



Neutral Citation Number: [2024] EWHC 3264 (Ch)

Case No: IL-2024-000060

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

7 Rolls Building
Fetter Lane, London,
EC4A 1NL

Date: 18 December 2024

Before:
The Honourable Mr Justice Thomsell

Between:

(1) PLAYTECH SOFTWARE LIMITED **Claimant**
(2) EURO LIVE TECHNOLOGIES SIA
(a company incorporated under the laws of Latvia)

- and -

(1) GAMES GLOBAL LIMITED
(a company incorporated under the laws of the Isle of Man)
(2) GAMES GLOBAL OPERATIONS LIMITED
(a company incorporated under the laws of the Isle of Man)
(3) MT REALTIME LIVE LTD
(a company incorporated under the laws of Malta)
(4) REALTIME SIA
(a company incorporated under the laws of Latvia)
(5) MR IGORS VELIKS

Defendants

Mr Michael Tappin KC and Mr Thomas Jones (instructed by **Linklaters LLP**) for the
Claimants

Mr Micheal Silverleaf KC (instructed by **Cooley (UK) LLP**) for the **First and Second**
Defendants

Mr Tom Moody-Stuart KC and Mr Maxwell Keay
(instructed by **Herbert Smith Freehills LLP and Trowers & Hamlins LLP**) for the **Third,**
Fourth and Fifth Defendants

Hearing dates: 6-7 November 2024

Approved Judgment

This judgment was handed down remotely at 10.30am on 18 December 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Approved Judgment**Mr Justice Thompsell:****1. INTRODUCTION**

1. This hearing is dealing with a number of applications made in relation to an action which Playtech Software Ltd (“**Playtech**”) is looking to pursue against five defendants in relation to alleged breaches of confidentiality, the ~~theft~~ misuse of trade secrets and infringement of copyright.
2. Playtech operates in the online gambling industry. In particular, Playtech commissions its sister company, Euro Live Technologies SIA (originally the Second Claimant) (“**ELT**”) to design and develop online gambling games on its behalf and Playtech licenses such games to operators of online gambling websites such as William Hill. Playtech has a particular speciality in the development of online live casino games that bring together online a live presenter and a casino game.
3. The Fifth Defendant, Mr Veliks, was employed by ELT to develop games to be used in Playtech’s business. In this capacity, he was given access to a software platform called Horizon by means of a password and username. He also had access to other passwords and usernames affording similar access. The Horizon platform hosts playable versions of games developed for Playtech, including games that have been released, and some games that have not yet been released.
4. Mr Veliks left employment with ELT and became employed by the Fourth Defendant, Realtime SIA (“**Realtime Latvia**”), a Latvian company, to undertake a similar role developing games for that company. Whilst undertaking this role, it appears that he used the credentials he had been given to gain access to Horizon. Playtech alleges that this was an act of industrial espionage and involved breaching duties of confidentiality owed by Mr Veliks to Playtech; and a misuse of trade secrets by Mr Veliks.
5. Playtech also alleges that its copyright was infringed by Mr Veliks in the United Kingdom in that Mr Veliks made a copy of the work by accessing Horizon from Riga, Latvia and that, while they were both in the United Kingdom, Mr Veliks sent to a Mr Ivanovs (then a co-employee of Realtime Latvia) a screenshot of that work.
6. Playtech alleges that Realtime Latvia was vicariously responsible for these breaches as Mr Veliks’ employer and that it, and another company in the same group based in Malta, the Third Defendant, MT Realtime Live Limited (“**Realtime Malta**”) have knowingly misused this confidential information.
7. Playtech alleges against the First and Second Defendants, Games Global Limited (an Isle of Man company) and another Isle of Man company, Games Global Operations Limited (together the “**Games Global companies**”), that they are jointly liable for the misuse of confidential information said to have been committed by the Third and Fourth Defendants by acting in combination with them in relation to the design, development and release of online gambling games and/or in a way such as to further those acts in pursuance of a common design, and in doing so knew, or at least turned a blind eye to, the essential facts that made these actions unlawful.

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8. Playtech, was originally advancing its claims alongside ELT. They had jointly put forward Particulars of Claim claiming relief on a number of bases. These included claims based on the contractual duties of Mr Veliks as an employee of ELT and claims based on alleged breaches of the user agreement relating to the Horizon platform. Playtech and ELT obtained permission to serve out on the basis of their original claims. Playtech now wishes to amend its claim, and pursue its amended claims by itself, with ELT withdrawing as a claimant. The court is asked to approve its proposed Amended Particulars of Claim and to approve the service of its proposed Amended Particulars of Claim out of the jurisdiction.
9. At the same time, each of the Defendants has raised various objections to the claims being pursued in the courts of England and Wales, arguing that, as a result, the court should not approve the Amended Particulars of Claim and should not assume jurisdiction over this matter. They raise arguments that:
 - i) the claims as amended do not pass the tests in *Kawasaki Kisen Kaisha v James Kemball* [2021] EWCA Civ 33 (“*Kawasaki*”), as discussed further below;
 - ii) the claim as amended does not pass through any of the “gateways” set out in paragraph 3.1 of Practice Direction 6B so as to allow service out of the jurisdiction; and
 - iii) in any case the courts of England and Wales are not the most convenient forum for a dispute which, each of the Defendants consider relates principally to matters that occurred in Latvia and the English court should not use its discretion to allow the case to be pursued in England.
10. These arguments are considered below.

2. LEGAL PRINCIPLES CONCERNING SERVICE OUT OF THE JURISDICTION

11. Pursuant to Civil Procedure Rule (“CPR”) 6.36, subject to certain exceptions not applicable in this case, the permission of the court is required for service of a claim form outside the jurisdiction. Pursuant to CPR 6.37(3) the court will not give permission to serve out:

“unless satisfied that England and Wales is the proper place in which to bring the claim”.
12. In order to satisfy the court of such matter, Playtech needs to satisfy the court of three matters in respect of each claim they seek to bring against each of the Defendants (see the White Book at 6.37.13 and *Altimo Holdings Ltd v Kyrgyz Mobile Tel Ltd* [2011] UKPC 7, [2012] 1W.L.R. 1804 (“*Altimo*”) at [71], [81] and [88]):
13. First, that there is a serious issue to be tried on the merits. According to *Altimo*, that question must be approached in the same way as the test for summary judgment, by asking whether there is a real, as opposed to a fanciful, prospect of success within the meaning discussed in *Kawasaki* which I summarise further below.

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14. Secondly, that there is a good arguable case that the claim falls within one of the so-called “gateways” in Practice Direction 6B. In this context “good arguable case” means that one side has a much better argument than the other – but see at [93] below as to the nuances involved in applying this phrase.
15. Thirdly, that England and Wales is the proper place in which to bring the claim, in the sense of being “clearly or distinctly the appropriate forum for the trial of the dispute”, and in all the circumstances the court ought to exercise its discretion to permit service out of the jurisdiction.

The Kawasaki Merits Test

16. The approach to the first requirement, the merits test, was summarised by Popplewell LJ in *Kawasaki* at [18] (which I reproduce below but without the case references supplied by the Judge):
 - “i) It is not enough that the claim is merely arguable; it must carry some degree of conviction.
 - ii) The pleading must be coherent and properly particularised.
 - iii) The pleading must be supported by evidence which establishes a factual basis which meets the merits test: it is not sufficient simply to plead allegations which if true would establish a claim; there must be evidential material which establishes a sufficiently arguable case that the allegations are correct.”
17. I will call these principles the “*Kawasaki Test*”. The test applies where there is an application to amend a statement of case (see *Kawasaki* at [17]) as well as where there is an application to serve out.
18. The parties were agreed that, in light of the abandonment of the claim as originally formulated, logically Playtech’s application to amend should be considered in relation to the *Kawasaki Test* before addressing the gateways.
19. The *Kawasaki Test* needs to be applied separately to the case against each of the Defendants. It is appropriate to consider this in the following order:
 - i) the case against Mr Veliks, the Fifth Defendant (as it is mainly his alleged actions that found the case against all the other Defendants);
 - ii) the case against the Fourth Defendant, as the person employing Mr Veliks and the person most directly benefiting from any advantage in games development;
 - iii) the case against the Third and Fourth Defendants (together the “**Realtime companies**”) as tortfeasors in their own right; and
 - iv) the case against the First and Second Defendants.

