

**EASTERN CARIBBEAN SUPREME COURT
BRITISH VIRGIN ISLANDS**

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

CLAIM No: BVIHC (COM) 2020/0219

BETWEEN:

AO ALFA-BANK

Claimant

and

KIPFORD VENTURES LTD

Defendants

Appearances:

Mr. Robert-Jan Temmink QC and Mr. Christopher Bromilow for the Claimant
Mr. Alain Choo-Choy QC, Ms. Claire Goldstein and Ms. Sarah Thompson for the
Defendant

2021 June 16
June 17

JUDGMENT

- [1] **JACK, J [Ag.]:** On 17th December 2020 I granted the claimant (“Alfa-Bank”) a freezing order against the defendant (“Kipford”). There was a short return date on 12th January 2021 and the matter was adjourned for a two-day substantive hearing on the first available date after 12th April 2021. That date was fixed as yesterday 16th and today 17th June 2021. In addition, Kipford make a heavy application disputing the jurisdiction which is listed to be heard.

- [2] At 7.01pm on Thursday 10th June 2021, after the close of the Court, Kipford filed the hearing bundles on the e-Litigation Portal. The hard copies of the bundles were delivered on the morning of Monday 14th June 2021. There were nineteen bundles of documents. These did not include any authorities bundles.
- [3] By **Practice Direction 69A No 1 of 2009** para 3(h), “[e]ach party to a special application” — pausing there, because this application is listed for more than two hours, it is a special application — “must lodge with the Judicial Assistant no later than 1pm one clear day before the hearing, a skeleton argument together with copies of any authorities intended to be relied upon.” Skeletons were therefore due by 1pm on Monday 14th June.
- [4] This was not done. There was some to-ing and fro-ing between the law firms and some contact with Ms. Alexander, my assistant, but no extension of time was granted by the Court. Ms. Thompson wrote to the Court on Monday 14th June at 5.27pm (in other words after the Court had closed):
- “Dear Ms. Alexander,
The parties have agreed by consent to extend the deadline for filing and service of skeleton arguments and authorities until 9:30am tomorrow (15 June 2021).
We will send our client’s skeleton to you via email following exchange. A hard copy of our client’s authorities bundle will be delivered to the Court.
We will also upload the soft copy to the workshare.
Kind regards,
Sarah”
- [5] Forbes Hare, on behalf of Alfa Bank, then prepared a consent order which Harneys signed on behalf of Kipford but this has not yet been lodged at court by Forbes Hare. The consent order is irrelevant. It was agreed after the time for lodging skeletons had elapsed and I would never have approved it.
- [6] Alfa-Bank’s skeleton was lodged on the ePortal at 9.49am on Tuesday 15th June and Kipford’s at 10.43am the same day. The former is sixteen pages long, which is

a reasonable length, however, it invites me to read thirteen documents, some very extensive.

- [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**,¹ 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,² 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. It is particularly surprising that Kipford’s skeleton was so excessive in length, since Harneys, who submitted it, had

¹ [2021] ECSCJ No 466, BVIHC (COM) 2020/0182 (15th February 2021).

² 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))

been involved in the **Ali Ganjaei** case (albeit that they did not serve the offending skeleton in that case).

- [9] Service of skeletons at 9.49am and 10.43am is completely useless for the purpose of getting them read by a judge. As is to be expected, I was in Court from 10am until after 12 noon and then again from 2pm to 3pm. Knowing of the current application I had set aside Monday evening to prepare the case. Without any skeletons on Monday, I could not sensibly read nineteen bundles in order to see what was relevant and what not.
- [10] It is not open to the parties to agree among themselves to extend the time set down by the Commercial Court Practice Direction quoted above. **Notice No 2 of 2017** provides in para 3(a): “Bundles and skeletons should be delivered on time save where there is a good reason (such as extreme urgency) in which case a brief explanation may help.” The parties cannot unilaterally vary these time limits. Ms. Thompson’s email does not even seek the Court’s consent to a variation, still less give an explanation. Given how long this matter has taken to list, there is no good reason for late service of the skeletons. All the evidence was served by Thursday 10th June. The parties had the whole weekend to prepare their skeletons and could perfectly well have served them before 1pm on Monday 14th June as was their obligation.
- [11] Due to the late filing of the skeleton arguments and the quantity of evidence, I was not adequately prepared to hear this application. Save in respect of expert evidence, counsel are in agreement as to what documents I should read. These comprise:
- Amended application notice for discharge of the freezing order (3 page)
 - Application notice for challenging forum (3 page)
 - Application notice for freezing order (4 pages)
 - Application notice to continue freezing order (2 pages)
 - Claim Form (3 pages)
 - Statement of Claim (19 page)
 - First Statement of Mr. Negrey (26 pages)

- Third Statement of Ms. Polishchuck (78 pages)
- Second Statement of Mr. Negrey (25 pages)
- Fourth Statement of Ms. Polishchuck (20 pages)
- Summary (3 closely typed pages) of Mr. Platonov's expert report (35 pages)
- Summary (2 typed pages) of Mr. Petrachkov's expert report (49 pages)
- Summary (does not exist) of Mr. Platonov's second expert report (26 pages)

[12] Mr. Temmink QC thought that the summaries of the expert reports on Russian law were sufficient for me to read (even if there is not one in the last report), but Mr. Choo-Choy QC eschewed this dilettantish approach to evidence and wanted them all read in their entirety. The page count for the expert reports is 110 pages; that for the other materials 183 pages.

[13] Both counsel are agreed that the reading time in this case is one day. That obviously could not be accomplished Tuesday evening. Mr. Choo-Choy QC submitted that I could spend yesterday reading the bundles and then limit submissions to one day, so that the matter could be heard today. He urged, quite correctly, that Kipford had been waiting a long time for the matter to come on. He and Mr. Temmink QC were very apologetic about the failure by both sides to appreciate and foresee the difficulties which would arise from the parties' unilateral decision to serve skeletons late.

[14] I agree that the waste of Court time and legal costs is to be deprecated. Nonetheless, the applications before me are heavy. I do not consider that they can be resolved fairly with oral submissions limited to one day. Mr. Choo-Choy QC submitted that, because he had submitted such extensive written submissions, oral submissions could be shortened. I disagree. That would penalise Alfa-Bank, whose written submissions were of an acceptable length.

[15] I shall therefore adjourn the matter to be heard over three days with one reading days and two days for submissions. For reasons I gave yesterday there will be no order for costs.

Adrian Jack
Commercial Court Judge [Ag.]

By the Court

Registrar