Case No: CL-2019-000141
Neutral Citation Number: [2021] EWHC 2696 (Comm)

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

7 Rolls Building
Fetter Lane
London EC4A 1NL

Monday, 25 January 2021

BEFORE:

MR JUSTICE WAKSMAN

BETWEEN:

LAKATAMIA SHIPPING COMPANY LTD

Claimant

- and -

(1) NOBU SU (2) TOSHIKO MORIMOTO (3) PORTVIEW HOLDINGS LTD
(4) CRESTA OVERSEAS LTD (5) UP SHIPPING CORPORATION
(6) BLUE DIAMOND SEA TRANSPORT LLC

Defendant

MR S J PHILLIPS QC (instructed by Hill Dickinson LLP) appeared on behalf of the Claimant
MR D HEAD QC (instructed by Baker McKenzie LLP) appeared on behalf of the Defendant
MR NOBU SU appeared in person

APPROVED JUDGMENT

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(Official Shorthand Writers to the Court)

MR JUSTICE WAKSMAN:

1. I am going to give a relatively short judgment now in view of the late hour. In this action, I have to deal with two applications. The first is an application to re-re-amend the Particulars of Claim and the second is an application for specific disclosure also made by the claimant, Lakatamia.

2. By way of background, and there is a lot of it, the first defendant, Mr Su, is already a judgment debtor of Lakatamia pursuant to a judgment given against him by Cooke J in the underlying action at the beginning of 2015 for has been an amount which now, with interest and costs, comes to some $60 million. There a series of defaults so far as Mr Su is concerned, particularly in relation to disclosure and freezing orders and he has been imprisoned now twice for contempt of court.

3. This action arises because of what he said in the course of his first cross-examination of assets which was to the effect that during the currency of the freezing order made against him in 2011, the proceeds of sale of property in Monaco which belonged to him had been paid out to his mother; this was said to be not only in breach of the freezing order but also a knowing breach, both on his part and on the part of his mother.

4. This present ancillary action, as it were, commenced in March 2015. Apart from Mr Su who, in fact, at least earlier on, was present here today in person, and his mother Mrs Morimoto, there are four other defendants. Three of them, Portview, Cresta and UP Shipping, are BVI companies and the fourth is Blue Diamond, a company incorporated in the UAE; technically speaking, Mr Su says that he is also representing Cresta and it is said that he has the beneficial ownership of all those companies.

5. The trial of this action is set to commence on 8 March for three weeks and there is a PTR fixed on 12 February. The cause of action is put either in the form of a conspiracy to use unlawful means, namely violating the freezing order or a relatively new tort of acting so as to effectively frustrate the effects of a judgment. Mrs Morimoto is represented by solicitors and leading counsel and she has denied all of those claims. She is now 87. She lives in Japan, although it is not suggested that there is any

particular underlying health condition which might affect her ability to instruct solicitors and give evidence.

6. The disclosure history, so far as she is concerned, is that she was to give, and purported to give, standard disclosure or disclosure under the pilot on 24 July of this year. Her disclosure statement was brief. She said that she has the control of the former office of Mr Su in Japan. It had a number of folders of documents that he abandoned when he moved. She owns the office, she has a key to it and most of her disclosure comes from that office. She says that she could not disclose all the documents that she then had or controlled because she had some hard copy financial records located in a flat in Taipei in Taiwan and because of Covid-19 she has not been able to get across to Taipei, the implication therefore being that in due course there would be some further disclosure, she says, once she has been able safely to return to Taipei. That was the position at the end of July. In fact, it was something of a red herring, so far as her own ability to travel was concerned, because, of course, she could have instructed others to pick up the documents there. She held out against taking any further steps along those lines until about November when further documents were taken from those premises and disclosed, although not very many of them; in fact, only five were ultimately disclosed. Those were the further documents that were disclosed on 1 December. I will need to say a little more about them later but there was a bank deposit book, a statement of account recording loans that she had made to Mr Su to the tune of some $44 million, a list of expenses for Mr Su, a document from a number of employees which is called a "thank you letter". Her solicitors had said previously that they did not think there was likely to be a lot of disclosure. The claimant had taken the view that this disclosure is seriously incomplete. I will come back, as I say, to the contents of those documents later on.

