Neutral Citation Number: [2021] EWHC 1728 (Comm)

Case No: CL-2017-000373

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice,
Rolls Building
Fetter Lane,
London, EC4A 1NL

Date: 25/06/2021

Before :

Peter MacDonald Eggers QC
(sitting as a Deputy Judge of the High Court)

- -

Between :

ARAB LAWYERS NETWORK COMPANY LIMITED	**Claimant**
- and -	
THOMSON REUTERS (PROFESSIONAL) UK LIMITED	**Defendant**

- -
- -

Saaman Pourghadiri (instructed by **Rosenblatt Limited**) for the **Claimants**
John Robb (instructed by **Eversheds Sutherland (International) LLP**) for the **Defendants**

Hearing date: 13th May 2021

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Approved Judgment

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 25 June 2021 at 10:30 am.

Peter MacDonald Eggers QC :

Introduction

1. The Defendant ("TR") applies for summary judgment under CPR rule 24.2 against the Claimant ("ALN") dismissing the whole of ALN's claims on the grounds that ALN has no real prospect of succeeding on the claims, because the claims are time-barred and there is no other compelling reason why the claims should be disposed of at a trial.

2. ALN has made two principal claims against TR in these proceedings, both claims under a Memorandum of Agreement dated 2nd February 2011 between ALN and TR ("the MOA"). The contractual time bar or limitation provision in the MOA is clause 14.2 which requires any claim or action based on the claim to be brought within one year after the basis for the claim became known to the claimant. The MOA was terminated on 1st February 2015.

3. The two contractual claims made by ALN against TR are (1) the claim for the non-payment of the "*Agreed Royalty*" pursuant to clause 3.1 of the MOA in respect of TR's exploitation of material ("the Supplier Publications") provided by ALN before the termination of the MOA ("the Agreed Royalty Claim") and (2) the claim for the continued use of the Supplier Publications after the termination of the MOA pursuant to clause 15.1 of the MOA ("the Continued Use Claim": I have chosen this label instead of that suggested by TR - the "Non-Deletion Claims").

The MOA

4. ALN is a Saudi Arabian company, which carries on business as a supplier of legal resources. It uses the trading names "Mohamoon.net" and "Mohamoon.com". TR is an English company, carrying on the business as a publisher and supplier of legal and other resources online and in print.

5. On 2nd February 2011, ALN entered into the MOA with TR. The MOA had a three-year term, but it was to renew automatically unless notice was received in accordance with clause 15.1 of the MOA.

6. Under the MOA, ALN undertook to provide certain Supplier Publications to TR, and licensed TR to publish and grant access to them as part of Thomson Reuters Legal Services. The Supplier Publications were listed in Exhibit A (at times incorrectly referred to as Exhibit 1) to the MOA. The Supplier Publications included:

   (1) The Bahraini Legislation Encyclopaedia.

   (2) The Kuwaiti Legislation Encyclopaedia.

   (3) The Qatari Legislation Encyclopaedia.

   (4) The Saudi Legislation Encyclopaedia.

   (5) The United Arab Emirates Legislation Encyclopaedia.

7. By clause 2 of the MOA, ALN granted TR an exclusive, worldwide licence to publish the Supplier Publications (in whatever file format TR shall in its sole discretion decide) as a part of the Thomson Reuters Legal Services, to provide CALR Services Customers with access to and use of the Supplier Publications, and to use, reproduce and distribute portions of the Supplier Publications to Delivery Services Customers.

8. All of the rights granted by ALN were to lapse on the termination of the MOA.

9. The MOA contained the following provisions (TR is referred to as "*TRLL*" and ALN is referred to as "*Supplier*"):

"***3. ROYALTY AND RELATED PROVISIONS***

3.1 Subject to the provisions of paragraph 3.5 below, during the continuance of this Agreement, TRLL shall pay SUPPLIER an "Agreed Royalty" for each of the SUPPLIER Publications as specified in Exhibit A.

3.2 The Agreed Royalty shall be applied to the actual amounts received by TRLL in respect of the proceeds of exploitation of the SUPPLIER Publications in the Thomson Reuters Legal Services; and the royalty payable shall be that proportion of the Agreed Royalty which TRLL assesses (acting reasonably) to be the proportion which the SUPPLIER Publications represents of the relevant Thomson Reuters Legal Services.

3.3 All royalties payable hereunder shall be accrued for quarterly periods ending on March 31, June 30, September 30, and December 31 of each year and shall be paid by TRLL to SUPPLIER within 60 days after the end of each such quarterly period, subject to receipt by TRLL of a valid invoice therefore.

3.4 This Agreed Royalty covers all use of the SUPPLIER Publications in Thomson Reuters Legal Services.

3.5 The Agreed Royally shall not be payable in respect of the use of the SUPPLIER Publications in Thomson Reuters Legal Services unless and until complete and accurate data in the SUPPLIER Publications has been supplied in a reasonably acceptable form to TRLL. TRLL will have to object on the content within 60 days from content delivery on quality of the content. or otherwise it will be considered complete and accurate …

3.7 Any sums due to be paid by TRLL under or pursuant to this Agreement which are not paid on their due date will bear interest (as well after as before the date of any judgment) at the rate of 3% above the base sterling lending rate from time to time of National Westminster Bank Plc in London, compounded monthly, but without prejudice to any other rights or remedies SUPPLIER may have …

5. INCLUSION OF SUPPLIER PUBLICATIONS ON THOMSON REUTERS LEGAL SERVICES

5.1 ***TRLL's Obligations****. TRLL shall be responsible at its own cost for developing (or shall be responsible for procuring, at its own cost, the*

developing of) the Thomson Reuters Legal Services Display Formats for the SUPPLIER Publications and loading and storing the SUPPLIER Publications as part of the Thomson Reuters Legal Services. Subject to clause 5.4, TRLL shall load (or shall procure the loading of) the SUPPLIER Publications into the Thomson Reuters Legal Services as soon as reasonably possible after receipt thereof. As used herein "Display Formats" means the appearance of the SUPPLIER Publications as displayed online, the organisation of the SUPPLIER Publications internally and as displayed online, and the manner in which the SUPPLIER Publications are presented, such as in a separate database, in combination with other databases in "multibases" and the like.

6. ADVERTISING, MARKETING AND PROMOTION

6.1 TRLL shall be responsible at its own cost and expense for its own advertising (or may procure the advertising of) the fact that the SUPPLIER Publications are available on or through Thomson Reuters Legal Services and for marketing and promoting the use of those materials to and by TRLG Customers …

7. TRAINING AND TRAINING MATERIALS

TRLL shall be solely responsible at its own cost and expense for training (or may procure the training of) TRLG Customers in the use of the SUPPLIER Publications on or through TRLG Services and for developing and distributing such training materials as it reasonably believes are necessary or useful to enable TRLG Customers to use the SUPPLIER Publications on Thomson Reuters Legal Services …

10. CONFIDENTIALITY

*10.1 **Confidentiality Obligations**. During the term of this Agreement and thereafter, except as specifically provided herein and/or to the extent reasonably necessary to perform its obligations or exercise or enforce its rights hereunder, neither party shall provide or disclose to any third party (other than to TRLG in the case of TRLL), or itself use, unless authorised in writing to do so by the other party or properly directed or ordered to do so by public authority, any information or matter that (i) constitutes or concerns the terms and conditions of this Agreement, (ii) is provided to it by the other party hereunder or as a result hereof, (iii) is owned by the other party as set forth in paragraph 9.1 or 9.2 hereof; or (iv) regards any dealings or negotiations with the other party related to this Agreement; provided, however that the parties may consult with their respective professional advisors with respect to such information …*

14. LIMITATION OF LIABILITY AND CLAIMS

…

*14.2 **Limitation of Claims**. No claim, regardless of form, which in any way arises out of this Agreement or the parties' performance of this Agreement*

may be made, nor action based upon such a claim brought, by either party more than one year after the basis for the claim becomes known to the party desiring to assert it.

