IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
BUSINESS LIST (ChD)

No. HC-2015-001647

NCN: [2023] EWHC 1768 (Ch)

The Rolls Building
7 Rolls Buildings
Fetter Lane
London
EC4A 1NL

Tuesday, 13 June 2023

Before:

MR JUSTICE MILES

(**In Private in part**)

B E T W E E N :

KEA INVESTMENTS LIMITED	Claimant
- and -	
ERIC JOHN WATSON	Defendant
- and -	
FLADGATE LLP	Intervening Party

MS E JONES KC and MR D DRAKE (instructed by Farrer & Co.) appeared on behalf of the Claimant.

THE DEFENDANT did not appear and was not represented.

MR D MITCHELL (instructed by Kennedys Law) appeared on behalf of the Intervening Party.

J U D G M E N T

MR JUSTICE MILES:

1 This is an application made by Kea Investments Limited, the claimant in these proceedings, and a separate application by Fladgate LLP as an intervening party. I will deal with the applications by Kea first and then turn to the applications by Fladgate. The proceedings are against Mr Eric Watson.

2 I made an order on 11 May 2023 on an *ex parte* application by Kea and gave a judgment explaining my reasons on that day. The hearing on 11 May was made in the context of Kea's substantive application dated 29 March 2023 ("the judgment application") for the final determination of the amount of equitable compensation due to Kea from Mr Watson.

3 The judgment application is the continuation of proceedings which have been going on for years, by which Kea alleged that Mr Watson was liable to it for various forms of fraudulent conduct. Nugee J gave a judgment in July 2018 in which he found that Mr Watson was liable to pay equitable compensation to Kea. That judgment was followed by an order in September 2018, which provided that the quantum of Kea's entitlement to equitable compensation would be finally determined following various accounts and further relief being sought in the action.

4 Since then various sums have been collected by Kea as a result of claims against a number of third parties. These included claims that shares in companies associated with an English company called Long Harbour Limited were held on trust for Mr Watson and, as a result of a settlement agreement, interests in a number of entities in Long Harbour Group were in due course transferred to Kea.

5 There have also been further transactions relating to such interests in the Long Harbour Group, which have led to the realisation of monetary sums. Those sums will in various ways be brought into account as part of the judgment application.

6 The various agreements which have led to the realisation of those sums contain confidentiality obligations owed by Kea to the relevant parties and contractual terms under which Kea agreed to seek to uphold those confidentiality terms.

7 Mr Watson has not actively participated in the proceedings for some time. At the hearing on 11 May 2023, and by my order of that date, I gave permission for Kea to serve documents on Mr Watson by email to ejwatson59@gmail.com and to jcrighton@ashfords.com. The second address is that of Mr Crighton, a partner in the firm of Ashfords. As I explained in my judgment of 11 May 2023, Ashfords had served a notice of change of solicitors in 2019. In it they had said that they were instructed only for certain specific applications and were not generally instructed to receive documents by way of service in the proceedings, but said that they would forward copies of documents provided to them to Mr Watson.

8 At the time of the hearing on 11 May 2023, the evidence showed that Mr Watson had actively been using the ejwatson59@gmail.com address and there was no evidence of any emails failing to get through to him. Shortly after the hearing on 11 May 2023, Kea's New Zealand solicitors received a bounce-back notification in respect of an email sent to that address. There have been subsequent emails sent to that address, which have also bounced back. It therefore appears that that email address has not been an effective means of notifying Mr Watson.

9 Since the 11 May 2023 hearing Kea has received no express acknowledgement of receipt or communication from or on behalf of Mr Watson.

10 As I explained in my judgment on 11 May 2023, Kea has divided its evidence into non-confidential and confidential materials and, whereas the non-confidential parts were sought to be served after the 11 May hearing, the confidential parts have not been served pending the receipt by Kea of appropriate confidentiality undertakings. That was in accordance with my order of 11 May 2023.

11 Since the 11 May hearing, Kea has completed its substantive evidence and has updated the non-confidential and confidential parts of it.

