THE HIGH COURT

[2021] IEHC 214
[2019/3234 P]

BETWEEN

S.T.T. RISK MANAGEMENT

PLAINTIFF

AND

TRANSDEV

DEFENDANT

Judgment of Mr. Justice Brian O'Moore delivered on the 24th day of March, 2021.

1. These proceedings began on the 18th of April 2019. After the pleadings closed, and after the Defendant ('Transdev') had made discovery, the Plaintiff ('STT') delivered an Amended Statement of Claim on the 30th of June 2020. The claim now made by STT can briefly be summarised as follows.

A. Background

2. It is claimed that Transdev is the operator of the Luas network. Since 2009 STT has provided the security for the Luas network, working with Transdev. In 2017, and in the context of tendering for the contract to operate the Luas system from 2019 onwards, Transdev entered into arrangements with STT on foot of which STT provided confidential information to Transdev; Transdev then wrongfully used this information to tender for the contract while excluding STT from the benefit of the contract which was ultimately won by Transdev. Apart from the misuse of confidential information alleged against Transdev, there is an overarching claim by STT that the parties had agreed that STT would be involved in the operation of the Luas network if Transdev won that contract, that STT assisted Transdev in the latter's tender, and that Transdev reneged on this arrangement by not naming STT as the entity providing security for the Luas network should Transdev's bid be successful.

3. Transdev has been awarded the contract to operate the Luas network. It had not included STT in the operation of the network as security provider or, indeed, in any capacity. STT claims damages, permanent declaratory and injunctive reliefs and an account of profits.

4. Transdev's Amended Defence is a very full one; importantly, for the purpose of STT's current motion for discovery, it includes the following plea at paragraphs 13 and 19:-

> "13. The Plaintiff and Defendant did engage with each other on foot of the Contract, from May 2017, for the purpose of discussing a potential collaboration in respect of the Tender. However, the Parties never engaged on the preparation and submission of a detailed response to the Pre-Qualification Questionnaire (the 'PQQ') or to the Tender. Between May 2017 and September 2018, when the Invitation to Tender was issued, the parties engaged in respect of options for strategic collaboration but did not collaborate on any detailed solution for the Tender. The response to the PQQ was issued by the defendant alone and while it contained references to the plaintiff and the fact that it had provided security services, there was never any agreement that the response to the PQQ would be made on a joint basis or include

the Plaintiff as a party to the submission. At all times, the inclusion or otherwise of the Plaintiff in any bid was subject to the terms of the Contract and subject to the parties reaching agreement on the material terms of the services elements of the Tender or of any sub-contract. From the Summer of 2018, the Parties discussed a number of potential delivery models. With respect to the proposal that the Plaintiff would provide security services as a sub-contractor, the Parties negotiated in good faith in respect of same. However, the proposals of the Plaintiff in respect of security were uneconomic and would have resulted in an uncompetitive bid for the Tender and the Plaintiff did not provide any detailed technical/operational proposals in relation to providing security management in respect of the Tender. Despite the extensive negotiations between the Parties in good faith, the Parties failed to agree material terms of the services elements of the Tender or of any sub-contract. Consequently, in or around late January/early February 2019, the Contract terminated in accordance with its terms and, in particular, pursuant to Clause 7.1.9.

[…]

19. In respect of paragraph 23, no admissions are made as to what the Plaintiff "learned". The Defendant did submit a response to the Tender which did not include the Plaintiff. This followed the termination of the Contract, which arose from the fact that despite extensive negotiations in good faith, the Parties failed to agree material terms of the services elements of the Tender or any sub-contract. As pleaded above, the Plaintiff's proposals were uneconomic and would have resulted in an uncompetitive bid for the Tender."

5. The gist of these pleas, to the effect that the proposed terms of STT for the provision of security services were uneconomic and would have led to an uncompetitive (and presumably unsuccessful) tender, is also to be found in the original Defence. I will refer to these pleas as "the uneconomic defence".

6. Each of the parties brought a motion for discovery after delivery of the Amended Statement of Claim. STT's motion throws up more complicated issues, not least in relation to its ability to seek discovery at all at this time. Shortly before the discovery motions were due to be heard, Transdev suggested that there be a split trial of these proceedings, so that all issues of quantum would be decided after liability was decided (if STT won on the liability issues). At the hearing of the discovery motions, counsel for STT accepted that I had jurisdiction to order a split hearing in the circumstances of this case.