15. TERM AND TERMINATION

15.1 ***Term, Renewal and Termination****. This Agreement shall become effective on the date of this Agreement (specified on page 1) and shall remain in force for an initial term of 3 years ("Initial Term"). Unless notice of termination is given by either party at least 180 days before the expiry of the Initial Term (or any anniversary thereof where this Agreement has been renewed) then this Agreement shall be automatically renewed for successive periods of one year on the same terms or such other terms as may be agreed between the parties ...*

15.2 ***TRLL's Obligation Upon Termination***

15.2.1 Upon any proper termination of this Agreement, TRLL:

(a) Upon the termination of the contract between the Supplier and TRLG, TRLG will have either the option to pay a one time fee for the Supplier in return for the content TRLG wants, or within 21 days of the expiry of the relevant notice period, shall delete (or shall procure the deletion of) the SUPPLIER Publications from the Thomson Reuters Legal Services and cease making available the SUPPLIER Publications through the Thomson Reuters Legal Services ...

20. NON-WAIVER

Failure of either party to enforce any provision of this Agreement shall not constitute or be construed as a waiver of such provision nor of the right to enforce such provision …"

10. The MOA is expressed to be governed by English law.

The Termination of the MOA

11. It is alleged by ALN that, in June-July 2011, it provided access to TR to the Supplier Publications. This is disputed by TR.

12. On 20th June 2014, TR served notice of termination of the MOA pursuant to clause 15.1 of the MOA. It is common ground that the MOA came to an end on 1st February 2015.

13. ALN claims that, during the period of the MOA, TR used the Supplier Publications on its Westlaw services, providing third parties with access. TR disputes this allegation, contending that while TR used some of ALN's material for its Westlaw Gulf (Qatar) platform only, TR was unable to access material for Bahrain, Kuwait, Saudi Arabia and the United Arab Emirates or subsequently upload that material to its Westlaw Gulf platform or to use that material on its Westlaw service, or any other service, because TR's access was limited by ALN during the term of the MOA.

14. Further, ALN alleges that, since 1st February 2015 when the MOA was terminated, TR has continued to use the Supplier Publications on its Westlaw services, providing third parties with access to the Supplier Publications. This is denied by TR.

15. TR accepts that it received payment from third parties in respect of access to and the use of material derived from ALN's Qatari Legislation Encyclopaedia.

16. ALN has received no payment from TR for the latter's alleged use of the Supplier Publications.

17. On 13th October 2015, ALN sent TR a letter in Arabic and English translation. However, TR maintains that this letter was not received by it until 10th February 2016. In this letter, ALN expressed its intention to bring a claim against TR. After reviewing the MOA and the history of its relationship with TR, ALN stated that:

    (1) ALN fulfilled its contractual obligations and dealt with TR in good faith and sincerity and confidence and delivered to TR copies of five complete and updated databases, but TR dealt with ALN with ambiguity and non-transparency, and having concealed from ALN its legal sales that are based on Gulf States Legislation Encyclopaedias and having concealed important information regarding its contract with the Qatar Government.

    (2) Since the start of the MOA, ALN asked TR for its Statements of Accounts related to its sales based on the Encyclopaedias, but TR created excuses and made ALN believe that their relationship was for the long term and that the MOA would be renewed

    (3) ALN has not received from ALN any Statement of Account that includes Sales Invoices for services which TR sold, and ALN did not receive its share of its sales and services to Qatar State.

    (4) There then followed a striking statement: "*Thomson Reuters violated a basic Article of the Agreement which is related to Termination Provisions. Please, refer to Article 2/3 and Article (15). Still our Encyclopedia [sic] is on Qatar Gate, and still our other Encyclopedias [sic] are with them despite the termination of Contract*".

    (5) ALN intends to commence proceedings in London and before the Qatar Courts to reserve its rights and claiming compensation and its share of the sales proceeds received by TR, which is estimated to be US$1 million to date and compensation in accordance with an expert's estimate for the databases received from ALN and handed over to Qatar State to utilize it permanently, thus depriving ALN of the benefit of this database in the Qatari Market.

18. On 26th July 2016, TR sent ALN a "without prejudice" letter offering (without admission of liability) to pay the sum of US$56,856.06 in full and final settlement of any claims of ALN in connection with the MOA. In this letter, TR referred to the receipt of ALN's letter dated 13th October 2015 in February 2016 and to the termination notice dated 20th June 2014 (which it stated was tendered by ALN, but was in fact tendered by TR). In this letter, TR stated that ALN failed to fulfil its obligations under the MOA, including (a) its failure to hand over copies of printed

and digital laws in ML format pursuant to clause 3.4 of the MOA, (b) its failure to notify TR of any changes made to the information contained in any release before handover as set out in clause 5.2 of the MOA, and (c) ALN's blocking access to the Mohamoon database containing the laws of GCC countries in breach of clause 2 of the MOA. TR denied the allegations made by ALN.

19. Included with its letter dated 26th July 2016, TR enclosed a letter sent by Alliott Hadi Shahid Chartered Accountants ("AHS") to the Directors of Thomson Reuters, Dubai, UAE and a 2-page spreadsheet entitled "*Statement of Royalty Payable*". TR alleges that this letter provided information as to the royalties to which it was entitled in the period from 31st December 2014 to 31st December 2015 in respect of the Qatar Supplier Publications. The letter from AHS stated that:

> *"... we have verified Statement of Royalty Payable (Annexure 1) to [ALN] for the year ended 31 December 2014 and 31 December 2015 on the basis of revenue recognised by the management of the Thomson Reuters for the territory of Qatar.*
>
> *We have verified the calculations of royalty due to [ALN] and confirm that the amount of USD 50,856.06 has been correctly calculated on the basis of invoices generated and revenue recognition made by the management of Thomson Reuters and explanation provided to us."*

20. According to ALN, as stated in paragraphs 17-23 of the witness statement dated 20th January 2021 of Ms Hema Parmar (of OTI International, ALN's solicitors), there is no suggestion by TR that any Royalty Information had been provided to ALN prior to 12th June 2016 or that any Royalty Information has been provided in respect of the period prior to 31st December 2014 or in respect of Supplier Publications for other jurisdictions.

21. However, at paragraphs 2-10 of his second witness statement dated 9th April 2021 in support of TR's application, Mr Gertjan Kemkers (of TR's solicitors, Eversheds Sutherland (International) LLP) stated that TR provided Royalty Information in respect of the proceeds of exploitation of ALN's Qatari Legislation Encyclopaedia for the whole period since the start of TR's Westlaw Gulf (Qatar) service in July 2013, as is evident from emails dated 6th November 2014, 15th January 2015 and 14th February 2016.

22. On 8th December 2016, ALN issued an invoice or letter of demand in the following terms:

> *"[Date:08/12/2016]*
>
> ***Demand for Payment/ Invoice***
>
> ***To Thomson Reuters (Professional) UK Limited***
>
> *Pursuant to the agreement made on 2 February 2011, we demand payment of all monies owed for the agreed royalties for all periods since the date of the agreement in respect of the exploitation of our publications supplied to Thomson Reuters.*

Yours faithfully

Arab Lawyers Network Company Limited"

23. There followed pre-action correspondence between the parties.

ALN's claims

24. On 13th June 2017, ALN issued a Claim Form instituting the current proceedings against TR claiming the following relief:

(1) Damages for breach of an express or implied term of the MOA requiring TR to inform ALN of the amount of the "*Agreed Royalty*" (referred to as "*Royalty Information*") after each quarterly period within a reasonable period and, in any event, within less than 60 days (in order to permit ALN to issue an invoice before the end of 60 days) (paragraphs 14, 32 and 39 of the Particulars of Claim).

(2) Damages for the non-payment of the "*Agreed Royalty*" under clause 3 of the MOA in respect of any quarterly period within 60 days of receipt of the invoice dated 8th December 2016 or at any time. No Agreed Royalty was paid. ALN's case is that TR's obligation to pay the Agreed Royalty did not fall due unless and until TR received a valid invoice from ALN in respect of each quarterly period and that once the obligation to pay the Agreed Royalty fell due, TR must pay the Agreed Royalties within 60 days (paragraphs 15-16, 34 and 39 of the Particulars of Claim).