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20. The test to be applied in determining if actual or threatened action of a person constitutes a breach of confidence is explained in *Snell's Equity* (34th edition) ("*Snell*") at section 9-011 onwards. At the risk of oversimplifying some propositions that are themselves the subject of nuanced (and sometimes conflicting) case law, I would summarise the requirements for such an action listed by *Snell* as follows:
- i) that subject matter of the action must be information and that information must be capable of being kept confidential or private;
 - ii) that the claimant must have had a reasonable expectation that the information is confidential or private;
 - iii) that (in the absence of an agreement relating to confidentiality) the claimant must show that, at the time when the information was accessed or used, the defendant knew, or had sufficient notice, that the information was confidential;
 - iv) that the defendant has used or plans to make use of the information in a way that amounts to an unconscionable misuse.
21. *Snell* also lists two further requirements of a confidentiality action and/or defences to one, being that:
- i) maintenance of confidentiality is not contrary to the public interest;
 - ii) the breach of confidence must not be applied in such a way as to interfere unjustifiably with the defendant's right to freedom of expression.
- Neither of these points have been raised by any party as being relevant to the case before me, and so I shall not discuss these any further.
22. The case against Mr Veliks according to the Amended Particulars of Claim as regards an equitable breach of confidence is made as follows:
- i) access to the Horizon platform is controlled by a username and password;
 - ii) access is granted on the basis that any information available is confidential;
 - iii) the games on Horizon include a number of games that are in development and as such are subject to optimisation and improvement based on processes of user acceptance testing and feedback;
 - iv) information about the games in development, and the ability to test and interrogate new games would be of commercial interest to Playtech's competitors if not kept secret from them and the loss of such secrecy would deprive Playtech of the competitive advantage it would otherwise enjoy by the ability to bring new games and/or design and play features to the market with a period of practical exclusivity; indeed even if a new game does not have any new design or play features, that information can itself be useful to competitors;

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- v) Mr Veliks knew or ought to have known that the information he would access on Horizon was confidential;
 - vi) there was material on Horizon that was not at any given point in time in the public domain; and
 - a) had the necessary quality of confidence about it; had been imparted to those who received it in circumstances where they were on explicit or implicit notice of such confidentiality;
 - b) was secret, in the sense that it was not generally known among or ~~all~~ readily accessible to persons within the circles that normally deal with the kind of information in question; was of commercial value; and had been the subject of reasonable steps taken by Playtech to keep it secret, and accordingly comprised a trade secret within the meaning of regulation 2 of the Trade Secrets (Enforcement, etc.) Regulations 2018/597 (the “**TSER 2018**”).
23. Playtech particularised certain games which Mr Veliks is said to have accessed after he had taken employment with the Fourth Defendant, setting out particular features of those games which it considered to be confidential information.
24. As regards evidence for these contentions, Playtech has sufficiently established cogent evidence that Mr Veliks did access information on the Horizon platform, and indeed this point has not been denied. I also consider, having reviewed the terms of the Services Agreement between ELT and Playtech, that it is clear that Playtech was the owner, or an owner, of any such confidential information – or at least that it had sufficient interest in such confidential information to allow it to enjoy the protection afforded by equity to confidential information.
25. What has been put into doubt, is the extent that the information that was allegedly accessed was of a confidential nature and that it was, or should have been, known to Mr Veliks to be of a confidential nature.
26. Playtech has explained the nature and use of the Horizon platform as follows.
27. Playtech uses Horizon to host both (i) games that it has developed and which are on general release and (ii) pre-release versions of its games in development. As regards the pre-release games, Playtech’s game developers and selected customers were given access to Horizon to provide feedback on games before their release, allowing bugs to be spotted and amendments to be made to games prior to their release. Mr Veliks was provided with access for this purpose, with what Playtech describes as “superuser” access credentials allowing him to access all of the games, including those under development.
28. The Defendants have suggested there is real doubt about whether information on the platform was manifestly of a private nature by pointing out the following matters:
- i) the platform hosts the details of a large number of games, the vast majority of which are in the public domain;

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- ii) representatives of one of the Defendants’ solicitor firms have been able to acquire username and password credentials to access the Horizon Platform easily without having to provide any credentials, beyond confirming that they were over 18;
 - iii) the Horizon User Agreement does not contain any express undertaking of confidentiality (although it does limit the uses that persons accessing the platform can make of the information found on it). According to evidence put forward by Playtech, the Horizon User Agreement is agreed to by persons signing up to the platform. There is some doubt however whether this is universally the case. There is no evidence that Mr Veliks agreed to these terms, and Playtech’s case is not based on any such argument.
29. On the basis of the above points, the Defendants characterise the Horizon platform as a “shop window” and/or a platform for beta testing, neither of which has any obvious quality of confidentiality.
30. In response to these points, Playtech has provided the witness evidence of Mr Edo Haitin, the CEO of Playtech Live. He augments an explanation that had already been given in witness evidence by Mr Karet, by explaining that the parts of the site that any particular user would be able to access were controlled. Users who sign up on the public site would have access only to games that were already in the public domain, or some games that were close to launch and were being tested and promoted on the platform. They would not have access to other games that were in development. Access to games in development would be limited to staff developing the game on behalf of Playtech and possibly certain Playtech customers where a game is being developed in conjunction with another customer.
31. On the basis of the evidence before the court at the moment, I consider that any information that was on the Horizon platform to which general users could have access should be regarded as being information in the public domain. Whilst there is password protection, it is by no means clear that this of itself was there to protect the confidentiality of the platform; there was anyway a need to protect the confidential details provided by the platform user —on the site. It appears that members of the general public are nevertheless able to obtain access to such games without any meaningful pre-qualification (other than confirming that they are 18 years old). The games I regard as being in the public domain include any game that was about to launch where general users were able to access that game. This then may be a slightly wider category of games than the games that had already been launched and were in the public domain by that means.
32. However, I consider on the basis of the pleadings and the evidence provided by the Claimant that there is a good arguable case, with a suitable degree of conviction, that the parts of the website where access was restricted (through settings made by the platform administrator behind the scenes) comprise confidential information. Where a game was under development and not available to the public, the information concerning the features of that game can fairly be said to be of a confidential nature.