7. There are in effect three applications to be decided by me. I will deal firstly with the suggestion that there be a split trial. I will then deal Transdev's motion for discovery. Finally, I will decide STT's discovery application.

B. Should there be a Modular Hearing?

8. In *Donatex Ltd. & Anor. v. Dublin Docklands Development Authority* [2011] IEHC 538 Clarke J. considered his earlier decision in *Cork Plastics (Manufacturing) Ltd. & Ors. v. Ineos Compound U.K. Ltd. & Ors*. [2008] IEHC 93 and the judgment of Charlton J. in *McCann v. Desmond* [2010] 4 IR 554. In *Donatex*, Clarke J. found at para. 2.8 that two broad considerations should be taken into account in deciding on whether a modular trial should be ordered namely:-

> "A. Is there a logical division of the case into modules which could realistically lead to a saving in time and costs; and
>
> B. Is there any true prejudice to any of the parties, as opposed to mere tactical disadvantage, as a result of a modular hearing."

9. Here the parties agree that a modular trial may be appropriate, though STT enters the caveat that it must have discovery in order to avoid a real unfairness to it. The position of STT was put this way by its counsel:-

> "[...] my understanding of the letter suggesting a modular trial, that is the letter of 3rd November, is that there will be a modular trial and in the event that the Plaintiff wins on liability, the issue of discovery can be considered then. So it meant parking the issue of discovery. And I suppose that was unsatisfactory from the Plaintiff's point of view [...]
>
> And I suppose that's the part that I'm not particularly happy about, Judge, because what I don't want to do is have to re-visit this issue in 12 months' or 24 months' time, because I don't think I'll be in a better position, Judge. So I mean, obviously [...] if it's in order that the Court deal with a modular trial and that the discovery documents be provided, then I wouldn't have much of a problem with that except for the liability issue and that is my difficulty."

10. By "the liability issue" I understand counsel to mean that discovery is required by STT in order to deal with the uneconomic defence. I will return to this point when dealing with STT's discovery motion.

11. I intend to direct a modular hearing. The first module will deal with the liability (if any) of Transdev to STT in respect of the claim made in these proceedings; the second will deal with the reliefs (if any) to which STT is entitled including the quantum of any damages to be awarded to STT.

12. The reasons why I direct a modular hearing are as follows:-

    (i) There will be a considerable potential saving in costs and court time in the event that liability is decided first. The quantum/reliefs phase will clearly involve evidence of experts which may well be detailed and contentious. The sheer scale of the value of the relevant part of the contract is likely to be large, and the calculation of loss could be difficult.

(ii) These savings will arise in the event that STT fails to establish liability; even if it succeeds, these savings could still be achieved. It is not unknown for parties to resolve or at least to narrow their differences after a decision on liability.

(iii) The advantages of a modular hearing are somewhat diluted by the fact that the same witness or witnesses may give evidence in both modules; for example, there may be persons giving evidence on the uneconomic defence who would also give evidence on the quantum of loss. However, this does not mean that the savings of a modular trial will be significantly reduced. In addition, neither side points to the sort of issues (about the credibility of witnesses) which lead Costello J. to refuse to order a modular hearing in *James Elliott Construction Ltd. v. Lagan* [2017] IEHC 278.

(iv) There will also be a potential saving in the costs of making discovery, given the conclusion I have reached on STT's motion.

13. There are other practical aspects this direction which will have to be decided, but I will do so having given the parties an opportunity to address me on them.

C. Transdev's Motion for Discovery

14. In its motion, Transdev seeks discovery of:-

> "All documents evidencing or referring to the alleged loss, damage, inconvenience and expense suffered by the Plaintiff as a result of the matters alleged in the Statement of Claim, and in particular the quantum of said alleged loss, damage, inconvenience and expense and the alleged prospective loss of income from the Tender."

15. This is not an application for further and better discovery; it is an application for an Order for discovery. The surprising aspect of this application is that, on one reading of the correspondence, STT has already agreed to make discovery in these very terms. Equally surprising is the fact that STT has purported to make discovery in respect of this category over two different affidavits; this would be a very odd thing to do if STT had not in fact agreed to make discovery in respect of this category. I will describe in some greater detail both of these unusual features of the motion.

16. On the 29th of July 2019 Transdev sought discovery of this class of documents; it was category seven of the classes of discovery set out in Transdev's request for voluntary discovery. The letter specified that agreement to make discovery would "have such effect as if directed by Order of the Court [...]".