12 The matters now before the court concern (1) further proposals by Kea as to alternative service; (2) Kea's application to maintain confidentiality in respect of some of the information to be served for the purposes of the judgment application; and (3) further directions for the purposes of having an effective hearing of the judgment application, which is listed to be heard in early July 2023.

13 I shall address these in turn, starting with the alternative service. Kea relies on the 47th witness statement of Mr Graham, a partner in Farrer & Co., and the exhibit to that statement. To summarise the position, as already explained, it appears that the ejwatson59 email account has not been operative at least in the period since 11 May 2023. Kea has been unable to serve documents by sending them to this address and there is no reason to believe that it will be able to do so in the future.

14 As noted, I also made an order for alternative service at Mr Crighton's email address. Various documents have been sent by email to that address since the 11 May hearing, in particular a number of documents were sent on 16 May 2023, together with a request that they be forwarded to Mr Watson. After the email was sent, Messrs Farrer & Co. sought confirmation from Mr Crighton that he had forwarded the email to Mr Watson. There was email correspondence between Farrer and Mr Crighton in relation to that. Mr Crighton took the point that he and his firm were subject to duties of confidentiality, including to Mr Watson as a former client.

15 In the course of that correspondence, Mr Crighton indicated in an email of 26 May 2023 that the notification (contained in the notice of change of solicitors in December 2019) stated that documents would be forwarded to Mr Watson because, as he put it, forwarding copies of documents to a client or former client was "what all solicitors do when receiving information or documents from third parties for [that] client or former client". What Mr Crighton did not say was that he had not sent the emails on to Mr Watson, or that he had tried but been unable to do so.

16 A number of other emails were sent to Mr Crighton following that exchange and Farrer have received no response. These include further emails enclosing the materials for the hearing today, including the skeleton argument and notifying Mr Watson of the date of this hearing.

17 In addition to those actions using the emails, Farrer have sought to send the application documents relating to the judgment application to Mr Watson by including a secured link to them in a WhatsApp message to a mobile phone number that had been identified by Mr Watson in correspondence in 2019. The relevant number was provided in connection with some correspondence concerning orders that had been made against Mr Watson at that time. I will not set out the telephone number in full here, but the last three digits are 555.

18 Mr McPhail sent a message to the mobile phone with that number, or to another linked device. The evidence shows that a delivered message was received by Mr McPhail. It is

not possible to know whether the message has been read or not. The evidence shows that it is possible for someone who has an account on WhatsApp to turn off the read receipt function. The message sent by Mr McPhail, as I have said, contained a secured link to the relevant documents. Mr McPhail also carried out a test by sending a WhatsApp message to someone else in his firm containing the same link and that person was able to open the documents using it.

19 The evidence shows that since then it is likely that Mr McPhail has been blocked as a contact by the user of 555 so that messages from him to that number will no longer be delivered. The evidence also shows that number 555 remains in use on WhatsApp. That is shown by the fact that Ms Cope of Farrer was able to locate that number as a WhatsApp user and send a message to the number. Again, the evidence shows that Ms Cope has since not been able to send messages to that number, which suggests that the number has been blocked.

20 I found in my judgment of 11 May 2023 that Mr Watson appeared to be seeking to evade service. He had failed to notify an up-to-date UK address for service as required by CPR 6.23 and 6.24 and had given false addresses in other UK proceedings. He had also failed to provide a UK address for service in response to a request by email. The view I took on 11 May 2023 has been bolstered by the evidence showing that he appears to have deleted the Gmail account that had previously been used in communications with Kea's lawyers here and elsewhere and the apparent blocking of Mr McPhail as a WhatsApp contact.

21 In these circumstances, Kea seeks an order that the service of the application documents on Mr Watson by two means, namely the WhatsApp message sent on 18 May to 555 and the 16 May 2023 email to Mr Crighton's address, constitutes good service of the application documents. This application is made under CPR 6.15(2). Kea also seeks an order that the claimant has permission to serve further documents on Mr Watson by sending them by email to Mr Crighton with a notification that they are to be forwarded to Mr Watson.

