

JUNKANOO ESTATES LTD, ET AL. V UBS - 1451/2015

1 THE COURT: Good morning.

2 MS. CARGILL: Good morning, my Lord.

3 THE COURT: Yes, where are we today?

4 MR. TURNQUEST: Yes, my Lord. Appearances are
5 the same as before.

6 My Lord, I think today's hearing was scheduled
7 for the Plaintiff's Application to Strike Out certain
8 paragraphs of the Defendant's Amended Defence, my Lord.

9 And I think, if my memory serves me correct, I
10 think your Lordship was going to hand down a Ruling on
11 the Application.

12 THE COURT: Yes. I have two issues with the
13 Decision. But I'm still waiting on the transcript.

14 MR. TURNQUEST: Okay.

15 THE COURT: The December.

16 MR. TURNQUEST: Okay.

17 THE COURT: I very recently got the one for
18 January, the 4th.

19 MR. TURNQUEST: My Lord, the only issue is, it
20 has been said before in relation to the sale --

21 THE COURT: I appreciate that. Like I said, I
22 only just got the transcripts.

23 MR. TURNQUEST: I appreciate that.

24 THE COURT: And I need to go through it. A lot
25 of things was said during the course of these
26 proceedings.

27 MR. TURNQUEST: My Lord, just on the point
28 about my learned friend's Application to Strike Out. I
29 mean, just as a preliminary matter, my Lord, and I don't
30 know, my Lord, in terms of if you have read any of the
31 Applications of the parties or Submissions that the
32 parties have filed for this Application.

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1 THE COURT: Yes, I have.

2 MR. TURNQUEST: Because as your Lordship will
3 see, one of the issues, that we are raising, we made a
4 request for Further and Better Particulars of the
5 Plaintiffs' Statement of Claim, which are quite
6 substantial.

7 And I'm sure whatever -- what they disclose in
8 the request For and Better particulars would probably
9 lead to another Application to Amend our Defence.

10 So, that's a preliminary matter. But your
11 Lordship -- that's one issue, which we want to raise
12 with your Lordship.

13 I mean, in terms of -- we also obviously have
14 our substantive point in terms of saying the Application
15 is --

16 THE COURT: Let them make their Application
17 first.

18 MR. TURNQUEST: Yes.

19 THE COURT: Yes.

20 MS. STAROSTENKO: Yes, my Lord.

21 My Lord, before we go towards our Application,
22 we would like the Court to please hear what has been
23 done to today.

24 It's our -- it's 12th of November, December
25 10th, January 4th, February 23rd. This Court was busy
26 for two months.

27 There's one Application for Sale, which we had
28 suspend. We were supposed to make it an appeal against
29 Justice Evans' Ruling, not come here.

30 But secondly, they made a request for Amended
31 Defence, which this Court granted. It was on December
32 10th.

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1 However, this new issue with the Further and
2 Better Disclosure, which we have no problem, we will
3 just need the time to answer. It's 182 paragraphs.
4 This request comes 50 months late. For my
5 modest review of this page, the definition of a judge
6 approach is clearly here. It's clear. Clearly scribed
7 and here.

8 I'm trying to speak very closely, because in
9 transcripts creating so many problems. Then transcripts
10 are late and I finding sort of phrase from myself, which
11 even with my bad English, I hardly can imagine towards.

12 So, I do apologize. I will try to speak very
13 slowly today. Our point now, is that before we get into
14 Strike Out Application and this last moment request,
15 even if this Court --

16 THE COURT: When was your request filed? Why
17 haven't I seen those? When was the request for Further
18 and Better Particulars?

19 MS. STAROSTENKO: 50 months later at 7:40 p.m.,
20 on Friday February 15th. Even if you, my Lord, directed
21 very clearly, no Submissions after February 12th.

22 But in any event, we asking please to start --

23 THE COURT: All right, slow down, slow down.

24 MS. STAROSTEKNO: Yes, my Lord.

25 MR. TURNQUEST: The request for Further and
26 Better Particulars, my Lord, are exhibited to the
27 Affidavit -- Fourth Affidavit of Renate Raeber, filed
28 the 18th of February.

29 THE COURT: On Monday?

30 MR. TURNQUEST: On Friday afternoon.

31 MS. CARGILL: It was sent the Friday before.

32 MS. STAROSTENO: Yes, they filed it on Monday,

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1 morning.

2 MS. CARGILL: But the Affidavit was sent to
3 them the Friday before.

4 MS. STAROSTENKO: Yes, Friday, 7:40 p.m., my
5 Lord. 7:40 p.m. on Friday. So, we can say it was
6 Monday morning.

7 What we're asking now, my Lord, is about Orders
8 you already made. It's six Orders you made.

9 THE COURT: Give me one second.

10 SKWRAO: Yes, my Lord. There is no Application
11 before court for today. No Application.

12 We've been thrown out of house, because it was
13 no Application for a stay before Justice Evans in 2015
14 in November.

15 There is no Application before court. This is
16 only the -- there is no Application. And they had all
17 time to make this Application.

18 And they are Attorney, assisted by Junior
19 Attorney. Big law firm, not homeless. And we are with
20 Mr. Lundy, who will be celebrating four years since he
21 has assisted us without even one dollar from it.

22 So, they had all time again. It's just raising
23 about oppression, about time of justice. What we ask
24 humbly is that this approach is -- we're asking to start
25 this Order you already made, my Lord.

26 THE COURT: One second.

27 MS. STAROSTENKO: Yes.

28 THE COURT: So, Mr. Turnquest --

29 MR. TURNQUEST: Yes, my Lord.

30 THE COURT: I mean, this comes minutes
31 before --

32 MR. TURNQUEST: My Lord, here's the reality.

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1 We've been trying to sort that out for a while. My
2 Lord, this is the Statement of Claim. This is what
3 we're battling here trying to figure out how do we get
4 to figure out what exactly the Plaintiffs is -- this
5 is --

6 THE COURT: What date did they file the
7 Statement of Claim?

8 MR. TURNQUEST: This was November 14th, 2017,
9 my Lord.

10 My Lord --

11 THE COURT: So, it took you a year to
12 understand what -- but you've already defended it.

13 MR. TURNQUEST: Yes, my Lord. But it doesn't
14 matter what we -- every week -- almost every week, we've
15 been served with Applications after Application.

