Neutral Citation Number: **[2021] EWHC 647 (Ch)**

Case No: IL-2020-000079

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

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

Date: 19 March 2021

Before: Deputy Master McQuail

Between:

ILLIQUIDX LIMITED

Claimant

-and-

(1) ALTANA WEALTH LIMITED
(2) LEE ROBINSON
(3) STEFFEN KASTNER
(4) BREVENT ADVISORY LIMITED

Defendants

Douglas Campbell QC and Daniel Selmi (instructed by **Waterfront Solicitors LLP**) for the **Claimant**
Tom Moody-Stuart QC and Ben Longstaff (instructed by **Fieldfisher LLP**) for the **Defendants**

Hearing date: 19 February 2021

Approved Judgment

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to BAILII. The date and time for hand down is deemed to be 19 March 2021 at 10.00 am

Deputy Master McQuail:

Introduction

1. This is the Claimant's application for permission to amend its Particulars of Claim ("POC"). The application notice was issued on 5 January 2021. The brief evidence in support of Piers Strickland, partner with Waterfront Solicitors LLP who represent the Claimant, was included in the application notice.

2. The Defendants' solicitor, James Seadon of Fieldfisher LLP, filed a witness statement opposing the application dated 5 February 2021.

3. This prompted the service of witness statements in response on behalf of the Claimant made by Galina Alabatchka, a director of the Claimant, and by Piers Strickland both dated 12 February 2021.

4. The Claimant brings this action against the Defendants for breach of contract, breach of confidence, breach of trade secrets and copyright infringement relating to investment opportunities in Venezuela. The relief sought includes declaratory and injunctive relief, delivery up of material including confidential information or trade secrets and an inquiry as to damages or an account of profits.

5. The Claim Form was issued on 27 July 2020 and the POC bear the same date. The POC attach Confidential Annexes 1 to 7. The original Claim Form stated that no damages were being sought in the first instance and therefore that only the non-money claim court fee needed to be paid.

6. The Defendants served a Defence dated 22 October 2020 which attached Confidential Annexes 1 to 6. The Defendants served a Part 18 Request and a Notice to Admit Facts on the same date.

7. The Claimant responded to the Part 18 Request on 5 November 2020.

8. The Claimant formulated an Amended Claim Form now stating that the value of the damages claim was in excess of £10 million thus attracting a higher Court Fee and also

proposed draft Amended Particulars of Claim ("APOC") attaching Amended Confidential Annexes 1 to 6.

9. There was no objection to the Amended Claim Form and it was sealed on 12 January 2021.

10. The most significant proposed amendment in the APOC is to re-plead the allegation of breach of confidence in a manner said to be based upon the case of *CF Partners (UK) LLP v Barclays Bank Plc & Ors* [2014] EWHC 3049 (Ch) ("*CF Partners*") which the Claimant says is a case with numerous parallels to its claim.

11. In summary the amendments to the Claimant's breach of confidence case (and consequently to the claim to protection of its trade secrets) plead a "Big Idea" and underlying "Detail" using those terms as they are said to have been used in *CF Partners*. The Claimant says that the substance of its case has not changed.

12. The Notice to Admit was answered by the Claimant on 12 February 2021.

Permission to Amend

13. CPR 17.1(2) provides that once a party has served its statement of case it may only amend it with the written consent of the other parties or with the permission of the Court.

14. The notes at White Book 2020 17.3.5 point out that in considering whether to exercise its discretion to allow an amendment the Court must have regard to the matters mentioned in CPR r.1.1(2) in order to deal with the case justly and at proportionate cost.

15. The notes in the following paragraph refer to the case of *SPR North Ltd v Swiss Post International (UK) Limited* [2019] EWHC 2004 (Ch) which confirms that if an application to amend is opposed the test to be applied is that applicable to an application for summary judgment. The question is whether the proposed new claim has a real prospect of success.

