EFG Private Bank (Channel Islands) Limited and BC Capital Group SA (in liquidation) et al
Royal Court
7th April 2014

JUDGMENT 17/2014

Application for permission to adduce expert evidence in the field of forensic accounting.

Approved Text
07.04.2014

IN THE ROYAL COURT OF GUERNSEY

(ORDINARY DIVISION)

Between:

EFG PRIVATE BANK (CHANNEL ISLANDS) LIMITED

Applicant

-AND-

(1) BC CAPITAL GROUP SA (IN LIQUIDATION)

(2) BC CAPITAL GROUP INTERNATIONAL SA (IN LIQUIDATION)

(3) BRICK KANE, KEVIN SEYMOUR AND KEVIN CAMBRIDGE IN THEIR CAPACITY AS JOINT OFFICIAL LIQUIDATORS OF BC CAPITAL GROUP SA (IN LIQUIDATION) AND BC CAPITAL GROUP INTERNATIONAL SA (IN LIQUIDATION)

(4) ROBB EVANS & ASSOCIATES LLC IN ITS CAPACITY AS RECEIVER OVER MR NIKOLAI SIMON BATTOO, BC CAPITAL GROUP SA, BC CAPITAL GROUP INTERNATIONAL LIMITED (ALSO KNOWN AS BC CAPITAL GROUP HOLDINGS LIMITED ALSO KNOWN AS BC CAPITAL GLOBAL), BC CAPITAL MANAGEMENT LLP AND BC CAPITAL GROUP HOLDINGS SA

(5) ANCHOR HEDGE FUND LIMITED (IN LIQUIDATION)

(6) FUTURESONE DIVERSIFIED FUND SPC LIMITED (IN LIQUIDATION)

(7) FUTURESONE INNOVATIVE FUND SPC LIMITED (IN LIQUIDATION)

(8) PHI R (SQUARED) INVESTMENT FUND SPC LIMITED (IN LIQUIDATION)

(9) HADLEY CHILTON AND JOHN GREENWOOD OF BAKER TILLY (BVI) LIMITED IN THEIR CAPACITY AS JOINT LIQUIDATORS OF THE FIFTH TO EIGHTH AND ELEVENTH TO SIXTEENTH & EIGHTEENTH RESPONDENTS

(10) FUTURESONE DIVERSIFIED FUND LIMITED (IN LIQUIDATION)

(11) FUTURESONE F4 INVESTMENT LIMITED (IN LIQUIDATION)

(12) FUTURESONE F1 INVESTMENT LIMITED (IN LIQUIDATION)

(13) FUTURESONE A INVESTMENTS LIMITED (IN LIQUIDATION)

(14) GALAXY FUND INC (IN LIQUIDATION)

(15) GALAXY PE, LIMITED (IN LIQUIDATION)

(16) SILVER OAK FUND LIMITED (IN LIQUIDATION)

(17) SILVER OAK INVESTMENT MANAGEMENT LIMITED

(18) PHI R (SQUARED) MASTER SERIES INVESTMENT LIMITED (IN LIQUIDATION)

Respondents

Date of hearing: 14th February 2014

Reasons handed down: 7th April 2014

Before: Richard James McMahon, Esq., Deputy Bailiff

Advocate for the Fifth to Eighteenth Respondent: **Advocate R A Field**
Advocate for the First to Fourth Respondents: **Advocate T W McGuffin**
Advocate for the Interpleader Applicant/Bank: **Advocate A Lyall**

Cases & Materials referred to:

The Evidence in Civil Proceedings (Guernsey and Alderney) Rules, 2011
The Evidence in Civil Proceedings (Guernsey and Alderney) Law, 2009
R v Bonython [1984] SASR 45, 46
The Civil Procedure Rules
Clarke v Marlborough Fine Art (London) Limited [2002] EWHC 11 (Ch)
OJSC Oil Company Yugraneft (in liquidation) v Abramovich [2008] EWHC 2613 (Comm)
Foskett v McKeown [2001] 1 AC 102
The Royal Court Civil Rules, 2007
Gumpo v Church of Scientology Religious Education College Inc. (unreported, 26 July 1999)
Thompson v Masterton [2003-04] GLR 332
J P Morgan Chase Bank v Springwell Navigation Corporation [2006] EWHC 2755 (Comm)
The Royal Court (Reform) (Guernsey) Law, 2008
Madoff Securities International Limited v Raven [2011] EWHC 3102 (Comm)
Commerzbank Aktiengesellschaft v IMB Morgan plc [2004] EWHC 2771 (Ch)
National Justice Compania Naviera SA v Prudential Assurance Co Ltd [1993] 2 Lloyd's Rep 68

Introduction

1. By an application dated 10 January 2014, the First to Fourth Respondents to interpleader proceedings brought by EFG Private Bank (Channel Islands) Limited ("the Interpleader Applicant") sought permission of the Court pursuant to rule 10 of the Evidence in Civil Proceedings (Guernsey and Alderney) Rules, 2011 to call an expert or put in evidence an expert's report limited to the field of forensic accounting and the calling or putting into evidence of a report or reports of Penelope Cassell of Krys & Associates (Cayman) Limited. Although the Interpleader Applicant was neutral in relation to whether expert evidence should be permitted, the Fifth to Eighteenth Respondents to the interpleader proceedings opposed the application.

2. I heard the parties' submissions on 14 February 2014 and reserved my decision. I then reviewed the arguments and had the opportunity to re-visit the content of the report prepared by Ms Cassell dated 10 January 2014 on the instructions of the Advocates for the First to Fourth Respondents, which has been exhibited to the Third Affidavit of Paul Clark Smith dated the same day, in order to consider whether it actually contained opinion evidence or not. Because of the possible impact of my decision on other interlocutory applications being made and heard at around that time, I announced on 28 February 2014, immediately before hearing another application, that I had decided to grant the application and permit the First to Fourth Respondents to adduce expert evidence in the field of forensic accounting. I briefly explained my reasons for doing so and indicated that full reasons in writing would follow when time permitted. Those reasons are now set out in this judgment.

Background

3. I have rehearsed the background to the bringing of the interpleader proceedings in previous decisions handed down and do not propose to repeat myself here. Suffice it to say that, after a number of previous deadlines had been fixed and extended for various reasons, not least arising from the number of interlocutory applications being made by the parties, on 26 November 2013, I had directed that the First to Fourth Respondents were required to file evidence in support of their claims to be entitled to the assets held by the Interpleader Applicant on or before 10 January 2014. The evidence in support of the claims made by the Fifth to Eighteenth Respondents had been filed on 24 May 2013. As part of their evidence, the First to Fourth Respondents sought to rely on the report prepared by Ms Cassell. If it constituted expert evidence, they could only do so with permission. However, if it did not constitute expert evidence, because it had been filed by the deadline, the First to Fourth Respondents would still be able to rely on it as factual evidence. The principal evidence filed on behalf of the First to Fourth Respondents was contained in the Fifth Affidavit of Brick Kane, which had been supplied in an unsworn version by the deadline but was then sworn on 13 January 2014.

4. On behalf of the First to Fourth Respondents, Advocate McGuffin submitted that they maintain their proprietary interests in the assets held by the Interpleader Applicant on the basis that a pool of investors are the innocent victims of a Ponzi-style fraud orchestrated by Nikolai Simon Battoo. It is said that Mr Battoo and the corporate vehicles used by him marketed two portfolios, referred to as "*the PIWM Portfolios*", with the result that over 800 pool participants invested in excess of US$460 million. The First to Fourth Respondents' case is that they will be able to trace those investments to the assets held by the Interpleader Applicant, enabling them to defeat the simple claims of the other Respondents that the assets are held in accounts in their names and are, therefore, owned by them.

