

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
BUSINESS LIST (ChD)
[2022] EWHC 2633 (Ch)



No. HC-2016-002106

Rolls Building
Fetter Lane
London, EC4A 1NL

Wednesday, 21 September 2022

Before:

MR JUSTICE MILES

B E T W E E N :

(1) LIBYAN INVESTMENT AUTHORITY
(2) LIA ADVISORY SERVICES (UK) LIMITED
(3) MAPLECROSS HOLDINGS INVESTMENT COMPANY LIMITED Claimants

- and -

(1) ROGER KING
(2) INTERNATIONAL GROUP LIMITED
(3) BEESON PROPERTY INVESTMENTS LIMITED
(4) STOKE PARK ESTATES (formerly known as Beeson Investments)
(5) CHARLES MERRY
(6) CONRAD STRATEGIC PARTNERS LIMITED Defendants

MR A. ONSLOW KC and MS K. HOLDERNESS (instructed by Hogan Lovells) appeared on behalf of the Claimants.

MR P. GREEN KC, MR H. WARWICK KC and MISS R. TANDY (instructed by Croft Solicitors) appeared on behalf of Defendants.

A P P R O V E D J U D G E M E N T

Mr Justice Miles:

- 1 This is the PTR for a case which is due to be heard over seventeen days in a window starting on 7 November 2022. Most of the directions for trial have been agreed and I have already discussed with the parties directions designed to ensure the efficient conduct of the trial.
- 2 There is one significant application before me today, for permission to rely on a witness statement of Mr Ian Elliott. It is necessary for the claimants to apply because the date for service of witness statements was in April 2022 and the witness statement of Mr Elliott was provided on 14 September 2022. The application is supported by the 11th witness statement of Mr Ditchburn, a partner in the claimants' solicitors. That led to an 8th witness statement of Mr Croft of the defendants' solicitors, and in response Mr Ditchburn has served a 12th statement.
- 3 The claim concerns a joint venture by which the parties planned to develop a hotel and retail park on land located in Maple Cross, Hertfordshire. The claimants are the Libyan Investment Authority, along with one of its UK companies and a special purpose corporate vehicle. The defendants are Mr Roger King and companies within his family business, known as the International Group, along with a property consultant and a chartered surveyor, Mr Merry, and his company.
- 4 The parties entered into discussions about the proposed joint venture project at the end of 2009 and into 2010. The defendants already owned some relevant parcels of land and were seeking an investment partner. By that date the defendants had already drawn down a loan from the Bank of Scotland in the sum of £10 million supported by a report from Strutt & Parker ("S&P"), addressed to the Bank of Scotland, which valued the hotel site alone at £17 to £20 million. The defendants had also obtained their own letter of advice from S&P dated 11 December 2009 recording S&P's view that the hotel should be capable of achieving a future capital value of c.£58 million ("the S&P 2009 letter"). The defendants had also agreed non-binding heads of terms with Intercontinental Hotels Group ("IHG") to operate the hotel under a 25-year management agreement.
- 5 In May 2010, Mr Layas of LIA UK wrote to Mr King confirming that, subject to contract, the LIA were proceeding to purchase a 50 per cent shareholding in the relevant SPV, which would own the freehold properties, for £10.5 million. The parties then instructed solicitors to represent them in the deal. There is a dispute as to whether the parties had agreed the purchase price unconditionally at that stage. The claimants say that the LIA's decision to proceed with the transaction was conditional on the LIA obtaining an up-to-date independent valuation of the property. The defendants say that the LIA or LIA UK had decided to proceed with the joint venture and that the parties had agreed on the price of £10.5 million.
- 6 In mid-June 2010 the LIA sought a letter from a valuer before entering the joint venture. Specifically, in mid-June LIA UK instructed Messrs Savills. However, very shortly afterwards, Mr Layas dis-instructed Savills and asked Mr King to help in obtaining alternative advice at short notice. There is a dispute between the parties as to why the instructions were withdrawn.

