Case No: CH-2016-000106

Neutral Citation Number: [2016] EWHC 3844 (ch)
IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

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

Friday, 21 October 2016

BEFORE:

MR D FOXTON QC
(Sitting as a Deputy Judge of the High Court)

BETWEEN:

CORAL REEF LTD

Claimant

- and -

SILVERBOARD ENTERPRISES LTD AND ANR

Defendants

MR R TAGER QC and MR H WEBB (instructed by Macfarlanes LLP) appeared on behalf of the Claimant
MR HAIG(?) and MR A COOK (instructed by Candey Ltd) appeared on behalf of the Defendants

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JUDGMENT
(As Approved)

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1. THE DEPUTY JUDGE: This is an appeal brought before me today with permission of Birss J against certain orders of Master Matthews made in the context of an application for security of costs.

2. First, there was an order made on 20 April refusing the claimant permission to adduce evidence of its assets and those of its shareholders. Second, , there is an appeal against an order of the same date that the claimant should give security for the first and second defendants' costs in principle and against a further order of 6 May which fixed the amount of that security at £938,000 and set stages for the provision of security.

3. The principal basis of the appeal is that at the conclusion of the hearing on 20 April, Coral sought permission to file evidence as to its assets and those of its beneficial shareholders so as to enable it to resist an order for security on the grounds that such an order would stifle its claim. That application for permission was refused and the Master's decision to refuse it is challenged on two grounds.

4. First, it is said that Coral was entitled to proceed for the purposes for the security for costs hearing on the basis that the Master was bound by the decision in the Commercial Court of Andrew Smith J in a case called *Sarpd Oil International v Addax Energy* on which basis Coral submits, it was reasonable for it not to serve any evidence as to its financial condition or that of its shareholders for the purposes of the hearing on 20 April.

5. Secondly, it said that in any event, the Master's refusal to allow the filing of further evidence was disproportionate and contrary to the overriding objective. It should be noted that the grounds of appeal effectively attacked the Master's exercise of a discretion. Paragraph 38 of Mr Tager's acknowledges this, and that as a result, what must be shown for this part of the appeal to succeed is that the Master erred in law; for example, taking into account irrelevant considerations or failing to take account of relevant ones, or that the exercise of his discretion fell outside the area in which reasonable disagreement as to its exercise is possible.

6. Coral is registered in Hong Kong and is not obliged by the legislation there to file financial statements. It was first invited to provide security for costs on 14 December last year and it was also asked to provide information as to its finances and status. It declined both invitations and on 22 January this year, the Defendants applied for security for costs on the basis that Coral was resident outside a Convention state and on the basis that there was reason to believe that Coral would be unable to pay the Defendant's costs if ordered to do so. CPR Rule 25.132)(c) provides that this is one of the conditions for an order foe security for costs, and I am going to refer to that second ground, as "condition (c)".

7. Coral's then solicitor, because it was not represented by McFaddens at that stage, stated that Coral would be providing evidence to show that security was not necessary and informed the Defendants' solicitors that, "Coral Reef is financially capable and this obviously needs to be proved to you". It was suggested that Coral would provide that evidence as soon as possible.

8. Coral suggested it was able to meet a costs order because it had assets, being a property in Costa Rica, which was said to be its main asset. The suggestion that Coral had assets in a Costa Rican property was later supplemented by a suggestion that Coral also held precious stones, its solicitor stating at a hearing before the Master in February that its business was one of buying and selling precious stones.

9. At the directions hearing on 3 February to which I have just referred, Coral asked for more time to obtain valuation reports for the Costa Rica property. The Master ordered Coral to confirm in writing what its position was in relation to the security application, including whether it opposed the application and, if so, on what grounds.

10. The response was a letter from McFaddens, who had very recently taken over the conduct of the case on Coral's behalf. That letter indicated readiness to provide security for costs in respect of the additional costs of enforcing any judgment in Hong Kong, but denied that condition (c) was made out. It offered no information as to the financial position of Coral or its shareholders and corrected the assertion previously made that Coral owned precious stones (suggesting that these were owned by a different company). Finally, it made observations as to the quantum of security sought which it said was inflated.

11. I would note that the statement that the precious stones were owned by another company and not Coral was made against the background of Coral's previous solicitor having said that Coral's business was to buy and sell gemstones.