16. The Defendants' substantial objection to the breach of confidence/trade secrets amendments is not that the proposed amended claim does not have a real prospect of success,

although they would say that also, but that they fail adequately to particularise the Claimant's claim in confidential information or trade secrets and therefore constitute an abuse and the amendments should not be allowed for that reason. Implicit in what they say is that if the amendments were to be allowed a successful application to strike them out would follow.

Pleading Breach of Confidence

17. Mr Campbell QC and Mr Moody-Stuart QC referred me to the judgment of Laddie J in *Ocular Sciences v Aspect Vision Care (No. 2*) [1997] RPC 289, 359-360. The Judge there pointed out that the rules as to the proper particularity of pleading apply to breach of confidence claims as they apply to all other proceedings, that the potential for breach of confidence actions to be used to oppress or harass competitors is well recognised and that the courts are careful to ensure claimants give full and proper particulars of all confidential information on which they intend to rely. The Judge referred to the *John Zink* case in which the Court of Appeal [1973] RPC 717 ordered particulars before defence and the High Court [1975] RPC 385 subsequently struck the claim out. The Judge went on:

> "if a plaintiff wishes to seek relief against a defendant for misuse of confidential information it is his duty to ensure that the defendant knows what information is in issue. This is not only for the reasons set out by Edmund Davies L.J. in *John Zink* but for at least two other reasons. First, the plaintiff usually seeks an injunction to restrain the defendant from using its confidential information. Unless the confidential information is properly identified, an injunction in such terms is of uncertain scope and may be difficult to enforce: See for example *P.A. Thomas & Co. v. Mould* [1968] 2 Q.B. 913 and *Suhner & Co. AG v. Transradio Ltd.* [1967] R.P.C. 329. Secondly, the defendant must know what he has to meet. He may wish to show that the items of information relied on by the plaintiff are matters of public knowledge. His ability to defend himself will be compromised if the plaintiff can rely on matters of which no proper warning was given. It is for all these reasons that failure to give proper particulars may be a particularly damaging abuse of process.
>
> "These principles do not apply only to the question of the content of the pleadings. Just as it may be an abuse of process to fail properly to identify the information on which the plaintiff relies, it can be an abuse to give proper particulars but of information which is not, in fact, confidential. A claim based even in part on wide and unsupportable claims of confidentiality can be used as an instrument of oppression or harassment against a defendant. It can be used to destroy an ex-employee's ability to obtain employment or a competitor's ability to compete. The wider the claims, the longer and more expensive the litigation."

18. Mr Moody-Stuart QC submitted that the terms of the Disclosure Pilot including the need to identify issues for disclosure is a further reason for requiring proper particularity in pleadings.

19. He also pointed out that the judgment of Arnold LJ in *Celgard v Shenzhen Senior Technology* [2021] F.S.R. 1 makes clear that the considerations identified by Laddie J in *Ocular Sciences* apply with equal force to claims brought under the Trade Secrets Regulations as they do to claims brought in equity.

CF Partners

20. In *CF Partners* the Claimant claimed damages in relation to the misuse of confidential information in the context of the acquisition by the First Defendant (Barclays) of the Second Defendant (Tricorona). CFP said that Barclays had misused information that it had given to Barclays subject to a duty of confidence, when Barclays was a client seeking lending facilities and advice, and had subsequently exploited the information to acquire Tricorona for itself.

21. The Claimant says that is parallel to the situation here.

22. Mr Campbell QC referred me to paragraphs 124-126 of the judgment of Hildyard J in *CF Partners* as setting out the relevant law on duties of confidence:

> "124 The basic attribute or quality which must be shown to attach to the information for it to be treated as confidential is inaccessibility: the information cannot be treated as confidential if it is common knowledge or generally accessible and in the public domain. Whether the information is so generally accessible is a question of degree depending on the particular case. It is not necessary for a claimant to show that no one else knew of or had access to the information.
> "125 A special collation and presentation of information, the individual components of which are not of themselves or individually confidential, may have the quality of confidence: for example, a customer list may be composed of particular names all of which are publicly available, but the list will nevertheless be confidential. In the Saltman case (supra) Lord Greene MR said:
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> > ""…it is perfectly possible to have a confidential document, be it a formula, a plan, a sketch, or something of that kind, which is the result of work done by the maker on materials which may be available for the use of anybody; but what makes it confidential is the fact that the maker of the document has used his brain and thus produced a result which can only be produced by somebody who goes through the same process.""
>
> Or as it is put in Gurry on Breach of Confidence (2nd ed., 2012) para 5.16:
>
> > ""Something that has been constructed solely from materials in the public domain may possess the necessary quality of confidentiality: for something new and confidential may have been brought into being by the skill and ingenuity of the human brain. Novelty depends on the thing itself, and not upon the quality

> of its constituent parts. Indeed, often the more striking the novelty, the more commonplace its components…”"
>
> “126 Further, and of particular potential relevance in this case, pieces of information which individually might appear to have limited value and marginal secrecy, in combination in particular hands, might have special composite value and confer on the recipient a considerable advantage: as was noted by the New Zealand Court of Appeal in the *Arklow* case when at that stage (see [1998] 3 NZLR 680 at 700 in the judgment of the majority which was affirmed by the Privy Council).”

23. The formulation of the APOC draw on the wording of pleading in *CF Partners* as set out at paragraph 898 of the judgment:

> “The Claimant’s case as to what attached to information provided by CFP in the course of Project Arctic Fox the necessary quality of confidence was stated in its Re-Amended Particulars of Claim as follows (the separation into separate alphabetised points being my addition):
>
> ““"8. CF Partners provided Barclays with a single, composite piece of confidential information, namely the fact that Tricorona was an (a) attractive and (b) available takeover/purchase prospect; (c) the aggregate bundle of information provided by CF Partners to Barclays essentially presented Barclays with the “"trade”" that the purchase of Tricorona represented, allowing Barclays to see (ultimately for itself) the disparity between the value of Tricorona’s portfolio of carbon credits, and the potential purchase price of the entire issued share capital of Tricorona (namely the market capitalisation of the company by reference to its share price, plus the customary premium to such market capitalisation required to obtain shareholder approval, referred to herein for convenience as ‘'the Market Price’').
>
> 9. Further or alternatively, CF Partners provided Barclays with a great number of pieces of confidential information (which, taken together, form the single, composite, piece of confidential information identified above). Such confidential information is identified and detailed below.”"

Factual background

24. The Claimant, whose directors are Ms Galina Alabatchka and Mr Celestino Amore, says that it specialises in investing in illiquid securities and in recent years says it has dedicated its attention to potential Venezuelan investment opportunities, including Venezuelan government/corporate bonds and claims and other Venezuelan receivables, private equity and other Venezuelan related opportunities.

25. The First Defendant is an investment company and the Second Defendant is its Chief Investment Officer. The Fourth Defendant provides consultancy services to the First Defendant. The Third Defendant is a director of the Fourth Defendant. The First and Second

Defendants say that they have specialist investment expertise relating to distressed debt and have maintained an interest in oil and petroleum companies and Venezuela for many years.

26. Between about April and November 2019 the Claimant and the Defendants discussed the possibility of a joint funding vehicle for the purpose of exploiting investment opportunities sourced by the Claimant. This was to have been a fund investing in Venezuelan investment opportunities called the Altana Illiquidx Canaima Fund ("AICF"). A promotional prospectus relating to this proposed fund was circulated from July 2019 onwards.

27. The parties entered into a non-disclosure agreement dated 8 July 2019 (the "NDA") to cover any confidential information disclosed between themselves, save that the NDA did not apply to information that was in the public domain or was already known to a party or became public other than by breach.

28. The NDA defined "Opportunities" as "potential Venezuela related credit investment opportunities including (but not limited to) Venezuelan government/corporate bonds and claims and other Venezuelan receivables, private equity and other such Venezuela related opportunities" and defined "Confidential Information" as "any and all information relating to [the First Defendant] and/or to [the Claimant] and/or any Opportunities and which is considered by the disclosing Party to be of a confidential nature (or is marked or described as confidential)."

