT Reinsurance Brokers [2009] EWHC 3448 (QB) at [26] (and also Le Puy Ltd v Potter [2015] EWHC 193 (QB) at [64]) that a court must be careful not:

> *"… to subvert the normal accusatorial basis of our litigation, where the horse precedes the cart, into an inquisitorial one starting from an assumption that guilt has been proved, and saying to the defendants, "Tell us everything you and others have done which was wrong" [when] all that has been shown to date is a good arguable case, no more and no less …"*

77. For the reasons given by the Claimant, I consider that this is in principle an appropriate case in which to make an order for Affidavit evidence from the First Defendant and an authorised officer of the Fourth Defendant. However, I also consider that sub-paragraphs (f) to (h) of the draft disclosure order set out above were not required to assist in giving effect to the injunctory relief or to assist the Claimant in undoing the harm, which has been unlawfully done. Rather, they crossed the boundary into requiring the Defendants to identify all that they had done which was or might be wrong. Accordingly, I grant an order for affidavit evidence which required disclosure in accordance with sub-paragraphs (a) to (e) and (i) of the draft set out above.

Enforcement of the PTRs

78. The Claimant sought orders enforcing the express PTRs found in the September 2021 contract against the First Defendant.

79. I have already found that I consider it likely at this stage that the Claimant will succeed in establishing that the First Defendant was employed on the terms of the September 2021 contract (including clauses 15 and 16) at the time he resigned from the Claimant.

80. I have also already found that the First Defendant's case on constructive dismissal does not establish grounds on which it would be appropriate to refuse the Claimant's application to enforce the PTRs.

81. The First and Fourth Defendants challenge the PTRs on the basis that they are too vague and wide-ranging, both in scope and timeframe, to be enforceable. I do not accept that submission. In my view, the PTRs are drafted in terms such

that the First and Fourth Defendants can know the restrictions which are being imposed on the First Defendant.

82. I accept that the ordinary remedy when seeking to enforce negative covenants is an injunction; D v P [2016] ICR 688. In light of the evidence from Mr. Armitage as to the financial position of the Claimant, I also accept that the cross-undertaking provides protection to the First and Fourth Defendants against the grant of the injunction if it is later proved to have been wrongly granted (although the fact of the cross-undertaking is not a reason to grant injunctive relief if it is not otherwise appropriate to do so).

83. In deciding whether to grant the Claimant the relief it seeks, I adopt the guidance of Haddon-Cave J. (as he then was) in QBE Management Services (UK) Ltd v. Dymoke [2012] IRLR 458 at [210] as to the general approach the Court should take when considering the enforceability of PTRs.

i) The Court must determine what the covenant means, properly construed.

ii) The Court must then consider whether the former employer has shown on the evidence that it has legitimate interests requiring protection in relation to the employer's employment.

iii) Once legitimate protectable interests are shown, the covenant must be shown by the former employer to be no wider than reasonably necessary.

iv) Even if the covenant is held to be reasonable, the Court will decide whether as a matter of discretion, the injunctive relief should in all circumstances be granted having regard, among other things, to its reasonableness at the time of trial.

v) The burden is on the covenantee to establish that the restraint is no greater than reasonably necessary for the proper protection of protectable interests.

vi) Reasonable necessity is to be assessed from the perspective of reasonable persons in the position of the parties at the time that the Contract was entered into or varied and having regard to the contractual provisions as a whole and to the factual matrix to which the contract would then realistically have been expected to apply.

84. Haddon-Cave J. was considering the test to be applied for final injunctive relief. Nevertheless, his guidance is still valuable when considering whether to grant relief at an interlocutory stage.

