

**EASTERN CARIBBEAN SUPREME COURT
BRITISH VIRGIN ISLANDS**

**IN THE HIGH COURT OF JUSTICE
(COMMERCIAL DIVISION)**

CLAIM No: BVIHC (COM) 2021/0096

BETWEEN:

WWRT LTD

Claimant

and

**(1) CAROSAN TRADING LTD
(2) BORIS KAUFMAN**

Defendants

Appearances:

Mr. Andrew Ayres QC and Ms. Sophia Hurst, with them Dr. Alicia Johns of Conyers
for the Claimant

Mr. Brian Lacy and Mr. Alexander Muksinov of Ogier for the First Defendant

Mr. Richard Morgan QC and Ms. Amanda Hadkiss, with them Mr. Richard Brown of
Carey Olsen for the Second Defendant

2021 December 6

JUDGMENT

[1] **JACK, J [Ag.]**: This is yet another case in which one party has served skeleton
arguments of inordinate length.

[2] In **AO Alfa-Bank v Kipford Ventures**,¹ I said of the defendant's skeleton:

¹ [2021] ECSCJ No 599 (17th June 2021)

“[7] The latter is a closely written 54 pages in single type with about 26,500 words. A similar issue as to the excessive length of skeletons arose in **Ali Ganjaei v Sable Trust Ltd and another**,² where I said:

“[66] [Counsel] made very extensive written submissions. In this jurisdiction, parties are expected to serve skeleton arguments and then develop their submission orally. [Counsel] did not serve a skeleton. Instead he served a closely typed 46 page document. The word-count is 19,296. By contrast [opposing counsel's] skeleton was 5,840 words long. This was already a fairly fleshy skeleton, but it is dwarfed by [the other] submissions which were more than three times as long.

[67] It is not in my judgment appropriate to make written submissions of such prolixity. It breaches the overriding objective in multiple ways. First, it forces the Court to allot more of its resources to the case than is appropriate, because the Court has to read the submissions: CPR 1.1(2)(e). Second, it imposes unnecessary additional expense on all the parties: [The party which is] paying for the submissions, and the other parties, who have to employ lawyers to read the submissions: CPR 1.1(2)(b). Third, the intention is to give [that party] an advantage in exposing the judge to that party's submissions at greater length than the other parties' submissions, with the intended consequence that the parties are not on an even footing: CPR 1.1(2)(a). In fact, if this was the intention, it fails. It has been recognised since classical times that in advocacy less is more,³ but an intended breach of the overriding objective should not be countenanced. Logorrhoea has no place in the Commercial Court.”

[8] A reasonable length of a skeleton in a heavy application such as this is 25 pages in 12 point type and one and a half line spacing.”

[3] In the current case, the claimant's main skeleton argument runs to 59 pages. Although the line-spacing is one and a half, the type appears to be 11 or 10.5-point Times Roman. The word count is 25,843 words. The claimant's supplemental skeleton dealing with a point on evidence is a further 11 pages. This mercifully is in

² [2021] ECSCJ No 466 (15th February 2021) at para [66]-.

³ Quintillian, *Institutio Oratoria* 4.2.40 (“Our statement will be sufficiently concise, if, in the first place, we commence the exposition of the case at the point where it begins to concern the judge; next, if we say nothing foreign to the cause; and, lastly, if we retrench everything of which the absence will deduct nothing from the knowledge of the judge or the advantage of our client.” (translation John Watson, London 1892))

a larger type. It comprises 4,012 words. The total word count is therefore 29,855 words.

[4] The word count of **War and Peace**⁴ is 587,287 words.⁵ The combined word-count of the claimant's skeletons is therefore 5.08 per cent of the length of that novel.

[5] The filing of skeletons of such inordinate length is particularly surprising, since I had my assistant write on 19th November 2021 in the case of **FG v HJ**⁶ to Dr. Johns, who jointly submitted the two offending skeletons in this current matter, in the following terms:

"[The judge] notes that your skeleton argument runs to 62 pages. He has calculated that there are about 22,300 words in it. This is about 3.8 per cent of the word count of War and Peace.

This is grossly excessive for a one day hearing. He has no intention of reading something of such inordinate length: see CPR 1.1(2)(e).

In addition to the case to which he has already drawn your attention, in **Von der Heydt Invest SA v Mex Clearing Ltd**,⁷ counsel for applicant produced a 34 page submission for a modest application to produce documents under CPR 28.16. He again told counsel to resubmit a skeleton of reasonable length and summarily assessed the costs of the other parties, whose unfortunate counsel had had to read the missive.

The judge suggests you resubmit your skeleton limited to 25 pages one-and-a-half line spaced in 12 point type if you wish to avoid a similar consequence."

[6] If there had been enough time, I would again have required the claimant to resubmit its skeletons at an acceptable length. However, since I only saw the skeletons over the weekend, I have had little alternative but to read them. I will, however, consider

⁴ Count Leo Tolstoy, Moscow 1869.

⁵ wordcounter.net/blog/2016/10/28/102640_how-many-words-is-war-and-peace.html accessed 6th December 2021. It is not entirely clear whether the word count is from the original Russian (with much dialogue in French) or from an English translation.

⁶ BVIHC (COM) 2021/0094.

⁷ The judgment subsequently delivered is reported as *Mex Clearing Ltd v Mex Securities Sarl* [2021] ECSCJ No 752 (19th October 2021).

applications in respect of the costs incurred by the service of such documents. In **Mex Clearing** this included summarily assessing the costs incurred by the other parties in reading the missive. Other potential orders include disallowing the cost of preparation of the skeletons and slashing the brief fees of counsel concerned. (This of course depends on the claimant otherwise being the receiving party in respect of any costs order.) I shall hear such submissions as the parties wish to make. Any party seeking a costs order in respect of the time spent reading the claimant's skeletons should submit a schedule of the costs claimed.

- [7] I should add that, since handing down judgment in the **Ali Ganjaei** and **Kipford** matters, I have become aware that logorrhoea can be a symptom of a recognised psychiatric disorder, Warnick's aphasia. Any advocate suffering from this condition should write to the Court, so that reasonable adjustments can be made in respect of the disability.

Adrian Jack
Commercial Court Judge [Ag.]

By the Court

Registrar