Neutral Citation Number: **[2019] EWHC 2845 (QB)**

Case No: QB-2017-000090 ***and*** QB-2017-000089

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ON APPEAL FROM MASTER DAVISON

Royal Courts of Justice
Strand, London, WC2A 2LL
Date: 25/10/2019

Before:

MR JUSTICE FREEDMAN

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Between:

(1) BCG Brokers LP **(2) Martin Brokers Group Limited** **(3) BGC Services (Holdings) LLP**	**Respondents/ Claimants**
- and -	
(1) Tradition (UK) Limited **(2) John Anthony Vowell** **(3) Michael Anderson**	**Appellants/ Defendants**

And

Between;

Martin Brokers Group Limited	**Respondent/ Claimant**
-and-	
(1) Paul Bell **(2) Tradition (UK) Limited**	**Appellant/ Defendant**

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Mr Neil Kitchener QC and Mr Matthew Cook (instructed by **Mischon de Reya**) for the **Appellant**
Mr Max Mallin QC and Mr Bobby Friedman (instructed by **BCLP**) for the **Respondent**

Hearing dates: 10th of October, 2019

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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Mr Justice Freedman:

I INTRODUCTION

1. This is an appeal against a decision of Master Davison ("the Master"). On 21 and 22 May 2019, the Master heard a large number of specific disclosure applications by the Claimants and the Tradition Defendants. "The Tradition Defendants" is a reference to the First, Second and Fifth Defendants in "the Vowell Claim" and to the Second Defendant in "the Bell Claim" as the claims are defined in paragraph 2 below. One of a number of applications, which took little time relative to the others, comprised an application to un-redact the names of any individuals mentioned in the Recruitment Reports (as defined in paragraph 2 below) who worked for any of the Claimants and certain companies associated with the Claimants. The redactions were on the ground of irrelevance.

2. By paragraph 3 of his order dated 21, 22 and 24 May 2019, the Master required the Tradition Defendants to un-redact the names of any individuals mentioned in the Recruitment Reports who worked for any of the Claimants and certain companies associated with the Claimants. The Recruitment Reports were made by a recruiter, Mr Ian Stoppani, who identified brokers for potential recruitment by "Tradition", the First Defendant in claim number QB-2017-000090 ("the Vowell Claim") and the Second Defendant in claim number QB-2017-000089 ("the Bell Claim").

II THE NATURE OF THE ACTION

3. The three Claimants in the Vowell Claim are entities in the BGC Group. One of them, Martin Brokers Group Limited, commonly referred to as RP Martin ("RPM") is also the Claimant in the Bell Claim. Tradition (UK) Limited ("Tradition") is a defendant to both Claims. BGC and Tradition are competitor inter-dealer brokers.

4. Mr Vowell and Mr Anderson (both of whom are Defendants in the Vowell Claim) are employees of Tradition. Settlements have been reached with the other two defendants in the Vowell Claim, Mr Cuddihy and Mr Goan (who were not employees of Tradition).

5. The Bell Claim is in summary as follows:

   i) Mr Paul Bell (the First Defendant in the Bell Claim, who does not appear on the Appeal) was the joint head of the Forward Cable Desk for RPM (the "FC Desk"). There were six members of the FC Desk ("RPM 6") who resigned to join Tradition.

   ii) It is common ground that Mr Bell owed contractual duties to RPM, for example not to assist competitors; to inform RPM if approached or solicited by a competitor; and not to disclose confidential information; and that he owed implied contractual duties of fidelity: Bell Re-Amended Particulars of Claim ("RAPOC") [5-6], Tradition Amended Defence [12-13]. It is also alleged that Mr Bell owed fiduciary duties to RPM: Bell RAPOC [7]. Tradition began approaching Mr Bell in October 2016.. The case is that Mr Bell failed properly to report to his senior management the approaches made to him by Tradition, or the approaches that his colleagues informed him - as their head of desk – had

been made to them. He also failed to inform RPM of key information given to him by other members of the RPM 6 as to what they wanted in order for RPM to retain them. It is alleged that Mr Bell acted as a recruiting sergeant, disrupting RPM's attempts to retain the other brokers and orchestrating a team move: Bell RAPOC [32-35], [38-40].

iii) Mr Bell then received a £1 million payment from Tradition: Bell RAPOC [26], Bell Defence [38]. On his final day working for RPM, he took a photograph of the part of the BGC's BR08 spreadsheet (as explained further below) to which he had access, on his mobile phone: Bell RAPOC [29A].

iv) On the day that the RPM 6 resigned, it is alleged that Mr Anderson committed acts of spoliation by deleting his WhatsApp messages, telling Mr Stoppani, "*PB resigned this morning I am deleting all my whatsapps"*.

v) It is alleged that Mr Bell – or another source within BGC or RPM - also passed confidential information to Tradition. The allegation is also that Mr Stoppani received confidential information about the RPM 6 from others within RPM or BGC (who would include his other recruitment targets).

vi) It is alleged that Tradition and Mr Bell also conspired to cause damage to RPM by unlawful means: Bell RAPOC [29A].

vii) RPM therefore claims for the loss and damage caused. Mr Bell also holds his £1 million payment on trust for RPM; and RPM claims that it is entitled to an account of profits against Mr Bell and/or Tradition for their breaches of confidence: Bell RAPOC [50-54].