12. At this point, I should introduce an important feature of the background to the application, namely the decision of Andrew Smith J in *Sarpd Oil International v Addax Energy* [2015] EWHC 2426 (Comm), handed down on 14 August 2015. That case involved an application for security of costs against a BVI company and security being sought on the basis of condition (c). The claimant had said nothing about its financial position, and under BVI legislation there were no public records to which access could be had to ascertain what its financial position was.

13. Andrew Smith J held in the case before him that condition (c) was not made out. He accepted that it was possible that in cases where a company refused to provide financial information about its accounts when such information was not publicly available, a practice might have developed in the Commercial Court of ordering it to provide security. He held that if so, he felt that that practice was not justified and he declined to follow it.

14. The hearing in this case was listed before Master Matthews on 4 March. Skeleton arguments were exchanged the day before. Mr Tager QC for Coral took his stance in the skeleton argument on the basis that it was for the Defendants to prove condition (c) was satisfied and, on the evidence, he submitted they were unable to do so. He relied for this purpose on the judgment of Andrew Smith J; however presumably to allow for the possibility that this threshold objection to security might fail, the skeleton argument also made submissions on the quantum and timing of security.

15. On the very day that skeletons were exchanged, the Court of Appeal handed down judgment overruling the decision of Andrew Smith J in the *Sarpd* case. The Court of Appeal's judgment is reported at [2016] EWCA Civ 120. The Court noted that there was existing authority to which Andrew Smith J was not referred which was consistent with the practice to which the judge had referred but which he had held was not justified. The Court reviewed those authorities and held that deliberate reticence about a company's financial position was something a court was entitled to take into account when determining to the relevant standard whether condition (c) was made out. The practice of the Commercial Court to which the judge had referred was described as a sound one which the Court upheld.

16. Mr Tager only became aware of the Court of Appeal judgment at 8.00 am on 4 March. At the hearing, he submitted that had the Court of Appeal decision been handed down the previous week, he would have been presenting a very difficult argument to that which he was now presenting. Coral did not seek an adjournment in order to adduce whatever further evidence would have reflected that very different argument. The argument Coral ran was that the Master could not draw any inference from its failure to provide information because until the morning of 4 March, that decision was perfectly explicable by its reliance on Andrew Smith J's judgment.

17. That, with respect, was a very clever argument and sought to give Coral the benefit of the approach adopted by Andrew Smith J, since overturned by the Court of Appeal. If it had succeeded, it would have enabled Coral to resist security for costs without having to provide the financial information which few claimants or their investors are keen to provide.

18. However, in a case involving a dispute about the ownership of a casino, it is not unfair to note that in return for that possible upside, it carried an obvious downside as against the alternative course of asking for an adjournment so that Coral could serve the evidence which the Court of Appeal had now held was necessary.

19. That downside was that if the argument failed, Coral would not have the material available to it to answer the Defendants' case that the court should conclude condition (c) was met, or otherwise to resist an order for security by reference to the Claimant's financial position.

20. The Master did raise the possibility of an adjournment with Mr Tager, and Mr Tager made it clear he was not asking for one. He recognised that had an adjournment been sought and obtained for a sufficient time, it would no longer have been open to his client to rely on its silence to date as to its financial position as having been explained away by reasonable reliance on Andrew Smith J's decision.

21. It is right to acknowledge, in fairness to Mr Tager, that he expressly acknowledged this forensic issue and the disadvantage of an adjournment from that perspective in the course of his argument. Mr Haig(?) QC for the defendants also confirmed he was not seeking an adjournment.

22. Before the Master, there was a discussion as to whether the Master would have been obliged to follow Andrew Smith J's decision even if he had thought it wrong. That issue loomed large at a subsequent to the hearing before Master Matthews and it has loomed large on this appeal. The Master allowed the parties to put in further authorities and submissions on this question. Those submissions were served on 11th and 14th March, and the Master's judgment was handed down on 20th April, having been circulated in draft at midday on 18th April.

23. The Master rejected the inference for which Mr Tager contended, he said because it was clear from Andrew Smith J's judgment that other judges had regarded the refusal to provide financial information as a relevant factor in determining whether condition (c) was satisfied, with the result that there would on any view be doubt as to whether the judge hearing the application would have followed Andrew Smith J's approach.

24. As the Master put it, in taking its stand on that judgment, Coral was taking an obvious and significant risk. It seems to me that description is equally true of the decision taken not to seek an adjournment once the Court of Appeal decision was known. But in each case, the risk carried with it the possibility of a significant forensic benefit in avoiding providing financial information of a kind which most claimants are keen to avoid providing if the arguments had succeeded.

