

JERSEY / JUDGMENT

State House Company Limited and Ors v Friend Media Technology Systems Limited and Ors (Royal Court : Hearing (Civil) : Birt : Summary judgment) [2026] JRC 084 (26 March 2026)

[2026] JRC 084

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judgment

the commissioner: 1. This is an appeal against the judgment of the Master dated 18 December 2025 ("the Judgment") whereby he refused the Plaintiffs' application to exclude the Opinion of English counsel on an application for summary judgment brought by the Second to Fourth Defendants ("the NEC Parties"). 2. Amongst other issues, the appeal raises the question of whether a party wishing to adduce expert evidence needs to obtain leave from the court to do so. Factual background 3. I gratefully draw on the Master's summary in the Judgment for the relevant

background.

4. Pursuant to an investment agreement executed on 19 July 2022 ("the Investment Agreement"), the NEC Parties acquired shares in the First Defendant ("the Company") which had hitherto been largely owned by the Plaintiffs. The Investment Agreement was governed by English law. 5. Pursuant to clause 28.1 of the Investment Agreement, there was a 'no-partnership' clause which stated "Nothing contained in this agreement shall be deemed to constitute a partnership between the parties or any of them". 6. Clause 28.5 contained an 'entire agreement' clause which provided that: "This agreement, together with any documents in the agreed form and all documents entered into or to be entered into pursuant to the terms of this agreement, constitutes the entire agreement between the parties with respect to all matters referred to in this agreement...." 7. The Plaintiffs have instituted proceedings by way of Order of Justice alleging that they have suffered unfair prejudice as shareholders of the Company as a result of the actions of the NEC Parties. The NEC Parties deny the allegations and assert by way of cross-claim that they have suffered unfair prejudice at the hands of some of the Plaintiffs. 8. Paragraphs 13 to 17 of the Order of Justice plead that: "13. Throughout the negotiations surrounding NEC's potential investment in the Company, it was understood that, following such investment, the Company was to operate in the nature of a partnership between NEC on the one hand, and amongst others, the

Plaintiffs on the other (the Partnership Understanding).

14. The Partnership Understanding comprised, in particular, the following aspects...
15. The Partnership Understanding reflected the fact that, amongst other things, the Plaintiffs would, following the proposed investment by NEC, have a minority shareholding in the Company they had founded and would otherwise be left with little, if any, means by which to protect their investment.
16. By reason of the Partnership Understanding, and otherwise by virtue of the manner in which the parties' shareholdings were delineated following NEC's investment as pleaded hereinbelow, the Company and FMTSL have been (and remain) quasi-partnership companies.
17. The Partnership Understanding existed notwithstanding - a. the fact that NEC was intending to acquire a majority stake in the Company; and b. the particular terms of any formal investment documentation, including the investment agreement ultimately executed on 19 July 2022 (the Investment Agreement)." 9. By a summons dated 21 October 2025, the NEC Parties applied for summary judgment against the Plaintiffs in respect of this allegation of a Partnership Understanding and that the Company (and FMTSL) had been and were quasi-partnership companies. In support of the application, they rely inter alia on the entire agreement and no partnership clauses in the Investment Agreement. Accompanying the application, the NEC Parties filed an opinion from Ciaran Keller KC on English law (the "Opinion"). 10. In response, the Plaintiffs issued a summons on 17 November 2025 effectively seeking to exclude the Opinion. It was that application which was the subject of the Judgment. 11. The Master recorded that the Plaintiffs submitted that: (i) expert evidence cannot be adduced for the purposes of an application for summary judgment; (ii) permission is required to adduce expert evidence and in the absence of permission, no such evidence can be adduced; (iii) alternatively, parts of Mr Keller KC's evidence should be excluded. 12. In the Judgment, the Master effectively rejected all these submissions. He held that expert evidence could be adduced on an application for summary judgment; that permission to do so was not required; and that he was not willing to exclude any part of the Opinion. 13. The Plaintiffs now appeal against the Judgment. Test on appeal 14. The approach of the court on appeals from procedural decisions of the Master is well-established, namely that the court hears the matter afresh and reaches its own decision whilst having due regard to the decision of the Master. It was helpfully summarised by MacRae, Deputy Bailiff, in *Patel v JTC Trust Company Limited*

[2023] JRC 152 in the following terms at [5]: "[The test on appeal] is well-established. The hearing is de novo with the Royal Court having unfettered discretion to make such orders as it sees fit, but the Royal Court ought to have due regard to the decision of the Master and his reasoning - see *Café de Lecq v Rossborough (Insurance) Brokers Limited*

[2011] JLR 31 . I note that in the recent appeal to the Royal Court in *Cook v Clapham*

