Neutral Citation Number: [2019] EWHC 3318 (Ch)

Case No: CR-2019-005982

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMPANIES AND INSOLVENCY LIST

IN THE MATTERS OF FOURFRONT GROUP LIMITED, FOURFRONT HOLDINGS LIMITED, 360 WORKPLACE LIMITED, AREA SQ. LIMITED, SKETCH STUDIOS LIMITED AND THE UNITED WORKPLACE LIMITED
AND IN THE MATTER OF THE COMPANY DIRECTORS DISQUALIFICATION ACT 1986

Royal Courts of Justice
Rolls Building
Fetter Lane
London EC4A 1NL

Date: 5 December 2019

Before :
Deputy Insolvency and Companies Court Judge Baister

Between :

(1) AKI JOHN PANDELIS STAMATIS **(2) SION EMYR DAVIES**	**Claimants**
- and -	
THE COMPETITION AND MARKETS AUTHORITY	**Defendant**

Christopher Buckley (instructed by **Freshfields Bruckhaus Deringer LLP**) for the **Claimants**
George Bompas QC (instructed by **The Competition and Markets Authority**) for the **Defendants**
Hearing date: 12 November 2019

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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Deputy Insolvency and Companies Court Judge Baister:

The background

1. The Fourfront Group consists of a number of companies, principally, for present purposes, Fourfront Group Limited, Fourfront Holdings Limited, 360 Workplace Limited, Area Sq. Limited, Sketch Studios Limited and Cube Interior Solutions Limited. The group started when Area and Cube (I shall henceforth refer to each company in an abbreviated form) were incorporated in 1999 and 2004 by a Mr Clive Lucking and was established formally in 2006. Following the arrival of Mr Stamatis, the first claimant, Group, 360 and Sketch were incorporated in the same year. Mr Lucking became the CEO of the group. The business of the companies in the group was and remains the design and fitting of office interiors, the provision of office furniture, office moves and related activity. The group is substantial, and its clients include a number of well known names.

2. 360, Area and Sketch are the operational companies in the group. 360 is a workplace consultancy. It observes and analyses what happens within an organisation regarding its use of real estate and how people function in it, provides advice as to how a client's workplace could be better organised, and manages changes to the workplace. Area takes the report produced by 360 and designs and builds the new workplace, which includes providing architectural services, space planning and the building work itself. Sketch specialises in commercial office furniture, providing consultancy, procurement, installation and office move management services. Cube built workplaces according to designs produced by others but is no longer active. Neither Group nor Holdings trade. Group owns 100% of the shares in the three operational companies, and Holdings is the sole shareholder of Group (having been incorporated in 2016 to simplify the ownership of the group). There are 13 individual shareholders of Holdings, including Mr Stamatis, Mr Davies, Mr Lucking, Mr Gary Chandler and Mr Mark Scott.

3. On 19 July 2017, the Competition and Markets Authority launched an investigation into the business of the group under s. 25 Competition Act 1998 on the basis that there were grounds to suspect that Group, Holdings, Area and Cube, as well as five other companies in the same line of work, had been involved in anti-competitive activity. On 16 April 2019, as a result of its investigation, it issued an infringement decision, which found that Fourfront companies and others had, by their conduct, acted in breach of s. 2 of the Competition Act. At or about the same time, the CMA opened a further investigation with a view to applying for competition disqualification orders against the claimants (among others) for their part in the infringing conduct.

4. The investigations concerned the activities of a number of companies and individuals, but the principal protagonists were:

    (a) Bluu Solutions Limited and Bluuco Limited, Tetris Projects Limited and Jones Lang LaSalle Incorporated, Mr Robb Simms-Davies (Bluu's managing director and CEO), being the principal subject of the disqualification investigation.

    (b) Fourfront, the following directors being the principal subjects of the disqualification investigation: (i) Mr Lucking; (ii) Mr Oliver Hammond (formerly the director responsible for corporate accounts); (iii) Mr Trevor Hall (the founder of

Cube, and its former managing director); and (iv) the second claimant, Mr Davies (currently chief strategy officer and managing director of Area, but at the time simply managing director of Area, London); and (v) Mr Stamatis (the then chairman of Fourfront).

(c) Several other companies, whose directors were either "de-prioritised" or did not come within the scope of the disqualification investigation on account of leniency protection which the companies of which they were directors obtained as a result of their cooperation with the CMA.