(3) Damages for TR's alleged continued use of the Supplier Publications after 1st February 2015 and its alleged failure to comply with clause 15.2.1(a) of the MOA by either paying a one-time fee or deleting the Supplier Publications from its services (paragraphs 35-39 of the Particulars of Claim).

(4) An account of profits in respect of TR's unauthorised exploitation of the Supplier Publications which belong to ALN after the termination of the MOA on 1st February 2015 (paragraphs 49-52 of the Particulars of Claim).

(5) A mandatory injunction requiring TR to delete or to procure the deletion of the Supplier Publications it has retained from the Thomson Reuters Legal Services in accordance with Clause 15.2.1(a) of the MOA (paragraphs 47-48 of the Particulars of Claim).

25. ALN's monetary claims are for damages for breaches of the payment obligations in clauses 3 and 15.2.1(a) of the MOA. However, Mr Saaman Pourghadiri who appeared on behalf of ALM submitted that the monetary claims could also readily have been expressed as a claim for a debt in a sum to be ascertained.

26. As an alternative to the claims for damages for breach of clause 15.2.1(a), ALN claims a quantum meruit in respect of the services provided/work done by ALN, after the termination of the MOA on 1st February 2015, with the amount payable being the same as the entitlement under the MOA (paragraphs 43-46 of the Particulars of Claim).

TR's application for summary judgment

27. TR applies for summary judgment pursuant to CPR rule 24.2 dismissing the entirety of ALN's claims on the grounds that they are time-barred.

28. The Claim Form was issued on 13th June 2017. The relevant time bar is not one imposed by the Limitation Act 1980. Instead, it is a contractual time bar imposed by clause 14.2 of the MOA.

29. Summary judgment should be granted if ALN has no real prospect of succeeding in its claim and there is no other compelling reason for the action to be tried.

30. The approach to dealing with such an application was not in dispute between the parties:

    (1) The Court must not conduct a "mini-trial" and should avoid being drawn into an attempt to resolve conflicts of fact which are normally resolved by the trial process (*Global Assets Capital Inc v Aabar Block SARL* [2017] EWCA Civ 37; [2017] 4 WLR 163, para. 27).

    (2) That said, the Court is not bound to accept at face value and without analysis every factual assertion by the respondent. A "*realistic*" claim is one that carries some degree of conviction and which is more than "*merely arguable*".

    (3) At a hearing of a summary judgment application, the Court may determine issues of law or contractual construction which have the potential to dispose of the proceedings (*Easyair Limited v Opal Telecom Limited* [2009] EWHC 339 (Ch), at para. 15), but the Court should still consider very carefully before accepting an invitation to deal with single issues in cases where there will need to be a full trial or where the disposal of the case by summary judgment may result in delay (*e.g.* because of appeals) (*TFL Management Services Limited v Lloyds TSB Bank Plc* [2013] EWCA Civ 1415; [2014] 1 WLR 2006, at para. 26-27).

    (4) If the Court considers that it is appropriate to deal with an issue of law or construction on a summary judgment application, any relevant disputed issues of fact should be assumed in favour of the person against whom summary judgment is sought (*Daniels v Lloyds Bank Plc* [2018] EWHC 660 (Comm), para. 49(vi)).

    (5) If, on the determination of the point of law or construction (which might be a point which is well arguable by both parties), the Court determines that there is no real prospect of success for the respondent to the application and there is no other compelling reason for the disposal of the case at trial, the applicant will be entitled to summary judgment. If, however, the respondent has a real prospect of success or if there is a compelling reason for the matter to proceed to trial, the application for summary judgment should be dismissed.

31. In this case, the parties' submissions concentrated on the prospects of success, rather than the existence or non-existence of other compelling reasons for trial. Further, the parties' submissions concentrated on the construction to be given to the terms of the

MOA insofar as it was relevant; it was not suggested (at least not with any force) that such questions of construction should be deferred to trial. In addressing the application, I have considered whether it is appropriate to construe the contractual provisions and have found no reason not to do so.

32. For the purposes of considering this application, I shall assume that ALN has valid claims against TR. That said, not all aspects of ALN's claims can be assumed, for example the date on which the relevant cause of action accrued or the meaning and effect of clause 14.2 of the MOA.

33. Clause 14.2 of the MOA provides that "*No claim, regardless of form, which in any way arises out of this Agreement or the parties' performance of this Agreement may be made, nor action based upon such a claim brought, by either party more than one year after the basis for the claim becomes known to the party desiring to assert it*".

34. I will therefore consider the application for summary judgment by addressing each of the contractual claims for damages separately, namely (1) the Agreed Royalty Claim under clause 3 of the MOA and (2) the Continued Use Claim under clause 15.1 of the MOA.

35. There is an additional claim made by ALN against TR: the claim for damages for breach of the express or implied term of the MOA requiring TR to inform ALN of the amount of the "*Agreed Royalty*" after each quarterly period. However, as I understand it, the parties accept that this claim will be time-barred if the Agreed Royalty Claim is time-barred. I will return to this claim later in this judgment.

36. ALN accepted that the availability of summary judgment in respect of its claims for an account of profits, an injunction and a quantum meruit stands or falls with the Court's decision on the application for summary judgment in respect of the Continued Use Claim.

The Agreed Royalty Claim - Clause 3.1

TR's Submissions

37. Mr John Robb, appearing on behalf of TR, submitted in respect of the Agreed Royalty Claim that as to ALN's argument that the obligation to pay the Agreed Royalty Claim could not have arisen until after the issue of the invoice on 8th December 2016 and that prior to 8th December 2016, ALN could not have known the basis for the claim, because the facts entitling ALN to make the Claim had not yet occurred (see paragraph 30 of Ms Parmar's witness statement), that argument was wrong for the following reasons:

    (1) The trigger for the running of time under clause 14.2 is when the "*basis for the claim*" becomes known to the potential claimant. The basis for the claim denotes the foundation, the fundamental ingredient, the principal constituent, or the starting point for a claim. There is therefore a distinction between the substance (or basis) of a claim (in this case, the failure to pay the Agreed Royalty within the specified contractual deadline), and a procedural precondition that may have to be satisfied in order to entitle the claimant to claim (in this case, the submission of an invoice, on ALN's case).

(2) The premise of ALN's submission is that if it failed to submit an invoice within 60 days of a quarter-end then TR's duty to pay would be postponed. Clause 3.3 of the MOA says nothing about such a postponement; instead, it states that (i) TR's obligation is to pay "*within 60 days after the end of such quarterly period*", and (ii) the payment obligation is "*subject to receipt by TRLL of a valid invoice [therefor]*". Therefore, if TR does not receive such an invoice within that period, then the payment obligation never arises.

(3) ALN's construction is uncommercial (as well as being contrary to the language of clauses 3.3 and 14.2 of the MOA for the first two reasons). The effect would be that ALN could indefinitely postpone the running of time by failing to submit an invoice. That would defeat the object of both clauses 3.3 and 14.2 of the MOA, which was to ensure that any claims would be asserted and resolved promptly.

38. Mr Robb further submitted that if ALN's submission is that a claimant cannot have acquired knowledge of the basis for a claim before it has acquired an enforceable cause of action in respect of that claim, then that is wrong for the following reasons:

(1) Clause 14.2 distinguishes between a "*claim*" and an "*action based upon such a claim*". It is knowledge of the basis for the former which starts time running. That implies that time may start running before an action can be brought.

(2) There is no invariable rule that time cannot begin running in respect of a cause of action before the cause of action is complete. Indeed, it has been held in respect of what is now section 20(1) of the Limitation Act 1980 - which prohibits an action to recover any principal sum of money secured by a mortgage or other charge on property after the expiration of 12 years from the date on which the right to receive the money accrued - that a mortgagee's or chargee's action to recover a secured debt may be barred before the security-holder has acquired a right of action against the debtor, where the only thing standing in the way of such a right of action is something (such as service of a demand) which is within the security-holder's right to procure. See *Hornsey Local Board v Monarch Investment Building Society* (1889) LR 24 QBD 1; *Gotham v Doodes* [2006] EWCA Civ 1080; [2007] 1 WLR 86, para. 32.

(3) There is no unfairness to ALN in TR's construction. If TR neither pays nor supplies information as to the amount of the Agreed Royalty due, then there is nothing to stop ALN bringing a claim 60 days after the relevant quarter-end.