17. On the 30th of July, STT's solicitors wrote:-

> "We confirm that the Plaintiff will make voluntary discovery of the documentation as sought. It could well be that the discovery falling within Category 7 will be

incomplete pending receipt of discovery from the Defendant but that's an issue that can be addressed in the fullness of time if that problem should arise."

18. In his affidavit of discovery on behalf of STT, Mr. Ted O'Connor swore that there were no documents in the possession or power of STT in respect of category seven. The same day (the 31st of October 2019) STT's solicitors wrote that:-

> "The Plaintiff is unable to quantify the extent of the loss arising out of the matters complained of in the proceedings until such time as we have information concerning the revenues generated from the Tender by the Defendant. We suggest this issue would most usefully be addressed between our respective experts as soon as that documentation is made available by the Defendant."
>
> The letter went on to invite Transdev to appoint an expert, and STT would do likewise with a view to reviewing "the documentation" and meeting to "see if the figures can be agreed in this matter without prejudice to the issue of liability."

19. This letter appears to confuse the quantification of loss with the discovery of documents relating to loss. In its request for voluntary discovery, STT had not sought any documentation from Transdev in respect of the revenues generated by Transdev, or the loss suffered by STT; STT had therefore commenced proceedings and prosecuted them without being in a position to quantify its loss, let alone prove it. Equally surprising is the fact that STT claimed, on oath, to have not a single document relating to the loss and damage suffered by it as a result of the alleged wrongdoing of Transdev.

20. The position of STT on this point is developed in the second relevant affidavit of discovery, sworn by Mr. O'Connor on the 22nd of July 2020. At paragraph 3, Mr. O'Connor averred:-

> "I make this Affidavit of Discovery for the specific purpose of discovering documents which may fall within category 7 of the Defendant's solicitor's letter seeking voluntary discovery of the 29th July 2019 ('Category 7'). The Plaintiff is not able to make discovery of those documents at this time. The Plaintiff will not be able to make discovery of all documents in its possession or power and falling within the said category until the Defendant has furnished information regarding the revenues it generated from the contract it won, having excluded the Plaintiff. It will be necessary for the Plaintiff to seek further discovery to this end. Once such discovery has been made and the Plaintiff has consulted with its expert, the Plaintiff will be able to deliver calculate and particularise its loss and to make discovery of all relevant documents. In the meantime, the Plaintiff has agreed to make discovery of its monthly management accounts and annual accounts from the three financial years ended 30 June 2017 to 30 June 2019, on the basis that those documents may fall within the category in question."

21. In her affidavit grounding Transdev's motion, Ms. Claire Wallace (as Transdev's solicitor) avers:-

> "While it is for STT to identify the precise documents which come within the category, I and Transdev believe that the category should include documents that relate to and evidence STT's financials and cost base. As noted in our letter of 20 March 2020, we would expect that STT holds a significant number of other documents which would evidence alleged losses incurred by it and which would fall within Category 7, including but not limited to sales listings, details of fixed and variable costs, projections, bank records, details of debtors and creditors, as well as Revenue records, returns and reports."

22. In his replying affidavit, STT's solicitor (Hugh Millar) disputes none of this evidence from Ms. Wallace. Instead, he emphasises the documentation that STT does not have (such as the revenue payable for the provision of security services in accordance with the new Luas contract); however, it was not until after STT had made discovery that it sought discovery from Transdev of, for example, the revenues earned by Transdev.

23. I should add that counsel for STT accepts that the documentation sought in this category is relevant and necessary, as these terms are used in the context of ordering discovery. He makes no submission that this discovery would be disproportionate, onerous or such as would breach confidentiality owed to others or which STT is entitled to assert.

24. To put it mildly, I am reluctant to make an order for discovery in circumstances where identical discovery is already agreed. In describing the effect of the exchange of correspondence in July 2019, counsel for STT stated:-

> "Did the Plaintiff agree to make discovery in terms of Category 7? I think the answer to that, Judge, has to be yes, but there was, Judge, a proviso to that, which is that obligation will be ongoing and will be satisfied, but conditional upon obtaining the information from the Defendant [...] insofar as there's a difficulty with that in circumstances where the Plaintiff's own request didn't look for those documents, I understand that entirely, Judge."

25. I teased out the matter with counsel, in this way:-

> "O'Moore J.: […] Now, do you accept that the Plaintiff undertook those obligations; yes or no?
>
> Mr. Beatty: Yes, but they were always, Judge, subject to the proviso that is included in what is the agreement to make discovery.
>
> O'Moore J.: Then, Mr. Beatty, the answer is no, you didn't agree, or the Plaintiff didn't agree to make discovery, the full discovery of Category 7 with the defined four-week period.
>
> Mr. Beatty: Well, if that's what it means, it's very clear that – it's clear from the correspondence, Judge, that it was unable to do that at the time and that it would ultimately do it. And that was its position."