7. Following correspondence about what Lakatamia says was the inadequacy of that disclosure towards the end of December, the application for specific disclosure was then made on 13 January and I have had witness statements from both sides addressing it. That is all I need to say about that part of the disclosure process at the moment.

8. I am going to deal first with the amendment application but I should say at the outset what the parties' positions are. Lakatamia says that the amendments are

unobjectionable and (subject to the point below) could be accommodated within the trial that is due to start on 8 March. The position of Mrs Morimoto is that they lack sufficient merit and, in any event, would cause the trial date to be lost. So far as the loss of the trial date is concerned, while Lakatamia says it would not be, it also goes on to say that that is not a real point because on the basis of the further disclosure to which it says it is entitled, that process could not be done by the time of the trial and therefore it positively seeks an adjournment of the trial in any event; and if that were right, then the amendment could comfortably be dealt with, subject to the point of merit.

9. Let me then turn to say what these amendments are all about and I do that by reference to the draft claim. Before coming to the detail of it, there are two other procedural points I ought to mention. First of all, there was a question about whether the conspiracy alleged in relation to the Monegasque properties raises a question of governing law being Monaco law or not. That has been ventilated. Lakatamia has not pleaded specifically any foreign law but there is a ongoing discussion between the parties to identify if there is going to be an issue over governing law and expert evidence in relation to it; that is all covered in the present directions for trial.

10. The second thing I should note is this: among the many orders made against Mr Su, in June of last year, Andrew Baker J made a search order in relation to his computers and the result of that was the production of some 800,000 documents. To protect his interests, once key words had been used so as to harvest an initial batch of documents, independent lawyers would then review those documents to ensure there were no privilege documents or wholly irrelevant documents which on either basis should not be disclosed to the claimant. That process has taken some time.

11. In addition, the claimant also put in as key words key words in relation to this section, which strictly they should not have done because they had no permission to make any collateral use of that disclosure which was solely for the purpose of the enforcement of the original judgment. They belatedly made an application to Cockerill J who heard it at the end of September and at the end of November, she gave a judgment permitting that, but saying that it should have been done earlier and there was an element of impropriety which was seeking documents out immediately for use in this action where there was no permission to do so. Of the 90,000 documents that responded to the key

words put in, including in relation to the existing action, I am told that about 275 have emerged from the manual review by the independent lawyers as being relevant to this existing action. So, although the starting figure is very high, the eventual figure for this action is actually very low.

12. I then turn to the Particulars of Claim. In their original form, the freezing order was pleaded, the original proceedings are pleaded, and in addition, so far as the assets subject to the freezing order was concerned, which was not objected to, there is a reference to a Mr Chang who said he was the sole director and shareholder of a company, Great Vision, and said that he held the shares held in Great Vision as nominee but not for Mr Su or any of the Su companies. However, he has not said who he did act as nominee for. In a subsequent witness statement, he said Great Vision was funding Mr Su's legal expenses in the underlying action because of the personal family relationship between the beneficial owner of Great Vision and Mr Su. That is said to be a reference to Mrs Morimoto.

13. The defendant, Mrs Morimoto, on her side say Mr Chang does not actually say who this unnamed family member was. He said it could equally have been Mr Su's daughters. I suspect that that is unlikely on the basis that, on any view, there was a lot of funding going on from Mrs Morimoto to Mr Su, including the aforesaid $44 million they paid on 1 December, but that is not a matter for me to decide; that is a matter for trial.

14. Then the judgment is recited and it is then alleged at paragraph 23 that Mrs Morimoto had actual knowledge of the freezing order. It is alleged that Mr Su told her so. It is to be inferred from the fact it said that she is the ultimate beneficial owner of Great Vision which, itself, was part of the family group of companies that was aware of it and that she had, though Great Vision, provided Mr Su and the Su companies with funding in connection with the appellate proceedings which actually concerned the making of the freezing order as against her in relation to this action. It is, effectively, said if she knew about all of that, she must have known about the original freezing order.

