



CL-2018-000297, CL-2018-000404, CL-2018-000590 and CL-2019-000487

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

CL-2018-000297

BEFORE THE HON. MR JUSTICE ANDREW BAKER
(in public by remote hearing conducted via Microsoft teams)
19 November 2020

BETWEEN:

SKATTEFORVALTNINGEN
(the Danish Customs and Tax Administration)

Claimant

-and-

**SOLO CAPITAL PARTNERS LLP (in special administration) &
OTHERS**

Defendants

ORDER

UPON there being four sets of claims with numbers CL-2018-000297 (the "**First Claim**"), CL-2018-000404 (the "**Second Claim**"), CL-2018-000590 (the "**Third Claim**"), CL-2019-000487 (the "**Fourth Claim**"), which were consolidated by the Orders of Mr Justice Jacobs dated 27 June 2018, Mrs Justice Cockerill dated 12 October 2018 and Mr Justice Andrew Baker dated 11 May 2020 (the "**Consolidated Proceedings**") involving numerous parties (each, a "**Party**").

AND UPON orders for disclosure being made in the Consolidated Proceedings, including an Order dated 16 January 2020 (as amended by an Order dated 24 April 2020) that the Claimant provide rolling disclosure

on various dates of documents relevant to various issues for disclosure set out in the “**Disclosure Spreadsheet**” attached to the Order dated 16 January 2020

AND UPON the Claimant having obtained various documents in related proceedings in the United States of America (the “**US Proceedings**”): (a) which are relevant to the issues for disclosure in the Disclosure Spreadsheet; but (b) whose use and dissemination (including summaries and extracts thereof and information therein) is restricted by an Amended Stipulated Protective Order Governing Confidentiality of Discovery Materials dated 6 November 2020 made by the United States District Court, Southern District of New York (the “**US Protective Order**”).

AND UPON the US Protective Order applying to “Confidential Material” and “Highly Confidential Material”, each as defined therein.

AND UPON an application by the Claimant dated 16 October 2020 (the “**Confidentiality Application**”) for an order regulating the use and disclosure of Confidential Material or Highly Confidential Material, as defined in the US Protective Order, in or for the purpose of the Consolidated Proceedings.

AND UPON the Claimant having offered to enter into a confidentiality agreement (the “**Confidentiality Agreement**”) for the purpose of disclosing certain Confidential Material and Highly Confidential Material contained in a “**US Confidential Exhibit**” filed under seal as part of the Confidentiality Application on confidential terms to specified persons for the purpose of the hearing of the Confidentiality Application.

AND UPON the legal representatives of Acupay and ED&F Man having received copies of the US Confidential Exhibit (in the case of Acupay, pursuant to the Confidentiality Agreement).

AND UPON hearing the submissions of counsel for the Claimant, the Sanjay Shah Defendants and the DWF Defendants and receiving written submissions on behalf of Goal and Ms Stratford.

AND UPON the Court being satisfied that the order below is necessary in the interests of justice.

AND UPON the following terms being defined as follows for the purposes of this Order, namely that “Confidential US Material” and “Highly Confidential US Material” (collectively, “Protected US Material”) mean, respectively, Confidential Material and Highly Confidential Material, each as defined in the US Protective Order, in each case except for material:

- (a) in the possession or control of the Claimant otherwise than as a result of disclosure to the Claimant in the US Proceedings, or
- (b) in the possession or control of any Defendant to the Consolidated Proceedings otherwise than as a result of disclosure by the Claimant in the Consolidated Proceedings, or
- (c) in the possession or control of any Defendant to the Consolidated Proceedings as a result of disclosure by the Claimant in the Consolidated Proceedings of material within (a) above.

AND UPON the Claimant undertaking by its solicitors:

- (1) to make an application pursuant to paragraph 6 below: (a) to vary this order in the event of an amendment to the scope of the US Protective Order that is material to the scope of this order; and (b) for a further confidentiality order governing the use of Confidential US Material or Highly Confidential US Material at any trial hearing in the Consolidated Proceedings (which, for the avoidance of doubt, includes any preliminary issue trial);
- (2) by 2 December 2020 to write (through the Claimant’s US lawyers) to the US Defendants and Producing Third Parties (as defined in paragraph 27 of the Second Witness Statement of Mr Oxford dated 16 October 2020) who have produced Confidential US Material or Highly Confidential US Material in the US Proceedings, to:
 - a) enclose a copy of this Order;

- b) inform such US Defendants and the Producing Third Parties of the Claimant's intention to provide a copy of this Order to Judge Kaplan; and
- c) request that such US Defendants and the Producing Third Parties inform the Claimant in writing within 14 days if they object to the proposal in paragraph (b) above or otherwise contend that compliance with this Order will not be sufficient to comply with the US Protective Order (and, if so, the reasons for any such objection(s)).

(3) to provide copies to the Defendants of any such written objections by such US Defendants or the Producing Third Parties, within 7 days of the receipt of the same by the Claimant (through its US lawyers).