6. The Vowell Claim concerns the passing of confidential information from BGC to Tradition.

i) It is common ground that various financial information was passed by Mr Cuddihy – who worked for BGC – to Mr Vowell, who worked for Tradition. The information came at least in part from copies of BGC's "BR08" spreadsheets, which set out the revenues generated by individual brokers and desks working for BGC in the highly valuable Interest Rate Swaps ("IRS") Business (the "BR08 Information"). Mr Cuddihy's junior colleague, Mr Goan, improperly had access to the BR08 spreadsheets: Vowell RAPOC [11-12]. BGC's case is that, in addition to Mr Vowell - himself a senior manager - (whose receipt of the BR08 Information from BGC is admitted by the Tradition Defendants), the confidential information was requested, received, used and/or transmitted by Tradition's other senior management, and/or by Mr Anderson, Tradition's joint CEO.

ii) In addition, BGC's case is that Mr Anderson attempted to, and successfully did, obtain confidential information as to BGC's IRS business revenues, which allowed him to prepare and distribute two spreadsheets setting out the revenues of BGC's IRS business (the "Anderson Information"). This information was highly accurate and could not have been obtained legitimately. It was repeatedly described by Mr Anderson as "*confidential"*: RAPOC [16(5A)].

iii) BGC also pleads a case that there was further misuse of confidential information derived from the BR08, through Mr Stoppani, as Tradition's effective in-house recruiter. The BR08 contained figures as to the performance of individual desks within BGC. One of those desks, the Turkey foreign exchange desk (the "Turkey FX Desk") was erroneously described on the BR08, for historical reasons, as the "EGB - Turkey" or "European Govt Bond – Turkey" desk. This was a misnomer: the desk was not a bond desk. However, Mr Stoppani contacted one of BGC's recently departed brokers and sought information about the brokers who worked on the "Turkey Bond Desk". Mr Stoppani could only have believed that there was such a desk based on information provided to him by someone who had seen the BR08 or who had had access to information derived from the BR08 (the "Turkey Bonds Allegations: RAPOC [16(9)]).

iv) BGC further pleads spoliation against Tradition, namely that Mr Anderson deliberately destroyed evidence despite having given a written internal briefing that litigation was likely: Vowell RAPOC [18A-18C].

7. The appeal relates to a small part of the argument before the Court below. In BGC's skeleton argument of 18 pages, it formed barely half a page. It is worth setting it out in full:

> "25. The Recruitment Reports contain the names of the brokers Mr Stoppani was targeting for recruitment, but they have been entirely redacted, save for references to the RPM 6 and the brokers at [9A] of the Bell RAPOC as having been specifically targeted by Mr Stoppani. These redactions should be removed insofar as they relate to others who worked for the Claimants or their associated companies since 1 October 2016.
>
> 25.1 BGC's case in the Vowell Claim is that the conduct pleaded is an example of the widespread wrongdoing of Tradition misusing BGC's confidential information for recruitment purposes: see [16(9)(k) Vowell RAPOC].
>
> 25.2 In relation to the Bell Claim, it is RPM's case that Tradition was accurately targeting its key revenue producers: [9A Bell RAPOC].
>
> 26. The identity of the brokers is therefore relevant to both pleaded cases."

8. The quoted paragraphs read as follows:

i) Paragraph 16(9)(k) of the Vowell RAPOC reads as follows:

> "When taken together with the facts and matters relied on in the Bell Proceedings and the facts and matters pleaded above, the inference is that this conduct on the part of Tradition was not limited to the examples that BGC has been able to uncover so far, but was widespread, such that the full extent of the wrong-

> doing of Mr Anderson, Mr Vowell and/or Tradition will only be apparent following full disclosure herein".

ii) Paragraph 9A of the Bell RAPOC reads as follows:

> *"*Tradition's approaches to members of the Desk were consistent with a wider pattern of approaches made by Tradition to RPM Brokers between late 2016 and early 2017 by which **Tradition was accurately targeting RPM's key revenue producers**, including Mark Kelly (head of Basis Swaps) and Ryan Morley (head of Swiss). Such approaches represented a new recruitment strategy from Tradition, uncharacteristic of their previous approach to recruitment prior to the appointment of Messrs Anderson and Marcus [as Tradition's joint CEOs]*." (Emphasis added)*

9. The oral argument below appears in the transcript provided to the Court. In the submissions of BGC at [37-40] and [174-175] of the transcript for 21 May 2019, Mr Mallin QC who appeared below and appears before the Court as respondent to the appeal, submitted in both actions that Tradition misused confidential information for the purposes of actual and potential recruitment by Tradition. The inference is that the misuse went wider "*than that which we have so far been able to identify. In those circumstances, if it is relevant – if the information is relevant, and we say it is --- then it must be disclosed. They say that the line between redacted and unredacted names is arbitrary." Mr Mallin QC said that "It is in effect a matrix of the identity this broker, and all that in the context of the very significant period of time when a lot of things were going on in the 2016/2017 period."*