16 We've been in the Court of Appeal. We've been
17 to the Privy Council. Everything you try to focus on
18 something, it's another Application, my Lord.

19 And, my Lord, if your Lordship would recall,
20 originally we had asked the Plaintiff for an extension
21 of time to be able to properly file a Statement of
22 Claim. They refused. So, we didn't have a choice but
23 to serve the Defendant's -- but to file a Statement of
24 Claim as -- well --

25 THE COURT: But you asked the Court to amend
26 your Defence.

27 MR. TURNQUEST: Yes, my Lord. My Lord --
28 sorry, my Lord.

29 Well, my Lord, we've always indicated to them,
30 that we were going to make an Application for Further
31 and Better Particulars.

32 THE COURT: Yes.

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1 MR. TURNQUEST: But, my Lord, you can always --
2 there's no time line on making a request for Further and
3 Better Particulars. There's no time line on seeking to
4 amend your Defence.

5 My Lord, we are making the Application. I don't
6 see how my learned friend is prejudiced by an
7 Application for Further and Better Particulars.

8 Half of their Statement of Claim is
9 Submissions. Is just them off and on alleging
10 conspiracy. It's unclear who are involved in these
11 conspiracy, my Lord.

12 We have pleaded our Defence, based on the
13 information. Obviously, we need Further and Better
14 Particulars to further plead out the Defence. That's
15 our point, my Lord.

16 MS. STAROSTENKO: My Lord --

17 THE COURT: One second.

18 Yes, Ms. Starostenko.

19 MS. STAROSTENKO: On Page 2 of Affidavit of
20 Renate Raeber, filed on February 18th, 2019,
21 disregarding Order of this Honourable Court no documents
22 after two weeks after our Submissions.

23 However, on Point 4, Ms. Raeber stated:

24 "Having regard to the foregoing, UBS reserves
25 its right to further amend its defence as necessary,
26 upon receiving the further and better particulars from
27 the Plaintiffs."

28 If there is no prejudice to us one year
29 homeless and I don't want to take time. I imagine every
30 person can imagine what we are going through I think.

31 Again, my Lord, we humbly asking to make finish
32 of this activity. And you already give them leave to

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1 make Defence, on December 10th, which will become
2 useless, should they be granted this last moment
3 Application.

4 We should also ask to be a tactic to delay,
5 always delay. But before getting there, can we ask
6 please, my Lord, to perfect the Order, which were
7 already been down, promoted in this court and sent to
8 the other side three times by e-mail. And the response
9 is silence.

10 We made -- we apologize. We made a SOS Letter
11 to you, my Lord, on the end of January, which wasn't
12 appropriate. But we literally doesn't know what else to
13 do in order to perform.

14 So, the Orders promoted on December 10th (1)
15 the Defendant is granted leave to amend Defence, filed
16 by the Plaintiffs, November 2017.

17 The second Order was that the Defendants to
18 produce documents --

19 MR. TURNQUEST: My Lord --

20 MS. STAROSTENKO: -- which the Plaintiff
21 requested to disclose in their disputed list of
22 documents.

23 Such Order was that the Defendant is ordered
24 to produce licence of the Central Bank and valid
25 licences of the employees.

26 Fourth was the Affidavit of Renate Raeber,
27 filed on the 18th of November, being re-sworn by a
28 person duly authorize."

29 Then on January 4th was other two Orders. The
30 Defendant asked to file an Affidavit in Response to the
31 Second Affidavit of --

32 THE COURT: All right. Slow down. Slow down.

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- 1 So, the December Order, you've seen a draft?
- 2 MR. TURNQUEST: Yes, my Lord. We have sent
- 3 them back our changes. And the parties obviously can't
- 4 agree.
- 5 THE COURT: What is it? This is why I ordered
- 6 the transcripts already.
- 7 MR. TURNQUEST: Sorry -- Pardon me, my Lord.
- 8 THE COURT: The transcript for December. I
- 9 don't have the transcript from December.
- 10 MS. STAROSTENKO: No, they don't have December
- 11 10th. But we brought here our junior assistant. The
- 12 intent is now some changes may be made. Because Order
- 13 is the same Order here. Because the Defence want to
- 14 take this issue. It take 50 months for Order for
- 15 facilitation, you know. And --
- 16 THE COURT: Okay, one second.
- 17 MS. STAROSTENKO: These are Orders. It's three
- 18 copies each.
- 19 MR. TURNQUEST: My Lord, do you have our
- 20 version?
- 21 THE COURT: What's the dispute? What's the
- 22 dispute I'm hearing?
- 23 MR. TURNQUEST: Sorry, my Lord?
- 24 THE COURT: What's the dispute I'm hearing.
- 25 MR. TURNQUEST: My Lord, the entire wording of
- 26 what the Court ordered. I mean, for each one of them,
- 27 my Lord.
- 28 MS. STAROSTENKO: We just have a copy for each
- 29 for you, so we will have the same copy. We print a
- 30 draft of each for you.
- 31 THE COURT: All right. So, the one for
- 32 Olivia Moss, there's no dispute in that one?

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- 1 MS. CARGILL: There is a dispute, my Lord.
2 We've provided our version and the Plaintiffs do not
3 agree, that that's what the Court ordered.
4 And we do not agree that their version is what
5 the Court ordered.
6 THE COURT: All right. Where's your version?
7 I thought what you had given me was your version?
8 MS. CARGILL: Yes, my Lord. There should be
9 three of ours.
10 THE COURT: Yes.
11 MS. CARGILL: Ours have Lennox Patton at the
12 back of them, my Lord.
13 I believe that the only version of what's
14 agreed, my Lord, is the amendment, which was our Order
15 to draft. But the Plaintiffs went ahead and draft it.
16 We revised.
17 THE COURT: All right. So, the Moss Affidavit,
18 you say that, the Defendant is granted leave to amend
19 the Defence.
20 MS. CARGILL: Yes, that is agreed, my Lord.
21 Our version.
22 THE COURT: Sorry, what is this?
23 You gave me Mr. Lundy's Order. That's why I
24 have two here. I don't have your version of the Order.
25 MS. CARGILL: Which one don't you have, my
26 Lord? You have the amendment.
27 THE COURT: No, the Affidavit. The re-swearing
28 Affidavit of Olivia Moss.
29 MS. CARGILL: And you have the production?
30 THE COURT: I have the amendment and I have the
31 production.
32 MS. CARGILL: Okay.

