Cable & Wireless PLC & Pender Insurance Ltd v Christopher Robin Valentine [2005] ADR.L.R. 03/16

JUDGMENT : Mr. Justice Cooke: QBD Commercial Court: 16 March 2005.

Introduction

1. In this action the Claimants, "C&W/ Pender" (Pender being C&W's captive insurer) claim damages from a number of parties in respect of an alleged fraudulent scheme by certain employees of the C&W Group to divert premium income to companies beneficially owned by themselves. Mr. Foulger was an employee of the 17th Defendant ("Willis UK Limited") and was also a director of Pender and the 16th Defendant ("Willis IOM") at the relevant time. It is alleged that he assisted the authors of the scheme (essentially the first to 5th Defendants) to carry it out. Willis IOM nominated Mr. Foulger as Pender's underwriting manager and he is alleged to be the person primarily responsible for performing the obligations of Willis IOM under an agreement dated 26th November 1993 by which Willis agreed to provide management services to Pender. In this judgment I refer to Willis UK and Willis IOM together as "Willis".

2. C&W and Pender contend that an agreement was reached between 24 & 26th November 2004 in exchanges between Mr. Bowden, the Group General Counsel of Willis and Mr. Garard, the Group General Counsel and Company Secretary of C&W. There was statement evidence from Mr. Garard and from Mr. Mitchell of C&W, who was also involved, but there was no evidence from Mr. Bowden, whether directly or indirectly in relation to these matters. The argument centres upon a letter signed by Mr. Bowden and Mr. Garard on 24 & 26th November respectively and an e-mail from Mr. Bowden on 24th November which, it is accepted by C&W/Pender was accepted as a qualification to that agreement. That qualification was accepted in a telephone call on 25th November, on the uncontradicted evidence of Mr Garard, and was confirmed in a later e-mail of 26th November, albeit that, by the time the confirming e-mail was sent, an issue had arisen as to whether or not a binding agreement had been concluded.

3. Willis has applied for summary judgment for a declaration that there is no binding agreement between the parties whilst C&W and Pender have applied for summary judgment seeking a declaration to the contrary. In this context I bear in mind the test for summary judgment as set out in CPR 24.2 and the decision in **Swain v Hillman** [2001] 1 AER 91.

4. In the Re- Re-amended Particulars of Claim, Mr. Foulger is alleged to have committed a breach of fiduciary duty, to have dishonestly assisted others in breach of their fiduciary duty, to be in knowing receipt of funds obtained in breach of trust, to have procured breaches of duty by C&W employees and to have conspired with those wrongdoers. He is alleged to be a constructive trustee and to be liable to account. He is also alleged to be liable in damages on a joint and several basis with the other wrongdoers. C&W and Pender contend that Willis is liable for these breaches by Mr. Foulger, although it is not alleged that they are liable to repay the alleged bribe of £100,000 which he received.

5. Apart from the claims made in these proceedings (the Misfeasance proceedings) at the time of the exchanges in question both parties were aware that C&W/Pender maintained that they had other claims against Willis.

The background to the exchanges

6. On 29th March 2004 C&W/Pender commenced proceedings against the first to 11th Defendants. In April, Mr. Garard met Mr. Bowden and the Chairman of Willis, Mr. Plumeri in New York, seeking assistance in obtaining documents from Willis to ascertain information about the activities of those Defendants and the fraud which it said had been committed. In consequence a large number of documents was disclosed by Willis to C&W/Pender's solicitors. In addition Willis permitted four interviews of Mr. Foulger to take place with C&W/Pender's solicitors in which he admitted knowledge of the activities of the other Defendants and receipt of £100,000, whilst denying dishonesty. Mr Garard's unchallenged evidence is that, in consequence, Willis in the person of Mr Bowden, appeared to accept that it would be liable for Mr Foulger's misdeeds and would have to make a payment in settlement of that liability.

7. In consequence of the newfound knowledge, C&W/Pender joined Mr. Foulger as a Defendant in the Misfeasance proceedings on 30th July and Amended Particulars of Claim were served on 5th August. Thereafter consideration was given by C&W/Pender to joining other Defendants, including Willis.

