

JERSEY / JUDGMENT

State House Trust Company Limited and Ors v Friend Media Technology Systems Limited and Ors (Royal Court : Hearing (Civil) : Cadin : Expert evidence) [2025] JRC 334 (18 December 2025)

[2025] JRC 334

Source: bailii.org · Research copy typeset by Esheria. Not court-issued or certified.

judgment

the master:

Introduction

1. This is my judgment in relation to an application by the Plaintiffs to exclude the opinion of English Counsel in an application for summary judgment.

Background

2. The background to these proceedings is set out, at length, in a judgment of Commissioner Bailhache dated 13 June 2025, reported at [2025] JRC 158 (in particular at paragraphs 5 to 21) and I do not propose to recite it in detail in this judgment.
3. The Plaintiffs allege that they have suffered unfair prejudice as shareholders in Friend Media Technology Systems Limited (the "Company") as a result of the actions of the Second to Fourth Defendants (the "NEC Parties"). The NEC Parties deny the allegations and assert by way of a cross claim that they have suffered unfair prejudice at the hands of some of the Plaintiffs.
4. 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)." 5. At paragraph 20 of his Judgment, Commissioner Bailhache noted that: "20. In the Order of Justice, it is asserted that there was a partnership understanding between the Plaintiffs and the NEC Parties as a result of which the Company and [a subsidiary called Friend MTS Ltd ("FMTSL")] have been and remain quasi-partnership companies. It might be thought that this would be a difficult proposition to establish given Clause 28.1 of the Investment Agreement which provides that "Nothing contained in this agreement shall be deemed to constitute a partnership between the parties or any of them". Furthermore, at Clause 28.5, the parties agreed 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 ... " However, we are not required to consider the point any further because Advocate Angus confirmed that for the purposes of the present hearing the existence or otherwise of the partnership understanding was not a relevant feature and we should proceed upon the basis that no such claim at this stage was maintained. This we have done." 6. By a summons dated 21 October 2025, the NEC Parties applied for summary judgment against the Plaintiffs in respect of this allegation that the Company and FMTSL had been and were quasi-partnership companies. In support of that application, the NEC Parties have filed an affidavit together with an Opinion from Ciaran Keller KC on English law. That summons is listed for hearing on 21 January 2026. 7. In response, the Plaintiffs issued a summons on 17 November 2025 effectively seeking to exclude the Opinion of Mr Keller KC and it is that application which is the subject of this judgment. The Parties' Respective Submissions 8. The Plaintiffs submit 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. 9. In contrast, the NEC Parties submit that: (i) expert evidence is frequently adduced on interlocutory applications; (ii) expert evidence of foreign law is a matter of fact; and (iii) the Opinion of Mr Keller KC has been provided to assist the Court, not to obtain a material advantage in the context of an application for summary judgment and there is nothing improper as to its contents. The Relevance of Foreign Law 10. The Company is Jersey-registered. The nature of the parties' respective interests in the Company, and their roles, rights and obligations, were set out in an Investment Agreement, governed by English law, and the Articles of Association, governed by Jersey law. 11. The parties appear to agree that English law and Jersey law are materially identical insofar as concerns the

interpretation of the relevant documents in that in response to an allegation that a firm of English solicitors were "not competent to advise the Company in respect of requests for information by directors and shareholders of a Jersey company (such as the Company)" pleaded at paragraph 76(c) of the Order of Justice: (i) the NEC Parties plead at paragraph 121.3 of their Answer that: "121.3... The right to request information and documents arose under the Investment Agreement, which is also an agreement to be governed and interpreted in accordance with English law (clause 29.1). Further and in any event, the relevant Jersey law would be materially identical to English law and so advice from a reputable English law firm would be of material assistance to the Investigation Committee." (ii) at paragraph 57(b) of their Reply and Answer to Cross Claim, the Plaintiffs plead that: "b. The phrase "the relevant Jersey law would be materially identical to English law" is admitted specifically, and with general application to the documentation in these proceedings and particularly the Investment Agreement." 12. The Royal Court is, of course, very familiar with principles of English law, particularly where they align with principles of Jersey law. In *Energy Investments Global Limited v Heritage Oil Limited*