5. The mischief that was the object of the CMA's investigations was a practice called "cover bidding" or "cover pricing" which is, I am told, a well-established example of infringement "by object" under the Competition Act 1998. For an infringement "by object"', the effect or result is immaterial. It is enough that the activity is: (i) likely to affect trade within the UK; and (ii) is calculated to remove or reduce the benefits to customers of price competition between direct competitors, and thus restrict, prevent and/or distort price competition between the relevant undertakings in respect of a core aspect of their businesses. Bluu and Fourfront companies were parties to arrangements of precisely this kind. One of the companies agreed with the other company or companies concerned to submit a "cover bid" or "cover price" for a contract involving fit-out services: in simple terms, it provided a false bid at a false price, thus rigging the otherwise competitive process, the object being "to deceive the tenderee into thinking that a bid is genuine when it is not" (cf *Apex Asphalt and Paving Co Limited v Office of Fair Trading* [2005] CAT 4, a case mentioned by Mr Bompas in his skeleton argument).

6. Mr Stamatis was a director of Area and Cube when they were found to have participated in cover bidding or cover pricing involving 10 contracts with a value of just under £12 million. Mr Davies was a director of Area. The allegation against him concerned three contracts with a value of some £8.6 million. The precise details need not detain us, because shortly before the CMA applied for disqualification orders, both Mr Stamatis and Mr Davies (among others) agreed to sign competition disqualification undertakings, as a result of which Mr Stamatis and Mr Davies undertook not to act as a director, or take part in the management of, a company for 2 years and 9 months and 1 year and 6 months respectively. The matters of unfitness are recorded in the claimants' respective undertakings. Mr Stamatis accepted that as a director of four of the Fourfront companies:

(a) he contributed to certain cover bidding infringements described in the undertaking, had reasonable grounds to suspect them or ought to have known about them but took no steps to prevent them;

(b) the intention behind the infringements was to manipulate the tendering procedure in relation to certain contracts;

(c) he thereby contributed to exposing the Fourfront companies to a penalty under the Competition Act.

(d) He acknowledged that collusive tendering was a serious breach of competition law.

Mr Davies agreed that as a director of Area:

(a) he contributed to certain infringements described in the undertaking by failing to prevent collusive tendering, thereby facilitating the infringements;

(b) the intention behind the infringements was to manipulate the tendering procedure in relation to certain contracts;

(c) he thereby contributed to exposing the Fourfront companies to a penalty under the Competition Act.

(d) He too accepted the seriousness of collusive tendering.

In all, six disqualification undertakings were given, including undertakings from Mr Lucking and Mr Simms-Davies.

The application and the evidence

7. Both Mr Stamatis and Mr Davies now apply under s. 17 Company Directors Disqualification Act 1986 for permission to act as directors and take part in the management of certain group companies. Mr Stamatis seeks permission to act as a director of, and take part in the management of, two companies: Fourfront Group Limited and Fourfront Holdings Limited; and to take part in the management of, but not be appointed as a director of, a further three companies: 360, Area and Sketch. Mr Davies seeks permission to act as a director of, and take part in the management of, Area. Mr Stamatis's application as it was initially made also sought permission to act in the affairs of a company called The United Workplace Limited and to act as chairman of the group, but that relief is no longer pursued. Interim permission subject to conditions was granted by Chief ICC Judge Briggs on 3 October 2019.

8. The application is supported by affidavits from each of the claimants and other directors of the Fourfront group, Mr Chandler and Mr Scott. There is also an affidavit from a Mr David Rintoul, a recently appointed non-executive director whose role I will consider later. The application is opposed by the CMA which relies on the affidavit evidence of Ms Jessica Radke.

9. No witness was tendered for cross examination. That is important because it means that, by and large, I must assume that what is set out in the written evidence is to be taken at face value save to the extent that it is manifestly wrong or so at odds with contemporaneous documentary evidence or the like that I can disregard it notwithstanding the fact that it has not been tested by cross-examination. No evidence comes into that category in this case.

The law

10. I can pass over the provisions of the Competition Act 1998 because we are at the stage where undertakings have been given. The basis on which they were given and accepted is

now water under the bridge. Suffice it to note the two sections of the Act to which Mr Bompas referred me, s. 2, which sets out the detail of prohibited agreements designed to restrict or distort competition, and s. 25, which empowers the CMA to undertake investigations of the kind it undertook here.

11. Sections 9A-9E Company Directors Disqualification Act 1986 set out the regime which applies in cases of competition infringement. Particularly relevant are the following provisions:

> 9A Competition disqualification order
>
> (1) The court must make a disqualification order against a person if the following two conditions are satisfied in relation to him.
>
> (2) The first condition is that an undertaking which is a company of which he is a director commits a breach of competition law.
>
> (3) The second condition is that the court considers that his conduct as a director makes him unfit to be concerned in the management of a company.
>
> (4) An undertaking commits a breach of competition law if it engages in conduct which infringes any of the following —
>
> (a) the Chapter 1 prohibition (within the meaning of the Competition Act 1998) (prohibition on agreements, etc preventing, restricting or distorting competition);
>
> (b) the Chapter 2 prohibition (within the meaning of that Act) (prohibition on abuse of a dominant position);
>
> […]
>
> (5) For the purpose of deciding under subsection (3) whether a person is unfit to be concerned in the management of a company the court—
>
> (a) must have regard to whether subsection (6) applies to him;
>
> (b) may have regard to his conduct as a director of a company in connection with any other breach of competition law;
>
> (c) must not have regard to the matters mentioned in Schedule 1.
>
> (6) This subsection applies to a person if as a director of the company—

