Neutral Citation Number: [2021] EWHC 239 (QB)

Case No: QB-2021-000260

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 9th February 2021

Before:

ROGER TER HAAR Q.C.,
(Sitting as a Deputy High Court Judge)

- -

Between:

STROMA BUILDING CONTROL LIMITED	**Claimant**
- and -	
(1) NIGEL BARR **(2) PAUL BOYCE** **(3) COMPLIANCE BUILDING CONTROL LIMITED** **(4) MARK SHEPPARD** **(5) GORDON LYNCH** **(6) BALRAJ SHERI**	**Defendants**

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- -

Daniel Oudkerk Q.C. and Freddie Popplewell (instructed by **Addleshaw Goddard LLP**) for the **Claimant**
Jane McCafferty Q.C. and Simon Forshaw (instructed by **Clyde & Co LLP**) for the **First to Third Defendants**
Angelica Rokad (instructed by **Excello Law**) for the **Sixth Defendant**
The Fourth and Fifth Defendants were not represented

Hearing dates: 29 January 2021

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Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email and release to Bailii. The date for hand-down is deemed to be on 10:30am on Tuesday 9th February 2021.

Roger Ter Haar Q.C. :

1. This is the judgment on the Claimant's application for interlocutory relief against all the Defendants. As explained below, it is only between the Claimant and the First to Third Defendants that there is any dispute.

2. In this judgment the Claimant is referred to as "SBC" and the Third Defendant as "CBC".

3. There was placed before me a Revised Draft Order which sought orders that:

   (1) The Fourth to Sixth Defendants (Messrs Sheppard, Lynch and Sheri) comply with their contractual obligations (i) not to solicit SBC's clients; (ii) not to entice away SBC's employees; (iii) not to make untrue or misleading statements about SBC; and (iv) not to misuse SBC's Confidential Information;

   (2) The First and Second Defendants (Messrs Barr and Boyce) comply with their contractual obligations not to use certain names relating to SBC in the course of any business;

   (3) All of the Defendants deliver up SBC's Confidential Information;

   (4) All of the Defendants identify and preserve relevant evidence;

   (5) All of the Defendants file affidavits as to their (mis)conduct;

   (6) Directions be given for a further interim hearing.

   In order to avoid citing the terms of the text of the proposed order, I direct that a draft of that proposed order should be treated as being an Appendix to this judgment.

4. The Fourth Defendant has agreed terms of an order to be made him. The Fifth and Sixth Defendants have agreed to give undertakings to the Court in terms which are acceptable to the Claimant.

5. Accordingly, as regards the Fourth to Sixth Defendants, there are no extant issues for the Court to resolve.

6. SBC made it clear to me that it is adopting a two stage approach. In this application ("Stage One"), SBC has limited its Application to delivery up of its confidential information, preservation of evidence, disclosure orders and compliance with certain contractual obligations. SBC seeks a return date to consider further injunctive relief – and in particular springboard relief – together with directions for an expedited trial ("Stage Two").

Background Facts

7. The summary of the background facts which follows comes from SBC's counsel's skeleton argument. The facts are evidenced by a witness statement of Martin John Holt, Chief Executive Office of Stroma Group Limited ("Stroma") and a director of SBC.

Stroma and SBC

8. Stroma is the ultimate parent company of the Stroma Group and SBC. Stroma is a leading provider of environmental sustainability and compliance services to the built environment, offering consultancy and inspection services throughout the construction lifecycle of a project. Stroma provides services across England and Wales to a wide range of parties in the construction and energy sectors, including house builders, self-builders, main contractors, property developers, architects and infrastructure managers. Through its subsidiaries, such as SBC, Stroma works alongside its clients and assists with the interpretation of, and compliance with, Building Regulations and the evaluation of building performance. It further provides advice in respect of environmental legislation and reviews project designs with the aim of minimising risk during the lifecycle of a project.

9. On 23 April 2016, SBC, Stroma, and its subsidiary Stroma Compliance Limited, entered into a Share Purchase Agreement (the "SPA") with Messrs Barr and Boyce (and two others). Under the SPA, Stroma purchased the entire issued share capital of SBC (then trading as BBS Building Control Limited ("BBS")) and Bespoke Builder Services Limited ("Bespoke") for £6.439m. BBS changed its name to SBC on or around 28 September 2018.

