Neutral Citation Number: [2026] EWCA Civ 874

Case No: CA-2025-001600

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE, BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES, INTELLECTUAL PROPERTY LIST (ChD)
Mr Justice Rajah
[2025] EWHC 299 (Ch)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10 July 2026

Before :

LORD JUSTICE ARNOLD
LORD JUSTICE ZACAROLI
and
LORD JUSTICE MILES

- -

Between :

ILLIQUIDX LIMITED	**Claimant/ Respondent**
- and -	
(1) ALTANA WEALTH	**Defendant/ Appellant**
(2) LEE ROBINSON	**Defendant**
(3) STEFFEN KASTNER	**Defendant**
(4) BREVENT ADVISORY LIMITED	**Defendant/ Appellant**

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Tom Moody-Stuart KC and Ben Longstaff (instructed by **Fieldfisher LLP**) for the **Appellants**
Andrew Green KC, Mark Vinall and Charles Wall (instructed by **Quinn Emanuel Urquhart & Sullivan UK LLP**) for the **Respondent**

Hearing dates : 30 June – 1 July 2026

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Approved Judgment

This judgment was handed down remotely at 10.30am on 10 July 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Arnold:

Introduction

1. This is an appeal by the First Defendant ("Altana") and the Fourth Defendant ("Brevent") (together, "the Appellants") against an order of Rajah J dated 23 June 2025 granting the Claimant ("IX") judgment on its claims for breach of confidence and misuse of trade secrets for the reasons given in the judge's judgment dated 13 February 2025 [2025] EWHC 299 (Ch).

2. The principal issue raised by the appeal is whether the confidential information which the judge found that the Appellants had misused was in the public domain at the relevant time.

Factual background

3. The following summary of the factual background is drawn largely verbatim from the judge's judgment. It includes references to a number of documents claimed by IX to contain confidential information as explained later in this judgment.

4. By 2019, most of Venezuela's sovereign debt was in default. Despite the country's enormous natural resources, a number of factors, such as the crash in oil prices in 2014, falling oil production and US sanctions, had led to a major economic crisis with hyperinflation, mass unemployment and mass migration of its population. There was political turmoil following a contested election in 2018, with some countries continuing to recognise Nicolás Maduro as president while many others recognised his opponent, Juan Guaidó.

5. The United States of America had imposed sanctions restricting Venezuela's access to US financial markets in 2017-2018, with certain exceptions to minimise the impact on US economic interests. Those exceptions allowed US investors and financial institutions to continue to buy and sell certain Venezuelan sovereign bonds and bonds issued by the Venezuelan state oil company Petróleos de Venezuela SA ("PDVSA") in the secondary market.

6. US sanctions were tightened in January and February 2019. On 28 January 2019 PDVSA was sanctioned, freezing its US assets and prohibiting US persons from dealing with it without a licence from the Office of Foreign Assets Control ("OFAC") and restricting US persons' dealings in PDVSA bonds so that only divestments to a non-US person were permitted. On 1 February 2019 the previously broad exception for secondary market dealings in Venezuelan sovereign bonds was narrowed in the same way, so that US persons (i.e. most of the market) could not buy the bonds, and could only sell them to non-US persons. On 11 February 2019 the General Licenses granted by OFAC were amended again to make clear that US persons could not "facilitate" the purchase of listed bonds, other than divestments to non-US persons.

7. The position was much the same in respect of trade claims. After 2019, a US person would have been prohibited from buying or selling any trade claims against the Government of Venezuela or PDVSA without an OFAC licence.

8. These sanctions distorted the market in Venezuelan debt, and depressed the price of bonds. It remained possible for non-US persons to buy and clear 38 Venezuelan sovereign and PDSVA bonds from US sellers through Euroclear without breaching US sanctions. It also remained possible for non-US persons to deal in non-US trade claims against the Government of Venezuela or PDVSA. It is common ground that this created an investment opportunity.

9. IX is an advisory and broking boutique which specialises in illiquid investments. By 2019 it had particular expertise in Venezuelan debt. Its founders and directors are Celestino Amore and Galina Alabatchka.

10. Altana is an investment fund management company. Its founder, controlling shareholder and Chief Investment Officer is Lee Robinson, the Second Defendant. Mr Robinson has worked in the City since 1991. He set up his own hedge fund business in 2001, and in 2010 set up the Altana group of companies. Altana launches and manages investment funds comprising Mr Robinson's money and that of other investors. The funds invest in a wide range of opportunities from cryptocurrencies to corporate bonds.

11. Brevent is a company that provides consulting services to Altana, of which Steffen Kastner, the Third Defendant, is the sole director and shareholder. Mr Kastner was at Goldman Sachs for about 20 years until 2014. Thereafter he has pursued his own investments and taken on consultancies from time to time.

12. Prior to its relationship with the Defendants, IX had been looking to set up an investment fund to invest in Venezuelan distressed debt. IX prepared a presentation ("the Canaima Capital Presentation" – item (a) of the Detail referred to below) which set out the nature of the proposed fund and why it was a good investment opportunity. In February and March 2019 IX circulated various iterations of the Canaima Capital Presentation to a number of potential investors to encourage interest in the proposed fund.

13. Ms Alabatchka had previously worked with Mr Kastner at Goldman Sachs and the two had remained in intermittent contact. At a meeting with him on 5 April 2019, Ms Alabatchka shared IX's plans to set up an investment fund in relation to Venezuela and raise capital. A telephone call was arranged between Mr Amore and Mr Kastner on 18 April 2019. In that call, Mr Amore explained IX's intention to set up a fund trading in distressed sovereign debt and why IX was proposing to do so. Mr Kastner suggested Mr Robinson as a potential person that IX could work with to source capital.