- 7 On 18 June 2010, Mr Iain Lock of Savills indicated in an email that they were unable to understand how S&P had calculated their numbers and could only conclude that S&P must have come to a much higher exit value in order to explain the numbers.
- 8 After that, arrangements were made to instruct another firm of surveyors, King Sturge (“KS”), who, on 23 June 2010, produced a letter (“the KS letter”) supporting a figure of £21 million for the joint venture. The parties now accept that the opinion expressed by KS in that letter was honestly held. The deal was approved by the LIA Board on 27 June 2010. There is a dispute as to whether the Board relied on either or both of the KS letter or the S&P 2009 letter.
- 9 The investment was made and the Joint Venture Agreement was entered into on 19 July 2010.
- 10 Relations between the parties subsequently broke down and the sites were not developed as planned. The joint venture company was placed into members voluntary liquidation.
- 11 The claimants now contend that the business was worthless, or at least was worth far less than £21 million. The liquidation of the joint venture company has yielded over £8 million.
- 12 The proceedings were issued by the claimants on 18 July 2016. The claim was originally advanced against KS in deceit by writing and sending the KS letter and the other defendants, who are the remaining defendants in these proceedings, were said to have been complicit in that fraud. The particulars of claim were served on 15 November 2016 and defences were filed and served on 5 May 2017. There was then a hiatus while the status of those capable of giving instructions on behalf of the LIA was considered. Eventually a receiver was appointed to conduct the litigation by order of Flaux LJ on 29 September 2017.
- 13 The procedural background is then complicated. It is enough to say that the defendants succeeded in striking out the claim as originally formulated and the defendants were awarded their costs of the proceedings to date on the indemnity basis. The claimants were, however, given the opportunity to make a further application for permission to amend against the defendants, but not against KS. There was then a series of hearings in 2019. Judgment was handed down on 26 February 2020 in the claimants’ favour. Substantially the case which is now advanced was allowed to be made. There was also an appeal in November 2020 on a limitation point; that was decided in the claimants’ favour on 14 December 2020.
- 14 The main issues in the case include: first, whether the KS letter and the S&P letter contained various representations as to the value of the JV or the value of the underlying property; secondly, whether the defendants caused or procured those representations; thirdly, whether the defendants did so dishonestly with the intended result that the claimants relied upon them when entering into the joint venture; and, fourthly, whether the claimants relied upon the KS letter and/or the S&P 2009 letter.
- 15 One of the areas of factual dispute which will be relevant to those issues is whether the defendants knew or suspected that the hotel site and the joint venture were worthless or were, at any rate, worth significantly less than the amounts said to have been represented as those values in the S&P 2009 letter and the KS letter.

- 16 As noted, part of the history is that the claimants approached Savills in June 2010 with a view to obtaining a form of valuation or appraisal of the property or the investment but soon afterwards Savills was dis-instructed.
- 17 The claimants' case is that the executive director of LIA UK, Mr Layas, dishonestly decided to dis-instruct Savills because he knew that Savills could not support the valuations necessary to justify the investment in the joint venture. The claimants say that the defendants knew this and that they conspired with Mr Layas to procure a letter from KS, which the defendants knew gave a misleading impression. Hence the reasons why Mr Layas dis-instructed Savills have been in play throughout the litigation.
- 18 The parties obtained some documents from Savills at an earlier stage in the litigation and these were disclosed as part of the ordinary disclosure process in January 2022. In broad terms, these were documents that had passed between the LIA and Savills and the first defendant and Savills but did not include all of Savills' own internal documents, such as emails dating from the events of 2010.
- 19 The basis of the application is set out in Ditchburn 11 and Ditchburn 12. Ditchburn 11 bases the application on the disclosure to the parties on 17 August 2022 by Savills of previously undisclosed documents. These included an email of 16 June 2010 in which Mr Lock, then of Savills, said to two colleagues:

“A few days ago we got go ahead on this and it became obvious very quickly that we were nowhere near what the LIA had been told by the site owner the site was worth. The site owner well knows the value. They had a site value a couple of years ago by Strutts at £17 - £20 million and passed this to the LIA want (sic) they did not pass to LIA was a second val around Christmas that it much, much lower. We have swiftly told LIA that we will not be anywhere near the figure. We are at about £4 million. I suspect the other val is a bit higher, but not much, we may get to £5 to £6 million, but not more.”