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1 THE COURT: You handed me back the same thing.

2 MS. CARGILL: I'm sorry, my Lord -- oh,
3 my Lord, it's -- the reason it would be noted as
4 Mr. Lundy, because it was their Order, but it was our
5 revision.

6 So, their name is still on it. But it's their
7 Order, but with our revision.

8 THE COURT: What's the revision?

9 MS. CARGILL: For which, my Lord?

10 THE COURT: Olivia -- the re-swearing of the
11 Olivia Moss Affidavit?

12 MS. CARGILL: They had -- for theirs, they had
13 indicated, that it was struck out, I believe. If I can
14 just find it.

15 So, this is theirs and ours. I may not have
16 brought ours for the amendment of --

17 THE COURT: For the re-swearing?

18 MS. CARGILL: Yes. And I'm pretty sure we made
19 revision to theirs. I just have to locate it.

20 Perhaps the Plaintiff may have it in their
21 possession, because we did send it to them by e-mail.

22 MS. STAROSTENKO: You send them three times
23 e-mails. Three times e-mail. And the last one was --

24 MS. CARGILL: We have no issue with the Order
25 that we handed up, my Lord, with respect to
26 re-swearing --

27 THE COURT: It seems to be the same as the
28 Order they have here.

29 MS. CARGILL: -- with respect to re-swearing
30 Olivia's Affidavit.

31 THE COURT: All right. Whose Application is
32 this? Did it come from Mr. Lundy?

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1 MS. CARGILL: It was the Plaintiffs. I'm not
2 sure whether it was the Plaintiffs' Application.
3 THE COURT: I'll initial the Plaintiffs' Order
4 then.
5 MS. CARGILL: With respect to the re-swearing?
6 THE COURT: With respect to the re-swearing.
7 MS. STAROSTENKO: Thank you, my Lord.
8 MS. CARGILL: And also, my Lord, I have
9 indicated the amendment was agreed.
10 THE COURT: Sorry, I need you to --
11 MS. CARGILL: It has no backing sheet.
12 THE COURT: You have to do a backing sheet for
13 this.
14 MS. STAROSTENKO: Yes, my Lord.
15 THE COURT: You are not allowed to back your
16 documents.
17 MS. STAROSTENKO: Yes, my Lord.
18 THE COURT: All right. So, you said, the
19 amendment is also agreed?
20 MS. CARGILL: Yes, my Lord, our version.
21 MS. STAROSTENKO: As soon as we finish our
22 junior will do it properly.
23 THE COURT: You have agreed that everybody has
24 one version?
25 MS. CARGILL: Yes, it was agreed, my Lord.
26 THE COURT: All right. So, this is your
27 Application to Amend the Defence?
28 MS. CARGILL: Yes, my Lord.
29 THE COURT: All right, because it's the
30 Plaintiffs' Application -- the Defendant's Application,
31 I will sign the Defendant's Order, which is the same as
32 the Plaintiffs.

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1 All right. So, the Affidavit -- the production
2 documents?

3 MR. TURNQUEST: That's the one, that was not
4 agreed.

5 THE COURT: What's the difference? What's the
6 dispute? Paragraph 1 seems to be agreed?

7 MS. CARGILL: My Lord, if I may. My Lord, on
8 the 10th of December, my Lord, the Plaintiffs had made
9 an Application referencing their Notice to Produce
10 Documents, claiming that we were to produce all of the
11 documents supposedly listed in their disputed list of
12 documents.

13 We had indicated to the Court, that we had
14 already produced all of the documents in our possession.

15 THE COURT: Yes.

16 MS. CARGILL: And there were a few -- I think
17 the bank licence, that the Court ordered be produced and
18 any other approvals from the Central Bank was ordered
19 to be produced.

20 And also to prepare a Verifying Affidavit,
21 verifying the list of documents. We indicated, that we
22 had produce all of the documents in our possession.

23 The Plaintiffs seemed to be of the view, that
24 we were ordered to produce all of the documents in their
25 disputed list of documents.

26 And I think we noted on the last occasion, that
27 a lot of these documents contained privileged
28 information, client discussions between and attorneys
29 and --

30 THE COURT: Sorry, where's the Plaintiff
31 version of the order.

32 MS. CARGILL: We have another copy here.

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1 THE COURT: This is the Order that has it --
2 MS. CARGILL: It would be in their name,
3 because it was their Application, but it's our draft.
4 MS. STAROSTENKO: We object to what now
5 Ms. Cargill says strongly. And the document is what we
6 send up there. But in December 2017 --
7 THE COURT: Sorry, one second. One second. I
8 just want to understand the difference first before I
9 hear from both of you.
10 Yeah, what are you saying about the list of
11 documents in their requested list?
12 MS. CARGILL: My Lord, in their list, they
13 said, the Defendant to produce documents, which the
14 Plaintiff requested to disclosed in their disputed list
15 of documents.
16 There is their disputed list of documents,
17 my Lord. And a lot of the documents do refer to
18 e-mails, that we've disclosed in our list of documents.
19 MS. STAROSTENKO: No, my Lord.
20 MS. CARGILL: But there are also --
21 MS. STAROSTENKO: Objection. Objection.
22 MS. CARGILL: If I may finish, my Lord. There
23 are also documents in here that refer to
24 client/attorneys discussions.
25 THE COURT: Okay. I'm looking at two Orders --
26 MS. STAROSTENKO: Objection, my Lord.
27 THE COURT: One second. One second.
28 I'm looking at two versions of an Order; right.
29 MS. CARGILL: May be I'm looking at the wrong
30 version.
31 THE COURT: I'm trying to find --
32 MS. CARGILL: This is the version of their

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- 1 Order that I'm looking at.
2 THE COURT: Yeah, I saw that one already.
3 MS. CARGILL: I don't have that version.
4 MS. STAROSTENKO: I just give it to you.
5 MS. CARGILL: I got this version.
6 MS. STAROSTENKO: I gave that. It's been
7 rejected.
8 MS. CARGILL: The judge is looking at something
9 different.
10 MS. STAROSTENKO: No, this is the same.
11 THE COURT: This is what you sent to me.
12 MS. STAROSTENKO: The document is December
13 10th.
14 THE COURT: Isn't that what you sent up to me?
15 MS. STAROSTENKO: I'm apologize, my Lord, for
16 not. Thank you for opportunity. I need five minutes to
17 make copies. I don't find it here. I don't see it
18 here.
19 THE COURT: So, that's not the one you wanted
20 me to have?
21 MS. STAROSTENKO: Yes, yes. The one we want
22 was -- oh, here it is. Here it is. That was the one
23 that we sent you.
24 MS. CARGILL: No, we did not.
25 MS. STAROSTENKO: Yes, okay. I gave it to you.
26 But please --
27 MS. CARGILL: Are we able to get it now?
28 MS. STAROSTENKO: It doesn't matter. And you
29 can take the paper this way. It didn't help you.
30 You've been already in our --
31 MR. TURNQUEST: My Lord, we need to see our
32 copy back for a second.