14. On 30 April 2019 Mr Amore sent Mr Kastner the Canaima Capital Presentation, and on 8 May 2019 Mr Robinson reviewed it. On 10 May 2019 Mr Amore, Mr Robinson and Mr Kastner had a conference call to discuss it. On 29 May 2019 Mr Robinson emailed Ms Alabatchka and Mr Amore Altana's proposal for providing set- up and operational support for a fund with a commitment to lead marketing and raise capital for the fund, and a proposed fee structure.

15. This led to IX, Altana and Brevent establishing a joint venture to set up a fund to be called the Altana IlliquidX Canaima Fund ("AICF") to invest in Venezuelan distressed debt ("the JV"). They entered into an agreement setting out the terms of the JV dated

28 June 2019 ("the JV Agreement"), and a non-disclosure and non-circumvention agreement dated 5 July 2019 although signed on 8 July 2019 ("the NDA").

16. The JV Agreement provided that IX would only be obliged to launch its proposed fund with the Appellants if the Appellants reached a "$30m target of soft commitments by October 15, 2019". If the Appellants did not meet their fundraising targets from potential investors, or did not convert their "soft commitments […] into hard, signed commitment", IX would have the right "not to pursue the opportunity with [Altana]" and "to pursue alternative fundraising routes".

17. After executing the NDA, the parties held a meeting on 9 July 2019, which Mr Kastner recorded in a note ("the Due Diligence Note" – item (b)) that he distributed on the same day. Mr Amore talked through the US (and EU) sanctions and the mechanics and feasibility of various types of trade, recovery strategies, and the possible competition. His briefing included the idea of obtaining a legal opinion that the fund was sanctions compliant to reassure investors and financial institutions dealing with the proposed fund.

18. On the same day, Ms Alabatchka followed up with an email to Mr Kastner attaching the Executive Orders and General Licenses containing the US sanctions regime ("the 9 July Email" – item (b1)). The annexes to the General Licenses identified the 38 Venezuelan bonds which non-US investors could lawfully buy from US sellers pursuant to the US sanctions.

19. Thereafter there were many emails and conversations between Messrs Robinson, Kastner, Amore and Ms Alabatchka, and IX sent a number of documents to Mr Robinson and Mr Kastner setting out details of the proposed fund. These included a presentation ("the 17 July Slides" – item (d)) and a fact sheet ("the 12 August Fund Fact Sheet" – item (h)).

20. As envisaged by the JV, the parties worked on preparing "teaser" presentations for marketing. This culminated in the production by IX of a fact sheet summarising the terms of the proposed fund ("the Canaima Fund Fact Sheet" – item (m)) and a presentation encouraging investment in the proposed fund ("the AICF Presentation" – item (l)).

21. On 5 September 2019 Mr Amore, Ms Alabatchka, Mr Robinson and Mr Kastner had a telephone call with Professor Olivares-Caminal. Professor Olivares-Caminal is a legal academic specialising in sovereign debt. It is common ground that Professor Olivares-Caminal was IX's pre-existing contact.

22. On the phone call, Professor Olivares-Caminal and Mr Amore explained that Venezuelan bonds used a fiscal agency rather than trust structure. This meant that, to stop claims to interest or capital becoming time-barred, legal proceedings had to be brought by the individual bond holder. This was important because historically sovereign nations had not taken limitation or prescription points, but Argentina had recently done so and Professor Olivares-Caminal considered it realistic that Venezuela would do so too. The significance of this point was important to the joint venture. First, the ramifications of Venezuelan bonds being a fiscal agency structure were not well known. Nor was the analysis that protective legal proceedings should be

commenced. Further, a big advantage and selling point of the new joint venture fund was that it could bring such protective proceedings on behalf of all its investors.

23. On 11 September 2019 Professor Olivares-Caminal provided a short one-page note on the effect of limitation periods on Venezuelan bonds and the consequential advantage of the proposed joint venture fund which could protect investor rights ("the Limitations Document" - item (w)(i)). Professor Olivares-Caminal also produced a memorandum dated 2 October 2019 explaining the difference between trustee and fiscal agency structures in sovereign bonds ("the Trustee vs Fiscal Agent Memo" - item (w)(ii)).

24. On 11 October 2019 Mr Amore sent Mr Robinson and Mr Kastner a further presentation ("the Claim Management Presentation" - item (r)) that explained the proposed multi-cell structure of the AICF, which would allow existing holders of Venezuelan debt to invest in kind in the AICF by exchanging their debt for shares in the relevant cell of the AICF. This presentation explained the protection conferred by the multi-cell structure and the advantages of the AICF being able to bring litigation on behalf of all investors.

25. The JV came to an end in November 2019 without a fund being launched. Altana went on to set up its own fund focussed on distressed Venezuelan debt in July 2020. This was called the Altana Credit Opportunities Fund ("ACOF"). IX issued the present claim on 27 July 2020. It eventually reached trial in October 2024.

The relevant terms of the NDA

26. The following terms of the NDA are relevant.

Preamble

27. The NDA commences with this preamble (underlining in the original):

> "In connection with Altana Wealth Limited and its associated entities (together, '**ALTANA**') and Brevent Advisory Ltd. ('**Brevent**'), and potential Venezuela related credit investment opportunities, including (but not limited to) Venezuelan government / corporate bonds and claims and other Venezuelan receivables, private equity and other such Venezuela related opportunities ('**Opportunities**') to be sourced by Illiquidx Limited ('**IlliquidX**'), Confidential Information (as such expression is defined below) will be furnished between ALTANA and IlliquidX to their respective Representatives. As a condition to the furnishing of such Confidential Information, you hereby agree to the terms and conditions contained in this Confidentiality Letter (this '**Letter**')."