Messrs Barr and Boyce

10. Messrs Barr and Boyce were the founders of BBS (now SBC). Following completion of the SPA, Messrs Barr and Boyce remained with SBC in executive roles and continued as directors of SBC. Both entered into service agreements with SBC on 23 April 2016 ("the Service Agreements"). Mr Barr left SBC on 31 December 2017 and Mr Boyce left in April 2018.

CBC

11. CBC is a new start-up operation which is a competitor of SBC and Stroma. Its business is the same as SBC's. It was incorporated by Messrs Barr and Boyce on 13 May 2019, and they were appointed as statutory directors on the same day. The majority of CBC's staff are based in Lamberhurst, where SBC is based. CBC employs a large number of former (and soon to be former) employees of SBC (as detailed further below). One of CBC's employees is Marco Valori.

Mr Sheppard

12. Mr Sheppard is currently employed by SBC as a Senior Building Control Surveyor. He commenced employment with SBC on 1 December 2018 (but had continuous employment with BBS since 12 June 2017). Mr Sheppard's role includes liaising with clients on the scope of work required and providing quotations; analysing a project's plans against Building Regulations; performing site inspections during a project's progression; maintaining a list of any remedial actions required; giving sign-off for a project and issuing a Final Certificate. Mr Sheppard is covered by the CIC Code of Conduct and reported to Mr Lynch.

13. On 21 October 2020, Mr Sheppard resigned from SBC to take up a role with CBC, beginning on 31 January 2021. He is currently suspended by SBC pending an

investigation into his conduct (which conduct forms part of the Application). Since this Application was issued, CBC has now performed a *volte face* and revoked their offer of employment to Mr Sheppard.

Mr Lynch

14. Mr Lynch was employed by SBC as an Associate Director from 1 August 2018 until 7 August 2020 (but had continuous employment with BBS since 17 August 2015). During his employment, Mr Lynch was an Associate Director, who was responsible for the operation and performance of the Eastern region, and reported to the Managing Director. Mr Lynch led a team of around 10 surveyors.

Mr Sheri

15. Mr Sheri was employed by SBC as a Building Control Surveyor from 1 December 2018 until 14 January 2021 (but had continuous employment with BBS since 4 May 2015). During his employment at SBC, Mr Sheri was a Building Control Surveyor. His responsibilities were similar to Mr Sheppard's: liaising with clients on the scope of work required and providing quotations; analysing a project's plans against Building Regulations; performing site inspections during a project's progression; maintaining a list of any remedial actions required and giving sign-off for a project and issuing a Final Certificate. Mr Sheri was also covered by the CIC Code of Conduct.

16. On 17 December 2020, shortly before he left CBC, Mr Sheri was suspended pending an investigation into his conduct (which conduct forms part of this Application).

The Alleged Wrongdoing

17. Mr. Holt's witness statement sets out at some length the allegations of wrongdoing against each of the Defendants. These allegations are also recited in the Claimant's counsel's skeleton argument. I do not recite the allegations in this judgment. That skeleton argument asserts that from the evidential position that has emerged there is at the very least a serious issue to be tried that the Defendants have committed at least the following wrongs:

    (1) Messrs Sheppard, Sheri and Lynch have breached their Employment Contracts;

    (2) Messrs Barr and Boyce, and CBC, have induced Messrs Sheppard, Sheri and Lynch to breach their Employment Contracts;

    (3) Messrs Barr and Boyce have breached their Service Agreements;

    (4) CBC has induced Messrs Barr and Boyce's breaches of the Service Agreements;

    (5) Messrs Barr and Boyce have breached the SPA;

    (6) CBC has induced Messrs Barr and Boyce's breaches of the SPA;

    (7) Messrrs Sheppard and Sheri have breached their fiduciary duties;

(8) There is a common design between each of the Defendants to injure SBC by unlawful means (alternatively, between any combination of two or more of the Defendants).

18. The most powerful evidence in support of these allegations comes from a body of emails to and from Mr Sheppard and, to a lesser extent, to and from Mr Sheri.

The Position of the First to Third Defendants

19. SBC sent letters before action to each of the Defendants on 15 January 2021. The letters set out the orders or undertakings which SBC was seeking. The letters made clear that SBC wanted the security of a court order or an undertaking to the court rather than merely a contractual undertaking.

