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IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION Case No: **HQ14X02231**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11th March 2016

Before :

HIS HON. JUDGE CURRAN QC
sitting as a Judge of the High Court

- -

Between :

TATA CONSULTANCY SERVICES LIMITED

Claimant

-and-

PRASHANT ASHOK SINGH SENGAR

Defendant

David Craig QC (instructed by Mishcon de Reya LLP) for the Claimant.
The Defendant in person.
Hearing dates:1st, 2nd & 3rd February 2016

Judgment
(As Approved)

Judge Curran:

Abbreviations

The following abbreviations are used throughout the papers in the case, and also appear at various points in this judgment.

TCS	Tata Consultancy Services Limited

ICT	Intra-Company Transfers
SOC	Standard Occupational Classification
COS	Certificate of Sponsorship
NQF	National Qualifications Framework

This judgment is divided into discrete topics as follows.

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The Claimant Company

1. The Claimant company, which I shall refer to as "TCS", is part of the well-known Tata Group ("Tata"), one of India's largest conglomerate businesses, which is also a multinational concern. TCS was established in 1968 as a division of one of the companies in the group, and it was incorporated as a separate entity in 1995 in India.

2. It is common ground that TCS is one of the leading information technology ("IT") businesses in the world, a consultancy providing IT services, 'business solutions' and consultancy services to some of the largest companies in the world. TCS has approximately 300,000 staff from over 100 different nationalities working in 46 different countries. It has operated in the UK and Ireland for more than thirty years and was registered in the UK as an overseas company in 2004. Some 7,000 members of staff at any given time work at roughly 65 client sites to provide on-site IT services to clients in the UK & Ireland.

The Defendant

3. At the time of the beginning of the material events in this case, the Defendant, Mr Prashant Sengar, was working as the owner and manager of a restaurant in Leamington Spa. At that time, some members of staff at TCS who were working in the Leamington Spa area became customers of the restaurant. Mr Sengar said in his witness statement, which formed the basis of his evidence in chief, that those employees of TCS had arranged corporate events at the restaurant as well as making visits on a personal basis. He did not go into detail, but it is clear that he learned something of the business of TCS.

The Defendant's job application

4. In time Mr Sengar came to make an application for a job with TCS. In April 2014, Mr Sengar was unsuccessful in interviews at TCS's Leamington Spa office. In a document headed *"Technical Interview Assessment"* dated 17 April 2014, under *"Recommendations"* it was said that the decision was made not to offer the defendant the job on the ground that he lacked the necessary skills, knowledge and relevant experience. It was said that he had,

> "*... no experience in managing infrastructure specific to an IT company and IT projects. He lacks key domain and subject matter knowledge hence, will not be able to manage audit, health and safety management on a singular basis and without significant additional support that this role cannot provide the luxury of providing. ... .*"

5. The Defendant was both disappointed and extremely aggrieved about that decision. He would not accept that he was not offered the post on merit. He came to the view, he says, that the true explanation was that in order to save money TCS was unlawfully employing its own staff from India on Tier 2 ICT (Intra-Company Transfer) visas, rather than employing British nationals. Indeed, the Defendant asserted that he had been told this by the individuals who had interviewed him for the role on 17 April 2014, a Mr Gandhi and a Mr Renganathan.

The emails from the Defendant in the period April – June 2014,

6. What follows under this heading, in terms of primary fact, is common ground.

7. Mr Sengar's rejection prompted an email from him to a Mr Riyali (copied to a Mr Pandit) on 26 April 2014. In that email Mr Sengar informed the company that

> *"... it is my intention to file a claim against TCS for Discrimination, Promissory Estoppel and Breach of Tier 2 ICT visa.*"

(As a matter of fact four days or so later, he made a pre-action disclosure application, with the stated intention of bringing proceedings, issuing the application in the

Birmingham County Court, and seeking an order that TCS comply with his disclosure request.)

8. A series of other emails from Mr Sengar to TCS or to Tata followed, beginning on 1 May 2014. Mr Sengar emailed Tata's Chief Executive Officer and Managing Director, Mr Natarajan Chandrasekaran, as follows.

> *"Firstly, I am sorry to write to you directly about the potential claim that I intend to bring against TCS in UK. Like many Indians, I have always followed the success of Tata and like millions consider Mr. Ratan Tata as my mentor and have lot of respect for him. It is due to this fact that, though I have far better legal remedy available here in UK, I thought will write to you independently. …. Knowing how important and valuable your time is, I will like to nail down the issue for you. Presently TCS Employs many people on Tier 2 ICT. One of the conditions of this visa is that the job must be for skilled migrants and not for the position which can be filled by local and EU residents. It is very clear that presently TCS employs many of them under these visas and they are performing jobs which can be filled using local resident.*
>
> *"As you will be aware that this is a goldmine case for many Lawyer firms and especially knowing that a previous case like this was settled for $30 million in US. It is not my intention to drag heels and put TCS through a mess but I need to do what is right for me and in an ethical sense. It is completely unfair that 7 months of my time was wasted and I was subjected to Discrimination and Promissory Estoppel. I must point out that I have had an opportunity of meeting two of your best team members (Satya Riyali and Ananad Pandit) but guess this is a bigger problem for them to handle and thus this email was sent to you directly. I just hope common sense will prevail and we can find an amicable solution for this issue."*

9. That email was followed by a further email from him two days later, on 3 May 2014, again to Mr Chandrasekaran. This

email was marked "without prejudice." In the light of the content of that email, at the hearing of an application for an interim injunction the Court ruled that it was admissible evidence. No issue arose over its being treated as an open communication in these proceedings. In view of its terms, and the context within which the issues over confidential information arise in this case, that was not surprising. It reads as follows.

> "*I write further to my open email dated 1 May 2014. In that email I set out my grievances and you should be aware that I am more than willing to pursue this matter to tribunal or civil court in the absence of swift resolution.*
>
> *"I have taken some legal advice and the only reason that I have not contracted my case to a law firm yet, is because they want to capitalise on this issue by involving media and will be asking for huge ransom for the victimisation, loss of time (7 months) and promissory estoppel from TCS.*
>
> *"I have been informed by the law firm that they have spoken to some national newspaper and news channel and want me to give them interview and evidence that I hold on Wednesday, 7th May 2014. In their opinion due to the fact that immigration is very hot topic presently in UK and also due to the fact that UKBA IT contract was awarded to TCS, it will be good news for them. It may sound like I am laying foundation down for a good bargain, but surely that's not my idea!!! I seriously don't want to go down that route as I believe things can still be put right.*
>
> *"On a purely commercial basis, and for swift resolution, I would be prepared to reach an agreement on the basis that 2 of my conditions are accepted. The two conditions being:- 1) I would be offered the position of VMO Manager (a position which was offered to me in the first place and was asked to join from 2nd January 2014) at annual CTC of GBP 55K plus perks on permanent basis with TCS UK. I would be assured that I would not be victimised for bringing claim against the company. 2) Within reasonable time*

TCS will move all the present support staff performing roles within Administration, HR, Legal and all other areas where local residents can be easily employed. It will form a committee who would ensure that in future we don't breach the Tier 2 ICT regulations.

"I am sure you will agree that this is a very reasonable and practical solution to resolve the present situation. Provided we can reach an agreement on this basis I will agree to drop the application and that will be the end of the matter. I still believe that some people that I will have the opportunity of working (including Mr. Satya Ryali and Mr. Anand Pandit), will give me a great platform to learn and have wonderful experience.

"I hope you can see that in spite of the application brought in the court (I had no control over it!); I am genuinely not trying to exploit the situation for financial gains or to blackmail anyone. I just want to be given the opportunity which I was promised in the first place and hope that I can prove to you that I was worth it! It is very important and I STRESS that I hear back soon as comes Tuesday it will be a completely different ball game all together once the law firm is instructed and [I] end up giving interview to the Newspaper. I hope to hear in very near future."

