



Neutral Citation Number: [2018] EWHC 3622 (QB)

Case No: HQ17XO3689

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20 March 2018

Before:
DEPUTY MASTER HILL QC

Between:

(1) BGC BROKERS LP
(2) MARTIN BROKERS GROUP LIMITED
(3) BGC SERVICES HOLDINGS LLP

Claimants

-and-

(1) TRADITION (UK) LIMITED
(2) JOHN ANTHONY VOWELL
(3) SIMON JAMES CUDDIHY
(4) ROBERT GOAN

Defendants

-and-

(5) MICHAEL ANDERSON

Intended Defendant

Max Mallin QC and Matthew Parker (for the Claimants)
Neil Kitchener QC and Matthew Cook (for the Defendants)

Hearing date: 15 February 2018

Approved Judgment

I direct that pursuant to CPR PD 39A para. 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

DEPUTY MASTER HILL QC:

Introduction

1. By this application, issued on 12 January 2018, the Claimants seek permission to (i) add a Fifth Defendant (Michael Anderson) to the claim, pursuant to CPR 19.4; and (ii) amend their claim to plead the claim against him, and to allege direct and vicarious liability for his actions by the First Defendant (“Tradition”), pursuant to CPR 17.1. The application is supported by a witness statement from Graham Shear, the Claimants’ solicitor.
2. The Claimants have settled their claims against the Third and Fourth Defendants. The First and Second Defendants and Mr Anderson (“the Defendants”) oppose this application. They rely on witness evidence from Mr Anderson, the Second Defendant and Stevan Vjestica.

The factual background

3. The Claimants are part of the BGC group of companies and carry on business as inter-dealer brokers, arranging trades between principals in a wide range of financial products. Tradition is one of their main competitors in the UK and Europe.
4. The Third Defendant (Simon Cuddihy) is a partner of BGC. The Fourth Defendant (Robert Goan) is a former employee of BGC.
5. The Second Defendant (Anthony Vowell) is a senior employee of Tradition. The intended Fifth Defendant (Michael Anderson) is a joint Chief Executive Officer of Tradition in London.
6. Mr Cuddihy and Mr Vowell are said to be friends of long-standing.
7. The Claimants’ claim is for breach of confidence. The evidence indicates that on various occasions in 2016 and 2017 Mr Cuddihy passed confidential BGC information to Mr Vowell (having first obtained it from Mr Goan). This information has been described as “*highly confidential information relating to the revenues earned each month by BGC’s individual brokers*”. It is understood to have been derived from certain “BR08” spreadsheets which contained information for nearly all of BGC’s individual brokers, access to which was restricted to very senior management and certain support staff. The Claimants’ claim is that this information would (i) enable any competitor such as Tradition to identify which of the BGC “*desks*” were performing most successfully; (ii) thus enable a competitor to tailor its efforts to best compete for that particular business; and (iii) facilitate any efforts by the competitor to recruit particular BGC brokers as employees, in what is said to be an intense recruitment market. The Claimants indicated that in April 2017 Tradition did in fact recruit six of the eight brokers working on the RP Martin Forward Cable desk, a particularly well-performing desk within BGC. This is the subject of separate proceedings against Tradition (HQ17X04687).

8. In terms of the procedural background, on 9 October 2016 the Claimants obtained a without notice injunction from Foskett J which among other things prohibited Tradition and Mr Vowell from misusing the BGC information or disclosing it to third parties. Mr Vowell, Mr Cuddihy and Mr Goan were also ordered to make their mobile telephones and other electronic media available so that the material on them could be imaged and preserved by an IT expert. This duly occurred. The Claim Form was issued on 10th October 2017, with Particulars of Claim following on 26 October 2017. Thereafter, Mr Vowell was ordered, and Mr Cuddihy and Mr Goan undertook, to provide affidavits setting out the details of their receipt and/or transmission of the BGC information, which they duly did. All three have also carried out wide-ranging disclosure exercises for relevant documents and exhibited them to the affidavits. Mr Vowell conducted the searches with the assistance of his solicitors. Both parties rely on aspects of the affidavit evidence for the purposes of this application. On 22 December 2017 BGC served draft Amended Particulars of Claim which sought to add Mr Anderson as a Defendant and make proposed amendments to the text. Some of the amendments were consented to but the remainder and the addition of Mr Anderson are the issues that came before me.