26. On this issue, counsel for Transdev made the following submission in his reply:-

> "If STT is now saying that they didn't in fact agree to make discovery of this category and that it was some kind of conditional agreement then I say I do need the order that they now make discovery of this category, for all of the reasons that I've relied upon."

27. Transdev is entitled to discovery of this category of documents. Despite the July 2019 correspondence, and despite the fact that STT purported to discover documents by reference to this category, neither side now says that there is an unequivocal agreement by STT to make discovery in the terms set out in the motion. It seems to me that STT and its lawyers have focused excessively on the information and documents sought from Transdev instead of considering what documents STT already has available to it that may fall within the category now sought, and conditionally agreed in July 2019. In order to dispel, inasmuch as I can, the uncertainty about STT's obligations I will make the order sought by Transdev. I will hear the parties on the time required by STT to make this discovery.

D. STT's Motion for Discovery

28. In a letter of the 25th of July 2019, STT asked Transdev to agree to make discovery of seven categories of documents. None of these related to the uneconomic nature of STT's proposals and none related to the claim for damages. These were striking omissions, made all the more obvious by the fact that Transdev's request for discovery (of the 29th of July 2019) sought (at Category seven) "documents evidencing or referring to the alleged loss, damage, inconvenience and expense suffered by [STT] as a result of the matters alleged in the Statement of Claim [...]" The response of STT was not to amend its request for discovery, but rather to send the letter of the 30th of July 2019 which I have referred to at paragraph seventeen.

29. It is difficult to understand what was meant by this letter. No discovery in respect of loss had been sought by STT. This is now acknowledged by STT's solicitors. I am unclear as to how the discovery to be made by STT in respect of loss and damage was to be supplemented by documents received by it from Transdev, when Transdev had not been asked to provide any documents in respect of this issue.

30. Ultimately, the discovery to be made by Transdev was agreed on the 20th of September 2019.

31. On the 3rd of September 2020, RBK (the accountants retained by STT in this action) set out a list of documents which were required by them in order to calculate STT's loss. As none of these documents had been previously sought, STT on the 7th of September 2020 notified Transdev that fresh discovery was now required. As there was no agreement to the provision of this discovery, STT issued a motion for discovery on the 15th of September 2020.

32. The discovery now sought by STT is in the following terms:-

"i. All documents of any description recording or evidencing the tender submitted by the defendant and the contract it made with Transport Infrastructure Ireland insofar as the same relate to the provision of security services and/or revenue protection services and/or the provision of security services and revenue protection services in a merged role on the Luas Light Rail network and the sums payable by Transport Infrastructure Ireland to the defendant for such services;

ii. All the financial projections submitted by the defendant to Transport Infrastructure Ireland in relation to the security aspect of the contract and the revenue protection aspect thereof and/or the provision of security services and revenue protection services in a merged role, to include, but not limited to, the following:

(a) The projected revenue generated by the defendant (and cost to Transport Infrastructure Ireland);
(b) All project costs of sales and the projected gross profit margin;
(c) All projected overhead costs including directly attributable overheads and overhead allocations and resulting net margin projected; and
(d) All financial projections for the combined security and revenue protection role for the period of the contract.

iii. All documents recording or evidencing the number, grade and identity of employees deployed by the defendant to provide security services and/or revenue protection services on the Luas Light Rail network in Dublin.

33. The motion is, in reality, grounded on Order 31 rule 12(11). The rule reads:-

"(11) Any party concerned by the effect of an order or agreement for discovery may at any time, by motion on notice to each other party concerned, apply to the Court for an order varying the terms of the discovery order or agreement. The Court may vary the terms of such order or agreement where it is satisfied that:

(i) further discovery is necessary for disposing fairly of the case or for saving costs, or
(ii) the discovery originally ordered or agreed is unreasonable having regard to the cost or other burden of providing discovery."

34. This rule requires the moving party not only to show that the ordinary requirements for granting discovery are met but also to establish that there is "some good reason for revisiting [the earlier] agreement or order'; Murray J. in *Hireservices (E) Ltd. v. An Post* [2020] IECA 120. I have little doubt that the discovery sought meets the requirements set out in *Tobin v. Minister for Defence* [2019] IESC 57. The real issue in dispute is the second requirement for an order under Rule 12(11).