22 I am satisfied for the purposes of CPR 6.15 and 6.27, which concerns the service of documents other than a claim form, that there is good reason to believe that the documents are likely to have reached Mr Watson as a result of the steps already taken (see 6APD paragraph 9.2(4)) and that this provides a good reason to authorise service by that method as required by 6.15. In particular, I am satisfied that it is more likely than not that Mr Crighton succeeded in forwarding the relevant email or emails to Mr Watson. Mr Crighton had said that it is a routine matter for a solicitor to forward copies of documents to former clients and that that is what all solicitors do in such circumstances. It is improbable that he would have said that if he had either not tried at all to forward the emails or had attempted but failed to do so. It is, of course, possible that that is the case, but I think it is improbable.

23 I also consider that the WhatsApp message sent on 18 May to 555 was delivered to a number which is likely to be that of Mr Watson. He provided that number in correspondence at an earlier stage in the proceedings and there is no reason to think that he is not still using it. It appears to me likely, on the basis of the evidence, that the WhatsApp message was delivered to a device of Mr Watson.

24 That bolsters the conclusion in relation to the service by email on Mr Crighton, but I would in any case have concluded that the latter is likely to have led to the documents reaching Mr Watson. So I will make an order in respect of the service which has already occurred.

25 For similar reasons, I will make an order in respect of future documents that, for the purposes of service on Mr Watson, it is sufficient to send them by email to Mr Crighton's address, together with a request that they be forwarded to Mr Watson.

26 I turn to the confidentiality application. Kea seeks orders that information contained in the various agreements, which is confidential as it concerns the terms of the agreements, the amounts paid and the identity of some of the parties, should not be provided to Mr Watson, except against various restrictive undertakings which are designed, as far as possible, to uphold the contractual confidentiality contained in those agreements.

27 Kea relies essentially on two principal reasons for this. The first is that the information is contractually confidential and that there is a public interest in the protection of such confidentiality. Kea says that where parties have settled their disputes there is an obvious public interest in confidentiality.

28 Second, on the specific facts, Kea relies on evidence showing that Mr Watson appears to have combined with one Mr Rizwan Hussain in taking a number of steps, both of a corporate nature in order to interfere with the affairs of Kea and other companies and in bringing spurious litigation claims against a wide range of companies, including Kea itself, and a number of entities involved with Long Harbour and other entities interested in the various transactions with Kea, whose confidentiality Kea now seeks to uphold. In broad terms, Kea says that there is good reason to suppose that if Mr Watson and Mr Hussain obtain detailed information about the terms of the various agreements, they will abuse it by bringing vexatious claims against the various parties protected by the confidentiality agreements. As counsel for Kea puts it, there has been a history of harassment and there is reason to think that that will continue.

29 The information relevant to the judgment application that is the subject of confidentiality obligations has been set out in two confidential exhibits: TBMG46 and TBMG54. The information includes information about the recoveries made by Kea, which is bound to be central to an assessment of the equitable compensation still due from Mr Watson. Kea has identified the various agreements which give rise to the relevant confidentiality obligations and has explained the nature of the relevant obligations and the information subject to them. There are several confidential exhibits (TBMG47, TBMG48, TBMG49 and TBMG50) which contain largely redacted copies of the various agreements which give rise to the relevant confidentiality obligations.

30 I heard the relevant part of the application where I was taken through the confidential information in private and I shall not refer to the terms of those exhibits in this judgment. There are some respects in which information referred to in the confidential exhibits have been disclosed to Mr Watson previously. These include a copy of a settlement agreement between Kea and the owners of Long Harbour Holdings. However, he has not been provided with various subsequent agreements which are relevant to the question of the recoveries made by Kea.

31 There have also been some public disclosures in Long Harbour Holding's filings at Companies House regarding a group reorganisation and a 30 July investment agreement, which are relevant to those various transactions. However, as Mr Graham explains in paragraph 28 of his 47th statement, the rationale for the confidentiality application is not undermined by the filings made by LHHL because there remain details which have not been disclosed, which it is possible that Mr Watson and/or Mr Hussain would exploit to harass the relevant parties if those details were known to them.

