



Neutral Citation Number: [2018] EWHC 3577 (Ch)

Case No: PT-2018-000505

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
CHANCERY DIVISION
PROPERTY TRUSTS AND PROBATE LIST (ChD)

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

Monday, 3rd December 2018

Before:

MR JUSTICE MARCUS SMITH

Between:

(1) CANARY WHARF (BP4) T1 LIMITED **Claimants**
(2) CANARY WHARF (CP4) T2 LIMITED
(3) CANARY WHARF MANAGEMENT LIMITED

- and -

EUROPEAN MEDICINES AGENCY **Defendant**

MS. JOANNE WICKS QC, LORD ANDERSON OF IPSWICH KBE QC, and MR. JONATHAN CHEW (instructed by **Clifford Chance LLP**) for the **Claimants**
MR. JONATHAN SEITLER QC, MR. THOMAS DE LA MARE QC, MS. EMER MURPHY, and MR. JAMES SEGAN (instructed by **DLA Piper UK LLP**) for the **Defendant**

Hearing date: 3 December 2018

Approved Judgment

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MR. JUSTICE MARCUS SMITH:

1. I have before me an application regarding the management of the trial of this matter next year which relates to whether the experts called by each side should be cross-examined. It should be stated at the outset that the issue on which the experts have given their evidence – and I shall come back to the nature of the evidence in a moment – is controversial in that both parties advance differing cases as to what was foreseeable in the terms of Brexit at the time the lease was concluded.
2. In those circumstances, the ordinary course would be to require both experts to attend for cross-examination and for each party to put their case, that process having been preceded by exchange of joint reports and statements of agreement or disagreement. That would be the normal course.
3. However, in this case, the experts have not submitted a formal expert report of the sort envisaged under the CPR. As was made clear in my ruling on 26 September 2018 in this matter, the experts were effectively precluded from giving expressions of opinion in their reports. What instead they were asked to produce was a collation of relevant documents that the court ought to see for the judge to review and what was termed, in paragraph 4.2 of my ruling, a critical analysis looking at the material collated with the expert giving a view as to whether the information was significant.
4. In paragraph 8 of my ruling, I expressly considered the question of whether opinion evidence would assist. I said there:

“I am satisfied it is not going to assist the judge, whether it be me or someone else, in reaching a conclusion on the points in issue. Given the material that will be before the judge, the collation, and the narrative, it will be well within the ability of the judge to reach a concluded view on the question of foreseeability without expert assistance.”
5. That, to my mind, is substantially the answer to this application. I have read both narratives, that is to say the narrative of Prof. Jennings and the narrative of Prof. Bale. It seems to me they have done what they were asked to do, which is to provide the court with a sense of the context of how matters stood politically with regard to the UK’s relations with the European Union at the time the lease was granted. I am very grateful to them for their efforts.
6. It is certainly the case that they have done so in a level of detail and with a level of granularity as I am quite confident no ordinary reasonable person would have had in mind, but as background to this matter it seems to me the material is extremely helpful. However, I do not consider that a detailed parsing of what the experts may or may not have meant in their narratives, given that these are intended to be a broad-brush narrative of the relations between the United Kingdom and the European Union over time, will assist me further. It seems to me much more important that I hear in the form of submissions from counsel as to what they draw from the two reports.
7. So it is now entirely too late and wrong for the reasons that I gave in my earlier ruling to invite the experts to provide what would inevitably be opinion evidence if they were to be cross-examined on points in their narratives.
8. So, for those reasons I am going to order that the two reports stand as narratives and that there be no further evidence save for the reply report from the EMA and that any

further points in respect of this issue will be addressed by way of submission of counsel and not by way of opinion evidence from the experts, my view as to opinion evidence being that this is a matter on which the judge can assimilate the material and reach his own concluded view.

This transcript has been approved by the judge