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- 1 MS. CARGILL: Just to compare.
- 2 THE COURT: Yes, I've seen it.
- 3 MS. CARGILL: That was the only copy, that we
4 had of ours. Because if it is, that is now their
5 version, we would not wanted to see them.
- 6 THE COURT: All right. Is that the last order?
7 Is that the last one for December 10th?
- 8 MS. STAROSTENKO: My Lord --
- 9 THE COURT: Is that the last one for December
10 10th?
- 11 MS. STAROSTENKO: No, my Lord. We have another
12 one. Amendment of Defence, Production of licence. Yes,
13 one second. They managed to make me confused by
14 refusing what I give to them. In future I need to make
15 signature of everything.
- 16 So, my Lord, they already deal with Amended
17 Defence. We're dealing now with the List of Documents.
18 There are two. One the request to disclose disputed:
19 Ist of Documents. And second, request and produce
20 licence of Central Bank and valid licences of employees.
21 There are two different Orders for production
22 of these documents. The one which now I give the second
23 copy to Ms. Cargill is actually for Central Bank Licence
24 valid, when we had activity with UBS Bank. And games
25 are being played.
- 26 Because instead of licence, they produce an old
27 licence and the Certificate of change of name. We have
28 no --
- 29 THE COURT: Okay, slow down. Slow down.
- 30 MS. STAROSTENKO: Yes.
- 31 THE COURT: Is that -- what you're talking
32 about -- what you're talking about is something they

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1 gave you afterwards or something they gave you before
2 you made the Application.

3 MS. CARGILL: Before.

4 MS. STAROSTENKO: They give us this licence of
5 Central Bank, which is not valid on the date when we
6 first dealt with UBS.

7 We're asking to give, because this licence will
8 show what they were allowed do in The Bahamas. They
9 give before two licences in their List of Documents of
10 1968 with the consequential change of May, because the
11 company first was incorporated as Swiss Bank
12 Corporation. Then in 1998 they changed name.

13 But our -- we don't have the fresh licence.
14 Because we're dealing with --

15 THE COURT: Did they get a new licence?

16 MS. CARGILL: No, my Lord.

17 THE COURT: Did they get a new licence?

18 MS. STAROSTENKO: Well, supposed to.

19 MS. CARGILL: No, my Lord.

20 MS. STAROSTENKPO: In 2010 they supposed to
21 serve a new licence.

22 MS. CARGILL: No, my Lord.

23 THE COURT: My recollection is that they get
24 one licence and then -- unless there's a change in the
25 licence.

26 MS. STAROSTENKO: Well, there was a -- that's
27 fine, okay. The licence of all employees is very
28 important. The valid licence about the employee.

29 They keep presenting to this court, licence
30 which is clearly stated, "Security Industry Act 2012."

31 Therefore, what licences they produce is
32 principle. But if -- within all the legislation, there

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1 is no right for litigation in principle in current law.

2 The Bahamas making it better and to bring up
3 the quality of financial industry standards. This is
4 why in 2011, when the law changed and in 2012, when
5 industry act -- Security Industry Act came, it's clearly
6 stated:

7 "Persons currently conducting business under
8 the Security Industry Act 1999 for which, under the
9 Security Industry Act 2011, they will not have approval,
10 will be operating outside of their authorized function."

11 THE COURT: All right. Let's go back to the
12 Order, because --

13 MS. STAROSTENKO: Yes, my Lord.

14 THE COURT: It's a matter of what I asked you
15 -- it's a matter of what I ordered.

16 MS. STAROSTENKO: Excuse me, my Lord.

17 THE COURT: It's a matter of what I ordered.

18 MS. STAROSTENKO: You ordered to produce valid
19 licence. Because if --

20 MR. TURNQUEST: My Lord, that's not -- my Lord.

21 MS. STAROSTENKO: No, it's that this court --
22 can you please let me go. This Court cannot bear with
23 people coming here, swearing Affidavit.

24 My Lord, you made this beautiful case about the
25 Royal Bank of Canada. You did not give extent --

26 MR. TURNQUEST: My Lord.

27 MS. STAROSTENKO: -- so, we try to use this

28 Royal Bank of Canada, somebody stopping me. Try to stop
29 me.

30 Here is this saying, here is the law, there are
31 people, who have clearly expired licence. They keep
32 saying, they were --

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1 MR. TURNQUEST: My Lord, there's no expired
2 licence.

3 MS. STAROSTENKO: And you said, when the
4 discussion was before you in December, you said, well
5 then produce it. If it valid, then produce it.

6 THE COURT: Okay.

7 MS. STAROSTENKO: And we made an Affidavit.

8 THE COURT: All right.

9 MS. STAROSTENKO: Yes, my Lord.

10 THE COURT: I obviously would need the
11 transcript to see what was ordered.

12 MS. STAROSTENKO: Yes, my Lord. But for the
13 next Order -- okay, we can wait for the -- anyway, for
14 the next Order we need the transcripts, because next
15 Order about production of the documents in the List of
16 Documents, you, my Lord, this would was on January 4th,
17 you remember, that you did this Order. And this is in
18 transcript of January 4th.

19 And you're saying that, yes they did. You're
20 asking me -- yes, here it is in Page 6 of the transcript
21 of January 4th. It's regarding the next Order for
22 production of documents in disputed list.