10. The response of Mr Cook for Tradition was to refer to the pleaded case in the Bell Claim, starting with paragraph 9A of RAPOC in the Bell Claim, but then referring to other parts of the pleading in the Bell Claim as follows:

i) In Further Information provided by the Claimant as to which key producers were referred to, the answer was "key revenue producers targeted by Tradition between late 2016 and early 2017 were: Spencer Franks, Grant Swift; Ryan Morley; Richard Rayment; Mark Kelly; Phil Lough."

ii) In the Amended Defence at [28.2], it was noted that the Claimant does not assert that such alleged approaches were unlawful. This was not contradicted in the Amended Reply.

iii) On the contrary, the Claimants expressly pleaded that the identities of the key revenue producers are in general terms already known and discussed in the market: see Amended Reply in the Bell claim at 17(d):

> "it is admitted that, **in general terms**, the identity of successful brokers is known and discussed in the market and decisions as to potential recruits are typically made by RPM, BGC and all IDBs based on such general market knowledge. **Specific revenue, track record and remuneration information is not known.**" [emphasis added].

11. Mr Cook submitted that there was no evidence to contend that approaches to brokers were as a result of misuse of confidential information. In the Bell proceedings, there were the 6 people identified in the Further Information and the 6 members of the RPM 6, and specific searches were carried out in the Bell Claim for documents relevant to those individuals. Further, there is no allegation in the Bell Claim that Tradition engaged in particularly accurate recruitment of brokers such that it must have come from the misuse of confidential information. Nor is there such an allegation in the Vowell Claim. Absent a pleaded case relating to further individuals, it was submitted that there is no basis to unredact these additional names.

12. In correspondence, Mishcon de Reya ("MdR"), acting for Tradition, confirmed that the list of names had been reviewed and the redactions had been applied appropriately, which meant that none of the names redacted are relevant to the Vowell Claim, that is there is no evidence of the receipt of confidential information in relation to those names. Mr Cook submitted that it was too late for the Claimants to challenge that confirmation from MdR. Further, it was checked that none of the 54 brokers that were on extracts of BR08 that were received by Mr Vowell were among the names which had been redacted.

III THE ORDER OF THE MASTER

13. The Master identified two reasons for his order. The first reason for his order was as follows: *"What seems to me of most relevance is the fact that there is a pleaded case of targeting key revenue producers with an accuracy that could only be consistent with access to confidential information."* at [18] ('the First Reason').

14. In respect of the First Reason, the Master also said the following in paragraph [18] of his judgment: "*BGC named six key revenue producers, and it is accepted that the recruitment report should be unredacted to the extent that these features. That impliedly accepts, and I would in any event find, that the allegation of targeting is a basis to unredact. BGC cannot be expected to know and to be able to name every key revenue producer who was targeted, because it is in the nature of the case that not all of them would have reported an approach. The personnel, pattern and timing of Mr Stoppani's approaches might support the allegation of accurate targeting and the allegation of impropriety that lies behind it. The allegation as pleaded is not tied or limited to the "BR08 54", as I will call them. There is, and is accepted to be, an arguable case of misuse of confidential information, and, in the shape of the IRS allegations [concerning the Anderson Information], some hard evidence of dissemination of confidential information within Tradition. Mr Stoppani was an instrument whereby any misuse might be translated into action. These matters seem to me to take this application outside the characterisation of it as a fishing expedition*."

15. The Master added a second reason which had *"slightly influenced"* the consideration. It is that *"BGC would regard Mr Stoppani as something of a key player, would think the refusal of his application unjust, and would continue to nurse dark suspicions about the significance of the information beneath the redactions"* at [19] ('the Second Reason'). This was an echo of something which he had called *"a marginal consideration"* at paragraph 4 of the Judgment that *"withholding disclosure is apt to engender a sense of injustice on the part of the requesting party, and/or a sense that the opposing party resists disclosure because it has something to hide."*

IV STANDARD DISCLOSURE AND THRESHOLD FOR APPEAL

16. It is common ground that the relevant disclosure in this case is standard disclosure pursuant to CPR 31.6 which reads as follows:

"31.6 Standard disclosure requires a party to disclose only–

i) the documents on which he relies; and

ii) the documents which –

a) adversely affect his own case;

b) adversely affect another party's case; or

c) support another party's case; and

iii) the documents which he is required to disclose by a relevant practice direction."

17. The Claimants draw attention to two authorities in connection with the test to be applied on an appeal.

18. In *Fiddes v Channel 4 Television Corp* [2010] EWCA Civ 516, the Court said the following at [41]:

> "in this court we do not sit in the shoes of the judge. I am far from sure that, had I been ruling on the application at first instance, I would have reached the conclusion which he reached. But our task is to review his discretionary case management decision from what one might compendiously describe as the distance identified in the well-known jurisprudence. It is therefore not enough for me to consider, as I do, that the judge's decision may not have been right. Mr Sherborne accepts that, in that the judge paid at any rate some regard to all the factors specified in Rule 31.7(1) and in paragraph 2.4 of the Practice Direction supplementary to Part 31, he must persuade us that the decision is plainly wrong."

19. As explained in *Canadian Imperial Bank of Commerce v Beck* [2009] EWCA Civ 619 at [23]:

> "As to the correction of an error of law committed by a judge who is exercising a judicial discretion, the law is equally clear. The leading case is G v. G [1985] 1 WLR 647, which contains references to the well-known judgment of Asquith LJ in Bellenden (formerly Satterthwaite) v Satterthwaite [1948] 1 All ER 343 at 345. For an appeal to succeed, the exercise of discretion which is challenged must, in Asquith LJ's words: "exceed the generous ambit within which reasonable disagreement is possible"."