5. There is no question that Ms Cassell has the qualifications to be regarded as an expert in the field of forensic accounting. Her instructions were to review the flow of monies from the entities known as "the BC Group" (being a label referring to the Defendants in proceedings brought in Illinois as a result of which the Fourth Respondent was appointed as Receiver over those entities) to the Interpleader Applicant, giving consideration to the equitable principles of tracing that are applied in other jurisdictions. This exercise was to be undertaken using the reconstruction of the accounts compiled by or on behalf of the First to Fourth Respondents. Because of the short timeframe in which this work was undertaken, Ms Cassell confined herself to looking at the main accounts representing approximately half of the money within the assets held by the Interpleader Applicant, and this exercise did not involve looking at any of the accounts holding securities. As a result, Advocate McGuffin acknowledged that Ms Cassell's report was necessarily an example of what could be produced and that he envisaged a further, more comprehensive report in due course, were permission to be given for expert evidence in this field.

Status of Cassell report

6. The primary contention of Advocate Field, on behalf of the Fifth to Eighteenth Respondents, was that the content of Ms Cassell's report does not even offer any opinion evidence and so falls outside the regime to which Part II of the 2011 Rules applies. In his submission, the content is "*a collection of facts, filtered and arranged in a summary manner so as to illustrate certain propositions*". Because what has been done amounts to no more than "*a purely mechanical exercise of arranging data in a manner which is more easily referable for the purposes of establishing the flow of funds into various accounts*", it is something that an individual giving factual evidence, such as Mr Kane, could have done himself. Indeed, he suggested it is something that could be undertaken by the Ninth Respondents themselves, which demonstrated why this was not an area requiring expert evidence. Further, because it is an exercise that has been carried out on information compiled by or on behalf of Mr Kane, it is not independent of one of the parties. In short, in the absence of any opinion given by way of a conclusion, the report should not be treated as being the report of an expert.

7. In reply, Advocate McGuffin struggled to identify where in Ms Cassell's report an opinion was given. He suggested that paragraph 6.2 in the section headed "Conclusion" was an example but, with respect to him, I can see nothing in that paragraph amounting to opinion. It was for this reason that I wished to have time to read and, if necessary re-read, the entire report to form my own view on whether it contained any opinion and, if so, whether it was of a type that might assist the Court at the trial of the interpleader application.

8. As a result of my review of Ms Cassell's report, I was just satisfied that it contains opinion evidence, although I understood why Advocate Field had made the primary submission he did. In reaching that conclusion, I reminded myself of what constitutes expert evidence.

9. Section 19 of the Evidence in Civil Proceedings (Guernsey and Alderney) Law, 2009 provides that "*where a person is called as a witness in any civil proceedings, his opinion on any relevant matter on which he is qualified to give expert evidence shall be admissible in evidence*". Counsel were agreed that there are similarities in the new scheme in Guernsey under the 2009 Law and the 2011 Rules which mean that, until a body of domestic jurisprudence is established, helpful reference can be had to English law principles and, in particular, Part 35 of the *Civil Procedure Rules*. Without quoting extensively from the commentary in that part, I can confirm that I have focused on whether there is an opinion, as opposed to purely factual material, contained in Ms Cassell's report, considering that I would then be well placed to consider whether more expansive evidence from her will be of assistance to the Court in the trial of the interpleader proceedings.

10. In doing so, I have borne in mind what King CJ stated in the Australian case of *R v Bonython* [1984] SASR 45, 46, which has been cited with approval in some of the English law cases to which Counsel referred:

"*Before admitting the opinion of a witness into evidence as expert testimony, the Judge must consider and decide two questions. The first is whether the subject matter of the opinion falls within the class of subjects upon which expert testimony is permissible. This first question may be divided into two parts: (a) whether the subject matter of the opinion is such that a person without instruction or experience in the area of knowledge or human experience would be able to form a sound judgment on the matter without the assistance of witnesses possessing special knowledge or experience in the area; and (b) whether the subject matter of the opinion forms part of a body of knowledge or experience which is sufficiently organised or recognised to be accepted as a reliable body of knowledge or experience, a special acquaintance with which the witness would render his opinion of assistance to the court. The second question is whether the witness has acquired by study or experience sufficient knowledge of the subject to render the opinion of value in resolving the issue before the court.*"

As I have indicated, the second part of the test is acknowledged by Advocate Field to have been satisfied in relation to Ms Cassell.