85. The relevant covenants at Appendix D of the draft Order are as follows:

The [First Defendant] shall not, without the [Claimant's] prior written consent, directly or indirectly, either alone or with or on behalf of any person, firm, company or entity and whether on his own account or as principal, partner, shareholder, director, employee, consultant or in any other capacity whatsoever:

i) *for three months following the Termination Date be engaged or concerned in any business supplying Services in the Relevant Area;*

ii) *for nine months following the Termination Date and in competition with the Company or any Group Company canvass or solicit business or custom from any Client, Prospective Client, Candidate or Prospective Candidate in relation to Services;*

iii) *for nine months following the Termination Date and in competition with the Company or any Group Company be concerned with the supply of Services to any Client, Prospective Client, Candidate or Prospective Candidate or otherwise deal with any Client, Prospective Client, Candidate or Prospective Candidate in relation to Services;*

iv) *for nine months following the Termination Date solicit or endeavour to solicit the employment or engagement of any Key Employee in a business supplying Services (whether or not such person would breach their contract of employment or engagement);*

v) *for nine months following the Termination Date employ any Key Employee in a business supplying Services (whether or not such person would breach their contract of employment or engagement);*

86. The above covenants are to be read in conjunction with the definitions at Appendix C to the draft Order. They provided so far as material:

Candidate *means an applicant for permanent employment, temporary or contract work who has at any time during the Relevant Period been registered with [the Claimant] or any Group Company and with whom the [First Defendant] was materially involved or had personal dealings with during the Relevant Period.*

Client *means any person, firm, company or entity which has at any time during the Relevant Period been a client of [the Claimant] or any Group Company and with whom the [First Defendant] was materially involved or had personal dealings during the Relevant period.*

Key Employee *means any person who immediately prior to the Termination Date was a recruitment consultant / manager / Employee of [the Claimant] or any Group Company with whom the [First Defendant] had personal dealings during the Relevant Period.*

Prospective Candidate *means any person, firm, company or entity who has at any time during the period of six months prior to the Termination Date been in negotiations with [the Claimant] or any Group Company about their availability for placement in permanent employment, temporary or contract work and with whom during such period the [First Defendant] was materially involved or had personal dealings;*

Prospective Client *means any person, firm, company or entity which has at any time during the period of six months prior to the Termination Date been in*

negotiations with [the Claimant] or any Group Company for the supply of services and with whom during such period the [First Defendant] was materially involved or had personal dealings;

Relevant Area *means within ½ a mile of any branch of [the Claimant] or any Group Company at which the [First Defendant] worked in the Relevant Period;*

Relevant Period *means the period of 12 months ending on the Termination Date.*

Services *means services identical or similar to those being supplied by [the Claimant] or any Group Company at the Termination Date and with which the [First Defendant] was materially involved during the Relevant Period;*

Termination Date *means 30 June 2023 in the case of the First [Defendant].*

87. The First and Fourth Defendants did not suggest that there were any ambiguities with the wording of the PTRs, which made them unreasonable or which made it impossible or difficult for the First Defendant to know the meaning of the PTRs. I consider that the meaning and effect of the PTRs is clear. The First and Fourth Defendants' principal criticism of the PTRs is that they are too wide and the First Defendant would not know which of potentially thousands of Clients, Prospective Clients, Candidates and Potential Candidates he is restricted from dealing with.

88. I do not accept this submission. Each of the definitions of Client, Prospective Client, Candidates and Potential Candidates requires the individuals or entities concerned to be ones with whom the First Defendant has been materially involved or has had personal dealings within the relevant periods. Those qualifications seem to me to be ones which will enable the First Defendant to know who he is restricted from dealing with particularly in circumstances where he was the person principally responsible for overseeing the Billericay office of the Claimant and building up its business. In addition, I refuse to make on an interim basis the order for deletion and destruction of Confidential Documents or Relevant Documents sought by the Claimant. Not only does it seem to me to be an order which is effectively final in form, but refusal of the order will ensure that documents are not deleted or destroyed which may be necessary for the First Defendant to know whether he is at risk of breaching the terms of the PTRs or to seek legal advice if necessary.

89. So far as the question of legitimate interest is concerned, as outlined in paragraphs 33 to 36 above, I accept that the Claimant is likely to be able to establish at trial that it has a legitimate interest, which require protection in relation to the employment of the First Defendant by the enforcement of the PTRs.

90. As to the question of whether the PTRs are no wider than is reasonably necessary, I am satisfied that the Claimant is likely to be able to establish at trial that the PTRs are no wider than reasonably necessary. The evidence of Mr.

