

(1) Filed on behalf of Claimants/Respondents

(2) P X Morris

(3) Seventh Affidavit

(4) Exhibit PXM14

(5) 9 August 2018

**IN THE HIGH COURT OF  
JUSTICE**

**Claim No. CL-2018-000269**

**BUSINESS AND PROPERTY COURTS OF  
ENGLAND AND WALES  
COMMERCIAL COURT (QBD)**

**BETWEEN:**

**(1) FUNDO SOBERANO DE ANGOLA**

**(2) FSDEA HOTEL INVESTMENT LIMITED**

**(3) FSDEA AFRICA AGRICULTURE (LP) LIMITED**

**(4) FSDEA AFRICA INVESTMENT (LP) LIMITED**

**(5) FSDEA AFRICA HEALTHCARE (LP) LIMITED**

**(6) FSDEA AFRICA MEZZANINE (LP) LIMITED**

**(7) FSDEA AFRICAN MINING (LP) LIMITED**

**(8) FSDEA AFRICA TIMBER (LP) LIMITED**

**Claimants/Respondents**

**- and -**

**(1) JOSÉ FILOMENO DOS SANTOS**

**(2) JEAN-CLAUDE BASTOS DE MORAIS**

**(3) QUANTUM GLOBAL INVESTMENT MANAGEMENT LIMITED**

**(4) QG INVESTMENTS AFRICA MANAGEMENT LIMITED**

- (5) QG INVESTMENTS LIMITED
- (6) QUANTUM GLOBAL ALTERNATIVE INVESTMENTS  
AG
- (7) INFRASTRUCTURE AFRICA (GP) LIMITED
- (8) HOTEL AFRICA (GP) LTD
- (9) AGRICULTURE AFRICA (GP) LTD
- (10) HEALTHCARE AFRICA (GP) LTD
- (11) MEZZANINE AFRICA (GP) LTD
- (12) MINING AFRICA (GP) LTD
- (13) TIMBER AFRICA (GP) LTD
- (14) QG AFRICAN INFRASTRUCTURE LP
- (15) QG AFRICA HOTEL LP
- (16) QG AFRICA AGRICULTURE LP
- (17) QG AFRICA HEALTHCARE LP
- (18) QG AFRICA MEZZANINE LP
- (19) QG AFRICA MINING LP
- (20) QG AFRICA TIMBER LP

**Defendants/Applicants**

and

- (21) THE NORTHERN TRUST COMPANY

**Defendant**

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SEVENTH AFFIDAVIT OF  
PAUL XAVIER MORRIS

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**I, PAUL XAVIER MORRIS, of 3 More London Riverside, London, SE1 2AQ, STATE ON OATH:**

1. I am a partner in Norton Rose Fulbright LLP and have conduct of the current proceedings on behalf of the Claimant Respondents. I am authorised to swear this affidavit on behalf of the Claimants, the Fundo Soberano de Angola (**FSDEA**), and the Second to Eighth Claimants (**the Limited Partners**) in relation to the applications by the First Defendant (**Mr Dos Santos**), the Second Defendant, and the Third to Twentieth Defendants to challenge the jurisdiction of this Court and to set aside the Proprietary and Freezing Injunction, originally made by Mr Justice Phillips at a without notice hearing on 27 April 2018, continued (with certain amendments) after an *inter partes* hearing before the same Judge with the Second to Twentieth Defendants, as further amended on 23 May 2018, and as continued (with certain further amendments) after an *inter partes* hearing before Mr Richard Salter QC (sitting as a Deputy High Court Judge) 25 May 2018 with Mr Dos Santos (**the Injunction**).
2. I make this affidavit in order to clarify certain matters for the court further to my first affidavit dated 24 April 2018 (**Morris A1**) and my second affidavit dated 27 April 2018 (**Morris A2**), which were made in support of the Claimants' *ex parte* application for the Injunction, and the discussion of certain aspects of Morris A1, namely paragraphs 145-147 and 190 of that affidavit, at the hearing of the Defendants' application to discharge that application (**the Hearing**). I also wish to offer to the Court an apology on behalf of myself personally and the Claimants about one respect in which I now believe that I inadvertently misled the Court.
3. The facts and matters to which I depose herein are within my own knowledge and are true.
4. There is now shown to me marked "PXM14" a paginated bundle of copy documents to which I refer in this affidavit. References in the form [PXM14/Volume/Tab/Page] are references to PXM14.
5. For ease of reference, the relevant passages in Morris A1 are set out below:

*“145. On 23 February 2018, NT confirmed to the FSDEA that no further transactions would be processed without joint-approval of the FSDEA and Quantum approval. This was re-iterated in a letter from NT dated 4 March.*

*146. On or around 6 March 2018, it became apparent to the FSDEA that NT had instructed solicitors, Sidley Austin. As a consequence, and at the request of Sidley Austin, my firm wrote to request account information relating to several accounts held by the FSDEA, the FSDEA Limited Partners and the Limited Partnerships.*

*147. A number of documents were received from NT on 16 March, under cover of a response from Sidley Austin. However, FSDEA was not provided with details relating to the Limited Partnership bank accounts. It was also clear from that letter that NT had sought the consent of the General Partners to provide the information sought and that the Quantum Group had refused to provide that consent. Just pausing there: it is somewhat remarkable that those behind the Quantum Group may consider it appropriate and consistent with the overall relationship between the FSDEA and the Quantum Group to refuse to provide the FSDEA and the Limited Partners with basic information about what on any view are funds being invested for and on their behalf Sidley Austin's letter also explained that, as far as accounts held with NT by the Limited Partnerships were concerned, NT could agree only to notify us and the FSDEA in advance if it was instructed by a General Partner to transfer funds.*

*...*

*190. Although NT have assured my firm that they will notify us in the event that they receive instructions to transfer funds out of the Limited Partnership Accounts with NT that provides at best very limited comfort. NT will owe contractual obligations to the Limited Partnerships, including confidentiality obligations. There appears to be a real risk that, if the Applicants do not obtain a freezing or proprietary injunction, there will come a point when NT considers that it is contractually*

*required to comply with an instruction by the Limited Partners to transfer funds out of their accounts. Given their confidentiality obligations, NT may not feel legally able to tell us in advance or they may notify us, but we may be unable to apply for injunctive relief in time to prevent a transfer. I do not believe that the FSDEA and the Limited Partners should be expected to bear this risk, particularly given the enormity of the sums involved and the risk of dissipation I have described above.”*

6. It was submitted on behalf of the Defendants at the hearing on 24-27 July 2018 of their application to discharge the Injunction that the passages above did not give a fair representation of the position to Mr Justice Phillips when he considered Morris A1 on 27 April 2018. In particular, it was said that the position was in fact that there was no real risk of dissipation of monies held by the Limited Partnerships with NT because the confirmation provided by NT and referred to at paragraph 145 of Morris A1 (and reiterated in a letter from Sidley Austin to Clifford Chance dated 20 March 2018, which I had not seen when I prepared Morris A1) was such that there was no realistic risk that funds would be transferred from any of the relevant accounts (which I refer to below as the **Limited Partnership Accounts**).
7. These submissions first became apparent to me as a result of certain passages in the Skeleton Arguments served by the Second and Third to Twentieth Defendants on 18 July 2018. However, my clear recollection at the time of my swearing Morris A1 and upon considering the submissions in question on 18 July 2018, was that Sidley Austin had confirmed to me in exchanges in March 2018 which were expressed and understood to be privileged for reasons I explain below, that, in practice, the Claimants could only be expected to be notified of any instruction from the Limited Partnerships or General Partners to transfer monies from the Limited Partnership Accounts, because NT was not justified contractually in seeking joint instructions from any of the Claimants with regard to such instructions.
8. During the course of submissions made on behalf of the Claimants at the hearing on 26 and 27 July 2018, it became apparent to me that the Judge was concerned that the position