V THE FIRST GROUND

(i) Tradition's case in respect of the First Ground

20. Tradition's first Ground of Appeal is that the Master was wrong to conclude that there was a pleaded case of targeting key revenue producers with accuracy only consistent with access to confidential information, when there was in fact no such case advanced in either claim.

21. It is trite that for the purposes of disclosure, relevance must be judged exclusively by reference to the pleadings: *Paddick v Associated Newspapers Ltd* [2003] EWHC 2991 (QB) at [11]. If there were such a pleading, it would be easy to identify. However, the Master did not identify any paragraph in the Claimants' pleadings that makes the allegation.

22. The closest that the Master came was an apparent reference to paragraph 9A of the Bell Re-Amended Particulars of Claim. The Master stated at [18]: *"what seems to me of most relevance is the fact that there is a pleaded case of* ***targeting key revenue producers*** *with an accuracy that could only be consistent with access to confidential information."* He also referred to the following: *"[t]he personnel, pattern and timing of Mr Stoppani's approaches might support the allegation of* ***accurate targeting*** *and the allegation of impropriety that lies behind it."* (Emphasis added).

23. The Master did not refer to any specific paragraph of the Bell RAPOC, but the same words in his judgment and in paragraph 9A lead to the clear inference that his words were derived from paragraph 9A of the Bell RAPOC. However, contrary to what the Master said, paragraph 9A does not make the allegation that the names had an accuracy that *"could only be consistent with access to confidential information".* Further, there was no issue taken by the Claimants with the assertion above referred to in the Amended Defence that the Claimants do not assert that such alleged approaches were unlawful. On the contrary, as noted, the Reply was to the effect that the identities of the key revenue producers were in general terms already known and discussed in the market.

24. Tradition makes four points, namely

    i) First, paragraph 9A of the Bell RAPOC does not allege any impropriety against Tradition or Mr Bell, let alone the misuse of confidential information. The assertion is simply that Tradition was targeting the Claimants' key revenue producers and that this represented a new recruitment approach by Tradition. There is no allegation that this targeting was wrongful in any way, still less that this *"could only be consistent with access to confidential information*". Indeed, the limited nature of the allegation has been specifically pointed out in Tradition's Amended Defence [28.2] to the Bell Claim and was not challenged in the Amended Reply [17].

    ii) Second, the Claimants could not allege that the accurate targeting of successful brokers "*could only be consistent with access to confidential information."* The admission in the Amended Reply at paragraph 17(d) confirms that firms such as Tradition know who the successful brokers are and can lawfully recruit or attempt to recruit such brokers. It is therefore submitted by Tradition that the Master's interpretation of paragraph 9A or of the pleaded case generally in the

Bell Claim and/or the Vowell Claim is therefore contrary to the Claimants' pleaded case.

iii) Third, there was no scope to imply or infer into the pleaded case more generally, an allegation that Tradition was targeting the Claimants' key revenue producers with an accuracy that could only be explained by access to the Claimants' confidential information.

iv) Fourth, the Master does not identify any allegation in the Vowell Claim that would support the order he made. There is no allegation in the Vowell Claim that Tradition has been accurately targeting the Claimants' key revenue producers, let alone an allegation that Tradition was doing so with an accuracy that could only be explained by access to the Claimants' confidential information. Any such allegation would be contrary to RPM's Amended Reply in the Bell Claim.

25. The only specific allegation that Mr Stoppani received or misused confidential information is the allegation in paragraph 16(9)(i) of the Vowell Re-Amended Particulars of Claim that "*Mr Anderson (directly or indirectly) supplied Mr Stoppani with the Confidential Information concerning the Turkey FX Desk*". This allegation was introduced by a recent amendment, but it is not a plea that Mr Stoppani was wrongly supplied with or misused any other specific piece of confidential information.

(ii) The Claimants' case in respect of the First Ground

26. The Claimants submit that Tradition has accepted the relevance of the redacted targets by unredacting the six named targets. They say that those targets are pleaded in the Bell Claim on the basis that RPM's key revenue producers were not just targeted, but accurately targeted. The Claimants say that as paragraph 9A itself makes clear, Tradition previously had not been able to target accurately other revenue producers. They say that RPM is only aware of the identities of six people who were targeted, other than the RPM 6: these are the Other Targets, being Spencer Franks, Grant Smith, Ryan Morley, Richard Rayment, Mark Kelly and Phil Luff.

27. The Claimants submit that there are others who were targeted, who would be relevant for the same reasons as the Other Targets. It would be entirely inconsistent for Tradition to unredact some names while keeping the others redacted. They submit that the Claimants cannot be aware of all of the targets and therefore needs to know which other key revenue producers were targeted so as to amplify its plea. This requires the unredaction of the Recruitment Reports.