10. An email was sent to the defendant on 4 May 2014 by Mr Graham Buckley, Tata's Head of Employment Law and Employee Relations for the UK & Ireland, in which he explained that Tata had undertaken an internal review of the matters raised by Mr Sengar in his emails and other communications. Mr Buckley said:

"We have concluded that the allegations you make are false. I also understand that the claims you are asserting have no legal basis and can not be supported by facts. Please understand that you will not be offered a role within TCS and any legal claims that you pursue will be strongly opposed and defended with costs pursued as appropriate. As you yourself have noted in your previous mails, TCS, like all TATA companies have its own reputation and attach great

importance to it. We will not hesitate to go to any extent in defending our reputation. Your correspondence suggests that you may be planning to engage in activities aimed at maligning or attacking our reputation. Please be advised that we will also pursue action for defamation in appropriate circumstances. Please direct any and all future correspondence in this matter to my attention only."

11. Mr Sengar ignored Mr Buckley's last request, and, instead, on 6 May 2014, sent a further email to Mr Chandrasekaran, in which he said:

> *"Further to my exchange of correspondence with Head of Employment Law and Employee's Relationship, I am writing to you with some concerns and surprises that I have faced. Following raising my grievances that I faced, the least I expect was to be treated fairly and to my surprise I received an email from Mr. Buckley who alleged that my allegations were 'False and Baseless'.*
>
> ...
> *"Is this how complaints for getting unfairly dealt with, discrimination, etc complaints are dealt with. Whilst I expect no mercy or some lovely exchange of correspondence from your legal department, I would have thought that people will at least be reasonable and try and get to the bottom of the problem. But guess, using hard hand tactics works better for TCS....*
>
> *"All that is left to do now is to sign off this email and say that whilst I no doubt will seek the legal remedy available to me, I just hope and pray that in future TCS will resolve grievances in more reasonable and independent way."*

12. Mr Sengar then forwarded this email to the chairman of the whole TATA Group, Mr Mistry, the same day, with the following message:

"My apology for writing directly to you and whilst I appreciate Mr. Chandrasekaran is or may be handling this matter, I still thought will involve you in loop. I will request that you spend some of your valuable time to read through the email sent to Mr. Chandrasekaran on the even date."

13. On 18 May Mr Sengar sent another email to Mr Chandrasekaran. In it he said,

> *"…. So without wasting time let me bring some very important facts here:- I have managed to get a full list of employees presently working in UK and America and have selected few for your reference.... As you are aware that Tier 2 ICT can only be applied for Skilled workers over NQF Level 6 and the SOC provides full details of the job that can be undertaken.*
>
> *"This is just a sample and I have a list of 1023 employees just in UK who have been employed in Breach of Tier 2 ICT. I could have easily spoken to one of your HR Manager but don't want to be giving out any wrong signal.*
>
> *"It is completely your choice how you want to deal with this information but must stress that some people will be very keen to get this of me. Does this mean that I am trying to play dirty!!! I have no intentions of doing this and will write to you with a remedy once I hear directly from you...."*

The Tier 2 Migrant Scheme and the National Qualifications Framework

14. The references to Tier 2 and to NQF require brief explanation. Under the United Kingdom's Immigration Rules, "Tier 2" provides a route enabling UK employers to employ nationals from outside the resident workforce to fill particular jobs which cannot be filled by settled workers. A skilled worker in any Tier 2 category must not displace a suitable settled worker. The categories relevant to this case are sub-divided as follows (with underlining added.)

"This route enables multinational employers to transfer their existing employees from outside the EE to their UK branch for training purposes or to fill a specific vacancy that cannot be filled by a British or EEA worker. There are four sub-categories in this route:

(i) Short Term staff: for established employees of multi-national companies who are being transferred to a skilled job in the UK for 12 months or less that could not be carried out by a new recruit from the resident workforce;

(ii) Long Term staff: for established employees of multi-national companies who are being transferred to a skilled job in the UK which will, or may, last for more than 12 months and could not be carried out by a new recruit from the resident workforce;

(iii) Graduate Trainee: for recent graduate recruits of multi-national companies who are being transferred to the UK branch of the same organisation as part of a structured graduate training programme, which clearly defines progression towards a managerial or specialist role;

(iv) Skills Transfer: for overseas employees of multi-national companies who are being transferred to the UK branch of the same organisation in a graduate occupation to learn the skills and knowledge they will need to perform their jobs overseas, or to impart their specialist skills to the UK workforce."

15. Tier 2 effectively replaced the previous "work permit" route for skilled foreign workers. Employers who are considering the recruitment of foreign workers have to follow a procedure which includes a sponsorship scheme, and must provide any such proposed worker with a Certificate of Sponsorship. It is necessary for the UK employer to register with the home Office as a sponsor, and to be granted a sponsorship licence which authorises it to issue Certificates of Sponsorship to the proposed recruit. Under the rules relating to any individual's

qualification for a Tier 2 category, minimum skill levels are required which are assessed by reference to the comparative requirements of the National Qualifications Framework (the "NQF").

16. The NQF has apparently now been replaced, but at the times material to this case it was a system which, amongst other features, permitted the comparison of different kinds of qualifications in England, Wales and Northern Ireland. It graded various qualifications according to nine levels from "Entry level" to "Level 8". For example, GCSEs at grades A – C equate to NQF level 2; a first degree, such as a BA, equates to Level 6; a Master's degree to Level 7 and a doctorate to Level 8. Tier 2 skilled workers were required to show qualifications of NQF Level 6 and over.

17. Mr Sengar accepts that, having acquired TCS employees' details by clandestine means, which provided him with their company employee registration numbers, their names, UK locations and roles, he added what he said was their NQF Level. His position was that each of the Tier 2 employees had only NQF level 3 qualifications, and that therefore TCS was engaged in conduct which was in breach of the Immigration Rules. TCS has always firmly maintained that Mr Sengar was (and is) completely wrong about this. TCS has also always maintained that the NQF information is not information which Mr Sengar can have obtained from his source.

The application to the Employment Tribunal claiming discrimination

18. On the 8th July 2014 Mr Sengar brought a claim against TCS in the Employment Tribunal alleging that he had not been offered the job as the result of unlawful discrimination. This claim was made on alternative bases. First, he claimed to have been subject to direct discrimination on the ground of his race. That claim was struck out, it seems as having no reasonable prospect of success: see trial bundle volume C, p. 354 at paragraph 2.

19. Alternatively, he claimed indirect discrimination based on the allegation that TCS was employing migrant workers from India in preference to UK/EU workers. That claim was dismissed by the Tribunal in July 2015 volume C at pp. 356-

385. In its judgment, the Tribunal accepted the evidence of TCS staff who gave evidence before them that they had not told the Defendant that TCS employed individuals on Tier 2 ICT visas because it was cheaper to do so. The tribunal rejected the Defendant's evidence to the contrary: volume C at p. 370. The tribunal also observed that in respect of the Claimant's use of Tier 2 ICT visas, the UK Visa & Immigration Authority were satisfied that TCS was operating an appropriate process correctly, so far as the Home Office was concerned: volume C at p. 364.

Ultimatix

20. The information concerning Tata employees in the UK and the US to which Mr Sengar had obtained access was contained on Tata's computer database known as *Ultimatix*. Again what follows in respect of the facts relating to that database is uncontroversial.

21. Mrs Mallick, the Head of Human Resources ("Human Resources") for TCS in the UK, explained in her witness statement that the information on the Ultimatix system concerns every member of Tata staff in the UK and the USA, and it is not information which is in the public domain. It is information which can only be accessed by Tata personnel using their unique staff number and a password. This is made clear by the first page of the relevant website, where it is clearly stated that *"Entry to this site is restricted to employees and affiliates of Tata Consultancy Services Limited"*. Indeed, as Mr Sengar admitted in his witness statement, he had obtained the information from somebody who works for Tata, although he has not identified that person.

22. At the Birmingham County Court a hearing had been ordered of the application by Mr Sengar for pre-action disclosure. In an exhibit to his witness statement sent on 23 May 2014 to TCS in respect of that application, Mr Sengar stated that he had in his possession a number of documents in support of his assertion that TCS was in breach of immigration rules, and that he had *"attached a few of these examples"*. He continued,

> *"I will have the others on the file along with me on the date of the hearing in case if the Honourable judge*

will like to have a look. I have list of more than 500 migrant worker [sic] presently deputed to UK [sic] working on roles which are under NQF Level 4 and NQF Level 3."