15. Then we come to the first, chronologically, of the amendments. Just so that I can recite them, in paragraph 23.4, and in further support of the allegation of actual knowledge, it

is said that she was integrally and intimately involved in the operation of the TMT group of companies, which was the group of companies through which Mr Su had conducted his business, evidenced by the following matters: (a) that she had given Mr Su detailed instructions and advice on how to operate the family business including an email where she referred to it as "our company"; (b) she had acted as treasurer for the companies and retained ultimate control over the residual cash available until at least 2019. For example, an email is cited saying, "Can you give Madam Su a phone call to release the money."; (c) it is said that she exercised ultimate executive authority within the TMT group and while Mr Su was the CEO she could countermand his decisions. Then there are some examples given of how she did precisely that, showing decisions which purport to be made by her running the company including directing Mr Su. Now, so far as that is concerned, most of the documents that are relied upon for that amendment were relatively recent. The one where it is said that she has acted as treasurer, that came out in 24 July 2020 and then in relation to the emails about exercising executive authority, that is said to be on 28 and 29 September.

16. We then turn to 23A which is the first time there is now an allegation of constructive knowledge. It is said that she should have attributed to her the knowledge of Mr Chang who already features in this pleading on the basis that he had knowledge of the freezing order and that he was Mrs Morimoto's agent for this purpose, whether or not he was also the agent for Mr Su. That is an inference which it is said should be drawn from the fact that prior to the death of her husband, Mr Chang had been his right hand man and then assumed the retainer, in particular for Mrs Morimoto, and so in an undated note which came out of the disclosure from Mr Su, he prepared, which was made in early 2019, "Most company had T C Chang so he follow my mother instructions." And it is said that the companies there include the defendant companies here. Then there is a reference to the direction which was pleaded in paragraph 23.4.D.4 where Mrs Morimoto stipulated a direction to Mr Su. Then there is a reference to Mr Chang holding the shares in Great Vision on behalf of Mrs Morimoto.

17. So far as that is concerned, under the allegation of constructive knowledge, one of the documents that was relied upon came out on 2 September of last year. Then we have a final amended plea which is called the aeroplane conspiracy, paragraph 52L and thereafter. What is said here is that Mr Su was the 100 per cent beneficial owner of an

aircraft and the value of it was at least represented by Mr Su to be $23 million and it was said to be a Bombardier Global Express Aircraft and the allegation is it was sold in around 2014 and at least $800,000 from that sale of which money Mr Su was the ultimate beneficial owner was, in fact, transferred to the control of Mrs Morimoto, and it is said to be inferred that was done pursuant to an agreement between her and him to hold the proceeds of sale, rather like the Monegasque monies. In other words, out of his estate at that point, bearing in mind the freezing order. That is the gist of the allegation that is made.

18. Then there is a reference to an email of 28 May where he says, "Send Madam Su I need 800,000 back from aircraft monies." In relation to that document, he actually said that otherwise he would commit suicide. The response to that came from Ms Huang who said that Ms Tseng would lend him $800,000 as a private loan and the inference that is pleaded is that Mrs Morimoto declined to return the funds and instead arranged for Ms Tseng to do that. It is alleged that was an asset and that he and Mrs Morimoto dealt with the asset in that way, effectively to evade the freezing order and that they conspired to that effect and to make the enforcement of any judgment less likely. In other words, it is the same kind of allegation as the Monaco conspiracy already in this action.

19. Now, in relation to all three proposed amendments, broadly speaking, Mrs Morimoto makes three points. First of all, she says these should be considered late amendments because they will jeopardise, indeed cause the adjournment of the trial and in that context, they lack sufficient merit and then details are given as to why they would threaten the trial date and prejudice the position of Mrs Morimoto as a defendant.