8. On 3rd November 2004, Mr. Garard in London sent Mr. Bowden in New York a copy of the Amended Particulars of Claim and a Summary of the claims that C&W and Pender considered they had against Willis arising out of the facts pleaded at that stage. In addition paragraph 1.2 of the note referred to "a range of additional claims and potential claims by Pender/C&W against Willis which have as their origins other errors and omissions which do not hinge upon misfeasance". The letter accompanying these documents spoke of the need to talk about "numbers" (i.e. the amount that Willis would pay to C&W and Pender) and the need to meet to discuss this as a matter of some urgency because of the running of statutes of limitation and because of the trial date which was fixed for October 2005, which necessitated imminent joinder of Willis if the date was to be kept. The claims against Willis were for the entirety of the loss which C&W/Pender considered they had suffered in accordance with the claims pleaded against Mr. Foulger, for whom it was said that Willis were vicariously liable.

9. As the case management conference scheduled for 26th November drew near, Pender/C&W chased Mr. Bowden for a response. There were discussions between Mr. Mitchell and Mr. Goodinge, Willis's General Counsel in the UK on 18th November in which Mr. Goodinge sought to obtain a better understanding as to what C&W/Pender were looking to obtain from Willis in order to avoid Willis being joined in the proceedings. Mr. Mitchell referred to the need for a standstill agreement in relation to all claims and/or to a settlement in relation to the amounts claimed from Willis as set out in the summary of claims provided on 3rd November.

10. On 19th November C&W/Pender's solicitors sent Mr. Goodinge a draft Re-amended Claim Form and draft Re-amended Particulars of Claim setting out the claims against Willis, again mentioning in the accompanying letter that there were other claims against Willis which would require separate proceedings.

11. This resulted in two telephone conversations between Mr. Mitchell and Mr. Bowden on 23rd November in which Mr. Bowden made it clear that it was Willis's preference to deal with the consequences of Mr. Foulger's defaults without Willis being joined in the proceedings. In order to achieve this he proposed that Willis would accept legal responsibility for the conduct of Mr. Foulger and "would not argue the facts". He made it clear that he was referring to all acts and/or omissions of Mr. Foulger, including those which might found any other breach of contract and negligence claims outside the existing proceedings. He referred to the need for a mechanism for quantifying the extent of Willis' liability, such as arbitration. He also suggested a comprehensive standstill agreement in relation to all claims that C&W/Pender considered that they had against Willis. The conversations concluded with Mr. Mitchell telling Mr. Bowden that he would arrange for solicitors to draft something for the parties to sign.

12. At about 4:30pm GMT on 24th November, Mr. Garard, with Mr. Mitchell, telephoned Mr. Bowden and informed him that he would be sending through a draft letter of agreement for his approval and signature. Mr. Bowden again said that he wished to avoid Willis being joined to the proceedings and that he had discussed the issue with Mr. Plumeri who agreed with the approach which Mr. Bowden had proposed to Mr. Mitchell the previous day.

The Critical Exchanges

13. At 6:36pm GMT on 24th November, Mr Garard e-mailed a draft letter of agreement to Mr. Bowden for him to sign. That letter was in the following terms: -

"Dear Bill

Cable & Wireless Plc and Pender v Christopher Valentine and Others

Claim No. 2004 Folio 250

I set out below the terms on which Cable & Wireless PLC ("C&W") and Pender Insurance Limited ("Pender") are prepared to defer the joinder of Willis UK Ltd ("Willis UK") and Willis Management (Isle of Man) Ltd into the above proceedings. If you are content with these terms, please sign a copy of this letter and return it to me overnight via pdf and courier.

1 *Willis UK and Willis (Isle of Man) Ltd accept legal responsibility to C&W and Pender for the acts and omissions and breaches of duty of Peter Foulger, whether pleaded in Claim No. 2004 Folio 250 (the "Misfeasance Proceedings") or otherwise and will not seek to assert in any negotiations or proceedings (including the Misfeasance Proceedings) that they do not have legal responsibility for his acts and/or omissions and/or breaches of duty as regards C&W and Pender.*

2 *Save to the extent that in the Misfeasance Proceedings an unappealed judgment at trial establishes that Peter Foulger is not liable to C&W and /or Pender in the respects alleged, Willis UK and Willis (Isle of Man) Ltd accept that the acts, omissions and breaches of duty alleged against Peter Foulger in the Misfeasance Proceedings occurred and will not seek to assert otherwise in any negotiations or proceedings (including the Misfeasance Proceedings).*