- [2022] JRC 210 , Commissioner Bailhache held at paragraph 28: "In my judgment.... I am entitled to approach the matter de novo if I wish to do so, and to exercise a discretion unfettered by the exercise of discretion by the Greffier , while at the same time giving that decision due weight."" 15. The Plaintiffs have raised a number of grounds of appeal but it seems to me that the essential points can satisfactorily be considered under the headings which follow. (i) Is leave to file the Opinion necessary? 16. Before the Master, it seems to have been the Plaintiffs' primary position that expert evidence is simply not admissible in an interlocutory application such as an application for summary judgment; see [3.3] of the Plaintiffs' skeleton argument before the Master. That submission was described by the Master at [19] of the Judgment as 'bold' and was rejected by him. 17. On this appeal, Advocate Angus has relied on what he termed his alternative argument before the Master. He submits that leave is required to adduce expert evidence in civil hearings, including interlocutory applications and that as leave was not obtained by the NEC Parties to file the Opinion, it is not admissible. 18. In support of his submission, he relies on RCR 6/20(2)(d). Rule 6/20 provides, so far as relevant, as follows: "(1) Subject to these Rules and to any other enactment relating to evidence, any fact required to be proved at the hearing of any proceedings by the evidence of witnesses shall be proved by the examination of the witnesses orally and in open court.
- (2) However the court may: (a) subject to paragraph (4), order that any particular facts to be specified may be proved by affidavit or witness statement;
 - (b) order that the affidavit of any witness may be read at the hearing on such conditions as the Court thinks reasonable;
 - (c) order that evidence of any particular fact to be specified shall be given at the hearing by statement on oath of information and belief or by production of documents or entries in books or by copies of documents or entries or otherwise as the Court may direct; and (d) order that not more than a specified number of expert witnesses may be called ." [Emphasis added] 19. He submits that Rule 6/20(2)(d) should be read in conjunction with the provisions of Practice Direction 17/09 dealing with Expert Evidence and which, so far as relevant, states as follows: "1. The purpose of this practice direction is to provide guidance to parties on how to approach applications to adduce expert evidence under [Royal] Court Rule 6/20(2)(d). 2. Other than in cases where a party has suffered personal injury, the Court will not normally permit expert evidence from more than two different disciplines to be called. 3. Each party may only call evidence from one expert for each discipline. 4. 5. The need for expert evidence will ultimately be determined by reference to the overriding objective. 6. In ordering expert evidence, the Court may have regard to what expert evidence is necessary to:- (a) determine a case at trial, and (b) enable the parties to explore settlement of the case and / or to take part in some form of alternative dispute resolution process...." 20. During the hearing, the Court raised with Advocate Angus whether Rule 6/20(2)(d) had the effect for which he contended and referred him to paragraph 38/4/1 of the 1999 edition of the Supreme Court Practice and Rule 35.4(1) of the Civil Procedure Rules of England and Wales. In my

judgment, Rule 6/20(2)(d) does not have the effect of requiring a party to obtain the leave of the court to obtain evidence from a single expert witness as in the present case. My reasons for reaching this conclusion can be summarised as follows: (i) It is not the natural meaning of the words used. It would be entirely straightforward to provide simply that leave is required to adduce the evidence of an expert. However, that is not what is stated; the words merely state that the court may limit the number of experts to be called. (ii) The Practice Direction, while implicitly envisaging that there will be applications to adduce expert evidence under Rule 6/20(2)(d), cannot alter the meaning of Rule 6/20(2)(d) or confer a power on the court that is not conferred by that rule. (iii) Although the wording of Rule 6/20(2)(d) is not identical to the wording of O.38/4 of the Supreme Court Rules as they were in force prior to the introduction of the Civil Procedure Rules, it is very similar and, in my judgment, has the same meaning. Thus, O.38/4 provided: "The Court may, at or before the trial of any action, order that the number of medical or other expert witnesses who may be called at the trial shall be limited as specified by the order." (iv) Paragraph O.38/4/1 of the commentary in the White Book states that the power to limit the number of expert witnesses under O.38/4 does not extend to excluding expert evidence altogether. The authority for this statement is the decision of the English Court of Appeal in *Sullivan v West Yorkshire Passenger Transport Executive*