20. Before dealing with those matters in turn, let me just refer to some of the relevant principles, which are well known. Of course, the exercise of granting an amendment or not is discretionary but it is subject to certain well established principles. Taking the lead, really, from the judgment of Carr J, as she then was, in *Quah Su-Ling v Goldman Sachs International* [2015] EWHC 759 (Comm) which has been approved subsequently, those principles include the following:

(a) The overriding objective is of the greatest importance. It is a question of striking a balance between the injustice to the applicant if the amendment is refused and the injustice to the opposing party if the amendment is permitted.

(b) Where it is a very late application, the correct approach is not whether the amendment should be allowed to get to the real dispute, there is a heavy burden on a party seeking a very late amendment to show the strength of a new case and why his opponent and other court users require him to be able to pursue it. The risk to a trial date may mean the lateness of the application would cause the imbalance to be loaded heavily against the grant of permission.

(c) A very late amendment is one where the trial date has been fixed where permitting the amendments would cause a trial date to be lost.

(d) Lateness is not an absolute but a relative concept. It depends on a review of the nature of the proposed amendment, the quality of the explanation for its timing and the fair appreciation of the consequences in terms of work wasted and consequential work to be done. "

I consider that particular principle at subparagraph (d) is very pertinent here.

21. Turning then to the particular proposed amendments, I actually begin with the aeroplane conspiracy. A preliminary point is taken by Mr Head QC which is that, actually, it will be subject to some refinement or change because it now appears that it may not have been the sale of the aircraft, it may have been something to do with its financing or some other payment in respect of it, although from the claimant's point of view, the underlying money exchanges, effectively, are still relied upon, as is the exchange of emails to which I have referred. So far as merit is concerned, Mr Head QC says there is nothing in this and if you read these emails, all it means is that he wanted some money and then Ms Tseng decides to give him a loan and they are entirely unrelated and it says nothing at all about the position of Mrs Morimoto. Well, that is one way of looking at it. Another way of looking at it is to ask why it was he was asking Mrs Morimoto for the money back in the first place. It is classically a matter for trial. Mrs Morimoto will be giving evidence. If this trial is kept to, Mr Su

may be giving evidence and the court can decide where the truth lies on that relatively narrow exchange of emails. So, I would not reject this amendment on the basis that it is too thin or that it is hopeless.

22. There is a second point which arises here. Mr Phillips QC says that the issue of this aircraft payment and Mrs Morimoto's role in it is going to come up in the trial, in any event, even without an amendment, effectively because it may be relied upon as similar fact evidence. That may be going too far but certainly it seems to me that it would be difficult to say that Mrs Morimoto could not be cross-examined about this exchange of emails so as to show the true nature of her relationship with Mr Su in connection with finance and in connection with who looks after money on behalf of the other. That seems to me to be highly relevant to the underlying allegations in this claim and, as Mr Phillips put it, "Well, if that is the case, all one is really doing here is adding the cause of action." Now, it is true; it is a cause of action in conspiracy. It is a serious thing. It is a dishonest and knowing breach of a freezing order but those allegations are already in issue. The relative dishonesty of the parties, of Mrs Morimoto and Mr Su, are already in issue; it is just a bit more of the same. Unless it was going to be shown to me that this was going to involve a vast exercise of further disclosure, for example, which would make the whole thing unworkable, in principle, it seems to me it is a matter which can be dealt with.

23. The next point that is made is the question of delay. Well, not really, in my judgment, because the documents in relation to the aeroplane conspiracy only came out on 6 October and the claimant was ready with its Draft Amended Particulars of Claim to send to those acting for the defendant by 25 November. It may not have been Mrs Morimoto's fault that they did not get those documents; it may have been Mr Su, but either way, I do not see how it can be said that the lateness of this application has been due to the claimant.

24. One general point has been made here on delay which is that if Lakatamia had got a search order against Mr Su at an earlier stage, then all of this would have come out at an earlier stage. That might be true but I am quite aware from the procedural history of this case quite how much had to be done otherwise in their attempt to enforce their

judgment against Mr Su and I do not think that anything can be held against them so far as that is concerned.

