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IN THE HIGH COURT OF JUSTICE  
KING'S BENCH DIVISION

[2023] EWHC 1305 (KB)

No. KB-2023-001793

Royal Courts of Justice  
Strand  
London, WC2A 2LL

Friday, 28 April 2023

Before:

MR MICHAEL FORD KC  
(Sitting as a Deputy Judge of the High Court)

B E T W E E N :

JUMP TRADING INTERNATIONAL LIMITED

Claimant

- and -

(1) DAMIEN COUTURE  
(2) VERITION ADVISORS (UK PARTNERS) LLP

Defendants

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MR J LADDIE KC, MR E KEMP and MR M GREAVES (instructed by Allen & Overy LLP)  
appeared on behalf of the Claimant.

MR N DE SILVA KC (instructed by Excello Law) appeared on behalf of the First Defendant.

MR A SOLOMON KC and MS C DAVIES (instructed by Paul Hastings (Europe) LLP) appeared  
on behalf of the Second Defendant.

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**J U D G M E N T**

THE DEPUTY JUDGE:

- 1 This hearing concerns an application notice dated 20 January 2023 in which the claimant seeks an interim prohibitory injunction to restrain commencement of the first defendant's employment with the second defendant until the end of a non-compete period. The claimant also seeks directions for an expedited trial. The hearing was listed for one day and the representation before me has been Mr Laddie KC, Mr Kemp and Mr Greaves for the claimant; for the first defendant, Mr de Silva KC; and for the second defendant, Mr Adam Solomon KC and Ms Davies. I am grateful to all counsel for their excellent submissions and to the solicitors for the efficient preparation of the bundles.
- 2 For the purpose of this hearing, I was presented with a bundle including witness statements for the claimant from Mr Peter Deaner (the claimant's managing director of its European operations) and two statements from Mr Pierre Lafitte, a quantitative trader working for the claimant; from the first defendant from Mr Damien Couture himself; and for the second defendant from Mr Robert Ellis (its general counsel) and Mr Marc Vesecky (a senior managing director of the second defendant). All parties submitted written skeleton arguments, and I was treated to a bundle of some 46 authorities. This judgment was given at the conclusion of the hearing.
- 3 In this judgment I will refer to the first and second defendants as "D1" and "D2".

**Background**

- 4 The claimant is a leading trading and investment firm with 1,500 employees globally. It uses quantitative and algorithmic methods to trade in financial assets. It has a trading team in London comprised of about 200 individuals engaged in what is called high frequency, medium frequency and low frequency trading. It includes traders, developers and quantitative researchers.
- 5 D1 is a quantitative researcher in algorithmic trading: that is, trading where computers make the final decision. He worked as a quantity researcher in the claimant's trading team in London from June 2016 until he resigned with notice, giving one year's notice on 30 March 2022.
- 6 D2 is a global hedge fund based in Connecticut with offices in the US, London, Hong Kong and Singapore. It recruited D1 in March 2022 to commence working for it once his notice period ended. He was due to start to work for it this month, April 2023.
- 7 D1 signed his contract of employment (the "Contract") with the claimant in August 2015 and commenced employment on 13 June 2016. The Contract included a provision for one year's notice in clause 10.1 and a provision for garden leave in clause 12.1, by which he could be required not to work during his notice period. During that period, defined as "Garden Leave", he could not enter or attend the premises of the company and nor do various acts, such as work for any third party.
- 8 The critical clause for the purpose of the hearing today is clause 19.1 which states as follows:

“Non-Compete

In order to protect the Confidential Information, Intellectual Property Rights, trade secrets, goodwill and business connections of each Group Company to which you have access as a result of your Employment, you agree to refrain at all times from directly or indirectly engaging in Competitive Activity during your Employment and during any notice period, Garden Leave and the Non-Compete Period.”