29. The joint venture came to nothing and the parties went their separate ways in November 2019.

30. In short, the Claimant says that the Claimant disclosed confidential information to the Defendants during the period of their discussions and that the Defendants misused that information in setting up their own Atlanta Credit Opportunities Fund ("ACOF") which invests in Venezuelan government/corporate bonds and within the ACOF Presentation used to market and launch the ACOF.

31. The Defendants say that the Claimant disclosed no concrete investment opportunity or any information not already in the public domain, already known by the relevant party or published in the AICF Presentation.

The POC

32. The key elements of the plea of breach of confidence and breach of trade secrets in the POC are as follows:

(i) the Claimant has since May 2017 dedicated time and resources towards gathering intelligence and expertise in potential Venezuela related credit investment opportunities including (but not limited to) Venezuelan government/corporate bonds and claims and other Venezuelan receivables, private equity and other such Venezuela related opportunities defined as "the Opportunities" (paragraph 6 POC);

(ii) the NDA defined the "Opportunities" as set out above … and defined "Confidential Information" as "any and all information that information relating to [the First Defendant] and/or to [the Claimant] and/or any Opportunities and which is considered by the disclosing Party to be of a confidential information (or is marked or described as confidential)". There follows an illustrative list of examples of such information (paragraph 16 POC);

(iii) the express terms of the NDA on which the Claimant relies (paragraph 17 POC);

(iv) the reference to Confidential Annex 1 as containing a list setting out the Confidential Information asserted by the Claimant (paragraph 19 a POC);

(v) the list of 6 documents or groups of documents, the introduction of two named parties and 3 listed items of legal advice (Confidential Annex 1 to POC);

(vi) the plea that the Confidential Information is a Trade Secret (paragraph 20 POC);

(vii) the circumstances of confidence in which the Confidential Information was disclosed to the Defendants (paragraphs 22-25 POC);

(viii) the misuse of the Confidential Information and/or Trade Secrets set out in Confidential Annex 1 and further information in Confidential Annex 6 relating to the legal framework and strategies surrounding the Opportunities in setting up ACOF, within the ACOF Presentation and by the distribution of the ACOF Presentation (paragraphs 27 and 28 POC).

33. The POC go on to claim that misuse of the Claimant's Confidential Information and/or Trade Secrets by the Defendants thereby:

(i) breached the NDA;

(ii) breached obligations of confidence; and

(iii) unlawfully used or disclosed Trade Secrets.

34. The Claimant's Responses to the Part 18 Request confirm that:

(i) the "Opportunities" referred to in the Particulars of Claim are intended to be identical to the "Opportunities" defined in the NDA (Responses 2 and 5);

(ii) the "idea of the Opportunities" is not materially distinct from the "Opportunities" and is confidential information in Annexes 1 and 6 (Response 3);

(iii) the "information imparted in respect of the Opportunities" is the Confidential Information (Response 4);

but decline to confirm that:

(iv) the Confidential Information constitutes the entirety of the confidential information relied on by the Claimant as further particulars are proposed to be provided by way of a Confidential Annex to the Reply (Response 6).

35. In the Notice to Admit the Defendants asked the Claimant to admit the publication of a series of 10 articles (found in Defence Annex 2), concerning inter alia, investment in sovereign bond markets, investment in Venezuela, including in sovereign bonds, published by entities including the IMF, Bloomberg and the Financial Times on dates ranging from 2016, through 2019 and into early 2020. The Claimant answered the Notice to Admit by admitting the identified publications and the consequence that each article was thereafter in the public domain.

36. The Defence denies any misuse of the Confidential Information in setting up promoting or operating the ACOF, including by circulating the ACOF Presentation; alternatively they say that any such Confidential Information was at all material times in the public domain by reason of being generally known or by reason of the public circulation of the AICF Presentation or substantially identical material from July 2019 onwards. They deny misuse of any protectable confidential information or trade secrets in respect of which they owe any duty to the Claimant and deny breach of the NDA.

