Case No: B2/2014/3520

Neutral Citation Number: [2015] EWCA Civ 1084
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM CENTRAL LONDON COUNTY COURT
HER HONOUR JUDGE FABER

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29/10/2015

Before:

THE RIGHT HONOURABLE LORD JUSTICE LONGMORE
THE RIGHT HONOURABLE LORD JUSTICE LLOYD JONES
and
THE RIGHT HONOURABLE LORD JUSTICE BRIGGS

- -

Between:

ONE MONEY MAIL LIMITED
Appellant

- and -

1) RIA FINANCIAL SERVICES
2) SEBASTIAN WASILEWSKI
Respondents

- -
- -

Mr Adrian Davies (instructed by **Gunnercooke LLP**) for the **Appellant**
Miss Joanna Smith QC & Mr Tim Austen (instructed by **Squire Patton Boggs (UK) LLP**) for the **Respondents**

Hearing dates: 14th & 15th October 2015

- -

Judgment **Lord Justice Longmore:**

Introduction

1. This appeal raises the question whether an agreement, made by an agent, to procure clients in and around Hereford for One Money Mail Ltd ("OMM"), a company which carries on the business of transferring money between the United Kingdom and Poland, has clauses which are in restraint of trade and thus prevented the agent from working for a competitor during the currency of the contract and for six months after termination.

2. There are many Polish workers in Herefordshire employed largely by farming and other companies in that mainly agricultural county. A number of them wish to transmit some of their earnings to their families in Poland. OMM specialise in what I may call the money remittance business relating to Poland and are in a comparatively small way of business. There are other larger organisations (such as Western Union and MoneyGram) which offer money transfer services worldwide, including Poland. On 18th October 2007 Mr Wasilewski agreed to act as OMM's agent for this purpose in the city of Hereford. At this time Mr Wasilewski spoke limited English and was new to the money transfer market. OMM initiated him into the market and arranged for at least some of the clauses to be translated to him. By his contract he agreed not to operate as a principal or as an agent for another money transfer organisation and also agreed certain post-termination restrictions; 3 years later on 24th November 2010 during the currency of the OMM agreement he made another agreement with another organisation larger than OMM namely Ria Financial Services Ltd ("Ria") described by the judge as a worldwide player along with Western Union and MoneyGram. OMM discovered this and complained to Ria in September 2012. On 1st June 2013 Mr Wasilewski gave 6 months' notice to terminate the OMM agreement and on 18th July OMM issued proceedings against both Ria and Mr Wasilewski claiming damages.

3. The judge, Her Honour Judge Faber, held that both sets of restrictions on Mr Wasilewski were in restraint of trade and unenforceable and that, in any event, OMM had not proved any loss. She also held that, if that were wrong, Ria had induced Mr Wasilewski to break his contract with OMM. OMM appeals against the decision that the restrictions on Mr Wasilewski's activities were unenforceable and that it was not entitled to damages; Ria cross-appeals the decision that it induced Mr Wasilewski to break his contract. Mr Wasilewski, who won below in the sense that the claim against him was dismissed, is the second respondent to the appeal but we are told he is now bankrupt. He has not been represented and did not attend the hearing.

The terms of the OMM contract

4. The agreement called Mr Wasilewski "the Contractor" and OMM, which was in the business of providing a "Money Remittance Service" in the United Kingdom, "the Correspondent". "Money Remittance Service" was defined as

> "… the service related to the process whereby the CONTRACTOR accepts funds from senders in the UK on behalf of the CORRESPONDENT, and transmits abroad such funds accompanied by payment instructions to the CORRESPONDENT to deliver the equivalent of said funds to beneficiaries thereof in accordance with the senders' instructions."