- 9 The “Non-Compete Period” is defined in clause 1.1, the definitions section of the Contract, in the following terms:

“**Non-Compete Period:** means the zero (0) to twelve (12) month period after the Termination Date as elected by the Company within twenty (20) business days following the notice of termination. The Non-Compete Period shall commence at the conclusion of any applicable Garden Leave or notice period.”

“Termination Date” is defined as the date of termination of employment.

- 10 “Competitive activity” is defined in clause 1.1 as follows:

“Engaging in any of the following activities with or for the benefit of a Competitive Entity in any Capacity:

- (a) providing similar services to the services provided by the Employee to any Group Company.
- (b) directly or indirectly utilizing or developing quantitative analytics that are based on, substantially similar to or derived from quantitative analytics that you utilized or developed or had access to while you were employed by any Group Company”

The definition then it goes on to give at (c) to (e) further instances of what are deemed to be “Competitive Activity”, referring to working with quantitative analytics.

- 11 In turn, “Competitive Entity” is defined in wide terms in clause 1.1, which begins by saying:

“**Competitive Entity:** For the purpose of this Agreement ‘Competitive Entity’ shall mean those entities engaged in or preparing to engage in (i) business activities identical or similar to any of those

engaged in by the Company; (ii) ownership or control of greater than five percent (5%) in any entity that engages in business activities identical or similar to any of those engaged in by the Company..”

Then it goes on to give three other categories, (iii) to (v), which fall within the definition..

- 12 By clause 20 of the Contract D1 agreed to various matters in respect of the restrictive covenant in clause 19, including that he had had the opportunity to receive legal advice. The Contract included a notification obligation imposed on him by clause 19.5, by which if he was offered or approached to be involved in any capacity in a business, undertaking or organisation which was or was intended to be a “Competitive Activity”, he undertook to give that person a copy of the Contract and to inform the claimant of the identity of the third party.
- 13 D1 was paid a salary of £175,000 plus a discretionary bonus. After D1 informed the claimant that he was going to resign, he was given an exit interview by the claimant’s human resources team on 22 March 2022 where, according to Mr Deaner, he said he was going to set up his own low frequency trading business, as recorded in an email in May 2022. On 23 March 2022, according to a letter from 3 April 2023 from D1, on this date he accepted an offer to work with D1, having met them earlier in November 2021. He explains that on that day he signed an agreement with D2 that he and a friend would both join D2 and create a new team with a mandate for what is called “Stack-Arb”. D2 was placed on garden leave from 30 March 2022, and on that date he gave written notice of resignation in a very short letter which he gave to Mr Lafitte.
- 14 On 31 March 2022 D2 received brief legal advice that, according to its solicitor, the non-compete covenant to which D1 was subject under clause 19.1 of the Contract was not enforceable, and privilege has been waived to that extent. On the same day, Mr Deaner informed D1 that he would impose the full twelve-month non-compete period on him pursuant to clause 19.1. According to D1, he said this was not acceptable.
- 15 Subsequently D1 received communications from D2 reminding him that the claimant had elected a non-compete period of 12 months, which would commence after the “Termination Date” of 30 March 2024. On about 12 July 2022, D1 informed Mr Deaner for the first time by Zoom that he intended to join D2. According to Mr Deaner, he told D1 that he would consider this to be competing.
- 16 In the period between June and November, without prejudice discussions took place between the parties in order to see if the dispute between them about the enforceability of clause 19.1 could be resolved. On 17 November 2022 D1 wrote an important letter to Mr Deaner saying he did not believe the restrictions on him were enforceable and confirming that he was going to join the D2 with an intended start date of 3 April 2022 (it is common ground that the letter should have said 3 April 2023). He said that his intention was to set up a new investment team, a minimum of 12 months would be spent on writing software and not trading, and he did not believe that those activities would be in competition with the claimant. There was no reply to that letter until 6 March 2023 and, in fact, it seems there was no communication at all between the parties during this period: see Mr Couture’s statement at para.23. There is, as Mr Laddie frankly accepted, no explanation for the almost four-month gap of time before 6 March.