The legal framework

9. The Court has the power under CPR 19.2(2) to order that a new party be joined to proceedings if (a) it is desirable to add the new party so that the court can resolve all the matters in dispute in the proceedings; or (b) there is an issue involving the new party and an existing party which is connected to the matters in dispute in the proceedings and it is desirable to add the new party so the court can resolve that issue.
10. The Court has the power to grant a party permission to amend its statement of case under CPR17.1(2)(b). Permission to amend will only be granted when the claim has some prospect of success. The test is the same as that which would apply on an application for summary judgment. In circumstances such as these where the respondent to a joinder application has served evidence purporting to challenge the merits of the claim against him, the test is whether the Claimants have no real prospect of succeeding in their claim against the respondent (White Book, paragraph 17.3.6; *AC Ward Ltd v Catlin (Five) Ltd*. [2009] EWCA Civ 1098, [2010] Lloyds Rep LR 301 at paragraph 24, approving the summary of the applicable principles in *Easyair Ltd v Opal Telecom Ltd* [2009] EWHC 339 (Ch) at paragraph 15; *PeCe Beheer BV and Ors v Alvere Limited* [2016] EWHC 434 (IPEC) at paragraphs 30-39).
11. In *Swain v Hillman* [2001] All ER 91 at pp.91-5, Lord Woolf gave the following well-known guidance in relation to summary judgment applications:

“It is important that a judge in appropriate cases should make use of the powers contained in Part 24. In doing so he or she gives effect to the overriding objectives contained in Part 1. It saves expense; it achieves expedition; it avoids the court’s resources being used up on cases where this serves no purpose, and, I would add generally, that is in the interest of justice. If a claimant has a case which is bound to fail then it is in the claimant’s interests to know as soon as possible

that that is the position. Likewise if a claim is bound to succeed, a claimant should know this as soon as possible.

Useful though the power is under Part 24, is important that it is kept to its proper role. It is not meant to dispense with the need for a trial where there are issues which should be investigated at the trial....the proper disposal of an issue under Part 24 does not involve the judge conducting a mini trial, that is not the object to the provisions; it is to enable cases where there is no real prospect of success either way, to be disposed of summarily”.

12. In *Carey v AIB* [2011] EWHC 594 (Ch) Briggs J (as he then was) provided further guidance on the test in relation to an application to amend. He stated that in situations such as this where a Defendant opposes permission to amend mainly on the ground that the claimant has no real prospect of succeeding in the case he seeks to add, the criterion which the judge has to apply under CPR 24 is “*not one of probability; it is absence of reality*” (Lord Hobhouse in *Three Rivers District Council v Bank of England (No. 3)* [2001] 2 All ER 513). In conducting this exercise, it is open to the Court to reject evidence if it is “*inherently implausible or...contradicted...or not supported by contemporaneous documentation*” (per Arden LJ in *Collier v P and MJ Wright Ltd* [2008] 1 WLR 643 at 653C-D).
13. If, as the Defendants argue, the Claimants’ application to amend is properly characterised as an application to plead against Mr Anderson an allegation of fraud or at least “*wilful default*”, CPR PD16, paragraph 8.2 requires the Claimants to specifically set out such any allegation.
14. The Defendants also referred to *Three Rivers* at paragraphs 186 and 187 for the proposition that it is not open to a Court to infer dishonesty from facts which have not been pleaded or from facts which have been pleaded which are consistent with honesty: there must be some fact which tilts the balance and justifies an inference of dishonesty and this fact must be both pleaded and proved.
15. The Defendants also rely on the principle that it can be an abuse of process to pursue a claim for an improper collateral purpose. In *Goldsmith v Sperrings Ltd* [1977] 1 WLR 478, CA, Bridge LJ held that if it can be shown that a litigant is pursuing an ulterior purpose unrelated to the subject matter of the litigation and that but for his ulterior purpose he would not have commenced proceedings at all, that is an abuse of process. In *JSC BTA Bank v Ablyazov* [2012] 2 All ER 575, Teare J held that this is the approach the Court should follow in deciding whether a claim is an abuse of process.