23 We're simply asking my Lord to make an Order.
24 This is case based on hard proof and documents.

25 THE COURT: Okay. As I recall, weren't the
26 documents handed over in court.

27 SKWRAO: Excuse me, my Lord?

28 THE COURT: Weren't the documents handed over
29 in court?

30 SKWRAO: Disputed List of Documents filed here
31 on September 23rd. When they was before you on December
32 10th, as I said, they did not see it. Even the e-mail

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1 was sent unanswered. So, we sent them a copy of
2 disputed List of Documents. And you told them to
3 produce --

4 THE COURT: That was your documents handed?

5 MR. TURNQUEST: Yes, my Lord.

6 MS. STAROSTENKO: No, disputed List of
7 Documents, not our documents. This was disputed List of
8 Documents.

9 MS. CARGILL: My Lord, if I may --

10 MS. STAROSTENKO: Just to make -- to make one
11 example, my Lord, because it's very important. A very
12 important thing. There is a decision-making process in
13 the bank. They produce only two Minutes so far. We
14 need these Minutes for other crucial point --

15 THE COURT: Okay, all right. You're straying
16 away -- you're straying away from the terms of the Order
17 as opposed to the quality of the documents or what's --
18 MS. STAROSTENKO: Thank you, my Lord. Thank
19 you for guiding me.

20 You said -- you see on January 4th, we said,
21 okay, we deal with this already, my Lord. You asking,
22 my Lord:

23 "Didn't I order them to produce the documents,
24 that you are asking for?"

25 And I am saying, "No."

26 You said, "Yes, they did. There was a List of
27 Documents."

28 And so on. And we are speaking about to
29 produce List of Documents. And what it is --

30 THE COURT: All right, one second.

31 Ms. Cargill, what did you understand in my
32 Order to be produced?

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1 MS. CARGILL: My Lord, my understanding was
2 that, when the issue was raised, that we had not
3 produced all of the documents, we indicated that we
4 produced all of the relevant documents in our
5 possession.

6 The Court then indicated, then you need to put
7 forward a Verifying Affidavit, verifying your List of
8 Documents, which we did.

9 And the Court also provided, that because we
10 only produced, I believe it was the business licence for
11 UBS as opposed to the Central Bank banking licence, the
12 Court required us to produce that as well, which we did,
13 which they are now claiming to be expired.

14 We've also produced the Certificate showing the
15 name from what the bank --

16 THE COURT: So, your Verifying Affidavit says
17 you've produced all of he documents, that you have?

18 MS. CARGILL: All of the relevant documents in
19 our possession. We said that, yes, my Lord.

20 We've also produced all of the licences --

21 THE COURT: What you mean relevant documents?

22 MS. CARGILL: Relevant to the action, my Lord.

23 MR. TURNQUEST: That's what the Rules provide
24 for, my Lord, all the relevant documents.

25 MS. STAROSTENKO: One second, my Lord. They
26 did not address our --

27 MS. CARGILL: My Lord, if we would just --

28 THE COURT: That seems a bit subjective. That
29 not merely what --

30 MR. TURNQUEST: But, my Lord, that's what the
31 Rules provide. The Rules say the party must produce all
32 relevant documents in your possession.

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1 My Lord, we produced every document, that we
2 had that our client produced to us.

3 THE COURT: I thought the issue was that those
4 documents didn't exist. So, that's why you --

5 MR. TURNQUEST: Yeah. That's -- when you look
6 at their --

7 THE COURT: This is the reason why you're doing
8 the Verifying Affidavit.

9 MS. CARGILL: Yes, my Lord. I don't know if my
10 Lord have in his possession the disputed list of
11 documents, that they've -- that the presented.

12 I'm assuming that this is what they continue to
13 request or perhaps it's another document. But they've
14 produced this list of documents, which they -- it is
15 very confusingly enumerated.

16 But besides that, my Lord, it's --

17 MS. STAROSTENKO: This is not true, my Lord.

18 MS. CARGILL: If I'm allowed to finish.

19 THE COURT: Hold on, hold on, hold on. I can't
20 concentrate, Man, please. One side speaks, the other
21 side listens. You will get a chance to speak.

22 But you can't imagine, that I can concentrate
23 like this.

24 Yes, Ms. Cargill.

25 MS. CARGILL: Yes, my Lord. In the List of
26 Documents, they have set out a general request for all
27 correspondence passing between UBS and their Attorney.

28 THE COURT: What is this disputed List of
29 Documents, that you're referring to?

30 MS. CARGILL: Well, this is my understanding of
31 what their disputed List of Documents was, which was
32 served on us. It's their List of Documents.

1 And, of course, we would have filed our initial
2 documents.

3 THE COURT: But they wouldn't be asking you to
4 produce stuff on their list?

5 MS. CARGILL: Yes, my Lord, they are.

6 So, from our List of Documents, they're saying
7 that a number of items, that they've enumerated in their
8 list, we did not produce.

9 And if you look at it, they have in a certain
10 column, that these are documents, that the Defendants
11 produce.

12 THE COURT: Okay, slow down.

13 Ms. Starostenko, the List of Documents you
14 produced -- the List of Documents you produced are all
15 the documents, that you think the other side have.

16 MS. CARGILL: Yes.

17 MS. STAROSTENKO: My Lord, not only -- what's
18 here, what's now handed to you, unfortunately is an old
19 List of Documents. The authorized list is disputed List
20 of Documents.

21 THE COURT: What's the date of your List of
22 Documents.

23 MS. STAROSTENKO: September 23rd. This is
24 disputed List of Documents. Following your Directions,
25 we have two objections --

26 THE COURT: Sorry.

27 MS. STAROSTENKO: Regarding what Ms. Cargill
28 stated now.

29 THE COURT: What's a disputed List of
30 Documents? What is the disputed List of Documents.

31 MS. STAROSTENKO: No, they file it to produce
32 the documents, which I really want for this case. For

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1 instance, to make one example, we create in the Draft
2 Order, that all documents detailing.

3 Another thing, if it is not clear for them what
4 we're asking for, that did a job of 70 pages requesting
5 further and better disclosure of 182 paragraphs of our
6 Statement of Claim 15 months later. But they did not
7 ask what it was.

8 However --

9 THE COURT: I asked you about the disputed --
10 what is the disputed List of Documents?

11 MS. STAROSTENKO: Here it is. It's a List of
12 Documents, my Lord. For instance -- and here is our
13 Draft Order. The reason why --

14 THE COURT: Why -- I don't need to see a Draft
15 Order. Why was this -- why did you file a disputed List
16 of Documents?