37. The Defendants also say that the "Opportunities" relied on by the Claimant are at such a level of generality that it was information not only in the public domain but so trite and general as to not be capable of protection and deny that any concrete or specific information about particular investment opportunities was provided to the Defendants.

38. Confidential Annex 1 to the Defence pleads in detail to the Confidential Information set out in Confidential Annex 1 to the POC.

The Proposed Amendments to the Particulars of Claim

39. The proposed amendments may be grouped as follows:

(i) ones dealing with the Claimant company and its history (paragraphs 1, 3, 5-5E APOC);

(ii) ones relating to the preliminary discussions between the parties (paragraphs 7-8 APOC);

(iii) ones relating to the Joint Venture document (paragraphs 9-10 APOC);

(iv) ones relating to the Non-Disclosure and Non-Circumvention Agreement consequential on the re-arrangement of the definition of "the Opportunities" (paragraphs 13 and 14 APOC);

(v) ones relating to the NDA including the express adoption of the term "Opportunities" in the pleading as defined in the NDA (paragraph 16 APOC):

(vi) ones specifying that the confidential information relied upon is now set out in Amended Confidential Annex 1 ("ACA1") (paragraph 18, reference in paragraph19 to ACA1, and ACA1 APOC);

(vii) refinements of the dates at which information is claimed to be protected in equity only or also by contract and clarification of the claim in relation to Trade Secrets (paragraphs balance of 19, 20 and 20A APOC);

(viii) ones limiting the copyright claim to an earlier version of the document previously relied upon, namely one pre-dating any involvement of the Defendants (paragraphs 21 and 31 APOC);

(ix) ones consequential on the proposed amendments to 19, 20 and 20A (paragraph 22 APOC);

(x) ones clarifying how the dissemination of the ACOF Presentation came to the attention of the Claimant (paragraphs 27 a to c APOC) and ones pleading further information derived from the First Defendant's website about the ACOF (paragraph 27d APOC); and finally

(xi) amendments to plead that the ACOF itself misuses the Confidential Information and/or Trade Secrets set out in ACA 1 by misuse of the Big Idea and/or the Detail (paragraph 28 APOC) and amendments to plead that the ACOF presentation misuses the Confidential Information and/or Trade Secrets set out in ACA1 by misuse of the

Big Idea and/or the Detail (paragraph 28A APOC) in the case of each paragraph by reference to the misuse set out in Amended Confidential Annex 5 ("ACA5") (original Confidential Annex 6 is no longer relied upon and ACA5 is essentially its replacement).

40. The amendments in groups apart from (vi), (viii) and (xi) are not controversial. Had they been controversial, I would have allowed those amendments as refinements and clarifications of the Claimant's case made at an early procedural stage helping better to identify issues and promote the just disposal of this case at proportionate cost.

41. The amendments in group (viii) are only opposed to the extent that details of the employment status of the three authors of the work in which the Claimant asserts copyright have not been pleaded. During the course of the hearing Mr Campbell QC offered to refine the pleading in this connection so that these details would be included. These amendments are therefore no longer controversial.

42. The substance of the dispute between the parties are the amendments in groups (vi) and (xi).

Confidential Information

43. ACA1 is intended to be the source for the identification of the information provided to the Defendants and having the necessary quality of confidence for the purposes of the Claimant's case and it refers, in paragraph 1, to "The Big Idea" and "The Detail" as explained below.

44. ACA1 says, in paragraph 2, that the Claimant provided the Defendants with "a single composite piece of confidential oral and/or written information (the "Big Idea"), namely the fact that the Opportunities were (a) an attractive and (b) available investment proposition; in respect of which (c) the Claimant provided a recipe of application".

45. ACA1 goes on to say, in paragraph 3, that "without prejudice to the generality of the foregoing the Big Idea satisfied each of (a), (b) and (c) for the following reasons" which are then set out.