[2020] JCA 258, *Bailhache JA* held that: "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." 13. The rather unique nature of English law and its similarity to Jersey law led the Plaintiffs to make the somewhat strained submission that whilst the NEC Parties could repeat Mr Keller KC's Opinion in their Skeleton Argument and submissions, without objection, they could not adduce his formal Opinion. In the former case, they accepted that the Court could assess the submissions and decide as to their correctness whereas in the latter, the Court would have to conduct "a trial of fact, which is contrary to the function of the Court when hearing an application for summary judgment". In my judgment, this apparent inconsistency reflects a mischaracterisation of the task to be carried out by the Court. Summary Judgment 14. Part 7 of the Royal Court Rules specifies the powers and the

process to be followed and for the purposes of this application, RCR 7/2 is the relevant provision which states that: "(1) A plaintiff may not, without leave of the Court, apply for summary judgment until the defendant against whom the application is made has placed the matter on the pending list. (2) If a plaintiff applies for summary judgment before a defendant against whom the application is made has filed an answer, that defendant need not file an answer before the hearing. (3) An application for summary judgment must be made by summons which must set out the claims or issues which it is proposed that the Court will decide at the hearing. (4) The application must be supported by an affidavit verifying the facts to which the application relates and stating that, in the deponent's belief, the other party has no real prospect of succeeding on the claim or issue or of defending the claim or issue set out in the application as the case may be. (5) Unless the Court otherwise directs, an affidavit for the purposes of this Rule may contain statements of information or belief with the sources and grounds thereof. "(6) The summons and a copy of the affidavit must be served on the other party not less than 14 clear days before the day on which the summary judgment hearing is to take place." 15. Summary judgment is therefore available at an early stage in litigation, before pleadings may have closed. The only requirement is that the summons must be supported by an affidavit containing the requisite declaration that the other party's case has no real prospect of success. 16. The applicable principles were set out by the Court of Appeal in *HRCKY Ltd v Hard Rock Ltd*

[2019] JCA 123 in the following terms: "59. At paragraph 18 of his judgment giving the Appellant leave to appeal the judgment of the Royal Court of 1st February 2018, McNeill JA helpfully set out the test which is to be adopted by the Court on an application for summary dismissal. In essence the principles are those set out by Lewison J in *Easyair Limited v Opal Telecom Limited*

[2009] EWHC 339 (Ch) at paragraph 15:- ""(i) The court must consider whether the claimant has a "realistic" as opposed to a "fanciful" prospect of success - *Swain v Hillman* [2001] 2 All ER 91; (ii) A "realistic" claim is one that carries some degree of conviction. This means a claim that is more than merely arguable - *ED & F Man Liquid Products v Patel* [2003] EWCA Civ 472 at [8]; (iii) In reaching its conclusion the court must not conduct a "mini- trial" - *Swain v Hillman*; (iv) This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents - *ED& F Man Liquid Product v Patel* at [10];

(v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application of a summary judgment, but also the evidence that can reasonably be expected to be available at trial - *Royal Brompton Hospital NHS Trust v Hammond (No 5)* [2001] EWCA Civ 550; (vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where

there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case - Doncaster Pharmaceuticals Group Limited v Bolton Pharmaceutical Co 100 Limited

[2007] FSR 63 ; (vii) On the other hand it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple - if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction - ICI Chemicals & Polymers Limited v TTE Training Limited [2007] EWCA Civ 725." 17. As the above principles make clear, the exercise to be conducted by the Court on an application is one of "critical analysis" (adopting the phrase used in Okpabi v Royal Dutch Shell Plc

[2021] UKSC 3 and referred to in Halabi v Farrow

[2025] JRC 169) of the evidence adduced and/or likely to be adduced at trial. It is not appropriate for the Court to conduct a mini-trial nor to make determinations about contested factual evidence or other documents, unless it concerns "a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument" . Expert Evidence on an Application for Summary Judgment 18. The Plaintiffs submit that there is no provision in the RCR allowing expert evidence to be adduced at an interlocutory application: (i) although RCR 6/20(2)(d) empowers the Court to limit the number of expert witnesses to be called, they submit that this is a reference to expert evidence at trial only; (ii) similarly, paragraph 6 of Practice Direction RC 17/09 refers to "expert evidence...necessary to determine a case at trial" ; (iii) in the absence of any express provision in the RCR permitting expert evidence to be adduced at an interlocutory hearing, it is not open to me as Master to supplement the RCR or the Practice Direction, as unlike the Royal Court I do not have inherent jurisdiction so to do. 19. This is a bold submission: (i) The Court, and in particular the Master who deals with the majority of the applications for summary judgment, frequently determines such applications in cases where expert evidence has been obtained and is relevant to the