20. On 21 January 2021 Clyde & Co, acting for the First to Third Defendants, wrote to the Claimant's solicitors saying:

> "Before receipt of your clients' letters before action ("**LBAs**"), our clients were unaware of the alleged misappropriation by third parties of information relating to the business of your clients. Our clients take those allegations seriously and are investigating them. A more detailed response to those allegations will form part of our substantive response to the LBAs.
>
> Our clients are willing to give undertakings to the Court in largely the form set out in the Annexures to the LBAs. We enclose amended draft undertakings accordingly. The material points on which our clients' draft undertakings differ from those enclosed with the LBAs are:
>
> 1. Paragraph 2.2 of the "CBC" undertakings enclosed with the CBC LBA would require a thorough enquiry as to the use by any of the CBC employees of any email, messaging or social media accounts, mobile phones, computers or other electronic devices which they may have used to store, send or receive any documents relevant to the issues in dispute. It has not been possible for CBC to conduct such an enquiry in the 4 working days available between receipt of your letter dated 15 January 2021 and today. We have added wording to reflect this.
>
> 2. Similarly, paragraph 2.2 of the "Barr" undertakings enclosed with the Barr LBA would require a thorough enquiry as to the use by Mr Barr and Mr Boyce of any email, messaging or social media accounts, mobile phones, computers or other electronic devices which they may have used to store, send or receive any documents relevant to the issues in dispute. It has not been possible for Mr Barr or Mr Boyce to conduct such an enquiry in the 4 working days available between receipt of your letter dated 15 January 2021 and today. We have added wording to reflect this.

> 3. Likewise, paragraph 3.3 of the CBC undertakings enclosed with the CBC LBA and paragraph 3.3 of the "Barr" undertakings enclosed with the Barr LBA would require enquiries by CBC and by Mr Barr and Mr Boyce, respectively, which they have not been able to conduct in the time available. We have qualified the wording of those paragraphs to reflect this.
>
> 4. Paragraph 4 of the "Barr" undertakings enclosed with the Barr LBA contains an absolute restriction on Mr Barr and Mr Boyce from using the term "BSS". Whilst we appreciate that the wording used reflects that on the Share Purchase Agreement dated 23 April 2016 ("**SPA**") in this respect, there are limited circumstances in which it may be necessary for Mr Barr and Mr Boyce to refer to the fact that they used to work for BSS. For example, to satisfy a regulatory enquiry. We have amended the wording of this paragraph accordingly.
>
> 5. We have also removed the reference to "Completion" from paragraph 4 (and the definitions) from the "Barr" undertakings enclosed with the Barr LBA, as it is not possible for our clients to give an undertaking in January [2021] with retrospective effect from 23 April 2016. In any event, your clients are already protected by the restriction in similar terms given in the SPA.
>
> In light of the fact that our clients are willing to give undertakings in largely the form sought by your clients, an application for injunctive relief is, plainly, unnecessary. We look forward to receiving confirmation that your client will accept undertakings from our clients in the forms enclosed with this letter."

21. Mr Oudkerk Q.C. for the Claimant places considerable reliance upon this letter.

22. On 22 January 2021 the Claimant's solicitors wrote to Clyde & Co indicating that SBC was in the process of issuing proceedings, and asking for *"consent to the relief sought at stage one of the application notice and reflected in the draft order ... by 10.00am on Tuesday 26 January 2021."*

23. On 26 January 2021 Clyde & Co responded:

> "1. By our letter of 21 January 2021, in order to avoid the costs of a contested hearing, our clients offered to provide effectively the relief sought by your clients in correspondence. This was a generous offer and extended to relief to which your clients were not entitled and which is unlikely to be granted by the Court.
>
> 2. Our clients' offer included some necessary but minor drafting amendments to your client's proposed undertakings; such as, by way of example, to permit our clients to make use of the words BBS etc, where they were required to by their auditors, by regulatory requirement or by court order. This offer was rejected