25. The Master compared the position as it would have been between an application coming before a judge and an application coming before a Master. He reviewed the authorities on this issue and concluded that a Master is not automatically bound to follow a decision of a High Court judge, but is expected to do so unless convinced that the decision is wrong.

26. In all these circumstances, he rejected Mr Tager's argument that no inference could be drawn from the deliberate refusal to provide financial information and said his conclusion on the issue of precedent had reinforced that view. Having reviewed all the evidence, he concluded that it was appropriate to draw such an inference in that case.

27. In this connection, he also attached significance to the fact that Coral had initially indicated that it owned a Costa Rican property but refused to say more, initially made a statement about ownership of gemstones which was later withdrawn, and he described those as matters exciting suspicion. He summarised all the matters to which he had had regard in drawing the inference at paragraph 56.

28. At the hearing in which the judgment was handed down, Coral asked for permission to file evidence in relation to its assets and those of its beneficial shareholders for the purpose of contending that no order for security should be made at all. The Master refused that application.

29. It is relevant to note that the principal thrust of this appeal has been to seek to attack that refusal to allow further evidence, not the Master's decision as to the inference to be drawn from Coral's failure to provide information on its financial position. One can well see why, for it is now clear that the inference the Master drew was factually correct and that condition (c) was amply satisfied.

30. Paragraph 1 of Mr Tager's skeleton argument in the appeal thus states:

> "The appellant seeks permission to appeal against a decision of Master Matthews on 20 April refusing permission for the appellant to file evidence as to its assets and those of its shareholders."

31. In my view, this appeal against the Master's order cannot succeed whether analysed as an issue of what inference could be drawn on 4 March, or as a challenge to whether further evidence should have been allowed on 20 April. In reaching that decision, it is not necessary to resolve the issue of whether a master is bound by the decision of a High Court judge.

32. I say that for a number of reasons. First, the issue which the Master had to decide was whether he could draw an inference from the material before him that condition (c) was satisfied. Relying on the factors he identified at paragraph 56 of his judgment, he held that he could. As the Master made clear in refusing permission to appeal, the result of the case would have been the same even if he had decided the issue on the doctrine of precedent in Coral's favour.

33. The Master was correct in those reasons to say that the refusal to provide information was not the only matter he had relied upon, and he was also correct to say that the refusal to provide information in this case was, on the facts, a matter capable of giving rise to an inference, even if as a matter of general principle a master is bound by the decision of a High Court judge on matters of law.

34. I say that because of the nature of Andrew Smith J's decision. That was a decision on the ability to draw an inference from facts before the judge. A decision of that nature is inevitably fact-dependent and it would be open to a master hearing an application to distinguish the decision on the facts. If regard is had to paragraph 11 of Andrew Smith J's judgment, the ratio of his decision is at best not that a refusal by a claimant to provide information can never be relied upon to draw an inference that condition (c) is satisfied, but a decision in that case that it could not be relied upon in circumstances where there was another obvious explanation for the claimant's reticence; namely not to damage its settlement posture in a case where the total cost in the litigation exceeded the amount claimed.

35. Whatever the correct formulation of the rule of precedent, it would have been open to any master hearing the application in this case to conclude that the other obvious explanation referred to by Andrew Smith J in that case did not apply here, and also to say that the further matters on which the Master in any event relied at paragraph 56 of his judgment themselves provided a ground of distinction.

36. Second, it is clear from Andrew Smith J's judgment and from other reported judgments that there were other judges who did not share his view, albeit those reported decisions have not been cited to Andrew Smith J. I have been referred by Mr Cook to one of those cases, a decision of Auld LJ in *Mbasogo & Anr v Logo & Ors [*2006] EWCA Civ

608, and which as a decision of the Court of Appeal would have provided the master with grounds for not following Andrew Smith J in any event.

37. Third, there was a possibility that another first instance judge or a higher court might reach a different conclusion in the period before the application was heard, and the possibility that any decision by the master on the application might itself be appealed to a High Court judge who would not then be bound by the decision of Andrew Smith J.

38. Fourth, even if there had been a ratio in Andrew Smith J's judgment which could not be distinguished, the issue of whether the decision of a High Court judge bound a master was on any view not subject to direct authority, something Coral themselves relied upon when seeking and obtaining permission to appeal.

39. In those circumstances, any party taking its stance on the basis of Andrew Smith J's judgment must or ought to have been aware that it was running a significant risk that failure to serve evidence might still count against them, albeit a risk they might well have been prepared to run rather than serving the evidence.