The Claimants’ submissions

16. The Claimants seek, in light of evidence that has come to light since the Particulars of Claim were served, to bring a claim against Mr Anderson that (i) he received BGC’s confidential information from Mr Vowell (or others) and that in breach of an equitable duty of confidence he used that information or transmitted it to others; and (ii) he procured the breaches of confidence carried out by Mr Vowell, Mr Cuddihy and Mr Goan. BGC also seeks to amend its existing claim against Tradition so as to

specifically allege that Tradition is directly or vicariously liable for Mr Anderson's wrongdoing.

17. The Claimants rely on the following matters which it is said are "*primary facts*" that give rise to a "*firm inference*" that Mr Anderson acted in breach of confidence and tortiously:
- (i) He was appointed joint CEO of Tradition in October 2016, and it was well known in the market that he was keen to make his mark on the direction of the UK business and press Tradition to compete with the larger inter dealer brokers such as BGC;
 - (ii) Mr Cuddihy is known to have transmitted BGC's confidential revenue information to Mr Vowell of Tradition on various occasions between November 2016 and July 2017 and Mr Vowell accepted receipt of the information;
 - (iii) On the first occasion on which Mr Vowell asked Mr Cuddihy for the information (23 October 2016) he made it clear that he had begun having meetings with Mr Anderson. He said at the time that these were about a potential new job and that he wanted the information to assist in progressing such discussions with Mr Anderson;
 - (iv) Mr Vowell applied pressure on Mr Cuddihy to provide BGC's confidential information, as is evidenced from, for example, WhatsApp messages on 26 and 30 June and 3, 14 and 17 July 2017 chasing for BGC's six months figures, which Mr Cuddihy eventually provided on 26 July 2017;
 - (v) Mr Vowell made it clear on various occasions that he wanted the information specifically for use in his discussions with Mr Anderson. There is a WhatsApp exchange on 11 May 2017 in which Mr Cuddihy asked Mr Vowell if he had showed Mr Anderson the "*BGC numbers*" and when Mr Vowell said that he had not, Mr Cuddihy said "*Its OK*" and "*I expected you to*" to which Mr Vowell replied "*Oh right OK, I will*", which suggests that he did (albeit that Mr Vowell denies this);
 - (vi) Mr Vowell met Mr Anderson regularly over the relevant period, and told Mr Cuddihy that he needed the BGC information "*in good time prior to meetings between himself and Mr Anderson and Mr Marcus*". Mr Vowell's requests coincided with these meetings (as to which reference is made to an example in March 2017 and an example in May 2017);
 - (vii) Mr Anderson had an obvious use for BGC's confidential information. He himself admits that he was seeking to grow Tradition's business and that hiring brokers is the most effective and expedient way of doing that. The Claimants challenge Mr Anderson's assertion that the BGC revenue information was "*unnecessary and irrelevant*" not least because it is contradicted by Mr Cuddihy, who explains the potential significance of the information; and

- (viii) Overall Mr Cuddihy was in direct and frequent contact with Mr Vowell throughout the period from November 2016 to July 2017. Moreover his own evidence is that looking back now at the timing of events, it seems to him that Mr Vowell was meeting with Mr Anderson on multiple regular occasions and that these were coinciding with the requests which Mr Vowell made of him for BGC's revenue information; and that by June 2017 he did begin to connect Mr Vowell's meetings with Mr Anderson and other senior management at Tradition and his requests to him. He concludes by saying that this leads him to believe now that from about early May 2017, Mr Vowell and others at Tradition were targeting him for access to BGC's confidential information.
18. In their evidence in response to the application Mr Anderson and Mr Vowell firmly deny that Mr Anderson ever asked Mr Vowell to obtain information or that Mr Vowell did so. However the Claimants argue that such denials are unsurprising or "*convenient*" and do not negate the existence of the inferences on which they rely.
19. Mr Anderson contends that none of the documents that were reviewed for the purposes of preparing Mr Vowell's affidavit evidences the transmission of information to him. However the Claimants say that this may be correct but argue that (i) BGC has not itself had an opportunity to review those documents; (ii) these documents are only those which were the subject of the imaging order against Mr Vowell; (iii) there has not apparently been any independent search of Tradition's documents; (iv) Mr Anderson has not given disclosure of material from his personal mobile telephone or other electronic devices; and (v) in any event the absence of documentary proof of the transmission of information Mr Anderson does not mean that it did not happen, especially given that meetings in person appeared to be the primary method of communication between Mr Vowell and Mr Anderson.
20. More generally the Claimants argue that while they know at this stage that Tradition has made some use of the information, they do not know how much it has been used. That issue will only become clear when there has been full disclosure in the proceedings, including from Tradition itself and Mr Anderson (and indeed that it is in such material that evidence about the use of the information is most likely to be found). It is said that for present purposes they have pleaded sufficient to show that their case is that there has been some loss, and the extent of that will become clearer in the future.
21. The Claimants also rely on evidence in relation to Tradition's contact with a senior broker working for another part of the BGC group, Camille Gagnaire, with a view to recruiting him as a Tradition employee. In particular they rely on the following:
- (i) Mr Gagnaire's evidence is that he first met Stevan Vjestica of Tradition in around July 2016 and discussed a potential move to Tradition. Mr Gagnaire believed that he provided only a vague outline of his revenues at that stage. Mr Vjestica has confirmed that at that first meeting on 14 July 2016 Mr Gagnaire wrote down his monthly revenues since February 2016 on a piece of paper (a copy of which is in the bundle);