23. The last 13 pages of the exhibit were extracts from TCS's Ultimatix database. They are labelled *"copyright © 2014 Tata Consultancy Services"* Any download or printout from Ultimatix will have the full name and unique employee number of the member of staff accessing the information on the top right hand corner of the page. The extracts produced by Mr Sengar have been redacted to conceal the identity of the individual who had accessed the information and passed it on to Mr Sengar.

24. Ultimatix is TCS's bespoke internal IT platform. Mrs Mallick's unchallenged evidence was that it represents the single biggest IT investment that TCS has made. TCS continues to invest in it. Its system is used worldwide to consolidate internal systems and take advantage of internal knowledge. It contains business management software in the form of a suite of integrated applications which TCS can use to collect, store, manage and interpret data across many business activities including HR, project management, finance, invoicing, marketing and sales and service delivery. It provides an integrated view of core business processes, often in real-time, and is maintained by a sophisticated database management system. Ultimatix also maintains user-specific data relating to its staff, including time sheets, payslips and appraisals.

25. Ultimatix is internet-based and is accessed by staff through a web address. The first page of the site requires visitors to enter a username and password. The Ultimatix software is accessible only by staff of TCS by means of their unique staff number and password. Each password is changed on a monthly basis. The first page of the site also expressly states that *"Entry to this site is restricted to employees and affiliates of Tata Consultancy Services Limited"*.

26. Staff have different security profiles depending on the information they need to access for the proper performance of their duties. The documents produced by Mr Sengar are

part of a sophisticated staff directory which is maintained as a database giving the internal contact details of colleagues, their location, the project or base they are affiliated to and their reporting line.

27. Mrs Mallick said that a huge amount of time and cost goes into the maintenance and development of the Ultimatix platform as a whole, including the creation and maintenance of the staff profiles on the staff database: TCS currently employs approximately 850 employees across the world to work solely on developing and maintaining Ultimatix.

Effects of unauthorised access to Ultimatix claimed by TCS

28. The Ultimatix database supports TCS's global business and its large number of employees worldwide, the vast majority of whom are internationally mobile. As such, TCS's business and operating model is heavily dependent on the Ultimatix system. Mrs Mallick said that access to one or more parts of the database by individuals who have not been granted such access and who do not owe any duties of confidentiality to TCS could be highly damaging.

29. Moreover, the Ultimatix database includes a detailed compilation of data on each and every member of staff of TCS. It is the Claimant's case that if such information were to be passed to a competitor or a head hunter seeking to poach TCS's staff or a team, it could be extremely damaging to TCS's business and the stability of its workforce. Access to this database would also provide a third party with access to a complete set of TCS's client base, which would help third parties to ascertain the relative size and complexity of the projects carried out by TCS for each of its clients, including the particular members of staff working for a client and how TCS arranges the teams of staff that work on particular client projects. All of this information is confidential and could be highly damaging for TCS if it fell into the hands of a competitor, who could use it to offer competing services to clients of TCS.

Evidence of Mrs Mallick relating to the confidential nature of the information

30. In TCS's standard UK contract of employment, which would have applied to Mr Sengar's source (as Mr Sengar

admits that his source was an employee of TCS based in the UK), there is a detailed definition of confidential information, which included the following: "*details of employees, officers and workers of and consultants to the Company or any Group Company, their remuneration details, job skills, experience and capabilities and other personal information.*" This, Mrs Mallick said, reflected the fact that details about TCS's staff is confidential and that it is made clear to employees that that is the case. Clause 13 of that contract details what employees can and cannot do with that confidential information both during their employment and thereafter. TCS's employees and affiliates, the only people permitted to access Ultimatix, are subject to strict duties of confidence. Mrs Mallick gave detailed examples of how the risk that the Confidential Documents could still be used to damage TCS remained today.

31. The confidential information was not in the public domain, in particular, it was nowhere available in the format of carefully collated precise details together stored as part of a sophisticated database.

32. Mrs Mallick made the point that quite apart from the duties upon TCS under the Data Protection Act 1998 to ensure that its employees' personal data is respected and properly protected, TCS was extremely concerned that Mr Sengar had managed to obtain hundreds of pages of confidential documents about its staff.

33. It would have been clear to Mr Sengar, she said, that the Confidential Documents were confidential not only because that was obvious from the nature of the information in the Confidential Documents, but also by such references in the correspondence as that he had "*managed to get hold*" of the information, that some people would be "*very keen to get the information out of him*" .

34. Moreover, it must also have been obvious to Mr Sengar that he had obtained the Confidential Documents unlawfully and that in providing the Confidential Documents to Mr Sengar, the employee in question had acted improperly and in breach of his or her obligations to TCS. This was reflected by the fact that on each page, the identity of the individual who accessed TCS's Ultimatix system has been redacted. It

was also reflected by Mr Sengar's refusal to identify the employee that gave him the Confidential Documents.

35. Mrs Mallick said that the most likely course of events was that the TCS employee in question printed the Confidential Documents from TCS's computers in the office on TCS paper and passed that information to Mr Sengar. This is why in his witness statement Mr Sengar referred to having "*received the documents*".

Mrs Mallick's evidence in respect of the allegations of unlawful immigration practices

36. Turning to Mr Sengar's suggestion that there had been unlawful conduct on TCS's part, in that it was in breach of immigration rules in the way that it used Tier 2 ICT visas. Mrs Mallick first pointed to the judgment of the Employment Tribunal dismissing Mr Sengar's claims of direct and indirect discrimination against TCS, in which it was stated, at paragraph 140, that Mr Sengar *"had not proved any such primary facts or discriminatory practices on the part of the respondent [TCS]"*.

37. Of TCS's approximately 300,000 staff in 46 different countries, approximately 90 per cent are IT consultants or consultants with particular sector expertise (such as retail or banking) who specialise in business analysis, project management and business consultancy, and make up what is known as TCS's global consulting practice. TCS works on a project basis: members of staff are employed in the country in which they are originally hired by TCS, but many of them travel overseas to provide services to TCS's global client base.

38. TCS also employs non-IT consulting staff. These individuals perform support roles such as administration, HR, and legal services. The role that Mr Sengar applied for was such an administrative role. It was not a client-facing role, it was not an IT-consultant role and it was not part of the global consulting practice. In the UK, TCS advertises for and fills the vast majority of these roles locally. In the main, these are permanent UK-based roles and not project-based roles. They do not require the kind of specialist in-depth knowledge of technical matters necessary for performance of the consultant roles.

39. Many of TCS's employees enter the UK from different jurisdictions each year to provide services to TCS's clients in the UK. The majority of these employees require immigration permission to enter and work in the UK, and TCS sponsors these individuals while they are working for TCS in the UK. As such, TCS is registered with the Home Office as a sponsor and maintains a sponsorship licence which enables it to bring employees to the UK with Tier 2 visas. TCS complies with all the Home Office rules in its use of Tier 2 ICT visas, and that is reflected by the fact that TCS is an A-rated sponsor with the Home Office. An A-rating is the top rating that the Home Office can award to a sponsor. TCS has maintained this A-rating for several years.

40. Mrs Mallick said that whilst in his email of 18 May 2014 Mr Sengar alleged that six TCS employees had come to the UK on Tier 2 ICT visas in breach of immigration rules, that was simply wrong. The individuals were all NQF Level 6.

41. When cross-examined by Mr Sengar she was asked about an employee named Sharma who was referred to in the papers as a system administrator, and whether that post was inconsistent with the NQF level concerned, Mrs Mallick said that the defendant was confusing internal job titles with the 'codes' used for certificate of sponsorship purposes. The two are not the same. As an example, she pointed out that the minimum salary which TCS would have had to pay such a person in the UK would then have been £25,000 if he or she were to be transferred from India under the ICT scheme. The document which she was invited to consider (trial bundle p. 196) showed a maximum salary within the UK for such a post of £19,900. It would therefore make no sense to bring a person from India to be paid on a higher salary level than to hire a person here.

42. Asked whether under the ICT scheme a 'Tier 2' salary could be made up of salary in India "plus 40 per cent of allowances" the witness said that that was not permissible. The total salary was calculated by the Home Office. The total amount paid to the employee is the figure used by the Home Office, and if allowances were paid they were considered to be part of the total.