Definitions

28. The NDA then sets out a number of definitions. It defines Confidential Information as follows:

> "'**Confidential Information**' means any and all information relating to ALTANA and/or to IlliquidX and/or any Opportunities and which is considered by the disclosing Party to be of a confidential nature (or is marked or described as confidential) and furthermore includes, without limitation:
>
> (a) information of whatever nature relating to ALTANA which is or has been furnished in oral, written, visual, magnetic, electronic or other form to IlliquidX or its Representatives by ALTANA or its Representatives, or which has been obtained by IlliquidX or its Representatives from ALTANA or its Representatives, in each case in connection with any of the Opportunities; and
>
> (b) information of whatever nature relating to IlliquidX or any of the Opportunities that Illiquidx introduces and/or presents to ALTANA or Brevent, whether eventually invested in or not, which is or has been furnished to ALTANA or Brevent, or to any of their respective Representatives, in oral, written, visual, magnetic, electronic or other form by IlliquidX or its Representatives, or which is or has been furnished by IlliquidX or its Representatives to ALTANA or Brevent, or any of their respective Representatives, in each case in connection with any Opportunities; and
>
> (c) information related to clients or contacts of ALTANA who cannot be approached by IlliquidX without ALTANA's express permission;
>
> (d) information related to clients or contacts of IlliquidX who cannot be approached by ALTANA or Brevent without IlliquidX's express written permission, including (but not limited to) Representatives, introduced third parties (individuals or entities) and investors; and
>
> (e) all IlliquidX Intellectual Property that is disclosed to, or obtained by, ALTANA or Brevent, or any of their respective Representatives, in connection with the Permitted Purpose or any of the Opportunities."

29. IlliquidX Intellectual Property is given a wide definition which includes:

> "any and all of the following forms and types of intellectual property which are created, developed, generated and/or owned by IlliquidX from time to time in connection with the Permitted Purpose or any of the Opportunities: … (ii) all ideas, concepts, transaction structures, reports, analysis, specification …"

The operative provisions

30. Clause 1 provides:

> "**CONFIDENTIALITY UNDERTAKING**
>
> Each Party undertakes (a) to keep all Confidential Information confidential and not to disclose it to anyone …, save to the extent permitted by paragraph 1.1 below … and (b) to use the Confidential Information only for the purpose of sourcing, evaluating and (as applicable) introducing and/or presenting Opportunities (the '**Permitted Purpose**')."

31. Clause 1.1 provides:

> "**PERMITTED DISCLOSURE**
>
> The undertakings contained in this Letter shall not apply to any Confidential Information which:
>
> (a) at the time of supply is in the public domain;
>
> (b) subsequently comes into the public domain other than as a result of a breach of the undertakings contained in this Letter;
>
> (c) at the time of supply is rightfully in the receiving Party's possession or control or was independently developed by the receiving Party or its Representatives prior to disclosure of the same hereunder; or
>
> (d) subsequently comes into a Party's possession or control from a third party who is rightfully in possession or control of it and is not bound by any obligation of confidence or secrecy to ALTANA, Brevent or IlliquidX.
>
> …"

32. Clause 2 provides:

> "**NON-CIRCUMVENTION**
>
> …
>
> (b) In the event the Parties elect not to pursue a business relationship related to any of the Opportunities, …, none of the Parties shall make any use of any other Party's Confidential Information, including (but not limited to) any such Confidential Information relating to any of such other Party's Representatives, introduced third parties

(individuals or entities) and investors directly or indirectly, or through any other intermediary, whether affiliated with that Party or not until termination as per clause 7".

33. Clause 3 provides:

"**NON-SOLICITATION AND NON-COMPETE**

(a) None of the Parties shall approach, solicit, engage or hire, directly or indirectly, any of the other Parties' Representatives who were introduced to that Party by any of those other Parties as part of the discussions relating to the Opportunities and/or the Permitted Purpose, or whose details were shared as part of those discussions, until termination as per clause 7.

(b) The Parties are free to compete with each other in the event that any of them decide to not jointly pursue the Opportunities, except that neither ALTANA nor Brevent can compete against IlliquidX using any of IlliquidX's Confidential Information including (without limitation) (i) any such Confidential Information which relates to any of IlliquidX's Representatives, clients, contacts, investors or acquisition targets and/or to any of the Opportunities disclosed by IlliquidX to Altana and (ii) any IlliquidX Intellectual Property."

34. Clause 8(g) provides that the NDA "is governed by, and shall be construed in accordance with English law".

35. All of the obligations in the NDA are time-limited. It is common ground that they expired on 8 July 2022.

Outline of IX's claims, the Defendants' defences and the judge's conclusions

36. IX claimed that, in setting up the ACOF, Altana and Brevent misused IX's confidential information and trade secrets. It also claimed that the Defendants marketed the ACOF using a slide presentation which infringed IX's copyright in the 17 July Slides. It also claimed that Mr Robinson and Mr Kastner were jointly liable with Altana and Brevent for these wrongs.

37. Although IX pleaded its case of misuse of confidential information both as a claim for breach of contractual obligations of confidence contained in the NDA and as a claim for breach of an equitable obligation of confidence, at trial it focussed on its contractual claim. IX relied on the same facts as founding a claim for misuse of trade secrets.

38. The Defendants accepted at trial that much of the information which IX claimed to be confidential fell within the definition of Confidential Information in the NDA. Furthermore, the Defendants did not dispute that they had used some of this information after the demise of the JV without IX's consent. The Defendants' principal defence was that use of the information was permitted by one or other of the provisions contained in paragraph 1.1 of the NDA, and in particular clauses 1.1(a) (the information was in the public domain) and (c) (the information was independently known to the Defendants).

39. The judge upheld IX's claims for misuse of confidential information and trade secrets. He dismissed the claim for copyright infringement, and there is no cross-appeal by IX against that conclusion. Mr Robinson accepted joint liability with Altana without admission of any wrongdoing. The judge held that Mr Kastner was not jointly liable, and there is no cross-appeal by IX against that conclusion.

40. It is important to note that, in reaching these conclusions, the judge found that Mr Robinson was not a credible witness. As the judge put it at [25]: "I am unable to accept anything said by Mr Robinson unless it is corroborated by the contemporaneous documents". Furthermore, the judge specifically rejected Mr Robinson's evidence that, prior to the JV, he had already had in mind the creation of a Venezuelan debt fund when the bond price was right. By contrast, the judge found that Mr Kastner was an honest and generally reliable witness. Mr Kastner accepted that, until IX made contact with him, Venezuela was not on his investment radar.