28. The Claimants submit that the meaning of paragraph 9A can be justified by reading it alongside paragraphs 37a(i) and (ii) and 37A including especially the reference back to *"Tradition's aggressive recruitment approach and targeting of key revenue-producing brokers and desks as stated in paragraphs 9* [referring to the recruitment of the RPM 6] *and 9A* [referring to the 6 further individuals] *above."* The Claimants also rely on paragraph 41b, referring to misuse of confidential information being about information concerning the brokers on the desk, the revenue which they generated and the trend in revenue and their attitudes towards the prospective team move. Likewise, the submission relies on an inference from paragraph 37A (pleaded at paragraph 43) being

that Mr Bell passed on confidential information and Tradition acquiesced in receiving it.

29. The Claimants emphasise words omitted in a quotation of the Reply by Tradition, which are emphasised in the quotation above. Those words at the start "*in general terms"* and the words at the end *"Specific revenue, track record and remuneration information is not known.*" These words are said to have the effect that the accurate targeting in this case and in this context is in connection with the misuse of confidential information.

30. The Claimants also submit that the disclosure is justified by reference to the Vowell Claim. They submit that:

    i) The conduct pleaded in respect of the Turkey Bonds Allegations in the Vowell Claim is but one example of the widespread wrongdoing on the part of Tradition, misusing BGC's confidential information for recruitment purposes. That there was widespread misuse of BGC's confidential information is confirmed by the transmission and use of the BR08 Information, Anderson Information and Turkey FX Desk information (amongst other matters).

    ii) The plea at paragraph 16(9)(k) of the RAPOC is that further wrongdoing will become clear on full disclosure. Given that there is a prima facie case of wrongdoing against Mr Stoppani relating to the Turkey Bonds Desk, BGC's inference is that seeing the names of the other targets on the Recruitment Reports will further demonstrate the misuse of confidential information. That is because, where confidential information was misused for recruitment purposes, Mr Stoppani was necessarily the mechanism for that misuse, as Tradition's effective in-house recruiter. The Claimants also referred to paragraph 16(9)(j) which referred to the provision of confidential information to Mr Stoppani to assist in a recruitment process by targeting BGC's high performance brokers.

31. In the light of the foregoing, the Claimants submit that the four points of Tradition are misconceived in that (following the same numbering as the four points):

    i) Paragraph 9A of RAPOC has to be read in the context of the whole of the Bell Claim including paragraphs 37, 37A and 43 above, and so accurate targeting is to be interpreted as containing an allegation of impropriety and involving the misuse of confidential information.

    ii) The admission in the Reply with the omitted words (referred to at paragraph 21 above) contradicts the submission of Tradition, and did connote the misuse of confidential information.

    iii) There was no question of implying something into the allegation at paragraph 9A. When read in context, the allegation is clear and correctly characterised by the Master.

    iv) The Turkey Bonds Allegations were sufficient to lead to a wider allegation when taken together with the allegations in the Bell Claim of further wrongdoing as set out in paragraph 16(9)(k) of the Vowell Claim. Just as the Turkey FX Desk brokers were targeted using confidential information, so there were grounds, according to the Claimants, that others were targeted accurately using

confidential information. It was submitted that the Master had this in mind when he referred to the IRS allegations concerning the Anderson Information and hard evidence of dissemination of confidential information within Tradition, and that Mr Stoppani was an instrument whereby any misuse might be translated into action. In the light of this, it was submitted that there was a pattern of approaches misusing confidential information and that viewing the names in the Recruitment Reports would further demonstrate misuse of confidential information. It would either advance the Claimants' case in that sense and create or add to a pattern, or if it did not, it would advance the Defendants' case and negative or subtract from a pattern.

32. The Claimants emphasised that the Master had been dealing extensively with this case. The instant application under appeal had been one of numerous matters before him, and that he had detailed knowledge of the case because of extensive other applications before him. They referred to the opening paragraphs of the Judgment to show that the Master understood the principles. Thus, it was submitted that this was a judgment exercised applying the appropriate principles, and an exercise of discretion with which the appellate court should not interfere.

33. The Claimants referred to the totality of paragraph 18 of the Judgment of the Master which they relied upon to show that this was not a fishing expedition. They submitted that in the Bell Claim, the allegation was of accurate targeting, and Tradition accepted that the Other Targets should be unredacted, which logic dictated that other recruitment targets should also be unredacted. In addition, RPM could not know all of the names of those who were targeted and so (contrary to the submission made by Tradition to the Master and now heavily relied on for the purposes of this appeal) Tradition's disclosure obligation is not limited to those brokers that BGC has been able to name in its RAPOC and Further Information.

(iii) Discussion in respect of the First Ground

34. In my judgment, the Master made an error when he found that "*there is a pleaded case of targeting key revenue producers with an accuracy that could only be consistent with access to confidential information."* Although he did not identify where that pleaded case appears, it is apparent from his language of *"targeting key producers"* in his judgment that he must have been referring to paragraph 9A of the Bell Claim. It is also apparent from reviewing the written and oral submissions before the Master that the removal of the redactions was based on paragraph 9A of the Bell Claim and on paragraph 16(9)(k) of the Vowell Claim. Paragraph 9A does not state, whether expressly or by implication, that targeting of key revenue producers was with an accuracy which *"could only be consistent with access to confidential information."* Nor is this to be found elsewhere in the pleadings in either action.