43. The witness's attention was then invited to trial bundle E at p. 71, a redacted copy of a Certificate of Sponsorship for a Tier 2 employee, Abhilash Kelappurath Mohan, and to trial bundle volume C at p. 89, Mr Sengar's email to Mr Chandrashekharan of 18 May 2014, in which he said he had "*managed to get a full list of employees presently working in UK and America, and have selected few* [sic] *for your reference*" one of whom was Mr Mohan, who in the email is shown as having employee number 310600 and his role is shown as "Network/System Administrator (NQF Level 3)." Mr Sengar pointed to the continuation sheet of the relevant Certificate of Sponsorship at trial bundle volume E at p. 72, where, under "Migrant's employment" the job code "1121" suggested that the job was to involve work as a director or production manager in manufacturing, when TCS was a consultancy firm and not a manufacturer. Mrs Mallick was asked to explain that. Her answer was that the relevant client of TCS to whom TCS sent Abhilash Kelappurath Mohan may have been a manufacturer: he would probably have been setting up an IT process for such a manufacturer client.

> *Q In the 12 months beginning April 2013 to March 2014 did you know that TCS issued 63 Certificates of sponsorship under code 1121 for directors/ production managers?*
> *A I don't know.*

44. Mr Sengar then asked Mrs Mallick to look at trial bundle C142, and to confirm that the '1121' code referred to production managers and directors in manufacturing? Mr Sengar repeated the question about Abhilash Kelappurath Mohan and put to Mrs Mallick that there had been a breach of the Immigration Rules because the Certificate of Sponsorship was issued in respect of manufacturing or engineering work and TCS did not work in that sphere. Mrs Mallick's response was as follows.

> *"A We work for Jaguar Land Rover - 500 of our employees work for them in the UK. Rolls-Royce are also clients of ours and both firms are well known as manufacturers and engineers.*

Q In your witness statement at paragraph 14.10 you referred to Somrupa Nath as a Human Resources Executive, whereas the extract from the Home Office Standard occupational Classification for Skilled Workers at C227 shows that 'Human resources and industrial relations officers' are occupations which are 'skilled to NQF level 3'?

A You have the same confusion with internal job descriptions as you have already shown. I refer to all the people in my team as 'HR Executives.' That is not their official job title. We have a very mobile workforce so it is very important for us to maintain our internal competences. If we change their job titles internally based upon the [immigration classifications for skilled workers' jobs] *in various countries we would have chaos."*

45. Mr Sengar then referred Mrs Mallick to trial bundle volume C at p. 299 and Part 6A of the Immigration Rules, and the provisions relating to ICT Migrants, as set out at paragraph 14 above. He pointed to the fact that of the four sub-categories it was only in the second two that there was no requirement of the kind set out in the underlined words referring to a 'new recruit' and suggested that therefore TCS were effectively prohibited from transferring any employees from India under the ICT scheme if the skilled job could be carried out by a new recruit from the resident workforce.

46. Mrs Mallick explained, as she had in her witness statement, that in practice TCS primarily transferred staff from, say, India for use in *operational* consultancy roles, as distinct from administrative roles. Operational staff would effectively be specialists, having been highly trained over many months in a particular job, and often having worked on the development of (for example) business software which may have taken a very long time to devise, implement and perfect. I understood her evidence to be that, in those circumstances, it was obviously not a practical possibility to recruit anyone else, whether from the resident workforce or otherwise, to be trained to do such a job and to carry it out within 12 months. Mrs Mallick pointed to paragraph 30.4 at trial bundle C p. 301:

> "*Because of the nature of* [Tier 2 Intra-Company transfers] *you do not need to carry out a resident labour market test. However, there are requirements unique to all four sub-categories which must be met and migrants must be paid at least the minimum salary permitted for the sub-category under which they will apply for leave.*" (Underlining added.)

Thus, said Mrs Mallick, there was no "resident labour market test" relevant to the posts in issue in this case. So far as non-specialist administrative jobs were concerned, it might very well be possible to find a new recruit from the resident workforce to perform the task required, and it might also be cheaper to employ such a person than to transfer an employee from India, and to pay him or her the minimum salary required for the role by UK law.

Mr Sengar's evidence

47. Mr Sengar said that as he has been serving a prison sentence since last June he had not had the resources to make a witness statement for the present case, but he was permitted to put in a witness statement made for interim injunction application in 2014 as his evidence in chief. Whilst some matters in that witness statement are not relevant to the present proceedings, the following points of relevance may be summarised from it.

    (1) Mr Sengar had run an Indian Licensed Restaurant in Leamington Spa, Warwickshire since August 2010. Employees of TCS had arranged many corporate events at the restaurant and also visited on personal basis.

    (2) He applied for a vacancy "*and was offered a job by TCS*" having attended at their office in Leamington Spa on 3 occasions in November 2013, December 2013 and January 2014, when the position of 'Events and New Facility Manager' was discussed and (he said) was offered to him.

    (3) Mr Sengar accepted that he had in his possession a list of employees who are presently deputed in the UK to work for TCS under Tier 2 ICT on various jobs. However, he contended that those jobs mainly fell below NQF Level 6.

(4) The information was disclosed to him by someone who works for the Claimant. Mr Sengar said that he "... *chooses not to provide any more information about this person, as it is real and genuine concern that the Individual will be subject to isolation and victimisation by the TCS or their employees*." The person who provided the information " ... *did that in good faith, had no personal gains and have been employed by the TCS for past many years*." Mr Sengar was not aware if the information has been disclosed to any other organisation or individual.

(5) Mr Sengar accepted that the printout he held came from 'Ultimatix' but did not accept that the format in which the details had been received by him could be termed confidential or could amount to a trade secret.

(6) He had never attempted to blackmail the TCS with the threat of misuse and disclosure of the employment details of over 1000 members of staff of the Claimant.

(7) Mr Sengar had no confidentiality agreement with the TCS and did not misuse the information provided to the Defendant.

(8) He had no use for the information he had in his possession other than to prove his claim for Discrimination and that the TCS was employing migrant workers in breach of Tier 2 ICT regulations.

(9) Mr Sengar said that he believed that the disclosed information falls within the category of "protected disclosure" under the Public Interest Disclosure Act 1998. "*Breaching the Tier 2 ICT Rules is an offence and against the Public Interest. It is a plain fraud.*" Mr Sengar said that he genuinely believes that the Claimant "*is involved in malpractice of employing migrant workers under Tier 2 ICT for performing roles which are not up to the skill level of NQF Level 6. It is thus [the] Defendant's case that these disclosure were made under 'Public Interest Act 1998' and the purpose for which the information is used cannot be termed as 'misuse' or for*

'blackmail'." (Section 1 of this Act inserts a 'Part IVA' into the Employment Rights Act 1996 and protected disclosures under the terms of that Act include information that a criminal offence has been committed, or that an individual or body has failed, to comply with a legal obligation to which it was subject, or on the ground that information tending to show such conduct is being deliberately concealed.) During the hearing Mr Sengar appeared to accept that while the protections under that Act might be a defence for an employee of TCS who might be categorised as a "whistleblower" it does not apply to anyone who, like himself, has not been an employee of TCS.

(10) To say that the information is very confidential, knowing it has no other value for the Defendant, is "an exaggerated statement." Mr Sengar is not involved in any business which can be classed as competing or employed by a competitor of the Defendant. He had no intention to misuse the information that he holds or held.

(11) The information that Mr Sengar holds does not reveal any personal details of the employees (*e.g.* date of birth, National Insurance number, bank account details, or payroll information.)

(12) When the information came into his possession he "immediately informed the TCS about this."

(13) The disclosed information does not say anywhere that it is 'Confidential' or 'Trade Secret'. In fact this information is available to all or most of the Claimant's employees and it terms of the content of the disclosure cannot be treated as 'Quality for Confidentiality or Trade Secret'.

48. In cross-examination Mr Craig QC began with Mr Sengar's credibility as a witness. In that context Mr Sengar agreed that he had been convicted of seven counts of sexual assaults after a six-day trial. Six separate complainants were the witnesses for the prosecution. He had pleaded not guilty and had said the six women were not telling the truth. He had given evidence which the jury had rejected.

49. Counsel moved to the emails first inviting him to look at the email of 1 May 2014 to Mr Chandrashekharan, and the reference to "a goldmine case".