> by your client, which has since issued proceedings and the Application. The undertakings previously offered by our clients have fallen away and our clients' offer will not be reinstated.
>
> 3. Our clients have now instructed Leading and Junior Counsel in relation to the Application.
>
> 4. The Application is complex. The draft order runs to some 26 pages. Extravagant, wide-ranging, and varying relief is sought against six different respondents, currently represented by 4 different legal teams or potentially in person. The Application will require the Court to consider the considerable jurisprudence in this area pointing against the relief sought, and any responsive evidence served by the respondents.
>
> 5. Notwithstanding all of the above, you have had the Application listed only for 1 hour this Friday. That listing in plainly inadequate to deal with the Application, even if only contested by our clients, but even more so if contested by any or all of the other respondents. Moreover, the listing of the Application this Friday leaves our clients no proper opportunity to consider or prepare responsive evidence, nor for that evidence to be served on your client in an orderly manner.
>
> 6. The evidence served in support of the Applicant fails to address when your client commenced its 'investigations' or why these matters were not raised with our clients before your letter sent at 21.02 on Friday 15 January 2021 requiring a response by midday on Tuesday 19 January 2021 (only one clear business day). Your client was aware of at least some of the matters now complained of from 29 October 2020 at the latest.
>
> 7. In the circumstances, please confirm your agreement that the hearing of the Application currently listed for 1 hour this Friday should be adjourned to Friday 5 February 2021, with a time estimate of one day. Our clients will then agree to serve any evidence in response by 4pm on 3 February 2021.
>
> 8. Should your client refuse to agree to this reasonable approach, our clients will instruct Counsel to attend Friday's hearing and will seek an adjournment from the Court …."

24. The hearing of the application was fixed for Friday 29 January 2021. Whilst it was listed for one hour, it was indicated to the parties in the course of the previous day, but after skeleton arguments had been lodged, that after a start at noon, the rest of that day would be available for hearing the application.

25. On 28 January 2021 a statement from Mr Barr was served. This said in paragraph 1.7 that Mr Barr could not in the time available respond in full to Mr Holt's witness statement. Summarising the contents of that witness statement, Mr Barr said that:

(1) Mr Barr and Mr Boyce work only part time in the CBC business. They have taken a backseat in the day to day running of the business, the real work is done by the employees.

(2) CBC is a very small outfit. When they set up, they intended only to operate in the South East of England (Kent/Sussex). More recently they had started to operate in the East of England as well, but only because Mr Lynch had joined them. Mr Lynch initially left Stroma to join another Approved Inspector business but then approached CBC to see if he could join that company.

(3) He and Mr Boyce were unaware of the Sheppard and Sheri emails.

(4) CBC has withdrawn the offer of employment made to Mr Sheppard.

(5) Mr Sheri is not an employee of CBC, but rather a self-employed contractor. Now that CBC is aware of the allegations against Mr Sheri CBC is also investigating his conduct and CBC has instructed him that any work that he is carrying out for or on behalf of CBC must not be in breach of his post-termination restrictions. If, following those investigations, CBC thinks it right to terminate its contractual relationship with Mr Sheri, it will do so.

(6) CBC has suspended Mr Lynch while CBC investigates his conduct and will abide by any order that the Court makes in relation to him and the restrictions on soliciting certain Stroma employees and clients in his contract of employment with Stroma. He made the point that CBC had not seen those restrictions until very recently.

26. Mr Oudkerk drew my attention in particular to Section 3 of Mr Barr's witness statement. The following passages seem to me significant:

> "3.5 Regarding the projects specifically referred to in the Sheppard Emails, there are four projects which are not yet underway. We have put a block on those, which means we have told our staff not to do any work on them and we will tell the clients we cannot do this work.
>
> 3.6 There are three projects referred to in the Sheppard Emails which are underway. These need to be continued. This is because it would be hugely problematic for the clients to stop the projects mid-way, as they would suffer financially and it would cause significant delay for them.
>
> 3.7 There are also certain clients (i.e. homeowners or developers) or contacts (i.e. introducers such as architects or builders) mentioned in the Sheppard Emails but without any specific projects referred to. In relation to these, we have investigated and identified that there are 28 projects from these individuals which are not specifically referred to in the Sheppard Emails. Of these 28 projects, 17 are not yet underway and we have put a block on those, which again means we have told our staff not to do any work on them and we will tell the clients we cannot do

> this work. The remaining 11 projects are underway and therefore need to continue for the reasons outlined at paragraph 3.6.
>
> 3.8 We are also going to search for the Confidential Emails and for any other documents which have been created from or as a result of the Confidential Emails on our systems and devices. We will not be able to do this by next Monday 1 February 2021, but we are making this a priority and will do it as soon as we possibly can. We will agree to delete these documents from our systems and devices but will not do this until we have agreed how to do this with Stroma."