35. Hugh Miller, STT's solicitor in these proceedings, explains at paragraph 24 of his grounding affidavit why this discovery was not sought in 2019. He swears:-

"Finally, I accept that the categories of documents that are identified in the Notice of Motion could and perhaps should have been sought in the plaintiff's initial request for voluntary discovery. In truth, however, this was borne of an oversight on the part of the plaintiff's advisors and an expectation that it would be possible to address these issues by way of a fruitful engagement between the parties' forensic accountants, without the necessity for discovery. […]"

36. There is a slight inconsistency between the two explanations provided in this paragraph. If there was a conscious expectation that there was no need for formal discovery, then the requirement to seek this discovery cannot have been overlooked. However, I understand Mr. Miller's evidence to come down to this; there was not sufficient attention paid to the need for discovery of documents relating to loss, because there was a perception that quantum could be sorted out by dialogue between the experts who would inevitably be instructed by each side in a case such as this. Of course, proper thought should have been given at the time to exactly what STT required in terms of discovery and it is unhelpful that this was not done. In addition, no consideration at all appears to have been given to the need for discovery to deal with the pleas at paragraphs 12 and 18 of the original Defence (which reappear at paragraphs 13 and 19 of the Amended Defence).

37. Based on this evidence, counsel for STT contends that there is good reason for revisiting the original discovery agreement. He submits the following:-

(a) There was an oversight on the part of STT's advisors, as a result of which the relevant discovery was not sought. I do not think that, in itself, this is a good reason for revisiting the original discovery agreement. If an oversight or error of the type that occurred here constitutes a 'good reason', it is difficult to imagine what does not amount to a good reason for these purposes. The intent of the Rule is to define and codify the circumstances in which this type of interlocutory order or arrangement can be revised; the Rule would be emasculated if STT's submission on this point is correct. There would, in effect, be no circumstances in which a party would be unable to justify bringing sequential discovery motions. It would also encourage a rather casual attitude towards setting out a comprehensive list of a party's discovery requirements if the Rule were to be interpreted in the way proposed by STT, as any lawyer would be comforted by the fact that oversight would justify coming again with fresh discovery demands.

(b) Discovery is required because of significant developments in these proceedings. It is argued that the discovery is required because of pleas of deceit to be found in the Amended Statement of Claim, and it is also required to demonstrate that Transdev made a profit at STT's expense. However, this submission was not pressed by counsel for STT at the hearing of the motion. Counsel accepted that the Amended Statement of Claim "doesn't really change very much"; while he did refer to the deceit allegation, I do not see how this justifies the late seeking of discovery relating to loss and no such justification is advanced by STT.

(c) STT should not be punished for the failure to seek this discovery when it sought voluntary discovery generally. However, this is not a question of punishing STT; it is rather a question of what are the consequences of STT failing to comply with the normal approach of making all discovery requests at the same time. Inasmuch as STT suggests that the effect of refusing this discovery would be disproportionate given the reason why it was not sought earlier (an argument made in clearer terms later in his submission) I will consider this at the end of this section of the ruling.

(d) There was a material change in circumstances in that STT anticipated that there would be an engagement between experts and, when that did not happen, it then moved to seek this discovery. This argument was accompanied by a submission that STT was exploring the alternatives to discovery suggested by Clarke C.J. In *Tobin v. Minister for Defence* [2019] IESC 57. Neither of these allied arguments are persuasive. There had never been an agreement that there would be any engagement between experts, still less that information would be provided to STT's expert so that discovery would not be required. Equally, it is a bit revisionist to suggest that STT were exploring alternatives to discovery. At its best, the evidence from STT is that the need for this class of discovery was overlooked (in the fashion I have described); this is hardly consistent with a conscious exploring of alternatives to discovery in order to save time, effort and costs. In any event, a possible consideration of alternatives to discovery does not justify a unilateral decision not to look for a relevant category when the letter for voluntary discovery is being sent out.

(e) STT has been advised by its forensic accountant that this documentation is needed in order to formulate the claim for damages; reliance is placed on the judgment of Murray J. in *Micks-Wallace (a minor) v. Dunne* [2020] IEHC 282. This fact is a relevant consideration; of course, if the forensic accountant had been retained before the letter for voluntary discovery was formulated (as is often the case) the relevant categories would have been sought in 2019, but this again brings us back to the original acknowledged oversight on the part of STT's advisers.