25. The final point that I make in relation to the aeroplane conspiracy, and it is true of much of the rest of it, is that this is an inferential case, as claims in conspiracy often are. There is an asymmetric relationship because by definition, the claimant is not likely to have much by way of documents, itself, or direct evidence. Quite often, all it can do is raise inferences from the documents which it has. It is, really, so far as the aeroplane conspiracy is concerned, when I say more of the same, I mean more of the same kind of allegation that is already in the existing action and although the existing action has been the subject of some criticism today, it is worth noting that it is now nearly two years old and at no point has Mrs Morimoto applied to strike it out or seek summary judgment on the basis it is all hopeless. Those are the particular points in relation to the aeroplane conspiracy.

26. I then turn back to paragraph 23.4, which is the other particulars in relation to actual knowledge. Again, while one of the documents came on 24 July, the others came on 28 and 29 September. So far as that is concerned, it is true that this raises the stakes a bit because it is now said that Mrs Morimoto exercised a treasury function or, indeed, a function of overall control and therefore that would, as it were, strengthen the case of actual knowledge of the freezing order because she was, effectively, running these companies. But it is a question of degree. The relationship between her and the companies, in my judgment, is likely to be ventilated, in any event, because significant reliance is placed on various payment instructions that she gave. So, it is not as if this is a very large departure from what is already there and, indeed, in relation to the emails that are referred to, it would be very difficult to see how those emails could not be put to her in the existing action. So, again, it is simply a question of adding those matters as actual knowledge.

27. One then turns to the third category which is the constructive knowledge claim. Now, it is true that one of the key documents here is Mr Su's handwritten notes which implies his mother was giving the instructions to Mr Chang. It will obviously involve an investigation into the relationship between her and Mr Chang but Mr Chang was already going to feature by way of paragraph 11, in any event. Subject to one point on

expert evidence, it does not seem to me that this is a matter which, again, is really outwith the existing claim. It needs to be amended but it is not as if the operation of the companies and Mr Chang's role within them is not something which would already feature in this case.

28. In relation to the points about constructive knowledge and the additional points in relation to actual knowledge, although it has been said they are hopeless or thin or will not go anywhere, they are all of a piece with the existing action, in my judgment, and they are not untypical in conspiracy claims and I certainly would not reject the amendment application on the basis that they are hopeless.

29. Having given an explanation, it cannot really be said that there has been some unnecessary delay on the part of formulating the amendments. One has to look at what the position is once those amendments were communicated to Mrs Morimoto's legal team. Her legal team have had them since 25 November, the claimant, perhaps a little optimistically, invited her legal team to put in a draft defence were in advance of any decision as to the amendments and they declined to do so. More importantly, however, is the fact that her legal team seems to have done nothing at all to explore what further evidence, if any, they would make, a detailed consideration of any expert evidence points and a detailed consideration of disclosure. When you have got an application that is made not immediately before the trial, three and a half months before the trial, if the resisting party wants to make submissions to the effect that it is unfairly prejudicial and it will cause the vacation of the trial, they have got to put some evidence in about it. The truth is, it is speculative as to whether there is going to be very much more that needs to be done by Mrs Morimoto or not. It is certainly not suggested she is going to have cast around for witnesses. She will undoubtedly have to put in a supplemental witness statement but it is not suggested that that is going to be particularly onerous.

30. By way of contrast, it can at least be said that so far as Lakatamia is concerned, it has already run a new key word search of the sort of key words which it says could be agreed between it and Mrs Morimoto in relation to any further disclosure from the 800,000. That has produced a hit list of 4,000. I am told that the reviewing lawyers get through about 1,000 documents a day and then there is some other work which has to be done on top but on the face of what I have been told today, that whole disclosure

exercise could be done within a week of the key word terms being agreed. I doubt there will be much difficulty over the key word terms because both parties did agree the original key word terms, ultimately for the purpose of the existing action. On that basis, there is not actually going to be very much disclosure coming from what now appears to be the main source which is the search order material. Contrast that with the position of Mrs Morimoto. She has maintained strongly her position that she did not have any relevant custodians for the purpose of disclosure and, as Mr Head QC frankly said, he doubts whether there is going to be very much disclosure on her side. On that basis, both sides can comfortably deal with any disclosure consequences of these amendments in the remaining seven weeks before this trial.