Q It is clear that you thought your case was worth a great deal of money?

A It was not that -- it was that the activity of TCS in relation to Tier 2 was unlawful. I was saying it could be a goldmine case for lawyers. Lawyers [in the other case] were paid £20 - £30 m.

Q You were making it clear that if there were no "amicable solution" it was going to be a goldmine case?

A No. I was suggesting he contact his employees to get correct information and we then could have an amicable solution. I agree I received no response to that email from him.

Q What do you say about the email of 3 May to Mr Chandrashekharan in which you say you had taken legal advice, but the "only reason that I have not contracted my case to a law firm yet is because they wanted to capitalize … involving media, and will be asking for huge ransom …" so you had been to a law firm and were thinking of asking them to act for you?

A Yes. That was the suggestion that was being given to me. I also spoke to ACAS and they explained that before I did anything I should set out [what I wanted as a job.]

Q Later on in the email you say "I had no control over the [pre-action disclosure] application [to the court.]" But you did?

A No because I told by ACAS I had to make the application before the expiry of 90 days. Time restrictions meant I would lose the opportunity – so I would have no control.

Q You say "I am genuinely not trying to exploit the situation for financial gain or to blackmail anyone" but the last paragraph gives a deadline does it not: "…comes Tuesday it will be a completely different matter." ?

A That is correct.

Q And that if he did not meet the deadline you would go to the newspapers?

A No -- [The question was repeated] A Yes.

Q When you emailed him again on 18 May – you said you had instructed a solicitor?

A I said I would have to, so that I would be taken seriously.

Q So you lied?

A It was not lying - it is a simple tactic that I was using. If I had instructed a solicitor Mr Chandrashekharan would have known because the correspondence would have come from a solicitor.

Q You say have a full list of employees in the UK?

A Yes.

Q More than 293?

A Whatever it was I thought I had full list of Tier 2 employees. I had over a thousand pages – 1,023 employees.

Q Also in America?

A That is a typo.

Q You had not got the information from public sources?

A No. From an employee – he or she gave the information in a different format and copied it onto my laptop.

50. Counsel then moved on to ask about the "NQF" level entries on the documents.

Q "NQF level" is your insertion?

A Yes. Title role checked against code.

Q You did not have the full job description, just a job title?

A No. But job title same throughout the world.

Counsel then asked Mr Sengar about a witness statement filed in the interlocutory proceedings by Mr Himanshu Kumar, who is responsible for all TCS in-house immigration matters, in which he had said, at paragraph 5.5, (a) that Mr Sengar had used the most recent version of the SOC codes rather than the specific SOC guidance at the time that any of the employees on the list was classified, and (b) that the codes change each year and so (c) a role that was classified as NQF Level 6 a year ago may not necessarily qualify as an

NQF Level 6 in the current version. Mr Sengar was asked if he agreed that was correct.

> *A Yes But that was one of reasons this morning that I queried whether those levels NQF 3 were NQF 4 because it changed in 2014.*
>
> *Q At 5.6 Mr Kumar says that it was not possible for you to determine whether any give member of staff is operating at a particular NQF level from the documentation you had. You had job titles, but not specific details of the duties associated with those titles. Jobs are not classified under the SOC according to their titles. Do you agree that is accurate?*
> *A No, although it is right that there are job descriptions and job titles and SOC codes.*

51. Counsel then asked about the email to Mr Chandrashekharan on 18 May when Mr Sengar had said "some people would be very keen to get this of [sic] me?"

> *A It is valuable and people would be keen to get it off me. I agree I expected Mr Chandrashekharan to contact me directly and I would then tell him what I wanted. If I had wanted money I would have asked for money but I just asked for a job.*

52. Mr Sengar was then asked about the form in which he had received the information. At p. 48 of his witness statement he had referred to receiving the "print out": did he agree that those words suggested that someone had printed it out for him? Mr Sengar frankly accepted that the words did indeed suggest that, but that he had in fact received it in soft copy format. He accepted that the material came from the Ultimatix database, but that name meant nothing to him. He said that he himself had redacted the identity of the individual who accessed system. He had done so, he said, because he did not want TCS to identify the person because he had revealed a catalogue of immigration abuses.

> *I am absolutely sure that he would get into trouble. I had not told him it was a goldmine case. A few people in this world work on principles not money.*

Applicable legal principles

Robb v Green

53. In a nineteenth-century case involving a 'customer-list', *Robb v Green* [1895] 2 Q.B. 1, at p.18-19, Hawkins J said,

> "There is one other contention of the defendant's counsel .... that the order-book of the plaintiff contained no more information than might be acquired by reference to directories ...; .... This ... may be true, but it is not so altogether. The order-book contains collected together the names and addresses of purchasers ... spread over the length and breadth of England, Wales, and Scotland. No directory would give this information in this collocation; .... The names of all the customers are collected together in the order-book in a manner not to be found in any other book or paper to which the defendant had access. To him, therefore, the possession of a copy of the order-book would be peculiarly valuable."

Roger Bullivant Ltd v Ellis

54. Nourse LJ in *Roger Bullivant Ltd v Ellis* [1987] ICR 464 Court of Appeal made reference to this case when he said of the card-indexed customer list with which the court was concerned there,

> "[t]he value of the card index to the defendants was that it contained a ready and finite compilation of the names and addresses of those who had brought or might bring business to the plaintiffs and who might bring business to them. Most of the cards carried the names of particular individuals to be contacted. While I recognise that it would have been possible for the first defendant to contact some, perhaps many, of the people concerned without using the card index, I am far from convinced that he would have been able to contact anywhere near all of those whom he did contact.... In my judgment it is of the highest importance that the principle of *Robb v Green* [1895] 2 QB 315 which, let it be said, is

> one of no more than fair and honourable dealing, should be steadfastly maintained."

Saltman Engineering: '*the necessary quality of confidence*'

55. The expression '*the necessary quality of confidence*' seems to have been coined by Lord Greene MR in *Saltman Engineering Co Ltd v Campbell Engineering Co Ltd* (1948) 65 RPC 203 at 215: it meant, he said, that the information in question,

> " ... must not be something which is public property and public knowledge."

Coco v. Clark

56. Megarry J (as he then was) identified the three essentials matters which a party needed to establish to found a claim for breach of an equitable duty of confidence in *Coco v. A. N. Clark (Engineers) Ltd.* [1969] R.P.C. 41, 47. His observations have regularly been approved in subsequent cases up to the highest levels (see Lord Griffiths in *Attorney-General v Guardian Newspapers Ltd (No 2) ("Spycatcher")* [1990] 1 AC 109 at 268; Lord Nicholls of Birkenhead in *Campbell v MGN Ltd* [2004] UKHL 22, [2004] 2 AC 457 at [13]; and Lord Hoffmann in *Douglas v Hello! Ltd (No 3)* [2007] UKHL 21, [2008] 1 AC 1 at [111]). They are as follows.

> "Three elements are normally required if, apart from contract, a case of breach of confidence is to succeed. First, the information itself, in the words of Lord Greene, M.R. in the *Saltman* case (1948) 65 R.P.C. 203 ... must '*have the necessary quality of confidence about it.*' Secondly, that information must have been imparted in circumstances importing an obligation of confidence. Thirdly, there must be an unauthorised use of that information to the detriment of the party communicating it."

Attorney General v Guardian Newspapers Ltd (No 2)

57. In *Attorney General v Guardian Newspapers Ltd (No 2)* [1988] UKHL 6, the history of the law which protects confidential information was reviewed by Lord Griffiths, who said at pp. 14ff., that it was judge-made law, reflecting the willingness of the judges "to give a remedy to protect people from being taken advantage of by those they have trusted with confidential information." Although the terms of a contract may impose a duty of confidence the right to seek a remedy was not dependent on contract: it existed as an equitable remedy.

Lord Griffiths said that the duty of confidence is, as a general rule, also imposed on a third party who is in possession of information which he knows is subject to an obligation of confidence: see *Prince Albert v. Strange* (1849) 1 Mac. & G. 25. and *Duchess of Argyll v. Duke of Argyll* [1967] Ch. 302.