- (ii) Mr Gagnaire and Mr Vjestica were in regular contact over the following months and on one occasion on 8 December 2016 Mr Anderson attended in person. There is evidence that he played a key role in these discussions thereafter: Mr Gagnaire states that he met Mr Anderson on roughly ten more occasions in both Paris and London; and
 - (iii) Mr Gagnaire states that Tradition never asked for verification of his revenue figures despite offering him very generous contract terms. This generates what is described by the Claimants as a “*central issue*” of whether Tradition was prepared to make Mr Gagnaire a very generous offer without ever seeing verification of its revenue numbers, and if so, why. Mr Gagnaire himself has said that he still finds it incomprehensible that Tradition made such large offers to him without evidence of his revenue figures. The Claimants argue that this evidence permits the inference that Tradition did not press for this verification of the figures because it had such verification from elsewhere, namely the BGC confidential information.
22. In response to the Defendants’ submissions on this aspect of the claim (see further below), the Claimants argue that (i) it is wrong to characterise the element of their claim relating to Mr Gagnaire as their primary claim as the Defendants do: rather it is just part of their claim; and (ii) the current albeit slightly changed state of the evidence still permits the Claimants to draw the inferences they rely on: some evidence, for example, suggests that offers of employment were made to Mr Gagnaire before the “*leaks*” of information from BGC (which is relied on by the Defendants to show that there cannot have been a causative link between the two), but the Claimants point out that offers continued to be made after the leaks (and so the Claimants say that the offers still could have been informed by the BGC information).
23. Overall it is argued by the Claimants that it is impossible to say that their claims against Mr Anderson personally and the claim against Tradition based on his alleged wrongdoing have no real prospect of success, not least because to resolve the issues raised by the Defendants would be to require precisely the sort of “*mini trial*” which is not appropriate in applications of this nature. It is said that the Court should exercise great caution before “*shutting out*” a claim without the benefit of full disclosure and the contentious evidence being tested at trial. It is also argued that it is not appropriate to seek to “*salami slice*” parts of the pleaded case or the evidence in the way that the Defendants do: rather the Court should look at the claim as a whole and see then if it has no prospect of succeeding.
24. Finally in response to the Defendants’ assertion that the claim is not being brought for a proper purpose the Claimants argue that (i) they are entitled to pursue Mr Anderson personally as a Defendant; (ii) if he is not joined to these proceedings they could sue him in a separate claim; (iii) it would be undesirable for there to be two separate proceedings arising from the same factual background not least because of the risk of inconsistent findings in the two claims; (iv) either criterion in CPR rule 19.2(2) is satisfied; (v) their approach to seeking any interim injunctive relief against Mr Anderson is a matter for them but there would be value to them in a permanent injunction against him; (vi) in respect of Mr Anderson’s evidence as to what he considers the motivations for the claim against him to be, BGC’s current UK Chief Executive Officer has confirmed that the claim is indeed being genuinely pursued and

can provide witness evidence to that effect if need be; and (vii) in any event the case law (namely *Ablyavov* at paragraph 5) dictates that an abuse of process is only made out where the collateral purpose is the only one and there is no genuine purpose at all, which cannot be said to apply here.