with regard to NT's willingness to allow transfers from the Limited Partnership Accounts had not been put fairly in Morris A1 (27 July Transcript, pages 55 to 70). During the short adjournment on 27 July, I therefore requested a colleague to send me notes of the relevant communications between my firm and Sidley Austin (the **Sidley Austin Attendance Notes**). As explained below, I do not waive the privileged or without prejudice status of those attendance notes nor in making this affidavit do I intend to "deploy" them for the purposes of CPR 31.14.

9. The Sidley Austin Attendance Notes were of various telephone conversations which I had with Dorothy Cory-Wright of Sidley Austin in March 2018. Those conversations were understood by me and, I believe, the other participants in them, to be without prejudice.
10. During the course of submissions on the afternoon of 27 July, Counsel for the Third to Twentieth Defendants made observations with regard to the prospect, at or around the time of the preparation of Morris A1, of NT's making a 'stakeholder application' under Part 86 of the Civil Procedure Rules, which would have had the effect of significantly reducing the risk of dissipation of assets, to which I had referred at Paragraph 190 of Morris A1.
11. Those observations caused me to reconsider the effect of the March 2018 conversations recorded in the Sidley Austin Attendance Notes, which I now see I should have reconsidered both at the time of the swearing of Morris A1 and again on 18 July, when I read the skeleton arguments served on behalf of the Second and Third to Twentieth Defendants. Specifically the effect of those conversations was that Sidley Austin had made me aware that NT might make a stakeholder application.
12. In particular, and I must stress that for the first time, I appreciated over the weekend of 28/29 July when I considered the position in detail, that my comments at paragraph 190 of Morris A1 had inadvertently misled the court as to the true level of risk that NT might make payment from the Limited Partnership Accounts before my clients had any opportunity to object by not explaining that there was a possibility that NT may make a stakeholder application.

13. Having reached that view, I decided on 30 July 2018, prior to the handing down by the Judge of his decision to discharge the Injunction on grounds of material non-disclosure that as: (1) I believed the matters to be disclosed were, or at least had been understood by me to be, the subject of without prejudice or common interest privilege; and (2) any privilege vested in my clients and was not for me or my firm to waive, I should seek the opinion of a Queen's Counsel who had not otherwise been instructed to act for the Claimants to advise on the application or otherwise of the interplay between any privilege to those communications and the duty to disclose them.
  
14. I mention this only for the purposes of explaining the timing of the disclosure made in this affidavit and do not intend to waive any privilege in the advice sought and received. Nor should it be inferred from my decision to seek the view of an 'independent' Queen's Counsel that there was a difference of opinion between Counsel instructed to act for the Claimants in these proceedings and me. That was not the case, and those Counsel were aware of and content with the involvement of another barrister to advise on this particular point.
  
15. Having taken the advice I have referred to, I sought a waiver from Sidley Austin (on behalf of their client) of the without prejudice status of the Sidley Austin Attendance Notes as I wished to put their substance before the Court. This confirmation was refused in a letter dated 6 August 2018 [PXM14/1/1/1 - 2]. Sidley Austin has made clear that NT asserts privilege in the content of the Sidley Austin Attendance Notes and underlying discussions which it is not prepared to waive. However, for the purposes of assisting the Court, Sidley Austin confirmed (with their client's permission), that prior to my clients' making of the *ex parte* application on 25 April 2018, whilst NT had considered making a stakeholder application, it had kept an 'open mind' in this respect and had not committed itself to doing so. As I make clear below, that confirmation is consistent with my recollection of the relevant discussions in March 2018.