> "If this was not the law the right would be of little practical value....When trade secrets are betrayed by a confidant to a third party it is usually the third party who is to exploit the information and it is the activity of the third party that must be stopped in order to protect the owner of the trade secret."

Lord Griffiths said that the task of the judge is to balance,

> "... the public interest in upholding the right to confidence, which is based on the moral principles of loyalty and fair dealing, against some other public interest that will be served by the publication of the confidential material."
>
> ....
>
> "I have no doubt, however, that in the case of a private claim to confidence, if the three elements of quality of confidence, obligation of confidence and detriment or potential detriment are established, the burden will lie upon the defendant to establish that some other overriding public interest should displace the plaintiff's right to have his confidential information protected."

In the same case, Lord Goff of Chieveley, at p. 28, made the following observations.

> "A duty of confidence arises when confidential information comes to the knowledge of a person (the confidant) in circumstances where he has notice, or is held to have agreed, that the information is confidential, with the effect that it would be just in all the circumstances that he should be precluded from disclosing the information to others. ... I of course understand knowledge to include circumstances where the confidant has deliberately closed his eyes to the obvious. The existence of this broad general principle reflects the fact that there is such a public interest in the maintenance of confidences, that the law will provide remedies for their protection. I realise that, in the vast majority of cases, in particular those concerned with trade secrets, the duty of confidence will arise from a transaction or relationship between the parties - often a contract .... But it is well settled that a duty of confidence may arise in equity independently of such cases...."

Lord Goff said that there were three qualifications to the general principle:

(1) The principle of confidentiality only applies to information to the extent that it is confidential. In particular, once it had entered the public domain, as a general rule, the principle of confidentiality could have no application to it.
(2) The duty of confidence applies neither to useless information, nor to trivia.
(3) Importantly, although the basis of the law's protection of confidence is that there is a public interest that confidences should be preserved and protected by the law, nevertheless that public interest may be outweighed by some other countervailing public interest which favours disclosure. It was this third 'limiting principle' which may require a court to carry out a balancing operation, weighing the public interest in

maintaining confidence against a countervailing public interest favouring disclosure.

Lansing Linde and the "harm test"

58. In *Lansing Linde v Kerr* [1991] 1 WLR 251. Staughton LJ said (at p. 260):

> "It appears to me that the problem is one of definition: what are trade secrets, and how do they differ (if at all) from confidential information? [Counsel] suggested that a trade secret is information which, if disclosed to a competitor, would be liable to cause real (or significant) harm to the owner of the secret. I would add first, that it must be information used in a trade or business, and secondly that the owner must limit the dissemination of it or at least not encourage or permit widespread publication.
> That is my preferred view of the meaning of trade secret in this context."

It is to be noted that Staughton LJ, although adding his own qualifications to it, adopted the test suggested by counsel in the case: *i.e.* of liability to cause harm, which does not necessarily involve proof of actual harm or of special damage.

Conscience

59. In *Imerman v Tchenguiz* [2010] EWCA Civ 908, [2011] Fam 116, Lord Neuberger MR, delivering the judgment of the Court of Appeal, said:

> "64. It was only some 20 years ago that the law of confidence was authoritatively extended to apply to cases where the defendant had come by the information without the consent of the claimant. That extension, which had been discussed in academic articles, was established in the speech of Lord Goff of Chieveley in *Attorney-General v Guardian Newspapers Ltd (No 2)* [1990] 1 AC 109. He said, at p 281, that confidence could be invoked 'where an obviously confidential document is wafted by an electric fan out of a window ... or ... is dropped in a public place, and is then picked up by a passer-by'.
> ....

"66. ... the touchstone suggested by Lord Nicholls of Birkenhead and Lord Hope of Craighead in *Campbell's* case [2004] 2 AC 457, paras 21, 85, namely whether the claimant had a *'reasonable expectation of privacy'* in respect of the information in issue, is, as it seems to us, a good test to apply when considering whether a claim for confidence is well founded. (It chimes well with the test suggested in classic commercial confidence cases by Megarry J in *Coco v AN Clark (Engineers) Ltd* [1969] RPC 41, 47, namely whether the information had the 'necessary quality of confidence' and had been 'imparted in circumstances importing an obligation of confidence'.)

...

"68. If confidence applies to a defendant who adventitiously, but without authorisation, obtains information in respect of which he must have appreciated that the claimant had an expectation of privacy, it must, a fortiori, extend to a defendant who intentionally, and without authorisation, takes steps to obtain such information. It would seem to us to follow that intentionally obtaining such information, secretly and knowing that the claimant reasonably expects it to be private, is itself a breach of confidence. The notion that looking at documents which one knows to be confidential is itself capable of constituting an actionable wrong (albeit perhaps only in equity) is also consistent with the decision of the Strasbourg court that monitoring private telephone calls can infringe the Article 8 rights of the caller: see *Copland v United Kingdom* (2007) 45 EHRR 858.

"69. In our view, it would be a breach of confidence for a defendant, without the authority of the claimant, to examine, or to make, retain, or supply copies to a third party of, a document whose contents are, and were (or ought to have been) appreciated by the defendant to be, confidential to the claimant. ..."

Vestergaard

60. The Supreme Court has recently emphasised the need for the conscience of the recipient of the allegedly confidential information to have been affected in order for a duty of

confidence to arise: see *Vestergaard Frandsen A/S & Ors v Bestnet Europe Ltd & Ors* [2013] 1 WLR 1556 per Lord Neuberger at [23] and [25]:

> "Liability for breach of confidence is not, of course, limited to ... classic cases. Thus, depending on the other facts of the case, a defendant who learns of a trade secret in circumstances where she reasonably does not appreciate that it is confidential, may none the less be liable to respect its confidentiality from the moment she is told, or otherwise appreciates, that it is in fact confidential. From that moment, it can be said that her conscience is affected in a way which should be recognised by equity."

Conclusions

Credibility of the defendant as a witness of truth

61. The fact that the Defendant has been convicted by a jury in the circumstances which I have mentioned plainly affects his credit as a witness. Counsel for the Claimant, however, also pointed to other examples of his unreliability the email of 3 May in which he said he had "no control over" the pre-action disclosure application when he had complete control over it. He maintained that untruthful stance in evidence. Moreover, said Mr Craig, he plainly lied in the email of 18 May when he said he had instructed a solicitor.

The form in which the information was received by the Defendant

62. Mr Sengar's credibility is of particular significance, it seems to me, in respect of two issues. First, it is crucial to a resolution of the issue of fact over whether the information was handed over to him in documentary form having already been printed for him by an employee of TCS, using a company printer and paper, or whether as Mr Sengar maintained in the witness box, it had been supplied to him electronically. Secondly, it is of importance in a resolution of the issue of whether the allegation against the Claimant of wrongdoing was a credible one from an apparently reliable source.

63. Mr Craig made two points on the first issue. First, at paragraph 2.2 of his witness statement he said that he "accepts that the printout he holds come [sic] from 'Ultimatix'." Secondly, Mrs Mallick's observation that the most likely course of events is that the TCS employee in question printed the confidential documents from TCS's computers in the office on TCS paper and passed that information to Mr Sengar. This, she said, can be the only reason why before the deputy judge in the interlocutory proceedings on 6 June 2014, Mr Sengar referred to having "*received the documents.*"

64. In my view, not merely are those points well made, but I also formed the impression that Mr Sengar was noticeably ill at ease when being questioned about this by counsel at the hearing, and I find as a fact, from all the circumstances, that he received the information in documentary form.

65. I will deal in greater detail later on with my reasons for rejecting the allegation of wrongdoing by the Claimant on the evidence I heard. However, had I not been satisfied by the evidence called by the Claimant that there was no substance in the allegation on an objective basis, I would not, in any event, have found Mr Sengar a 'reliable source.' Neverthless, as I said at the conclusion of the hearing, Mr Sengar conducted the case with courtesy and restraint.

Confidential information.

66. In my judgment it is quite clear that the Claimant company has established that the information was confidential information, for the following reasons.

(1) It was obtained by one of the employees of TCS from the Ultimatix database. Utimatix is TCS's bespoke internal IT platform. It maintains user-specific information relating to its staff. That information was plainly a unique compilation of data. Mrs Mallick's unchallenged evidence as to the amount of work involved and the fact that 850 employees were employed in maintaining the database puts that point beyond any question.