39. Mr Robb concluded in respect of the Agreed Royalty Claim that the basis for ALN's claim against TR for alleged the failure to pay the Agreed Royalty became known to ALN 60 days after each relevant quarter-end, the last of which was 31st March 2015. The fact that ALN only ever submitted an invoice on 8th December 2016 makes no difference; by that point of time, ALN's right to payment under clause 3 of the MOA had already become barred by clause 14.2. No invoice could have been issued unless it was known that there was an entitlement to payment of the Agreed Royalty.

ALN's Submissions

40. Mr Saaman Pourghadiri appearing on behalf of ALN submitted that:

(1) This is a case of a contractual limitation clause, not a statutory limitation under the Limitation Act 1980. Nevertheless, it is worth noting two general principles concerned with statutory limitation:

a) the principal statutory limitation periods run from when a cause of action or right of action accrues (including under section 5 in respect of claims for breach of contract)

b) Where a limitation period runs irrespective of when the cause of action is accrued, this is often expressly stated to be so (such as sections 11A(3) and 14B(2)(a)).

(2) The reference to "*the basis for the claim*" in clause 3.1 must include the ingredients for an accrued cause of action. The "*basis for the claim*" is TR's failure to pay royalties following receipt of an invoice.

(3) TR argued that if an invoice is not received by TR within 60 days from the quarter-end, ALN's right to payment is extinguished. That is a surprising, uncommercial approach, with no contractual language to justify it.

(4) A precondition to a claim being brought (or action based on a claim) is that the cause of action has accrued. Knowledge of the "*basis*" of a claim must (at the very least) include knowledge of the facts which enable a claim to be brought.

(5) The constituent facts of a cause of action are its foundation, essence or basis.

(6) The use of the word "*basis*" serves the function of identifying that one is not concerned with knowledge "*of a claim*". The latter formulation might indicate that one need not know whether in law there is a claim.

(7) Insofar as it is relevant, the Limitation Act 1980 supports such a construction. The general statutory approach to limitation periods is that time starts to run from when a cause of action has accrued.

(8) In answer to the argument that a claimant could indefinitely postpone the running of time by refusing to issue an invoice, that is a fanciful concern: no rational person would deliberately (and secretly) set about delaying when they might be put in funds. The prospect the receiving party would deliberately seek to delay when they were to be paid "*indefinitely*" is not a concern that should detain the Court when construing clause 14.2.

(9) It is sensible that time to bring a claim runs from when the claimant has complied with the contractual formalities for requesting payment. The alternative would enable a "*shellshocked*" defendant to be struck by litigation before it was obliged to pay or allow the contractual limitation period to lapse before a right to payment arose.

(10) ALN's approach to the "*basis*" of the claim is a sensible commercial approach. This construction accords with business common sense in that the receiving party (the claimant) should not be required to issue an invoice in circumstances where the assessment of how much is owed is disputed by the

paying party (the defendant). This is especially so in the case of a long-term relational contractual relationship, such as that under the MOA.

(11) Clause 14.2 applies to all disputes under the MOA, not just those arising from non-payment following an invoice. There is no justification for arguing that "*the basis*" for any other claim pursuant to the MOA could "*become known*" before the cause of action accrued. It makes no sense for clause 14.2 to modify its meaning depending on the particular breach.

(12) Contractual limitation clauses such as that in clause 14.2 of the MOA must be construed in the same way as exclusion clauses such that, if necessary to resolve any ambiguity, the limitation clause should be narrowly construed (*Nobahar-Cook v Hut Group* [2016] 1 CLC 573, para. 9, 16).

Decision on whether the Agreed Royalty Claim is time-barred

41. I start with the terms of contractual time bar provision. Clause 14.2 provides that "*No claim, regardless of form, which in any way arises out of this Agreement or the parties' performance of this Agreement may be made, nor action based upon such a claim brought, by either party more than one year after the basis for the claim becomes known to the party desiring to assert it*".

42. The time bar provision applies to a claim which arises out of the MOA or the parties' performance of the MOA. Clause 14.2 provides that neither party may bring a claim or start legal proceedings ("*action*") in respect of that claim "*more than one year after the basis for the claim becomes known to*" the claimant.

43. The effect of this provision is that if a claim is made or an action is commenced more than one year after the basis for the claim is known to the claimant, the claim or action cannot then be brought: it is time-barred.

44. A time bar provision operates similarly to a contractual exclusion or exemption provision in that it removes or restricts a contracting party's entitlement to exercise rights or enforce obligations which otherwise would exist. Accordingly, if the provision is ambiguous in its meaning, the Court should generally adopt a construction which is favourable to the claimant. This is because it is unlikely that the parties would lightly intend that a party would surrender valuable legal rights without the use of clear words to achieve that effect (*Nobahar-Cookson v Hut Group Ltd* [2016] EWCA Civ 128; [2016] 1 CLC 573, para. 9, 16, 18). This approach to construction presupposes that there is in reality an ambiguity in the meaning of the relevant provision after the Court undertakes the exercise of construing the contractual provision having regard to its language, purpose, contextual background and its place in the contract as a whole; the approach is not necessarily triggered merely because the superficial meaning of the language used in the provision - before this process of construction is completed - may lend itself to two or more senses (*Nobahar-Cookson v Hut Group Ltd* [2016] EWCA Civ 128; [2016] 1 CLC 573, para. 19; *Scottish Power UK Plc v BP Exploration Operating Company Ltd* [2016] EWCA Civ 1043, para. 29).

45. Notwithstanding this approach, the Court should also take into account the considerations that a time bar clause does not operate as a complete exemption from

liability on the part of the defendant for breach of a contractual obligation; the exemption takes effect only if the claim or action is not instituted within the time specified. Moreover, there are commercial purposes behind such a provision which must be acknowledged, that is, to ensure that the claim is brought to the attention of the defendant and the defendant is enabled to investigate the claim soon after it is made rather than having the potential disability of inquiring into a claim perhaps years after the circumstances giving rise to the claim arose (Lewison, *The Interpretation of Contracts* (7th ed., 2020), para. 12.128).

46. The contractual limitation period commenced when "*the basis for the claim becomes known to the party desiring to assert it*" and concluded one year later.

47. Under the MOA, the Agreed Royalty is a sum payable by reference to "*the actual amounts received by TRLL in respect of the proceeds of exploitation of the SUPPLIER Publications in the Thomson Reuters Legal Services*" (clause 3.2).

48. Clause 3.3 of the MOA identifies the timing of the entitlement to the Agreed Royalty in the following terms: "*All royalties payable hereunder shall be accrued for quarterly periods ending on March 31, June 30, September 30, and December 31 of each year and shall be paid by TRLL to SUPPLIER within 60 days after the end of each such quarterly period, subject to receipt by TRLL of a valid invoice therefore*".

49. Therefore, according to clause 3.3, the accrual of "*All royalties payable hereunder*" occurred at the end of each quarter. The quarter ending just prior to the termination of the MOA was that ending on 31st December 2014 and the quarter ending just after the MOA's termination was that ending on 31st March 2015. Further, there is a requirement that TR pay ALN the Agreed Royalty within 60 days after the end of each quarterly period, *e.g.* 1st March 2015 or 30th May 2015 respectively.

50. The Claim Form in the current action was issued and therefore action was brought on 13th June 2017. Therefore, if the basis for the claim for payment of the Agreed Royalty became known to ALN earlier than one year before 13th June 2017 (*i.e.* 13th June 2016), the claim would be time-barred.

51. TR's case is that ALN's entitlement to claim the Agreed Royalty existed to the knowledge of ALN before 13th June 2016 and so is time-barred by clause 14.2. ALN's case is that its entitlement to claim the Agreed Royalty arose only upon 8th December 2016 when it issued the invoice to TR and therefore the basis for the claim was not known to ALN beforehand, with the result that its claim is not time-barred.

52. In my judgment, the basis for the claim must be equated with all of the circumstances which if pleaded would constitute an entitlement on the part of ALN to claim the Agreed Royalty. In this respect, I accept Mr Pourghadiri's submission that "*the basis for the claim*" must be the facts and circumstances which constitute a right or cause of action at law. I do not consider that there is any ambiguity in the formulation of clause 14.2.