- 20 Mr Lock the author of the email, is proposed to be a witness for the claimants in this case, as is one of the recipients, Mr Furze.
- 21 Mr Ditchburn says that the claimants were previously aware that the defendants approached another firm of surveyors, Messrs Knight Frank, in late 2009 for some kind of appraisal in relation to the joint venture and that, in the end, Knight Frank had not apparently given any formal or written appraisal or valuation. The claimants knew this from disclosure given by the defendants in these proceedings. They had also seen what Mr Merry (one of the defendants) said in his trial witness statement:

“At around this time, late 2009/early 2010, I also asked Knight Frank to make an assessment of the proposed JV at an initial consideration of £21 million and to prepare a similar letter to S & P's 11 December 2009 letter. That was a belt and braces approach favoured by Roger [the first defendant]. In the event, neither request proceeded. Knight Frank wanted to make a planning review of the intended retail land to assess the JV, which we did not consider was worth doing. My understanding at the time was that Knight Frank did not want to write a letter similar to S & P's 11 December 2009 letter without first undertaking a full appraisal of the project. Roger

decided that as S & P had already provided their letter we did not need to instruct Knight Frank and incur any fees with them.”

Mr Merry did not refer in that passage to Knight Frank providing a valuation or, indeed, giving any opinion as to the value of the property or the joint venture.

- 22 Mr Ditchburn says that the email of 16 June 2010 was the trigger for the claimants and their solicitors to make further inquiries as to whether there had been other valuations carried out around Christmas 2009. In the light of the documentation that the claimants had already seen from disclosure, the obvious candidate for this was Knight Frank. Hogan Lovells made inquiries which led to the identification of Mr Elliott as a potential witness. He was on holiday until the end of August 2009. Mr Ditchburn’s firm was able to make contact with him in the first week of September and discussed his potential evidence in that week. A draft witness statement was then prepared and was finalised on 14 September. The application was then made on 14 September, supported by Ditchburn 11.
- 23 The witness statement signed by Mr Elliott explains his involvement with the King family and then goes on to describe his involvement with the proposed joint venture. He starts that section of the witness statement by referring to an email of 16 November 2009 which referred to a possible opportunity. He also explains that that email (which came from Mr Merry) stated that “the joint venture partnership requires an assessment of the proposal and the initial consideration of £21 million”. Mr Elliott goes on to refer to further emails which passed between the defendants and Knight Frank which had already been disclosed in the proceedings. He says that he does not recall Knight Frank providing any written advice on their views on value to Mr Merry, Hertford King or Roger King. However, he does recall at least one meeting which took place with Roger King and possibly Mr Merry during which he recalls that he explained their serious reservations about the value of the hotel part of the venture. He says that he does not recall what value of the hotel development he reported at that meeting and may not have reported an exact figure. However, he does recall that his view on value was far less than what Roger King was seeking and, as a result, he recalls it being a very difficult meeting. He says that he also does not recall precisely when the meeting took place, but based on emails he has seen he would suspect that it would have been in December 2009 or early 2010.
- 24 Mr Ditchburn explains that until Mr Elliott provided this evidence to the claimants they were not aware of any suggestion that Knight Frank had indicated an opinion as to the value of the property or the joint venture or, at least, as to whether their proposed views on value were less than those being sought by the defendants. He says that this is potentially important evidence and that it was only as a result of the email of 16 June 2010 that it occurred to the claimants and their lawyers that some indication of value might have been provided.
- 25 I turn against that background to the relevant principles. The application has been brought under CPR 32.10 which states:

“If a witness statement or a witness summary for use at trial is not served in respect of an intended witness within the time specified by the court, then the witness may not be called to give oral evidence unless the court gives permission.”