46 ACA1 goes on, in paragraph 4, under the heading "the Detail": "further or alternatively the Claimant provided the Defendants with a great number of pieces of confidential information (which, taken together, form the single composite piece of confidential information identified above)." The confidential information is then identified in a list of 20 specified documents or groups of documents and 3 points relating to the introduction of parties and 2 items of legal advice. ACA1 goes on to detail the importance of the 20 documents and the 3 points relating to introductions and 2 items of legal advice.

Misuse

47. Paragraph 28 of the APOC recasts the allegation of misuse as misuse of the material in ACA1, in particular the Big Idea and the Detail, as misuse in or by the ACOF. Paragraph 28A APOC alleges misuse of the material in ACA1 in the ACOF Presentation. In the case of both paragraphs reliance is placed on ACA5 for further details.

48. The amendments to ACA5 follow the changes to ACA1 and seek to identify the claimed misuses of the Big Idea in pursuing, setting up and implementing the ACOF and in the ACOF Presentation and the claimed misuses of the Detail in pursuing and implementing the ACOF and in the ACOF Presentation.

Defendants' Position

49. The Defendants say that the pleading of the "Big Idea" is incoherent and impossible to understand, the "recipe" is simply not explained and the "Detail" is wholly unparticularised. They say also that the present case is far removed from *CF Partners* which concerned one single target investment not a list of possible types of investment.

50. The Defendants say that the misuse allegations in ACA5, now extending beyond the ACOF Presentation to the setting up and implementing of the ACOF, are impermissibly wide in their scope. For example, the first claimed misuse is that "ACOF invests in distressed sovereign Venezuelan bonds", which cannot conceivably amount to a sustainable allegation of the misuse of confidential information in light, in particular, of the information the Claimant has, by its answers to the Notice to Admit, acknowledged to have entered the public domain.

Analysis of "Big Idea" and "Detail" Amendments

51. An analysis must start with consideration of the definition of "the Opportunities" in the NDA, adopted by the Claimant in the claim and set out at paragraph 28 above. That definition is of a very broad class of investment possibilities. Nowhere has the Claimant identified any specific investments within the Opportunities class which were identified to the Defendants as attractive and available and for which any recipe of application has been particularised by the Claimant.

52. In my judgment this case is very different from *CFP Partners.* There the investment opportunity was the acquisition of one named company and the pieces of confidential information taken together were what enabled it to be said that that company was attractive and available and when aggregated demonstrated "the trade".

53. In the absence of such identification or particularisation it is difficult to see what composite piece of information could amount to the Big Idea as claimed in paragraph 2 of ACA1 or to see what pieces of information could demonstrate "the trade" in relation to any particular Opportunity. That is particularly so where the Claimant only identifies the composite piece of information as "oral and/or written."

54. Paragraph 3 of ACA1 then claims that, without prejudice to the generality of the primary definition of the Big Idea, the Big Idea itself satisfied the three Big Idea criteria for reasons there set out. But the "Big Idea" itself was that the Opportunities satisfied these criteria. It is unclear how it can be said that there can exist an idea that an entity has certain characteristics, and also be said that the idea itself can have those same characteristics. How could the Big Idea itself be an attractive or available investment proposition?

55. It is unclear from the APOC how the detailed reasons relied upon in paragraph 3 of ACA1 for the Big Idea satisfying the three Big Idea criteria interact with the Big Idea itself and unclear whether these reasons comprise further particulars of Confidential Information.

56. It is further unclear if the reasons relied on in paragraph 3 of ACA1 are relied upon as the ingredients of the recipe of application. Without identifying a specific combination of these reasons as comprising a confidential or secret recipe it is not possible to understand what recipe of application is relied upon.

57. Then at ACA1 paragraph 4 (under the "Detail") it is pleaded that the listed pieces of confidential information "taken together, form the single composite piece of information identified above" i.e. the Big Idea.