11. Considering the first part of the test, perhaps the clearest example of what I regard as evidence of opinion is contained in para. 4.4 of Ms Cassell's report: "*There were few transactions that matched or were closely coordinated to suggest a near match*". Whilst I appreciate that such a conclusion from analysing figures may be offered by a non-expert factual witness (e.g. either of the Ninth Respondents or Mr Kane himself), a bald assertion of this, combined with the level of knowledge each member of the Court might bring to such a case as these interpleader proceedings (and the backgrounds of whoever might constitute the Court must, in my view, be taken at the lowest common denominator, rather than there being any assumption of any level of understanding of accounts and figures), possibly countered by an opposite bald assertion, might leave the Court in the difficult position of having to ascertain whose assertion is more credible. A similar exercise would, of course, follow even if the assertion comes from an expert, because the Court would still have to decide whether to accept that evidence, but I can see merit in having someone whose duty is to the Court, rather than to a party, being able to give such evidence, using their specialist knowledge as a means of helping the members of the Court to form sound judgments on these particular areas.

12. I also considered that the content of para. 4.5 and para. 4.6 might contain elements of opinion, the first of which explains what an account reaching a zero balance of an overdraft position might mean. It would have been more helpful to have had a report that sets out the work undertaken in the field of expertise and then set out more directly what the opinions as to the consequences of that analysis are. However, I am prepared to take a generous view of what has been prepared to date for the reason that it was done within a short timeframe and that it really amounts to no more than an indication of what might be capable of being produced if I were minded to permit the First to Fourth Respondents to adduce expert evidence from Ms Cassell in the discipline of forensic accounting. It is fair to say that making the application pursuant to rule 10 of the 2011 Rules was not dependent on lodging the report that has been lodged under cover of Paul Clark Smith's Third Affidavit and could have been made in isolation from it. The First to Fourth Respondents were at risk of having instructed Ms Cassell to prepare a report where no permission might be forthcoming, meaning the costs of taking this step would have fallen to them come what may. (In that regard, I reject Advocate Field's submission that a party is required to seek the Court's permission before obtaining expert evidence because there is a difference between what a party chooses to do, knowing that it may not be in a position to recover any costs associated with it and may face having obtained something that cannot then be used, and what the Court is required to pre-authorise.) Equally, however, had I reached the conclusion that the report was factual rather than opinion evidence, it would have been filed by the deadline the Court gave the First to Fourth Respondents to lodge material in support of their claims to the assets held by the Interpleader Applicant, with the consequence that the other parties could not have objected to it being relied on by them.

Relevance to issues

13. The alternative submission on behalf of the Fifth to Eighteenth Respondents was that the test for admissibility had not been satisfied. The English law approach to expert evidence under the *Civil Procedure Rules* and the way the 2011 Rules are framed shows that there is a duty on the Court to restrict such evidence "*to that which is reasonably required to resolve the proceedings*" (rule 8). As Advocate Field submitted, it is therefore necessary to have regard to what is in issue in the interpleader proceedings. He suggested the question is as simple as which of the parties has title to the assets held by the Interpleader Applicant and he criticised the way in which the First to Fourth Respondents' Advocates had still failed to give an adequate indication of the basis for their claims.

14. Counsel were agreed that the First to Fourth Respondents bear the burden of demonstrating that the expert evidence for which the Court's permission is sought will be of assistance to the Court

(see *Clarke v Marlborough Fine Art (London) Limited* [2002] EWHC 11 (Ch), especially para. 5 thereof).