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33. It is relevant in this regard to consider the extent to which Mr Veliks' alleged access to Horizon involved access to the public parts of the Horizon platform and access to the private parts of the platform. Playtech claims, and has provided evidence that, Mr Veliks' credentials were used to spend over 200 hours on the site and that there have been over 800 instances of access between August 2021 and January 2024 using his login credentials (including access from IP addresses that are said to be linked to the Realtime companies). However, the vast majority of this use appears to have been to access public parts of the platform. The games that he accessed and which are listed as being non-public are shown in red on Annex 4 to the Amended Particulars of Claim. It seems that the access to these non-public games amounted only to some 33 of the 800 instances of access complained of, and involved only nine games.
34. As to the question whether Mr Veliks was aware that the features of some of the games on the Horizon platform were confidential, in my view, there is sufficient evidence for this to be a good arguable case in relation to Mr Veliks. Mr Karet (based on a conversation with Mr Hartstein, the Head of Playtech Live) understood that "superusers" "would (or should) know that they have a special type of access" and that Mr Veliks (like any rival games developer) would have been aware of which games had been publicly released. Also, Mr Ivanovs has annexed to his witness statement an article by next.io (a media outlet specialising in news about iGaming) which states that Mr Veliks, in an electronic chat with another Realtime colleague, provided user credentials to that colleague and later stressed that the information was for "personal use" only, requesting that the details should not to be posted elsewhere. This provides some evidence, albeit hearsay evidence, suggesting that he saw the need to keep the access being made covert. It is difficult to see why he would have done this if he thought that the entirety of the contents of the Horizon platform were in the public domain.
35. There remains a question whether all the games Playtech has particularised as having been accessed by Mr Veliks were within the confidential category. Mr Haitin, the CEO of Playtech Live, was able to confirm through a late served witness statement that one of the games in question (Jet Set Racing Roulette), was not part of the public part of the site at the time that Mr Veliks allegedly accessed it. No doubt, given more time, he would be able to confirm whether or not the other games particularised in Playtech's Amended Particulars of Claim were also kept private from general users. However, until he, or someone else does so, there may be some doubt about this question. Nevertheless, I think it is sufficiently well established for the purposes of the *Kawasaki* Test that there is a good arguable case that at least some of the games on the Horizon platform were confidential and this was known by Mr Veliks. This, I consider, is sufficient to say that the claim carries some degree of conviction in relation to this element of the claim as regards Mr Veliks.
36. Before leaving this question, I should just consider one argument that was made by the Defendants. This was based on the fact that Mr Veliks had an employment contract with ELT (being a contract under Latvian law) that expressly dealt with confidentiality, and expressly did so to protect not only the confidential information of ELT, but also that of other members of the same group (which would have included Playtech). The argument made was that the existence of this agreement excluded the possibility of Playtech having separate remedies in equity for a breach of an equitable duty of confidence.

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37. This argument was advanced on the basis of the ruling in *Faccenda Chicken v Fowler* [1987] Ch 117, and in particular the principle stated by the court at page 135 (next to letter G) that:

“where the parties are, or have been, linked by a contract of employment, the obligations of the employee are to be determined by the contract between him and his employer”.

38. Whilst I think it is good law that this principle ousts any wider duty of confidentiality between ELT as employer and Mr Veliks as employee, I think it is taking this statement too far to assume that the principle ousts any rights in equity to protection of confidential material owned by any other company, even if it is part of the same group, and even if the employment contract purported to protect the confidential information of any other group member. To hold otherwise is to ignore the question of privity of contract.

The breach of Trade Secrets claim

39. I have set out above my view that there is a good arguable case with a degree of conviction that some of the information accessed by Mr Veliks was confidential and he knew that to be the case. That information, in my view, is likely to have included trade secrets.

40. Under Reg. 2 TSER 2018 (Enforcement, etc.) Regulations 2018 (“**TSER 2018**”):

““trade secret” means information which –

- (a) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among, or readily accessible to, persons within the circles that normally deal with the kind of information in question,
- (b) has commercial value because it is secret, and
- (c) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret”.

41. I consider therefore that there is a good arguable case with a degree of conviction that some or all of the features of forthcoming games that have been particularised by Playtech would, if Playtech was indeed keeping them secret, have been encompassed by this definition.

42. Under Reg.3 TSER 2018:

“the acquisition, use or disclosure of a trade secret is unlawful where the acquisition, use or disclosure constitutes a breach of confidence in confidential information”.

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43. Accordingly, the claim made for breach of Reg.3 will stand or fall with the claim for a breach of confidence. As I have said, I consider that there is a good arguable case at least against Mr Veliks with a degree of conviction for there being a breach of confidence, and therefore I find that there is a good arguable case with a suitable degree of conviction for there being a breach by him of Reg.3 TSER 2018.

The copyright claim

44. The Claimant is the owner of copyright in an artistic work that served as the logo for its game Jet Set Racing Roulette. The artistic work comprised of those words in particular colours and typeface, with the first two words appearing around a pseudo-heraldic shield (with laurel leaves either side) on which there is the stylised image of a horse and jockey. I will refer to this as the “**copyright logo**”.
45. The copyright logo was created by ELT but there is evidence that it has since been assigned to Playtech.
46. It is alleged that Mr Veliks made a copy of the work by accessing Horizon from Riga, Latvia, and taking a screenshot of the game in which it appeared, namely Jet Set Racing Roulette. Playtech supports its claim with records of Mr Veliks’ login credentials being used to access that game on the morning of 7 February 2023 from an IP address in Riga, and with the evidence of Mr Ivanovs. Mr Ivanovs has given evidence in his witness statement that, while they were both in the UK, Mr Veliks sent him a screenshot of the mobile version of that game.
47. It is alleged that the screenshots taken are infringing copies within the meaning of s.27 of the Copyright, Designs and Patents Act 1988 (“~~CPDA~~ **CDPA 1988**”) because, had they been made in this jurisdiction, that would have been an infringement. Based on the witness statement of Mr Ivanovs, it is alleged that Mr Veliks imported infringing copies by bringing them to the UK on the mobile phone on which the screenshots were made and saved, thereby possessing infringing copies in the UK, and distributed one of them by reason of his having sent it to Mr Ivanovs. Playtech alleges that Mr Veliks did so knowing or with reason to believe he was importing, possessing and dealing with infringing copies. As such, those acts were infringements of Playtech’s copyright under s.22 and s.23 of CDPA 1988.
48. It may be noted that Mr Ivanovs’ evidence in his witness statement relates to seeing a screenshot of the game and does not particularly mention the logo. However, Playtech argues that the existence of the logo within the screenshot can be inferred from the general description given by Mr Ivanovs as he is describing a screenshot of a portion of the game where the copyright logo would be displayed.
49. The Defendants make the point that Mr Ivanovs’ witness statement is less than definitive in stating where he saw the screenshot (he only thinks this was while they were in London). Mr Veliks does not recall taking any screenshots of Jet Set Racing Roulette and cannot think why he would have done so. He has checked his phone and has not found any screenshots on it. He does not recall discussing Jet Set Racing Roulette with Mr Ivanovs at the trade show. Further, having obtained screenshots of the Teams chat between Mr Veliks and Mr Ivanovs, Realtime Latvia has been unable to find messages or screenshots exchanged at the relevant time when these individuals

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were in London on the two platforms most used by its staff, Teams and Slack. Mr Ivanovs has since speculated that he might have seen this on some other platform.

50. In my view this allegation just about scrapes through on the *Kawasaki* Test. Playtech has put forward a cogent case and there is an evidential basis for it that, in my view, carries the appropriate degree of conviction. Whilst there is also an evidential basis for a defence against this, the court could not determine the merits without testing the evidence of the individuals who have given evidence.

4. THE VICARIOUS LIABILITY OF REALTIME LATVIA

51. It is common ground that the Fourth Defendant, Realtime Latvia, was the employer of Mr Veliks at the time the alleged acts were committed. No particular argument has been put forward as to why Realtime Latvia would not have vicarious liability for any of the wrongful acts said to be committed by Mr Veliks. As I have found that Playtech has a good arguable case with a suitable degree of conviction against Mr Veliks, I consider that it must have one also against Realtime Latvia for its vicarious liability for the acts of Mr Veliks.