(a) his conduct contributed to the breach of competition law mentioned in subsection (2);

(b) his conduct did not contribute to the breach but he had reasonable grounds to suspect that the conduct of the undertaking constituted the breach and he took no steps to prevent it;

(c) he did not know but ought to have known that the conduct of the undertaking constituted the breach.

(7) For the purposes of subsection (6)(a) it is immaterial whether the person knew that the conduct of the undertaking constituted the breach.

(8) For the purposes of subsection (4)(a) or (c) references to the conduct of an undertaking are references to its conduct taken with the conduct of one or more other undertakings.

(9) The maximum period of disqualification under this section is 15 years.

(10) An application under this section for a disqualification order may be made by the Competition and Markets Authority or by a specified regulator.

(11) […]

9B Competition undertakings

(1) This section applies if—

(a) the Competition and Markets Authority or a specified regulator thinks that in relation to any person an undertaking which is a company of which he is a director has committed or is committing a breach of competition law,

(b) the Competition and Markets Authority or the specified regulator thinks that the conduct of the person as a director makes him unfit to be concerned in the management of a company, and

(c) the person offers to give the Competition and Markets Authority or the specified regulator (as the case may be) a disqualification undertaking.

(2) The Competition and Markets Authority or the specified regulator (as the case may be) may accept a disqualification undertaking from the person instead of applying for or proceeding with an application for a disqualification order.

(3) A disqualification undertaking is an undertaking by a person that for the period specified in the undertaking he will not—

(a) be a director of a company;

(b) act as receiver of a company's property;

(c) in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company;

(d) act as an insolvency practitioner.

(4) But a disqualification undertaking may provide that a prohibition falling within subsection (3)(a) to (c) does not apply if the person obtains the leave of the court.

(5) The maximum period which may be specified in a disqualification undertaking is 15 years.

(6) If a disqualification undertaking is accepted from a person who is already subject to a disqualification undertaking under this Act or to a disqualification order the periods specified in those undertakings or the undertaking and the order (as the case may be) run concurrently.

(7) Subsections (4) to (8) of section 9A apply for the purposes of this section as they apply for the purposes of that section but in the application of subsection (5) of that section the reference to the court must be construed as a reference to the Competition and Markets Authority or a specified regulator (as the case may be).

12. Section 17 Company Directors Disqualification Act provides:

17 Application for leave under an order or undertaking

(1) Where a person is subject to a disqualification order made by a court having jurisdiction to wind up companies, any application for leave for the purposes of section 1(1)(a) shall be made to that court.

(2) Where—

(a) a person is subject to a disqualification order made under section 2 by a court other than a court having jurisdiction to wind up companies, or

(b) a person is subject to a disqualification order made under section 5 any application for leave for the purposes of section 1(1)(a) shall be made to any court which, when the

order was made, had jurisdiction to wind up the company (or, if there is more than one such company, any of the companies) to which the offence (or any of the offences) in question related.

(3) Where a person is subject to a disqualification undertaking accepted at any time under section 5A, 7 or 8, any application for leave for the purposes of section 1A(1)(a) shall be made to any court to which, if the Secretary of State had applied for a disqualification order under the section in question at that time, his application could have been made.

(3ZA) Where a person is subject to a disqualification undertaking accepted at any time under section 8ZC, any application for leave for the purposes of section 1A(1)(a) must be made to any court to which, if the Secretary of State had applied for a disqualification order under section 8ZA at that time, that application could have been made.

(3ZB) Where a person is subject to a disqualification undertaking accepted at any time under section 8ZE, any application for leave for the purposes of section 1A(1)(a) must be made to the High Court or, in Scotland, the Court of Session.

(3A) Where a person is subject to a disqualification undertaking accepted at any time under section 9B any application for leave for the purposes of section 9B(4) must be made to the High Court or (in Scotland) the Court of Session.

(4) But where a person is subject to two or more disqualification orders or undertakings (or to one or more disqualification orders and to one or more disqualification undertakings), any application for leave for the purposes of section 1(1)(a), 1A(1)(a) or 9B(4) shall be made to any court to which any such application relating to the latest order to be made, or undertaking to be accepted, could be made.

(5) On the hearing of an application for leave for the purposes of section 1(1)(a) or 1A(1)(a), the Secretary of State shall appear and call the attention of the court to any matters which seem to him to be relevant, and may himself give evidence or call witnesses.