32 I was taken through a number of authorities relating to the question of confidentiality. These included: *Church of Scientology of California v Department of Health and Social Security* [1979] 1 WLR 723: the Practice Guidance (interim non-disclosure orders) issued in 2012 (see [2012] 1 WLR 1003); *In the estate of Berezovsky* [2014] EWHC 70 (Ch); *Cape Intermediate Holdings Ltd v Dring* [2019] UKSC 38. It is sufficient to give the following brief summary of the principles.

33 First, open justice is a fundamental principle. The general rule is that hearings are carried out in, and judgments and orders, are given in public.

34 Second, derogations from the general principle can only be justified in exceptional circumstances, when they are strictly necessary as measures to secure the proper administration of justice. They are wholly exceptional. Derogations should, where justified, be no more than strictly necessary to achieve their purpose.

35 Third, the grant of derogations is not a question of discretion. It is a matter of obligation and the court is under a duty to either grant the derogation or refuse it when it has applied the relevant test.

36 Fourth, there is no general exception to open justice where privacy or confidentiality is in issue. Applications will only be heard in private if and to the extent that the court is satisfied that by nothing short of the exclusion of the public can justice be done. Exclusions must be no more than the minimum strictly necessary to ensure justice is done and parties are expected to consider before applying for such an exclusion whether something short of exclusion can meet their concerns, as will normally be the case.

37 Fifth, the burden of establishing any derogation from the general principle lies on the person seeking it. It must be established by clear and cogent evidence.

38 In the *Berezovsky* case, Morgan J was concerned with a situation in some ways analogous to the present one. There were cross-applications in relation to the administration of the estate of Mr Berezovsky, who died in this country in March 2013. One of the key questions was whether the estate was solvent and one of the parties contended that the estate was indeed solvent because of a settlement with a third party known as the "AP Family". Morgan J explained that it was necessary to carry out a careful balancing exercise. He referred in terms to the principle of open justice. He also referred to the confidentiality of the AP settlement and considered the question whether the confidentiality of the documents should be upheld. He made various orders in relation to the information which was said to be confidential, but in doing so said that he was not minded at that stage to make orders concerning the position at the substantive hearing. He was, however, prepared to make orders concerning the terms on which the relevant information was to be disclosed to the other party. The restrictions which have been sought in the present case to a large extent mirror those which were made by Morgan J in that case.

39 In *Cape v Dring*, Baroness Hale explained the importance of the open justice principle at paragraphs 34 and following. She explained in paragraph 38 that:

> "In evaluating the grounds for opposing access [to documents], the court would have to carry out a fact-specific proportionality exercise. 'Central to the court's evaluation will be the purpose of the open justice principle, the potential value of the material in advancing that

purpose and, conversely, any risk of harm which access to the documents may cause to the legitimate interests of others'… ."

40 In relation to the legitimate interests of others and the maintenance of an effective judicial process, Lady Hale noted that there may be good reasons for denying access, including, amongst other things, the protection of commercial confidentiality.

41 I have already outlined the nature of the confidential information without describing it in such terms as to destroy the confidence in it. It suffices to say that I am satisfied that there are confidentiality terms and that there is a public interest in the protection of such confidentiality. The documents will of course be and related information will of course be of importance as between the parties for the determination of the remaining matters to be decided on the judgment application. However, it is, to my mind, difficult on this application to reach a particularly clear view as to the importance of that information to upholding the principle of open justice. Specifically, it is not clear to me at this stage to what extent the explanation of the contents of that confidential information will be necessary in order for members of the public to understand the arguments at the judgment hearing, or, indeed, for any judgment which is given to go into the details of that confidential information. It may be that the court will be able to give rulings on points of principle and explain any potentially contentious points and that the calculation of any amount finally due will not have to feature in a judgment. However, as I say, I think it is difficult, on the information that I have been provided with today, to reach a really clear view on that question.

42 As to the possible harm to the administration of justice and the judgment interests of the third-party beneficiaries of the contractual confidentiality obligations, there are two points. First, I accept the submission that in general a party with the benefit of a confidentiality obligation is entitled to seek to enforce it, but that is only one matter to take into account. As to the allegation of broader risk of harm and harassment, I was taken through a good deal of material showing, first, that Mr Watson himself has in the past provided documents to third parties, which ought not to have been provided, and, second, that Mr Watson appears to have been acting in combination with Rizwan Hussain to bring spurious claims and make vexatious challenges to various corporate structures.