Clause 2 set out the Contractor's obligations which include

> "2.19 To use the CORRESPONDENT exclusively to pay the proceeds of the money remittances accepted by the CONTRACTOR.
>
> 2.20 To actively assist in the promotion of the CORRESPONDENT'S business by prominently and exclusively displaying, as directed by the CORRESPONDENT, all publicity material provided by the CORRESPONDENT and abide by the terms stipulated by the CORRESPONDENT from time to time in respect thereof.

2.21 To devote the CONTRACTOR'S time and best efforts to promoting the CORRESPONDENT'S business so as to develop customer interest and the services provided by it.

2.22 Generally to maintain premises and facilities which are in all respects suitable for the conduct of a Money Remittance Business, to deal promptly and courteously with all customers and to operate in such a fashion as serves at all times to protect the standing and reputation of the CORRESPONDENT.

2.23 During the term of this Agreement to engage in the Money Remittance business exclusively with the CORRESPONDENT and not to operate as principal or act as agent or representative of another Money Remittance anywhere within the UK, or engage in any other business or service which would involve the CONTRACTOR in activities inconsistent with his/its obligations to the CORRESPONDENT under this Agreement"

There was no obligation on OMM not to appoint another agent in the Contractor's area. Clause 3 set out the Correspondent's obligations including the obligation to deliver funds given to them by the Contractor to the intended recipients. By clause 10.1 the agreement was to continue for a year and thereafter unless terminated by either party on 6 months' notice but there were certain events entitling OMM to terminate on 28 days' notice and certain other events entitling OMM to terminate immediately. Clause 11 then dealt with the consequences of termination:-

"11.1 Upon termination of this Agreement by either party in conformity with clause 10 above:

a) The CONTRACTOR shall immediately cease using the CORRESPONDENT'S Intellectual Property and Licensed Software and any other property whatsoever belonging to the CORRESPONDENT that has been in the CONTRACTOR'S possession.

b) The CONTRACTOR shall return forthwith (and in all events within five (5) business days of termination) all property belonging to the CORRESPONDENT, including, but not limited to, the Licensed Software and any copies, updates or modifications.

c) The CONTRACTOR shall remit all outstanding Trust Funds to the CORRESPONDENT and pay all amounts due to the CORRESPONDENT.

d) The CORRESPONDENT shall complete on a timely basis all payment instructions that have been received by the CORRESPONDENT but not executed prior to the termination of this Agreement; provided, however, that any such payment may, at the CORRESPONDENT'S discretion, be cancelled and funds returned to THE CONTRACTOR.

e) The parties shall receive their respective commission, which may be due to them for services rendered hereunder prior to the termination of this Agreement.

f) The CONTRACTOR shall for a period of 6 months from the date of termination of this Agreement refrain from working for a setting up a money remittance business and using clients, contacts or employees within a radius of 5 miles from the place of business from which the CONTRACTOR has previously engaged in a money remittance and cheque cashing service with the CORRESPONDENT.

The CONTRACTOR agrees that this restriction is reasonable and necessary to protect the business and reputation of the CORRESPONDENT and that the commission received by the CONTRACTOR under this Agreement anticipates the post termination restriction period."

Exclusivity during the currency of the contract

5. Contractual terms which are in unreasonable restraint of trade are unlawful as a matter of English law. This legal principle applies to restrictions applicable during the contract not just to restrictions applicable on or after the termination of the contract, see A. Schroeder Music Publishing Co Ltd v Macaulay [1974] 1 W.L.R. 1308. In the case of restrictions intended to be effective during the currency of the contract, however, the court must be careful not to fetter what one may call ordinary commerce. Sole agencies are common in ordinary commerce and there would, therefore, have to be something specially restrictive before the restraint of trade principle will be effective.