(6) Subsection (5) does not apply to an application for leave for the purposes of section 1(1)(a) if the application for the disqualification order was made under section 9A.

(7) In such a case and in the case of an application for leave for the purposes of section 9B(4) on the hearing of the application whichever of the Competition and Markets Authority or a specified regulator (within the meaning of section 9E)

applied for the order or accepted the undertaking (as the case may be)—

(a) must appear and draw the attention of the court to any matters which appear to it or him (as the case may be) to be relevant;

(b) may give evidence or call witnesses.

13. There is a useful summary of the principles underpinning permission to act applications in the judgment of Sir Andrew Park in *Re Morija plc; Kluk v Secretary of State for Business and Regulatory Reform* [2008] 2 BCLC 313:

> "[32] I will not say much in this part of my judgment, since the principles are well-established and not disputed on the appeal to me. It is accepted that there is no difference between applications for leave in cases where a disqualification order has been made under the CDDA s 1 and applications in cases where a disqualification undertaking has been given under s 1A. Sir Richard Scott V-C pointed out in *Re Dawes & Henderson (Agencies) Ltd* [1999] 2 BCLC 317 at 326, that the statute puts no fetters on the discretion to grant leave and attaches no conditions. Nevertheless some broad principles have emerged from cases over the years.
>
> [33] The purpose of a disqualification order or undertaking is not to punish the director for his misconduct. Rather it is to protect the public. Partly it does that by restricting the ability of the person concerned to expose the public to the risk of loss from further misconduct on his part. It is worth adding that the possible further misconduct does not have to be of the same nature as that which has led to the disqualification: see observations of Lloyd J in the *Stern* case, *Re Westminster Property Management Ltd (No 2)* [2001] BCC 305 at 359–360. The observations were cited (appropriately so, in my judgment) by Registrar Jaques in the present case. Partly a disqualification order or undertaking achieves its purpose of protecting the public by deterring other directors from misconduct which might lead to disqualification proceedings against them. It also seems to me that the existence of the disqualification jurisdiction can have a beneficial effect in the form of maintaining and improving standards of integrity on the part of businessmen who also seems to me that the existence of the disqualification jurisdiction can have a beneficial effect in the form of maintaining and improving standards of integrity on the part of businessmen who become directors of companies.
>
> [34] Where a leave application is made the court has a balancing process to undertake. In favour of a grant of leave is the 'need' criterion: the need of the disqualified director to earn a living, and (a different matter, and usually more important) the need of

> some other person, typically another company, to have his services. Against the grant of leave may be the factors which I mentioned in the foregoing paragraph as purposes which the legislation is intended to serve: protecting the public by, to use a familiar metaphor drawn from another kind of disqualification, keeping off the road a person whose past conduct has fallen short of the standards to be expected; deterring other directors from similar misconduct; and maintaining and improving standards of integrity.
>
> [35] In the balancing process the degree of seriousness of the misconduct on the part of the disqualified person who is applying for leave is relevant. The relevance seems to me not to rest on the notion that, if a person's misconduct has been serious enough, a refusal of leave serves him right. Rather the point is in part that, in the case of a person who has misconducted himself seriously in the past, the risk to the public of him misconducting himself again if he is granted leave is greater than would exist in the case of a person whose misconduct was less serious. A different aspect of the same point is that, if a disqualified director whose conduct has been significantly bad is seen by others to have been granted leave by the court to continue as a director of another company, the deterrent effect on other directors will be weakened.

14. As Mr Bompas rightly points out, the onus lies on the claimants to demonstrate that permission should be granted.

15. As a general rule this will involve the claimants in demonstrating a need to do that for which permission is sought. Rattee J reviewed the previous authorities on the point in *Secretary of State for Trade and Industry v Barnett* [1998] 2 BCLC 64, but in my view it is enough for present purposes to set out the paragraph at page 72a on which Mr Bompas relies and which he cites in his skeleton argument:

> "In my judgment, the question I should ask myself is whether it is necessary for [the applicant] to be a director of a company in order to protect some legitimate interest of [the applicant] himself, or of any third party, which it is in all the circumstances of the case reasonable that the court should seek to protect. If it is so necessary, then the next question is whether that need can be met without infringing the protection of the public secured by the disqualification order. The extent to which it may be reasonable for the court to seek to protect the interests of the applicant himself in such a case must depend on all the circumstances giving rise to his disqualification. So must the court's ability to continue to protect the public adequately while mitigating the full rigour of a disqualification order."

