

Case No: QB-2022-001459

[2024] EWHC 1341 (KB)

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand
London
WC2A 2LL

Date of hearing: 29 April 2024

Before:

MASTER DAVISON

Between:

STL GLOBAL GROUP HOLDINGS LIMITED

Claimant

- and -

MOUNT COOK LAND LIMITED

Defendant

MR JEFFREY GRUDER KC & MS NIAMH CLEARY
(instructed by **Stephenson Harwood LLP**) for the **Claimant**
MR JEREMY BRIER KC & MS SRI CARMICHAEL
(instructed by **Goodwin Proctor LLP**) for the **Defendant**

JUDGMENT

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MASTER DAVISON:

1. This is my judgment in a case called *STL Global Group Holdings Limited v Mount Cook Land Limited*. This is claim number QB-2022-001459.
2. This is the conclusion of the first formal CMC in this claim. There has, happily, been a large measure of agreement but certain aspects of case management, particularly disclosure, were in dispute. I will give my rulings on those aspects without further narrative or introduction.

A. Basis of Disclosure

3. Standard disclosure was the model proposed by both parties in their directions questionnaires. The defendant's letter of 22nd April of this year did not, in my view, propose issue-by-issue based disclosure, pursuant to CPR 31.5(7)(c). That rule was not indeed mentioned. I do not think that the letter can reasonably be said to bear that interpretation. I agree with Mr Brier that the letter identified issues with a view to guiding standard disclosure. Putting the same point slightly differently, I agree with the statement at paragraph 4 of Goodwin Proctor's letter of 18th April, which said: "Our letter dated 21st March 2024 identified seven issues for disclosure categorised by reference to the parties' statements of case. We did this to enable the parties and the court to understand the issues within the parties' respective statements of case in respect of which disclosure was required."
4. So I will order standard disclosure and I will approve the list of issues as a guide, with these qualifications which are applied to the contentious issues, that is to say issues 1, 3, and 6.
5. First of all issue 1. Taken in isolation, rather than in its broader context, I would agree that the relevance of the issue would seem doubtful, but the broader context -- that is to

say the terms on which intercompany loans operated and/or were understood -- is relevant. Further, the relevance of the broader context is accepted by the claimant in relation to the novation agreement. (See issue 5.) I would agree with the defendant that these two issues are related and there is some inconsistency in the claimant's approach to them. Further, the disclosure sought is relatively modest in scope, as the claimant's fallback position, set out in paragraph 33.1 of its skeleton, impliedly acknowledges.

6. I turn then to issue 3. The claimant has offered or conceded disclosure by the parties of the registers of directors of Mount Cook, Mount Eden and Mount Fuji, and Koros. To the extent that the ultimate beneficial ownership of Koros and the claimant, SGGH, is in issue on the pleadings, the relevance of that was said by Mr Brier in his submissions to be: "It is what enabled the soft loans, transfers and intercompany relationships and transactions". But, if the evidence demonstrates the practices to which Mr Brier referred, what enabled those would be of no direct relevance. If it is or were to become relevant, I think it can very readily be inferred from the existing material that the ultimate beneficial owner and controller of Koros, and now SGGH, is Mr ST Lee. If an issue were ever raised, in the sense of a positive case contesting that, then I would revisit issue 3. So, in conclusion, beyond what has already been offered, I will not, on present material, approve issue 3 or the documents proposed by the defendant as disclosable.
7. I turn then to issue 6. This is an issue on the pleadings. I do not agree that Mr ST Lee's testamentary intentions and discussions regarding them cease to be of relevance -- or to use Mr Gruder's phrase were "burnt off" -- by time of the alleged agreement or representations made in 2015. The pleaded allegation, albeit only surfacing clearly on re-amendment, is that that agreement brought forward the scheme of testamentary arrangements which had been extensively discussed. Plainly the defendant will be giving such disclosure as it is able to on these matters.

8. I would therefore approve the issue, but I note that the claimant is very unlikely to have any documents in the categories sought within its control. Therefore including this issue imposes really no burden on the claimant at all. This will, as it presently seems to me be a matter for non-party disclosure applications, the merits of which will have to be assessed, if and when made. Another way of expressing my ruling on this is to say that if I were to remove the issue from consideration I would be pre-judging those applications, which is something, it seems to me, I should not do.

B. Custodians

9. Although it took up more time than other issues at the hearing, I can deal with this very shortly, because the dispute was really only about one custodian. That is to say, LEM.
10. Essentially I agree with Ms Cleary's submissions and disagree with Mr Brier's. The defendant has not come even close to making out by specific and compelling evidence its submissions that the documents held by LEM and Messrs Hardie, Pugh, Ellahi and Robinson, but particularly Mr Hardie when he was wearing his LEM hat, are within the claimant's practical control. Even if I had found that, I do not think it would follow that the claimant could call for documents held by LEM and the relevant individuals on behalf of other entities. But I do not need to decide that. The claimant's obligations extend only to relevant documents held by LEM and the others on behalf of the claimant. That arises out of, and only out of, the contractual relationship between them.
11. As to documents held by Mr ST Lee, these are not within the claimant's control and must be a matter for request by the defendant and/or non-party disclosure applications. This point was essentially conceded by Mr Brier.

C. Date Range

12. Again, I can deal with this shortly. The defendant proposed a date range commencing in 1998. That is to say 26 years ago. That is clearly too long. Indeed, extravagantly so. A reasonable date range would commence in 2012, which is the date from which the Mount Cook share transfer was mooted by Sam Li. (See paragraph 12U of the re-amended defence.)
13. For emails and correspondence, the date range for the claimant must commence on 13th March 2019, the claimant's date of incorporation. At the risk of stating the obvious, before that date it can neither have sent nor received emails. To the extent, if any, that upon or after incorporation the claimant became the repository or custodian of existing documents, including Koros documents, then the date range should commence in 2012.
14. I add that, in my view, the claimant should give a clear answer to the question, "What has become of the Koros documents?" I do not find it credible that the claimant does not know or -- to use the slightly careful wording that the claimant has adopted -- cannot confirm where they are currently held.

Other Issues

15. Various other issues were ventilated or flagged during the course of the hearing. I hope I am right in saying that none of them require any decision from me, so I say no more about them.

(End of judgment)

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