TLC 804/03

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IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Royal Courts of Justice
Strand
London WCA 2LL

Thursday, 1st April, 2004

B e f o r e:

MR D DONALDSON QC
(Sitting as a Deputy Judge of the High Court)

UZOR

APPLICANT

−v−

CHINYE & OTHERS

RESPONDENTS

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(Official Shorthand Writers to the Court)

MR D LIGHTMAN (instructed by Howard Kennedy) appeared on behalf of the APPLICANT.

J U D G M E N T
(As Approved by the Court)

J U D G M E N T

1. DAVID DONALDSON QC: On 5th August 2003 the claimant applied to Evans−Lombe J without notice for, *inter alia* , a freezing order against each of the defendants and an order directed to three banks, including JP Morgan Chase Bank ("JP Morgan"), that each of the banks should forthwith disclose and permit the claimant to take copies of all correspondence with the defendants relating to bank accounts held in the name of the third defendant, Redsear, all cheques drawn on the accounts, and all debit vouchers, transfer applications and orders relating to the accounts. Evans−Lombe J made those orders as asked. His order contained the usual cross−undertaking by the claimant to compensate the defendant for any loss which might be caused to the claimant by the order.

2. On 15th August 2003 Pumfrey J discharged the order in its entirety and directed an enquiry as to the damages payable by the claimant under the cross−undertaking. Particulars of Claim having been filed by the defendants for the purposes of such an enquiry, His Honour Judge Howarth, sitting as a Judge of the High Court, ordered on 14th November 2003 that there should be judgment for the defendants in respect of liability concerning their claim for damages on the cross−undertaking in damages and a trial in respect of the assessment of those damages. That trial took place before me. This is my judgment as to that assessment.

3. I should record that before the start of the trial the claimant's solicitors had come off the record and that the claimant was not otherwise represented nor present at the hearing before me.

4. Before considering the relevant legal principles and their application, it is useful to outline some of the essential facts.

5. Both the claimant and the first defendant, Mr Chinye, are citizens and residents of Nigeria. The second defendant is the wife of the first defendant. The claimant and another chief, Chief Okafor, carried on business in Nigeria through Zumax Nigeria Limited ("Zumax"), concerned with the provision of high technology oil services. The first defendant made a substantial investment in Zumax, where he became a director. Zumax was also a customer of International Merchant Bank plc in Nigeria ("IMB" or "IMB Bank"), in which the first defendant was a substantial shareholder and the managing director. By 2002 Zumax had a large overdraft facility with IMB, equivalent to about £5.5 million, secured by a debenture over the company's assets and personal guarantees of the two chiefs. But it soon exceeded that permitted liability by the equivalent of about £3 million. IMB required repayment of this sum. In December 2002 IMB appointed receivers under the debenture.

6. In January 2003 the chiefs, i.e. the claimant and Chief Okafor, purported to remove the first defendant from the board of Zumax. These events gave rise to substantial and multifarious litigation in Nigeria, involving the chiefs, IMB and the first defendant, which was pending in August 2003 at the time of the application to Evans−Lombe J.

7. The third defendant is a company incorporated in the Isle of Man, with three equal shareholders: the claimant, the first defendant, and a Mr Lanchester. The directors are or were, according to the first defendant, the claimant, the first defendant and the claimant's brother; according to the first defendant, Mrs Chinye rather than her husband was a director. The role of the third defendant was, as described by the first defendant, to act as the foreign technical partner of Zumax. In essence, the allegations made by the claimant in this action were that the first and/or second defendants improperly caused payments to be made out of the third defendant's bank accounts and, in particular, a payment of $410,000. On this basis, Evans−Lombe J made a freezing order up to £400,000 and the disclosure orders directed to JP Morgan and other banks, as I described earlier. That order was made on Tuesday, 5th August 2003.

8. The first defendant first learned of the order on Friday, 8th August 2003, when JP Morgan informed him that, due to the order, pending payment instructions could not be carried out. The

first defendant and Mr Lanchester flew to London to instruct solicitors and the matter came before Pumfrey J for the first time on the morning of 13th August 2003, both sides being present.