27. The skeleton argument filed by counsel for the First to Third Defendants at about the same time as Mr Barr's witness statement sought an adjournment, but also set out detailed reasons for refusing the relief sought.

28. On the morning of the hearing a Note was sent to the Court by Counsel for the First to Third Defendants. The brunt of this statement was that there was no signed contract of employment on the part of Mr Lynch and that Mr Lynch had been unwilling to agree to the terms proposed by SBC because they were too restrictive.

29. When the matter came before me, Ms McCafferty did not pursue the application for an adjournment.

The Proper Approach

30. Unsurprisingly it was common ground that the principles to be applied are those set out in *American Cyanamid v Ethicon Ltd* [1975] A.C. 396, namely that I must be satisfied by SBC (i) there is a serious issue to be tried; (ii) that damages would not be an adequate remedy; and (iii) that the balance of convenience is in favour of making the order.

Is there a serious issue to be tried?

31. In her submissions, both written and oral, Ms McCafferty Q.C. concentrated particularly on the position of Mr Barr and Boyce. I do not think that is the right place to start. It seems to me that the right place to start is with the conduct of CBC, and then consider the role, if any, of the individuals in the conduct of the company.

32. The evidence appears to me to show a highly arguable, indeed, as Mr Oudkerk submitted, a compelling case that CBC as an organisation was involved in a major exercise in diverting SBC's clients through illegal means. Indeed, it seems to me that Section 3 of Mr Barr's witness statement goes a long way towards accepting that.

33. It is also noticeable that Mr Barr's witness statement was quiet on the role of Mr Valori, an employee of CBC who was very much involved with what was going on.

34. The evidence in judgment paints a powerful case against CBC: what of Mr Barr and Mr Boyce? Whilst Mr Barr's witness statement seeks to distance both of them from the conduct of the company, they were the people who founded CBC and were the directors of the company. CBC is not a vast company, and in my judgment there is a serious

issue to be tried as to what the true extent of the knowledge of each of them was as to what was going on.

35. Whilst Ms McCafferty placed considerable emphasis upon the absence of a signed contract of employment binding Mr Lynch, I do not regard that as being of great significance: even without a signed agreement, there is a serious issue to be tried as to the terms of Mr Lynch's employment and, therefore, as to whether the First to Third Defendants induced a breach of his contract of employment. But, even were that not so, there are sufficient other reasons to conclude that there is a serious issue to be tried as between the Claimant and the First to Third Defendants to satisfy the first limb of the *American Cyanamid* principles.

The orders sought

36. The orders sought in headline terms are as follows:

    (1) Enforcement of Contractual Obligations;

    (2) Preservation of Evidence;

    (3) Delivery up of Confidential Information;

    (4) Provision of Affidavits.

Enforcement of Contracts

37. Insofar as relevant for the purposes of this judgment, this concerns whether Mr Barr and Mr Boyce should be required to comply with the terms of Clause 7.2 of the SPA.

38. It does not seem to me necessary to grant any injunctive relief in this regard in respect of the short period between now and a return date in this application. Clause 7.2 of the SPA is concerned with unfair competition by way of passing off. It seems to me that insofar as Mr Barr or Mr Boyce might attempt to make some illicit profit by passing off in breach of the SPA in the next week or so, the financial damage to SBC would be limited and could be recompensed by an award of damages.

39. Accordingly at this stage this part of the Claimant's application does not satisfy the second *American Cyanamid* requirement, even if the first is satisfied.

Preservation of evidence

40. Ms McCafferty and Mr Forshaw's skeleton argument argues as follows (paragraphs 46 to 54):

    (1) In order to grant an evidence preservation order, the Court must be satisfied on the basis of the evidence the applicant puts before it, that without such an order, there is a real risk that a respondent will destroy, damage or conceal evidence.