3 *Neither Willis UK nor Willis (Isle of Man) Ltd will seek to argue that they have been served late or out of time nor will they seek to delay the timetable for the hearing of the Misfeasance Proceedings or take any other point or defence of any nature against C&W and /or Pender arising out of C&W and Pender's agreement to defer service of proceedings.*

4 *Willis UK and Willis (Isle of Man) Ltd will enter into a general standstill agreement extending the limitation period for all other claims that C&W and Pender may have against them arising out of their and/or Peter Foulger's and/or other of their respective employees acts or omissions or breaches of duty owed to C&W and/or Pender.*

Yours sincerely"

14. At 8:13pm GMT that evening, Mr. Bowden sent an e-mail to Mr. Garard in the following terms: -
"This looks fine, with the one caveat, which I believe we both accept, that our acceptance of legal responsibility for what our employee did or didn't do properly is obviously only one aspect of what led to the problems at Pender. In our discussions we have always acknowledged candidly the difficulty of attributing fault to the various parties involved, including the principal bad actors, Pender, C&W and the other third parties you've identified, for the things they did or should have done in connection with what occurred.
I'm therefore signing and returning the letter as you've drafted it, but with the understanding that our acceptance of legal responsibility is not intended to be an undertaking of full responsibility for the damages suffered by Pender and C&W, but in effect for a share in them which we are agreeing to discuss pursuant to the kind of standstill agreement that will give both of us appropriate cover as long as such discussions are proceeding in good faith and haven't broken down.
I believe this is what we both intended. If not, please give me a call on my cell at any time (917 327 4235) to discuss."

15. Later that evening, at 8:28pm GMT Mr. Bowden's secretary e-mailed a copy of the letter of agreement signed by Mr. Bowden together with a further copy of Mr. Bowden's e-mail, expressing his caveat.

16. At about 4:00pm GMT the next day, 25th November, Mr. Bowden telephoned Mr. Garard to reiterate what he had stated in his e-mail of the evening before. Mr. Garard agreed that his caveat was in line with what had been previously discussed and that C&W and Pender agreed that Willis was accepting liability to pay only their "fair share" of the sums due and not liability for all losses. Mr Bowden said that a means to determine the extent of the sums involved would be required, such as mediation or arbitration. According to Mr. Garard's note, they agreed that a statement of principles would be drafted to set out a process to agree the amount that Willis would pay. Mr. Bowden said that there was no urgency about this.

17. On the following morning, the date fixed for the CMC, Mr. Garard countersigned the letter of agreement and e-mailed a copy back to Mr. Bowden at 9:44am GMT. By this time C&W/Pender's lawyers had contacted Willis's lawyers to confirm that they would not be seeking to join Willis at the CMC, because agreement had been reached between the parties' General Counsel which obviated the need to do so. At 10:54am however Willis's solicitors sent a fax to C&W/Pender's solicitors stating that Willis did not accept that there was any binding agreement and that they would appear at the CMC that day. When this message got back to Mr. Garard, he e-mailed Mr. Bowden to state that Mr. Goodinge was "*seeking to renege on our deal*". In a telephone call shortly thereafter, Mr Garard

complained to Mr Bowden that Mr Goodinge was maintaining that there was no agreement and suggested that Mr Bowden should fire Mr Goodinge, which Mr Bowden said had crossed his mind. Mr Bowden expressed his continued desire that Willis should not be joined in the proceedings and did not suggest that no agreement had been reached. He said that Willis UK was concerned that there had been agreement to accept liability for all C&W/Pender losses. Mr Garard confirmed that this was not so and that the terms of Mr Bowden's caveat email were agreed.

18. C&W/Pender did not apply at the CMC to join Willis and Mr. Garard sent a further e-mail on the afternoon of 26th November to Mr. Bowden in the following terms: -
"Further to our discussions of this morning and last night and our written agreement of yesterday, I confirm that today neither C&W nor Pender sought to join any Willis company to the above proceedings.
As you requested, I also confirm our agreement of last night and this morning that (as you point out in your e-mail to me 24 November) Willis' acceptance of legal responsibility is not intended to be an undertaking of full responsibility for the damages suffered by Pender and C&W, but in effect is for a share in them which you and I will discuss in good faith.
Best regards."