issues and/or the application. (ii) In *Smith v SWM Limited*

[2017] JRC 167, in relation to an application for summary judgment in relation to negligent investment advice, Master Thompson, as he then was, allowed evidence to be admitted from two independent reporting professionals appointed pursuant to a direction from the Jersey Financial Services Commission under the Financial Services (Jersey) Law 1998 : "47. While therefore I am of the view that the reports are admissible, they are not admissible as expert opinion called by the plaintiff under Rule 6/20(2)(d). Rather, I consider they fall within Rule 6/20(3) which provides that:- "The Court shall have full discretionary power, at any time before the delivery of judgment, to receive such further evidence as in the opinion of the Court the justice of the case may require, and may of its own motion direct that additional witnesses be heard." 48. This rule is not one of those rules which is limited to the Royal Court only and accordingly the power to admit evidence is a discretionary power also vested in the Judicial Greffier /Master." (iii) Further and/or alternatively, Master Thompson noted in *Bertrand des Pallieres v RBC Trustees (CI) Limited*

[2018] JRC 172, that although the Master does not have a "general inherent jurisdiction" unlike the Royal Court, he does have such inherent jurisdiction as may allow him "all procedural power necessary to act as a court in a meaningful sense" (reflecting the words of the Court of Appeal in paragraph 37 of *Halabi v Wilson and HMRC*

[2018] JCA 114). In my judgment, that procedural power extends to receiving such evidence as he thinks necessary to determine the issues before the Court. 20. I therefore reject the Plaintiffs' submission that expert evidence cannot be adduced on an application for summary

judgment.

The Requirement for Permission to Adduce Expert Evidence 21. The Plaintiffs' alternative submission is that because permission for expert evidence was not sought by the NEC Parties in advance, they cannot rely upon it for the purposes of a summary judgment application unless and until they get permission. Moreover, they submit that it would be illogical for the Court to rule otherwise: (i) if successful, summary judgment will result in a final determination; if the NEC Parties would have required permission to rely upon the expert evidence at trial for the purposes of a final determination, they should not be in any better position on an application for summary judgment; (ii) conversely, if the application for summary judgment is unsuccessful, it would be odd for the Court to require the NEC Parties then to obtain permission to adduce the expert evidence for the trial even though that evidence had already been adduced before the Court. 22. In my judgment: (i) RCR 6/20(2)(d) applies to hearings where "any fact required to be proved...by the evidence of witnesses shall be proved by the examination of the witnesses orally and in open court" ; RCR 7/2 and 7/3 provide that for the purposes of an application for summary judgment, evidence shall be on affidavit; accordingly, RCR 6/20 does not apply to such applications; (ii) there is no requirement under Part 7 of the RCR for permission to be obtained in advance of filing any affidavit containing direct, or indirect, expert evidence; (iii) permission is

not required before expert evidence can be adduced on an application for summary judgment.

23. However, whilst the RCR may be silent as to how expert evidence may be adduced on an interlocutory application, that does not mean that an application for summary judgment can be used as an ambush. The Overriding Objective requires that parties proceed on an "equal footing" (RCR 1/6(2)(a)) and that the parties must help the Court achieve the Overriding Objective (RCR 1/6(4)). To that extent, if one party is proposing to rely upon expert evidence, they should notify the other as soon as practicable and give them an opportunity to obtain their own expert evidence in advance of any hearing. 24. The Plaintiffs submit that such an approach is fundamentally flawed on the basis that: "The effect of admitting [expert evidence] therefore would be to immediately place the Court into the territory of conducting a trial of fact, which is contrary to the function of the Court when hearing an application for summary judgment." 25. In my judgment, this objection is misconceived. The provision of opposing expert reports on a summary judgment application does not require the Court to carry out a mini-trial to determine which of the reports is correct; the Court's role is to determine whether the respondent has a "realistic" case. In making that determination, the Court will attach such weight as it thinks fit to the expert evidence. 26. Insofar as the Plaintiffs submit that it would be illogical not to require permission: (i) that is the effect of the Royal Court Rules; (ii) there is limited utility in looking to England as the position is different given that CPR 35.4(1) provides that: "No party may call an expert or put in evidence an expert's report without the court's permission" (iii) there is no illogicality given the different exercises that the Court has to perform: (a) on an application for summary judgment, namely a critical appraisal of the evidence then available and which might be reasonably expected to become available to determine whether the respondent has a realistic case; (b) when facilitating a trial in accordance with the Overriding Objective which requires active case management. Exclusion of Part of the Expert Evidence 27. The Plaintiffs' final submission is that parts of Mr Keller KC's evidence, namely paragraphs 24 to 45, should be excluded. 28. Mr Keller KC's Opinion acknowledges his duties to the Court in accordance with Practice Direction RC 17/09 and attaches a copy of his CV and his instructions which were "to address the content of English law and the legal principles applicable to the...interpretation and construction of the terms of a contract...the resolution of ambiguous contract wording or alternative contractual constructions between the parties...the scope and effect of an entire agreement clause; and...the effect of a "no partnership" clause." His Opinion specifically records that "I do not express any opinion on the interpretation of the Investment Agreement or on the application (as opposed to the content) of English law." 29. Paragraphs 14 to 23 of his Opinion set out the English law principles of contractual construction and subject to expert evidence being admissible and/or no permission being required, the Plaintiffs do not object to these paragraphs. 30. As to paragraphs 24 to 45, the Plaintiffs submit that: 3.18 However...paras. 24 - 45 of the Opinion are exorbitant. 3.19 Paras. 24 - 45 of the Opinion trespass on this Court's role and function, namely the determination of what the Investment Agreement means applying the English law principles. They invite determination based on examples from particular English cases, decided on particular facts and against the background or particular wording of particular clauses, and what those English courts decided in those cases. In short, they set out the effect of particular provisions in particular contracts, having first applied principles of contractual