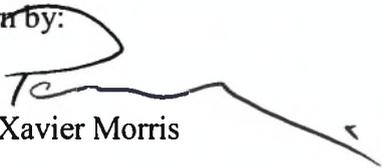
16. In a response to Sidley Austin dated the same day [PXM14/1/1/3], my firm made it clear that, notwithstanding the content of Sidley Austin's letter, we continued to consider that it was necessary to make disclosure of information over which NT claimed privilege.
17. It has now been agreed between my firm and Sidley Austin that the fact of the existence of without prejudice exchanges could be revealed and that the effect of the relevant parts of them could be explained in this affidavit for the limited purpose expressed herein (namely the correction of an incomplete, and therefore misleading, impression which I now believe was given at Paragraph 190 of Morris A1).
18. As I have already explained, the effect of my conversations with Sidley Austin in March 2018 was that I was aware that NT might bring a stakeholder application. Further, while I was not aware from those discussions of all of the detail referred to in Sidley Austin's letter of 6 August 2018, it is broadly consistent with my recollection of events. In the circumstances, I was aware from my discussions in March 2018 that there was a serious prospect, although by no means any certainty, of a stakeholder application.
19. Unfortunately, when I swore Morris A1 and – in particular – drafted paragraph 190 of that affidavit, I did not review the Sidley Austin Attendance Notes. I did not therefore properly apply my mind to the question of the actual risk of dissipation in view of the matters contained in them.
20. The reason for this failure on my part is that, by the time I came to swear Morris A1, the situation had changed since the discussions with Sidley Austin and I did not realise or recall that there could have been material in the Sidley Austin Attendance Notes that might be relevant to the subject matter of paragraph 190 of Morris A1.
21. However, and as became obvious to me over the weekend of 28/29 July 2018, I mistakenly believed that the prospect of a stakeholder application had changed or lessened because I had informed Sidley Austin (shortly after the Easter weekend i.e. 30 March – 2 April 2018) that the Claimants would be making an application for a freezing injunction (which is a matter of recollection, as I do not have a note of the relevant call).

22. As also became obvious to me over the weekend of 28/29 July 2018, it is not tenable, in seeking to establish a real risk of dissipation for the purposes of obtaining a freezing injunction, to discount the probability of a stakeholder application which, if made, may have the effect of safeguarding the funds held by NT on the basis that they have been 'taken from the table'. For that reason, I believe that I did not fully explain the risk of dissipation at Paragraph 190 of Morris A1.
23. It is with profound regret that I find myself in the position of disclosing the matters I disclose in this affidavit to the court at this very late stage in proceedings. With the benefit of hindsight, I should not have characterised the position as I did at Paragraph 190 of Morris A1 and I should have appreciated earlier than I did that a mistake had been made in that respect.
24. It is important to say, however, that I genuinely did not consider that I had been mistaken in this respect until the weekend of 28/29 July 2018. Moreover, I have never deliberately attempted to mislead the court or considered myself to be at any risk of doing so. I wish to offer a sincere and unqualified apology to the Court for having done so in fact. I take responsibility for the error that I made and should stress that I have no recollection of discussing the matters disclosed in this affidavit with my clients, or reason to believe that they were informed of those matters until my preparation of this affidavit.
25. I should make it clear again that any disclosure of information in this affidavit which would otherwise be subject to legal professional privilege has been given for the very limited purpose of facilitating the disclosure of the discussions I had with Sidley Austin in March 2018 regarding the prospect of NT's making a stakeholder application. Nothing in this affidavit should be construed as a wider waiver either for any other purpose or of any further material or information for the limited purpose concerned.

**STATEMENT OF TRUTH**

I believe that the facts stated in this affidavit are true.

Sworn by:

  
Paul Xavier Morris

at *the offices of Gowling WLG (UK) LLP*  
this 9th day of August 2018

Before me.   
Solicitor *EMILY AIRTEW*

Address

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London SE1 2AU**

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**(1) JOSÉ FILOMENO DOS SANTOS  
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**(21) THE NORTHERN TRUST COMPANY  
Defendant**

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**SEVENTH AFFIDAVIT OF  
PAUL XAVIER MORRIS**

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