The Defendants' submissions

25. By way of introduction the Defendants stress that as a result of the affidavit evidence and disclosure exercises already undertaken pursuant to the interim orders the Court is in the unusual position of having a full documentary picture even at this early stage, and thus dismissal of the application is merited. The Defendants aver that far from supporting the Claimants, the material shows that there is no substance in the claims they seek to bring.
26. The Defendants invite the Court to refuse the application on the grounds that (i) BGC has no realistic prospect of succeeding in the new claims; (ii) there is no good reason to join Mr Anderson to the proceedings in any event, since his addition adds nothing to the existing claims; despite challenge there is no claim for special damages; and there is no need for any other relief against Mr Anderson personally; and (iii) there is unchallenged evidence that indicates that BGC's motivation in adding Mr Anderson as a Defendant is to damage a competitor rather than because it adds anything to the claim, and this is an improper collateral purpose that amounts to an abuse of process.
27. The Defendants characterise the Claimants' application as seeking to advance two claims against Mr Anderson: (i) a specific allegation that Mr Anderson made use of BGC's confidential information in seeking to recruit Mr Gagnaire ("*the Gagnaire claim*"); and (ii) a general claim that Mr Vowell requested and received BGC's confidential information from Mr Cuddihy at the request of Mr Anderson ("*the general claim*").
 - (i) *The Gagnaire claim*
28. It is said by the Defendants that the Gagnaire claim is the most significant, since it is the only allegation that Tradition made substantial use of BGC's confidential information. Even in relation to this claim it is said by the Defendants that there is no contention that BGC suffered any loss because of the alleged misuse of the information, despite BGC being challenged by Mr Anderson's evidence to make such a case.
29. The Defendants argue that the Gagnaire claim is fundamentally flawed for two reasons.
30. First it is argued there is no evidence indicating that Mr Anderson received any confidential information in relation to Mr Gagnaire other than from Mr Gagnaire himself. It is said that (i) there is no reference in the draft Amended Particulars of Claim or in the evidence filed by the Claimants to Mr Goan/Mr Cuddihy providing Mr Vowell with any information that could possibly relate to Mr Gagnaire; (ii) the evidence is that no revenue information was provided by Mr Goan/Mr Cuddihy to Mr Vowell prior to November 2016, by which time Tradition had already been in negotiations with Mr Gagnaire and made him offers of employment; and (iii) Mr

Goan, Mr Cuddihy, Mr Vowell, Mr Anderson and Mr Vjestica have each given affidavit or witness evidence explaining in detail what information they had access to; this does not include evidence of the transmission to Tradition of BGC information in relation to Mr Gagnaire; and there is no evidence to the contrary.

31. Second it is argued that the Gagnaire claim is flawed because the pleaded case is based on factual premises which are not only demonstrably untrue, but accepted to be untrue by BGC's witnesses. It is said that (i) there are inconsistencies between Mr Cuddihy's affidavit and the evidence of Mr Vjestica and Mr Anderson, which it is said Mr Gagnaire has provided an inadequate explanation for; (ii) the inference that BGC seek to draw from the absence of information provided to Tradition by Mr Gagnaire about his earnings cannot properly be made in light of his own evidence that he provided them with such information; (iii) there are other factors that mean that Tradition's reliance on the earnings information provided by Mr Gagnaire without further verification was unsurprising; and (iv) applying the *Three Rivers* principle, there is a potentially innocent explanation here such that an inference to the contrary cannot properly be drawn.
 32. The Defendants argue that the provision in the amended pleading that refers to information having been provided by Mr Vowell "*and/or from other persons whose identities are presently unknown to BGC*" is (i) a wholly unparticularised "*general muckraking exercise*"; (ii) problematic given the limited circle of people who had access to the data in question; (iii) doubtful given the absence of evidence that BGC has sought to investigate this alleged "*leak*" in comparison to the "*aggressive steps*" taken by BGC to investigate the alleged breaches by Mr Vowell/Mr Cuddihy; and (iv) in any event flawed given the now undisputed evidence that Mr Gagnaire provided earnings information himself to Mr Anderson.
 33. Overall therefore the Defendants argue that the Gagnaire claim has no realistic prospect of success and serves no purpose because BGC does not contend it suffered any loss, given that ultimately Tradition did not succeed in recruiting him.
- (ii) *The general claim*
34. As to the claim that Mr Vowell requested and received BGC's confidential information from Mr Cuddihy at the request of Mr Anderson, it is said by the Defendants that this is a serious allegation of deliberate wrongdoing, which BGC seeks to advance without any evidence.
 35. The Defendants point to the fact that the affidavit and documentary evidence from Mr Vowell, and the witness evidence from Mr Anderson, provide no evidence that Mr Anderson requested the information in question or that Mr Vowell provided it.
 36. It is said that otherwise the claim relies on apparent "*guesswork*" by Mr Cuddihy. The Defendants draw various distinctions between the short and the long affidavits provided by Mr Cuddihy (respectively "*Cuddihy Short*" and "*Cuddihy Long*"). It is said that there has been no explanation given by Mr Shear for the provision of the two Cuddihy affidavits. More pertinently perhaps the Defendants characterise the differences between the two as such that what appears to have happened is that certain