The argument

19. Mr. Jonathan Sumption Q.C. for Willis said that no contract had been made between the parties because Mr. Bowden's signature of the letter of agreement was accompanied by a caveat which made it clear that there was no agreement to one feature of the letter of agreement which was fundamental to a contract being made. There was therefore no intention to be bound until the issue raised by the caveat had been resolved and there was no final unqualified expression of assent.

20. I was referred to a number of decisions including **Hussey v Horne-Payee** (1879) 4 App. Cas. 311, **Love & Stewart Ltd v S. Instone & Co. Ltd** (1917) 33 T.L.R 475, **Trollope & Colls Ltd v Atomic Power Constructions Ltd** [1962] 3 All ER 1035 and **Pang an S.p.A. v Feed Products Ltd** [1987] 2 LLR 601. These decisions make it plain that it is possible for documents, on their face, to appear to represent a concluded agreement but that there can be other elements which remain unagreed which the parties accept as essential for agreement before any binding contract is concluded. Thus Lord Selborne in Hussey (ibid) at page 323: -
"It appears to me that no such contract ought to be held established, even by letters which would otherwise be sufficient for the purpose, if it is clear, upon the facts, that there were other conditions of the intended contract, beyond and besides those expressed in the letters, which were still in a state of negotiation only, and without the settlement of which the parties had no idea of concluding any agreement."

21. Equally it is open to one party to stipulate that no binding contract shall be concluded until a particular matter is expressly agreed between them. In **Trollope & Colls** (ibid) at page 1037, Megaw J set out four propositions in relation to the conclusion of a contract: -
"(i) there must have been an intention by both parties continuing up to Apr. 11, 1960, to make a contract; (ii) at that date the parties must have been ad idem on all the terms which they then regarded as being required in order that a contract should come into existence; (iii) the terms on which the parties were ad idem must not omit any term which, even though the parties did not realise it, was in fact essential to be agreed in order to make the contract commercially workable; and (iv) there must be some manifestation which indicated with sufficient clarity acceptance by the offeree of the offer as then made, such acceptance complying with any stipulation in the offer itself as to the manner of acceptance."

22. In **Pang an** (ibid) at page 611 Bingham J said this: -
"Where the parties have not reached agreement on terms which they regard as essential to a binding agreement, it naturally follows that there can be no binding agreement until they do agree on those terms: see ***Rossiter v Miller,*** *(1878) 3 App. Cas. 1124 at p. 1151 per Lord Blackburn. But just as it is open to parties by their words and conduct to make clear that they do not intend to be bound until certain terms are agreed, even if those terms (objectively viewed) are of relatively minor significance, the converse is also true. The parties may by their words and conduct make it clear that they do intend to be bound, even though there are other terms yet to be agreed, even terms which may often or usually be agreed before a binding contract is made.*

The parties are to be regarded as masters of their contractual fate. It is their intentions which matter and to which the Court must strive to give effect. In this endeavour, help is to be gained from the observation of Lord Denning MR in ***Port Sudan Cotton Co. v Chettiar*** *[1977] 2 Lloyd's Rep. 5 (at p.10):*

In considering this question, I do not much like the analysis in the text-books of inquiring whether there was an offer and acceptance, or a counter-offer, and so forth. I prefer to examine the whole of the documents in the case and decide from them whether the parties did reach an agreement upon all material terms in such circumstances that the proper inference is that they agreed to be bound by those terms from that time onwards. That is, I think, the result ***of Brogden v Metropolitan Railway Co****. (1877) App. Cas. 666* ***and Hussey v Horne-Payne****, (1874) 4 App. Cas. 311.*

I think, furthermore, that the Court must bear constantly in mind the subject matter with which it is dealing. The relevant principles of the law of contract are, no doubt, of universal application, but the proper inference to draw may differ widely according to the facts of the particular case."

23. Willis' argument is that the e-mail which set out the caveat destroyed the basis of the signed letter of agreement because it rejected the essential feature of acceptance of full liability for Mr. Foulger's activities. In the letter there was no agreement as to the share of the losses for which Willis was liable to pay. It required the quantum of that liability to be the subject of further discussions and negotiation in good faith. It is trite law that an obligation to negotiate in good faith is unenforceable - see the decision of the House of Lords in **Walford v Miles** [1992] 2 AC 128. The whole point of the caveat, it is said, was to object to the conclusion of any binding agreement and to enable negotiations to take place in the context of a standstill agreement which had itself to be agreed in order to make it possible to seek agreement on the extent of Willis' liability. There was therefore no "final and unqualified expression of assent" to the letter of agreement. The inconsistency between the letter of agreement and the "caveat" e-mail would have to be resolved by further discussion between the parties and as a result there was no binding agreement between the parties nor any certainty about the quantum of liability which was accepted by Willis.