41. On the appeal it was common ground that the claim for misuse of trade secrets stood or fell with the contractual claim for misuse of confidential information. Accordingly, I will say no more about it.

IX's pleaded case, and the case presented by IX in oral closing submissions, as to the Confidential Information provided by IX to the Defendants

42. As the judge noted, claims for misuse of confidential information must identify with particularity the confidential information which has allegedly been misused, but IX struggled to do this.

43. IX's final pleaded case as to the Confidential Information which it alleged that the Defendants had misused is set out in Re-Re-Amended Confidential Annex 1 to its Re-Re-Amended Particulars of Claim ("RRACA1"). The first half of RRACA1 (paragraphs A1 to A12) describes a "package of confidential information" called "the Business Opportunity", while the second half (paragraphs A13 and following) pleads that the Business Opportunity is "made up of component pieces of information contained in and/or evidenced by" a series of documents provided by IX to the Defendants. These component pieces of information are described as "the Detail". The documents in question consist of items (a) to (w)(ii). I have referred to a number of these documents above. RRACA1 refers to particular passages in each of these documents.

44. Under the heading "(1) A package of confidential information", paragraph A1 of RRACA1 pleads:

> "The Claimant provided the Defendants a package of confidential information (the 'Business Opportunity'). The Business Opportunity was that there were distressed Venezuelan credit opportunities (namely the Opportunities defined in the NDA) which the market (including the Defendants) had ignored and/or avoided and/or undervalued because of the OFAC sanctions restrictions on Venezuela, but that such credit opportunities could, upon application of IX's investment strategy (as explained below), be monetised and exploited for value notwithstanding the aforesaid sanctions restrictions".

45. Paragraph A3(3) pleads:

> "The Claimant showed the Defendants how, by use of its investment strategy set out below, including use of an OFAC sanctions compliant fund, the value of the distressed Venezuelan credit opportunities could be unlocked. …"

46. Paragraph A4 pleads:

> "The particulars of the Business Opportunity, which made up the Claimant's investment strategy, and which in combination gave rise to the Business Opportunity, are set out below."

47. These particulars are set out under the headings "(2) Identification of the distressed Venezuelan credit opportunities" (paragraphs A5-A7, including paragraph A6(3), which says that "the Business Opportunity was to be realised through an OFAC sanctions compliant fund: see para. A12 below"), "(3) Use of risk strategies to trade and settle distressed Venezuelan credit opportunities" (paragraph A8), "(4) Strategies to exploit features of distressed Venezuelan credit opportunities" (paragraph A9), "(5) Enforcement and recovery strategies" (paragraph A10), "(6) Selection of custodian" (paragraph A11) and "(7) Use of OFAC sanctions compliant fund" (paragraph A12).

48. As the judge recorded at [84], he ruled at the pre-trial review that the pleaded case was that the Business Opportunity "is composed of the information listed in the Detail".

49. As the judge went on to explain, after having cited paragraph A1 of RRACA1 and noted that IX's "investment strategy" included establishing an OFAC sanctions compliant fund which was to be the joint venture vehicle for unlocking value in distressed Venezuelan debt:

> "86. Although paragraphs A2 to A11 of RRACA1 appear to set out other elements of IX's investment strategy, Mr Green in his closing submissions sought to focus on the idea of a sanctions compliant fund. The Business Opportunity, he submitted, was the opportunity to set up a sanctions compliant fund to exploit undervalued Venezuelan debt. This was valuable because it was not common knowledge in the market that this could be done and IX had the know how to overcome the apparent obstacles in the way. I accept that this change of emphasis is within IX's pleaded case, and Mr Moody-Stuart did not seek to argue otherwise. This is because a sanctions compliant fund as a means of unlocking value is described as part of the package of information comprising the Business Opportunity and confidential in its own right (see paragraphs A3(3), A6(3) and A12 of RRACA1) and it is contained in and evidenced by several documents comprising the Detail, such as the Canaima Capital Presentation, the 17 July Slides, the AICF Presentation and various fund fact sheets (see below and the Schedule).
>
> …

> 88. The Business Opportunity was the focus of Mr Green's submissions at trial. Little time was spent on the Detail. In this judgment, I too will focus on the Business Opportunity.
>
> 89. I have set out my findings in respect of each element of the Detail in the Schedule to this judgment."

The judge's findings as to the Confidential Information provided by IX to the Defendants

50. The judge expressed his findings as to what Confidential Information had been provided by IX to the Defendants as follows:

> "90. The Business Opportunity - the opportunity to set up a sanctions compliant fund to exploit undervalued Venezuelan debt - is Confidential Information as defined by the NDA because it was IX's idea and concept and therefore was information '*relating to IlliquidX*' for the purposes of sub paragraph (b) of Confidential Information and was also within sub paragraph (ii) of the definition of IlliquidX Intellectual Property. It is deemed by the NDA to be Confidential Information whether it would be treated as such for the purposes of the equitable duty of confidence or not.
>
> 91. Details of the Business Opportunity (such as IX's idea of creating such a fund, the rationale for it, and IX's proposed structure of the proposed fund, including the use of a multi-cell strategy, provision for contributions to be made in kind and provisions for dealing with the inherent illiquidity of such a fund) were contained in a number of documents provided to the Defendants and which are pleaded in the Detail. These are the Canaima Capital Presentation, the 17 July slides, the AICF Presentation, the 12 August Fund Fact Sheet, the Canaima Fund Fact Sheet and the Claim Management Presentation ('**the Fund Detail**'). … The Defendants accept that the Due Diligence Note is within the definition of Confidential Information to the extent that it includes specific information."

51. Also of relevance to this question is what the judge said in [95] quoted in paragraph 77 below.

52. Although it is not in itself the subject of any ground of appeal, there is a significant dispute as to precisely what the judge found the Business Opportunity to consist of.