53. The question then becomes whether the basis for the claim for the Agreed Royalty under clause 3 of the MOA is constituted by (a) the accrual of the Agreed Royalty at the end of the relevant quarter, (b) the expiry of the period for payment of the Agreed

Royalty, being 60 days after the end of the relevant quarter, and/or (c) the issue of a valid invoice by ALN to TR.

54. Mr Robb on behalf of TR submitted that the invoice was not of itself an essential criterion for a valid claim for the Agreed Royalty, but it was nonetheless a procedural pre-condition which if not satisfied extinguished any obligation to pay the Agreed Royalty. By contrast, Mr Pourghadiri on behalf of ALN submitted that the invoice was an important aspect of ALN's entitlement to the Agreed Royalty; without an issued invoice, there was no entitlement to claim the Agreed Royalty, but the invoice could be issued at any time.

55. In my judgment, ALN's entitlement to claim for payment of the Agreed Royalty existed no later than 60 days after the end of the relevant quarter. This is because clause 3.3 expressly stipulated that the "*royalties payable hereunder shall be accrued*" at the end of the relevant quarter and that the Agreed Royalty "*shall be paid by TRLL to SUPPLIER within 60 days after the end of each such quarterly period*". Interest under clause 3.7 of the MOA is payable on any sums "*which are not paid on their due date*" and would accrue in accordance with clause 3.7 of the MOA; the "*due date*" is no later than the end of the 60 day period after the end of the relevant quarter.

56. Clause 3.3 provides that the Agreed Royalty shall be paid within the 60 day period "*subject to receipt by TRLL of a valid invoice therefore*". I do not accept TR's submission that TR's obligation to pay the Agreed Royalty extinguished in the event that an invoice was not issued within the 60 days after the end of the relevant quarter. Further, I do not accept ALN's submission that the entitlement to claim for the Agreed Royalty accrues only upon the issue of an invoice by ALN for the following reasons.

57. First, the MOA, in particular clause 3.3, does not stipulate that the Agreed Royalty must be paid only upon the issue of the invoice; it stipulates payment at the end of the 60 day period after the end of the relevant quarter.

58. Second, the MOA does not stipulate that the obligation to pay the Agreed Royalty accrues upon the issue of an invoice by ALN. The Agreed Royalty is to be accrued at the end of the relevant quarter and the obligation to pay must be performed within 60 days. The obligation of payment can be performed without the invoice. TR knows how much the Agreed Royalty is because it is possessed of information which allows the relevant amount to be calculated. The purpose of the invoice is at best to register ALN's claim for the sum already due and owing under clause 3.3 of the MOA.

59. Third, the issue of an invoice necessarily presupposes that the Agreed Royalty is already due and owing.

60. Fourth, it would be odd if ALN as the claimant could postpone the accrual of its entitlement to claim the Agreed Royalty (and with it the commencement of the limitation period) indefinitely by the simple expedient of withholding the issue of an invoice. There was force in Mr Robb's submission that the issue of the invoice on 8th December 2016 was itself a claim and was therefore based on a known pre-existing entitlement to claim the Agreed Royalty. Although it is irrelevant for the purposes of construction of the MOA, it is striking that the invoice in an unquantified amount issued by ALN on 8th December 2016 stated that "*we demand payment of all monies*

owed for the agreed royalties for all periods since the date of the agreement in respect of the exploitation of our publications supplied to Thomson Reuters".

61. Fifth, I do not think that ALN's practical objection to the preceding consideration - namely that there is little commercial reason for ALN to delay the invoice - assists in the construction of clause 3.3. There is some parallel to this consideration in the decision in *Hornsey Local Board v Monarch Investment Building Society* (1889) LR 24 QBD 1, which concerned statutory limitation under the Real Property Limitation Act 1874, section 8 of which prohibited any action for any sum of money secured by charge over land unless brought within 12 years after "*the present right to receive*" the same shall have accrued. In this case, the plaintiff board served notices on the owners of premises fronting on a street to carry out paving works and completed the works itself in 1875. The defendants became the owners of the premises after the completion of the works. The board did not apportion the expenses among the owners until 1885. The board demanded payment of the expenses so apportioned from the defendants in 1887. In 1888, the board commenced the action claiming a declaration that such expenses were a charge on the premises and an order that the premises be sold. The defendants pleaded the statutory time bar. The question for the Court of Appeal was when the "*present right*" accrued, when the works were completed in 1875 (in which case the claim was time-barred) or when the board apportioned the expenses in 1885 (in which case the claim was not time-barred). The Court of Appeal held that the claim was time-barred. At pages 5-6, Lord Esher, MR said that the present right to receive payment did not equate with the right to enforce payment (see further *Gotham v Doodes* [2006] EWCA Civ 1080; [2007] 1 WLR 86, para. 18-20, 32, 38). At page 9, Lindley, LJ said:

> *"If we read "present right to receive" in the sense in which the Master of the Rolls has explained, and as distinguishable, as apparently it is meant to be, from "present right to sue," everything works out harmoniously; the moment the time of the coming into existence of the charge is ascertained, the period of limitation will begin to run: whereas, if the opposite construction is adopted, we are at once landed in the curious anomaly that the creditor, that is to say, the person who is entitled to the charge, can by his own act postpone his right to sue indefinitely, subject of course to the question as to an application for a mandamus. Such a result would be extremely anomalous. Who ever heard, with reference to any Statute of Limitations, that a creditor could enlarge the time for suing indefinitely by omitting to do that which it is his duty by statute or common law to do? It appears to me that we ought not to adopt a construction of the statute that leads to such a result, unless we are driven to it. I do not think we are driven to it."*

62. Importantly, as far as clause 14.2 is concerned, it is not only when the entitlement to claim the Agreed Royalty arises which matters, but also when ALN became aware of the basis of that entitlement to claim.

63. In respect of the Agreed Royalty Claim, the parties in their submissions did not seek to separate the question of when the entitlement to claim the Agreed Royalty from knowledge of the basis for the claim. TR contended that the entitlement to claim the

Agreed Royalty was known to ALN no later than 60 days after the end of the relevant quarter. ALN contended that the entitlement to claim the Agreed Royalty was known to ALN when it issued the invoice on 8th December 2016.

64. It follows that much or all of ALN's claim for the Agreed Royalty is time-barred pursuant to clause 14.2 of the MOA insofar as the said Agreed Royalty for the relevant quarter was payable before 13th June 2016, being one year before the date of the commencement of this action.

65. If, however, the Agreed Royalty claimed by ALN became payable on or after 13th June 2016, the claim is not time-barred pursuant to clause 14.2. I think this must be so because clause 3.2 provides that the Agreed Royalty is to be calculated by reference "*to the actual amounts received by TRLL in respect of the proceeds of exploitation of the SUPPLIER Publications in the Thomson Reuters Legal Services*" and such amounts paid in respect of the exploitation of the Supplier Publications before the termination of the MOA on 1st February 2015 might not be received by TR until after 13th June 2016, even if it may be unlikely. I do not know if any part of ALN's claim for the Agreed Royalty accrued on or after 13th June 2016. If ALN's claim does extend to an Agreed Royalty which might be said to accrue on or after 13th June 2016, I understand that there may be an issue between the parties about whether any such Agreed Royalty would or would not be recoverable under the terms of the MOA. This is not an issue which is considered or determined by this judgment.

66. It seems to me that the same position must be true in respect of ALN's claim for damages for a breach of a term of the MOA requiring the provision by TR of Royalty Information. If the Royalty Information - assuming (against TR's case) that such an obligation existed - was required to be provided prior to 13th June 2016, any claim for breach of that obligation is time-barred, but if the breach occurred on or after 13th June 2016, the claim is not time-barred. Of course, the relevant contractual limitation period does not commence when the breach of contract occurred, but when the basis for the claim became known to ALN, but as it would have been self-evident that Royalty Information had not been provided by the relevant time, the occurrence of the breach and ALN's knowledge of the same must coincide.