IT IS ORDERED THAT:

1. When providing its Extended Disclosure, the Claimant shall signify any Confidential US Material or Highly Confidential US Material by the use of US Bates Numbers and "confidential" or "highly confidential" (respectively) stamped on the face of the disclosed copy documents.
2. Pursuant to CPR r39.2(3)(a),(c) and (g), and unless otherwise ordered hereafter, any and all references to the content of any Protected US Material at any hearing in the Consolidated Proceedings other than a trial hearing shall be heard in private and, pursuant to section 11 of the Contempt of Court Act 1981, there shall be no reporting of such content.
3. Pursuant to CPR r31.22(2), unless the court gives permission, no use may be made outside the Consolidated Proceedings of any Protected US Material, even where that material has been read to or by the Court or referred to at a hearing, other than a trial hearing, held partly or wholly in public.
4. Pursuant to CPR 5.4C(2), 5.4C(4)(c)(d), 5.4C(6) and 3.1(2)(m):

- (a) with respect to the skeleton arguments filed in relation to the Confidentiality Application:
 - (i) redacted versions in the form shown to Mr Justice Andrew Baker shall be held by the Court office in place of any unedited versions;
 - (ii) unedited, confidential versions shall be treated as having been filed at Court under seal and shall remain sealed and held with the Court office on the terms of this Order;
- (b) the “US Confidential Exhibit” to the Fourth Witness Statement of Alan John Sheeley dated 16 October 2020 shall be treated as having been filed at Court under seal and shall remain sealed and held with the Court office on the terms of this Order;
- (c) to the extent that any party to the Consolidated Proceedings (each, a “**Party**”) or lawyer acting on behalf of such Party wishes to use any Protected US Material in the course of the Consolidated Proceedings otherwise than at a trial hearing (including but not limited to by considering or making reference to the content of the Protected US Material for the purpose of preparing any applications, statements of case, witness statements, expert reports or skeleton arguments):
 - (i) such Party or lawyer acting on behalf of such Party (each a “**Permitted Discloser**”) shall only disclose Protected US Material, on the term set out in sub-paragraph (ii), to the following persons associated with a Party:
 - 1) any lawyer acting for a Party (including a barrister or a solicitor or other legal professional acting for a Party);
 - 2) any expert, consultant or investigator acting for a Party to the extent that the Permitted Discloser considers in good faith that it is necessary for such expert, consultant, or investigator to provide a written opinion, or to prepare to testify or assist the Party in the prosecution or defence of the Consolidated Proceedings;

- 3) any individual (including a representative of a Party) that the Permitted Discloser considers in good faith to be personally indicated to be the author, addressee or a copy recipient of a document, or to have personal knowledge of the content of the Protected US Material;
 - 4) any actual or prospective witness of a Party to whom the Permitted Discloser considers in good faith that it is necessary to disclose the Protected US Material for the purpose of obtaining instructions or taking evidence for the purpose of the Consolidated Proceedings;
 - 5) as regards Confidential US Material only, not Highly Confidential US Material, any Party or director, officer or employee of a Party who is assisting in the Consolidated Proceedings (whether or not sub-paragraph 3) or sub-paragraph 4) above applies to that person in respect of the Material in question); and
 - 6) any e-disclosure provider acting for a Party for the purposes of being uploaded to an e-disclosure platform.
- (ii) any disclosure of Protected US Material by a Permitted Discloser pursuant to sub-paragraph (i) above shall be subject to the recipient first confirming in signed writing (including by an electronic signature) by execution of an agreement in the form of Schedule 1 to this Order that:
- 1) he or she agrees to abide by the terms of this Order, a copy of which has been provided to him/her;
 - 2) he or she will keep confidential and not disclose the content of any Protected US Material to any third party save in so far as permitted by this Order;
- (d) where any Party wishes to include reference to the content of any Protected US Material in a document to be filed or served in the Consolidated Proceedings (including but not limited to any application, statements of case, witness statement, expert report or skeleton argument), such Party:

- (i) shall prepare and file at Court a redacted version of such document(s), which does not reveal or disclose that content;
 - (ii) prepare an unredacted version of the relevant document(s) clearly marked as “confidential” to be served on any other Party and, if necessary for a hearing, to be filed with the Clerk to Mr Justice Andrew Baker (or such other Judge before whom the relevant hearing will take place);
 - (e) unless otherwise ordered, the following documents shall only be included in confidential hard copy or electronic bundles for the purposes of the Consolidated Proceedings, with access restricted to persons covered by paragraph 4(c) of this Order:
 - (i) the unedited versions of the skeleton arguments in relation to the Confidentiality Application;
 - (ii) the “US Confidential Exhibit” to the Fourth Witness Statement of Alan John Sheeley dated 16 October 2020;
 - (iii) any other document which contains an unredacted reference to the content of any Protected US Material (including any document(s) covered by sub-paragraph (d)(ii) above).
 - (f) any non-party wishing to obtain a copy of any of the documents referred to in sub-paragraph (e) above must file an application notice in accordance with CPR Part 23 and serve it on the Claimant via their solicitors Pinsent Masons, giving at least 14 days’ notice of any such application.
5. Subject to further Order of the Court, the Claimant shall not be entitled to rely, for the purposes of an order in relation to any particular Defendant, on any Protected US Material that cannot be seen under paragraph 4(c)(i) above at least 14 days prior to the hearing or determination of the application relating to such order: (i) where the Defendant is an individual, by the relevant Defendant; or (ii) where the Defendant is a corporate entity or a trust, by any