- 26 The application before me is for permission to call Mr Elliott.
- 27 I was directed to the relevant notes in the White Book and the cases referred to in those notes. In particular, para 32.10.1 refers to the decision in *Capital Funding One Limited v Esquant* [2020] EWHC 981 (QB) in which the High Court upheld the trial judge’s decision to admit late evidence from the first defendant in support of the second defendant’s case. The judge endorsed the approach taken in an earlier case of *Foster v Action Aviation Limited* [2013] EWHC 2930 (QB) which was to consider the application in the light of: the reason why the evidence was not put forward before; the significance of the evidence; the prejudice to the applicant if the application is refused; prejudice to the other parties if the application is allowed; and the need to do justice to all the parties, having regard to the overriding objective.
- 28 *Foster* was not a case about witness statements but concerned the admission of certain documents into evidence after a trial had been closed.
- 29 The defendants drew my attention to para 32.10.2, which explains the prohibition imposed by r.32.10 on calling a witness whose witness statement has not been served amounts to a sanction in terms of r.3.8(1) of the CPR for failure to comply with a rule or court order. Accordingly, a party applying for permission under r.32.10 must apply for relief from sanctions as provided for by rr.3.8 and 3.9, and the test under *Denton v T H White Limited* [2014] EWCA Civ 906 applies.
- 30 The defendants also referred me to the case of *Chartwell Estate Agents Limited v Fergies Properties SA* [2014] EWCA Civ 506 where Davis LJ says at para.25: “For this purpose, the phrase “unless the court gives permission” as contained in CPR 32.10 cannot, in my view, be applied in a free-standing way, leaving the exercise of judicial discretion at large. In deciding whether to give permission, the court has to have regard to and give effect to other relevant rules such as CPR 3.1. It also seems to me inescapable that, for this purpose, the court must likewise give effect to CPR 3.8 and CPR 3.9: just because CPR 32.10 is demonstrably imposing a sanction in the event of failure to serve a witness statement within the time specified.”
- 31 The defendants also referred to the relatively recent decision of Judge Paul Matthews, sitting as a High Court judge, in *Re Wolf Rock (Cornwall) Limited* [2020] EWHC 2500 (Ch) at para 35, where he said that while he would not categorise the putting forward of further witness statements as a breach of the court’s earlier orders the authorities to which he had referred made clear that, for policy reasons, the test for giving permission for evidence not filed and served in accordance with the court timetable was to be the same test as that for relief from sanctions under CPR rule 3.9 and therefore that the principles in *Denton* apply.
- 32 The *Denton* principles are summarised in the White Book as follows: “A judge should address an application for relief from sanctions in three stages. The first stage is to identify and assess the seriousness and significance of the failure to comply with any rule, practice direction or court order which engages r.3.9(1). If the breach is neither serious nor significant the court is unlikely to need to spend much time on the second of those stages. The second stage is to consider why the default occurred. The third stage is to evaluate all the circumstances of the case so as to enable the court to deal justly with the application, including 3.9(1)(a) and (b).”

- 33 Counsel for the defendants submitted that these authorities showed that in assessing an application such as the present the court should follow the guidance set out in *Denton*.
- 34 Counsel for the claimants accepted that in carrying out an exercise under CPR 32.10 the court should take account of the factors in CPR 3.9 but must be careful not to do so as if in a straitjacket. Counsel for the claimants pointed out that there may be a range of different kinds of application under r.32.10. On the one hand there may be cases where there has been a clear and knowing breach of an order of the court for service of witness statements. On the other hand there may be cases where the evidence was not reasonably available to that party or the party may not have reasonably appreciated the significance of the evidence at the date for serving witness statements and in such a case the party in question cannot properly be regarded as being in default or in breach of an order of the court. Counsel submitted that the language used in cases such as *Denton* presupposed some reprehensible conduct on the part of the party seeking relief from sanctions.
- 35 It seems to me that the right approach is this. The discretion in CPR 32.10 is not freestanding; the court must in considering it give effect to CPR 3.9 and the *Denton* guidance. But the court must approach the application of that guidance with sensitivity to the context and facts. It may indeed be the case where there has been no blameworthy default or breach of an order, but nonetheless the application is to serve a witness statement after the deadline and therefore in default of an order of the court. In such circumstances, the court will apply the *Denton* criteria, which includes ultimately deciding whether in all the circumstances it is just to allow the witness statement to be relied upon, taking into account the specific factors set out in r.3.9.
- 36 The claimants' position on the application may be summarised as follows: (a) It was not really disputed that the delay since April can be regarded as serious but counsel for the claimants said that this was not a case of a default or breach. It is not a case of the claimants failing to meet a deadline in any real sense. (b) The claimants have given a full explanation for the reason why the witness statement of Mr Elliott was not served by the April 2022 deadline. The June 2010 email was the trigger that led the claimants to identify Mr Elliott and to seek evidence from him. The claimants then moved with proper speed in obtaining and serving the evidence. (c) The application was made as soon as it could be, immediately after the witness statement was approved and signed. (d) The evidence is potentially material to the case. (e) The witness statement of Mr Elliott is short and self-contained and its admission will not, in any material way, affect the length of the trial. (f) The defendants have expressly disavowed any argument based on specific prejudice to them. (g) The witness can be accommodated at the trial and the defendants can serve any responsive statements they wish to rely upon. (h) In all the circumstances it is just for the evidence to be admitted.
- 37 The defendants' position is, in broad summary: (a) The delay is significant and serious. (b) There is no proper explanation for the delay. Had they acted with proper diligence the claimants would have approached Knight Frank and Mr Elliott earlier. The claimants knew of the dealings between the defendants and Knight Frank from the documents that were disclosed in January 2022. Moreover, all the documents referred to in Mr Elliott's statement were in the disclosure and were, indeed, referred to in the evidence of Mr Merry. (c) The claimants could and should have obtained the full Savills files earlier. The aborted instructions to Savills came from the claimants themselves. The claimants are to blame for the failure to obtain the documents at an earlier stage. (d) The claimants should have made the application itself earlier, or should at least have