40. It is also significant that once the Court of Appeal judgment had been handed down, it was open to Coral to seek an adjournment. This they chose not to do for tactical reasons, but that decision carried with it the risks I have already identified. The inference argument having failed, the Master was fully entitled to conclude that Coral should not be allowed to put in evidence once the outcome was known. I cannot put it better than the way the Master put it himself when refusing permission to appeal:

> "The claimant and the claimant's legal team deliberately chose at the last hearing not to ask for an adjournment to put in evidence, then they must I think live with the consequences of that."

41. There are three further arguments I shall address. First, it is said that the 4 March hearing was directed at the issue of whether the threshold conditions for security were met and that the Master's refusal to allow Coral to file further evidence was particularly disproportionate in circumstances in which there is to be a further hearing on quantum in any event. This point too is without merit, and the hearing of 4 March was clearly intended to resolve all the issues concerning security for costs, including quantum, and all the issues in play were covered by witness statements and skeleton arguments.

42. As I have indicated, Coral ran other arguments which would only arise if its primary case that condition (c) was not satisfied failed; namely an argument as to the amount of security and the timing. In the event, there was not sufficient time to address the quantum issues and the Master proceeded to issue his ruling on the other issues. But the fact that there did in the event prove to be a second hearing on quantum provides no basis for allowing Coral to serve additional purpose evidence for the purpose of challenging the decision on whether security should be ordered at all.

43. Secondly, it is said that the Master failed sufficiently to take into account the consequences for Coral if it was not able to pursue this claim. However, there was no evidence before the Master or me as to what those consequences would be. On the contrary, I have before me the third witness statement of Mr Eppel which suggested it will be possible to provide security for costs in the form of ATE insurance, albeit more time might be necessary to allow this to be put into place. It seems to me that the issue of whether more time should be allowed, if any, and if so how much, is a matter which will fall to be determined as one of the consequential matters from this judgment.

44. Finally, it was suggested by reference to the decision of the Supreme Court in *Re L* that it is significant that the court's order had not been drawn up here. However, this is not a case in which the Master had changed his mind on the evidence he had heard in relation to an issue he had been asked to decide. I do not accept that the issues of exercise of discretion raised by this case, namely whether the claimant should get a second bite at the cherry as to argue in effect something that was the diametric opposite of the position it had previously taken, could depend on the happenstance of the point of time at which the order was drawn up.

45. For those reasons, I do not believe that the Master is to be criticised for his decision not to allow Coral to file further evidence. Certainly it does not fall outside the range of reasonable options open to him. As I have indicated, in those circumstances it is not strictly necessary for me to determine the issue of precedent on which the Master ruled. But the point having been argued, I will set out my conclusion on it in brief terms.

46. There are a number of uncontroversial principles which I can briefly summarise. First, all courts below the Supreme Court are bound by its decisions and all courts below the Court of Appeal are bound by the Court of Appeal's decisions. If authority is needed for such obvious statements, it can be found summarised in Halsbury's Laws, Vol 11 2015 at paragraphs 29 to 30.

47. Second, a High Court judge is not bound by decisions of other High Court judges. The modern practice is that such a judge should follow such a judgment unless convinced it is wrong. By way of example, in *Lornamead Acquisitions Ltd v Kaupthing Bank HF* [2011] EWHC 2611 (Comm) at 53, Gloster J cited a passage from Halsbury's Laws to that effect and proceeded to apply that principle.

48. Third, for the purpose of this second rule, a divisional court sitting with two High Court judges has the same status as a High Court judge sitting alone, because in each case the courts are simply a court constituted for the purpose of transacting the business of the High Court as performed by High Court judges (*Regina v Greater Manchester Coroner ex parte Tal* [1985] QB 67 at 82-81).

49. And finally, decisions of High Court judges are binding on county court judges (*Howard De Walden Estates Ltd & Anr v Les Aggio & Ors [*2007] EWCA Civ 499.

50. I should say a little more about this last case. A point of law arose in that appeal which had previously been determined by a deputy judge of the High Court in another case. The same issue of law then arose in the county court, and the county court judge held

he was not bound by the deputy High Court judge's decision as a matter of precedent, but rather that it was subject to the rule of practice which operated between judges of coordinate jurisdiction.

51. The Court of Appeal received submissions on that issue and gave judgment on it in a note attached to their principal judgment. The terms in which the court framed that issue at paragraph 87 are of interest. The question is whether a judge sitting at first instance in the county court is bound by a decision of a judge sitting in the High Court when that decision has not been given on an appeal to the High Court, but by a High Court judge exercising a first instance jurisdiction that has been conferred by statute on both the High Court and the county court.