6. In Esso Petroleum Co Ltd v Harper's Garage (Stourport) Ltd [1968] A.C. 269 Lord Pearce said this at pages 328A:-

"When Lord Macnaghten said in the Nordenfelt case that: "In the age of Queen Elizabeth all restraints of trade, whatever they were, general or partial, were thought to be contrary to public policy, and therefore void" he was clearly not intending the words "restraint of trade" to cover any contract whose terms, by absorbing a man's services or custom or output, in fact prevented him from trading with others; so, too, the wide remarks of Lord Parker of Waddington in the Adelaide case. It was the sterilising of a man's capacity for work and not its absorption that underlay the objection to restraint of trade. This is the rationale of Young v Timmins, where a brass foundry was during the contract sterilised so that it could only work for a party who might choose not to absorb its output at all but to go to other foundries, with the result that the foundry was completely at the mercy of the other party and might remain idle and unsupported.

The doctrine does not apply to ordinary commercial contracts for the regulation and promotion of trade during the existence of the contract, provided that any prevention of work outside the contract, viewed as a whole, is directed towards the absorption of the parties' services and not their sterilisation. Sole agencies are a normal and necessary incident of commerce and those who desire the benefits of a sole agency must deny themselves the opportunities of other agencies. So, too, in the case of a film-star who may tie herself to a company in order to obtain from them the benefits of stardom (Gaumont-British Pictures Incorporated v Alexander). See, too, Warner Brothers Pictures Incorporated v Nelson. And partners habitually fetter themselves to one another.

> When a contract only ties the parties during the continuance of the contract, and the negative ties are only those which are incidental and normal to the positive commercial arrangements at which the contract aims, even though those ties exclude all dealings with others, there is no restraint of trade within the meaning of the doctrine and no question of reasonableness arises. If, however, the contract ties the trading activities of either party after its determination, it is a restraint of trade, and the question of reasonableness arises. So, too, if during the contract one of the parties is too unilaterally fettered so that the contract loses its character of a contract for the regulation and promotion of trade and acquires the predominant character of a contract in restraint of trade. In that case the rationale of Young v Timmins comes into play and the question whether it is reasonable arises."

7. It seems from this that Lord Pearce thought that, since sole agencies were a normal and necessary incident of commerce, the doctrine of restraint of trade should not apply to them unless in some way the agent's ability to work could be said to be sterilised in that he could only work for a party who might not choose to absorb his output. Lord Wilberforce agreed with this approach saying (page 336A):-

> "The line of thought that restrictions may in some context be imposed, and upheld, where they have become part of the accepted pattern or structure of a trade, as encouraging or strengthening trade, rather than as limiting trade, is I think behind the courts' acceptance of exclusivity contracts and contracts of sole agency. So, in Servais Bouchard v Prince's Hall Restaurant Ltd, the contract was for exclusive purchase of burgundy for the defendant's restaurant for an indefinite period. The judgments of the Lord Justices are based on different grounds and it was held, in any event, that the covenant was reasonable: but the judgment of Henn Collins M.R. is instructive. He thought that the case did not come within the principle by which restraints of trade were held to be invalid as being contrary to public policy. Contracts of the same class as that now in question, viz, contracts by which persons bound themselves for good consideration to supply their customers with goods obtained from a particular merchant exclusively, were for the benefit of the community. There was need for contracts of this kind and the court must have regard to the fact that contracts for sole agency were matters of every-day occurrence."

8. It is, moreover, the case that every agent has a duty of loyalty to his principal. This is a duty inherent in the relationship and is difficult (though not impossible) to perform if an agent has two principals. Treitel, Law of Contract 13th ed. Para 11-084 makes this very point with regard to employment contracts and this agency contract (particularly in the light of clauses 2.20 and 2.21) is similar enough to an employment contract for similar considerations to arise.

9. In the light of those authorities, to which we may have been referred in more detail than was the learned circuit judge, her reasons for holding the sole agency obligation to be in unreasonable restraint of trade will need careful scrutiny. She expressed her reasoning in this way, referring to Mr Wasilewski as D2 and to OMM as C:-

> "60. In this case I think that it is important that D2 was new to the money transfer market in this country. He spoke limited [in] English at the time of entry

into the contract and C effectively inducted him into the business, training him from scratch, providing him with the necessary software, training and marketing materials so that from a standing start of zero transactions in October 2007, in June 2010 he managed 423 transactions in a month.