The Continued Use Claim - Clause 15.2.1

TR's Submissions

67. Mr Robb on behalf of TR submitted that:

(1) The basis of ALN's claim for TR's alleged failure to pay ALN a fee in return for the Supplier Publications and/or failure to delete or procure the deletion of the Supplier Publications from the Thomson Reuters Legal Services within 21 days of the termination of the MOA was known to ALN by 22nd February 2015. This is because (i) ALN knew that the MOA had been terminated on 1st February 2015, (ii) ALN knew that a 21-day period had elapsed and that it had not received any payment under Clause 15.2.1(a) by 22nd February 2015, and (iii) insofar as ALN can be said to "*know*" something which (on TR's case) is false and therefore not capable of being a matter of justified true belief, ALN "*knew*" by 22nd February 2015 (and as early as 2nd February 2015) that TR

was continuing to use Supplier Publications on its services, because ALN could see that those services were still operational.

(2) There is hearsay evidence in Ms Parmar's witness statement, at paragraphs 19-23, based upon information provided to her by Mr Al-Nasri (the Director-General of ALN), that:

a) ALN "*suspected that the Defendant might not have deleted the Supplier Publications*" before 13th June 2016 (which is the date one year before issue of the Claim Form).

b) The basis for ALN's suspicion was that (i) "its attempts to obtain information from the Defendant in relation to its sales which had been made during the term of the MOA had been rebuffed"; and (ii) "the Defendant had not sent the Claimant proof that it had in fact deleted the Supplier Publications".

c) It was on the basis of this suspicion that ALN wrote its letter dated 13th October 2015, which raised "*allegations of non-deletion*" (*i.e.* the Continued Use Claim).

d) ALN's state of mind did not at this stage, however, amount to "*knowledge of the basis for the claim*".

e) ALN acquired "*knowledge*" only on 26th July 2016, when it received TR's 26th July 2016 letter and enclosed Statement.

(3) In clause 14.2, there is a distinction between (a) the basis of the claim being "*unknown*" to the putative claimant and (b) that basis having "*become known*". Therefore, "*becomes known*" is synonymous with "*finds out about*". It is about the moment of first discovery of a (possible) fact, not the moment when a previously suspected fact is proven to be well-founded. There is nothing in the expression "*becomes known*" in clause 14.2 which would suggest that "*knowledge*" for these purposes should be equated with "*certainty*" or "*proof on a balance of probabilities*" or "*belief supported by positive direct evidence going beyond mere inference*".

(4) The degree of knowledge required to trigger clause 14.2 is no higher than the degree of knowledge required under sections 11, 12, 14 and 14A of the Limitation Act 1980. The term "*date of knowledge*" as used in sections 11 and 12 is defined by section 14(1) to mean "*the date on which [the relevant individual] first had knowledge of the following facts* …". The following propositions are established by case law on section 14 of the 1980 Act, in particular by the majority of the Supreme Court's judgment in *AB v Ministry of Defence* [2012] UKSC 9; [2013] 1 AC 78, para. 3-12:

a) The question of whether a claimant has "*knowledge*" for these purposes is separate from the question of whether the claimant has "*evidence*" to support its claim.

b) The concept of "*knowledge*", for the purposes of section 14, is, like that of "*belief*", "*inherently subjective*".

c) A mere suspicion will not qualify as "knowledge" for the purposes of section 14. The belief must "not only … be held with a degree of confidence (rather than to be little more than a suspicion) but … also … carry a degree of substance (rather than … be the product of caprice)".

d) The expression "*reasoned belief*" probably better captures that distinction than does the more commonly used expression "*reasonable belief*", but this is a matter of nuance: "*a claimant is likely to have acquired knowledge of the facts specified in section 14 when he first came reasonably to believe them*".

e) More concretely, a belief will qualify as "*knowledge*" where it is held "*with sufficient confidence to justify embarking on the preliminaries to the issue of a writ, such as submitting a claim to the proposed defendant, taking legal and other advice and collecting evidence*" (see *Halford v Brookes* [1991] 1 WLR 428).

f) To put the same point another way, the search is "*for the moment at which the claimant knows enough to make it reasonable for him to begin to investigate whether he has a "case" against the defendant*" (see *Broadley v Guy Clapham & Co* [1994] 4 All ER 439).

g) "*[I]t does not automatically follow that, by the date when [a claimant] first took legal advice, the claimant will have acquired the requisite knowledge; but such an inference may well be justified*".

h) A claimant cannot deny that it had "*knowledge*" (for the purposes of section 14) by the time at which it issued its claim form.

i) The onus is on the claimant to plead and prove that it first had the knowledge required for bringing its action within a period of three years prior to its bringing.

(5) The question is when the basis for the Continued Use Claim "*becomes known*" to ALN. That will be the point in time after 22nd February 2015 when it became known to ALN (to the requisite degree of "*knowledge*") that the Supplier Publications had not been deleted. If it is accepted that the test of "*knowledge*" for the purposes of clause 14.2 of the MOA is no more onerous than the equivalent requirement under sections 11, 12 and 14 of the Limitation Act 1980, ALN will have had knowledge when Mr Al-Nasri (the Director-General of ALN) had a sufficiently confident belief in the allegation to be "*submitting a claim to the proposed defendant, taking legal and other advice and collecting evidence*". That point in time was no later than 13th October 2015, the date of ALN's letter intimating a claim against TR. By that point of time, ALN had formally asserted a claim against TR and ALN had acquired all of the "*evidence*" now said to support the Continued Use Claim, with the sole exception of the 26th July 2016 letter (which in any event was not admissible

evidence and does not support the claims). This does not presuppose that the fact "*known*" is true; for the purposes of the limitation enquiry, the cause of action is assumed to be well-founded (*AB v Ministry of Defence* [2012] UKSC 9; [2013] 1 AC 78, para. 2). ALN was proposing to repeat its allegations to the ministries of the relevant Gulf states and to all of the major law firms operating in those states.

(6) If TR's 26th July 2016 letter does not support ALN's claims, then it must follow that the Continued Use Claim is time-barred. This is because (i) ALN cannot deny that it had the requisite "*knowledge*" by the time it issued the claim form and (ii) ALN has adduced no evidence that it discovered anything relevant between 26th July 2016 and 13th June 2017 (when the claim form was issued).

(7) TR's 26th July 2016 letter is a document which maintains TR's denial of liability for all of the claims articulated by ALN in its letter dated 13th October 2015, while making an offer as a gesture of goodwill without admission of wrongdoing to "*release the monies set out in the account statement attached to this letter*".

(8) At paragraphs 16-20 of Mr Kemkers' second witness statement, it is explained that TR disclosed documents which demonstrate how the Statement accompanying TR's letter dated 26th July 2016 was prepared and that it was not the product of either TR or AHS sifting through usage data to work out how much (if any) of the revenues derived by TR from its Westlaw Gulf customers from December 2014 to January 2015.

(9) Based on internal correspondence, the Statement shows that (i) TR calculated the whole of its revenues earned or deemed earned over the period up to 31st December 2015 from any contracts with customers for the use of its Westlaw Qatar service beginning at any point up to the end of December 2015; (ii) it then deemed 30% of that "*Westlaw Qatar*" revenue up to 31st December 2015 as being "*Royalty Amount Payable*" to ALN. That is consistent with the description of the Statement given in AHS's letter dated 12th June 2016 which describes it as having been produced "*for the year ended 31 December 2014 and 31 December 2015 on the basis of revenue recognised by the management of the Thomson Reuters for the territory of Qatar*". Even if TR had been continuing to exploit Supplier Publications in breach of clause 15.2 of the MOA, it would have had no contractual or other obligation to pay 30% of its revenues therefrom to ALN. The clause 3 obligation to pay 30% of revenues subsisted only during the life of the MOA and was replaced upon termination by an obligation to pay an (unspecified) "*one time fee*" under clause 15.2.1(a). TR's 26th July 2016 letter and the accompanying Statement cannot therefore objectively be read as an admission on TR's part that it was continuing to exploit Supplier Publications after 1st February 2015.