9. The matter was stood over until Friday 15th August 2003, but Pumfrey J, understandably, ordered that in the meantime the disclosure order should be stayed. Indeed, I am told that the claimant's representatives did not actively resist that stay. That order was made at 10.45 am on the morning of Wednesday 13th August 2003. Most surprisingly, neither firm of solicitors informed JP Morgan of the stay. In ignorance of the stay, i.e. the suspension of the order, JP Morgan, later that same day, couriered to the claimant's solicitors copies of the relevant documentation which the disclosure order covered. It appears that at least some of these documents were subsequently passed to (a) members of the board of IMB Bank and (b) senior members of the church in Nigeria, in which Mr Chinye and, even more strongly, Mrs Chinye play a prominent role. The claimant's solicitors in later correspondence with JP Morgan claimed to have taken the view that (1) the documents had probably been dispatched by JP Morgan before the order had been suspended and, therefore, (2) they could not only retain it but send copies to their clients in Nigeria. I refrain from comment on the reasoning and propriety of this surprising behaviour only because the solicitors are not present before me.

10. On 14th August 2003, i.e the Thursday, the order was printed in its entirety, though without comment, in one of Nigeria's leading national daily newspapers in the form of a full−page advertisement.

11. These matters were drawn to the attention of Pumfrey J when the case came back before him on Friday 15th August 2003. He also had further evidence, not available previously to Evans−Lombe J, which made clear to him that there had been a material failure to make full and proper disclosure and, in particular, that the order obtained from Evans−Lombe J was being used for collateral purposes, having little to do with the action itself and a great deal to do with the personal dispute in Nigeria, to which I have referred above. Indeed, counsel for the claimant felt unable to persist in an application to continue the injunction. Pumfrey J made various orders to endeavour to undo some of the damage already suffered, e.g. for the recall of the documents and the placement of an advertisement in the Nigerian newspapers, which either were not or were only partly complied with.

12. In addition, as I have already recounted, he ordered an enquiry as to the damages payable to the defendants by the claimant on the claimant's cross−undertaking. This is a clear reference to the undertaking numbered 1 in the order of Evans−Lombe J to compensate the defendants for any loss caused by the order to them and which is the sole basis of my jurisdiction on the present application. Contrary to what counsel for the defendants appeared at one point to suggest in oral submissions, I am not concerned with damage which may have been caused by a breach of any of the other undertakings recorded in the order of Evans−Lombe J. Nor is there anything in the order of His Honour Judge Howarth which either did or could extend my jurisdiction beyond that cross−undertaking.

13. The manner in which I have to approach the assessment is, as counsel for the defendants accepts and indeed himself submits, set out in the speech of Lord Diplock in F Hoffmann−La Roche v The Secretary of State for Trade & Industry [1975] AC 295 at 361, where, having stressed that the measure of damages on such an assessment is not discretionary, Lord Diplock continued:

> "The assessment is made upon the same basis as that upon which damages for breach of contract would be assessed if the undertaking had been a contract between the plaintiff and the defendant that the plaintiff would not prevent the defendant from doing that which he was restrained from doing by the terms of the injunction: see Smith v Day (1882) 21 Ch D 421, *per* Brett LJ, at p. 427."
> (Quotation checked)

14. It follows, as is uncontroversial, that I have to apply the same rules of causation and remoteness as

would obtain in a claim for breach of a contract such as that described by Lord Diplock. Lord Diplock's formulation was of course addressed to a negative injunction. Where, as in the case of a disclosure order, one is concerned with an order to do a positive act, the equivalent task of the court would be to ascertain the loss on the basis of a notional contract that the claimant would not compel the defendant or, as the case may be where relevant, a third party, to perform the act the subject of the order, in effect and, more shortly, the loss resulting from the defendant or a third party such as a bank having done that act under the compulsion of the order, subject again to the same requirements of possession and remoteness as would apply in a claim for breach of such a contract.