61. Furthermore C is a specialist in the Polish market and can provide Polish speakers to assist the new entrants into the business who come from Poland and who attract Polish customers because they speak their language. C is a smaller organisation than the major players so can devote more individual attention to its agents (per Ms Bober). In those circumstances people in the position of D2 gain a great deal from the input of C and are able to make their way solely because C sets them up and trains them. In those circumstances, the public interest in competition and competitive rates would in my view take second place to the public interest in encouraging new small business to open up to serve the public which militates in favour of the enforceability of the exclusivity term. The interests of C are engaged not solely by the investment it makes in D2 but also in the goodwill of D2's customers which earns C its share of the commission.

62. However I should weigh against that the apparent unfairness that C was not restrained from appointing another agent in a position to compete with D2 with the potential effect of reducing the number of his transactions and thus his income. Also highly relevant is the very short notice of termination available to C. Both of which aspects of this contract distinguish this contract from an employment contract and force this the court to distinguish it from the authority of Jones Brothers v Stevens relied on by Mr Davies.

63. Those aspects make the contract very one-sided from a commercial view point. It enabled C with one hand to provide all the facilities and training and then to take away the good effect of that stimulus to new business by setting up an agent in close proximity. That unfairness is unreasonable, not necessary to protect C's interests (because of the short notice in the termination provisions) and has no good public service effect."

10. In paragraphs 60 and 61 the judge appears to give reasons for concluding that the restriction of sole agency might be reasonable but it is the two matters in paragraph 62 that persuade her in the end that the restriction is unreasonable. These matters are the lack of reciprocity which permits OMM to appoint another agent in the area if it wishes to do so and the short notice period for termination available to OMM but not to Mr Wasilewski.

11. It does not seem to me that ability of OMM to appoint another agent can be decisive. There must be many sole agencies which do not prohibit the principal from appointing another agent; if this were decisive many sole agencies would have to be struck down as being in unreasonable restraint of trade. The key to the argument is, as Lord Pearce said, the question of sterilisation. If there was an ability on the part of OMM to sterilise Mr Wasilewski's activities that would be very serious but there is not. OMM is obliged to process all requests for transfers of funds brought to them by Mr Wasilewski and to pay him commission for them; there is, therefore, no question of Mr Wasilewski being unable to earn his commission. There may be legitimate reasons for OMM appointing another agent such as an unexpected increase of numbers of Polish workers or an inability on the part of Mr Wasilewski to persuade his compatriots to use

his services. The evidence before the judge was that OMM did, apparently in error, appoint another local agent and it was that that caused Mr Wasilewski to approach Ria in the first place. But these matters have to be judged at the time the contract was made not in the light of after-events. I cannot, therefore, agree that OMM's ability to appoint another agent is a circumstance that makes or helps to make the sole agency an unreasonable restraint of trade.

12. Nor can the short notice of termination available to OMM be critical. It is true that Mr Wasilewski has to give 6 months' notice but there are circumstances set out in clause 10.2 in which OMM can terminate without notice. As against that clause 10.4 gives Mr Wasilewski similar rights to terminate without notice so that there is substantial reciprocity in this regard. It cannot be often that provisions about notice of termination will cause a contractual restriction to be regarded as a restraint of trade.

13. I would therefore hold that the exclusivity provision in the contract is a reasonable one and that Mr Wasilewski was in breach of contract to sign up with Ria during the currency of his contract with OMM.

Post-contract restrictions

14. It is a curiosity of the case that Mr Wasilewski's contract with OMM continued for 3 years after he started working for Ria. Any damages for breach of the post-contract restriction that he should not work for another principal for 6 months after termination within 5 miles of the city of Hereford are likely to be small indeed in comparison to the damages theoretically available to OMM for his breach of contract in working for Ria during the currency of the contract.