(10) The Statement accompanying TR's letter dated 26th July 2016 was a "without prejudice" document produced in order to support a settlement proposal. TR chose to calculate that settlement figure by reference to its revenues earned during the years ended 31st December 2014 and 31st December 2015. It did not thereby represent that any of those revenues (in particular, those earned

after 1st November 2014 / 1st February 2015) were derived from the exploitation of Supplier Publications. Its only representations were to precisely the opposite effect, namely that ALN's allegations were false and denied but that TR was nevertheless prepared to offer to pay the amounts set out in the Schedule as a goodwill payment and as part of a full settlement.

(11) The basis for ALN's Continued Use Claim had become known to ALN by shortly after termination of the MOA on 1st February 2015, and at any rate by the time of ALN's 13th October 2015 letter. ALN accepts that it had "*suspicions*" by this point (paragraph 23 of Ms Parmar witness statement). Those suspicions were enough to trigger the running of time under clause 14.2. In truth, ALN has never had anything more than those suspicions, and Mr Al-Nasri's reported belief that TR's 26th July 2016 letter and accompanying Statement amounted to some form of positive direct evidence is both irrelevant (because "*knowledge*" for these purposes does not depend on evidence), and wrong.

(12) ALN contends that TR's breach of clause 15.2.1 of the MOA is a breach of a continuing obligation and that the obligation being breached continued beyond 13th June 2016 (being one year before the date of the commencement of the action). Such a contention must fail by reason of the relationship between ALN and TR and the fact that clause 15.2.1 imposes an obligation to pay a one time fee for the use of the Supplier Publications unless it opts within 21 days after termination to delete the Supplier Publications (see *Equitas Ltd v Walsham Bros & Co Ltd* [2013] EWHC 3264 (Comm); [2014] PNLR 8, para. 59-68).

ALN's Submissions

68. Mr Pourghadiri on behalf of ALN submitted that the Continued Use Claim was not time-barred pursuant to clause 14.2 of the MOA for the following reasons:

(1) TR's case is that the word "*known*" within the meaning of clause 14.2 should be construed in an identical way to statutory knowledge for the purpose of the Limitation Act 1980, namely subjective belief is sufficient. However, the word "*known*" should be construed to mean knowledge of facts as opposed to subjective belief, or knowledge grounded in evidence. On ALN's preferred construction, the date of knowledge is no earlier than when ALN received the Statement accompanying TR's letter dated 26th July 2016.

(2) A safe analogy cannot be drawn between statutory "*knowledge*" and the concept of "*known*" in the MOA because (i) statutory knowledge includes constructive knowledge and there is no indication that the MOA imports constructive knowledge; (ii) the decision in *AB v Ministry of Defence* [2012] UKSC 9; [2013] 1 AC 78 concerned statutory knowledge of "*attributability*" where the required knowledge was "*merely possible, a real possibility and not a fanciful one, a possible cause as opposed to a probable cause of the injury*" (para. 35), whereas the MOA requires knowledge of the "*basis*" of the claim not "*possible basis*"; (iii) the decision was contrary to the ordinary English usage of the word "*knowledge*", which is grounded in fact (*R v Montila* [2004] UKHL 50; [2004] 1 WLR 3141, para. 28); (iv) there is a well-established

distinction between "*knowledge*" and "*belief*" in other areas of the law such as deceit (*Derry v Peek* (1889) 14 App Cas 337, 374); and (v) the majority decision in *AB v Ministry of Defence* [2013] 1 AC 78 was shaped by a desire not to "*jettison*" historic jurisprudence on the issue, which is not a consideration that informs the Court's approach to interpreting the MOA.

(3) In *AB v Ministry of Defence* [2012] UKSC 9; [2013] 1 AC 78, the majority of the Court gave guidance as to what is meant by suspicion and why it is insufficient to amount to knowledge: "*suspicion, particularly if it is vague and unsupported, will indeed not be enough, but reasonable belief will normally suffice*" (*Haward v Fawcetts* [2006] UKHL 9; [2006] 1 WLR 682). Although in *AB v Ministry of Defence* [2012] UKSC 9; [2013] 1 AC 78, the Court gave further guidance as to why the instruction of solicitors or the investigations associated with it might indicate a claimant has sufficient knowledge, the commencement of legal investigation is not itself a guide to whether a claimant has the requisite knowledge.

(4) It is not commercially sensible for subjective belief to be the trigger that starts time running. First, an enquiry into subjective belief gives rise to open-ended subjective uncertainty to the operation of the time bar clause. A focus on knowledge of facts gives hard edged certainty to the enquiry. Second, the MOA was a long-term arrangement between the parties. During the course of such arrangements differences and disputes may arise. It would be uncommercial for such disputes to be accelerated into court litigation merely on the basis of subjective belief. Rather one would require the greater solidity of the knowledge of facts, before sinking the commercial relationship with litigation.

(5) There is a triable issue whether ALN was aware of the basis for the Continued Use Claim notwithstanding the assertion in its letter dated 13th October 2015 that TR had violated the MOA by continuing to use the Encyclopaedias (including the Qatari Encyclopaedia) in that:

a) The Statement accompanying TR's letter dated 26th July 2016 shows that at least some of the revenue which the Statement stated was payable to ALN was in respect of contracts which commenced after the MOA was terminated (paragraph 21 of Ms Parmar's witness statement).

b) As a result of this, ALN understood that TR was continuing to exploit the Supplier Publications after the date of termination of the MOA (paragraph 23 of Ms Parmar's witness statement).

c) TR's evidence is that the inference - to the effect that TR was continuing to exploit the Supplier Publications after the Termination Date of the MOA - which ALN drew from the Statement accompanying the letter dated 26th July 2016, is wrong (paragraph 11 of Mr Kemkers' second witness statement). TR seeks to substantiate this with a series of internal emails – substantively redacted - which were not available to ALN at the time. There are a number of difficulties with TR's attempts to substantiate this: (i) it is contrary to

TR's pleaded case that the Statement was "*adequate and complete*" (para. 27(a) of the Defence); (ii) the emails are a product of selective choice not a full disclosure exercise; (iii) the emails purportedly show how the sum was calculated, but do not explain why TR chose (on its case) to adopt such a calculation method; and (iv) it is telling that in response to ALN's case on knowledge, TR has gone to the effort of producing evidence as to how the Statement was calculated, but have not chosen to adduce evidence to show ALN's belief was wrong.

d) Putting to one side whether ALN's explanation of the Statement is correct, the critical point is that the Statement gave solidity and support to ALN's suspicion that TR had not deleted the Supplier Publications and was exploiting them. This belief was reasonable.

e) Prior to receipt of the Statement in July 2016, ALN only had suspicions as to TR's conduct. The grounds for those suspicions are set out in paragraph 23 of Ms Parmar's witness statement, namely (i) ALN's attempt to obtain information from TR in relation to its sales which had been made during the term of the MOA had been rebuffed and (ii) TR had not sent ALN proof that it had in fact deleted the Supplier Publications.

(6) In case of any remaining ambiguity, the Court should adopt the narrowest construction.

(7) If the Court accepts that the Statement accompanying TR's letter dated 26th July 2016 is evidence of TR's breach of the MOA (or at least accepts this is so at the summary stage) then time began to run from ALN's receipt of the Statement.

(8) If TR's construction is preferred, the claim is still not time-barred, because (i) ALN's suspicions prior to receiving the Statement were based on an absence of evidence, or a lack of information from TR; such an absence of evidence does not satisfy the test in *AB v Ministry of Defence* [2012] UKSC 9; [2013] 1 AC 78; (ii) by contrast, the Statement did give substance to ALN's suspicion (objectively viewed on the basis of materials available to ALN).

(9) Where there are continuing breaches of the MOA, time only runs from when the breach was no longer occurring. There is real sense and reason in allowing a claim to be brought at the end of a continuing breach as opposed to requiring them to be brought at the start. One purpose of contractual time bar clauses is to enable a claim to be investigated soon after the facts giving rise to it. Where a breach is continuing, then that purpose is served equally well if a claim is brought at the end of the period of breach as the start.