15. Against this background, I turn to the various heads of loss advanced by the defendants.

16. (1) Expenses of setting aside the order.
(a) On 10th August 2003 the first defendant flew to London from Nigeria to deal with the order and, in particular, to apply for it to be set aside. He remained in London until 24th August 2003, a period of two weeks. He claims the cost of his airfare, accommodation and living expenses. Expenditure incurred reasonably to avoid or reduce loss which would otherwise have occurred is recoverable in a claim for breach of contract and is, therefore, recoverable under the cross−undertaking. The first defendant can, therefore, recover the cost of his airfare, for which there is a receipt from the travel agent in the sum of US$3,601. The first defendant is further entitled to the reasonable cost of accommodation and living expenses. He has not, however, produced vouchers covering more than a few days of his stay, but I am prepared to order an allowance of £200 per day. The order was discharged on 15th August and I do not, therefore, consider that a further week's stay in London can properly be regarded as expenditure to avoid loss caused by the order, though I will accept a further delay of two days. I therefore propose to order payment of accommodation and expenses of £200 for the nights of 10th August to 17th August inclusive, i.e. 8 x £200, which equals £1,600. It is suggested that the further week's stay after 15th August was necessary to procure the unblocking by JP Morgan of the Redsear bank account, but the bank's reason for not unblocking the account was not caused by the order. The order froze the accounts of the third defendant, Redsear, until its discharge on 15th August 2003. JP Morgan was informed of that discharge almost immediately that day, but continued to block funds until 22nd October. That action was, however, nothing to do with the order. The problem was that the claimant's solicitors had informed JP Morgan that they acted for Redsear and that there were also interpleader proceedings on foot. It was not until mid October that the bank was assured that the interpleader proceedings were unrelated to the funds in the Redsear account, and it then released the monies. Accordingly, any loss caused by blocking the funds after the discharge of the order on 15th August and its almost instantaneous notification to JP Morgan was not caused by the order or covered by the cross−undertaking.

17. (b) The first defendant also caused Mr Lanchester to come from Lagos. I accept that, as a director of Redsear and with special knowledge of its affairs, it was reasonable for the third defendant to have to come to London. The third defendant can therefore recover his airfare, for which there is also a receipt from a travel agent in this case in the sum of US$3,614, and living expenses for 10th to 17th August, following the same reasoning as for the defendant, i.e. living expenses totalling £1,600.

18. (c) The first defendant also caused his Nigerian lawyer to come to London to attend meetings with the English solicitors and counsel in London. Given the basis for the application to discharge the order, namely non−disclosure by the claimant of the dispute and litigation in Nigeria, I accept that this was a reasonable course of action and that the first defendant should, in principle, be entitled to recover the costs of reasonable fees and expenses. The first defendant told me that the lawyer's bill was £12,900. Regrettably, neither his fee note nor any other documentation is produced to support this. I have no information as to how many days he was employed, or the basis of his charges. Nor do I know what, if any, expenses are included in the £12,900. In the circumstances, I will award the cost of the airfare in the sum of $3,614, for which again there is a voucher in the form of a receipt note from a travel agent. I am prepared also to order £200 per day for the period

of his stay. In the absence of any evidence as to the length of his stay, I have taken a period of five days, making £1,000. In the absence of any fee note showing the sums payable to the Nigerian lawyer and of any documentation showing its make−up, I feel unable to make any award at present in respect of what are said to be the lawyer's fees. I am, however, prepared to give the first defendant a period of 14 days to produce contemporaneous documentation to fill this gap. I stress that I am referring to a fee note or other material produced at the time. If that is done, I will consider what further award may be appropriate.

19. (d) On 15th August 2003 the second defendant, Mrs Chinye, flew to London and remained there until 24th August. By 15th August the application to set aside the order had been fully prepared and was presented that morning when the order was discharged. I cannot see that the defendant's flight on that date and her stay throughout the following week was expenditure incurred reasonably or at all to avoid loss caused by the order. I therefore make no award under this head.

20. (2) Damages for loss of post as the executive chairman of IMB
On 9th August 2003 the claimant's Nigerian lawyer wrote to Mr Adigwe, the then incoming managing director of IMB Bank in the following terms:

> "Dear Sirs,
> Do please find enclosed an order of injunction regarding Mr Edwin Chinye and his role with Redsear/Zumax. We forward same for your guidance and to put you on notice that there are some complex issues arising that should be of interest to the bank."

The second paragraph is not relevant. The third paragraph continues:

> "My clients have tried in good faith to settle the matter, but it appears your bank and Mr Chinye are disposed to destroy their business after the pillage that has occurred with their funds through your ex−MD Mr Edwin Chinye. Also find enclosed here settlement terms that Mr Chinye and my clients have proposed to the bank as a way of resolving the problem. We now understand that Mr Chinye now wishes to withdraw from the terms he had earlier agreed to. This effort is intended to give you an opportunity to intervene constructively to ensure your interest is protected in the course of this sorry saga."
> (Quotation unchecked)

That letter enclosed, *inter alia* , the order made by Evans−Lombe J .