17 MS. STAROSTENKO: Because their failure to
18 produce this document or to clearly admit -- in their
19 last Affidavit, they are not admitting to have kept
20 those documents.

21 They keep saying -- they're producing only two
22 out of --

23 THE COURT: Sorry, one second.

24 MS. STAROSTENKO: All what they say is circled,
25 that they produce.

26 THE COURT: Okay, one second. One second.

27 So, these are the documents in your Notice to
28 Produce?

29 MS. STAROSTENKO: Yes. We need to know who
30 made decision to halt our trading. How it was made. We
31 need to know who and how the decision to sequester money
32 from our account was made.

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1 And, of course, there is always discretion
2 about trading on the New York Stock Exchange. All this
3 means is they don't have any Brokers Notes, as by law,
4 which are by licence, Stock Broker or Member of New York
5 Stock Exchange or they produce.

6 They cannot play this tennis game back and
7 forth for a while. And this Court is dealing with many
8 issues and time it cost.

9 And we are oppressive party for five years.
10 This is why, we have our Application from July 5th, my
11 Lord, which is constituted disclosure. It's from July
12 5th.

13 And we asking specifically disclose documents,
14 which are particularly in -- out of our seven notices,
15 they answer only one. The rest of six notices still
16 pending.

17 So, we asking humbly, this Order was made in
18 December to address. Three days later, they made
19 another List of Documents, as much confusing as
20 previous, basically providing only one document.

21 Absolutely not true statement made here by
22 Ms. Cargill, that we asking privilege documents.
23 Privilege is only one party.

24 THE COURT: Hold on. Hold on for a minute.

25 MS. STAROSTENKO: Yes, my Lord.

26 THE COURT: Ms. Cargill, Mr. Turnquest, I
27 understood that the documents were being -- were being
28 -- that the issue with the documents were the documents
29 didn't exist, not that it was a question of relevance.

30 Because that's really the only reason why you
31 asked me to swear an Affidavit, Verifying Affidavit. If
32 -- to verify, that you don't have this document.

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1 It's not a question of whether you don't think
2 it's relevant or not.

3 STPHAO: My Lord, we can't produce documents,
4 that we don't have. And this is what they're not
5 understanding.

6 THE COURT: That's what I understood. So,
7 you're saying, that you filed -- you're saying, that you
8 filed relevant documents.

9 MR. TURNQUEST: But, my Lord --

10 THE COURT: Not so much, that you don't have
11 the documents.

12 MR. TURNQUEST: Well, my Lord, documents that
13 we -- that they are asking for, we don't -- as far as
14 we're concerned, we don't -- I can't say that they don't
15 exist, but we don't have them.

16 I mean, the documents --

17 THE COURT: If you don't have them, you don't
18 have them.

19 MR. TURNQUEST: Well, exactly, my Lord.

20 And --

21 THE COURT: That's what I asked. That's what I
22 thought I understood. But you said, that you only filed
23 relevant documents. Which suggest to me that --

24 MS. CARGILL: There are other documents.

25 THE COURT: -- you have those documents, but
26 you don't think that they're relevant.

27 MR. TURNQUEST: My Lord, we took -- some of
28 these documents, we don't even know what they're talking
29 about, to be quite frank with the Court, my Lord.

30 And when you look in their documents, we don't
31 have the documents, my Lord. We can only produce what
32 we have, right.

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- 1 Some of these documents, we don't even know
2 what they're talking about.
- 3 THE COURT: So, you're Verifying Affidavit then
4 says or if it doesn't say, will say, that these
5 documents are not in your possession.
- 6 MR. TURNQUEST: My Lord, we filed a Verifying
7 Affidavit saying that.
- 8 MS. CARGILL: In December. It's in the
9 Affidavit of Renate Raeber.
- 10 MR. TURNQUEST: My Lord, we went through --
- 11 THE COURT: What's the date of the filing of
12 the Affidavit?
- 13 MS. CARGILL: It would have been filed, my
14 Lord, 13th of December.
- 15 MS. STAROSTENKO: No, on the 4th of September
16 is another Affidavit.
- 17 MS. CARGILL: My Lord, if I may --
- 18 MR. TURNQUEST: My Lord, we went through their
19 disputed List of Documents --
- 20 MS. STAROSTENKO: This Affidavit, you filed it
21 in response of our 16th Affidavit --
- 22 THE COURT: 13th of December, you said?
- 23 MS. CARGILL: Yes, my Lord. The 13th of
24 September -- of December.
- 25 MR. TURNQUEST: And, my Lord --
- 26 THE COURT: One second. Let me find the
27 document first.
- 28 MS. CARGILL: I can just hand up mine perhaps.
- 29 If you are unable to find it, this is the Affidavit.
- 30 THE COURT: Hold on.
- 31 MS. STAROSTENKO: We deal with this much time.
- 32 And we made 16 Affidavits. And on January 4th, it's in

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1 transcript, you ordered them to produce documents.

2 They bringing you back what we already deal
3 with here.

4 MR. TURNQUEST: My Lord --

5 THE COURT: One second. Just give me one
6 second, both of you.

7 Yeah, I'm looking at Paragraph 6 of your
8 Affidavit.

9 MS. CARGILL: Which --

10 MR. TURNQUEST: Paragraph 6.

11 THE COURT: I was expecting an averment to the
12 effect of what you just represented, that there are no
13 other documents, that you are aware of, that you may
14 have.

15 This talks about we have included in our list
16 all relevant documents in our possession relating to
17 this matter.

18 MR. TURNQUEST: My Lord, we've produced --

19 THE COURT: It seems that you're open to a
20 suggestion, that you may have them, but you're not --
21 you may have them at some place. And they say, that
22 they are relevant.

23 MR. TURNQUEST: My Lord, if you go through some
24 of the stuff, that they are asking, we've asked our
25 client. Some of these things --

26 THE COURT: What is your reservation -- is
27 there a reservation or is your client unwilling without
28 an Order to make the statement you made just now?

29 MR. TURNQUEST: My Lord, it's not a question of
30 an Order. But when you -- they're asking for documents,
31 that we don't even know what they're talking about.