constructions to what the relevant clauses mean. This strays a considerable distance from what is permissible. 3.20 The exorbitance peaks at paras. 32 - 35 of the Opinion, headed "Effect in a contract such as the Investment Agreement" (emphasis added). The Opinion there sets out what, in effect, the Second to Fourth Defendants want this Court to conclude in relation to the Plaintiffs' prospects of success regarding their 'quasi-partnership' claims. It is for this reason that the Plaintiffs characterised the Opinion as a "skeleton argument" in correspondence. Not one of the passages in the authorities identified is concerned with the principles of construction which the English Courts have identified and applied in construing such clauses; rather, they are all instead concerned with the effect which the English Courts have given, across various cases of diverse factual background, to those clauses once they have been construed in accordance with the usual principles of construction. 31. In my judgment: (i) whilst the submission that the Court should only decide the application on the basis of admissible evidence is superficially attractive, it is based on a mischaracterisation of the task the Court is to perform; (ii) RCR 7/2(5) specifically permits affidavits used for the purposes of an application for summary judgment to contain statements of information or belief; some of that evidence may not, in fact, be admissible; some may be of very limited weight; some may be admissible and determinative. Yet there is no express requirement for the Court to separate the plums from the duff and to make its assessment only on the basis of admissible and credible evidence; quite the contrary as the Court must not conduct a mini-trial; (iii) the exercise that is required is for the Court to carry out a critical appraisal of the respondent's case to determine whether it has any realistic prospect of success. In so doing, the Court must take into account the evidence adduced, and the evidence that might reasonably be expected to be available at trial. That latter category could include additional, new evidence or conversely it could include what the Court regards as the admissible elements of the evidence originally adduced; (iv) if there are elements that are plainly and obviously inadmissible, the Court may disregard them; alternatively, it may proceed on the basis that any apparent defects are likely to be resolved in whole, or in part, by the date of trial. In my judgment, these assessments are for the Court to determine, and to articulate, in the course of the application for summary judgment; not before; (v) indeed, to do otherwise would undermine the summary nature of an application under Part 7 of the RCR; risk leading the Court into conducting a mini-trial; and/or encourage multiple applications about the admissibility of evidence at different stages of the proceedings, contrary to the Overriding Objective. It is neither necessary nor appropriate for the Court to determine the admissibility of any evidence before proceeding with a summary judgment application. 32. Accordingly, whilst I note the criticisms of Mr Keller KC's Opinion, I decline to exclude paragraphs 24 to 45 in whole or in part. These are paragraphs to be considered by the Court when determining the application for summary judgment. 33. The Plaintiffs' application is therefore refused. Authorities State House Trust Co Ltd and Ors -v- Friend Media Technology and Ors

[2025] JRC 158. Energy Investments Global Limited v Heritage Oil Limited

[2020] JCA 258 . Royal Court Rules 2004. HRCKY Ltd v Hard Rock Ltd

[2019] JCA 123 . Okpabi v Royal Dutch Shell Plc

[2021] UKSC 3 . Halabi v Farrow

[2025] JRC 169 . Smith v SWM Limited

[2017] JRC 167 . Jersey Financial Services Commission under the Financial Services (Jersey) Law 1998. Bertrand des Pallieres v RBC Trustees (CI) Limited

[2018] JRC 172 . Halabi v Wilson and HMRC

[2018] JCA 114 . Page Last Updated: 06 Jan 2026 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bailii.org/je/cases/UR/2025/>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/state-house-trust-company-limited-and-ors-v-friend-media-technology-systems-limited-and-ors-royal-court-hearing-civil-cadin-expert-evidence-2025-2025>

Prepared on 22 October 2026 · Esheria