Is there a binding Contract?

24. The effect of Mr. Garard's evidence, which is uncontradicted, is that he agreed to the qualification put forward by Mr. Bowden in the telephone conversation on 25th November, as confirmed in his e-mail the following day. Mr. Garard had sent an offer to Mr. Bowden in the shape of the letter of agreement for him to accept and sign and when he returned that letter of agreement duly signed he sought a variation of its terms in his "caveat" e-mail. That counteroffer was accepted in the telephone conversation of 25th November, as confirmed by the later e-mail of 26th November and the letter of agreement was signed by Mr. Garard and returned to Mr. Bowden with an agreed variation in the form of the "caveat" e-mail. The caveat email did not prevent the conclusion of a binding contract, but represented a further term, which, once accepted became part of the concluded contract.

25. There is no doubt that the parties intended to conclude a binding agreement in the shape of the letter of agreement and the "caveat" e-mail variation. The form of the letter of agreement, drafted with reference to legal concepts, and the circumstances of its execution by both signatories show this clearly. The caveat email did not constitute an objection to any agreement coming into force, if its terms were agreed. The parties were intent on concluding an agreement which would result in the deferral of the institution of proceedings against Willis and both Mr Garard and Mr Bowden knew that if there had been no such agreement, joinder would have been sought.

    i) The letter of agreement was a formal document signed as a letter of agreement.

    ii) It was signed by the two most senior legal figures in each of the respective organisation.

    iii) It referred expressly to the "acceptance of legal responsibility" by Willis.

    iv) It referred to the "acts/omission and breaches of duty" by Mr. Foulger as regards C&W and Pender.

    v) It referred expressly to the misfeasance proceedings (this action) and (in paragraph 4) to all claims that C&W and Pender might have against Willis arising out of their own, Mr. Foulger's or other employees' acts, omissions or beaches of duty owed to C&W and Pender.

vi) It set out expressly the conditional basis upon which Willis agreed to accept legal responsibility in paragraph 2 (save to the extent that Mr. Foulger was found not liable in the misfeasance proceedings).

vii) It set out expressly in paragraph 2 the conditional basis upon which Willis agreed to accept the facts of Mr. Foulger's misfeasance as alleged in the misfeasance proceedings (with the same proviso).

viii) It set out these matters expressly as the terms upon which Pender/C&W were prepared to defer joinder of Willis in the action and sought signature of the letter and return of it as a confirmation of the agreement reached.

ix) Provision was made to prevent Willis taking any time bar points and for a standstill agreement should it become necessary for proceedings to be taken in the future.

x) The letter of agreement was signed on the mutual understanding and agreement that it was qualified by the terms of the caveat email.

26. The agreement was concluded in the days leading up to the case management conference of 26th November in order to avoid Willis being joined in these proceedings on that date. This objective is plain from the evidence and from the preliminary paragraph of the letter of agreement. The caveat e-mail expressly accepted the terms of that agreement subject to the one caveat and Mr. Bowden stated that he was signing and returning the letter of agreement with the additional understanding set out in the e-mail.

27. The only issue therefore is whether or not the two documents can be read together in such a way as to make sense and to constitute an agreement with sufficient certainty for it to be enforceable. I am unable to see that there is any problem in reading the letter of agreement and the "caveat" e-mail together.