forewarned the defendants. The defendants say they have been ambushed. (e) Although no specific prejudice is advanced, this late application has been disruptive to proceedings and, in any event, the absence of prejudice is not a reason for relief from for sanctions to be granted. (f) The present application is reflective of the claimants' lax and casual approach to the litigation and the preparation of evidence. (g) There would not be much prejudice to the claimants if the application was refused as they will still be able to cross-examine Mr Merry and will be able to deploy the Knight Frank documents in doing so. (h) In all the circumstances it would not be just for the witness statement to be admitted.

- 38 The first *Denton* criterion is whether the failure to comply is serious and significant. I think there is some force in the claimants' submission that on the present facts this element needs to be taken together with the question of whether there is a proper explanation for the delay. The claimants say that they are not in breach or default in any real sense. Rather, the lately disclosed documents triggered a line of inquiry which they could not reasonably have been expected to pursue. I think there is some force of the argument that the language of default or breach is not apt, but with that linguistic caveat in mind I think that the question is whether the delay from April to September for the service of the statement was significant or serious. I have concluded that the delay is, indeed, a serious and significant one in the context of this litigation and the stage it has reached.
- 39 The second criterion is the nature and quality of the explanation for the delay. Mr Ditchburn has given the explanation that I have already summarised. The defendants submitted that the claimants could reasonably have worked out much earlier that Mr Elliott, or at least someone from Knight Frank, was a potential witness. They relied particularly on two emails. The first was an email of 16 November 2009, which I have already referred to. As I have already explained that email said that the joint venture partnership required an assessment of the proposal and the initial consideration of £21 million. The defendants say that that showed that the defendants were, at that stage, looking for some sort of assessment or evaluation of the joint venture by Knight Frank. The defendants also relied on an email of 8 January 2010 from Mr Lever of Knight Frank to Mr Merry, copied to Mr Elliott and others. That email explained that Knight Frank would find it difficult to provide a letter similar to the S&P letter. It went on to say this: "As I have explained to you and Roger on the phone, Ian remains consistent in his view that we are unable to assist, even though the advice would not be a formal valuation. I have to say that I do share this view, having also looked at the numbers myself." The defendants contend that this shows not only that the defendants had been looking for some sort of evaluation from Knight Frank, but that Knight Frank appeared to have considered the numbers and it is not a large leap to conclude that the reason they were not prepared to provide a letter of comfort was because of their view of the numbers.
- 40 The defendants argued that if the claimants and their lawyers had approached that and the surrounding correspondence with proper diligence they would have realised that there was at least a prospect that Knight Frank might have provided a valuation of the land in late 2009 or early 2010. They said that it appears that the claimants' lawyers simply did not have their eyes properly open when considering that part of the disclosure.
- 41 I am unable to accept this submission. Mr Ditchburn has given a full explanation and it appears to me that it is entirely understandable that the claimants did not realise that

Knight Frank had expressed any view on the value of the property or the joint venture in late 2009/early 2010. I say that in part because of the contents of the documents which do not, themselves, suggest that any particular view about numbers was given, but also because of the contents of para 22 of Mr Merry's witness statement, which I have already quoted. It seems to me that it was reasonable for the claimants, on receiving that, to conclude that the reason why Knight Frank had not provided any advice as to value was because they were insisting that they could only provide a letter if they carried out a full assessment of planning permission and that that would have required extra fees which the defendants were not prepared to incur. I do not think that it could be said that the claimants and their solicitors must have had their eyes shut or even that they took their eye off the ball. It seems to me that the explanation they have given is a reasonable one and is a good explanation for why they did not approach Mr Elliott or Knight Frank earlier.

