

Case No: BL-2021-000640

Neutral Citation Number: [2022] EWHC 1236 (Ch)

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**BUSINESS LIST (ChD)**

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

Friday 25 February 2022

BEFORE:

**MASTER PESTER**

BETWEEN:

-----  
**(1) COVALIS CAPITAL LP**  
**(2) COVALIS CAPITAL LLP**

Claimants

- and -

**BANCO BTG PACTUAL SA**

Defendant

-----  
**MS S HURST** (instructed by Kris Sen Solicitors) appeared on behalf of the Claimants

**MS A DAY QC** and **MS J BOX** (instructed by Reed Smith LLP) appeared on behalf of the Defendant

-----  
**JUDGMENT**  
**APPROVED**  
-----

Digital Transcription by Epiq Europe Ltd,  
Unit 1 Blenheim Court, Beaufort Business Park, Bristol, BS32 4NE  
Web: [www.epiqglobal.com/en-gb/](http://www.epiqglobal.com/en-gb/) Email: [civil@epiqglobal.co.uk](mailto:civil@epiqglobal.co.uk)  
(Official Shorthand Writers to the Court)

*This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.*

*WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.*

1. THE MASTER: At the moment, I am not going to order an issue for disclosure in terms of issue 18, either as formulated in the DRD that is actually before me or on the basis of what Ms Hurst was formulating (it seemed to me somewhat on the hoof). What she suggested was, "Did the RWE plan become out of date before redemption of the fund and, if so, when?" or something along those lines.
2. I am not persuaded that it is right to order disclosure in those terms because the parties have agreed -- and it seems to me properly agreed -- that we will have a trial in two stages with the issue of liability only (the breach of confidence trial) being tried at the first hearing. If one starts bringing issues about the staleness of the RWE plan or becoming out of date before redemption of the fund or when the confidentiality ceased, for the purposes of formulating the List of issues for Disclosure, it seems to me one starts to blur the different questions of liability versus causation and loss, which should be kept separate. If one does not do that, one starts to get into the realm where any savings from hiving off the issues for the liability trial as agreed between the parties begins to be undermined, so that seems to me the wrong way to go.
3. So, for the reasons that have been submitted to me by Ms Day, I prefer the view that issues 1 to 29 are properly issues for the first-stage trial and 30 and 31 (and interest in so far as it is interest relating to the breach of confidence claim) will be issues only for stage 2. So, issues 30 and 31 will be reserved for the second stage. Therefore, for the reasons I have just set out, I am not persuaded that Issue 18 is a proper issue to be included in the List of Issues for Disclosure at the moment.

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

Unit 1 Blenheim Court, Beaufort Business Park, Bristol BS32 4NE

Email: [civil@epiqglobal.co.uk](mailto:civil@epiqglobal.co.uk)

**This transcript has been approved by the Judge**