15. Nevertheless once one concludes that the exclusivity provision is not in unreasonable restraint of trade, it is difficult to see that the post-contract restriction is unreasonable if OMM had a legitimate interest to protect.

16. The position as to that is that the judge found (para 24) that OMM provided its agents with training, transactional systems, software, marketing materials, regular visits from sales staff and a helpdesk dedicated to agents giving them operational and technical assistance. It is clear from this that OMM dedicate both time and money to training and supporting their agents. Mr Wasilewski's statement confirmed that OMM did so in his case. The level of that investment of time and money shows that OMM did indeed have an interest to protect, as the judge herself effectively held in the second half of paragraph 61 quoted above. The judge found, moreover, (para 45):-

> "Agents continually change principal depending on the services offered because it is a highly competitive market in the UK and Ireland both for customers and agents. [Ria] wins and loses agents frequently."

It was also accepted by counsel for both OMM and RIA that customers' loyalty tends to be with the individual agent rather than the correspondent who actually arranges the money transfer to Poland. As Ms Sylvia Dabrowska said in an internal Ria email of 17th September 2010 sent after Ria had succeeded in obtaining the services of two other OMM agents in Birmingham:-

> "Overall the customers were very happy to try new company as they do fully trust the agent no matter which company they work with."

17. In spite of all this the judge held (para 70) that OMM could effectively protect its source of income in the Hereford area were Mr Wasilewski to continue in business during the notice period, because once termination had occurred he had to cease using (and return within 5 days) OMM's software on which the customer details were stored. I find this difficult to follow in a situation where the customers' primary loyalty is to the agent rather than the correspondent; customers will continue to come to Mr Wasilewski; if he is free to transfer them all to a new agent at the moment the contract is terminated, OMM's investment in training, operating its software and the visits made to Mr Wasilewski will all be wasted.

18. Miss Joanna Smith QC for Ria relied on para 70 of the judgment as a finding of fact with which an appellant court should not interfere but it is only an inference from clause 11.1 of the contract. The primary facts found by the judge and set out above all point to the right inference being that OMM did have a legitimate interest to protect and the only question should therefore be whether the duration the restriction or the area were unreasonable restraints. As to that there was no real argument; 5 miles is a narrow radius and six months is a commonly agreed duration. I therefore disagree with the judge about the post-contract restrictions as well as the restriction applicable during the currency of the contract and I would accordingly allow the appeal to the extent of entering judgment against both Ria and Mr Wasilewski.

Damages?

19. The judge said that the evidence before her did not enable her to perform any kind of calculation of the loss which may have been suffered by OMM. If she had found in OMM's favour she would not therefore have awarded any damages against either Ria or Mr Wasilewski. OMM has not been permitted to appeal that conclusion. It was, however, granted permission to appeal on the question whether it could have equitable damages in lieu of an injunction calculated by reference to the gain made both by Mr Wasilewski and by Ria and obtained by reason of Mr Wasilewski's breach of contract with OMM.

20. The difficulty about this is that there was no evidence which would have enabled the judge to calculate that gain any more than there was evidence of the loss suffered by OMM. Mr Davies for OMM submitted that this was because Ria never gave any disclosure to show what it had earned and that the matter should be remitted to the judge for disclosure to be given and a decision on damages. But Ria was never asked to make the relevant disclosure, and was not under a general disclosure obligation. The directions given earlier limited Ria to making specific disclosure only. The parties attended what was intended to be a single trial of all issues and it would be disproportionate for OMM now to have what would, in effect, be a second bite at the cherry.

21. No doubt OMM wish to claim damages from Ria rather than from Mr Wasilewski who is now bankrupt. Any such claim would require a decision that Ria was liable in damages for the tort of inducing breach of contract. The judge held that it would have been so liable, if the restrictions had been enforceable. But since they were not in her view enforceable, there was no breach in fact and therefore no liability.