- 17 On 6 March 2023 Mr Deaner replied to D1's letter of November, stating that the claimant disagreed with D1's assertions that the non-compete clause was unenforceable and saying that taking up the post with D2 would be in violation of it. There were then communications between the claimant's general counsel, Mr Hinerfeld, and D2's general counsel, Mr Ellis, as to whether or not the clause would be enforceable.
- 18 In accordance with his notice period, D1's employment terminated on 30 March 2023. In a letter dated 3 April 2023 a letter from his solicitors responded to various questions from the claimant's general counsel Mr Hinerfeld. Thereafter, after further correspondence between the parties, the claimants served a claim form and this application on 14 April 2023. On 18 April 2023 it served Particulars of Claim endorsed with a statement of truth. The Particulars of Claim contend, in summary, that (i) D1 intended to breach clause 19, defined as the "Non-Compete Covenant" and (ii) D2 intended to procure and/or induce D1 to breach that clause. Although para. 18 of the Particulars of Claim refers to a breach of the notification obligation in clause 19.5 of the Contract, no claim for damages is alleged. The relief sought by the claimant is "Injunctive relief to enforce the Non-Compete Covenant until its expiry".

### Decision and reasons

- 19 It is against that background that I consider the interim relief application before me today.
- 20 The principles for interim relief are not in significant dispute between the parties; see, for example, *Lawrence David v Ashton* [1989] ICR 123 among many others. Here the non-compete clause will not expire until 30 March 2024 and an expedited trial is possible within that period so there are the normally three issues to be considered under *American Cyanamid* [1975] AC 396: first, is there a serious issue to be tried; secondly, are damages an adequate remedy for either party; and, finally, the balance of convenience.
- 21 There is no significant dispute between the parties that covenants are *prima facie* in restraint of trade. They must go no further than is reasonably necessary to protect the claimant's legitimate interests and reasonableness should be assessed at the time a contract is entered into. I have been referred to the guidance of Cox J in *TFS Derivatives Ltd v Morgan* [2005] IRLR 246 saying that there is a three-stage process in relation to restrictive covenants: what does the restrictive covenant mean; has the employer shown a legitimate business interest to be protected; and is the clause no wider than is reasonably necessary to protect those interests, only to be determined at this stage on whether there is a serious issue to be tried. As Mr Laddie reminds me, the serious question to be tried is not a demanding test, and the short time for hearing an interlocutory application is not the appropriate occasion to expect a definitive answer to whether a covenant is enforceable or not: see Nugee LJ in *Planon v Gilligan* [2022] IRLR 684 at §102. Nor is there any significant dispute about the principles on construction of contracts or the specific principles that apply to the construction of restrictive covenants.
- 22 As for the question of the legitimate business interests, Mr Laddie says clause 19 was made for the purpose of protecting the claimant's confidential information, IP rights, trade secrets, goodwill and business connections. Neither D1 nor D2 argues that these are not legitimate business interests. Nor do they dispute that D1 had access to confidential information during his employment with the claimant, and both Mr Lafitte and Mr Deaner explained why a non-compete clause may be necessary in order to protect their confidential interests, principally because it would be hard to police the use of confidential information otherwise. While there is an express clause in the Contract protecting "Confidential Information" (see clause 16), I accept the submissions for the claimant by Mr Laddie that the non-compete clause could in principle be justified because it is difficult to draw the line between

confidential information or other information and it may be difficult to police the use of confidential information otherwise: see *Littlewoods Organisation Ltd v Harris* [1977] 1 WLR 1472.