58. The particulars given in relation to each of the listed items of the Detail do not condescend to identifying that which is said to be confidential in each document or group of documents and in each case prefaces a description of the content by a formula such as "without prejudice as to generality." Although Mr Campbell QC offered to remove all such formulae, I nevertheless accept Mr Moody Stuart QC's assessment that the task of answering ACA1 in full detail, rather than by broad denial, would be extremely onerous if not impossible.

59. In the Claimant's solicitors' letter of 29 January 2021 it was stated in relation to these proposed Amendments:

> "As to it being allegedly unclear whether any of the matters alleged under paragraph 3 are said to be (i) confidential information or (ii) part of the Big Idea the answer is both: everything in [ACA1] is asserted as being Confidential Information and since those points appear under the heading "The Big Idea", of course they are said to form part of the Big Idea;
> The pleading of the Big Idea and the Detail is not "unintelligible". Our clients' case is that the pieces of information (in this case "the Detail") in combination can have special composite value and confer a considerable advantage (in this case, the "Big Idea"), so it apposite to plead confidentiality in respect of both. This is why the Big Idea is pleaded separately from the Detail, yet, as you correctly note, it is also said to be the sum total of the Detail."

60. From all this I am unable to discern:

(i) the distinction, if any, between the "Big Idea" and the totality of "the Detail";

(ii) where, if anywhere, the "recipe of application" is to be found;

(iii) upon what confidential information or trade secret the Claimant relies within the documents, introductions and legal advice detailed in ACA1; and

(iv) whether there is said to be some particular combination of the elements of the Detail or the Confidential Information which has "special composite value" and, if so, what that combination is and whether that is different from "the Big Idea".

Analysis of Misuse Allegations

61. Even if the information claimed to be confidential were properly particularised, an extension of the allegations of misuse to the whole operation of ACOF, which includes

investing in bonds on public sale, does not found a claim that has a real prospect of success or that could lead to the broadly framed injunctive relief sought. Significant further particularity of claimed misuse in the operation of ACOF would be required to enable the Defendants to understand the case against them.

Conclusions

62. I conclude therefore that the proposed amendments to paragraph 18 and ACA1 fail to particularise the information or combination of elements of information said by the Claimant to be confidential or secret adequately and they purport to define concepts said to be relied upon in ways which obscure their possible meanings so that the Defendants cannot understand the case they have to meet.

63. I further conclude that the wide-ranging allegations of misuse of the information or secrets proposed to be pleaded in paragraphs 28, 28A and ACA5 of the APOC (to the extent they go wider than the allegations now in paragraph 28 of the POC) do not amount to a case which the Defendants can be expected to understand or plead to.

64. In my judgment the proposed amendments in paragraphs 18, 28, 28A and ACA1 and ACA5 do not plead a claim which has real prospects of success.

65. Subject to Mr Campbell QC and Mr Moody-Stuart QC agreeing a form of words for paragraphs 21 and 31 of the APOC, I will make an order permitting the proposed amendments in the form of the APOC annexed to the Claimants' application notice dated 5 January 2021, save for the proposed amendments in paragraphs 18, 28, 28A of the APOC and the proposed annexing of ACA1 and of ACA5 (and necessarily the proposed reference to ACA1 in paragraph 19) which will not be permitted.

66. This judgment will be handed down remotely. If the parties are unable to agree a form of order, a consequentials hearing will be listed on a separate occasion.

ADDENDUM

67. I sent my draft judgment to the parties for editorial corrections. In response Mr Campbell QC sent a letter reminding me of the Court of Appeal's guidance in the case of *Re M (A Child)* [2008] EWCA Civ 1261 at paragraphs 36-40. The letter went on to suggest that

my judgment had overlooked the differences between the case on the Big Idea and the case on the Detail. Mr Moody-Stuart QC responded disagreeing that the points raised in Mr Campbell's letter engaged the principles in *Re M* as Mr Campbell had not identified any omission from my reasoning or any relevant matter not covered in my judgment. I agree with Mr Moody-Stuart and have made no substantive revisions to my circulated draft judgment.