(f) If the discovery is not obtained, there would be a disproportionate effect on STT in this litigation. Avoiding any risk of understatement, counsel submitted that "there will be a terrible injustice if discovery is not granted [...]" as it would prevent STT from advancing its claim for damages in any meaningful way. It was therefore submitted that this discovery is necessary for disposing fairly of the claim.

38. In its submissions, Transdev emphasises the reason given for not having sought this discovery earlier (inadvertence), which it says is not a good reason; it stresses the fact that the discovery is not required for the main relief sought, namely an account of profits, which in any event was sought from the outset; and it makes the argument that the fact the request is focused is not in itself enough to justify a variation in the discovery already agreed. There is force in all of those submissions, as there is in the further argument that no agreement was ever reached about engagement between experts.

39. I am less taken with the Transdev submission that there has been delay on the part of STT. Of course, the fact that this discovery was not sought in the first place means that there is delay in having the issue addressed. Equally, when the suggestion that the experts engaged did not find favour with Transdev this should have prompted STT to consider the need for this discovery. As against that, when the expert advised the STT side of what was needed in order to put shape on the damages claim STT's solicitors acted with alacrity.

40. I have decided to permit STT to seek this further discovery, pursuant to Order 31 rule 12(11). I do so, notwithstanding the variety of fragile arguments made on behalf of STT, for these reasons:-

    (i) STT's solicitors have set out on affidavit that the failure to seek this discovery was due to their inadvertence or oversight. While this is not enough to constitute a good reason for varying the agreed discovery, it does inform me of the cause of the original failure and raises the question as to whether refusing to allow STT to look for this discovery would be appropriate.

    (ii) STT has been advised by its experts that it requires this discovery in order to put together a claim for damages. While STT seeks an account of profits, it should be able to maintain a claim for damages in the alternative.

    (iii) When STT was advised by its forensic accountant of the need for these documents, it acted with speed.

    (iv) Most significantly, if this discovery is not available to STT it will be unable to formulate a claim for damages even if it succeeds against Transdev. The nature of the claim is worth noting. It is that Transdev deceived STT, tricking it into assisting Transdev in a successful bid for a very significant public contract, and then dropping STT when it was no longer of any use. If STT were to succeed in establishing that Transdev was liable to it on that case (or any version of the case made) it would seem unfair to deprive STT of its ability to advance a damages claim.

    (v) The original error on the part of STT's advisers was one of oversight, inadvertence and a certain laxness. I believe that it would be disproportionate if such failings were to have the consequences claimed by STT. While it is entirely the fault of STT or its team that this discovery was not sought when it should have been, the discovery is now necessary for disposing fairly of STT's claim

41. I acknowledge that, in his judgments to which I have been referred, Murray J. has made the observation that the Rule requires more than that the discovery is relevant and necessary. This analysis is clearly correct. However, discovery of a class of documents may be necessary without constituting documentation which is absolutely critical in enabling a plaintiff to make a coherent claim. I am satisfied that, on the basis of the advice from STT's expert, this extra discovery is not only necessary to enable the Plaintiff

to advance its case in some particular way but is also required to prove a fundamental element of the claim made in these proceedings.

42. I have found that the basic requirements of relevance and necessity are established by STT on this motion. While Transdev has suggested that there is a way in which STT might quantify its losses without the documents sought, STT is not confined to this method of formulating its claim. I am provided with the letter from STT's expert which states clearly that these materials are needed in order for him to assist STT (and, in due course, the Court) as to the loss and damage sustained by STT. In the absence of any clear error in principle at this stage on the part of the forensic accountant, I will not second guess his requirements at this stage in the proceedings.

43. I will therefore order discovery broadly in the form sought in the Notice of Motion. Given the modular trial which I now direct, I will order that Transdev make discovery now substantially in terms of paragraph 1(i) of the Notice of Motion, confined to the specific documents sought. As that discovery is not only for the purpose of quantum but also goes to the uneconomic defence to liability made by Transdev, this is required for the first of the two modular hearings. Given the concerns, not seriously disputed, by Transdev about the confidentiality of these documents I will direct that this discovery will, initially at least, be circulated only within a confidentiality ring established for that purpose.

44. The balance of the discovery to be provided by Transdev on this motion will not be made until after the judgment on liability. I have come to this decision as it could constitute a real saving in costs of the litigation; if STT fails to establish liability, then discovery solely directed to quantum will never be required.

45. I will hear the parties on the precise wording of the Discovery to be made by Transdev, as I believe the current form of words may be too broad.