(2) Access to the database was subject to tight security restrictions: Ultimatix is internet based and can only be accessed by staff by means of their unique staff number and password. Staff have to change their passwords on a monthly basis. The first page of the site also expressly refers to its restricted nature.

(3) Moreover, the very detail of the information, involving as it does such matters as the identities of employees, their roles, email addresses, and the identities of the clients for whom they work, is plainly sensitive information in respect of which any employer such as TCS would have a reasonable expectation of confidentiality. It therefore clearly passes the 'reasonable expectation test' - see *Imerman v Tchenhguiz* [2011] Fam 116.

(4) The employee of TCS who obtained it was subject to a contract of employment which contained a definition of the company's confidential information which includes: "*details of employees, officers and workers of and consultants in the Company or any Group Company, their remuneration details, job skills, experience and capabilities and other personal information*". Mr Sengar therefore obtained the information from someone who was acting in breach of confidence.

Trade secret

67. In my judgment, the information was plainly capable of causing harm to TCS if it were to fall into the hands of a competitor or 'head-hunter'. Having information about a number of employees who work for a particular client would obviously enable a competitor to ascertain the relative size and complexity of the projects carried out by TCS for that client and how TCS arranges the teams of staff that work on particular projects. A competitor could use that information to offer competing services to clients of TCS. A competitor or head-hunter could also use the information about the structure and membership of client teams to target the poaching of key members of the team. They in turn could

influence other members of their teams to move. Thus the information obtained by Mr Sengar was in my judgment not only confidential, but also passed the higher threshold explained by Staughton LJ in *Lansing Linde Ltd v Kerr*, above, and amounted to a trade secret.

The Defendant's knowledge of the confidential nature of the information

68. In my view that Mr Sengar knew very well that TCS had a reasonable expectation of confidentiality in the information is demonstrated by the following points.

(1) The words which I have italicised in the email to Mr Chandrasekaran on 18 May 2014, as follows.

> "I have *managed* to get a full list of employees presently working in UK and America and have selected a few for your reference."
>
> "It is completely your choice how to deal with this information but must stress that *some people will be very keen to get this of [sic] me*".

(2) The fact that Mr Sengar redacted the identity of the individual who gave him the documents, and refuses still to reveal his or her identity shows that he knows very well that the individual who did so has acted in breach of his or her contractual and equitable duties of confidence to TCS.

(3) In his email of 3 May 2014 he said that the "*press would be very interested*" in the information, thereby acknowledging that the information was not available publicly.

Evidence of use/misuse

69. In *Coco v Clark* it had been suggested that it was necessary to show unauthorised use, or threatened use, of the

information. Mr Craig submits that although, in the light of the emails sent by the Defendant to Mr Chandrasekaran set out above, that is clearly made out in this case, in fact it is unnecessary for a claimant to do so in order to succeed in a claim for breach of confidence. He points to *Imerman v Tchenguiz,* where the Court of Appeal held that the fact that misuse of private information had become recognised as an actionable wrong *"does not mean that there has to be such misuse before a claim for breach of confidentiality can succeed."* It is a breach of confidence for a defendant, without the authority of the claimant, even to examine or retain a document whose contents are, and were (or ought to have been) appreciated by the defendant to be, confidential to the claimant.

> "It is of the essence of the claimant's right to confidentiality that he can choose whether, and, if so, to whom and in what circumstances and on what terms, to reveal the information which has the protection of confidence." (Lord Neuberger MR at §69)

I accept Mr Craig's submission that, while evidence of misuse is not strictly necessary, there is in fact clear evidence here of such misuse by Mr Sengar.

70. The Claimant company says there was in fact misuse: it was being used at least as 'leverage' (a) to get a job and (b) at a better salary. The threat was that if the company did not comply the Defendant would go to the press. When he knew from Mr Buckley's email that there was no prospect of a job at all, it was being used in an attempt to obtain money. He was, Mr Craig submits, plainly trying to blackmail the company, but whether it amounts to blackmail in law, its use was at the very least improper and unauthorised. I also accept this submission.

Relief

Adequacy of damages as a remedy

71. In his judgment granting the interim injunction, and when considering whether TCS would be adequately compensated

by an award of damages if an interim injunction were not granted, Mr Picken QC, as he then was, said,

> "I am sure that the answer to this question is that Tata would not be adequately compensated in that eventuality because it would be very difficult to quantify what Tata's losses would be in the event that the property were to find its way into the hands of Tata's competitors or headhunters interested in Tata's employees.... It is no answer for Mr Sengar to point out that he is not himself a competitor of Tata, and that he is not an employee of any Tata competitor. The point is that there is a risk that the documentation will find its way into the hands of parties who are competitors of Tata. Nor am I remotely persuaded by Mr Sengar's submission that information as to Tata's clients could be obtained freely on the internet, since it is one thing for general information of that sort to be accessible but quite another for detailed information of the type contained in Tata's 'Ultimatix' system to be available. Similarly I found unpersuasive Mr Sengar's suggestion... that employees could not easily move away from Tata were they to be the subject of poaching attempts by third parties. The fact that Tata may (or may not) have remedies available to it to prevent poaching happening seems to me to be somewhat beside the point: if Mr Sengar is not entitled to have the confidential information which he has, then Tata should not have to take advantage of other remedies to lessen the impact of information becoming available to third parties."

I entirely agree with and respectfully adopt those observations so far as final relief is concerned, for the same reasons.

Final injunction

72. In submitting that the court should grant final injunctive relief Mr Craig submits that absent any defence on particular facts, the Court should do so as a matter of principle, relying upon *Imerman v Tchenguiz*. Lord Neuberger said under the heading "*The relief to be granted where there is a breach of confidence*":

> "72. If a defendant looks at a document to which he has no right of access and which contains information which is confidential to the claimant, it would be surprising if the claimant could not obtain an injunction to stop the defendant repeating his action, if he threatened to do so. The fact that the defendant did not intend to reveal the contents to any third party would not meet the claimant's concern: first, given that the information is confidential, the defendant should not be seeing it; secondly, whatever the defendant's intentions, there would be a risk of the information getting out, for the defendant may change his mind or may inadvertently reveal the information.
>
> 73. An injunction to restrain passing on, or using, the information, would seem to be self-evidently appropriate—always subject to any good reason to the contrary on the facts of the case. If the defendant has taken the documents, there can almost always be no question but that he must return them: they are the claimant's property. If the defendant makes paper or electronic copies, the copies should be ordered to be returned or destroyed (again in the absence of good reason otherwise). Without such an order, the information would still be 'out there' in the possession of someone who should not have it. The value of the actual

> paper on which any copying has been made will be tiny, and, where the copy is electronic, the value of the device on which the material is stored will often also be tiny, or, where it is not, the information (and any associated metadata) can be deleted and the device returned".

73. Mr Sengar raised two points in opposition to the grant of injunctive relief as sought. First, that the copies are his, and secondly, that there is a countervailing public interest.

Property in the copies

74. As to the first point I have found as a fact that the documents were handed to him by an employee of the Claimant company in breach of his or her contract of employment, who, on the balance of probabilities printed them on company paper by means of a company printer. The Claimant company is therefore entitled to the return of the documents under the Tort Interference with Goods Act 1977: s.14 (1) " goods" includes all chattels personal other than things in action and money. If I were wrong as to that, and the documents were not the physical property of the claimant company, then nevertheless, having regard to the observations at paragraph 73 of *Imerman* above, it is appropriate and necessary to order the Defendant to deliver them up to the claimant company.

Countervailing public interest

75. As to the second, public interest, point Mr Sengar said he had two purposes in obtaining and keeping the information: (1) to report unlawful conduct to the authorities; and (2) that he required it for his own private litigation purposes. As to the second, Mr Craig submits that that is obviously not a *public* interest, and that the appropriate way of obtaining documentation for private litigation is by the disclosure procedure - not by clandestine self-help. Counsel pointed out that that is exactly what happened in *Imermam*. He relied also on the observations of Jack J in *Brandeaux* [2011] IRLR 224. If any documents could conceivably be relevant to any claim they will be disclosed. He is not entitled to retain them without having

such disclosure made to him. In my judgment that is a correct proposition of law.