43 As for the first of those points, the strongest example was the provision by Mr Watson of an affidavit of Mr Graham, which had not been used at that stage in the UK proceedings, for proceedings brought in the courts of Florida or Georgia. That happened in 2020. Mr Watson said that he accepted that he had provided it, but said that he was unaware of any restriction on his doing so.

44 As to the evidence concerning Mr Watson and Mr Hussain, Mr Graham has given evidence showing that the two appear to have served sentences for contempt of court in the same prisons at the same time. As has been very widely reported through a series of cases in the Business and Property Courts, Mr Hussain been involved in a great many sets of entirely spurious proceedings. There are a number of indicia of his approach to things. These include the use of annulled Marshall Island companies, the use of various aliases, the use of shared office accommodation as service addresses on claim forms and attempts to insert into companies outsiders as purported directors on the legally ludicrous basis that those people are prepared to assume the position of directors.

45 I was taken to a number of sets of correspondence which have the hallmarks of correspondence produced by or with the assistance of Mr Hussain, and which in content mirror or echo correspondence which has been referred to in numerous proceedings,

culminating in a judgment that I gave committing Mr Hussain to prison for two years for contempt of court. I have no doubt, having looked at those documents, that Mr Hussain has persuaded Mr Watson to adopt the same sort of strategies and stratagems as he has used in respect of other companies.

46 The steps they has taken have included purporting to take control of Kea itself, to sack Kea's lawyers in various jurisdictions, to cause Kea to enter into the settlement of proceedings in Kentucky for a purported sum of $100million and other steps. It is difficult, looking at those documents, not to conclude that the steps taken are legally ludicrous. Nonetheless, they inevitably involve the targets of them in substantial costs management, time and bother. It is generally necessary to apply to the court for strike out orders and to apprise the court of the absurdity of what is taking place.

47 I was taken to evidence about proceedings in Kentucky and a series of sets of proceedings in the Commercial Court in the UK, including a number of sets of proceedings against entities or individuals involved with the Long Harbour Holdings business and related entities. I struck out one set of proceedings which concerned a number of claims against Kea's lawyers. HHJ Pelling struck out some four separate cases in 2022. He also made an order for costs against Mr Watson, being satisfied that he was responsible for the claims, along with Mr Hussain.

48 I am satisfied that there is a good basis for concluding that if Mr Watson were to have unrestricted access to the confidential material concerning the various Long Harbour Holdings and other entities there is a real risk that he would abuse it, possibly with Mr Hussain, as part of a policy of harassment. As counsel for Kea put it, the more detail he has about the relevant entities and amounts involved, the more likely it is that he will use it to cause problems.

49 It seems to me that this is a very unusual, exceptional, case where the steps taken by Mr Watson, together with Mr Hussain, have amounted to an abuse of the process of the court. The conduct is so outlandish as to cause me to conclude that there is a real risk of harm through harassment, as well as simply the harm of breach of confidentiality undertakings.

50 I am not, however, at this stage, persuaded that it would be appropriate to make an order which covers the trial of the judgment application itself. The next step in the litigation is for the provision of further information to Mr Watson in order that he can consider it, if he chooses to participate in the proceedings, and decide what points to take in relation to the judgment application. It seems to me that, considering the principle of open justice, and balancing the various factors, there is no compelling reason at the moment why that information must be made openly available, but the position may be different when it comes to the trial itself and, as I said, the court will need to undertake a fact-sensitive, careful review of the proportionality of imposing further restrictions in relation to the trial and the contents of any judgment.

51 It seems to me, therefore, appropriate to make an order covering the terms of the provision of further information to Mr Watson, but not to make orders which cover the position at the trial of the hearing itself.

