

Neutral Citation Number: [2020] EWHC 646 (Comm)

Case No: CL-2016-000049

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

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 12 March 2020

Before :

Mr Justice Waksman

Between :

**PCP Capital Partners LLP & PCP International
Finance Limited
- and -
Barclays Bank Plc**

Claimant

Defendant

Joe Smouha QC and Robert Weekes (instructed by **Quinn Emanuel Urquhart & Sullivan UK LLP**)
for the **Claimant**

Jeffrey Onions QC, Alexander Polly and Oliver Butler (instructed by **Simmons & Simmons LLP**) for
the **Defendant**

Hearing date: **12th March 2020**

APPROVED JUDGMENT

Thursday, 12 March 2020

MR JUSTICE WAKSMAN

1. This is a PTR and it seems to me that if there are problems with anyone's witness statements in terms of material that should not be there and which is likely to prove a distraction at trial, or increase the time spent on that statement, either by the judge or by counsel or anyone else, or which could increase the cross-examination unnecessarily, it is my job, as the judge who will be trying this case, to seek to do something about it.
2. I do not consider, given that both counsel refer to different parts of the Working Groupon Witness Statements of which I was a party, that there is simply a binary choice here; that is to say, unless the witness statement is riddled with inappropriate content, I should leave it alone, or, on the other hand, if there is inappropriate content, then I should simply prevent it from coming in and instruct the relevant party to start all over again. There is a middle ground and one which is proportionate in this case.
3. There are definitely elements of Mr Varley's witness statement which should not be there, in particular because, in truth, they are no more than arguments or simply bringing into the witness statement contents of the documents and nothing more than that, documents to which Mr Varley was not a party.
4. The party producing that witness statement does not have increased latitude because this is an allegation of fraud. There may be compelling reasons why the allegation of fraud cannot be made out because of what is said in certain documents, but that does not mean that a particular witness who has no knowledge of those documents and no involvement therein, has to become the mouthpiece for making those anti-fraud submissions, as it were.
5. I am not concerned here with those paragraphs in Mr Varley's witness statement which say something along the lines that, "I don't recall what I said at the meeting but I have seen the minutes of the meeting and I've no reason to think that they would not be an accurate record of

what I did say"; or that, "The content of an email referring to something that I've done, even though I don't recollect it, would seem reasonable enough or likely enough". That is still evidence coming from that witness and it should not be excluded.

6. On the other hand, I take, for example, paragraphs 90 and 91 of Mr Varley's witness statement. This might be a convenient moment for him to make a point if this were permissible but it is not permissible here for him to comment where he has, after the event, been shown transcripts of calls between other people to say what has happened and what they indicate. What these transcripts indicate will ultimately be a matter for the judge, and Mr Varley is in no better position than anyone else to say what they do or should mean. That applies equally to paragraph 91.
7. I now refer to some other specific examples that really came to my attention as I was perusing the witness statement. As it has been agreed (with my approval) that the particular content of passages in the witness statements should not be reported at this stage, I have put my comments here into a separate confidential annex.
8. Now, Mr Onions QC is perfectly correct: if there is the odd sentence here or there that is non-conforming, the court is not going to get too excited about it because the time spent would be disproportionate, but there are a number of sections of this witness statement which, in my view, do one of two things which is objectionable: either, on a fair reading, it is simply comment to support the position which Mr Varley seeks to advance; or, secondly, they are pure recitation of documents to which he cannot contribute any further.
9. I do not believe that the removal of those passages is in any way going to deprive Mr Varley of the substance of what he can say in the witness statement or making it difficult for the court to understand his general case.
10. By the same token, it is right to say that Mr Onions has pointed to at least some paragraphs in the very lengthy evidence of Ms Staveley which, again, are pure comment. It may be that in both cases those who have drafted the witness statement for approval by the witness have got

somewhat carried away or have forgotten what the role of the witness statement is. To reinforce that for this case, the purpose of the witness statement in this context is to say, so far as the witness can say what happened, what the witness says he or she did, what he or she knew or thought or believed or intended, or, the meaning or content of documents to which they were a party where they can comment properly about them and where the meaning or content of that document has been called into question. Beyond that, they should not go.

11. The course that I am going to take here is to require both sides to go back to those witness statements and, within 14 days, remove the paragraphs that I consider have been offending for the reasons that I have given. I consider that it is only fair to deal with both Mr Varley's witness statement and Ms Staveley's, and it makes no difference at all that one of them is already in and the other one is still the subject of an application for permission - that's a completely arbitrary distinction for my case management purposes. The references that I have made are by no means exhaustive but I am quite sure that what I have said now is a sufficient steer to both parties.
12. I am not going to say that Mr Varley's witness statement should be reduced to 30 pages. Ms Staveley's is a lot more than 30 pages and I'm not impressed by the point that apparently, no-one objected to it at the time. The question is what is a proper length of a witness statement in a very substantial case, with allegations of fraud, where it doesn't surprise me at all that these key witnesses would need more than 30 pages.
13. That's what the parties are going to do. I would hope that, after that period of pruning, both parties will live with the results. If one of them still says that there is something seriously wrong, they can make an application to me on paper and I will deal with it on paper.