    (2) The Court cannot proceed on the basis that the granting of a relief will 'do no harm' as a basis for making an order. In *HVE (Electric) Limited v. Cufflin Holdings Limited* [1964] 1 WLR 378 Salmon LJ noted:

> "The Queen's Bench judges do not grant injunctions merely because they will do no harm but, like their brethren in the Chancery Division, grant them only if there is evidence before them of the likelihood of the wrong complained of being repeated and evidence before them that the plaintiffs need interlocutory protection against those wrongs."

(3) Nor is an applicant entitled to an injunction just because it wants or demands one or suspects that there has been some wrongdoing. Again, it is well established in the authorities that in order for an interim injunction to be granted, there must be a *"real risk"* that, unless restrained by the Court, there will be a breach of a legal obligation and that "*an employer is not entitled to injunctive relief simply because it seeks it"*: see *Caterpillar* at paragraph 67. The assessment of such risk must be based on evidence, not mere suspicion: see *CEF Holdings Limited v. Mundey* at paragraph 125.

(4) There is <u>no</u> evidence before the Court that any of the Clydes Defendants might destroy, damage or conceal evidence. The only allegation in the witness evidence that *anybody* has behaved in such a way is at paragraph 69 of Mr Holt's witness statement where there is an allegation that the Sixth Defendant - Mr Sheri - *"wiped"* his mobile phone before returning it to the Claimant. Even drawing all available inferences against Mr Sheri, it is not evidence of a risk of destruction of evidence by the Clydes Defendants. Mr Sheri is not even an employee of CBC - he is a mere contractor.

(5) On the evidence that is before the Court, the Clydes Defendants offered undertakings to preserve evidence before the Application was issued. SBC's witness statement fails to address this part of the offer it rejected. But it is not the conduct of a party which intends to destroy evidence.

(6) Moreover, if SBC had genuine and well-founded concerns about the risk of destruction of evidence by any of the Clydes Defendants, it is surprising that it did not seek a preservation order *ex parte*. SBC had ample time to do so. The Court noted surprise at such a course of action in *Capital Plc v. Darch* and relied on this as tending to suggest that there were no real concerns as to the destruction of evidence (see paragraph 31 of *Capita Plc v. Darch*):

> "… Moreover, if Capita had a serious concern that the Defendants might act in this way, I would have expected an application for such relief to be made without notice to the Defendants. If the application is made with notice, this suggests that Capita cannot say that the Defendants would take the opportunity to act contrary to the injunction that is being sought between the date that they receive notice of the application and the effective hearing date. However, if they are unlikely to act wrongfully between those dates, at a time when they are not subject to the restraint of an injunction, what are Capita's grounds for saying that they would act wrongfully thereafter unless enjoined?"

(7) There is _no_ evidential basis for the granting of preservation orders as against the Clydes Defendants.

(8) Moreover, the Court must be astute to ensure that this expensive litigation is not used by SBC to stifle legitimate competition. This is a particularly acute risk here where the preservation order is drafted in unjustifiably broad terms which:

a) are governed by a definition of "*Relevant Document"* which is not limited to documents containing SBC's confidential information (howsoever defined) or anchored in any pleaded case, and thus would necessarily extend beyond the standard disclosure which the defendants will be required to provide in short order under case management directions for a speedy trial;

b) goes far beyond evidence preservation and prevents the Clydes Defendants from _*making use*_ of the documents;

c) would require an extensive search exercise, at least as extensive as standard disclosure, to be performed in a matter of days and at pain of penal sanction;

d) is not limited to the unlawful conduct alleged in the Application, or indeed any unlawful conduct, but extends to all recruitment of staff, all efforts to obtain client business and all evidence of the First and Second Defendants "*being engaged with or working for CBC"* and as such applies to perfectly lawful conduct by these parties and would effectively extend to all business activities of CBC from its inception.

(9) Such excessively broad relief would require exceptionally strong evidence in support. In this case, it is wholly unsupported by any evidence and underscores that this is, at best, a fishing expedition by a commercial competitor.

41. I recognise the need for caution before granting any injunctive relief. However, it seems to me that an order requiring the preservation of evidence is fully justified in this case.

42. Firstly, and most importantly, there is a serious issue to be tried, as I have already held, as to whether CBC and its directors and shareholders were involved in a significant attempt to divert customers from SBC to CBC by illicit means.

43. Secondly, the dishonesty which it appears may well have been displayed by CBC employees or agents thus far suggests that extreme caution is justified.