Armitage is that the average life of assignment handled by the Billericay office was six months but could be up to five years. The First Defendant disputed these estimates and suggested that in relation to certain categories of worker the length of assignment could be measured in days. However, I am satisfied at this stage that there is sufficient credibility to the evidence of Mr. Armitage that justifies a conclusion that the Claimant is likely to be able to establish at trial that a restriction of nine months is reasonably necessary and proportionate. I take into account also the evidence from Mr. Armitage that with the departure of the First, Second and Third Defendants, the Claimant's Billericay office will need time to re-establish itself especially in circumstances where there is evidence that confidential information and documents belonging to the Claimant have been taken by the First to Third Defendants. Although the question of reasonable necessity is to be assessed at the time of contract, it seems to me that the possibility of a 'team move' involving the First Defendant and the possibility of confidential information and documents being taken are possibilities which were foreseeable at the time of contracting and are one which justify the necessity of the PTRs found in the September 2021 contract.

91. In relation to the exercise of my discretion and the balance of convenience, I take on board the submissions made on behalf of the First Defendant that he should not be prevented from carrying on business as a recruitment consultant in the construction industry and the evidence that he has incurred costs associated with the start-up of his new business, including on-going costs as well as having costs of living including a mortgage. Nevertheless, it is also clear that since 2018, he has worked for the Claimant under a contract of employment which included post-termination restrictions and that the Claimant is likely to be able to establish at trial that since about September 2021 he has worked under the terms of the PTRs. Given that I accept that the Claimant is likely to be able to establish at trial that the PTRs are reasonably necessary and the Claimant has a legitimate interest to protect and I accept that the PTRs as ordered do not have the effect of preventing the First Defendant from working as a recruitment consultant in the construction industry generally, I find that the balance of convenience lies in enforcing the PTRs at this time on the terms found in the draft order approved by me. Given the evidence from the First Defendant as to his limited means, it is also clear that damages would not be an adequate remedy for the Claimant if it is later successful in its claims against the First Defendant.

Device and Account Imaging

92. I am satisfied that a device and account imaging order in the terms sought by the Claimant is necessary to provide the Claimant with the security it requires to confirm that the First and Fourth Defendants have complied with their obligations and in particular their obligations in respect of Affidavit evidence.

93. In this regard, the court accepted in Warm Zones v. Thurley [2014] IRLR 971 that the overriding consideration was to identify the court involving the least risk of injustice should it transpire that the chosen course was wrong. An imaging order was granted because the order sought was a focused one intended to secure the return, protection and security of the applicant's confidential information. Accordingly, the balance of convenience lay firmly with granting the relief sought.

94. In Arthur J. Gallagher Services UK Ltd v. Skriptchenko [2016] EWHC 603 an interim computer imaging order was granted. The Court held that it *"had a high degree of assurance the claimants will be able to establish a claim of breach of confidence at trial"*, damages would be an adequate remedy, the claimants could meet their cross-undertaking in damages and the balance of convenience favoured the making of the order sought. The court also recognised:

> *"[60]The claimants are entitled to protect their confidential information. The defendants are not entitled to have it or to use it. On the evidence before me, I am not satisfied that the defendants can be trusted to seek out and delete such material themselves, were they to retain it whether deliberately or inadvertently."*

95. I accept that the reasoning in Warm Zones and Skriptchenko is applicable to this case and on the evidence before me justifies the grant of an imaging order. I also accept that the order sought is not so intrusive as would suggest that the Claimant is looking to harass or unduly burden the First Defendant. Accordingly, I make an imaging order in the terms found in the draft Order approved by me.

Springboard relief

96. In addition to seeking injunctive relief to enforce the PTRs, the Claimant also sought springboard relief to prevent the First and Fourth Defendants taking an unfair competitive advantage from the unlawful use of the Claimant's confidential information.

97. In order to obtain a springboard injunction in a case concerning confidential information, an applicant must show:

    i) Unlawful use of its confidential information.

    ii) That the respondents thereby gained an unfair competitive advantage over the applicant.

    iii) That the advantage still exists at the date that the springboard relief is sought and will continue to have effect unless the relief sought is granted.