52 The scheme of the order sought involves the definition of confidential information and confidential documents. The order then enables the claimant to redact the relevant parts of documents and by paragraph 4 requires that "The Claimant shall … make the Confidential Documents available to the Defendant by serving a copy of [them] personally" on what is called a "Permitted Person at a Designated UK Address, if and only if … the conditions

necessary for a Permitted Person and a Designated UK Address to be constituted, as set out in Schedules … to [the] Order, have been satisfied", it then directs and orders the permitted persons "shall abide by the terms of the Confidentiality Undertaking" contained in the schedule to the order. The body of the order also provides that:

> "Any non-party who wishes to obtain from the court any of the Confidential Documents, or any other document which contains reference to the Confidential Information … must file an application notice in accordance with CPR Pt 23 and serve it upon the Claimant."

53 The schedules then define "Permitted Persons". These include the defendant (provided he is provided in satisfactory form the confidentiality undertaking), a solicitor acting on the record for the defendant or as an agent of the solicitor on the record (provided again that such person is provided the relevant confidentiality undertakings) and a solicitor or a barrister instructed to appear as an advocate in relation to the judgment application (again, on the basis that they are provided the relevant confidentiality undertakings). There is also a provision for the defendant to be permitted to designate an individual as an agent to transmit documents (again, against appropriate confidentiality undertakings).

54 The schedules then go on to provide for a designated UK address for the service of confidential documents and schedule C contains the appropriate confidentiality undertakings. These place restrictions on the use of the confidential information and confidential documents and on copying and on what happens to the documents at the end of the proceedings. It is unnecessary for me to set out the full detail of those undertakings.

55 I have come to the conclusion that it is appropriate to make the confidentiality order sought. I have considered the confidentiality in the documents, the principles of open justice, the importance of the documents to that principle and the potential harm to the parties affected, mainly those with the benefit of the confidentiality obligations. It seems to me that the orders sought, at least in the period up to the hearing of the judgment application, are necessary and proportionate derogations from the principle of open justice and I will make those orders.

56 I turn, third, to the directions sought in relation to the hearing of the judgment application. I confirm that the application is to be heard on the date already listed, namely in a window from 3-5 July 2023 with a time estimate of three days, together with half a day for reading. I shall also make orders for the claimant to provide the final tranche of evidence within 24 hours after this order is sealed and, as Kea has suggested, give the defendant permission to apply for directions as to the service of evidence by him and/or to adjourn the hearing of the judgment application, but such application (or applications) must be made before 4pm on Friday, 23 June 2023. That is to ensure that if any such application is made it is made sufficiently in advance of the hearing on 3-5 July 2023, that unnecessary work and costs are not wasted and the court has proper notice.

57 Finally, I should also say in relation to service that, although not strictly as a matter of service for the purposes of rule 6.27 and 6.15, it does appear to me that it would be appropriate to direct that notice be given to two other persons notifying them of the application, asking them to pass the notification to Mr Watson and, again, reiterating that he should get in touch with Farrer as soon as possible in order to obtain any documents that he does not yet have, subject of course to the confidentiality regime. The relevant evidence in that regard is contained in the 47th affidavit of Mr Graham. He explains at paragraph 25 that he believes that Mr Watson is close to his son, Sam Watson. Sam Watson is a director of two companies incorporated in England and Wales. Companies House information for

those companies gives a number of correspondence addresses for Sam Watson. The representative of Farrer's attended these addresses on 1 June 2023. In relation to one address, namely 332 Ladbroke Grove, he ascertained that it is actively used by Sam Watson for business purposes. The centre co-ordinator for the property said that she receives correspondence on behalf of and looks after a mailbox for one of the companies of which he is a director. She said that Sam Watson regularly attends the property, most recently on 30 May 2023. She said that she had Sam Watson's contact details and offered to forward documents to him. The other two addresses did not appear to be of relevance.

58 The second person of relevance is Mr Watson's sister, Mrs Watson-Burton. In a judgment made on a committal application in 2020 ([2020] EWHC 2599) Nugee J explained that it appeared that Mrs Watson-Burton has functioned as a conduit for communications regarding Mr Watson's affairs. She has been a director of a large number of New Zealand companies and a residential address is given for her in New Zealand, but it was explained to me that it appeared that that address might be historic and that she may well be in Australia. However, her LinkedIn page gives a relevant email address and it appears to me that there is no reason to think that that is not still being used.