5. THE CLAIMS AGAINST REALTIME LATVIA AND REALTIME MALTA

52. Playtech also claims that the Realtime companies (which Playtech refers to together under the soubriquet “OnAir”, (referring to a trading name used or previously used by them both), each have primary liability for breach of confidence through misusing confidential information.
53. For these companies to have primary liability (as opposed to any secondary or vicarious liability) it is necessary that those companies knew, or had sufficient notice, that the information was confidential and that the defendant has used or planned to make use of the information in a way that amounts to an unconscionable misuse. Again this point is dealt with in *Snell*, again at section 9-011. In a case where the defendant has received information from another person who is in breach of a duty of confidence, *Snell* suggests, I think correctly, that that defendant will have primary liability only if that defendant knew or had sufficient notice that the information was confidential, however, a defendant might also have secondary liability. This follows a distinction made by Lord Neuberger in *Vestgaard Frandsen A/S v Bestnet Europe Ltd and Others* [2013] UKSC 31; [2013] W.L.R. 1556 (“*Vestergaard*”) at [26] and [27] as follows:

“26. Further, while a recipient of confidential information may be said to be primarily liable in a case of its misuse, a person who assists her in the misuse can be liable, in a secondary sense. However, as I see it, consistently with the approach of equity in this area, she would normally have to know that the recipient was abusing confidential information. Knowledge in this context would of course not be limited to her actual knowledge, and it would include what is sometimes called “blind-eye knowledge”. The best analysis of what that involves is to be found in *Royal Brunei Airlines Sdn Bhd v Tan* [1995] 2 AC 378, especially at pp 390F—391D, where Lord Nicholls of Birkenhead approved the notion of “commercially unacceptable conduct in the particular context involved”, and suggested that “acting in reckless

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disregard of others' rights or possible rights can be a tell-tale sign of dishonesty.

27. Further, even a person who did not know that the information which is being abused is confidential could nonetheless be liable if there were relevant additional facts. Thus, if a person who directly misuses a claimant's trade secret does so in the course of her employment by a third party, then the third party could (at least arguably) be liable to the claimant for the breach of confidence. However, that would simply involve the application of one well established legal principle, vicarious liability, to another, misuse of confidential information."

54. Playtech's pleaded case in relation to the Realtime companies' knowledge of the confidential nature of information allegedly accessed by Mr Veliks in its Amended Particulars of Claim may be summarised as follows: any Confidential Information that came into the possession of OnAir did so in circumstances where OnAir knew, or alternatively where it would have been obvious to any reasonable party in OnAir's position, that such information was confidential and in particular:
- i) OnAir knew or alternatively it would have been obvious to any reasonable party in OnAir's position that any game under development before public launch would be treated as confidential by any developer active in the online gambling game industry as a matter of course.
 - ii) Mr Veliks was a member of the product development committee at OnAir, which also included Andres Rengifo (whom the Claimant describes as the CEO of OnAir but more accurately was the CEO of Realtime Malta and a non-executive director of Realtime Latvia), Mr Armands Zalitis and Mr Andrejs Kirma. As such, OnAir knew or alternatively it would have been obvious to any reasonable party in OnAir's position that the Fifth Defendant was accessing Horizon after termination of his employment by ELT, and that such access was without the Claimant's consent.
 - iii) Further, and in any event, by reason of the scale of unauthorised access taking place to the Horizon site from IP addresses associated with OnAir, OnAir knew or alternatively it would have been obvious to any reasonable party in OnAir's position that its employees or contractors were accessing a competitor's password protected test environment, and that such access was without the Claimant's consent.
55. As regards knowledge of confidentiality, Playtech therefore bases its case on this on the circumstances in which the confidential information came into the Realtime companies' possession; the scale of access going on from IP addresses associated with OnAir; and on what Playtech's witnesses Mr Ivanovs and Mr Field have said about how senior people at OnAir were aware of and involved in access to Horizon.

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56. As to the first point, the circumstances in which the confidential information came into the Realtime companies' possession, this point relies on each of the Realtime companies knowing that some of the games on the Horizon platform were confidential and that information that they were accessing that was derived from the Horizon platform had come from the confidential part of the platform. The point then, is not as self-evident as the pleading would suggest.
57. As to the second point, the scale of access at first sight seems substantial, but as noted at [33] above, the majority of this access was to the public parts of the Horizon platform, and accordingly I do not think that this establishes that the two Realtime companies must have been aware that there was significant access to a private part of the website, and there is no evidence that they were actually aware that some parts of the Horizon platform were private.
58. As to the third point, I turn first to the evidence of Mr Ivanovs in this regard. The parts of his first witness statement which are said to support this point are as follows:
- i) Paragraph 15, where he describes the development of a new game which became "Diamond Rush Roulette" (previously known as "Bonus Roulette" or "BoRo") which involved meetings of what he describes as "OnAir's product committee" in November and December 2022, and where a decision was made to model that game on Playtech's "Mega Fire Blaze". There is no evidence that this game was (at the relevant time) on the private part of the Horizon platform, and so I do not accept this as cogent evidence that the Realtime companies were accessing confidential information through the Horizon platform.
 - ii) Paragraphs 21 to 23, where he describes an "OnAir" Product Committee meeting in 2023, which he thinks happened after the ICE gaming conference at which Playtech's game, Jet Set Racing Roulette, had been publicly announced (at least in its desktop format), as including discussion of what became "Diamond Rush Roulette". Mr Ivanovs says that he was told by Mr Simon Field (who it is said to have been OnAir's Chief Commercial Officer, and who has produced a separate witness statement for the benefit of Playtech) that Mr Veliks had showed him "Playtech's test system", and that he had been told by another "product owner" (which I understand to be a chief product developer in respect of a particular product) that Mr Veliks "had access to Playtech's internal environment". Mr Ivanovs concludes this topic by stating his belief that Mr Veliks had access to Playtech's information and that he used it and shared it at OnAir.
59. Whilst this (largely hearsay) evidence might show something about the use made by the Realtime companies (or one of them – the use of the portmanteau term "OnAir" disguises which company is being referred to) there is nothing in this witness evidence that demonstrates that anyone other than Mr Veliks knew that the information being accessed was of a confidential nature. There is a further difficulty in that it is unclear as to which "test system" or "internal environment" Mr Ivanovs is referring. In the original version of the Particulars of Claim, claims were made concerning breaches of confidential information stored on both the Horizon platform and on another platform that was used for game development called "Staging". Under the Amended Particulars of Claim, the allegations regarding Staging are not now being pursued. The ambiguity

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as to which platform Mr Ivanovs is referring to substantially weakens the cogency of his evidence.

60. Turning to Mr Field's witness evidence in relation to this point, he was in a position to have some knowledge of what was going on in relation to product development between 2021 and January 2023 when he was CCO (which I understand to be short for Chief Commercial Officer) and Finance Executive for Realtime Malta. He gives evidence that:
- “Mr Rengifo was well aware that Igor Veliks was accessing the Playtech test system. I was also aware of that personally, because on one occasion Mr Veliks walked me through the system online, showing me what was there.”
61. According to Mr Field, Mr Rengifo led product development at OnAir.
62. Again, there is a difficulty with this evidence in that it is not clear that Mr Field is referring to the Horizon platform rather than to Staging (which seems of the two platforms to be more accurately described as a test system). If the reference is to Horizon, the evidence does not demonstrate that Mr Rengifo knew that the access was to the private part of the system (or indeed that he knew that there was a private part of the system).
63. A further difficulty arises again because of the use by Playtech of the portmanteau term (“OnAir”) to refer to both of the Realtime companies.
64. As to the respective roles of the Realtime companies, Realtime Latvia is, according to the first witness statement of Andrew Moir, under common ownership with Realtime Malta. Realtime Latvia employs product developers (including Mr Veliks since 2 August 2021) and operates the live studio functions in Latvia. According to Mr Moir's second witness statement, Realtime Malta carries out administrative and supporting functions such as legal, finance, compliance, integrations and HR for the Realtime Group. It seems however that Realtime Malta also holds a gaming licence but there has been no evidence of the extent if any that it makes any use of this.
65. As to specific use being made of confidential information, pending evidence and disclosure, the Claimant has identified only two games which it says that the Realtime companies developed using confidential information in the form of features of Playtech games that had been accessed on the Horizon platform at a point when these were still confidential.
66. First, it is said that OnAir's game “Travel Fever” has features derived from the Playtech game “The Greatest Card Show” in the form of a horizontal roulette wheel of the type first used in The Greatest Card Show. OnAir would have been aware of this feature anyway from the point of the public launch of this game which was on 26 October 2022. It appears that the first alleged access by Mr Veliks to this game on the Horizon platform was on 25 October 2022, so this would have at most provided a springboard advantage of one day.