parts of Cuddihy Long that are unhelpful to BGC have been replaced in Cuddihy Short with additional material which seeks to implicate Mr Anderson.

37. The alleged discrepancies between Cuddihy Long and Cuddihy Short relate to (i) when it was in 2016 that Mr Cuddihy became aware that Mr Goan had access to wider revenue information, relative to when Mr Vowell provided the information; (ii) whether or not Mr Cuddihy seeks to draw an inference regarding the chronology of Mr Anderson's promotion and the beginning of their contact, and the suggestion that Mr Cuddihy cannot recall precise details of his meetings with Mr Vowell; and (iii) a different reason why Mr Cuddihy chose to provide information to Mr Vowell, namely that he was boasting about his access to BGC's data and willingly provided it to a number of brokers, including Mr Vowell (an account that is present in Cuddihy Long but missing from Cuddihy Short). It is submitted that this provides a full and complete explanation for Mr Vowell asking for information which is nothing to do with being asked to do it by Mr Anderson.
38. The Defendants refer to the various sub-paragraphs of paragraph 16(7) of the Particulars of Claim and argue that none of the points made therein justifies the inference against Mr Anderson which the Claimants seek to draw. It is said that (i) the timing of Mr Anderson's promotion relative to the meetings with Mr Vowell, his requests for confidential information, and his ambition to drive Tradition forward, prove nothing; (ii) the fact that Mr Vowell had not made any previous request for data over the previous 16 months is not material; (iii) the documentary evidence does not support the proposition that Mr Vowell placed significant pressure on Mr Cuddihy to provide information; (iv) the suggestion that the data might have been of greater potential interest to senior management at Tradition (such as Mr Anderson) does not mean that it was asked for by him; (v) the fact that Mr Vowell continued to ask for this data even after becoming head of the Euro desk (which is said by the Claimants to show that his original explanation for wanting the data – to help him secure such a position - cannot be right) has been explained by Mr Vowell in his affidavit (namely that he wanted the data to see how his team was doing); (vi) the fact that Mr Vowell became a member of Tradition's rates management team (which is said by the Claimants to be consistent with his reason for seeking the data going beyond securing a new position) provides no basis for the inference that Mr Vowell was acting on instructions; and (vii) the exchange on 11 May 2017 in which Mr Vowell confirmed that he had not yet shared the data with Mr Anderson contradicts the suggestion that he was acting on Mr Anderson's instructions.
39. Based on all the above it is said that there is no proper evidential basis for the suggestion that Mr Vowell was acting on Mr Anderson's instructions.
40. Finally the Defendants argue that adding Mr Anderson to the claim serves no legitimate purpose because (i) Tradition has accepted in its Defence that it would be vicariously liable for Mr Vowell's receipt of BGC's confidential information whether or not this was done at Mr Anderson's request; and if the Gagnaire claim is made out Tradition would be vicariously liable for Mr Anderson's actions in that respect; (ii) BGC does not suggest that Tradition would not be "*good for the claim*" (ie. able to pay any damages ordered by the Court); (iii) it cannot be suggested that joining Mr Anderson is necessary for the purposes of securing injunctive relieve against him because none has been sought against him to date, and it is therefore inconceivable

that BGC would seek such relief post-trial, not least as Mr Anderson's evidence is to the effect that the information would be out of date by that point; and (iv) Mr Anderson's evidence is that the real reason for BGC seeking to add him to the claim appears to be to cause maximum disruption to Tradition as a competitor and adversely impact on his reputation and his ability to run Tradition's business, which is said to amount to a collateral purpose and thus an abuse of process (which would apply whether BGC sought to add Mr Anderson to this claim or bring a fresh claim).