- 23 The first issue in dispute on whether the clause goes further than is reasonably necessary to protect the claimant's interests is said to be the uncertainty to which the non-compete clause gives rise. The "Non-Compete Period" commences at the end of the Garden Leave or notice period and is such period up to twelve months as the claimant shall elect. The election here took place on 7 April 2022 and at that point the claimant opted for the maximum non-compete period of twelve months, so that the non-compete period will end on 30 March 2024. The clause does not operate as a default of twelve months, as has been pointed out by both Mr de Silva and Mr Solomon for the defendants. Rather, the temporal extent of the restriction imposed by the clause is unknown until such a point as the company elects to decide what period to impose.
- 24 Both D1 and D2 contend in various ways that the uncertainty means that the clause is unenforceable and that there is no serious issue to be tried on that question. Mr de Silva points to the highly unusual nature of the clause and Mr Solomon draws attention to the fact that the employee does not know at the point when the contract is entered into how long the non-compete period will be, and he has referred me to the comprehensive decision of the Singapore High Court in *Humming Flowers & Gifts Pte Ltd* [2014] SGHC 64. In that case, the Court considered what has been referred to before me as a "cascading clause" by which there was more than one restriction on an employee, inviting blue pencilling, but he was not sure of which one bound him until, it seems, there was a determination by the court of which one of them was enforceable or not. The Court held that such a clause operated *in terrorem* of the employee and it would be inconsistent with public policy to allow severing of one limb to save the other: see §197.
- 25 I have also been referred to the judgment of Underhill J, as he then was, in *Patsystems v Neilly* [2012] IRLR 979, to support the submission that the clause must satisfy the requirement of certainty at the point in time at which the contract is entered into. Against that, Mr Laddie argues the clause is not void for uncertainty where it provides a means for resolving it and he has referred me to passages in *Chitty on Contract* and some of the authorities on that matter.
- 26 At this interim stage and based on the limited exploration of the arguments on both sides, I do not consider I can say there is no serious issue to be tried on this question. At the time the Contract was entered into it is true there was uncertainty as to the length of the non-compete clause, though it was clear it could not exceed twelve months.
- 27 Mr Laddie accepts that in order to show that clause 19.1 is not unreasonable, he will have to justify the maximum twelve-month period because it permitted a non-compete period of that length when the Contract was agreed. That seems to me a correct in principle. It also contain within it the requirements for resolving the uncertainty. I consider it is at least arguable that, although the clause's temporal extent was not known at the time the contract was entered into, the fact it had a maximum duration of twelve months and a mechanism by which the employee would know its extent once an election was made does not necessarily make it unreasonable for the purpose of the restraint of trade doctrine..
- 28 According to the army of counsel appearing before me, there is no direct authority on the validity of the particular clause of this sort. In contrast to *Humming Flowers*, the uncertain temporal extension of the clause is not unknown until it is actually determined by a court

because its length will be known once the employer states what is to be the period of non-competition.