16. The court enjoys an unfettered discretion in dealing with applications under s. 17, a point made by Sir Richard Scott V-C in *Re Dawes & Henderson (Agencies) Limited (No 2)* [1999] 2 BCLC 317 (at 326) by reference to Rattee J's judgment in the *Barnett* case:

> "It is, I think, plain that Rattee J in *Secretary of State for Trade and Industry v Barnett* was not limiting the factors to be taken into account so as to exclude some personal, non-commercial purpose of the applicant. In my respectful opinion he was right in expressing the question as he did in the passage I have cited. The discretion given to the court under the 1986 Act to grant leave to an individual against whom a disqualification order has been made, enabling him during the currency of the disqualification order to act as a director of a particular company, is a discretion unfettered by any statutory condition or criterion. It would in my view be wrong for the court to create any such fetters or conditions. The reason why it would be wrong is that no one, when sitting in a particular case to give judgment, can foresee the infinite variety of circumstances that might apply in future cases not before the court. Where Parliament has given the courts an unfettered discretion I do not think it is for the courts to reduce the ambit of that discretion. But in exercising the statutory discretion courts must, of course, not take into account any irrelevant factors. The emphasis given in a judgment in a particular case on particular circumstances in that case is not necessarily a guide to the weight to be attributed to similar circumstances in a different case. Anything I say in this case about the circumstances that seem to me of weight in this case must be read subject to that warning."

17. Permission is not, however, to be given too readily, a point Mr Bompas takes in his skeleton argument and makes good by reference to a *dictum* of Arden J, as she then was, in *Re Textiles Ltd; Secretary of State for Trade and Industry v Vane* [1998] 1 BCLC 259. After dealing with discretion she went on to say (at 267):

> "Leave, however, in my view is not to be too freely given. Legislative policy requires the disqualification of unfit directors to minimise the risk of harm to the public, and the courts must not by granting leave prevent the achievement of this policy objective. Nor would the court wish anyone dealing with the director to be misled as to the gravity with which it views the order that has been made."

18. If need is one consideration that informs the exercise of discretion, so then is public protection, the requirement to minimise harm to the public, in the words of Arden J, the risk of further misconduct, in the expression of Sir Andrew Park.

19. The seriousness of the misconduct is another consideration (see again the judgment of Sir Andrew Park above). That is often expressed by reference to the bracket into which the disqualification period ordered or agreed to by undertaking falls, and in that sense is a convenient shorthand to adopt, but in fact it seems to me that it is the seriousness of the conduct to which attention must be paid rather than the period of disqualification *per se*.

The submissions

20. The seriousness of the claimants' conduct is a convenient starting point for Mr Buckley's submissions on behalf of the claimants. Mr Buckley notes that in both cases the disqualification periods are in the bottom bracket, which suggests that their conduct, whilst falling short of the required standard, was "relatively speaking, not very serious" (*Re Sevenoaks Stationers (Retail) Ltd* [1991] Ch 164 at 174F).

21. He next relies on the claimants' acceptance of the errors of their ways. In paragraph 28 of his first affidavit Mr Stamatis reproduces part of the text of a letter he wrote to the CMA on 6 August 2019. He unreservedly acknowledges his failures of the past, expresses regret for them and offers to meet the CMA "to allay any fears that it may have" as to whether he has learnt his lesson. In paragraph 11 of his first affidavit Mr Davies says that he has learnt from his recent experiences. He says that he now has an understanding of competition law which he previously lacked and refers to Mr Stamatis's affidavit for a description of the steps the companies have taken "to ensure that the offending conduct is not repeated". (Those steps are set out in paragraphs 44-47 of Mr Stamatis's first affidavit.)

22. On 16 September 2019 Mr David Rintoul was appointed as a non-executive director of Area, Group and Holdings. Mr Rintoul is a solicitor and partner at Clarkslegal LLP and is head of the firm's construction, engineering and environmental projects group. He was the firm's managing partner for three years and its deputy manging partner for six years before that. He has knowledge of the construction industry and a track record in management. He is not a competition law expert, but he has attended a one day accredited competition law course. In paragraphs 9-22 of his affidavit he describes the compliance work that he has undertaken in his new role. It is comprehensive in its scope.

23. The Fourfront group has now introduced a competition compliance policy. In her affidavit Ms Radke has drawn attention to some amendments which were being made to the policy which appeared to weaken its effect, but the claimants say that as soon as the deletions were drawn to their attention the policy was corrected and the deleted passages were reintroduced (paragraph 6.4 of the third affidavit of Mr Stamatis). Mr Rintoul is now responsible for the policy and its implementation.

24. Training has also been introduced. Staff identified as occupying high risk positions (directors, project directors and staff working in sales, business development and pricing) will now be required to attend a half-day competition law course. Eighteen members of staff attended training on 15 and 16 October 2019, and a further 30 were booked to undertake training on 5 and 7 November 2019. Staff identified as medium risk (those working in design, finance, marketing, IT and operations) will be required to complete a similar course online which is likely to take place at the end of January 2020. Training for both groups will be kept under review and repeated annually.