Discussion and conclusions

41. In determining this application I have had close regard to the legal framework set out above.
42. I have been conscious throughout of the need to apply the summary judgement test to the first ground on which the application is challenged, which essentially means that the issue for me is whether the Claimants have no real prospect of succeeding in their claim. In determining that issue I must be conscious not to engage in a "mini-trial", but to look at the Claimants' case and assess whether it has an absence of reality. Equally I am entitled to reject evidence if it is inherently implausible, contradicted or not supported.
43. It seems to me pertinent to note how complex an exercise this has been. The documentary material supporting and opposing the application ran to several lever arch files and required much more reading time than the estimates provided. Both leading counsel lodged detailed written submissions. Counsel for the Defendants also provided me with a speaking note. Both addressed me orally at some length, at a hearing that lasted quite significantly longer than the 2 hours that had been allocated it. Further reading was required thereafter. The legal framework, the key elements of the factual background and the notable points in the procedural history were all broadly agreed between the parties. Rather, the volume of material and the time taken to argue and consider the application illustrates, to my mind, the scale of the complexity of the evidence and the evidential disputes between the parties at this stage.
44. Looking at the proposed amended claim as a whole, it seems to me wrong to say that the most significant element of the Claimants' intended claim against Mr Anderson is that which relates to the Gagnaire issue, as the Defendants seek to do. Rather I prefer the Claimants' characterisation of their proposed claim, which is that this is primarily an allegation that Mr Anderson requested and used the confidential information from BGC, and that the use of that information to seek to recruit Mr Gagnaire is but one part of the evidential picture put forward by the Claimants.
45. It does not therefore seem to be appropriate to begin with the Gagnaire aspect, but to look first at the wider claim to the effect that Mr Anderson requested and used the confidential information.
46. The way the Claimants put this claim is summarised at paragraph 17 above. In short there are a range of factual matters that the Claimants rely on to generate a potential inference that Mr Anderson acted in breach of confidence. The Defendants seek to challenge each of these points and it is fair to say that if one does that, some of the

elements in themselves are not such that the inference in question could be drawn: for example, the Defendants are no doubt right to say that the fact that Mr Anderson was appointed joint CEO of Tradition in October 2016 in itself does not generate an inference.

47. However I agree with the Claimants that it is not appropriate to seek to “*salami slice*” the pleading and look at each element in isolation in such a way: rather the Claimants are entitled to “*build*” their case using each of the factual elements as “*blocks*” and the whole picture needs to be looked at. A trial judge would look at all of the facts to see whether the inference that the Claimants seek to draw is valid, and it seems to me that for the purposes of this application I must conduct the same exercise. Different results flow when one does so: for example, the timing of Mr Anderson’s appointment may well have greater significance when one considers it alongside the evidence as to the timing of the process of transmission of information.
48. There clearly is evidence that could be said to contradict the points set out at paragraph 17 above. There are key disputes, for example, about whether the evidence of Mr Cuddihy “*boasting*” provides a complete answer to the suggestion that he provided the information at Mr Anderson’s request; and about whether the WhatsApp exchange on 11 May 2017 referred to above helps the Claimants or the Defendants. In particular I am mindful that there is evidence, some of which is in sworn affidavit form, to the effect that Mr Anderson did not request the information and that it was not passed to him. Against that I am conscious of the arguments advanced by the Claimants that the various denials may not be accurate, and that given the complexities of the past and ongoing relationships between the key protagonists here, there may be particular reasons why certain denials have been given. Overall, I agree with the Claimants that this is exactly the sort of credibility dispute that can only properly be resolved at trial, and not on paper, at a summary hearing.
49. I am also very conscious of the stage of proceedings that this application is being brought at. It is correct that there is more information and evidence available than would perhaps normally be available on a summary judgement application, given the interlocutory proceedings that have led to extensive affidavit, witness and documentary evidence being made available. However this material is far from the complete picture and I have to have regard to what evidence may be available at trial. I accept the points made by the Claimants that BGC has not itself reviewed a lot of this material; and that neither Tradition nor Mr Anderson have given disclosure. It seems to me that there is force in the Claimants’ position that it is perfectly possible that direct proof of Mr Anderson’s involvement will emerge once all disclosure has been completed; and that even if that is not correct, the absence of explicit proof of a request for or use of the information does not mean it did not happen, especially given that the context in which a lot of these communications appear to have taken place is through face-to-face meetings of which there may be no direct record. Indeed it might even be thought unlikely that if the sort of activity that is alleged had in fact taken place, it would be rigorously documented (albeit that the Claimants did not take this point). A similar analysis applies to the issue of loss: the Claimants have pleaded that the information was passed and was of value, and they are entitled once full disclosure has been made to develop the case on loss more specifically. These issues all further illustrate to me that it would not be appropriate to determine matters at this stage.