52. I take it from that formulation that the court regard it as clear that a decision of the High Court when exercising its appellate jurisdiction from the county court would be binding on a county court judge. The Court of Appeal held that decisions of the High Court were equally binding on the county court when the two courts were exercising the same first instance jurisdiction. The court stated at paragraph 19:

> "The relationship between the High Court and the county court is that of superior and inferior court and decisions of the former, whether made on appeal or at first instance, are binding on the latter."

53. As I have indicated, none of these principles are in dispute, but none of them directly address the position as between judgments given within the same court by judicial office holders holding superior and subordinate positions within that court. That is to say, the authorities do not address the effect of decisions of High Court judges on masters or district judges of the High Court.

54. That issue has so far, as the researches of counsel in this case have revealed, only been addressed before by a decision of Deputy Master Moraes in *Randall v Randall* [2014] EWHC 314 (Ch) which held that the relationship between decisions of High Court judges and masters was governed by the rule of practice operating between judges of coordinate jurisdiction rather than by the doctrine of precedent.

55. In a carefully researched and reasoned judgment, Master Matthews concluded in effect that the doctrine of precedent could only operate as between different courts, superior and subordinate courts, rather than between judicial officers within the same court. He concluded that the relationship between the judgments of High Court judges and judgments of masters is governed by the rule of practice and not the doctrine of precedent.

56. In reaching his decision, he concluded that the authorities, including *Howard De Walden*, placed emphasis on the hierarchy of courts rather than the hierarchy of judges in determining when the doctrine of precedent as opposed to the rule of practice operated. He noted that decisions of deputy High Court judges, Court of Appeal judges

sitting at first instance and High Court judges were all treated as judgments of judges of coordinate jurisdiction to which the rule of practice applied.

57. He noted the very significant changes which have been effected to the role in jurisdiction of masters as judicial officers of the High Court. Finally, he noted that very often masters would be specialists in particular fields and also have extensive experience of procedural issues such that it was not easy to see why their decision should be treated as any less valuable than those of High Court judges, circuit judges or deputy judges.

58. It is certainly the case that judgments of masters will very often provide a valuable analysis of issues of law. The judgment of Master Matthews in this case is just such an example. In my own experience, judgments of masters are now sometimes cited on particular issues and are likely to have particular weight when the master is a specialist in the relevant area. But that in itself does not answer the issue of how the doctrine of precedent is to be applied.

59. It would be invidious if the formal status of a decision as a matter of precedent as opposed to its persuasive effect depended on **ad hominem** considerations of this nature. It is in the nature of a doctrine of precedent that it should provide clear guidance as to which decisions are binding on which judges to promote legal certainty and the efficient conduct of court proceedings.

60. I mention the master had referred to the decision of a deputy master in *Randall v Randall* which had reached the same conclusion as Master Matthews for broadly the same reasons. The substantive issue considered in that case was ruled upon by the Court of Appeal in May this year (2016 EWCA Civ 494). The Court of Appeal did not refer to the issue of precedent which had been raised before the master, and in those circumstances I do not believe I can derive any assistance from the Court of Appeal's judgment on this issue.

61. Notwithstanding Mr Cook's spirited argument to the contrary, I have concluded that the fact that a High Court judge and a master sit in the same court, namely the High Court, is not determinative of the question of whether the doctrine of precedent applies as between them. In this regard, it seems to be highly significant that the High Court judge exercises appellate jurisdiction over the decisions of a master (see CPR 52A PD and CPR 52B PD). Such an appeal can be brought with the permission of a master or the High Court judge in circumstances in which a High Court judge may make a finding on an issue of law when exercising an appellate jurisdiction over a master. It seems to me very difficult to argue that such a decision would not have precedential effect if the same issue came before that or a different master on a future occasion.

62. I referred above to the fact that the Court of Appeal in *Howard De Walden* regarded the position of a decision of a High Court judge in the exercise of appellate jurisdiction over the county court as clear. If that conclusion is right, it seems to me that on the basis of *Howard De Walden* that it would not be appropriate to distinguish between decisions of High Court judges when exercising an appellate jurisdiction and those reached when exercising a first instance decision.