53. The Appellants contend that the judge found the Business Opportunity to consist of the information specified in the second sentence of [86], the first sentence of [90] and the third sentence of [95], namely "the opportunity to set up a sanctions compliant fund to exploit undervalued Venezuelan debt". In support of this, counsel for the Appellants relied not only on what the judge said in those paragraphs, but also on what the judge said in his judgment on costs dated 23 June 2025 [2025] EWHC 1566 (Ch) at [19]:

> "A significant part of the Defendants' skeleton argument was devoted to trying to make sense of IX's pleading. Mr Moody-Stuart fairly described the Business Opportunity as pleaded as 'hopelessly vague'. Mr Moody-Stuart duly cross examined IX's witnesses about all the documents in the Detail and addressed the case he thought IX was advancing. It now appears, to use his words, he was fighting yesterday's war. For in his closing submissions Mr Green dropped substantially all the Detail (without formally abandoning IX's case on the Detail) and argued that the Business Opportunity was the high-level idea of a sanctions compliant fund, which was evidenced by a few documents in the Detail. In the liability judgment at [83] to [88] I concluded that this change of position was within IX's vague and expansive pleaded case. Mr Moody-Stuart did not seek to argue otherwise."

54. Counsel for IX did not dispute that, in his oral closing submissions at trial, he had put IX's primary case on the Business Opportunity at that high level of generality, but he emphasised that he had not abandoned any aspect of IX's pleaded case. Furthermore, he submitted that the judge's findings went beyond that high level of generality.

55. The relevance of this dispute is two-fold. First, it defines the target (or one of the targets) the Appellants must hit with their grounds of appeal. Secondly, it is potentially relevant to issues on quantum.

56. It seems to me that the judge did find at [90] that the Business Opportunity at that high level of generality was Confidential Information provided by IX to the Defendants within the NDA, but I accept counsel for IX's submission that the judge also made findings which went beyond that high level of generality. In [91] he said that "[d]etails of the Business Opportunity … were contained in" the six documents which he defined as "the Fund Detail" and that the information contained in these documents was also Confidential Information provided by IX to the Defendants. These six documents are items (a), (d), (h), (l), (m) and (r) of the Detail in RRACA1. When one turns to the Schedule to the judge's judgment, one sees findings that each of these items (1) was Confidential Information within the NDA, (2) was not covered by clause 1.1 of the NDA and (3) had been misused by the Appellants. It follows that the Fund Detail viewed as a package of information satisfied all three of these requirements.

57. It is convenient to note at this point that there are also equivalent findings in respect of items (b), (w)(i) and (w)(ii) (and also in respect of item (n), but only in so far as it consists of item (h)). By contrast, other items in the Detail were either not pursued by IX or were covered by clause 1.1 or had not been misused by the Appellants.

58. A point emphasised by the Appellants is that, as the judge recorded at [81], it was common ground at trial that, apart from identifying 38 sovereign and PDVSA bonds which were suitable for investment (which the judge held to be Opportunities within the NDA), no specific opportunities were introduced or presented by IX to the Appellants. In the Schedule the judge found that the list of 38 bonds which could be traded despite sanctions identified in the 9 July Email (item (b1)) was Confidential Information within the NDA because it identified Opportunities, but that its use was permitted by clause 1.1. His reasoning was that the list was publicly available on the

OFAC website. Although the judge did not explicitly say so, it is therefore plain that he found that use of the information was permitted by clause 1.1(a).

The Appellants' grounds of appeal

59. I granted the Appellants permission to appeal on three out of four grounds. Ground 3 concerns trade secrets, and therefore can be ignored for the reason given in paragraph 41 above. Ground 1 has two limbs. The first limb concerns the interpretation of the expression "public domain" in clauses 1.1(a) and (b) of the NDA, and in particular clause 1.1(a). The second limb concerns the application of clauses 1.1(c) and (d). Ground 2 concerns the judge's conclusion that none of the Confidential Information which he found that the Appellants had misused was in the public domain.

Ground 1(i): clauses 1.1(a) and (b)

60. It is not in dispute that, in the law concerning equitable obligations of confidence, the expression "public domain" has a well-established meaning, namely as referring to information which is, in the words of Lord Goff of Chieveley in *Attorney-General v Observer Ltd* [1990] 1 AC 109 at 282, "so generally accessible that, in all the circumstances, it cannot be regarded as confidential". This reflects the fact that confidentiality is a relative, not an absolute, concept: see in particular *Franchi v Franchi* [1967] RPC 149 at 152-153 (Cross J). As I put it in *Racing Partnership Ltd v Done Bros (Cash Betting) Ltd* [2020] EWCA Civ 1300, [2021] Ch 233 at [67], "the true criterion [of confidentiality] is not secrecy … but inaccessibility". Relative inaccessibility can suffice to make information confidential rather than in the public domain.

61. The judge interpreted the expression "public domain" in clauses 1.1(a) and (b) in the same way. The Appellants contend that he was wrong to do so, and that he should have interpreted the expression in that context as meaning any information which was available or had been disclosed without being subject to a duty of confidentiality. The difference is that this formulation would not require the information to be generally accessible: it would suffice if one other person was free in law and equity to use the information.

62. I do not accept this contention for the following reasons. First, where an expression which has a well-established meaning in the law is used in a professionally-drafted contract, the obvious inference, unless the wording of the contract indicates to the contrary, is that the parties intended that expression to bear the well-established meaning: see *Falkiner v Commissioner of Stamp Duties* [1973] AC 565 at 577F-H (Lord Simon of Glaisdale); *Infiniteland Ltd v Artisan Contracting Ltd* [2005] EWCA Civ 758, [2006] 1 BCLC 632 at [88] (Carnwath LJ); *Triple Point Technology Inc v PTT Public Co Ltd* [2021] UKSC 29, [2021] AC 1148 at [52] (Lady Arden); and *Marlborough Knightsbridge Management Ltd v Fivaz* [2021] EWCA Civ 989, [2021] 1 WLR 4345 at [11] (myself). In the present case the judge found at [68] that the NDA was "based on a professionally drafted template or precedent", and so this presumption applies.

