

20 June 2019

**(1) MR AYOUB-FARID MICHEL SAAB**  
**(2) MR FADI MICHEL SAAB**

**-and-**

**(1) DANGATE CONSULTING LTD**  
**(2) BARRINGTON LONDON LIMITED**  
**(3) MR NIGEL BROWN**  
**(4) MR ALEC LEIGHTON**

**[2019] EWHC 1558 (Comm)**

**BEFORE: MRS JUSTICE COCKERILL DBE**

**CASE SUMMARY**

**The judge summarised the law on the public-interest defence to breach of confidentiality. Contractual terms carried more weight than common-law confidentiality alone where both were present. Information already in the public domain or disclosure of past misconduct would not be protected by the public-interest defence. Evidence, not belief, was required even for disclosure to an investigative body.**

The case was about enforceability of contractual confidentiality against private investigators whom the Claimants retained to investigate allegations by the US Treasury's Financial Claims Enforcement Network ("**FinCEN**") at the now-liquidated FBME Bank ("**the Bank**"), which the Claimants owned. They allegedly gave information to: the Central Bank of Cyprus ("**CBC**"); FinCEN; law enforcement agencies; and the media. They asserted public interest and compulsion defences.

The Defendants provided services through the First and Second Defendant companies. The Defendants' letter of engagement obliged them not to disclose any related confidential materials to any third party without the Claimants' lawyers' consent ("**Obligation 1**"). Confidentiality would survive termination. Confidential information maintained by Dangate was property of the Claimants' lawyers. The Defendants were obliged to: notify the Claimants' lawyers before disclosing confidential information to third parties ("**Obligation 2**"); notify them of any such disclosure without consent ("**Obligation 3**"); decline to produce confidential information on third-party request ("**Obligation 4**") and deliver confidential information on the Claimants' (lawyers') request ("**Obligation 5**").

The court noted the parties' election not to raise any foreign law, which was unsatisfactory as it meant the court's conclusions were somewhat artificial.

The retainer ended and the Defendants, having not been paid, engaged lawyers with whom they discussed their investigations. This led to the Defendants making disclosures to the Cypriot authorities and FinCEN. Mr Brown made disclosures to an investigative reporter.

There was no public-interest defence to Obligations 2, 3 and 5 in the absence of any evidence on Cypriot provisions analogous to the English Public Interest Disclosure Act. Neither the Proceeds of Crime Act nor the EU Directive on Prevention and Use of the Financial System for the purposes of Money Laundering or Terrorist Financing applied. Overarching public policy would not apply, since those

obligations would not prevent disclosure. There was no basis for a general lien under Obligation 5. Obligation 4 might be subject to the public interest as the mirror of Obligation 1.

No private obligation dispenses with the obligation to disclose committed or contemplated crime (*Gartside v Outram* (1857) 26 LJ Ch (NS) 113; *Initial Services v Putterill* [1968] 1 QB 396). The conduct must be so disgraceful or criminal that exposure is in the public interest; it may be possible that publication is in the public interest even where there has been no wrongdoing, although a good reason will be required (*Lion Laboratories Ltd v Evans* [1985] QB 526). Toulson, *Confidentiality* (3rd ed.) (2012) provides a useful summary: the question is of conscionability or unconscionability; it is an evaluation not an unfettered discretion. The exercise is specific and structured to the particular public interest (Paul Stanley QC, *The Law of Confidentiality: A Restatement* (2008)).

The recipient must have a proper interest in receiving the information (*Initial Services v Putterill*). The lawyers and investigative reporter were not qualifying recipients, although the authorities could be.

If information was already common-law confidential, a contractual term did add extra weight (*Campbell v Frisbee* [2002] EWCA Civ 1374; *HRH Prince of Wales v Associated Newspapers Ltd* [2006] EWHC 522 (Ch); *Attorney General v Parry* [2002] EWHC 3201 (Ch)).

Iniquity must be evidenced (*Attorney General v Guardian Newspapers (No 2)* [1990] 1 AC 109). The Defendants' "document dump" disclosure caused them problems; rarely would such broad disclosure be justified. One email from the Second Claimant about third-party involvement in child pornography was insufficient, and likewise hearsay opinion of money laundering. Evidence of terrorist financing was also insufficient and the evidence of KYC issues lacked focus.

FinCEN had already highlighted abuse of card services. It had also highlighted KYC failures and terrorist financing. There was no pressing need for the public to know (*Lion Laboratories Ltd v Evans*). The public-interest defence was inapplicable to past conduct (*Schering Chemicals Ltd v Falkman Ltd* [1982] QB 1; *Distillers Co (Biochemicals) Ltd v Times Newspapers Ltd* [1975] QB 613; *Gurry on Breach of Confidence*, 2nd edn (2012)).

Some merits were required, even when alerting an investigative body (Stanley; *Corrs Pavey Whiting & Byrne v Collector of Customs* (1987) 74 ALR 428). Honestly held unreasonable belief that disclosure is justified will not suffice (Toulson), although a professional's objective and considered judgment will be respected (*W v Egdeell* [1990] Ch 359; *Woolgar v Chief Constable of Sussex Police*).

The compulsion case was based on requests by Cypriot authorities. There was no evidence of Cypriot law but the language of the requests did not show compulsion.

The court commented *obiter* that a submission that the Defendants were akin to lawyers, as in *Prince Jefri Bolkiah v KPMG* [1999] 2 AC 222, and the policy supporting proper defence outweighed the public interest, was a step too far.

---

**NOTE: This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments of the Commercial Court are public documents and are available at: <https://www.bailii.org/ew/cases/EWHC/Comm/>**