50. As set out above the Defendants have conducted a detailed comparison of Cuddihy Short and Cuddihy Long. However what those differences are, whether they are in fact differences of significance, whether or not Mr Cuddihy or Mr Shear can explain any such significant differences and whether if they cannot, inferences should be drawn against Mr Cuddihy are again in my view points of factual dispute and credibility which can only properly be determined at trial.
51. As far as the Gagnaire claim is concerned I have made clear that I take the view that it is not appropriate to regard this as the primary claim advanced by the Claimants. The Claimants of course accept that he was not in fact recruited by Tradition, but rely on his evidence that he was surprised at the offers being made to him without any verification of the figures that he had provided. The inference they seek to draw is that Tradition had the verification in question from the confidential BGC information.
52. The evidence now suggests that Mr Gagnaire wrote his revenue figures on a piece of paper and provided them to Tradition. However I consider that the issues of whether that piece of paper amounted to the provision of sufficient detailed information for Tradition, whether Tradition was justified in relying on that information (together with other materials such as the contracts of employment), or whether it is suspicious that it did so, such that it is possible to draw the inference that it had additional background material, and whether it in fact did so, are again all factual disputes that can only properly be determined at trial.
53. Similarly if in fact Mr Gagnaire has shifted in his evidence and if in fact that shifting renders his evidence weak or incredible is a matter for the trial judge to assess. I cannot from this position conclude that Mr Gagnaire's evidence will not be found to support the Claimants' claim at trial.
54. I do not consider that the principle set out in *Three Rivers* affects this analysis: it seems to me that whether or not the Court can properly infer dishonesty from this complex evidential background is one that is fit for trial and not summary determination.
55. I do not consider that the pleading against Mr Anderson should be struck out for want of compliance with CPR PD 16, paragraph 8.24.
56. I therefore reject the first of the grounds on which the Defendants oppose this application because I do not consider that it can be said that the Claimants have no prospect of proving the claim they seek to add at trial.
57. As to the second ground - that there is no good reason to join Mr Anderson to the proceedings - I have considered the arguments advanced by both parties on this issue and again I prefer those advanced by the Claimants. It seems to me that the Claimants are entitled to pursue Mr Anderson personally; and whether they pursue injunctive relief against him are matters for them. It is plainly the case that the issues that the Claimants seek to litigate against Mr Anderson are connected to the matters in dispute in these proceedings which therefore meet the criterion in CPR 19.2(2)(b); and for similar reasons it is desirable to add Mr Anderson to these proceedings so that the Court can resolve all the matters in dispute in the proceedings, such that the criterion

in CPR 19.2(2)(a) is also met. The argument is strengthened when one considers that there would be no barrier (other than the abuse argument set out below) to the Claimants issuing a fresh claim against Mr Anderson with all of the adverse case management consequences that that would bring, let alone the risk of inconsistent findings. It is plainly a more sensible course that is consistent with the overriding objective for Mr Anderson to be joined to these proceedings.

58. I therefore also reject the second ground on which the Defendants oppose the Claimants' application.
59. As to the third argument – that the amendments are borne out of a collateral purpose that amounts to an abuse of process – I agree with the Claimants that the case law suggests that a collateral purpose only becomes an abuse if it is the only purpose. What I have here is witness evidence from Mr Anderson as to what he believes the motive to be, to be contrasted with instructions from leading counsel conveyed to me through submissions that a similarly senior executive within BGC is willing to give witness evidence to the effect that there is a genuine reason for bringing these proceedings.
60. Again in my view it cannot be said that that is a matter that is capable of summary determination. Whether or not there are in fact ulterior motives at play here, whether if so they are the only motives, and if so whether this renders the case an abuse of process are in my view matters for trial.
61. I therefore also reject the third ground on which the Defendants oppose the Claimants' application.
62. For all these reasons the Claimants' application is granted.