[1985] 2 All ER 134 where at 139j-140a, Sir David Cairns said: "To the best of my knowledge there is no rule to be found in any statute, and nothing in the inherent jurisdiction of the court, which would enable any limitation to be placed on the right of a party to call an expert witness - at least, no right for the court to make any order on an interlocutory application barring the party from calling an expert witness. If such a rule is to be found, it must be found in the Rules of the Supreme Court and the only part of the Rules of the Supreme Court which could conceivably apply in this case are rr4, 36 and 38 of Ord 38. Rule 4 provides: "The Court may, at or before the trial of any action, order that the number of medical or other expert witnesses who may be called at the trial shall be limited as specified by the order." I am satisfied that only gives jurisdiction to limit the number, not to say that no expert witness shall be called." The judge went on to say that rr36 and 38 did not confer such power either. (v) The wording of Rule 6/20(2)(d) and O.38/4 is to be contrasted with the wording which now applies in England and Wales. CPR 35.4(1) simply states: "No party may call an expert or put in evidence an expert's report without the court's permission." (vi) In summary, I conclude that, as was the case in relation to the similar wording of O.38/4 in the Rules of the Supreme Court, Rule 6/20(2)(d) allows the court to limit the number of expert witnesses but does not extend to refusing to allow a party to call any expert witness at all. No distinction is to be drawn in this respect between a trial and an application for summary judgment. 21. It follows that, subject to what is said below, the NEC Parties did not require leave to call an expert witness on English law, just as they were free to call any other evidence which they sought to rely on. (ii) Admissibility 22. The fact that leave is not required to adduce evidence from a single expert witness does not mean that such evidence can automatically be heard. As with any evidence, it must be

relevant and admissible. Evidence which is not admissible cannot be adduced. 23. The Plaintiffs are critical of certain parts of the Master's Judgment at [31] which might be taken to suggest that a summary judgment application can be determined on the basis of inadmissible evidence. I am not sure that that is what the Master was saying, as his remarks were made in the context of a submission that parts of the Opinion were inadmissible as going beyond what was proper for an expert witness on foreign law to opine on and that these parts should be omitted. 24. But, if the Master was suggesting that he could decide a summary judgment application on the basis of inadmissible evidence, I must respectfully disagree. A trial may only be decided on the basis of admissible evidence. A summary judgment application which is successful determines that it is not necessary to have a trial because, for example, there is no realistic defence to the case being brought by a plaintiff. In order to decide on the strength of the case brought by the plaintiff, a Master can only have regard to admissible evidence. Otherwise, one could contemplate the position of a Master granting summary judgment to a plaintiff on the basis of evidence which the plaintiff would not be allowed to adduce at trial because it was inadmissible. That would clearly be a very unjust result. 25. Advocate Dann reminded the court that in *HRCKY Limited v Hard Rock Limited*

[2019] JCA 123, the Court of Appeal had stated that, in reaching its conclusion on a summary judgment application, the court must take into account not only the evidence actually placed before it on the application but also the evidence that can reasonably be expected to be available at trial. However, that can only mean admissible evidence that can reasonably be expected to be available at trial. 26. It follows that, in order for the NEC Parties to be able to rely on the Opinion in connection with the summary judgment application which they have brought, the court must be satisfied that it is admissible. I accordingly turn to consider that issue. (iii) Is the Opinion admissible? 27. Evidence from an expert is admissible if it is needed to provide the court with information likely to be outside the court's own knowledge and experience. An alternative way of expressing the same test is whether the court will be able to form a sound judgment on the matter in question without the assistance of witnesses possessing special knowledge and experience; see *Nott v Strzelecki*

[2014] JRC 155A. If the court can reach a sound judgment without such assistance, expert evidence is unnecessary and therefore inadmissible. 28. In this case, the expert evidence sought to be adduced relates to foreign law, namely English law, because the Investment Agreement is governed by English law. In most cases, foreign law is undoubtedly a subject which is likely to be outside the knowledge and experience of a Jersey court and accordingly expert evidence is regularly admitted where it is applicable because it is necessary for such evidence to be adduced in order for the court to reach a sound

judgment.

29. English law is, however, regarded rather differently. In many areas - although not of course all - there are great similarities between English law and Jersey law and the Royal Court is experienced at being addressed by counsel on various English authorities and seeking to extract the necessary principles from them. 30. The position was helpfully summarised by Bailhache JA in the Court of Appeal in *Energy Investments Global Limited v Heritage Oil Limited*