35. Likewise, the Master was wrong later in paragraph 18 of his Judgment when he stated that *"the personnel, pattern and timing of Mr Stoppani's approaches might support the allegation of accurate targeting and the allegation of impropriety that lies behind it."* There was not an allegation of impropriety that lies behind the allegation of accurate targeting in paragraph 9A of the Bell Claim.

36. As the Defence stated (at [28.2]) without contradiction, paragraph 9A did not on its face connote unlawful conduct. This was not contradicted in the Reply: see [17]. The Reply

contained an admission in general terms that the identity of successful brokers was known in the market, albeit that specific revenue, track record and remuneration information is not known. Contrary to the Claimants' submission, paragraph 17d with the words which had been omitted in a Tradition's skeleton argument (and which for identification are emphasised at paragraph 9.3 above) does not lead to the allegation of accurate targeting being by misuse of confidential information or having an allegation of impropriety lying behind it.

37. The Master has inadvertently mischaracterised the nature of the pleaded case in making the error referred to in paragraphs 34-36 above. The pleading does not even bear an implication that it could only be consistent with access to confidential information. On the contrary, in general terms, the identification of successful brokers is based on information which is known in the market. If it had been intended that paragraph 9A was based on misuse of confidential information or other impropriety, then it would and should have said so. The attempt to impute to it something that it does not say by reading it together with other parts of the RAPOC in the Bell Claim and with cross reference in the Vowell Claim does not in my view give it a meaning which it otherwise does not have. This has happened in the context of this appeal. It is telling that it did not form a part of the skeleton argument below as quoted above.

38. Further, and in any event, paragraph 9A has been particularised by the Further Information to refer to 6 individuals, namely Messrs Franks, Swift, Morley, Rayment, Kelly and Lough. The Master said that the Claimants could not have been expected to know everyone who was the subject of accurate targeting. However, that is not how the Claimants have put their case. They could and would have said that the best information until disclosure was the provision of the six names of Messrs Franks and others and that they expect that there will be others, but that further particulars will be provided on disclosure. The fact is that they did not do that, and there is no scope to interpret the pleadings as saying that. Although the points in this and the preceding paragraphs are separate, they are related. The identification of the brokers was not pleaded as being unlawful. In that context, not of wrongdoing, the Claimants were able to provide an exhaustive list of these "*key revenue producers*" in a response to a request for further information.

39. Further still, it does not follow that the fact that those 6 names identified in the Further Information are not redacted is a concession of the principle in respect of disclosure. In the context of a statement about accurately targeting recruits which does not contain an allegation of unlawful conduct, and in the context of six persons being named without a statement that it was expected that there were others, these six names are not redacted. That does not, in my judgment, provide a platform for looking at other names on the basis of the pleaded case in the Bell Claim, and, as I find too, on the basis of the Vowell Claim.

40. As regards the Vowell Claim, it is said that the conduct pleaded there is an example of the widespread wrongdoing of Tradition misusing confidential information for recruitment purposes. It was said at paragraph 16(9)(k) that when taken together with the facts and matters relied on in the Bell Claim and in the Vowell Claim, the inference is that the conduct was not limited to the examples thus far uncovered, and the full extent of the wrongdoing would only be available on disclosure. As regards paragraph 16(9)(j), which was not referred to specifically in the skeleton below or in the skeleton for the appeal, that does not refer to the identification of successful brokers by

confidential information, and is in the context of the Turkish Bonds Allegations. The Bell Claim comprises a claim about the RPM 6 being the six members of the FC Desk who all resigned to join Tradition.

41. In my judgment, neither claim is in respect of the names which are redacted. There are unredacted the names of the RPM 6, which does relate to the subject matter of the Bell Claim. There are also unredacted the names of the 6 further individuals, Messrs Franks and others, who have been named by the Further Information. They have been identified because paragraph 9A referred to a specific activity about targeting "RPM's key revenue producers" not in the context of the targeting being due to misuse of confidential information. They were particularised as six names and without qualification that this was the best that could be produced at this stage.

42. It follows that:

i) There is no allegation of unlawful conduct within paragraph 9A of the Bell Claim;

ii) Even if there is such an allegation, which there is not, it is limited to the six further individuals, namely Messrs Franks and others;

iii) It follows that the fact that Tradition has identified those six further individuals in unredacted form does not give rise to an admission that the other individuals should be named. The identification is simply because these are names of individuals who are the key revenue producers who were approached between late 2016 and early 2017;

iv) There is no pleaded basis to identify any other key identified producers either by reference to the misuse of confidential information (that is not what paragraph 9A claims) or, if it did, beyond the six further individuals.

43. Mr Mallin QC for the Claimants submits that the meaning of paragraph 9A can be justified by reading it alongside paragraphs 37a(i) and (ii) and 37A including especially the reference back to *"Tradition's aggressive recruitment approach and targeting of key revenue-producing brokers and desks as stated in paragraphs 9* [referring to the recruitment of the RPM 6] *and 9A* [referring to the 6 further individuals] *above."* He also relies on paragraphs 41b and 43, referring to misuse of confidential information being about information concerning the brokers on the desk, the revenue which they generated and the trend in revenue and their attitudes towards the prospect team move. Likewise, the submission relies on an inference from paragraph 37A being that Mr Bell passed on confidential information and Tradition acquiesced in receiving it.