21. In addition, at least some of the JP Morgan documents, i.e. the documents disclosed pursuant to the order of Evans−Lombe J (or which would have been pursuant to that order had it not been suspended), were, by 15th August 2003, sent to the then chairman of IMB's board, and some thereafter to another member of the board. In paragraph 29 of his witness statement dated 2nd February 2004 the first defendant gave evidence as to the loss said to have resulted from these events as follows:

> "By reason of (1) the making of the order of Evans−Lombe J, (2) the advertisement and (3) the publication and dissemination by and on behalf of Chief Uzor [the claimant] of the JP Morgan documents, the defendants have suffered loss and damage as follows.
> (a) I am by profession a banker. Since 1994 I have been managing Director and Chief Executive of IMB. As such I have an annual salary of 20 million Nigerian naira [approximately £40,000].
> (b) In September 2003 I was due to be confirmed by the board of IMB as the new executive chairman of the bank. As a chief executive I would have received a salary increase of at least 25% plus benefits for a minimum of five years, but would not have received expenses for attending board meetings, effectively a salary increase of approximately £6,000 per annum.
> (c) Following the advertisement and after perusing the JP Morgan documents, the chairman of the bank has instructed me to withdraw from my proposed position as

executive chairman of the bank. In a letter to me dated 3rd September 2003×"

I pause to interpose that that is exhibited to the evidence before me.

"×the chairman stated:

> 'Dear Mr Chinye,
> Re court order/injunction and JP Morgan documents. I refer to several discussions in respect of the above and, after consultations with other members of the board, I wish to inform you that you should immediately withdraw from being the executive chairman of the bank, a position for which you had been short listed and the only candidate for consideration at the next board meeting. We believe the embarrassment caused to the bank by the recent London court publication concerning your good self, as well as the JP Morgan document circulated to all board members by persons acting on behalf of Chief Uzor and Mr Nduka Ize, have done extreme damage to the reputation of the bank and yourself. You may apply for the position of non−executive chairman, which carries no remuneration. I regret the resultant loss of income, but you must understand this is my best decision in the circumstances.'
>
> (d) In the circumstances, by reason of the advertisement and/or the dissemination and publication to a member of the board of IMB of the JP Morgan documents, I will not become the new executive chairman of IMB and accordingly will lose the salary increase of effectively £6,000 per annum for the next five years, a total of £30,000."
> (Quotation unchecked)

22. His oral evidence was not exactly the same, in that he told me that he had already given up his post as managing director and chief executive. It is unclear why, in that event, he made the witness statement referring in the present tense to having an annual salary of 20 million Nigerian naira, or why he restricted his claim to the effective difference between the remuneration attached to the two posts of £6,000 per annum, according to the witness statement. Counsel for Mr Chinye did not, however, amend to recover the full amount of the salary as executive chairman. Mr Chinye also told me that there was no prospect of him obtaining alternative employment. There were no posts as executive chairman in the banking profession, and he was over qualified for any other position. He told me that he would, therefore, live off his savings.

23. This part of the defendants' claim faces many difficulties. (1) Even on its face, the letter lacks credibility as a true record of what happened. (a) The letter suggested that the bank would suffer by association with the first defendant as a result of (1) the publication of the order and (2) the circulation of JP Morgan documents to members of the board. But that was inconsistent with the stated willingness of the bank to accept the first defendant as non−executive chairman, albeit unpaid. In both cases, executive or non−executive, the first defendant would be chairman of the bank and occupying a flagship position in the bank. (b) As regards the JP Morgan documents, there was no suggestion, let alone evidence before me, that they contained material which reflected badly on the first defendant and could, therefore, affect his reputation, or hence, by contamination, that of the bank. Moreover, it is impossible to see how the *bank's* reputation could suffer by the circulation to it of the document disclosed by JP Morgan.

24. (2) For the reasons I have just mentioned, I do not consider that the letter is a reliable basis for finding a positive link between the disclosure of the JP Morgan documents under the order and any failure to obtain the paid chairmanship.

25. (3) The other suggested basis was that that failure to obtain the paid chairmanship was caused in part by the publication of the order. Even if that had been established by credible evidence, it would not have fallen within the cross−undertaking. As is clear from Lord Diplock's formulation,

the loss for which a defendant is to be compensated is that which results from his being unable to do that which is prohibited by the order, or, equivalently, in the case of a positive order, the loss flowing from the act which the defendant or a third party has been compelled to perform. The court is not concerned with the fact of the order but with its content and substantive effect. Loss covered by the cross−undertaking in the case of a freezing order is the loss resulting from the inability to use the frozen assets, and, in the case of a disclosure order, loss resulting from the disclosure. But the cross−undertaking does not extend to the injury to reputation or any loss consequential thereon which is caused by the mere fact that a freezing or disclosure order has been made. Such loss does not result from compliance with the order. Accordingly, even if I were to accept that the making of the order and its publication were the cause of the decision by IMB not to appoint the first defendant, this would not be covered by the cross−undertaking.