42 The defendants also submit that the claimants could and should have obtained the full Savills files earlier. I do not accept this submission. It seems to me that the explanation given by Mr Ditchburn on this subject in his 12th witness statement is a good explanation. The claimants did seek from Savills copies of their documents at an earlier stage in the litigation. Savills provided the correspondence that passed between them and the claimants and between them and the first defendant. The issue which appeared to be in play was why Savills had been dis-instructed. I think it was reasonable for the claimants to conclude that the documents they had been provided with went to that issue and that it was not necessary for them to push further for documents from Savills. It was the defendants who chose to pursue Savills for further documents. It was reasonable for them also to do so, but I do not think it can be said that the claimants were unreasonable in not seeking third party disclosure orders against Savills. The claimants also made it clear that they did not consider that Savills' own documents were in their possession or control for the purpose of the disclosure rules and that did not lead to an application for specific disclosure by the defendants against the claimants.

43 The next matter to consider is all the circumstances, having regard to those points expressly stated in CPR 3.9. I start here with the defendants' submission that the application itself was unduly delayed and indeed that there was an ambush. I do not accept that submission. It seems to me that the claimants acted with proper speed once they had identified Mr Elliott as a potential witness; they contacted him as soon as possible after his return from holiday and they worked together with him on the production of a witness statement reasonably quickly. It was not until the statement was finalised and signed that an application could reasonably have been made. I do not think this was an ambush.

44 I turn next to the balance of prejudice to the parties. I emphasise that the absence of prejudice is not itself a ground for an order under CPR 3.9. The days when it was open to an applicant to point to absence of specific prejudice on the part of a respondent as a slam-dunk answer are long gone. But the balance of prejudice to the parties and to other court users is a potentially important factor. Here, the defendants have disavowed reliance on any specific prejudice. They have not suggested that the trial itself would be jeopardised or that it would not be possible to include the evidence of Mr Elliott within the timetable already agreed or that it would not be possible to do so without some adjustments. There is also (for the same reasons) no prejudice to other court users. Nor is this a case where there is any need to refuse relief in order to deter laxness in approaching the rule or orders of the courts. This is not a case where the claimants have failed reasonably to obtain this evidence earlier or have ignored or flouted the rules.

- 45 The defendants also pointed to other parts of the history of this case. I was taken, in particular, to a recent decision of Sir Anthony Mann where he ordered the LIA to provide additional security for costs to the defendants. I agree with the submission of the defendants that the judge was critical of the LIA's evidence as to its assets. He said that some of that evidence was coy or was not forthcoming. But the judgment does not suggest any tendency to breach the rules of the court or to ignore the orders of the court. It does not evidence any persistent tendency to casualness in the LIA's approach to the rules or orders of the court. Indeed, since the proceedings were put in their current order in February 2020 I understand that there have been numerous orders of the court and that the parties have, on each side, largely complied with them. So, while I note what was said by Sir Anthony Mann in that application, I do not think it has any real force in the exercise of discretion here. I note that there were other examples of earlier conduct in the proceedings which were raised in the defendants' skeleton argument but were not advanced at the hearing and I say no more about them.
- 46 I stand back and ask, whether, having considered all of these factors, including those expressly stated in CPR 3.9, I should allow this application for Mr Elliott's witness statement. I have concluded in the exercise of my discretion that I should.
- 47 I turn to costs. I order these to be paid by the defendants. I have been provided with a summary statement of costs. There are a number of points taken. The first is that the hourly rates are significantly higher than the guideline hourly rates for London Band 1 by an order of around 25 per cent. Secondly, it is said that it is not appropriate for so many charging solicitors to have attended the hearing; it is one thing for them to attend, it is another thing for the costs to be thrown on the other party. Thirdly, that it is submitted that excessive time was spent in the preparation of the 12th statement of Mr Ditchburn. I note that nothing has been charged for the costs of the application itself, including the 11th statement of Mr Ditchburn. There is some force in each of these points. Making adjustments for the various points which have been raised by the defendants, I have concluded that the total payable by the defendants should be £15,000.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Proceedings or part thereof.

*Transcribed by **Opus 2 International Limited**
Official Court Reporters and Audio Transcribers
5 New Street Square, London EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
civil@opus2.digital*