Inducement of Breach of Contract?

22. If my brother judges agree with me so far, the restrictions are enforceable and there was therefore a breach of contract on the part of Mr Wasilewski. Since no damages are to be awarded against either Mr Wasilewski or against Ria, any decision on the question whether Ria induced or procured such breach becomes academic. There is nevertheless a cross-appeal by Ria (for which permission has been given) seeking to say that there was no inducement or procurement of that breach and both Miss Smith and Mr Davies want the court to deal with that matter. We will therefore deal with it but rather more shortly than would be warranted if it was a critical point in the case.

23. The judge held (paras 41-42) that Mr Wasilewski contacted Ria on the internet in October 2010 after he had discovered that OMM had appointed another agent in Hereford which might make him lose business. After that approach a representative of Ria contacted him and said that there might be an exclusivity provision in his contract. Mr Wasilewski's response was that he did not think that there was any such restriction and he was happy to continue with his application to Ria to become an agent for it. The judge further found (para 79) that Ria knew perfectly well that there was in fact an exclusivity provision in all OMM's contracts with its agents but that it nevertheless responded to Mr Wasilewski's internet contact "in accordance with its aims and objectives in the Polish market. It took an active step which enabled [Mr Wasilewski and Ria] to compete with [OMM] in that market. I find that to be an unlawful procurement of the breach".

24. The finding that Ria knew of OMM's exclusivity provision was based on an internal email of Ria of 15th February 2010 also from Ms Dabrowska in relation to the initial contact made by the Birmingham agents of OMM:-

> "Will contact [Ms Bober] and see if there is any chance to convince her to work with us. We are more competitive that [OMM] but unfortunately all the agents who work with them have exclusivity."

It is true that the judge later refers to the subsequent email of 17th September from Ms Dabrowska whom she describes as following up an initial contract by Mr Wasilewski whereas that email relates to the Birmingham agents not to Mr Wasilewski but that mistake (as it appears to be) is irrelevant on the question of Ria's knowledge and may only be intended by the judge to make plain that Ria continued to proceed with OMM's Birmingham agents despite the fact that they knew these agents to be the subject of an exclusivity clause.

25. Be all that as it may, Miss Smith for Ria submitted (1) that, since the first approach had been made by Mr Wasilewski, he had been asked if he had an exclusivity clause and replied that he did not think so, there was no intention on the part of Ria to procure his breach of contract and (2) that, even if Ria had taken an "active step" enabling it to compete with OMM, that was an insufficient procurement to constitute the tort of inducing breach of contract.

26. As to the first of these submissions, I would not interfere with the judge's finding that Ria "knew of the exclusivity provision" in Mr Wasilewski's contract. It was amply justified on the evidence and even if true "knowledge" could only be obtained by reading the contract itself, there was sufficient Nelsonian blindness to justify an

alternative finding that Ria were reckless as to the existence of the exclusivity provision. Miss Smith submitted that Mr Wasilewski had given Ria an assurance that there was no exclusivity provision but the evidence was only that he said "he did not think" so (para 42) which hardly amounts to an assurance. Even if it could be described as an assurance, it was not worth the paper it was not written on coming from someone whose first language was not English and who could not be relied on to have read, understood and remembered all the provisions contained in a closely printed 10 page contract. There was in my judgment every intention to sign Mr Wasilewski up as an agent in circumstances in which Ria knew of (or were reckless as to) the existence of an exclusivity clause.