63. Secondly, in my judgment there is nothing in the wording of the NDA to suggest that the parties intended "public domain" to bear a different meaning to its well-established meaning in this context. Still less is there anything in the wording of the NDA to support

the meaning contended for by the Appellants. Nor have the Appellants identified anything in the surrounding factual matrix which supports that meaning.

64. Thirdly, the Appellants' principal argument in support of their interpretation is that, because the NDA contains a very broad definition of Confidential Information, it is necessary to construe clauses 1.1(a) and (b) broadly. The judge took the opposite view at [93]. In my judgment both positions involve a *non sequitur*. The fact that the NDA contains a very broad definition of Confidential Information means that well-advised parties would be expected to counter-balance that broad protection with limitations of appropriate breadth. But there is no necessary correlation between the breadth of the definition of Confidential Information and the breadth of the limitations: the breadth of each provision depends on the wording chosen by the parties. In the present case the parties chose to express clauses 1.1(a) and (b) using a well-known expression. That indicates an intention to create limitations of the breadth conferred by the use of that expression. This is hardly a surprising choice, even if the Appellants might have been better advised to seek a broader limitation (or, perhaps more realistically, a narrower definition of Confidential Information).

65. Fourthly, the Appellants argue that the judge's construction leads to considerable uncertainty as to what information is or is not in the "public domain", which would render the NDA unworkable and uncommercial. I do not accept this argument. The requirement that information must not be in the public domain if it is to be confidential does not cause undue uncertainty in the context of equitable obligations of confidence. It is true that the test is a fact-sensitive one and that there may be grey areas, but the same is true of many tests contained in commercial contracts.

66. Fifthly, the Appellants argue that construing clause 1.1(a) and (b) as the judge did deprives clause 3(b) of all utility. I disagree: clause 3(b) provides that the parties are free to compete with each other if the JV does not proceed, but prevents the Appellants from competing with IX using any of IX's Confidential Information. There is no dispute that this restriction does not apply if use of the information is permitted by clause 1.1. Thus the freedom to compete confirmed by clause 3(b) is of some utility to the Appellants on the judge's construction.

67. Sixthly, the Appellants argue that construing clause 1.1(a) and (b) as the judge did deprives clause 1.1(d) of utility. As IX contends, the opposite is true: on the Appellants' interpretation of clauses 1.1(a) and (b), it is very difficult to see how clause 1.1(d) could apply.

68. Lastly, the Appellants argue that the judge's construction is inconsistent with his finding at [130] that IX had not established that Mr Kastner and Mr Robinson knew that, in setting up the ACOF, they were using IX's Confidential Information protected by the NDA. Rather, they believed that no information had been provided by IX which was "proprietary" and protected by the NDA. I disagree. There is no inconsistency between this finding as to Mr Kastner's and Mr Robinson's subjective state of mind and the judge's objective interpretation of clauses 1.1(a) and (b).

Ground 1(ii): clauses 1.1(c) and (d)

69. The Appellants contend that the judge failed to take into account, or give proper consideration to, clauses 1.1(c) and (d) of the NDA, and that he should have found that

three items of information were covered by these provisions.

70. As IX points out, this ground of appeal is unfair to the judge. There were only two references to clause 1.1(c) in the Defendants' written closing submissions (at paragraph 32 and in the final table when addressing item (v)), but neither reference mentioned the three items of information now relied on. As for clause 1.1(d), this was not mentioned in the Defendants' written closing submissions at all. In the table addressing each item of the Detail, it was repeatedly stated "Information excluded under Clause 1.1" without specifying which paragraph was relied on. Although there were three references to information being known to the Defendants, the main thrust of the submissions was that the Confidential Information was in the public domain. Moreover, there was no mention at all of two of the three items of information now relied on. Given that the Appellants did not ask the judge to make findings about these matters at trial, it is not open to them to complain about the judge's failure to do so on appeal. I shall nevertheless address these points on their merits.

71. First, the Appellants rely on an email from Christophe Chanchorle of Stifel Nicolaus Europe Ltd ("Stifel") to recipients including Altana dated 21 August 2019 and an attached attestation form. This email shows that Stifel was trading Venezuelan and PDVSA bonds despite OFAC sanctions, relying on the General Licenses issued by OFAC with clearance via Euroclear. As IX points out, however, this adds little to the judge's finding that it was in the public domain that 38 bonds could be traded despite sanctions (see paragraph 58 above). The judge distinguished between the information that certain bonds could be traded despite sanctions and the information that there was an opportunity to create a sanctions-compliant fund to exploit undervalued Venezuelan debt. The Stifel documents do not contain the idea for creating such a fund, still less the other information comprising the Fund Detail.

72. Secondly, the Appellants rely on Mr Kastner's unchallenged evidence that "multi-cell strategies were and are very basic and widespread". At trial the Defendants primarily relied upon this evidence in support of their contention that multi-cell structures were in the public domain, but their table when addressing item (r) did also refer to "fund features … well known to the Defendants". As IX points out, this evidence is no answer to the judge's conclusion concerning the Business Opportunity. At best, it concerns part of the Fund Detail. Furthermore, the judge found at [54] that the Claim Management Presentation (item (r)) "explained the proposed multi-cell structure of the AICF which would allow existing holders of Venezuelan debt to invest in kind in the AICF by exchanging their debt for shares in the relevant cell of the AICF". This goes beyond the mere knowledge of multi-cell structures. Furthermore, the judge found in the Schedule that this information was "relatively secret" and had been misused by the Appellants.