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67. Secondly, it is said that OnAir's game Diamond Rush Roulette was developed with knowledge of a novel feature in Playtech's game Jet Set Racing Roulette and that this feature was discussed by Mr Veliks with Mr Ivanovs during their time in London, but they rejected using the feature. Playtech argues that knowing of this feature (so that it could be rejected) accelerated the development of Realtime's game, but I find the logic of this difficult to follow. If the Realtime companies were not aware at all of this feature, they would not have spent any time discussing it. In any case, the springboard advantage again is minimal, the first access to this game undertaken using Mr Veliks' user credentials was made only some 29 days before the public launch of this game.
68. To summarise, there are a number of weaknesses in the case put forward against the Realtime companies based on primary liability for breach of confidence through misusing confidential information.
69. First, whilst there is a good arguable case that the "private" areas of the Horizon platform included information that was capable of being kept confidential or private, and that Playtech had a reasonable expectation that the information would be confidential or private, it is not clear that the Realtime companies had knowledge that the private part of the Horizon platform had been accessed (as it appears that games are sometimes put onto the public part of the platform prior to their public release). In relation to Realtime Latvia, I think it is reasonable to fix that company with the knowledge that its employee, Mr Veliks had, since he had a senior role in the development of games, and, as I have already found, there is a good arguable case that he had sufficient knowledge of the confidentiality of part of the Horizon platform. I consider, therefore, that there is a good arguable case with a degree of conviction that Realtime Latvia also had sufficient knowledge of the confidentiality of part of the Horizon platform.
70. In relation to Realtime Malta, however, the case seems to depend on the knowledge of Mr Renfigo, and as noted above, it is not clear that he had knowledge that what was being accessed included a private part of the Horizon platform.
71. Secondly, the facts alleged which might amount to commercially unacceptable conduct or acting in reckless disregard of others' rights, is at present thin, amounting to an allegation that OnAir's game "Travel Fever" appears to have copied the feature of a horizontal roulette wheel derived from the Playtech game "The Greatest Card Show" and there was discussion of a novel feature in Playtech's game Jet Set Racing Roulette but no adoption of that feature.
72. I do need to keep in mind, however, that this is a very early stage of litigation and that it is in the nature of this type of case that a claimant who has good reason to suspect use of its confidential information may not at the beginning of an action have all the information to know how use was made of such information. On this matter, therefore, I am going to give the benefit of the doubt to the Claimant as against Realtime Latvia since it has been able to demonstrate, in my view, to the standard required by the *Kawasaki* Test that there has been a breach of confidence in relation to a number of games and that there has been at least one instance where the information has been used to assist in the development of a game in a manner that amounts to an unconscionable misuse.

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73. However, as regards Realtime Malta, I do not think the case has been made out that that company has undertaken any unconscionable misuse of confidential information. If the company provides merely central administrative support to other group companies, including Realtime Latvia, it is difficult to see how it has had any active role in developing games.
74. My conclusion, then, is that Playtech passes the *Kawasaki* Test in relation to its claim against Realtime Latvia but, for the reasons I have given above, not against Realtime Malta.
75. As noted above, the claim relating to trade secrets is essentially based on the same facts as that relating to breach of confidence. I therefore reach the same conclusions in relation to that claim: I consider that the *Kawasaki* Test is made out in relation to Realtime Latvia but not Realtime Malta.
76. As regards the copyright claim, if this is made out against Mr Veliks, I consider that Realtime Latvia would have vicarious liability for the claim. I do not, however, see any basis on which Realtime Malta would be responsible for the infringement alleged. Accordingly, I consider that the *Kawasaki* Test is passed in relation to Realtime Latvia but not Realtime Malta.

6. THE CLAIMS AGAINST THE GAMES GLOBAL COMPANIES

77. Playtech alleges, against the Games Global companies, that they are jointly liable for the misuse of confidential information said to have been committed by the Third and Fourth Defendants by acting in combination with them in relation to the design, development and release of online gambling games and/or in a way such as to further those acts in pursuance of a common design, and in doing so knew, or at least turned a blind eye to, the essential facts that made these actions unlawful. The allegation is particularised as follows:
- i) The Realtime companies were incorporated shortly after incorporation of the Games Global companies in order to assist the latter to develop a live online gambling gaming business. The Realtime companies and the Games Global companies are all ultimately owned by the Landon Trust, the beneficiary of which is Martin Moshal who attended OnAir meetings with Andreas Rengifo, Walter Bugno and Theo Naicker.
 - ii) OnAir develops content under the “OnAir” brand exclusively for Games Global.
 - iii) Games Global directed what features OnAir games should have and otherwise took an active role in the day to day running of the OnAir business. In particular:
 - a) the business of OnAir was run by Mr Rengifo, Mr Bugno, Mr Naicker and Andy Booth;
 - b) Messrs Bugno, Naicker and Booth were from time to time *de facto* directors of the First and/or Second Defendant or other companies in the Games Global group;

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- c) Messrs Bugno, Naicker and Booth were at the same time *de facto* directors of the Third and/or Fourth Defendant;
 - d) by the actions of Messrs Bugno, Naicker and/or Booth, Games Global controlled and directed OnAir’s games development, including by monthly oversight of OnAir’s finances.
- iv) By way of example of direction and day to day involvement aforesaid, Games Global directed OnAir to create the live slots game ‘9 Pots of Gold’ adopting the features of the Claimant’s well known live slots game ‘Buffalo Blitz’. In particular, such direction was aimed at producing an equivalent game for Games Global’s related company Betway for deployment in the Indian market.
- v) From time to time, Messrs Naicker and Bugno, were included on OnAir internal lists for feedback and provided feedback on OnAir games in development.
- vi) From time to time, OnAir staff otherwise met with and took direction from Messrs Naicker and Bugno.
- vii) Mr Rengifo was personally aware of the activities of Mr Veliks. In view of his role at OnAir and the roles at OnAir and Games Global of Messrs Bugno, Naicker and/or Booth aforesaid, it is to be inferred that Messrs Bugno, Naicker and/or Booth were also aware of the activities of Mr Veliks and their knowledge is knowledge of the Games Global companies.
- viii) In March 2022 at iGaming Next in New York, Mr Rengifo told Mr Haitin that OnAir would take away the Claimant’s business in live gaming.
- ix) On 16 April 2024 the First Defendant filed a preliminary prospectus by form F-1 at the US Securities and Exchange Commission (the “Prospectus”). The Amended Particulars of Claim quotes extensively from this Prospectus to demonstrate claims being made there that:
- a) OnAir was part of “one of the largest networks of exclusive iGaming content studios, one of “40 in-house and partnered studios with whom we have exclusive rights and [had] established operating histories predating the formation of our company””.
 - b) OnAir is thus identified as an “in-house and partnered studio with whom Games Global has exclusive rights” and as having developed games “proprietary” to Games Global and part of the Games Global “portfolio of games”.
 - c) OnAir as one of Games Global’s design studios, enjoys a mutually beneficial relationship as “Following integration into our studio network, these studios gain access to our brand, our broad distribution network and the resources and tools we share across our studio network, while we are able to benefit from the quality games developed by the studios.”