44. I reject the submission that that means that this extends the ambit of the pleadings beyond that which is identified above. It does not refer to the effect of introducing an allegation of misuse of confidential information in respect of the names of those who remain redacted. It appears that these wider arguments by reference in particular to paragraphs 37a, 37A and 43 in the Bell proceedings were not made before the Master in writing or in the oral submissions to which attention has been drawn. In my judgment, these matters do not alter the meaning and effect of parts of the Bell Claim to which reference has been made. That is because these additional paragraphs do not add to the scope of paragraph 9A of the Bell RAPOC or the pleadings generally in the

Bell Claim and/or the Vowell Claim. Nor do they bear out the view of the Master that "*there is a pleaded case of targeting key revenue producers with an accuracy that could only be consistent with access to confidential information."* Nor do they justify the order for disclosure of the names which remain redacted.

45. I also find that the Vowell Claim does not widen the ambit of the disclosure such as to justify the order of the Master. The overlap of the misuse of confidential information involving the same or connected parties does not have as an effect that the Claimants are able to have the disclosure of names beyond the RPM 6 and the 6 further individuals, namely Messrs Franks and others. In my judgment, it is a fishing exercise to seek to unredact the redacted names in order to seek to find out whether there are other names which have been obtained by misuse of confidential information. The reasons expressed in paragraph 18 of the Judgment of the Master for finding that it was not a fishing exercise was based on his erroneous reading of the pleadings.

46. The matter can be expressed as follows. If the case had been pleaded as the Master has sought to characterise it, then it could and would have been stated in simple terms in a differently worded paragraph 9A and in differently worded Further Information and in a differently worded Reply. The attempt to read such words into the pleaded case whether by reference to those parts of the pleadings or other parts of the Bell Claim or the Bell Claim as a whole or the Bell Claim read together with the parts of the Vowell Claim or the Vowell Claim as a whole or the Vowell Claim by itself has no basis.

47. In my judgment, it is established that a party is entitled to seal up or cover up part of a document which he claims to be irrelevant. Nothing that has been submitted shows that when the redactions were made in this case, whether by reference to the pleadings or any other documents or the witness statement of Mr Shear, that it was wrong to blank out the names.

48. It was submitted for the Claimants that the Court does not have a basis to depart from the decision of the Master because his was a discretionary case management decision. In my judgment, the decision was exercised on a plainly wrong basis and/or insofar as it was a discretionary decision, it exceeded the generous ambit within which reasonable disagreement is possible., founded on a wrong reading and understanding of the pleaded case. The Master was plainly wrong to find that there is a pleaded case of targeting key revenue producers with an accuracy that could only be consistent with access to confidential information. The Master was also plainly wrong to say that once the six names had been unredacted (Messrs Franks and others), this opened the way for more. The plain error here was because (a) there was no underlying allegation of impropriety, and (b) the further information referred to the six names and to no others and did not leave open the possibility of others being revealed depending on disclosure. If the Master had applied correctly the test under CPR 31.6 for disclosure, starting from a correct analysis of the pleaded issues, the only correct order which he could have made was not to order the unredacation.

49. It was also submitted that the Master knew about this case intimately having dealt with a 2-day disclosure application and having had the matter before him on a number of occasions. If it was the case that there was no error, and it was a case of a truly discretionary decision, then this might have been relevant. It might be said that the Court should be especially reluctant to interfere with such a discretionary decision.

However, this does not apply in view of the nature of the error which has been identified.

50. It is worth adding that it is not easy in these matters for Masters and Judges on an interim decision involving a number of issues where there are many decisions to be made to get it right. The Master expressed a concern about this kind of exercise at paragraph 2 of the Judgment. The Judge at the interim stage often does have the same feel as a trial Judge, but it is usually in the nature of a decision on disclosure that it has to be made before trial so that the case can be prepared for trial on the basis of full disclosure. In this case, the argument on the appeal was far more developed on both sides than the relatively short argument before the Master. A short part of numerous applications heard over two days has now become centre stage in an appeal simply dealing with this one aspect of disclosure, and occupying a multiple of the time of the abbreviated application below. This Court is therefore in a better position to analyse the case, albeit that it has applied the test for an appeal as noted especially in paragraphs 16-18 and 47 above. Whilst the Master was plainly wrong, the term is not used pejoratively of the Master. His other numerous decisions in the course of the two-day hearing have not been the subject of appeal or criticism.

VI THE SECOND GROUND

(i) Tradition's case in respect of the Second Ground

51. The Second Ground was that the Master was wrong to conclude that if information was not relevant to any pleaded issue it should be disclosed so that the Claimants could satisfy themselves that the information was irrelevant. The references to "*transparency*" and avoiding the Claimants "*nurs[ing] dark suspicions*" about the redacted material were wrong as a matter of principle.

52. It was also submitted that by taking into account these irrelevant considerations, this vitiated the decision of the Master more generally to require the Tradition Defendants to un-redact the Recruitment Reports.

(ii) The Claimants' case in respect of the Second Ground

53. The Claimants say that the Second Reason was not a decisive or necessary reason. It was the First Reason which was the decisive reason. This only slightly influenced him and no more. If it did, then it was justified as part of dealing with cases justly in accordance with the overriding objective, to deal with cases justly and at a proportionate cost, which includes "*ensuring that it is dealt with expeditiously and fairly"*. This would apply where the arguments "*for and against can seem equally compelling*", and this would be an appropriate factor to take into account in "breaking the tie". In fact, there was no tie break in this case for the reasons set out by the Master at paragraph 18 of his Judgment.