[2020] JCA 258 where he said at [62]: "62. We do not dissent at all from the propositions that foreign law is a question of fact in the island's courts and that where there is dispute about that law, the court should hear evidence from expert witnesses and make its adjudication. There are however two points to make where the foreign law is English law. The first is that English authorities are regularly cited in this court and the court below, and it is expected that the court should be able to form a view as to what the effect of those authorities might be. The position is therefore not the same as that where the court is faced with assertions about the law of a country where the judicial and juristic structure is quite different from our own. Of course there will be occasions where there are highly technical points of law or practice which arise - a typical example, though no more than an example, is one which arises in mistake applications in trust law where the taxation consequences of the gift into trust under English law have an impact which it is said is sufficient to have the gift set aside - thereby driving a need to have formal evidence before the court. Whether that is so or not will be a matter for the judgment of the court dealing with the issue. The second is that the court will need to make an assessment of the extent to which there is material difference between the parties as to that law and as to the materiality of the differences to the issue the court has to determine." 31. The Opinion in this case falls into three parts. The first part (paras 14-23) deals with general principles of contractual interpretation. The second part (paras 24-31) deals with how English courts have treated entire agreement and no partnership clauses. The third part (paras 32-56) refers to a number of cases where the courts have considered entire agreement or no partnership clauses in investment and shareholder agreements (such as the Investment Agreement). 32. The applicable principles for the interpretation of contracts in Jersey are identical to those under English law and the leading Jersey authorities draw heavily on the leading English authorities which are mentioned in the Opinion. Indeed, it is common ground between the parties that the principles are identical; see para 121.3 of the Answer and Cross Claim of the NEC Parties and para 57 of the Plaintiff's Reply and Answer to Cross Claim. 33. In the circumstances, I have no hesitation in concluding that it is not necessary for the court to admit the first part of the Opinion. This court (whether on a summary judgment application before the Master or at trial) will be entirely capable of reaching a sound judgment on the principles of interpretation under English law without the need for the Opinion because they are identical to those under Jersey law. Counsel will be able to refer the court to the relevant English authorities so far as necessary and the court will be capable of applying them. 34. Nor do I think it is necessary for the court to

receive the second and third parts of the Opinion in evidence in order to reach a sound judgment on the case. They do not concern a specialised area of law (as envisaged in the extract from Energy Investments Global referred to above) such as tax, intellectual property or specialised commercial transactions. The cases referred to in the second and third parts of the Opinion are simply cases where the English courts have considered the meaning and effect of entire agreement or no partnership clauses in various contexts, including in the context of investment and shareholder agreements. The Master and the Royal Court are eminently capable, with the assistance of counsel, of considering these cases and applying any principles which emerge from them to the determination of the meaning and effect of the particular entire agreement and no partnership clauses in the Investment Agreement. There is no need for expert English law evidence to be given in order for the Master or the court to reach a sound judgment on the matter; the conclusion, if any, which can be drawn from the cases referred to are not matters which are outside the court's own knowledge and experience. 35. In summary, in my judgment the court (whether the Master on the application for summary judgment or the court at any trial, if there is one) can be referred by counsel to such English cases as may be relevant and draw such assistance as may be available from such cases in determining the meaning and effect under English law of the entire agreement and no partnership clauses in the Investment Agreement. 36. It is therefore not necessary for the Opinion to be adduced in evidence in order for the court to reach a decision. As it is not necessary, it is not admissible and the summary judgment application must be determined without it. It follows the appeal against the Master's decision is allowed. 37. I should add that there is, in my judgment, good reason for the rule that expert evidence is only admissible where it is necessary for such evidence to be adduced in order for the court to reach a sound judgment on the matters in question. The provision of expert evidence is likely to incur additional expense and it would be inconsistent with the overriding objective to admit it unless it is necessary to do so. Postscript 38. As stated above, I have concluded that, on a true construction of Rule 6/20(2)(d), leave to adduce evidence from an expert witness is not required; the sole control mechanism available for a court is whether the expert evidence is admissible. If it is admissible, there is no discretion to exclude it (other than by limiting the number of expert witnesses in accordance with the Rule). 39. I have not reached this conclusion with any great enthusiasm. I was informed by counsel that, as a matter of practice, advocates do tend to seek leave to adduce expert evidence and the Master mentioned at [23] of the Judgment the importance of the Overriding Objective and the need for a party not to take another by surprise. 40. In my judgment, the court would undoubtedly benefit from the introduction into the Royal Court Rules of a specific provision equivalent to CPR 35.4 (quoted at para 20(v) above) imposing a simple and straightforward requirement for any party who wishes to call an expert or put in evidence an expert's report to obtain the court's leave. This would enable the court at an early stage to consider both questions of admissibility and general case management issues in relation to such evidence, e.g. requiring them to meet and agree issues upon which they agree and those upon which they disagree. 41. In view of my conclusion that the appeal

should be allowed, I have not thought it necessary to deal with a number of the other grounds of appeal relied upon by the Plaintiffs. 42. In summary, the appeal of the Plaintiffs is allowed and I hold that the Opinion is not admissible. It follows that the Master should consider the summary judgment application by reference to the submissions of counsel on the relevant English authorities. Authorities State House Trust Company Limited and Ors v Friend Media Technology Systems Limited and Ors

[2025] JRC 334 . Patel v JTC Trust Company Limited

[2023] JRC 152 . Royal Court Rules. Supreme Court Practice and Rules. Civil Procedure Rules of England and Wales. Sullivan v West Yorkshire Passenger Transport Executive [1985] 2 All ER 134. HRCKY Limited v Hard Rock Limited

[2019] JCA 123 . Nott v Strzelecki

[2014] JRC 155A . Energy Investments Global Limited v Heritage Oil Limited

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