15. Advocate McGuffin for the First to Fourth Respondents relied on the three conditions that must be satisfied for a successful tracing claim as set out by Christopher Clarke J (as he then was) in *OJSC Oil Company Yugraneft (in liquidation) v Abramovich* [2008] EWHC 2613 (Comm) (at para. 349):

> "*In order to be able successfully to trace property it is necessary for the claimant, firstly, to identify property of his, which has been unlawfully taken from him ("a proprietary base"); secondly, that that property has been used to acquire some other new identifiable property. The new property may then have been used to acquire another identifiable asset ("a series of transactional links"). Thirdly the chain of substitutes must be unbroken.*"

Whether or not the First to Fourth Respondents should be permitted to engage on a tracing exercise of this kind (or whatever other kind may ultimately be advanced) is a question for another day. Insofar as it is relevant for the purposes of determining the application to admit expert evidence in the field of forensic accounting, I was being invited to make an assessment of the utility of permitting this type of expert evidence to clarify whether these conditions can be shown to have been satisfied.

16. The criticism levelled at the First to Fourth Respondents by Advocate Field is amply supported by what Christopher Clarke J had stated just a few paragraphs earlier by reference to what Lord Millett had said in his speech in *Foskett v McKeown* [2001] 1 AC 102: "*Tracing is the process of identifying a new asset as the substitute for the old. … Tracing is thus neither a claim nor a remedy. It is merely the process by which a Claimant demonstrates what has happened to his property, identifies its proceeds and the persons who have handled or received them, and justifies his claim that the proceeds can properly be regarded as representing his property.*"

17. As the parties acknowledged, the position in the interpleader proceedings is unusual because there is no pleaded case. Assessing the relevance of the type of expert evidence a party seeks to adduce will inevitably be easier where the issues in dispute are clearly set out in the pleadings. In the present case, the issue to determine is broadly stated as being to identify who has title to the assets held by the Interpleader Applicant, recognising that the Interpleader Applicant had expressly confirmed, as required by rule 26(3)(a) of the Royal Court Civil Rules, 2007, that it claims no interest in the subject-matter in dispute other than for charges or costs. The First to Fourth Respondents have indicated through the evidence lodged that their claims are proprietary claims of the type described in other situations as arising from, for example, a constructive trust in respect of the proceeds of the alleged fraud of Mr Battoo. Their tracing claim, if established, will provide the link from the investments through the no doubt complex web of transactions resulting in the assets now held at the Interpleader Applicant in accounts in the names of the other Respondents, which will largely fall to be dealt with in the liquidations being conducted by the Ninth Respondents unless the First to Fourth Respondents' adverse claims are established. If pleadings existed, these matters would be clearer but, for present purposes, I am proceeding on the basis that this adequately reflects the case being advanced on behalf of the First to Fourth Respondents. The First to Fourth Respondents are to be treated as the claimants against the other Respondents, who have the prima facie, or default, entitlement to the assets, as defendants.

18. Advocate Field submitted that caution should be exercised against granting the application because it amounted to impermissible bolstering of the First to Fourth Respondents' case. In doing so, he referred to *Gumpo v Church of Scientology Religious Education College Inc.* (unreported, 26 July 1999), an early decision under the *Civil Procedure Rules* focusing on the policy objective underlying the rule that features as rule 8 of the 2011 Rules ("*Expert evidence shall be restricted to that which is reasonably required to resolve the proceedings*"). Coupled with the overriding objective, including particularly the elements of saving expense and applying

the principle of proportionality, he submitted that the Court should be circumspect before permitting a party to call an expert or put in evidence an expert's report.

19. In the *Gumpo* case (*supra*), Smedley J was able to review the pleadings before reaching a conclusion as to the way the issue in dispute would be likely to turn on factual evidence, thereby overturning the Master's order in favour of permitting expert evidence to be adduced. Accordingly, he took the view that expert evidence was unnecessary. In the present case, from the evidence already filed by way of affidavits, certain aspects of the First to Fourth Respondents' case will turn on findings of fact associated with the allegations that Mr Battoo has perpetuated a widescale fraud, but the finer details of the transactions relating to what has become the assets held by the Interpleader Applicant may well be something where someone with expertise is better able to explain them for the benefit of the Court than any of the parties who have their own obligations, arising from the offices they hold, to secure the assets for those who will benefit from the distributions they will in due course make consistent with those obligations. In my view, the issues in the present case are more complex than the issues facing the court in the *Gumpo* case and permitting expert evidence is not obviously a means of bolstering an otherwise weak factual case.