- 29 I can see considerable force in the argument this does not fit with the need to assess reasonableness at the time a contract is entered into, detracting from legal certainty. I can see there may be a degree of an unacceptable or *in terrorem* effect too, in that the resigning employee will not know the period of restriction at the point when he or she resigns until he receives the notice from the employer within the following twenty days. But in these murky and uncharted waters I do not consider I can say there is no serious issue to be tried on the matter.
- 30 The second significant dispute concerns the length of the clause. Both defendants contend the clause is too long when it is viewed in the context of a one-year garden leave period. During the Non-Compete Period, D1 does not receive all of his remuneration and Mr Solomon says that the effect its combination with garden leave is that D1 was restricted in his professional activities for two years - which, according to Mr Ellis, is very unusual in this sector.
- 31 There are potential legal issues here, about whether the length of the clause should be assessed in light of the actual or potential period of garden leave, or whether the garden leave period should be assessed separately from the non-compete clause for the purpose of the restraint of trade doctrine.
- 32 There is limited evidence before me of the general practice in the industry. It seems the only example presented to me of a two-year non-compete clause turned out to be in a contract of someone who was a member of an LLP, and not actually an employee. However, much as on the face of it the one-year non-compete clause coupled with the garden leave clause or garden leave period seems long, I accept that this is likely to be a fact-specific question based on the particular interests to be protected. Mr Deaner says the confidential information has a two-year shelf life and may have a longer period in this particular industry. In those circumstances, I accept the submission that the length of the clause is not something that I can properly address at this interim stage; see *Delivery Group v Yeo* [2022] IRLR 603 per Saini J at §34.
- 33 Although I have hesitated on this question, ultimately, I do not consider I can say there is no serious question to be tried on the matter.
- 34 The third principal matter relevant to the validity of the clause is its width, and this turns on the definitions of “Competitive Activity” and “Competitive Entity,” both of which are defined in broad and non-specific terms. Here, Mr de Silva has made various points about the very wide definition of “Competitive Activity” in the Contract. For example, it refers to providing similar services to the services provided by the employee without explaining what those services are meaning, says Mr de Silva, that D1 is prevented from doing any work in financial services. It also refers in sub paragraphs (b) to (e) repeatedly to “quantitative analytics” without defining what those potentially broad terms are. Similarly, the definition of “Competitive Entity” in relation in limb (i) talks of business activities identical or similar to any of those engaged in by the company, which on the face of it is very broad; and it goes on to refer to many other categories of Competitive Entity that are also defined in extremely wide terms.
- 35 For the claimant, Mr Laddie says that the constructions proposed by the defendant are not realistic and that the relevant clauses must be construed in context and against the background, in accordance with the familiar principles on contractual interpretation. He

contends that construed against its background clause (a) of the definition of “Competitive Activity” - where it says “[Providing] similar services to the services provided by the Employee to any Group Company” - would and must be understood as meaning the specialist services provided by D1 in the context of the claimant’s business of trading using quantitative and analytically-derived and algorithmic methods. Provided it is interpreted in that way, which he says is reasonable and accords with common sense, he contends it should be upheld. In relation to the other clauses in the definition of “Competitive Activity”, (b) to (e), he says, in essence, that they do little more than amplify the meaning of (a); and in any event and if necessary they could be blue-pencilled out and the remainder and key part of the clause upheld. He makes similar points in relation to competitive entity, saying that limb (i) of that definition should again be restricted to entities engaged in the kinds of services to which I have earlier referred.

- 36 Once again on the face of it clause 19 does appear to me to be very wide in light of, especially, the definition of “Competitive Activities”. If item (a) in that definition is interpreted in the context of the other subclauses (b) to (e), as Mr de Silva invites me to do, the clause appears even wider in its effect because it extends to all kinds of activities which seem to go far beyond those kinds of narrow sorts of services to which Mr Laddie seeks to restrict it. But, once again, I do not think I can say that it is so clearly too wide that at this interim stage I should conclude that there can be no serious question to be tried on this matter.
- 37 It follows that on the three points of construction that I have been asked to address today, much as I see considerable force in the points made by both defendants in relation to all three, I do not think I can say the defendants reach the threshold of showing there is no serious question to be tried.
- 38 It is not contested that damages are not an adequate remedy for the claimant. Nor do I accept they are an adequate remedy for D1. While it is said the loss of earnings in the period until an expedited trial could be quantified, it will add to the period during which he cannot exercise his skills, which is already long as a result of the garden leave clause.
- 39 It appears that some of the roles which Mr Deaner suggests in his second witness statement that D1 could obtain are somewhat unrealistic, so the consequence of any injunction will be that the atrophy of his skills in this dynamic area will be exacerbated. There is also prejudice to D2, even though it appears that no injunctive relief is sought against it, because it too has undertaken steps to engage in setting up the team which D1 was going to lead, as Mr Vesecky describes in his witness statement.
- 40 I therefore turn to the balance of convenience and deal firstly with delay. Mr Laddie accepts delay is a legitimate factor to consider, but he says that it should be given limited weight in this context because the claimant made the application before D1 started to work for D2. He referred me to various cases on delay, including *Planon v Gilligan* [2022] IRLR 684 where it seems the defendant had already started work for his new employer before proceedings were issued, and the damage had already occurred before the interim hearing seven weeks later (Bean LJ at §114). By contrast, in *Boydell v NZP Ltd and another* [2023] EWCA Civ 373 delay was not a bar to relief where there was a short period during which the parties were in negotiations and the defendant had not yet started work for the new employer.
- 41 Mr Laddie also referred me to *Legends Live v Harrison* [2017] IRLR 59 in which the defendant was a Michael Jackson tribute performer who performed on the seafront in Blackpool. On 4 January 2016 Legends Live, the former employer or engager of Mr Harrison, learnt that he was going to act for a competitor, Kings and Queens of Rock, Pop