73. Thirdly, the Appellants rely on Mr Kastner's unchallenged evidence that his broker Pictet had purchased a Venezuelan bond at his request in September 2019 and had done so through a Luxembourg fund vehicle. As IX points out, all this evidence shows is that Pictet confirmed to Mr Kastner what IX had already told the Defendants, namely that certain bonds could be traded. Mr Kastner accepted that buying bonds personally and setting up a fund to trade in sanctioned bonds were very different. The Appellants also rely upon a WhatsApp message sent by Mr Kastner to Mr Amore, Ms Alabatchka and Mr Robinson on 5 August 2019 reporting an earlier conversation with Pictet, but this adds nothing to the evidence about the September purchase.

Ground 2: public domain

74. As the judge explained at [92], the Defendants' case at trial was that the Business Opportunity and all of the information contained in the Detail was in public domain. As the judge explained in [88] (quoted in paragraph 49 above), he focussed on the Business Opportunity in the body of the judgment and set out his findings in respect of each item in the Detail in the Schedule.

75. It follows that it is necessary to consider separately the questions (1) whether the Business Opportunity was in the public domain and (2) whether those items of the Detail which the judge found to be Confidential Information, not covered by clause 1.1 and misused were in the public domain i.e. the Fund Detail and the other items identified in paragraph 57 above. Counsel for the Appellants particularly focussed on question (1), although he maintained the Appellants' case on question (2).

76. There is no dispute that the Appellants bore the burden of establishing that the information in question was in the public domain at the relevant time: see *Force India Formula One Team Ltd v Aerolab SRL* [2013] EWCA Civ 780, [2013] RPC 36 at [59] (Lewison LJ).

The Business Opportunity

77. The judge rejected the Appellants' argument that the Business Opportunity was in the public domain. The essence of his reasoning was as follows:

> "95. The fact that Venezuelan debt was distressed, and that Venezuela had defaulted on most of its debt, was well known in the market. The fact that it could be traded notwithstanding the US sanctions was known among some specialist investors, but not widely known. The Business Opportunity - the opportunity to set up a sanctions compliant fund to exploit undervalued Venezuelan debt - was not widely known in the market. The Defendants say that the Business Opportunity was staggeringly basic, but I do not consider that it was. It seems to me that very few people knew that setting up a sanction compliant fund to trade in Venezuelan debt was possible. Even now, apart from ACOF and IX's own post JV fund, the parties have only been able to identify one other fund which was established (the Copernico Recovery Fund).
>
> 96. The Defendants suggest that an article published in March 2019 by David Schneider … disclosed the Business Opportunity, but it does not do so. … Far from identifying the Business Opportunity it reinforces the fact that even amongst commentators on Venezuelan investments the opportunity to trade in Venezuelan sovereign debt was not widely known.
>
> 97. The Defendants also rely on an article by Clifford Chance … from January 2018. The focus of the article is on existing creditors and their predicament, and in particular it considers the potential strategies they might have for restructuring or

> enforcement. … It does not identify Venezuelan bonds as an investment opportunity at all.
>
> 98. What these articles do is highlight how complicated and unclear the position was in 2018 and 2019 in relation to Venezuelan distressed debt. … In my view they reinforce the conclusion that the Business Opportunity was not in the public domain.
>
> 99. The Business Opportunity itself was not published by IX or the Defendants as a collation of information except in the Fund Detail. It is right that much if not all of the information in the Fund Detail documents was publicly available and could be found if one looked; see for example the Clifford Chance article which mentions the fiscal agency structure of Venezuelan bonds …. However, the collation of that information to formulate a rationale for the idea of a sanctions compliant fund to invest in distressed Venezuelan debt was only available in the Fund Detail documents. …"

78. In addition, the judge said at [106]:

> "I am satisfied that prior to their contact with IX neither Mr Robinson nor Mr Kastner were aware of the ability to create a sanction compliant fund to trade in distressed Venezuelan debt. This reinforces the point that this was not information in the public domain if someone of Mr Robinson's expertise was not aware of it. It also confirms that they took the idea from IX, as there are no other alternative sources for that idea."

79. The judge's finding that the Business Opportunity was not in the public domain in 2019 was a finding of fact, or at the very least an evaluative assessment. It follows that this Court can only interfere with it in accordance with principles which are too well known to require recitation here. It is not enough that the conclusion that the Business Opportunity expressed at the high level of generality discussed above was not in the public domain may seem a surprising one to a person who was not immersed in the evidence at trial.

80. The Appellants' difficulties in challenging the judge's conclusion are compounded by the fact that they have been unable to point to a single document that was clearly in the public domain in 2019 which discloses the Business Opportunity even at that high level of generality. Instead, the Appellants rely upon six categories of information as disclosing it either individually or collectively. I will consider each of these below.

81. First, the Appellants rely upon marketing materials distributed by IX prior to the JV, and in particular versions of the Canaima Capital Presentation (item (a)) (see paragraph 12 above).

82. In relation to this item, the judge found at [101]:

> "Prior to the JV, the Canaima Capital Presentation had been sent to potential investors by IX and an IX contact called Mr Ilardo.

> The precise number of investors to whom it was sent is not clear - Mr Moody-Stuart identified at least 17, but it was likely sent to more. It appears to have been intended to be circulated internally by the recipient to colleagues who might be interested, and to potential investors. However, this circulation was clearly intended to be treated as a confidential opportunity to serious potential investors. The presentation was marked '*Strictly Private & Confidential*'. It was not put on the website or circulated to IX's newsletter database. It remained relatively secret because it was not circulated more widely. It was not intended to be, and was not, available to potential competitors to IX. So long as it did not fall into the hands of a competitor, the confidential information in the presentation retained its value to IX."

83. The Appellants advance two criticisms of this reasoning. First, they point out that the statement "Strictly Private & Confidential" was in a relatively small font. No coherent argument was presented as to why this matters, particularly given that the entire second page of the presentation is headed "LEGAL DISCLAIMER" and begins with the statement, "This document has been provided to you solely for your information and may not be reproduced or redistributed, in whole or in part …". Secondly, they argue that there was no evidence that the recipients of the Presentation had not further circulated the information. As IX points out, this is an attempt to reverse the burden of proof. The Appellants also invited this Court to form its own view as to whether the Presentation put the Business Opportunity into the public domain, but that is not this Court's function.