32 First of all, they're asking for a bunch of

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1 they're asking -- another point, if they're asking for
2 documents demonstrating -- what is it? Proof of passing
3 between the New York Stock Exchange and UBS.

4 There's proof that the shares -- they placed
5 the order for shares. The shares were bought. The
6 shares were sold. I mean, how are we supposed to get
7 proof of that? And that's reflected in the account
8 statement.

9 What are we supposed to do, my Lord? Go to the
10 New York Stock Exchange and say, well, produce --

11 THE COURT: Fair enough. But what documents
12 you have in your possession, you need to produce.
13 Because if they relate to the dispute --

14 MR. TURNQUEST: And, my Lord, and that's what
15 we've -- that's we've done, my Lord.

16 MS. STAROSTENKO: Objection.

17 MR. TURNQUEST: And then, my Lord -- I mean, if
18 you go through the -- their List of Documents,
19 my Lord --

20 THE COURT: I will ask you -- I will make the
21 Order, that your client produce an Affidavit in very
22 term, that you're representing to me now.

23 MR. TURNQUEST: Well, my Lord --

24 THE COURT: That other than the documents, that
25 you've produced, there are no other documents, that you
26 are aware of --

27 MR. TURNQUEST: That we're aware of.

28 THE COURT: -- that exists.

29 MR. TURNQUEST: Well, my Lord, we can -- we're
30 happy to do that.

31 But, my Lord, the issue what I'm saying is,

32 some of the points, that they're asking, we don't

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1 privilege documents. The correspondence between us and
2 the clients about this matter. Clearly, we can't
3 produce that, my Lord. That's privileged documents.

4 Some -- they've been going on and on about this
5 point about the contract notes, my Lord. I mean, every
6 time we come here --

7 MS. STAROSTENKO: Objection.

8 MR. TURNQUEST: They are banging on about
9 contract notes.

10 We have said, we've produced every contract.

11 And the problem, my Lord, is there's a difference of
12 opinion as to what constitutes contract notes.

13 We've said this time and time again. We've
14 said, the documents that we have produced to them, we
15 believe, in our opinion, is the contract notes.

16 That's the only document, that UBS has produced
17 during the course of the relationship. And that's what
18 they've have produced and that's what we've produced to
19 them.

20 We can't go away or UBS can't go away and make
21 up a new set of contract notes, that don't exist,
22 my Lord.

23 THE COURT: I appreciate that. But that's not
24 what -- that's not the nature -- what you're saying now
25 is not the nature of the general statement, that you
26 made.

27 MR. TURNQUEST: My Lord, I mean, you want us to
28 do a Verifying Affidavit saying, that the documents,
29 that they are seeking don't exist, my Lord.

30 THE COURT: That's what you're saying to me?
31 Isn't that what you're saying?

32 MR. TURNQUEST: Well, my Lord, we don't -- if

1 understand what they're asking for. That's one of the
2 issue. And in any event, we can't produce documents,
3 that we don't have.

4 THE COURT: That's a fundamental principle.
5 Certainly, if you don't have the documents, you can't
6 produce them. So -- that's why I was concerned that the
7 statement seems a bit a generic.

8 MR. TURNQUEST: Well, my Lord, that's -- when
9 you look at the Order -- I can't remember what the Order
10 is, that deals with the List of Documents.

11 The Order simply says that --

12 THE COURT: There was an Application for the
13 production.

14 MR. TURNQUEST: Yes. I mean, my Lord, we can
15 clarify this to say that aside from -- you know, unless
16 some other documents comes up, that -- you know, we want
17 -- that we don't have in our possession or you know may
18 come into existence, that we don't currently have.

19 But in terms of material documents, which
20 they're seeking, the contract notes, we've produced
21 them.

22 In terms of the licences, we've produced them,
23 my Lord. I don't know --

24 THE COURT: In any of her Affidavits has she
25 dealt with that? In any of her previous Affidavits?

26 MS. CARGILL: The contract notes? Yes,
27 my Lord.

28 MR. TURNQUEST: The contract notes are dealt
29 with. The issues of the licences are dealt with in
30 detail, my Lord.

31 So, I mean, I don't know what else are we
32 supposed to do.

- 1 MS. STAROSTENKO: Objection, my Lord.
2 THE COURT: Yes.
3 MS. STAROSTENKO: My Lord, first of all, the
4 documents are clearly stated. For instance, we're
5 asking attendance notes of our meeting with UBS.
6 MR. TURNQUEST: And, my Lord, we've produced
7 that.
8 MS. STAROSTENKO: We're asking voice recording.
9 If they don't have, they don't have.
10 We're asking, please, to make it in detail,
11 because there is a list of precise documents. And we've
12 brought it here and now. And this is the draft.
13 Please take it. This is the draft. We asked
14 -- we follow your Order, which we're much obliged, my
15 Lordship. That will address every document.
16 Because this, the one that's there right now,
17 we're going to use this against their clients as
18 confirmation of negligence.
19 MR. TURNQUEST: My Lord --
20 MS. STAROSTENKO: And all other activities.
21 Now, regarding the contract notes --
22 THE COURT: Hold on.
23 Why would they have to address every document,
24 if the answer to every document is the same?
25 MS. STAROSTENKO: Because these documents is
26 constituting disclosure, which every bank supposed to
27 have.
28 THE COURT: Well, like you say, if they don't
29 have it, then it's your opportunity, you say for
30 negligence. But if they don't have it, they don't have
31 it.
32 MR. TURNQUEST: My Lord --

- 1 MS. STAROSTENKO: Yes, my Lord. We're asking
2 this, because what we've been warning, that it's
3 happening, if they don't have now, they need valid.
4 Licence. It's all expired.
5 They have come to such a trial and all the
6 while --
7 MR. TURNQUEST: My Lord, we object to these
8 scandalous --
9 THE COURT: All right.
10 MS. STAROSTENKO: And all the while, starting
11 with a new licence. We don't want any new documents on
12 trial. Once disclose, if they will do the Affidavits,
13 thank you very much, my Lord --
14 THE COURT: Hold on.
15 MS. STAROSTENKO: Yes, my Lord.
16 THE COURT: The way a trial operates --
17 MR. TURNQUEST: Well, my Lord --
18 THE COURT: -- they would not be able to
19 produce any new documents at trial.
20 MS. STAROSTENKO: Much obliged. That's what
21 we're seeking for.
22 Another thing, when they're saying that these
23 documents are not relevant, why is that? Is there 182
24 questions of further and better particulars. That
25 questions like who in UBS made this decision?
26 MS. CARGILL: No.
27 MS. STAROSTENKO: So far, because only two
28 documents, which is Memorandum, when in January they
29 decided to not make an agreement with us. And then
30 attendance note of March, after Lennox Patton call it
31 our loan bank.
32 But only two of out of six. It's really

1 relevant, because if they do not say, that they don't
2 have it, then it will be conspiracy of fraud, confirming
3 what we say, because they must have it.