and Roll. There was then a period of negotiation between the parties to try and resolve their difficulties in January and February, which then led to the claimant's solicitors giving Mr Harrison an ultimatum on 18 March, shortly before his first performance under the new contract was due to begin on 25 March. Nothing happened until almost two months later when a letter was written on 20 May 2016 by the claimant's new solicitors and proceedings were issued on 9 June. The issue of delay arose.

- 42 Mr Laddie referred me to the principles on delay summarised by Edis J (as he then was) at §81, where he cited from a passage in **Spry on Equitable Remedies** and said there were two questions to be addressed in deciding whether or not to give equitable relief, including injunctive relief: first of all, whether there was unreasonable delay on the part of the plaintiff in commencing proceedings; and, secondly, whether in view of the nature and consequences of the delay it was unjust in all the circumstances to grant the relief that was sought. Applying those principles to the facts of that case, Edis J found that the delay up to March 2016, during which the parties were in active communications, would not have barred an injunction. But the delay after March 2016 was unreasonable, and in the absence of any explanation for that two-month pause it was unjust to grant the injunction.
- 43 Here the facts are stark in relation to delay. Firstly, in July 2022, as I have explained, the claimant knew that D1 was going to join the D2. Even if there were then some without prejudice discussions which explain some of the delay, it is clear that at that point in time the claimant was on notice that the D1 was going to leave and join a competitor. Secondly, on 17 November 2022 D1 wrote the letter to Mr Deaner which I have referred, saying he did not believe the non-compete clause in clause 19.1 was enforceable; that if the claimant had any queries, they should contact D2's general counsel, Mr Ellis; and that his intended start date with D2 was 3 April 2023. He said the first year with D2 would be spent writing software and not competing with the claimant. He also suggested a proposal to resolve the matter at the end of the letter by amending his Contract and asked the claimant to confirm if that was acceptable. After receiving that letter, the claimant did nothing at all until 6 March 2023. There is no explanation for that period of almost four months' delay and Mr Laddie conceded before me that it amounted to an unreasonable delay.
- 44 It seems to me there are two critical issues about the delay in that case. The first is that if an application had been made earlier, then in all likelihood an expedited trial could have been arranged before D1 started work for D2, so resolving definitively the issue between the parties about the enforceability of the clause without the need for any interim relief at all prior to D1's start date.
- 45 Secondly, as both Mr de Silva and Mr Solomon pointed out, there would then have been the possibility of arbitration between the parties because clause 23.5 of the Contract contained a provision by which if there was a dispute arising out of or in connection with the Contract, that matter "shall be referred to and finally resolved by arbitration under the London Court of International Arbitration Rules". That too would have been a means of resolving the matter, without the need to involve D2, perhaps at reduced cost and without the need for an interim relief hearing at all.
- 46 In addition, as I have already explained, D1 will suffer prejudice if he cannot start work as expected in April 2023 but is only able to start work after a hearing which, I am told, can take place in late June or early July 2023, causing further atrophy of his skills in the market. D2 will also suffer prejudice because it has gone ahead and recruited members of the team who may not be able to start work in the meantime; and, according to the evidence of Mr Vesecky, it seems that at least one of them was recruited in February 2023 and another had a

contract dated 31 March 2023 so steps may well have been taken to engage them before March 2023.