20. Counsel noted that, unlike in the *Civil Procedure Rules*, the overriding objective in rule 1 of the Royal Court Civil Rules, 2007 is not expressly incorporated into the 2011 Rules. However, neither submitted that this omission meant that the overriding objective did not apply by implication to consideration of the questions under the 2011 Rules in the same way as if both sets of Rules had been combined into a single set, as they are in England and Wales. I entirely agree that such a pragmatic approach makes sense.

21. I have reminded myself that in *Thompson v Masterton* [2003-04] GLR 332, Lieutenant-Bailiff Day added, as part of his postscript to that case (at para. 172(h)), that:

> "*… the purpose of adducing evidence from those who are experts is so that they may assist the court, by explanation and interpretation, to understand matters which, in the normal course, are outside the knowledge of ordinary people. At the end of the day, it is the court which has to reach the ultimate opinion on any particular issue, not merely rubber stamp that given by an expert.*"

I have compared that with what Aikens J stated in *J P Morgan Chase Bank v Springwell Navigation Corporation* [2006] EWHC 2755 (Comm) (at para. 23):

> "*I should mention one further practical matter, which I think is relevant to large commercial disputes. It is inevitable when there is a dispute between commercial entities that covers a long period of time (as this case does) and concerns a very large sum of money, that a huge amount of documents will have to be considered. There is a natural tendency of parties and their advisers to consider employing experts to assist in digesting this material, particularly if it relates to any area that might be recondite, such as trading in Russian debt in the 1990s. There is a tendency to think that a judge will be assisted by expert evidence in any area that appears to be outside the "normal" experience of a Commercial Court judge. The result is that, all too often, the judge is submerged in expert reports which are long, complicated and which stray far outside the particular issue that may be relevant to the case. Production of such expert reports is expensive, time-consuming and may ultimately be counter-productive. That is precisely why CPR Pt 35.1 exists. In my view it is the duty of the parties, particularly those involved in large scale commercial litigation, to ensure that they adhere to both the letter and spirit of that Rule. And it is the duty of the court, even if only for its own protection, to reject firmly all expert evidence that is not reasonably required to resolve the proceedings.*"

22. There is, in my view, a danger in looking too closely at the approach that would be taken in England and Wales in a case such as this. It might be slightly different in any case where, under section 13 of the Royal Court (Reform) (Guernsey) Law, 2008, all parties elect that the presiding judge shall sit unaccompanied by Jurats but, even then, in a small jurisdiction like Guernsey, full-time judiciary inevitably tend to be generalists rather than specialists as one might find in the English Commercial Court, so the potential need for expert evidence to be reasonably required will be proportionately greater. When considered in the light of the normal position of the Court at trial being constituted with Jurats, the likelihood potentially increases again so that every person involved in fact-finding is equally well-placed to make findings that do justice to all the evidence adduced. Accordingly, the assessment of whether expert evidence is reasonably required in a case needs to take into account these factors associated with the composition of the Court and the allocation of work amongst the judiciary.

23. As part of Advocate McGuffin's submissions, he appeared to be suggesting that the application should be granted because expert evidence had been permitted in *Madoff Securities International Limited v Raven* [2011] EWHC 3102 (Comm) (see, eg, para. 179 referring to "*the elaborate web of transactions revealed and analysed in diagrammatic form by the claimants' forensic accountants*"). In itself, that is not an attractive submission. Each case has to be decided in the light of what the proceedings involve and how the issues in dispute between the parties will fall to be resolved. Just because another case has used a forensic accountant to explain and interpret a complex set of transactions does not automatically mean that expert evidence is reasonably required in the present case. That said, the reference to an "*elaborate web of transactions*" resonates with me in this case and the type of analysis with which the Court may be concerned does appear to warrant expert evidence to be given.