27. As to the second submission, Miss Smith said that cases in which an "active step" was held to be a sufficient procurement or inducement for the purpose of the tort, such as BMTA v Salvadori [1949] Ch. 556 and Rickless v United Artists Corporation [1988] QB 40 had been impliedly overruled by OBG v Allen [2008] 1 A.C. 1. This argument depended on the disapproval by the House of Lords of the theory that the tort of inducing a breach of contract was part of a more general tort of causing loss by unlawful means and their criticism in that respect of D C Thomson v Deakin [1952] Ch. 646. Miss Smith took us through the authorities at a speed consonant with the 1½ day estimate for the hearing and it was (at any rate to me) a fascinating exercise of an advocate's skill. But as Mr Davies pointed out, the exercise was unnecessary because, on any view, Ria's acts were more than merely an "active step" enabling Ria to compete with OMM since Ria had signed a contract with Mr Wasilewski which meant that the procurement of the breach by Mr Wasilewski of his contract with OMM actually occurred and continued to occur for a period of 3 years until it was terminated.

28. OBG v Allen certainly decided that inducing breach of contract was a tort of accessory liability. As Lord Toulson JSC pointed out in Fish & Fish Ltd v Sea Shepard UK [2015] A.C. 1229, 1239 para 21:-

> "To establish accessory liability in tort it is not enough to show that D did acts which facilitated P's commission of the tort. D will be jointly liable with P if they combined to do or secure the doing of acts which constituted a tort."

In the present case Ria and Mr Wasilewski combined to the extent of making a contract which was or made provision for the very act which was a breach of Mr Wasilewski's contract with OMM.

29. I would uphold the judge's finding that Ria unlawfully procured a breach of Mr Wasilewski's contract with OMM, and enter judgment for OMM on that basis; but since OMM cannot quantify their loss I would do no more.

Lord Justice Lloyd Jones:

30. I agree.

Lord Justice Briggs:

31. I also agree.

IN the COURT OF APPEAL (CIVIL DIVISION) Appeal No. b2/2014/3520

ON APPEAL FROM THE CENTRAL LONDON COUNTY COURT
CHANCERY LIST
Claim No. A 10 CL 003
HHJ FABER

BETWEEN:

ONE MONEY MAIL LIMITED

Claimant/Appellant

- and -

(1) RIA FINANCIAL SERVICES LIMITED

First Defendant/Respondent

(2) SEBASTIAN WASILEWSKI (t/a Offiss)

Second Defendant

***draft* ORDER**

UPON APPEAL from the judgment of HHJ Faber dated 8 July 2014 and the Order of HHJ Faber dated 15 August 2014

AND UPON the appeal of the Claimant/Appellant dated 30 October 2014 of the Order dated 15 August 2014 ("the OMM Appeal") on three grounds of appeal (i) that the "non-compete" provisions were in unlawful restraint of trade, (ii) that the Judge erred in not calculating quantum, and (iii) that the Claimant/Appellant is entitled to equitable damages in lieu of an injunction

AND UPON permission to appeal being refused on the second ground of appeal

AND UPON the cross-appeal of the First Defendant/Respondent dated 26 January 2015 of the judgment dated 8 July 2014 ("the Ria Appeal") on procurement of breach of contract

AND UPON the Second Defendant not being represented and not attending the hearing of the Appeals

AND UPON hearing Adrian Davies for the Claimant/Appellant and Joanna Smith QC and Tim Austen for the First Defendant/Respondent

IT IS ORDERED THAT:

1. The OMM Appeal is allowed with respect to the first ground of appeal.
2. The OMM Appeal is dismissed with respect to the third ground of appeal.
3. The Ria Appeal is dismissed.

4. Paragraph 1 of the Order of HHJ Faber dated 15 August 2014 is set aside.

5. Judgment in the action is entered for the Claimant/Appellant.

6. The Claimant/Appellant is not entitled to any relief.

7. The Respondent to pay Appellant's costs of the appeal and cross- appeal.

8. This Order shall be served by the Claimant/Appellant on the First Defendant/Respondent and the Second Defendant.

The court has provided a sealed copy of this order to the serving party:

Gunnercooke LLP
1 Cornhill
London
EC3V 3ND
Attn: Sarah Cato

Solicitors for the Claimant/Appellant