63. That does not lead to the conclusion that the status of the individual judge, namely the office to which he is appointed, determines the operation of the doctrine such that the decision of a Court of Appeal judge sitting at first instance would be treated as a decision of the Court of Appeal. What matters in this regard is the judicial function which has been discharged when the relevant judgment is given, not the particular office to which the person discharging that function has been appointed.

64. I am fortified in this conclusion by a number of consequences which would follow if decisions of a High Court judge and of a master were treated as decisions of coordinate jurisdiction to which the rule of practice rather than the doctrine of precedent applied. First, it would mean that a High Court judge would as a rule of practice be required to follow a decision of a master or a district judge unless convinced it was wrong. Second, it would mean that decisions of High Court masters or High Court district judges would be binding on county court judges as a matter of precedent. This would be so even those in district registries where the individuals acting as district judges of the High Court will often sit on other occasions as district judges in the county court, in which capacity they would be subject to the appellate review of the county court judge.

65. It would also mean, as Mr Tager pointed out, that a judicial officer exercising the powers of the Court of Appeal in relation to issues such as security for costs would be able to reach determinations on issues of law which would have the same precedential status as that of a single Court of Appeal judge.

66. Mr Tager also relied upon the fact that decisions of masters are not as readily available as decisions of the High Court judges. I would not regard that consideration as determinative. The doctrine of precedent, it seems to me, must operate regardless of whether the decisions of a particular court are readily available or not, and its scope cannot be altered by changing practice in the distribution of judicial decisions over time.

67. For all those reasons, therefore, I would have concluded that the decision of a High Court judge in terms of its clear ratio is binding on a master, absent either conflicting decisions of another judge at the same level of the High Court judge, or obviously of superior courts.

68. However, that is not a conclusion which would have assisted Coral.

69. The decision of Andrew Smith J did not contain a clear ratio which was necessarily determinative in this case, and in any event was not consistent with other authorities, including one decision of a single Lord Justice in the Court of Appeal. In those circumstances, the appeal is dismissed.

(Proceedings continued)

70. I have dismissed the application brought by way of appeal on behalf of Coral and it now falls to me to assess the costs recoverable by the defendants. It is agreed that insofar as the first Defendant is concerned, any costs order in respect of VAT recovery

will need to be subject to the production of a certificate in the form required by paragraph 2.5 of the practice direction to part 44.

71. There are a number of issues taken in relation to the amount of the costs. First, Mr Tager says he has succeeded in relation to the question of the doctrine of precedent which arose, and although that has not been sufficient for him to win the appeal, it is a point on which time was spent both in skeletons, preparations and argument. Mr Cook makes it clear that this was always very much a fall-back argument for his client, who succeeded on the overriding argument they made that it did not matter how that point fell to be resolved, the appeal should be dismissed in any event.

72. Nonetheless, I feel that it is appropriate to make some discount for the fact that the point was argued and not prevailed upon. It would have been open to the Defendants to take their stance on their first point and to indicate they were prepared to accept the second for the purposes of argument, but they did not. I do not believe a discount should be as large as that put forward by Mr Tager (I will revert to that appropriate figure in a moment).

73. Secondly, a point is taken in relation to the fact that some costs recovery will involve a duplication because of the change of solicitors. I have to say that in my experience, when a new firm of solicitors, or indeed new counsel, come into a case, there is inevitably a process of duplication as they get up to speed which would not have been necessary had those originally instructed remained in the case. They are entirely reasonable costs for the replacement solicitor to charge, but it is not appropriate that they be recovered from the other party.

74. I am going to do my best to arrive at an appropriate figure. I cannot go through each individual item and work out how far there was duplication, but inevitably it seems to me there will be some significant duplication when the legal representation changes.

75. Thirdly, there was a complaint about the seniority of the fee earners and some of the time spent. It seems to me that that complaint is without foundation. The claimant itself used two senior fee earners, Mr Timothy Eppel and Mr Max Eppel, both grade A, for all of the work. It does seem to me that given the importance of this matter, the defendants were entitled to some senior fee earner involvement, and I note the Defendants used fee earners at a number of different grades for different exercises.

76. Taking all those matters into account, before getting to the issue of what discount is appropriate for the fact that the precedent issue was lost, I start off with an approximate figure net of VAT which the defendants are seeking to recover of about £45,000. I reduce that figure to £40,000 to reflect the effect of duplication arising from the change of solicitorsI am going to award 80 per cent of that figure to reflect the lack of success on the precedent issue. That produces a total figure of £32,000 plus VAT, VAT being conditional upon the production of the certificate.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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This transcript has been approved by the Judge