26. (4) In addition to causation, the first defendant would have to establish that the loss was not too remote, in other words, that this type of loss was reasonably within the contemplation of the claimant. I am not satisfied of this. There is no material which would justify me in finding that the claimant should have had in mind as a reasonable possibility that the first defendant might not be appointed to the position as executive chairman of the bank, as a result of the court order having been made, or, even more broadly, that either the freezing of the first defendant's assets or the compelled disclosure of the documents by the bank or even the making of the order might result in loss of employment or potential employment.

27. In the light of these considerations, I am unable to accept the first defendant's claim under this head. It is therefore unnecessary for me to consider yet further hurdles which it would face, in particular (1) whether the first defendant could have any claim on the cross−undertaking arising out of the disclosure of documents belonging to the third defendant, and (2) what the proper quantum of the claim might be having regard, *inter alia* , to (a) the fact that the appointment of the new executive chairman still had to be made by the board, and (b) the duty of the first defendant to mitigate any loss.

28. (3) The position of the church
Reliance was placed on a letter to the first and second defendants dated 4th September 2003. It is a letter written by the Reverend Andy Nwozo, who is a cleric within the church to which Mr and Mrs Chinye belong in Nigeria. In that letter he says:

> "I write this letter on behalf of our church and elders. We are highly disappointed at the publication contained in the This Day newspaper regarding you and sister Mrs Chinye. We also received some handwritten letters and documents between you and your bank, JP Morgan Chase London. The church is very embarrassed by these publications and, as a senior member of the church and a highly respected governing member, it is very important you clear your name before the church. Our sister, Mrs Chinye, should do the same too. Please treat as urgent."
> (Quotation unchecked)

This letter invites scepsis. No doubt the first and second defendants would have met with these church friends and have had an opportunity to explain matters. It is highly probable that they would, as they certainly should, have been informed that the order had been discharged. Accordingly, the reference in the letter to the Chinyes clearing their name is hard to comprehend.

29. Moreover, as I pointed out earlier, damage flowing from the mere fact that the order has been made, as opposed to its substantive effect, is not within the cross−undertaking. So far as references are made in Mr Nwozo's letter to the JP Morgan documents, again I stress that there was no suggestion before me that these documents contained anything to reflect negatively on either Mr or Mrs Chinye. In the circumstances, I hold that no entitlement to recovery has been established under this head.

30. (4) General damage to reputation
There are other passages in the witness statement of the first defendant as to embarrassment and

possible loss of reputation in Nigerian society. If so, this could only have been caused by the publication of the order and would, therefore, fall outside the ambit of the cross−undertaking, for the reasons I have already outlined above.

31. (5) Freezing of the Redsear bank account
The defendants described an act of serious vandalism on board one of Redsear's oil platforms on 16th August 2003, probably requiring an estimated £500,000 to repair, and the third defendant sought to recover this sum under the cross−undertaking. It was suggested that the damage was caused by disaffected workers who had not been paid their salaries and, implicitly, that this was due to the blocking of the account up to and including the morning of 15th August. I have to say that this suggestion is no more than that: pure speculation, unsupported by any evidence worthy of the name. Even if true, I would have been unable to treat the freezing of the Redsear bank account as the operative or effective cause of the damage to the rig. Finally, such damage is plainly far too remote. It could not fairly be regarded as reasonably in the contemplation of the claimant that the freeze would result in the vandalism of an oilrig, or even, viewed more widely, would result in damage to company property.

32. (6) Exemplary damages
Counsel for the defendants drew my attention to a large number of respects in which the claimant's conduct of these proceedings and his failure to comply with court orders was open to serious criticism. In addition, it can be said that the circumstances in which the order was obtained *ex parte* from Evans−Lombe J, as described by Pumfrey J, represented an egregious abuse of process. I was asked to make an award of exemplary damages to mark the court's disapproval of these matters.