25. Anti-bribery and anti-corruption standards are being introduced, again under the supervision of Mr Rintoul who is also making contact with customers of the group to explain the recent steps taken and policy changes made by the Fourfront companies.

26. The companies propose to introduce regular email server searches for high risk terms with a view to uncovering future attempts at collusive tendering and nipping them in the bud. The first search was conducted on 24 October 2019 and a report of the results is being prepared (paragraph 20 of Mr Rintoul's affidavit).

27. The boards of companies in the Fourfront group have been changed; in particular, three directors who were directly involved with the competition infringements, including Mr Lucking, the former CEO, have resigned.

28. Monthly divisional and board meetings now consider a specific agenda item dealing with matters of ethics and compliance.

29. Mr Rintoul concludes his evidence by saying that he considers the activities that have now been undertaken "greatly reduce the future risk of competition law issues from arising".

30. Mr Buckley made extensive submissions as to need both orally and in his skeleton argument. Mr Stamatis has played a major role in the companies for some time. He was the chairman of the group and has also acted as a director of all the companies in the group. He is now said to have a strategic as opposed to an operational role in the group. In his affidavits he describes his role as promoting the group internally by managing the relationships between the individual companies making up the group; overseeing the "organic growth" of the group; acting as the public face of the group; recruitment; training; overseeing the back-office functions of the group companies; overseeing the various compliance projects being implemented by Mr Rintoul and others; productivity; and introducing work (it is said that in the last three years he has tendered for projects worth over £23 million, an activity to which he intends to devote more time). Mr Davies runs Area's London office which in 2019 turned over some £48 million; he is responsible for all aspects of that company's performance: revenue, management and the day-to-day performance of the company's contracts; he is the public face of the London office. The foregoing is but a short summary of what is set out at much greater length in the evidence.

31. The CMA's position is that, on an analysis of the claimants' evidence and taking into account the broader public policy considerations inherent in the disqualification regime in respect of competition infringements, neither claimant has made out a case for permission to act. Whilst accepting that the considerations that apply to permission to act in competition disqualifications cases are fundamentally the same as those that apply to disqualification more generally, Mr Bompas says that the court should bear in mind that the making of a competition disqualification order or the giving of a competition disqualification undertaking provides not only enhanced protection for the public from future harmful conduct by individuals who have demonstrated failures to comply (or to prevent compliance) with competition law in the past, but also (importantly) serve as a general deterrent, bringing home to individuals the jeopardy in which they place themselves if they fail to observe the required standards. As far as Mr Stamatis is concerned, Mr Bompas submits that he has failed to demonstrate that there is any need for him to be given permission to continue acting as a director and/or to take part in the management of the companies. I understand the same to apply to Mr Davies.

32. Furthermore, and this is a major concern of the CMA, what transpired following Mr Stamatis's signing his undertaking, casts doubt on his appreciation of the gravity of

Fourfront's competition contraventions and his responsibility for them. I shall come to this later.

33. Even though Mr Stamatis has now agreed to stand down as the chairman of the Fourfront Group, it is clear that Mr Stamatis intends to continue to be the "public face of the Fourfront Group," something that Mr Bompas describes as a matter of concern to the CMA. On analysis, the evidence in support of Mr Davies's application, he contends, falls short of demonstrating that there is a need for him to continue to act as a director, as opposed to simply remaining employed by Area (albeit in a senior sales or possibly managerial role). Insofar as that role requires Mr Davies to be concerned in the management of Area, the CMA would not oppose limited permission to enable Mr Davies to so act.

34. I return to what did occur after Mr Stamatis's entering into the disqualification undertaking. Ms Radke deals with events in paragraphs 40-49 of her affidavit. Following the signature of undertakings by the claimants, the CMA prepared a press release to announce that the claimants, together with Mr Lucking, had signed disqualification undertakings. On 1 August 2019 the CMA discovered that an article had been published by *Law360* (a subscription-based, legal news service) on 31 July 2019 in which Mr Chandler, the CEO of the Fourfront Group, was quoted as having said that the claimants would "seek a dispensation from the courts allowing them to carry on as directors within Fourfront Group. The CMA said it would not object to the dispensations, according to Chandler". The CMA rightly objected to the suggestion that the process of obtaining "dispensation" was a formality, so that the world at large could expect the claimants simply to continue much as before. Furthermore, the CMA had not said that it "would not object to the dispensations," a fact which the CMA contacted *Law360* to clarify.