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- d) that the Game Global companies direct game development and manage game development across their platform as well as providing support related to the underlying technology platform, quality control, certification and integration with iGaming operators from teams across our network. Playtech argues that Games Global is thus described as exercising control over the development of games by its studios, including OnAir.
 - e) Games developed by OnAir including “9 Pots of Gold Live” and “Travel Fever” are described as Games Global games.
 - x) The Amended Particulars of Claim also quote extensively from what is described as “OnAir’s website” including articles referring to:
 - a) “Games Global’s live casino offering OnAir Entertainment™” in relation to a “partnership” with Betson Group and which refers to Betson Group having a “partnership with OnAir” entertainment;
 - b) a similarly worded article, dealing with a “partnership” with Kindred Group where a representative of that group talks of a “partnership with OnAir Entertainment™”;
 - c) a similar article dealing with a “strategic partnership” between Games Global’s live casino offering OnAir Entertainment™, and Rootz, talks of a “partnership with Games Global and OnAir Entertainment™”.
 - xi) Examples are given of games designed by OnAir including one (9 Pots of Gold) which is presented by one betting firm in the UK (William Hill) as being provided by Games Global and by other firms as being labelled as an “OnAir” game.
78. The points made in the Amended Particulars of Claim, with support from evidence, certainly go to demonstrate that the Realtime companies and the Games Global companies cooperate closely, and have particular roles within a supply chain – essentially Realtime operates as a manufacturer, and Games Global operates as a wholesale distributor. They also show that Games Global directs game development at a strategic level, and offers technical support relating to the technology platform, quality control and certification and integration with other operators.
79. The Games Global companies argue that the relationship is similar to that between a property developer and its architect. Games Global, like the property developer, provides general guidance in relation to the design but does not get involved in the final details of the design.
80. I am not sure that this analogy is particularly helpful. Very clearly the Realtime companies and the Games Global companies work closely together. That is not enough by itself to fix the Games Global companies with liability for any breach of confidence undertaken by one of the Realtime companies unless Games Global itself had knowledge (or blind-eye knowledge) of the breach of confidence. This can be seen, for example, from *Vestergaard* (see in particular at [21]- [23]. As Lord Neuberger of Abbotsbury said at [23]:

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“The classic case of breach of confidence involves the claimant’s confidential information, such as a trade secret, being used inconsistently with its confidential nature by a defendant, who received it in circumstances where she had agreed, or ought to have appreciated, that it was confidential: see e.g. per Lord Goff of Chieveley in *Attorney General v Guardian Newspapers Ltd* (No 2) [1990] 1 AC 109, 281. Thus, in order for the conscience of the recipient to be affected, she must have agreed, or must know, that the information is confidential.”

81. As he went on to say at [26], however:

“Knowledge in this context would of course not be limited to her actual knowledge, and it would include what is sometimes called “blind-eye knowledge”. The best analysis of what that involves is to be found in *Royal Brunei Airlines Sdn Bhd v Tan* [1995] 2 AC 378, especially at pp 390F—391D, where Lord Nicholls of Birkenhead approved the notion of “commercially unacceptable conduct in the particular context involved”, and suggested that “acting in reckless disregard of others’ rights or possible rights can be a tell-tale sign of dishonesty”.

82. The particulars put forward in the Amended Particulars of Claim relating to the knowledge of the Games Global companies that the Realtime companies (or one of them) were making use of confidential information is really limited to the matters set out above at [77(iii)].
83. One of these points is the contention that Messrs Bugno, Naicker and Booth were from time to time *de facto* directors of the First and/or Second Defendant or other companies in the Games Global group and the same individuals, together with Mr Rengifo, ran the business of OnAir. I do not see that this creates any necessary inference that those individuals had the same knowledge as Mr Rengifo, and certainly not that of Mr Veliks.
84. The next relevant contention is that, by the actions of Messrs Bugno, Naicker and/or Booth, Games Global controlled and directed OnAir’s games development, including by monthly oversight of OnAir’s finances. Whilst I can accept that an arguable case has been made out that they had strategic control of games development and oversight of finances, this again creates no necessary implication that they must have known or had blind-eye knowledge that Mr Veliks and Realtime Latvia were accessing a part of the Horizon website that was confidential.
85. Neither do I see that there is any necessary implication from the fact that Messrs Naicker and Bugno were included on OnAir internal lists for feedback and provided feedback on OnAir games in development or that, OnAir staff otherwise met with and took direction from Messrs Naicker and Bugno.
86. The case that Games Global was aware of an unconscionable breach of another company’s confidentiality therefore essentially rests on the proposition that Mr Rengifo was personally aware of the activities of Mr Veliks. There are, in my view, fatal gaps in the logic here. First, there is no evidence that Mr Rengifo knew that part of the Horizon platform included confidential information. The vast majority of the Horizon

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platform was not confidential. We have not heard of any evidence of any way in which an outside party who accessed information concerning games that were soon to be launched would know whether they were in the private or the public part of the platform. There is nothing to say that Mr Rengifo was on notice of this or that his knowledge that Mr Veliks was accessing the Horizon platform amounted to knowledge or blind-eye knowledge that he was accessing private parts of that platform.

87. As Playtech has failed to demonstrate an arguable case carrying the requisite level of conviction that Mr Rengifo had knowledge or blind-eye knowledge that confidential information was being accessed, the inference which it goes on to make that Messrs Bugno, Naicker and/or Booth, and therefore the Games Global companies had the requisite knowledge also fails.
88. In my view Playtech has failed to put together a sufficiently cogent case that demonstrates the Games Global companies were aware that Mr Veliks was accessing parts of the Horizon platform that were not open to the public. In the absence of knowledge of this point, there is no case against these parties either in relation to a common design that involved wrongful use of Playtech's confidential information or of its trade secrets (which, as we have seen, turn on the same facts).
89. For completeness, I would add that there is no argument that the Games Global companies may be regarded as responsible for any infringement of copyright that occurred as a result of Mr Veliks' activities in London.

7. APPLICATION OF GATEWAYS

90. To summarise where we have got to so far, the claims that passed the filter of the *Kawasaki* Test are:
- i) the claims against Mr Veliks, including the claims for breach of confidence, breach of trade secrets (i.e. of Reg.3 TSER 2018) and infringement of copyright;
 - ii) the vicarious liability claims made against Realtime Latvia; and
 - iii) the claim that Realtime Latvia has primary liability for breach of confidence through misusing confidential information.
91. However, none of the claims against Realtime Malta, or the Games Global companies have passed the *Kawasaki* Test.

8. GATEWAYS

92. I need next to apply the gateways to the remaining claims.
93. The test to be applied as to whether a gateway applies is a good arguable case or "a much better argument on the material available". However, as clarified by the discussion of the issue by Lord Sumption SJC in *Brownlie v Four Seasons* [2018] 1 WLR at [7], this phrase here has a nuanced meaning:

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“What is meant is (i) that the claimant must supply a plausible evidential basis for the application of a relevant jurisdictional gateway; (ii) that if there is an issue of fact about it, or some other reason for doubting whether it applies, the court must take a view on the material available if it can reliably do so; but (iii) the nature of the issue and the limitations of the material available at the interlocutory stage may be such that no reliable assessment can be made, in which case there is a good arguable case for the application of the gateway if there is a plausible (albeit contested) evidential basis for it. I do not believe that anything is gained by the word “much”, which suggests a superior standard of conviction that is both uncertain and unwarranted in this context.”