98. More generally, an applicant for springboard relief must meet the following principles (see the discussion in the QBE Management case at [239] – [247]):

    i) The purpose of springboard relief is to prevent the defendants taking unfair advantage of the springboard, which a respondent has built up by their misuse of information.

    ii) Springboard relief must be sought and obtained at a time when any unlawful advantage is still being enjoyed by the wrongdoer.

    iii) The aim of springboard relief is to restore the parties to the competitive position which they have each sought to occupy and would have occupied but for the defendant's misconduct.

iv) Springboard relief will not be granted where a monetary award would have provided an adequate remedy to the claimant for the wrong done to it.

v) Springboard relief is not intended to punish the defendant for wrongdoing. It is intended to provide fair and just protection for an unlawful harm on an interim basis.

vi) The burden is on the claimant to spell out the precise nature and period of the competitive advantage.

99. As already noted, I have a high degree of assurance that the Claimant will establish its claims for misuse of its confidential information against the First and Fourth Defendants. For reasons already given, I also consider that damages will not be an adequate remedy for the Claimant.

100. I also accept for the purposes of this interim application the Claimant's case as to the competitive advantage gained by the First and Fourth Defendant. A recruitment business cannot develop a stock of reliable client and candidate information overnight. Nor can it be done in a matter of weeks or months. It is an on-going and long-term process that requires patience and significant investment of resources. The information cannot be purchased off the shelf. The data is dynamic and requires continual updating and refinement. Mr. Armitage estimates that client information taken for the benefit of the First Defendant and the Fourth Defendant was developed through three years of sales activity. He also estimates that the candidate information taken cost the Claimant at least £100,000 to create. While the First Defendant disputes the evidence of Mr. Armitage, it seems to me that it is sufficiently credible that I can have a high degree of assurance that it will be accepted at trial.

101. The Claimant alleges that the effect of the First Defendant's misuse of the Claimant's confidential information and the circumstances in which the First, Second and Third Defendants came to resign from the Claimant give the Fourth Defendant an unfair advantage because:

i) They have weakened the Claimant by diverting the Claimant's good will to themselves and failing to promote the Claimant's business.

ii) The Fourth Defendant has gained a ready-made team equipped with the Claimant's confidential information so that it can develop a competing business proposition more quickly than would have been the case if they acted legitimately.

iii) If the First to Third Defendants are permitted to join the Fourth Defendant, they will use confidential information and harm the Claimant's business.

102. Again, I accept that the Claimant is likely to be able to make good this case at trial. As such I am satisfied that the Claimant is entitled to springboard relief in principle. The Claimant recognised that the springboard relief it was seeking

was at the severe end of interim order. It was right to do so. In particular, I had two concerns about the scope of the springboard relief sought:

i) It seems to me that there is a considerable overlap at least in relation to the First Defendant between the springboard relief sought and the express PTRs.

ii) If I were to prevent the Fourth Defendant engaging or employing the First Defendant, that would prevent the First Defendant from using the Fourth Defendant as a vehicle for a construction recruitment business in any form.

103. In response to my concerns, Mr. Northall offered an alternative form of springboard relief, which would be limited in time to one month after the date for provision of affidavit evidence or further order. This he submitted would allow the Claimant to seek more tailored springboard relief, if appropriate, once the Claimant knew the extent of any confidential information taken by the First and Fourth Defendants.

104. I am satisfied that on this more limited basis it is appropriate to order springboard relief subject to one further qualification, which is that the Fourth Defendant should not be prohibited from employing or engaging the First Defendant.

105. Accordingly, I grant springboard relief in the terms of the draft order approved by me.

Directions

106. This is an appropriate case for a speedy trial. All remaining parties in the action need to know as soon as sensibly possible to what final relief, if any, the Claimant is entitled particularly in relation to the enforceability of the PTRs. If I were in any doubt about this, that doubt was laid to rest by the decision of the Court of Appeal in Mimo Connect Ltd & Ors v. Buley & Ors [2023] EWCA Civ 909 handed down on the day of the hearing in this case, in which the Court said (at [9]) *"In common with many, if not most cases, to enforce covenants for a limited period by way of injunction, this case cried out for an order for speedy trial*." This is similarly such a case.

Conclusion

107. For the reasons set out above, I made an order at the conclusion of the hearing, the final form of which has been agreed between the Claimant on the one hand and the First and Fourth Defendants on the other and which I have approved. I have held over the issue of costs as between those parties to be determined on paper.