(current or former) director or employee or officer or trustee or beneficial owner of the relevant Defendant from whom it is necessary to take instructions or obtain information necessary to take instructions or give evidence. The following directions shall apply in relation to the same:

- (a) The Claimant shall identify at least 45 days prior to the proposed order or determination what Protected US Material it intends to rely on against which Defendants for the purposes of such order or determination (each a “**Relevant PUM**”).
- (b) Within 14 days thereof, each Defendant shall:
 - (i) where the Defendant is an individual, identify any Relevant PUM that have not been seen by such Defendant;
 - (ii) where the Defendant is a corporate entity or trustee:
 - (1) identify any Relevant PUM that have not been seen by any (current or former) director or employee or officer or trustee or beneficial owner of a Defendant (in the case of a corporate entity or trust, each a “**Defendant Representative**”), on the basis that the disclosure of such document is not in good faith considered to fall within sub-paragraph 4(c)(i) above; and
 - (2) set out in writing (without revealing any privileged information) why it is necessary for the Defendant Representative to see the Relevant PUM and the basis upon which the disclosure of such document is not considered to fall within sub-paragraph 4(c)(i) above.

- (c) In so far as there is a dispute about whether particular Relevant PUM can be seen by a particular Defendant or Defendant Representative that cannot be resolved by the parties, the Claimant shall issue an application to be determined by the Court in accordance with the following directions:
 - (i) within 7 days of the date in sub-paragraph (b), the Claimant shall file its application and its written submissions with the Court;
 - (ii) the relevant Defendant shall file any evidence upon which it wishes to rely and its written submissions within 3 days of the date of sub-paragraph (c)(i);
 - (iii) the Court will be invited to determine the application on the papers within 7 days of the date in sub-paragraph (c)(ii);
 - (iv) in the event that the relevant Defendant or the Court considers that oral submissions are necessary, such oral submissions shall take place at the hearing to determine the relevant application (in which case the Court may eliminate or shorten the 14-day notice requirement set out in the opening words of paragraph 5 above).
- 6. The above orders shall remain in place pending further order of the Court, in respect of which there shall be a general liberty to apply for any party in the Consolidated Proceedings.
- 7. The Claimant shall give notice to all other Parties within 14 days of becoming aware (through its US lawyers) that:
 - (a) any Protected US Material that has been Highly Confidential Material under the US Protective Order becomes Confidential Material only thereunder; or

- (b) any Protected US Material becomes neither Confidential Material nor Highly Confidential Material under the US Protective Order (together with a copy of the relevant document without the stamped designation of “confidential” or “highly confidential”), whereupon the provisions of this Order shall no longer apply to such document or the information therein without the need for a formal variation of the Order.
8. The Claimant’s deadline for disclosure set out in paragraph 11(h) of the January 2020 CMC Order as amended by paragraph 3(g) of the April 2020 CMC Order be varied to 8 January 2021 in respect of the Protected US Material with respect to Defendants who are legally represented.
 9. By 4.30pm on 12 March 2021, the Claimant shall notify each unrepresented Defendant:
 - (a) of the fact that specific documents containing Highly Confidential US Material have not been produced to the unrepresented Defendant in question, providing the US Bates number for each such document (each, an “**Undisclosed Highly Confidential Document**”);
 - (b) whether in the Claimant’s opinion, having taken advice from Pinsent Masons, any Undisclosed Highly Confidential Document constitutes, for the Claimant as disclosing party, an adverse document relative to the unrepresented Defendant in question within the meaning of paragraph 2.7 of CPR PD51U.
 10. Costs in the case.

Schedule 1 - Recipient Agreement (para 4(c)(ii))

I have been provided with a copy of the Order of Mr Justice Andrew Baker dated 2 November 2020 in the matter of Skatteforvaltingen v Solo Capital Partners (in Special Administration) and others (Court File Nos. CL-2018-000297, CL-2018-000404, CL-2018-000590 and CL-2019-000487) (the "**Order**").

I agree to abide by the terms of the Order. I also agree to keep confidential and not disclose the content of any Protected US Material (as defined in the Order) to any third party save in so far as permitted by this Order.

SIGNED this ___ day of _____, 20__.

(Print Name)

(Signature)