- 47 In all the circumstances, given the long period of what is conceded to be unreasonable delay, the absence of any explanation for it and the prejudice caused by the delay, I consider it is unjust to grant relief. I consider that delay in itself is a sufficient reason under the balance of convenience, and/or the general discretion that I have to grant an injunction, to refuse the application for interim relief at this stage. If necessary, I would also weigh in the balance the strength of the case because, in my judgement, the long duration and wide scope of the clause indicate that the defendants' arguments are stronger. That is a further factor that, if necessary, counts against granting the injunction in balance of convenience; but I consider the delay in and of itself is a sufficient reason for refusing interim relief.
- 48 For completeness, I should say something about the other matters relied upon by Mr Laddie. I do not accept the preservation of the *status quo* has much weight when set against the delay that has occurred in this case which leads to circumstances in which the *status quo* is about to change (because D2 is due to start work with D1). While it is correct that D1 may not have disclosed that he had obtained a post with D2 as soon as possible, in breach of the notification obligation in clause 19.5 of the Contract, he provides an explanation for that in his witness statement and, in any event, the claimant knew as early as July 2022 that he was going to begin working for D2.
- 49 It may also be correct that D1 entered into the contract with D2 with his eyes open, but during the period between November to March there was nothing to suggest to him that the claimant was going to take any action against him. None of these considerations affect my decision that the delay here is unreasonable and excessive and it would be unjust to grant interim relief now at this late stage. That an expedited trial can take place shortly, when the validity of the non-compete clause can be established based on evidence and full submissions, reinforces my decision that it is not just to grant interim relief for the intervening period.
- 50 In addition, as regards D2, Mr Solomon submits that there is no sufficient cause of action against them because at an early stage D2 received legal advice to the effect that the clause 19 was probably unenforceable: see Mr Ellis' witness statement at §§8-10. Mr Solomon says not only does that legal advice defeat knowledge but, he submits, it was correct. He referred me to *Allen v Dodd* [2020] IRLR 387. There, in the context of a claim for inducing breach of contract, the Court of Appeal, applying the judgment of the House of Lords in *OBG Limited v Allan* [2008] 1 AC 1, held that where the alleged inducer is in receipt of legal advice that it is more probable than not that a clause is unenforceable, that is sufficient to defeat a claim of inducement. The Court of Appeal held that people should be able to rely on legal advice for the purpose of the tort, even if that advice turns out to be wrong. Although the legal advice to D2 was short and not unequivocal, insofar as necessary I consider it shows there is no serious question to be tried as against D2, even though it is not actually clear if injunctive relief is sought against them.
- 51 In those circumstances, I do not need to address Mr Solomon's point about the width of the order sought because I will not be making an interim order.
- 52 However, I do not accept Mr de Silva's and Mr Solomon's argument that there should not be a speedy trial, on the basis that the claimant's delay made it unjust that it should now push in front of other court users. According to the D1's evidence, much of the work during the first year of his engagement with D2 will not in fact involve competing with the claimant or being involved in trading using quantitative analytics methods but will simply

involve developing software using general-purpose programming language used in many industries. The non-compete clause will not expire until 30 March 2024 and a speedy trial date is available, I was told, in late June or early July. The objective reason for expedition is to hear the claim promptly, early in the lifetime of the covenant and before much direct competition with the claimant has taken place: see *Petter v EMC Europe Limited* [2015] EWCA Civ 480. No prejudice to either defendant has been suggested, and the enforceability of clause 19.1 ought not to require extensive evidence. While the delay here is a factor counting against making the order, in all the circumstances I do not consider it is sufficient to outweigh the importance of resolving the enforceability of clause 19 before it becomes effectively redundant. In those circumstances, it seems to me there should be a speedy trial and so I will need to sort out the directions for that.

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**CERTIFICATE**

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This transcript has been approved by the Judge