31. The only other issue is this question of expert evidence. It was suggested today by Mr Head QC that there could be expert evidence on a number of things, including agency, and so on and so forth but, again, there does not appear to have been any real investigation of that. I am somewhat sceptical as to how far the question of expert evidence is likely to be pursued. One has to bear in mind what is really at stake here, whether it is the aeroplane conspiracy or whether it is the Monaco conspiracy, is whether these individuals, Mr Su and Mrs Morimoto were dishonestly conniving to evade the freezing order or the judgment. That is, really, what is all about. It is, essentially, a factual matter and for better or for worse, as it seems to me, the amount of further documentation which is now likely to be produced is not going to be very great and the court will have to do the best it can on the materials, having heard the witnesses, and being invited to make or not make certain inferential conclusions.

32. A final point that has been made is that this is likely to increase the length of the trial. I am pretty sceptical about that and, in any event, even if some further days were needed, I am sure they can be accommodated. Sometimes, for example, the court will sit on a Friday, as well, but it is speculative as to, in the event, whether it is likely to increase the trial length significantly.

33. All that then leaves is a question of pleadings in answer. Mrs Morimoto's lawyers, it would appear, have not yet worked out what they would say in reply as far as a draft is concerned but I am pretty sure what will be in it. It will be a denial and we have heard, put quite eloquently and very succinctly from Mr Head QC, what her case is going to

be about what you can or you cannot draw from these emails. So, that is not going to be a big exercise and I imagine that could be done within a couple of weeks unless you leave a provision for a reply, if it is necessary. All that seems to be done comfortably within the trial date.

34. So, at the end of the day, I do not class this as a very late amendment because granting it will not entail the adjournment of the trial and it is very important, in my judgment, to stress here that I consider that it cannot be said that the relative lateness of this application is somehow due to the default of Lakatamia. It is in somewhat of a cleft stick, where it has had difficulties of a serious nature in getting disclosure from Mr Su and where even Mrs Morimoto dragged her feet, as it seemed to me, over the months until November and it is not the point that when she eventually had to make disclosure and did on 1 December, that she did not disclose very much. So, applying all the relevant principles and exercising my discretion in the light of them, I am going to allow the amendments. There may be some tweaking that has to be done so far as the aeroplane conspiracy is concerned and that is something which I will ask the parties to deal with between themselves in the first instance.

35. Let me then turn very briefly to the second application which, in my view, can be taken very shortly. The claimant's overall position is it does not believe Mrs Morimoto, who has said in correspondence and through witness statements served by her and by her solicitor for today, that she does not have any relevant custodians. In other words, she does not have any people over whom she can exert either control by way of a legal right or control in a sense of an established practice. In other words, not just the occasional document being produced as a favour but an established and arranged practice, a right or an exception to get these documents. This is not a new matter. This has been debated between the parties going right back to April or May last year and it was never resolved, for example, by way of a hearing. I take the point, which Mr Phillips QC accepts, which is that you must not on an interlocutory hearing make a concluded finding about whether someone has possession or control of a document, particularly if that same issue is going to arise in the substantive trial, because otherwise you are prejudging it. It is not quite the same here. Once a party has said on the underlying facts that they do not have control in the required sense, it is very difficult to see what more the court can do about it. Certainly, the implausibility of that

suggestion, and it is Lakatamia's case that it is implausible, can be put by way of questions to the witness at the trial. They can invite the trial judge to draw an inference that he should not believe anything this witness says because, after all, surely she must have people looking after the underlying payment systems or bank accounts that led to $44 million being lent or given by Mrs Morimoto or Mr Su and trial judges are used to dealing with those sorts of points all of the time, But it seems to me to be quite pointless to order Mrs Morimoto to do what is said in the first part of the order which is to carry out a search by reference to these custodians when she says they are not her custodians and Mr Phillips QC accepted that I am not in a position today to say that they are when she says they are not.