59 Although I do not think that it is necessary to do so in order to satisfy the court that service has taken place by an alternative means, it appears to me that it would be sensible, as a matter of belt and braces, to direct Kea to give notice to them along the lines I have already described, asking them to send a communication to Mr Watson, which in turn urges him to get in touch with Farrer.

60 I turn to the position of Fladgate. I can deal with this quite briefly. Fladgate was party to proceedings brought by Kea, which relate in relevant terms to the matters complained of by Kea against Mr Watson and, indeed, Kea's claims against Fladgate were ultimately advanced in a single composite amended particulars of claim. Fladgate itself have brought a counterclaim against Kea for unpaid fees. Ultimately, the claim and counterclaims were settled on confidential terms by a settlement agreement. The settlement agreement contained confidentiality terms.

61 Fladgate acknowledges that the fact of the settlement agreement is in the public domain, but it says that the amount of the settlement and its terms are not. It seeks to protect the amount of the settlement as confidential information. Fladgate relied upon the same submissions and authorities as Kea did on its own application. In particular, it drew my attention to the Practice Guidance which I have already referred to. It also referred to CPR 39.2, including (3)(a) and (c), which specifically state:

> "(3) A hearing, or any part of it, must be held in private if, and only to the extent that, the court is satisfied of one or more of the matters set out in sub-paragraphs (a) to (g) and that it is necessary to sit in private to secure the proper administration of justice –
>
> …
>
> (c) it involves confidential information (including information relating to personal financial matters) and publicity would damage that confidentiality;"

62 Fladgate also referred me to the decision of the Court of Appeal in *HRH Prince of Wales v Associated Newspapers Limited* [2006] EWCA Civ 1776 at paragraph 67, which says:

> "There is an important public interest in the observance of duties of confidence."

And paragraph 69, which said that this is particularly so where the duties are contained in a written contract.

63 I am satisfied, essentially for the reasons I have already given, that this is an appropriate case for confidentiality restrictions to apply in respect of the next phase of the litigation, which is the potential provision of the information to Mr Watson. It seems to me that the same restriction should apply as in respect of the confidential information that Kea is seeking to protect.

64 As regards service and alternative service, I shall make the same orders in respect of Fladgate as I consider appropriate in respect of Kea. The material difference is that Fladgate did not seek to serve the documents by way of WhatsApp. However, earlier in this judgment I have explained that I was satisfied that service on Mr Crighton alone was likely to bring the proceedings to the attention of Mr Watson and so I shall make an appropriate order in respect of Fladgate.

65 As with Kea, any documents which are sought to be served in the future should be served on Mr Crighton's email address, but with notice that it is to be forwarded to Mr Watson. Clearly, Mr Crighton himself has made it clear that he is not authorised to accept service.

66 Finally, Fladgate seek an order joining them to the proceedings purely for the purpose of protecting their confidential information. I am satisfied that the court has jurisdiction under CPR 19.2(2)(b) to make such an order as there is an issue involving the new party and the existing party, which is connected to the matter in dispute in the proceedings, and it is desirable to add the new party so that the court can resolve that issue. So I shall make those orders.

67 Fladgate sought permission to appeal my decision not to make a blanket order covering not just the next steps but also the trial. I am not going to give permission to appeal. My decision was a case management decision. There is no principle that confidential information will be upheld, as counsel suggested. The authorities I have cited show that it is something that goes into the balance. This is not a matter, as counsel has just suggested, simply between the parties to the proceedings. It is clear on the authorities that the general rule is that the principle of open justice means that information is available not just to the parties, but to members of the public, and that parties are required to justify a derogation. A derogation will only be the absolute minimum to the extent necessary. The court has to carry out a careful proportionality exercise. It is clear from the *Berezovsky* case that the court may take a different view in relation to disclosure of documents from what happens at trial and, as I explained, I will be in a much better position to assess the proportionality of any restrictions once I have a full understanding of what is and is not important for the purposes not only of the hearing, but of any judgment.

CERTIFICATE

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