94. Playtech has identified the following gateways as being ones that it considers to be applicable

Gateway 2.

95. Gateway 2 applies where a claim is made for an injunction ordering the defendant to do or refrain from doing an act within the jurisdiction. In my view Playtech has not established any good arguable case that it is likely to be able to persuade a court to grant an injunction. There is no serious prospect of a repeat of the facts on which the breach of confidence and trade secrets claims are made since Playtech must by now have withdrawn the login credentials on which Mr Veliks was relying and any of the information that was confidential when accessed and where Playtech has been able to allege a good arguable case for breach will by now be in the public domain anyway. Accordingly, I do not consider that this gateway will apply.

Gateway 9.

96. Gateway 9 is expressed as follows: A claim is made in tort where –
- i) damage was sustained, or will be sustained, within the jurisdiction;
 - ii) damage which has been or will be sustained results from an act committed, or likely to be committed, within the jurisdiction; or
 - iii) the claim is governed by the law of England and Wales.
97. Playtech makes the case that the claim for copyright infringement clearly passes through this gateway, and I agree, although I strongly doubt whether, if there is no other argument connecting the other claims with the jurisdiction, and the other claims were being pursued, that the court would accept jurisdiction as regards the other claims merely because of this, given the trifling nature of the breach.
98. As regards the remaining claims, those concerning breach of confidence or breach of trade secrets, it is arguable whether the claims result from acts committed within the jurisdiction.

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99. The Third and Fourth Defendants make the point that in a claim for breach of confidence, the applicable law is to be determined in accordance with European Parliament and Council Regulation 864/2007 of 11 July 2007 on the law applicable to non-contractual obligations (“**the Rome II Regulation**”).
100. Breach of confidence is a species of unfair competition within Article 6 of the Rome II Regulation and Article 6(2) applies because Playtech’s claims are concerned with alleged acts of unfair competition affecting exclusively the interests of a specific competitor. In these circumstances, Article 6(2) provides that “*Article 4 shall apply*”. The consequence is that Article 4, which is concerned with the law applicable to a non-contractual obligation arising out of a tort, applies to determine the applicable law. This is despite breach of confidence not being a claim in tort for the purposes of English law.
101. This approach was taken in *Celgard v Shenzhen Senior Technology Material Co. Ltd* [2020] EWCA Civ 1293, [2021] F.S.R 1 (“*Celgard*”).
102. Article 4 of the Rome II Convention provides:
- “1. Unless otherwise provided for in this Regulation, the law applicable to a non-contractual obligation arising out of a tort/delict shall be the law of the country in which the damage occurs irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occur.
 2. However, where the person claimed to be liable and the person sustaining damage both have their habitual residence in the same country at the time when the damage occurs, the law of that country shall apply.
 3. Where it is clear from all the circumstances of the case that the tort/delict is manifestly more closely connected with a country other than that indicated in paragraphs 1 or 2, the law of that other country shall apply. A manifestly closer connection with another country might be based in particular on a pre-existing relationship between the parties, such as a contract, that is closely connected with the tort/delict in question.”
103. In *Celgard* at [54], Arnold LJ explained that under Article 4(1) the connecting factor is the direct damage caused by the wrongdoing. In that case, the claimant, Celgard, advanced a “Direct Claim” that the defendant (referred to as “Senior”)—was liable for breach of confidence by importing into, and marketing in, the UK products whose design and production benefited from Celgard’s trade secrets. Celgard also advanced a “Vicarious Claim” that Senior was vicariously liable for the wrongdoing of a Dr Zhang (a former employee of Celgard and a current employee of Senior) in disclosing Celgard’s trade secrets to Senior in China (see [17]-[18]).

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104. Arnold LJ held at [62] that, since the act of unfair competition that was the subject of the “Direct Claim” was the importation into, and marketing in, the UK of the infringing goods, it followed that the UK was the market affected by that act of unfair competition and the country where the direct damage was sustained. Thus, the applicable law for the “Direct Claim” was English law. In contrast, Arnold LJ held at [68] that the applicable law for the “Vicarious Claim” was Chinese law, because the direct damage caused by Dr Zhang’s disclosure of trade secrets to Senior was sustained in China.
105. Clearly Mr Veliks was undertaking acts in Latvia. It is possible that his acts also had an effect, and may be regarded as having been carried out, in the United Kingdom if he accessed servers that were present in the United Kingdom. There is no evidence on this point. However, following *Celgard*, I should focus away from this point and instead focus on whether the damage which has been or will be sustained from these acts has been suffered in the jurisdiction.
106. Playtech argues that damage has been sustained in the United Kingdom as it is based in the United Kingdom and trades from there and receives the revenues which may be damaged from unfair competition arising from these breaches in the United Kingdom. Whilst it has not identified competing specific imports, as was the case with the Direct Claim in *Celgard*, this is understandable as it is a different type of business that does not sell physical goods but instead sells intangible products. Nevertheless, it seems to me that it has got close enough to the Direct Claim in *Celgard* in that it has presented a strong case that it is facing competition to its business, which it conducts in the UK, in relation to its sales from at least one game that has a feature that has relied on its confidential information. This seems to me to be a good argument and a sufficient justification for the direct claims that Playtech is making against Mr Veliks and against Realtime Latvia to pass through this gateway.
107. It may be argued that the claim against Realtime Latvia as regards vicarious liability should be treated differently, as this was the case in *Celgard* but I do not think this is so, or at least, not entirely so.
108. In *Celgard* it seems that the claim for vicarious liability for the disclosure of trade secrets was being pursued on the basis that the damage was the disclosure itself which in that case took place in China. In the case before me, I understand the damage claimed for which there is vicarious liability is largely framed by reference to the same damage as for the direct claim (economic loss through unfair competition). It therefore passes the gateway in the same way as the direct claim.
109. Insofar as Playtech is making a claim that the loss is the disclosure itself, then applying the principles applied in *Celgard* to that damage alone, Latvia should be seen as the place where the loss is incurred. However as the court needs to deal with the claim holistically, I consider that looking at the two aspects of the claim the court should give primacy to the direct claims where, as I have explained the losses are to be considered to be falling within the jurisdiction.

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110. Gateway 11 is expressed as follows:

“The subject matter of the claim relates wholly or principally to property within the jurisdiction, provided that nothing under this paragraph shall render justiciable the title to or the right to possession of immovable property outside England and Wales.”

111. I agree with Playtech that this gateway applies in relation to the copyright claim although the comments I have made at [97] apply equally here.

112. Playtech would need to provide further argument and evidence, however, if it was trying to argue that the confidential information or trade secret amounts to property within the jurisdiction. Playtech is not pressing on this point, and so I shall leave this difficult question unresolved.

Gateway 21.

113. Gateway 21 is expressed as follows:

“A claim is made for breach of confidence or misuse of private information where:

(a) detriment was suffered, or will be suffered, within the jurisdiction; or

(b) detriment which has been, or will be, suffered results from an act committed, or likely to be committed, within the jurisdiction;

(c) the obligation of confidence or right to privacy arose in the jurisdiction; or

(d) the obligation of confidence or right of privacy is governed by the law of England and Wales.”

114. This is the most natural gateway to consider in relation to the claims for breach of confidence or unlawful use or disclosure of trade secrets.

115. Playtech argues that the claims relating to breach of confidence and trade secrets can access this gateway as it suffers detriment within the United Kingdom. As *per* the argument considered in relation to Gateway 9, discussed in detail above, I agree.

116. A textual point has been raised as to whether satisfying sub-paragraph (a) in the gateway by itself is enough to pass the gateway. The argument is based on the observation that the word “or” does not appear at the end of sub-paragraph (b) and this may be taken as an indication that points (a) to (d) are not all self-standing alternatives but rather a claimant needs to satisfy (a) or (b) *and* (c) or (d).