36. Many of the documents that relate to the custodian issues are not ones which have just arrived. Particular emphasis is placed by Mr Phillips QC on the thank you email which is one of the few documents that emerged on 1 December:

> "We are grateful for the many years of attentive Madam Su has given to the members of staff of our company. Even when we experienced an extraordinary difficulty in our company in the past few years, she still did her personal best to take care of all of our staff and their families ensuring they could live a life without worries. This has gone beyond what an employer should do for their employees. No words can express our gratitude…"

37. One of the four custodians, and only one, who are mentioned in the draft order Sherry is here. Her role has been ventilated and argued about in correspondence for some considerable time. The claimant says this proves categorically that all of these people, and certainly Sherry, must have had a custodian relationship with Mrs Morimoto. Well, that depends on what you construe by reference to the employer here and what her role was. She has given some sort of explanation about it which does not sound particularly convincing to me but, again, at the end of the day, if (and this would be the claimant's case) this person says untruthfully, and has done in correspondence and in witness statements that the necessary custodian relationship is not there at this stage, there is not much the court can do about it. There was a suggestion that a lot of time should be spent going over this and asking her to say it again because they could apply to strike out. Now, I have not heard of that being done before. If that is her position, then there is really nothing you can do about it. There is no point granting an unless order, as it were, to the effect that unless she agrees that they are her custodians, the defence should be struck out - because that goes behind her assertion that they are not.

So, I cannot see any utility so far as paragraph 1 is concerned and, as I say, to a large though not complete extent, this is a debate which has been rumbling on for some time.

38. Secondly, there is a question of a reasonable search for a computer in Mr Su's old office. That all came out from Mrs Morimoto's earlier disclosure where she produced in this office in a building which she has owned a number of documents that were Mr Su's, and she did not seem to have any problem doing that if she did not have control over those document, but did not want to get involved in what Mr Su has said are a number of old servers there for TMT. I asked Mrs Morimoto, whose familiarity with IT is not as a great as others might be, says she has not got the password, would not know how to get into the computers anyway. That might be so if they are simply servers, but the answer to that seems to me, Mr Su did indicate that as far as he is concerned, anybody can look at them. If that is his view and if the claimant is prepared to spend the money upfront on getting someone to look through those servers and image them and then see what can be retrieved from them, I see no reason why the claimant should not be entitled to do it. I have some doubt myself as to whether there is going to be much point in this because, it would seem to me, logically, that the real source of documents would be the newer computers which Mr Su has been actively using and which have been searched to some significant effect. So, I am not going to make an order in respect of that. If Mr Su is content for them to be looked at, then arrangements can be made.

39. Paragraphs 1.3 and 1.4 are less pressed upon me, if I can put it in that way, by Mr Phillips QC. They are all matters that have got some history in terms when they have been debated. In an ideal world, perhaps there should be some further disclosure or investigation of those matters. They have not previously been the subject of a disclosure application and I do not want to add to the parties' work which is going to have to be done in relation to this forthcoming trial. So, subject to my point on 1.2, subject also to the fact while I would like Mrs Morimoto to address the fact that in her disclosure statement she says in terms of where most of the documents are that she cannot get, in particular, for example, which rather suggests that there might be some other source, she needs to address that by a witness statement to confirm that there are no other sources that impliedly are referred to in that statement. Subject to that, I make no order on the specific disclosure application. The result of that is there is absolutely

no need for this trial to be adjourned because the underlying thesis which was the disclosure application is not going to result in any further disclosure exercise.

40. Mr Phillips QC has emphasised the point that he thinks that as much time should be needed to see if there cannot be more disclosure on the basis that there must be other documents that Mrs Morimoto has because it will prejudice their case if this is not so. Well, first of all, that is a speculative hope and, secondly, as I say, if it means you have to invite the court to make inferences, that is what you have to do. I say that on the footing that if this case was to go off, it will not come back for a year. I cannot see that is in anybody's interests and it seems to me that the sooner this case is tried, if it is not settled before, the better.

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