35. This led to correspondence between the CMA and Freshfields, the claimants' solicitors, which resulted in Freshfields providing the CMA with a reactive statement which, it was said, Fourfront would provide to the press That press statement noted that Fourfront "did not expect that [the claimants] would come under scrutiny" in the same way as Mr Lucking:

> "The CMA have argued that Sion Davies in his capacity as London's MD and Aki Stamatis as Chairman, should have been aware that such infringements were occurring and taken measures to intervene. Our lawyers disputed these conclusions with the CMA and felt we had a very strong case and should take the matter to Court. However, having weighed up the possible duration, cost and potential ongoing reputational damage that a Court case could bring, the Fourfront Group Board have reached the conclusion that it is in the business's best interests to accept the proposed CDU's".

The Press Statement went on to say:

> "The voluntary signing of the CDU's is predicated by the CMA offering no objections to them both obtaining a Court dispensation to carry on as Directors within Fourfront Group. Fourfront are working constructively with the CMA to ensure that any preconditions required are met and the CMA have allowed a suitable timescale to enable this to occur.

> [The claimants] have the full support of the business during this difficult period and will continue to perform their current roles whilst awaiting Court dispensations".

These statements were also thought to be incorrect and misleading and are said by the CMA to call into question the bona fides of the regret the claimants have purported to express. (I received a letter from Freshfields after the hearing saying that the press contact which actually took place was not just with *Law360* but also with a trade website, *Building.co.uk*.)

36. Ms Radke also objects (see paragraph 49 of her affidavit) to the tenor of much of the post undertaking correspondence as tending to lay the blame for Fourfront's recent financial difficulties on the competition investigation rather than on Fourfront itself for what it had done, resulting in the penalty and the damage to its reputation.

37. Mr Bompas also submits that the changes made to Fourfront's competition compliance policy, the existence of which was taken into account by the CMA for the purposes of a reduction in penalty, was materially altered by Fourfront. The amendments were made without any explanation. They too call into question the bona fides of the claimants and the genuiness of their remorse. Mr Bompas accepts that, after seeing Ms Radke's affidavit which drew attention to the deletions which appeared to water down the policy, Freshfields sent a version of the policy which reinstated the deleted passages, but no explanation was given for making the deletions in the first place. Mr Stamatis's latest evidence now says that he made the amendments to the policy but that he had mistakenly used an old version, so that various changes that had been made between that version and the final version, which was approved by the CMA, were omitted by mistake. Mr Bompas makes the obvious but cogent point that that explanation does not reflect well on Mr Stamatis's attention to the policy itself; and, he says, it is hard to reconcile with other material provided before the first hearing of this application. I agree that it does not inspire confidence as to the implementation of the measures the claimants say are being introduced.

The financial position of the Fourfront Group

38. The financial position of the Fourfront companies is not what it was either. The last filed accounts, which covered the year ended 30 April 2018, showed a turnover of £146 million odd and pre-tax profits of £1.7 million odd. Management accounts thereafter show a less rosy picture: a reduction in turnover for the year ended 30 April 2019 and a pre-tax loss of £2.6 million. These negative developments are, unsurprisingly, attributed to the damage to the companies' reputation caused by the competition investigation and its outcome, the penalty of £4.1 million which resulted from the investigation and the costs of redundancies which have occurred in the consequential and continuing restructuring of the companies.

39. I do not pretend to have covered all the facts or submissions I have read or heard, but I think the foregoing is sufficient to enable me to move on to my conclusions.

Conclusions

40. I do not propose to deal with oral submissions I heard that tended either to add to the gravity of the conduct in respect of which the undertakings have been given or detract from it; nor

do I intend to compare the conduct of these claimants to that of others, such as Mr Lucking or Mr Simms-Davies. My starting point is the agreed conduct of the claimants viewed in the light of the matters set out in their respective undertakings. My starting point also involves recognising the burden that the claimants must satisfy and that giving permission is not, as Arden J said, to be given too readily.

41. I do not intend either to become embroiled in argument about changes in the position of the claimants or the CMA in the course of this application or before it was made. The claimants were entitled to trim their sails to the prevailing wind; the CMA was equally entitled to take a more or less serious approach to the matters raised by this application and should not be criticised for doing so.

42. The factors relevant to the circumstances of the claimants and their individual applications are, of course, different, but in fact I do not think I need to differentiate between them in reaching my conclusions.

43. Both Mr Buckley and Mr Bompas agree that the approach to an application under ss. 9B(4) and 17(3A) Company Directors Disqualification Act should be similar to that governing any other application for s. 17 permission. Mr Bompas submits, however, that competition disqualification is focussed exclusively on the disqualified person's conduct relevant to competition infringements by a company (see s.9A(3), (5) and (6)) and does therefore differ from other bases on which directors may be disqualified. There must be a competition law breach; and the disqualified person must have a connection with the breach. That being the case, on a leave application such as this, the enquiry as to whether there is a risk that the particular conduct which gave rise to the disqualification in the first place may be repeated, or whether the giving of leave poses a risk of a future competition law breach, is a vital part of the enquiry: the court must pay particular attention to the wider public protection and considerations of deterrence (paragraph 47 of his skeleton argument) relevant to the competition disqualification regime.