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117. This seems to me to be an unlikely interpretation since:
- i) if this was meant, the draftsman would have clarified the point by using the word “and” at the end of sub-paragraph (b);
 - ii) in the absence of the word “and” at the end of sub-paragraph (b) there is an ambiguity as to whether “and” or “or” was meant;
 - iii) reading the gateway in its context, it is far more likely that “or” was intended.
118. This last point can be seen from the drafting of Gateway 23, which deals with the allied concept of unlawfully causing or assisting in breaches of obligations dealt with under Gateway 21. Here the drafting is clear that causing or assisting in anything that would be dealt with by any single one of the sub-paragraphs in Gateway 21 would pass Gateway 23. It is unlikely that it would be intended that a defendant assisting in a breach could be the subject of Gateway 23 whilst another defendant being the person committing the breach in question might not be the subject of Gateway 21 unless that defendant passed a further hurdle.
119. I therefore reject the textual argument and find therefore that Gateway 21 can be accessed by falling into any of the sub-paragraphs enumerated within it.

9. FORUM CONVENIENS

120. Having found that the claims that pass the filter of the *Kawasaki* Test as I have listed them above, do fit within one or more of the gateways, then there remains the question whether the English courts are the proper forum in which to determine these claims.
121. It is argued on behalf of Realtime Latvia and Mr Veliks that Latvia is a better jurisdiction as its defence may include reliance on the employment terms of Mr Veliks (including his termination agreement) and/or the Horizon user terms, all of which are governed by Latvian law. As there is no real evidence that Mr Veliks ever signed up to the Horizon user terms and, as I have discussed above I do not agree that terms contained within an employment contract with one company can govern confidentiality rights of another company (see my analysis above of *Faccienda Chicken* above), I will not put any weight on this point.
122. Whilst the Defendants have put forward some expert evidence as to what claims may be made in the Latvian courts, there does seem to be a lacuna in this advice as regards whether alleged breaches of obligations of confidence owed to a United Kingdom company and causing damage in the United Kingdom could be tried in Latvia, and I see this as reinforcing a reason for the English courts to take jurisdiction.
123. As to the practical issues, it does seem that there is some advantage to litigating in England and Wales. It appears that England and Wales has a more developed regime as regards disclosure. It is true that many of the witnesses are outside the United Kingdom, but as some will be in Latvia and some in Malta and possibly some in the United Kingdom, I do not see this as creating a strong reason to litigate elsewhere. There is the point that it may be expensive for Mr Veliks in particular to have to travel to the United Kingdom to give his evidence, but I would be surprised if Realtime Latvia would not see the need to cover this expense and if this genuinely causes difficulties

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for him, I would expect that a court might allow him to give evidence from Latvia. Overall, I can believe that it might be cheaper to litigate in Latvia in the general run of things, but as the remaining issues turn on duties of confidentiality where the damage takes place in the United Kingdom and where there are English trade secrets and copyright, any usual cost advantage may be reduced or outweighed by the requirement for expert evidence on English law to be adduced in Latvia.

124. Having considered the above points and having considered the matter in the round, I consider that the English courts are the proper forum in which to determine these claims and that the case that another forum would be more convenient is not made out.

10. FULL AND FRANK DISCLOSURE

125. The Defendants argue that Playtech failed to disclose facts and matters which were material to the Court's decision and which Playtech would or should reasonably have known that the Realtime companies would want the Court to be aware of. They argue that no justification or excuse has been put forward for these failures and that the court should conclude that Playtech made no proper effort to seek to comply with its duty of full and frank disclosure and fair presentation and that permission to serve ~~service~~ out of the jurisdiction should be set aside for this reason alone.
126. The matters complained of almost all relate to the way Playtech and ELT—originally framed their claims. The fact that ELT has discontinued its claim and Playtech has largely rebased its claims provides a very strong indication that any failure to deal with defects in the original framing of the claims was through error rather than through any deliberate withholding of information or arguments from the court. As such, I do not see these alleged failures as providing a reason for refusing Playtech's application, although Playtech's change of tack may have some relevance when it comes to costs.
127. More specifically, the matters complained of as falling short of the duty were as follows:
- i) That Playtech's evidence did not mention relevant factors connecting the case to Latvia. In particular, there was no mention of the exclusive jurisdiction clause in favour of the Latvian courts in the Employment Contract, despite the fact that Playtech was originally suing for breach of that contract. As Playtech is not now basing its amended claim on contract, and considered, in my view correctly, that these contractual provisions were not relevant, I do not agree that this is a relevant failure.
 - ii) That there was no mention of the fact that the alleged wrongdoing took place in Latvia. In this regard, Playtech's evidence asserted that the IP addresses used to access Horizon were linked to the Realtime companies, but did not mention that 94% of the access took place from Latvia and none was from the UK. I consider it was obvious to the court at all times that the vast majority of the access was likely to be coming from Latvia where Mr Veliks was working. As the Realtime companies were not based in the United Kingdom it would never have occurred to the court that access was being made from the United Kingdom. It is difficult then to see any failure here to disclose.

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- iii) That Playtech's evidence did not attempt to identify with precision the information on Staging or Horizon which is alleged to be confidential. This may have been relevant to the claim as originally framed but was not so in relation to the amended claim and therefore I do not see this as any reason to dismiss Playtech's current application.
 - iv) That Playtech's evidence did not make a fair presentation of the Horizon User Agreement, despite alleging breach of this contract. Again, this may have been relevant to the claim as originally framed but was not so in relation to the amended claim and therefore I do not see this as any reason to dismiss Playtech's application.
 - v) That Playtech's evidence did not attempt to identify with precision the information alleged to have been misused by the Realtime companies, nor explain that a claimant is required to do this. Once again, this may have been relevant to the claim as originally framed but was not so in relation to the amended claim and therefore I do not see this as any reason to dismiss Playtech's application.
128. There are however two failures in disclosure that in my view do have some continuing relevance notwithstanding the reframing of Playtech's claim.
129. The first is that both versions of the Particulars of Claim, and Playtech's evidence each failed to address the requirements of accessory liability in respect of the Games Global companies as set out by the Supreme Court in *Vestergaard*. I have considered *Vestergaard* in this judgment and am refusing the case against the Games Global companies essentially on the basis that Playtech has not done enough to satisfy the court on this point. I do not consider that this was a deliberate omission – I consider that Playtech thought that it had done enough to link the Games Global companies to Realtime Latvia's knowledge of confidentiality. I have found in favour of the Games Global companies on this point and I do not consider I need to take any further action in respect of it.
130. The second is that there appears to be a conflict between the case now advanced in Mr Karet's third witness statement to the effect that Mr Veliks would not have been asked to agree to the terms of the Horizon User Agreement and the case advanced in the original Particulars of Claim attached to the original without notice application (and signed with a statement of truth by Mr Karet). No explanation has been given for this change in the factual position being advanced. This point is of some concern but in my view is not, of itself or even taken with the other points complained of, sufficient to cause me to consider that Playtech's application should be refused. The evidential position regarding this point will be a matter to be explored at trial.

11. CONCLUSION

131. For the reasons I have given, the court should give permission for Playtech to amend its claim and Particulars of Claim, but only in a manner that would allow it to continue its claims as they relate to Mr Veliks and Realtime Latvia. Playtech should be allowed to serve the amended Claim Form and Amended Particulars of Claim on those remaining parties.

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132. I will ask the parties to settle a form of order (and a further amended Claim Form and Amended Particulars of Claim) reflecting this judgment. I will also ask the parties whether they consider the question of costs can be dealt with on paper or whether there will need to be another hearing to deal with this.