84. Secondly, the Appellants rely upon marketing materials distributed during the JV, and in particular the 12 August 2019 Fund Fact Sheet (item (h)), the ACIF Presentation (item (l)) and the Canaima Fund Fact Sheet (item (m)).

85. In relation to these items, the judge found at [102]:

> "The AICF Presentation and the Canaima Fund Fact Sheet (possibly including the 12 August Fund Fact Sheet) were sent to about 200 potential investors by IX, Altana and Brevent for the purposes of the joint venture. The second slide of the AICF said it was '*strictly confidential*' and the Canaima Fund Fact Sheet was marked '*private and confidential*'. This was intended by IX, Altana and Brevent to be a confidential opportunity to be presented to serious potential investors. The presentation was not put on the website or sent to the wider newsletter circulation of IX or Altana. It remained relatively secret because it was not circulated more widely. It was not intended to be, and was not, available to potential competitors to IX. Mr Amore said that there was a general understanding in the industry that such teaser marketing was confidential - this was supported by Mr Kassin. The tenor of Mr Kastner and Mr Robinson's evidence was that such a gentleman's agreement existed but was not reliable and not honoured and it was therefore preferable not to disclose confidential information in such teaser marketing. They

> nevertheless both confirmed that they would not have wanted the teaser marketing to have been shown to a competitor and they would not have allowed it to be sent to a competitor. This shows that it was intended by them to be confidential and while a risk had to be taken that it would fall into the wrong hands, it was hoped that it would remain confidential. So long as these marketing materials did not fall into the hands of a competitor, the confidential information in the presentation retained its value."

86. Again, the Appellants advance two criticisms of this reasoning. The first is again a point about the prominence of the confidentiality notices. The second is that the evidence about the "gentlemen's agreement" is manifestly fanciful. This is a hopeless contention, particularly given that this Court was not even shown all of the relevant evidence.

87. The judge's overall conclusion in relation to these first two categories at [103] was that he did not consider that "sending these marketing materials to selected investors made them generally accessible to the public, or to other investors who did not receive them, or to competitors". That was a conclusion which was open to him. As IX submits, his conclusion in relation to the second category is supported by the provisions of the NDA which permitted Confidential Information to be used for the Permitted Purpose, which included introducing and presenting Opportunities to investors.

88. Thirdly, the Appellants rely on a Bloomberg article published on 15 February 2019 and a Bloomberg bulletin dated 24 July 2019. As IX points out, the February article was not mentioned in the Defendants' evidence or submissions at trial, and it is too late for the Appellants to try to rely on it now. In any event, it adds nothing to the July bulletin.

89. As for the July bulletin, this states:

> "London hedge funds, a private bank in Monaco and Uruguayan millionaires are among the bargain hunters bidding on Venezuelan bonds as some investors dump the debt … Funds from Europe and Latin America are swooping in amid rules that prevent Americans from buying the notes … With demand limited to overseas entities, prices for the defaulted debt have dropped to about 15 cents on the dollar from double that just months ago. …
>
> With all but one of Venezuela's bonds in default, bondholders probably won't cash in anytime soon. Therefore, the bet is that an arduous restructuring process …. will eventually result in a pay day ….".

90. In my view this bulletin represents the Appellants' best evidence that the Business Opportunity was in the public domain in late July 2019 (i.e. prior to the alleged misuse). As the Appellants point out, the judge did not specifically discuss this bulletin in his judgment, apparently because the Defendants focussed more strongly on the articles he discussed at [96]-[98]. Nevertheless, I am not persuaded that it demonstrates that the judge was wrong to find at [95] that "[t]he Business Opportunity - the opportunity to set up a sanctions compliant fund to exploit undervalued Venezuelan debt - was not

widely known in the market" given the evidence relied upon by the judge as supporting that finding. Still less does it demonstrate that the package of information comprising the Fund Detail was in the public domain.

91. Fourthly, the Appellants rely upon the judge's own finding that the only Opportunities disclosed to the Defendants, namely the 38 bonds which could be traded, were in the public domain (paragraph 57 above). The Appellants argue that the judge's conclusion that the Business Opportunity was not in the public domain is inconsistent with this, but there is no such inconsistency.

92. Fifthly, the Appellants rely upon a transcript of a 10 May 2019 telephone call between Mr Amore and Mr Robinson in which Mr Amore reported a conversation he had had with some "very specialised hedge funds", which were based in the US and therefore prevented by the sanctions regime from setting up a fund to invest in Venezuelan debt themselves, saying "[i]t's crazy that Europeans are not setting up these things". Again the Appellants complain that the judge did not specifically mention this evidence in his judgment. As IX points out, however, this evidence if anything supports the judge's finding that the Business Opportunity was not in the public domain.

93. Sixthly, the Appellants assert that all of the legal advice given by Professor Olivares-Caminal concerned matters that were in the public domain. This point does not concern either the Business Opportunity or the Fund Detail, but rather items (w)(i) and (ii) of the Detail. It therefore suffices to say that the judge gave detailed reasons in his Schedule for concluding that these items were not in the public domain, and the Appellants have not demonstrated that he was wrong.

The Fund Detail and other items

94. As discussed above, the judge found that none of the items comprising the Fund Detail were in the public domain. The same goes for items (b), (w)(i) and (w)(ii). For the reasons given above, these conclusions are unassailable. I would add that, even if the judge was wrong to hold that the Business Opportunity at the high level of generality discussed above was not in the public domain, that would not undermine his conclusions about the package of information contained in these items.

Conclusion

95. For the reasons given above I would dismiss the appeal.

Lord Justice Zacaroli:

96. I agree.

Lord Justice Miles:

97. I also agree.