44. Initially I was not persuaded by Mr Bompas and was inclined to think that I should approach this application in the same way as any other for permission to act, and that was the end of the matter. In fact, on reflection, I think there is a difference between leave in this context and leave more generally in as much as any competition disqualification based on cover bidding or the like necessarily involves deception; it involves dishonest behaviour that is almost certain to result in real financial damage to others. That applies whatever the disqualification period may be. In run of the mill disqualification cases a lower bracket period will almost always be imposed for a minor or "technical" wrong. That is not the case here. That indeed requires the court to keep public protection in the forefront of its mind.

45. Public protection must still, however, be balanced against other relevant factors, one of which is need. I am persuaded, in so far as is necessary, that need has been made out in these cases. I mean third party need, that of the companies concerned, rather than the need of the claimants. That, I think, appears adequately from what I have said above about their roles in the group and the companies concerned, but it is also plain from the evidence of Mr Chandler and Mr Scott. Mr Scott's first affidavit (see paragraphs 20-23) sets out the relevant material as regards Mr Stamatis, who, he says, plays a key, strategic role in the Fourfront Group. He is said to be essential to the culture of the organisation. Mr Chandler (in paragraphs 7-8 of his affidavit) says that Mr Davies has spent his whole career in the market and it would be difficult to replace him; the London team is loyal to him: "If Sion

Davies could not continue in his role it would be likely to result in the closure of Area's London office, resulting in a further 50 redundancies." In paragraph 9-10 he makes out his support for the need for Mr Stamatis too: "The removal of Aki Stamatis from his current role would considerably undermine both the Group's culture and cohesion. It would also have a detrimental effect on the operations of the Fourfront Group and its strategic direction". He goes on to say, "I understand Aki Stamatis is committed to being 'part of the solution' as opposed to 'part of the problem.'" I take that need to be especially acute in the light of the changes the companies in the group have had to undergo (reorganisation and redundancies) which are reflected in its financial position. I should add that I was told that the companies are bearing the costs of the claimants' applications, a sign that they are serious about their need for the claimants' continued involvement in the capacities for which permission is sought.

46. The financial situation to which I have alluded is a factor that militates against granting permission, but I am satisfied that steps are being taken to address it. I refer, however, to my postscript to this judgment.

47. I accept the claimants' professions of regret at what occurred, taking them at face value for the reasons I have given above. Like the CMA, however, I am concerned about the statements made to the press and the errors that were made with the drafting of the policy. As to the latter, I accept again the explanation that has been given. As to the dealings involving the press, I share the CMA's concerns. I propose to deal with those by making the permission I propose to give on terms that the companies in the group and each of them undertake that any press release, statement to the press or other publicity referring to that permission shall be approved in advance in writing by the CMA or the court, for which purpose there should be liberty to apply. There can be no question of the gravity of what has occurred being minimised in the future, nor should the court countenance anything that gives the impression that the granting of permission in circumstances such as these is a rubber stamp. It is not. Counsel will have to be authorised to give the undertakings sought when judgment is handed down.

48. In deciding to give permission I am influenced by the fact that the disqualification undertakings are in the lower bracket in spite of my acceptance of Mr Bompas's public protection point, which is well made. It does mean, however, that the risk of repeat behaviour can only be for short time and is, in the circumstances, small.

49. The following factors also fortify me in the view that there is not likely to be a repeat of the conduct in issue:

    (a) The reorganisation of the companies and of the boards of directors.

    (b) The introduction of the policies and training I have described above.

    (c) The presence of Mr Rintoul as a non-executive director. I regard this as crucial. Mr Rintoul may not have much experience of competition law, but he knows the industry and has management experience, albeit in a different kind of business to that undertaken by the Fourfront companies. That

means he is likely to smell a rat if one is about. As a solicitor, he will be especially careful to ensure that there is no future misconduct.

(d) Finally, the various conditions that are already in force and which will continue go a considerable way to ensuring that the public can be adequately protected.

50. For all those reasons, and subject to the conditions that already obtain and the undertaking I have said I shall require, I shall give the claimants the permission they seek.

Postscripts

51. I emphasise to Mr Stamatis and Mr Davies that I have not reached that decision easily or taken it lightly. They will need to conduct themselves in future with great circumspection, not only as regards competition law but also in relation to the solvency of the companies for the affairs of which they are responsible. Whilst I am reasonably satisfied that appropriate steps have been and will continue to be undertaken in relation to the financial position of the group, nothing in this judgment should be taken as absolving either of them (or other directors) from the duties they owe to the companies or their creditors.

52. I end by thanking counsel for their patient oral submissions and thorough and helpful skeleton arguments on which I have drawn extensively in this judgment.