54. However, the Master did, in any event specifically consider whether or not the plea was permissible: in the case of the Vowell RAPOC there was a contested application concerning whether or not permission should be given for the passages in question, which the Master determined in BGC's favour.

(iii) Discussion in respect of the Second Ground

55. As regards the second ground of appeal, the Court is not entitled to make a judgment on disclosure on the basis that it is better to have transparency or that without an order of disclosure, the applicant would "*continue to nurse dark suspicions about the significance of the information beneath the redactions".* If the information satisfies the disclosure test, then it must be produced subject to privilege grounds. If it does not satisfy the disclosure test, then there is no basis for ordering its disclosure as a matter of the exercise of discretion, so that the parties believe that just has been done, or to avoid suspicions which might otherwise ensue.

56. The Claimants submitted that in the event that it was evenly balanced whether or not to order disclosure, this consideration could tip the balance. The Court inquired as to whether there was any authority to support this contention, and Mr Mallin QC very properly conceded that there was none. In the alternative, the Claimants submitted that the Master's first ground was an independent basis for his having ordered the disclosure, and the fact that he had this alternative second ground did not affect the validity of the first ground.

57. I am satisfied, at least for the purpose of the instant case, that there is no basis for disclosure to avoid suspicion. I am also satisfied that this could not be a relevant factor in the exercise of a discretion. If it were, then in this hard-fought case, it would greatly extend the ambit of what should or could be required by way of disclosure. It would create an unprincipled approach to disclosure in which subjective or uncertain views as to what would and would not lead to suspicion would have to be taken into account. Absent authority to recommend this approach, I regard it as plainly wrong.

58. It is said that the Master came to his view in paragraph 18 independently of this additional ground. That overstates the position. He was 'slightly influenced' by this Second Reason. The attempt to buttress the First Reason was misconceived. In fact, nothing turns on whether this by itself entitles this Court on appeal to interfere with the First Reason. For the reasons which I have indicated, the Master was plainly wrong in his First Reason.

59. In my judgment, in view of the nature of the pleaded case, and for all of the reasons set out above, there is no justification for the removal of the redaction of the names to the extent that this has not already occurred.

VII THE THIRD GROUND

(i) Tradition's case in respect of the Third Ground

60. In the submission of Tradition, it was wrong of the Master to require disclosure of the identity of brokers who did not work for any of the Claimant companies but who worked, instead, for Associated Companies. There was no proper basis for ordering disclosure in relation to brokers employed by other group companies, as the claims for breach of confidence are limited to information that was allegedly confidential to the Claimants themselves. There was no reference in the pleadings to information in relation to Associated Companies or any allegation of receipt or misuse of such information. The Associated Companies are not parties to the proceedings, and any claim would have to be brought by them.

(ii) The Claimants' case in respect of the Third Ground

61. The Claimants submit that in the case of all of the group companies (except for GFI), it was BGC that produced the BR08 spreadsheet, showing the revenue details of all BGC group companies (except for GFI). This showed how closely interlinked the Claimants and the Associated Companies were. It therefore followed that not only the Associated Companies, but also the Claimants, had the right to the confidential information. It was proprietary information of the Claimants and the Associated Companies. Further, it was submitted that to the extent that Tradition was misusing the confidential information of other BGC group companies, this must, necessarily, support BGC's case and undermine Tradition's.

62. Moreover, in any event, in both Claims, there is a pleaded case to this effect. The question is whether or not the disclosure is likely to support or undermine BGC's case or undermine Tradition's, as set out in the pleadings. If Tradition wants to attack either pleading (having failed already in its opposition to the Vowell pleading being allowed in by way of amendment) it would need to apply to strike it out, which it has chosen not to do in the substantial period of time since the pleading was served. Disclosure should be judged against the pleadings as they stand. In any event, this factor would not be sufficient to put the Master's decision outside of the generous ambit given to him.

(iii) Discussion in respect of the Third Ground

63. The order as made includes that the redactions should be removed not only as regards those working for the Claimants, but also for those who worked for their associated companies. Tradition says that there is no basis for the inclusion of employees of associated companies. It follows from my allowing the appeal in respect of the first two grounds that this head of appeal does not require determination. If the unredactions should not be ordered as regards the Claimants' employees, then, at least by parity of reasoning, the same should apply as regards the employees of the Associated Companies. Had the Court had to resolve this matter, it would have been sympathetic to the arguments of the Claimants because of the sharing of information between the Claimants and their Associated Companies. However, this is trumped by the findings in respect of the First Ground and the Second Ground which have as their effect that whether in respect of the employees of the Claimants or the Associated Companies, the application for unredaction of the names must fail.

VIII CONCLUSION

64. For all these reasons, the appeal will be allowed. The Master's decision was plainly wrong in respect of the First Reason and the Second Reason. In the circumstances, it was not right to require the redactions to be removed. The order should therefore be reversed to provide that the redactions sought should not be ordered. I should be grateful if Counsel would agree a form of order to reflect this finding.