44. Thirdly, if there has been such wrongdoing, the Defendants have significant interest in seeing that evidence is not preserved. It may well be that the horse has bolted – but if it or any of its evidential traces remain, it is desirable that they are retained at least for the few days before a return date in this matter.

45. Fourthly, it is relevant that on 21 January 2021 these Defendants were willing to give undertakings to preserve evidence (amongst other undertakings). This suggests to me that no commercial harm will be done to any of these three Defendants by a requirement to preserve evidence in the terms of the order sought. This viewpoint is underlined by

the fact that Mr Barr does not suggest in his witness statement any harm that will be caused to any of these Defendants if the injunction to preserve evidence is granted.

46. Finally, the initial duration of this order will be short.

47. Accordingly I regard the grant of interim injunctive relief to require preservation of evidence to be fully justified in this case. This order will remain in force until 9 February 2021 or further order in the meantime.

Delivery up of confidential information

48. The order sought against Mr Barr is as follows:

> "By 4pm on 1 February 2021, Mr Barr shall deliver up to the offices of the Claimant's legal representatives all hard copy documents which are the property of the Company or which contain Confidential Information that are in his possession, power, custody, or control (subject to valid claims of Legal advice or litigation privilege)".

49. Orders in the same terms (other than as to change of names) are sought against Mr Boyce and CBC.

50. Ms McCafferty and Mr Forshaw in their skeleton argument, and Ms McCafferty in her oral submissions launched a fierce attack upon this proposed order, concentrating particularly upon the definition of "Confidential Information" in the proposed order. It was suggested that the Defendants would not be able to know what they were required to do.

51. It is important to note that the order relates to "hard copy documents". This is a limited class of documentation. Whilst the definition of "Confidential Information" is widely, and skilfully, drawn, I do not believe that any of the three Defendants will find it difficult to understand what is required of them.

52. If any of these Defendants have such documentation in their possession or control, it seems to me obvious that it should be returned to its rightful owner. The evidence suggests a powerful case that such documentation has found its way into the hands of the First, Second and/or Third Defendants.

53. Accordingly I grant the orders sought against the First to Third Defendants, however the date for compliance will be 4 February 2021.

54. If there is any doubt in respect of any particular document, there will be liberty to apply in order to obtain directions as to whether any particular document(s) should be delivered up.

Provision of affidavits

55. I have received detailed submissions in writing and orally on this requested order.

56. Ms McCafferty and Mr Forshaw draw my attention to relevant authorities, particularly *Aon Limited v JLT Reinsurance Brokers Ltd* [2010] IRLR 600 and *ASE Plc v Kendrick* [2014] EWHC 2171.

57. Those authorities make clear the cautious approach to be taken by a court in making orders of the type sought by the Claimant.

58. I have considerable doubts as to whether the breadth of the order sought by the Claimant is justified. On the other hand, it seems to me that Section 3 of Mr Barr's witness statement raises very serious questions as to what has been going on, sufficient to call for more open explanation about the projects to which he refers.

59. What I think is just and proportionate is that by 5 p.m. on Thursday 4 February 2021 the First to Third Defendants should be required to file affidavits (which could come from the First or Second Defendant on behalf of the three Defendants):

    (1) Setting out the fullest possible details of the results of all inquiries conducted as to the matters raised by the Claimant in this matter, including all information available in respect of the transactions referred to in Section 3 of Mr Barr's witness statement;

    (2) Stating what inquiries are outstanding, why they are outstanding, and when it is expected that they will be concluded;

    (3) Exhibiting any documentation coming to those Defendants' attention in the course of those inquiries.

60. Whilst this is a short timeframe, it is important to note that Mr Barr's witness statement makes clear that a number of projects which may have been obtained illicitly are continuing, although he does not give particulars sufficient to identify which they are. Further, by 21 January 2021 these Defendants had had sufficient time to take legal advice and to offer undertakings. It is reasonable to expect that from then onwards active enquiries would have been being undertaken.

Next steps

61. The conclusions above require the delivery up of documentation and the provision of evidence by the First to Third Defendants by Thursday 4 February 2021.

62. I direct that there will be a hearing on Tuesday 9 February 2021, reserved to myself, to deal with any further directions in this case.

63. All questions of costs will be reserved to that hearing.