<u>Decision on whether the Continued Use Claim is time-barred</u>

69. ALN's Continued Use Claim is made on the basis that TR acted in breach of clause 15.2.1, which provided that "*Upon the termination of the contract between the Supplier and TRLG, TRLG will have either the option to pay a one time fee for the Supplier in return for the content TRLG wants, or within 21 days of the expiry of the*

relevant notice period, shall delete (or shall procure the deletion of) the SUPPLIER Publications from the Thomson Reuters Legal Services and cease making available the SUPPLIER Publications through the Thomson Reuters Legal Services".

70. ALN's claim is based upon the allegation that TR continued to use the Supplier Publications, providing access to the Supplier Publications to third parties, and receiving payment from such third parties, after the termination of the MOA on 1st February 2015. TR denies the allegation.

71. The parties' submissions on whether the Continued Use Claim is time-barred by clause 14.2 centred on the question when the basis for the claim became known to ALN and what "*becomes known*" meant for the purposes of clause 14.2.

72. For the purposes of determining whether the time bar in clause 14.2 is applicable, the Court should assume that the claim or cause of action asserted by ALN is valid and justified. If TR's defence is justified, it might be said that the basis for the claim could never be known to ALN, but in that event the time bar defence would not be relevant. If the Court assumes that ALN's allegation is true, then the Court is in a position to assess whether the requirement of clause 14.2 that ALN had become aware of the basis for the claim is satisfied especially at an interlocutory stage of the proceedings. (*Cf. AB v Ministry of Defence* [2012] UKSC 9; [2013] 1 AC 78, para. 2, which concerned the application of a statutory time bar under the Limitation Act 1980.)

73. As to the meaning of knowledge under clause 14.2, Mr Robb on behalf of TR argued that a subjective reasoned belief in the basis for the claim is sufficient for this purpose, but TR recognised that a mere suspicion would not be sufficient. In this respect, Mr Robb sought to draw support from the meaning of knowledge under the Limitation Act 1980, such as sections 14 and 14A.

74. For the reasons given by Mr Pourghadiri, in my judgment, the meaning of "*becomes known*" to ALN under clause 14.2 of the MOA is not that which is applicable under the Limitation Act 1980. There is no indication in the MOA that knowledge is to be defined in accordance with the statutory meaning. For the purposes of clause 14.2, knowledge should be given its ordinary, natural meaning and should be answered by asking whether ALN knew or was aware of the basis for the claim. In this context, knowledge does not mean that ALN must have an unwavering conviction in the belief in the truth of the basis for the claim, but there must be a sufficient measure of confidence in the belief which is justified by evidence, experience or reasoning. A mere suspicion, even if supported by some indeterminate evidence, is not sufficient to constitute knowledge for this purpose.

75. Mr Robb on behalf of TR argued that ALN was aware of the basis for the Continued Use Claim by 22nd February 2015, because (i) ALN knew that the MOA had been terminated on 1st February 2015, (ii) ALN knew that a 21-day period had elapsed and that it had not received any payment under clause 15.2.1(a), and (iii) ALN knew that TR was continuing to use Supplier Publications on its services, because ALN could see that those services were still operational.

76. I accept that ALN knew that the MOA was terminated on 1st February 2015 and that it had not received any payment pursuant to clause 15.2.1(a) by 22nd February 2015.

77. In favour of the conclusion that ALN knew that TR was continuing to use the Supplier Publications after 1st February 2015 is ALN's letter dated 13th October 2015, in which ALN stated that "*Thomson Reuters violated a basic Article of the Agreement which is related to Termination Provisions. Please, refer to Article 2/3 and Article (15). Still our Encyclopedia [sic] is on Qatar Gate, and still our other Encyclopedias [sic] are with them despite the termination of Contract*". This appears to be an assertion, stated with firmness and certainty, that TR continued to use the Qatari Legislation Encyclopaedia on the Qatar Gate platform and the other Encyclopaedias are being used ("*are with them*"), and that such conduct was a breach of clause 15 of the MOA.

78. However, ALN's position based on the evidence set out in Ms Parmar's witness statement, at paragraphs 19-23, which in turn is based on information provided by Mr Al-Nasri of ALN, was that the statement made on its letter dated 13th October 2015 was no more than a suspicion on the part of ALN, based on (i) ALN's "*attempts to obtain information from [TR] in relation to its sales which had been made during the term of the MOA had been rebuffed*"; and (ii) the fact that TR "*had not sent [ALN] proof that it had in fact deleted the Supplier Publications*". Further, ALN states that it became aware of the basis for the Continued Use Claim only upon receipt of TR's letter dated 26th July 2016 and the accompanying Statement which records "*Contract start dates*" in respect of certain third parties being after the date of termination of the MOA on 1st February 2015. At paragraphs 16-20 of his second witness statement, Mr Kemkers set out reasons why TR maintains that no conclusions can be reached that TR was continuing to exploit the Supplier Publications after 1st February 2015 by reason of the information contained in TR's letter dated 26th July 2016.

79. In my judgment, ALN has a real prospect of succeeding in its claim and defeating the time bar defence on the basis that it did not become aware of the basis of the Continued Use Claim until after 13th June 2016 (being one year before the date of commencement of this action). Whether or not ALN had the requisite knowledge for the purposes of clause 14.2 of the MOA as at October 2015 or only later in July 2016 requires an inquiry into and consideration of the evidence, which might well include both documentary evidence and oral testimony. The Court is not in a position to make this assessment on a summary basis. It may be that TR's case is justified on the evidence. Equally, it may be that ALN's case on when it acquired the requisite knowledge is justified. That is not a decision for today but only at trial.

80. In considering this issue, I am aware that Ms Parmar in her witness statement states - based on information received from Mr Al-Nasri - that ALN became aware of the continued use of the Supplier Publications after the termination of the MOA upon receipt of TR's letter dated 26th July 2016. I am not convinced that there was anything in that letter which would have provided the enlightenment asserted by ALN. Nonetheless, that does not detract from the fact that although ALN's letter dated 13th October 2015 asserted without qualification that TR was continuing to use the Supplier Publications after the termination of the MOA, the evidence relied on by ALN states that it was then no more than a suspicion on the part of ALN. I do not think that it can be assumed for the purposes of a summary judgment application that ALN acquired the relevant knowledge merely because it issued the Claim Form in this action. In my judgment, rather than work backwards from what ALN knew or did not know as at 26th July 2016 (the date of TR's letter) or 13th June 2017 (the date of

the Claim Form), I have concentrated on the date of ALN's own letter dated 13th October 2015 and have concluded that there is a real prospect of success in defeating the time-bar defence on the part of ALN in this respect. That is not to say that TR might not ultimately prevail on this issue.

81. In these circumstances, I do not have to consider ALN's further submission that there was a continuing breach or breaches of clause 15.2.1 of the MOA such that the time bar defence based on clause 14.2 need not. I shall not address this allegation as it is best left to determination at trial.

82. Therefore, TR is not entitled to summary judgment dismissing the Continued Use Claim or the related claims for an account of profits, an injunction or a quantum meruit.

Conclusion

83. For the reasons explained above, I dispose of the TR's application for summary judgment as follows:

    (1) The application for summary judgment dismissing ALN's Agreed Royalty Claim made under clause 3 of the MOA to the extent that the said Agreed Royalty for the relevant quarter was payable by TR before 13th June 2016 is granted on the grounds that the claim is time-barred pursuant to clause 14.2 of the MOA. Insofar as the Agreed Royalty for the relevant quarter was payable by TR on or after 13th June 2016, if there is any such Agreed Royalty payable, the application for summary judgment is dismissed.

    (2) The position is the same in respect of ALN's claim for breach of any obligation to provide Royalty Information (assuming such an obligation existed). The application for summary judgment dismissing the claim is granted insofar as the Royalty Information was required to be provided by TR prior to 13th June 2016 on the ground that the claim for breach of that obligation is time-barred. If, however, the breach occurred on or after 13th June 2016, the claim is not time-barred and the application for summary judgment is dismissed.

    (3) TR's application for summary judgment in respect of the Continued Use Claim (or which TR described as the Non-Deletion Claims) is dismissed. It follows that TR is not entitled to summary judgment dismissing the Continued Use Claim or the related claims for an account of profits, an injunction or a quantum meruit.

84. I am very grateful to both counsel for their helpful and thoughtful submissions.