33. I was referred to a number of passages of obiter dicta in which judges in the past have opined on the question whether exemplary damages can be awarded on a cross−undertaking. In particular I was referred to Hobhouse LJ in Berkeley Administration Inc v McCelland [1995] ILPR 2001 217 to 219; to Nicholls V−C in Universal Thermosensors Limited v Hibben [1992] 1 WLR 840 at 858; to Brett LJ in Smith v Day 21 Ch D 421 at 428; to Scott J in Columbia Picture Industries Inc v Robinson [1987] Ch 38 at 87 to 88; and to Falconer J in Digital Corporation v Darkcrest Limited [1984] Ch 512 at 516.

34. Ultimately, however, I am not assisted by these passages. Firstly, none can be said to represent a systematic analysis or discussion of the topic. Secondly, they point in contrary directions. Thirdly, and most fundamental, all these passages were addressed to the old form of cross−undertaking, under which the plaintiff undertook "to abide by any order that the court may make as to damages, in case the court shall hereafter be of the opinion that the defendant shall have sustained any by reason of this order which the plaintiff ought to pay". Since the introduction of the Civil Procedure Rules, the required form of cross−undertaking has changed to that included in the present case, namely:

> "If the court later finds that this order has caused loss to the respondent and decides that the respondent should be compensated for that loss, the applicant will comply with any order the court may make."

35. Whatever the position under the more ambiguous earlier form, it is my view clear that the new form of undertaking is concerned solely with compensation for actual loss. But, as Sir Thomas Bingham MR expressed it in AB v South West Water Services Limited [1993] QB 507 at 528, exemplary damages

> "are not paid to compensate the plaintiff, who will be fully compensated by the ordinary measure of damages. They are paid to punish or deter the defendant, to mark the disapproval which his conduct has provoked. For the plaintiff such damages represent a bonus, an addition to the sum needed to compensate him fully for the loss he has suffered as a result of the wrong done to him."
> (Quotation checked)

36. Of course there may be contexts in which the word "compensate" is properly to be given a wider meaning. In Lancashire County Council v Municipal Mutual Insurance Limited [1996] 3 All ER 54, the defendant insurer provided liability insurance to the defendant, which covered all sums which the insured might become legally liable to pay as compensation for, *inter alia* , wrongful arrest, malicious prosecution and false imprisonment: all situations in which exemplary damages are prevalent and single lump sum awards may cover both ordinary and exemplary damages. Not surprisingly, the policy was construed as covering the liability to be the exemplary damages ordered by a court. In the present case, the context does not compel or even point the court to a similar result. On the contrary, the undertaking explicitly refers to loss and compensation for that loss. Those words cannot properly be interpreted as including damages not payable for a loss. If exemplary damages were available, I am far from clear that all the matters relied upon by the defendant in support of an award would be properly relevant, but, on the assumption that they were, I would have made an award of £5,000 under this head, to be divided equally between the three defendants.

37. (7) Aggravated damages
In the alternative, it was said that I should order aggravated damages. These are compensatory damages awarded for injury to feelings. Like all other forms of loss, they would, for reasons I have already rehearsed above in relation to other heads of suggested loss, have to result from either (a) the inability of the defendants to use their frozen assets, or (b) the disclosure of the JP Morgan documents. The various breaches of orders and undertakings or the abuse of process in obtaining the freezing and disclosure orders are outside the reach of cross−undertakings.

38. As to (a), I am not satisfied on the evidence before me that the inability to operate any of the accounts gave rise to damages to feelings of the first or second defendant. As to (b), I repeat that no one has suggested that JP Morgan documents contained anything derogatory of the defendants. Nor does the evidence establish that the mere fact of disclosure of those documents caused injury to the feelings of the defendants. Even if there were the necessary causative link, I consider the loss would be too remote, i.e. could not fairly be regarded as being a type of loss within the reasonable contemplation of the claimant.

39. Finally, the Particulars of Claim and the first defendant's witness statement advanced a claim for damages for breach of the Data Protection Act. Whatever the merits of such a claim (on which I express no view), it was plainly not a matter which fell within the confines of an enquiry as to damages on the cross−undertaking and counsel for the claimant rightly did not pursue it further.

40. I therefore award the following: the first defendant's airfare of US$3,601 plus £1,600, and in respect of the Nigerian lawyer, $3,614 in respect of the airfare and £1,000 in respect of living expenses. As I also indicated earlier, if proper contemporaneous documentation is produced within 14 days, I will consider whether I can properly make a further award under this head. So far as the third defendant is concerned, I will make an award in respect of Mr Lanchester of his airfare of $3,614 and accommodation and living expenses totalling £1,600.

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