28. The only qualification in the caveat email arises in relation to paragraph I of the letter of agreement and the acceptance of legal responsibility for the acts and omissions and breaches of duty of Mr. Foulger. Whereas paragraph I set out an acceptance of liability in respect of all his acts and omissions, whether in the misfeasance proceedings or elsewhere and a commitment not to assert the contrary, the e-mail referred to a prior understanding *("the one caveat which I believe we both accept")* that Willis should not be responsible for 100 percent of the losses caused by Mr. Foulger. The words *"with the understanding that our acceptance of legal responsibility is not intended to be an undertaking of full responsibility for the damages suffered by Pender/C&W, but in effect for a share in them "* clearly set out a more limited acceptance of liability. Whereas Mr. Sumption Q.C. argued that this was acceptance of a share to be negotiated and that this amounted to an agreement to negotiate which was unenforceable, Mr. Hirst Q.C. for C&W/Pender maintained that the second paragraph of the e-mail had to be read in the light of the first paragraph and the prior discussions culminating in the telephone conversation of 25th November where it was agreed that Willis would be liable for "its fair share" which could be determined in any one of a number of different ways. The parties plainly had in mind the possibility of a negotiated conclusion but there had equally been mention of mediation or arbitration and the fact that proceedings were deferred left it open to the parties to refer the matter to the Court for decision should that be necessary.

29. When regard is had to the first paragraph of the e-mail it is clear that Willis was prepared to accept that it was vicariously liable for Mr. Foulger's activity as a quid pro quo for not being involved in the proceedings. What it was not prepared to accept was liability for 100 percent of the damages for which Mr. Foulger might be jointly and severally liable since other parties might be at fault and be held to have played a part in causing the damage. There could be contributory negligence on the part of Pender/C&W. There would undoubtedly be liability on "the principal bad actors" (the I st 5th Defendants) if Mr. Foulger was liable and other third parties such as the 6th - 11th Defendants and the 13th - 15th Defendants when joined might also bear responsibility for the loss. What Willis wanted to be able to argue was that it should not bear the totality of the loss and damage suffered but it should be apportioned amongst the various entities at fault in a manner proportionate to that fault.

30. This is exactly the sort of exercise with which the Court is concerned when assessing contributory negligence and contributions under the Civil Liability (Contribution) Act 1978. Under section 2 of that Act, the amount of contribution recoverable from any person shall be "such as may be found by the Court to be just and equitable having regard to the extent of that person's responsibility for the damage in question". The effect of the caveat e-mail and the telephone conversation, as Mr Hirst QC accepted, is an acceptance by Willis of its liability for a net share on this basis, taking into account the relative fault of other parties. That would represent a "fair share", being that which it was just and reasonable for it to bear in all the circumstances. There is no difficulty in the Courts determining what is fair or what is just and reasonable or equitable as appears from the terms of the 1978 Act, the decision in the **Didymi** [1988] 2 Lloyd's Rep. 108 at pages 115 - 116 and 119 and the decision in **Mamidoil v Okta** [2001] 2 Lloyd's Rep. 76 at paragraph 69.

31. There is no reason to see the second paragraph as giving rise to an obligation to negotiate in order to determine the share of damages for which Willis is liable in respect of Mr. Foulger's activities or the email as requiring agreement to be reached on the figure for liability. The acceptance of legal responsibility is of a share in the loss and damage which is just and equitable on the basis of attribution of fault to the various parties involved, which could be the subject of negotiation or mediation or determination by an arbitral tribunal or Court. The agreement reached is akin to the kind of agreement frequently reached in litigation where a defendant accepts liability but not causation of damage nor the quantum of the loss claimed. Whilst the situation here is more complex the overall agreement is sufficiently clear in setting out the acceptance of vicarious liability but for a quantum figure which reflects the overall responsibility of all the parties involved in the litigation.

32. This agreement is quite certain enough to be enforced since the Court can make any determination that is required. It is perfectly comprehensible and sensible from a commercial viewpoint and achieved a compromise solution which avoided the necessity for Willis to be joined in the proceedings in November 2004. No further agreement was required since, if the parties failed to reach agreement by good faith negotiation the matter was capable of resolution in the Courts.

Conclusion

33. I hold therefore that there was a binding agreement reached between the parties on the terms of the letter of agreement, the caveat e-mail and the telephone conversation of 25th November 2004. Willis' application therefore fails and I will hear submissions about the form of declaration to be made and the consequential orders which must follow in relation to the pleadings in this action and Willis' participation in it.

34. In these circumstances I do not need to deal with the alternative arguments about admissions and withdrawal of admissions since they only arise if there is no binding agreement between the parties.

Jonathan Hirst Q.C., Andrew Mitchell & Patrick Goodall (instructed by Clifford Chance LLP and Barlow Lyde & Gilbert) for the Claimant

Jonathan Sumption Q.C. & Colin Wynter (instructed by Lovells) for the 16th and 17th Defendants (the Willis Companies)