24. These proceedings do not appear to have developed in quite the same way as an example offered by Advocate McGuffin of interpleader proceedings in England and Wales (*Commerzbank Aktiengesellschaft v IMB Morgan plc* [2004] EWHC 2771 (Ch)). In that case, none of the claimants to the funds in dispute between them appeared at the hearing. As a result, Lawrence Collins J commented that the proceedings did not have an adversarial character (at para. 37) and proceeded to consider the competing claims by reviewing the material contained in 18 ring binders. The present proceedings are not being conducted in a non-adversarial manner. Should they progress to a trial, there is, in my opinion, a real possibility that the parties will want to question each other on the statements contained in the affidavit evidence. For the Court to obtain a full understanding of that evidence, I took the view that it may well be assisted by input from Ms Cassell. Although it will ultimately be a matter for the Ninth Respondents, if they also wish to apply for leave to adduce expert evidence, they will probably find the Court sympathetic to such an application. Either way, by treating Ms Cassell's report as that of an expert, questions may be put to her about the content of any report she produces pursuant to rule 12 of the 2011 Rules.

Conclusion

25. In reaching my conclusion that the application of the First to Fourth Respondents should be granted, I have taken into account the helpful indication of what is included in the duties and responsibilities of experts drawn from *National Justice Compania Naviera SA v Prudential Assurance Co Ltd* [1993] 2 Lloyd's Rep 68, summarised at para. 35.3.3 in the commentary in the White Book:

> "*1. Expert evidence presented to the Court should be, and should be seen to be, the independent product of the expert uninfluenced as to the form or content by the exigencies of litigation (Whitehouse v Jordan [1981] 1 W.L.R. 246, HL, at 256, per Lord Wilberforce).*
>
> *2. An expert witness should provide independent assistance to the court by way of objective unbiased opinion in relation to matters within their expertise (see*

Pollivitte Ltd v Commercial Union Assurance Company Plc [1987] 1 Lloyd's Rep. 379 at 386, per Garland J., and Re J (1990 F.C.R. 193, per Cazalet J. An expert witness in the High Court should never assume the role of an advocate.

3. *An expert witness should state the facts or assumptions on which their opinion is based. They should not omit to consider material facts which could detract from their concluded opinion (Re J., above).*

4. *An expert witness should make it clear when a particular question or issue falls outside their expertise.*

5. *If an expert's opinion is not properly researched because they consider that insufficient data are available then this must be stated with an indication that the opinion is no more than a provisional one (Re J., above). In cases where an expert witness who has prepared a report could not assert that the report contained the truth, the whole truth and nothing but the truth without some qualification that qualification should be stated in the report (Derby & Co Ltd v Weldon (No. 9), The Times, November 9, 1990, CA, per Staughton L.J.*

6. *If, after exchange of reports, an expert witness changes their view on the material having read the other side's expert report or for any other reason, such change of view should be communicated (through legal representative) to the other side without delay and when appropriate to the court.*

7. *Where expert evidence refers to photographs, plans, calculations, analyses, measurements survey reports or other similar documents, these must be provided to the opposite party at the same time as exchange of reports.*"

26. Bearing those comments in mind, I am satisfied that Ms Cassell has the experience and expertise to be able to report on the aspects of the dispute between the parties where her forensic accounting expertise will assist the Court. Moreover, if she (or the team working for her) use particular methodologies to analyse the material in a helpful way, the workings undertaken leading to the opinion conclusions should be disclosed to the other parties.

27. For all these reasons, I decided to grant the application of the First to Fourth Respondents for permission to call an expert in the field of forensic accounting, being Ms Cassell, and to put into evidence the report already prepared by her dated 10 January 2014 and such further report as may be required.