Did the Defendant intend to report the matter to the authorities?

76. I have reached the clear view that the Defendant did not intend to report the matter to the authorities when he obtained the information. His purpose was to use it in an attempt to obtain either employment with the Claimant company or to extort money from it. If it had been his intention to report TCS to the immigration authorities, he could have done so and would have done so. He did not. The actual use, or misuse, he made of the documents in my view speaks for itself.

77. Moreover, Mr Craig drew my attention to Mr Sengar's witness statement of 6 June 2014 and made the point, which was commented on by the deputy judge, that in several paragraphs, namely paragraphs 2.5, 2.27, 5.6 and 7.6, Mr Sengar made the point that *"he has no intentions of misusing the information, save for bringing the proceedings"* (see, for example, paragraph 5.6). This was a point, the deputy judge said, which was also prominent in Mr Sengar's oral submissions to him.

78. The reality was that an "iniquity" defence was mentioned in argument by Mr Craig at that hearing (the Defendant not being legally represented, and counsel doing his duty to mention any matter of law which the Defendant might not be aware of) as a hypothetical defence which might be available in the context of consideration of the "whistleblower" provisions in the Employment Rights Act 1996. An extract from the judgment of Mr Picken QC, as he then was, demonstrates the context.

> "77. I might add that I do not consider that any of the *"three limiting principles"* addressed by Lord Goff in the ***Attorney General v Guardian Newspapers Ltd (No. 2)*** case at pages 282C-283B is applicable in the present case. This is not a case in which the information concerned has entered the public domain. Nor can the information be described as either useless or trivial. Nor is this a case, in my judgment, in which

there is *"some other countervailing public interest which favours disclosure"* which outweighs the public interest in preserving and protecting confidentiality. I doubt, in particular, that Mr Sengar can be right, in paragraphs, 4.1, 5.3 and 5.4 of his witness statement dated 6 June 2014 and in paragraphs 9 to 12 of his skeleton argument, to suggest that this is a case involving the application of Sections 43A to 43H of the Employment Rights Act 1996. ... I tend to agree with Mr Craig that Mr Sengar's case in this respect is, indeed, very weak. In short, I fail to see how these provisions of the 1996 Act can operate in the present case, given the lack of evidence before me: in relation to Section 43G, as to whether *"the worker"* (Mr Sengar's source) held either of the beliefs required by sub-sections (2)(a) and (b), or as to whether, in all the circumstances of the case, it was reasonable for that worker to have made the disclosure to Mr Sengar having regard to sub-section (3); and, in relation to Section 43H, even assuming that *"the relevant failure is of an exceptionally serious nature"*, as to whether, in all the circumstances of the case, it was reasonable for the *"worker"* to have made the disclosure to Mr Sengar (see Sub-sections (1)(e) and (2)). In the circumstances, I also consider that there is considerable force in Mr Craig's submission that the only interest in the confidential information is Mr Sengar's self-interest, and not the public interest alleged by Mr Sengar based on the operation of the 1996 Act. In any event, even if I were persuaded that there might be a public interest of the type contended for by Mr Sengar, I am wholly satisfied that, in the present case, that public interest is outweighed by the public interest in maintaining confidentiality in the information contained in the 'Ultimatix' material."

79. Again, I respectfully adopt those observations in full. The 1996 Act has no application in this case for the reasons given by the judge. However, the point is that there was at that interlocutory stage no mention of the point about a report to the authorities for which Mr Sengar now contends as a defence. In my view these circumstances demonstrate that such a defence is a late afterthought. The absence of any

mention of the matter in the judgment, as counsel submits, reflects the fact that the defendant knew very well that he did not obtain the confidential information in order to report the company to the authorities at all.

Is there any substance in the Defendant's allegations?

80. In any event, in my judgment there is no substance in Mr Sengar's allegations that the Claimant improperly employs thousands of migrant workers, and does not employ UK residents, or that there is any sinister significance in the internal job titles not marrying up with the appropriate immigration codes. The UK Border Agency "UKBA" clearly anticipated that the Claimant company would employ thousands of migrant workers, as is clear from its letter of 3 October 2008 to TCS granting the application of TCS to become a licensed sponsor: it refers to a maximum number of "4,500 Tier 2 ICT Certificates".

81. Moreover, the Employment Tribunal in its judgment dismissing Mr Sengar's racial discrimination claim against TCS rejected the suggestion that the employees of the Claimant had admitted that any unlawful immigration practices were employed by the Claimant company, having heard the oral evidence of one of those named by the Claimant. The tribunal held at paragraph 140 of its judgment that Mr Sengar " … *had not proved any such primary facts or discriminatory practices on the part of [TCS.]*" Mr Craig provided authority for the proposition that a party is estopped from going behind a finding of fact made in a previous decision where that finding was necessary for the determination in the form of the case of *Arnold v National Westminster Bank* [1991] 2 AC 93.

82. The Claimant is entirely transparent that it employs ICT workers and absolutely transparent that it does not operate a resident labour market test before *transferring* someone. The UKBA audit the Claimant's activities in this respect, and there was abundant documentary evidence of such audits. It has awarded the Claimant the highest grading it has: an "A" Grade.

83. I unreservedly accepted the evidence of Mrs Mallick as to the wholly lawful and responsible way in which TCS operated its immigration procedures, and insofar as Mr Sengar's evidence contradicted it, I reject his evidence.

84. In particular, on Mr Sengar's point about job titles not marrying up with the codes, I accept the evidence that a multinational company such as Tata would not change its job titles throughout the world to fit with UK codes. Mr Sengar actually accepted at one point that these were generic job titles across the world in IT consultancy: they are not and do not purport to be taken from UK ICT classifications. Mrs Mallick's evidence about job titles was entirely convincing: one cannot work out from the simple job title what specific tasks any individual might be required to perform.

85. I therefore find that on an objective basis there is no substance in the allegation of wrongdoing, and consequently no basis whatever for the countervailing public interest for which Mr Sengar contended.

86. At one stage Mr Sengar put the case also on the basis of a breach of Article 10 of the ECHR, but at the hearing he made it clear that had no intention of supplying the information to the media, and that point therefore no longer calls for any consideration.

The Order

87. The Claimant is therefore entitled to an order that:

(1) The Defendant shall forthwith deliver up all or any of the Claimant's property which is in his possession or under his control.

(2) The Defendant shall not induce or procure any third party to provide him with the Claimant's property or the Claimant's confidential information or himself directly or indirectly access or obtain access to the Claimant's Ultimatix system. If the Defendant should be provided with any of the Claimant's property or confidential information by any third party, he should forthwith (and in any event within 2 days of having

notice of the same) notify the solicitors for the Claimant, Mishcon de Reya, of the same and make arrangements to deliver up the material as soon as reasonably practicable.

(3) The Defendant shall not communicate or disclose to any person the Claimant's confidential information including but not limited to the incorporation of it within any document or using it or allowing it to be used in any way whatsoever whether directly or indirectly save for the purpose of instructing lawyers. The Defendant shall be permitted to rely upon any of the Claimant's property or confidential information later disclosed to him by the Claimant pursuant to any order made by this Court or any other court or tribunal of competent jurisdiction (subject to an undertaking that he will not be permitted to use information or documents so disclosed for any purpose other than those of relevant proceedings).

Case management directions (which do not form part of the judgment.)

1. *I direct (under CPR Part 39 PD 6.1) that no tape-recording need be made of this judgment, and that copies of this version, subject to editorial corrections, may be treated as authentic. It may now be released confidentially to solicitors and counsel (as agreed at the hearing) on a confidential basis so that they may consider it (1) to draw to the attention of the court any corrections or amendments which they suggest should be made to the judgment before it is handed down; (2) to prepare drafts of any consequential orders (whether agreed or not) which may have to be made upon handing down; and (3) to prepare any submissions on costs or for permission to appeal.*

2. *This judgment will be formally handed down on the date shown on the frontispiece. No party need attend upon the handing-down. If there are any applications to be made, the parties must attend upon such later date as may be agreed with the listing officer. No order will be made upon the handing-down save the Order set out above, with all other matters then being adjourned to a later hearing, and all*

relevant time limits extended to 21 days after that hearing or further order.