4 MS. CARGILL: Objection.

5 MS. STAROSTENKO: Well, I'm sorry.

6 But, my Lord, yes, we need -- this why we
7 asking them to address, because --

8 MR. TURNQUEST: My Lord --

9 MS. STAROSTENKO: -- or as you said, no other
10 document can be produced. So, it means that they have
11 no one of these documents. And they as well admitted,
12 this elastic approach towards the law. And they ought
13 to eradicate that into a Defence.

14 Probably they don't have it. But they can at
15 least tolerate it by Court and by any person in the
16 world.

17 The law says very clearly, if you're dealing in
18 regulated matters, it's not ordered, it's regulated, you
19 must provide these documents, according to this market.
20 And this market exists and say what documents need to be
21 provided.

22 THE COURT: Again --

23 MS. STAROSTENKO: Yes, my Lord.

24 THE COURT: -- if they have the document -- if
25 they have -- if they don't have the document, they don't
26 have they the document.

27 MS. STAROSTENKO: Yes, my Lord.

28 THE COURT: If you're able to determine, that
29 they -- that someone misrepresented, then that's a
30 different sorry altogether.

31 MS. STAROSTENKO: Yes, my Lord. Yes, my Lord.

32 Yes, my Lord.

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1 MR. TURNQUEST: My Lord, on that point, they've
2 never seen the document?

3 MS. STAROSTENKO: No, but I would like just to
4 bring to your attention for what they say --

5 THE COURT: Didn't they hand over the documents
6 in court earlier?

7 MS. STAROSTENKO: But --

8 MS. CARGILL: With respect to both sides giving
9 discovery, they've produced no documents. We're really
10 the only party who have produced documents.

11 MS. STAROSTENKO: My Lord, that is an attack
12 from their Defence. They're saying, that they don't
13 have other even trade slips. They say, it's only up to
14 22 hour between UBS Bahamas and UBS Switzerland.

15 There is a list of activity, where there is
16 reply. It's from 26th August to 8th of September.

17 Because before 26th of August, they didn't even make
18 claim how our demise is to UBS was ordered.

19 They produce only up to 26th of August.
20 They're saying that from 26th August up to 8th of
21 September, they don't have it.

22 And this is in e-mail from Ms. Cargill. And we
23 just asked for you to please make admission. So, we
24 hoping this Affidavit will be clearly stating the same
25 under the Order.

26 And now, when we come about the Affidavits, my
27 Lord, you know, as we follow your directions --

28 THE COURT: All right, okay.

29 You stood up and objected to the ground, we're
30 dealing with.

31 MS. STAROSTENKO: Excuse me, my Lord.

32 THE COURT: You stood and objected. But I

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1 think you expand.

2 MS. STAROSTENKO: I stood up and objected.

3 Yes, I apologize. Thank you for your guidance.

4 Yes, the objection is about privilege

5 documents. It doesn't arise to them any more. If it

6 arise, it arise. But in our e-mail, in our documents,

7 they're only public documents, which every bank in the

8 world has.

9 So, if they admit, that they don't have it, so
10 it wasn't absolutely proper authorization, it would
11 confirm our claim against them.

12 If they can, then they can say what it was
13 about. And we're asking very sound, very simple
14 documents, which can stand in this court and all courts
15 in the world.

16 The Orders --

17 THE COURT: Ms. Starostenko --

18 MS. STAROSTENKO: Yes, my Lord.

19 THE COURT: You promised you were going to go a
20 lot slower.

21 MS. STAROSTENKO: Yes, I'm sorry, my Lord.

22 Thank you very much, my Lord.

23 Yes, the documents we are asking are basic,
24 simple standard documents --

25 MR. TURNQUEST: My Lord --

26 MS. STAROSTENKO: -- between bank and clients
27 around the world.

28 We sure they can. In this court, in
29 everywhere, those attendance notes, Minutes of meeting,
30 decision-making process, voice recording, when we were
31 placing orders by phone, which will help a lot to
32 shorten time of trial and bring it to be a real fair

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1 trial, because those are hard evidence and facts.

2 This why we asking. We are not asking every
3 stage privilege documents. I want to be clear. They
4 made objection that it is privilege. We answer it, that
5 we are doing our part really to disclose it in the
6 future. And there is a good rule, because it shows,
7 will it's considered.

8 But in any way, that is not disrespect. But
9 for now, all our documents, which are in this draft,
10 which I give to Ms. Cargill, which is in our disputed
11 List of Documents, just for once, just to make example,

12 (3) --

13 THE COURT: What is the first word you said?

14 MS. STAROSTENKO: Yes, please. You just make
15 me -- please do it. I want you to write. Please.

16 For instance, I'm just opening, records kept
17 during the time and the steps and decisions made by the
18 Defendant. The halt of trading in effective of the
19 First Plaintiff's account, on 19th of September, 2017.
20 Very precise.

21 They --

22 THE COURT: Sorry, slow down. Slow down.

23 You have an objection?

24 MS. CARGILL: My Lord, just from the point of
25 reading it. That's not a document, that's description
26 of the general of documents.

27 So, if she's asking for a specific document,
28 that's different. But issues arising, that lead to the
29 halt of trading.

30 THE COURT: Why can't you ask for the document?

31 MS. CARGILL: Issues arising?

32 THE COURT: If that's just a report, that's

1 fine.

2 MS. CARGILL: But, my Lord, from the documents,

3 that we've listed --

4 THE COURT: All right.

5 MS. CARGILL: Sorry.

6 THE COURT: What's wrong with that?

7 MS. CARGILL: My Lord --

8 THE COURT: If your client did a report as to

9 -- in relation to any -- why trading were halted --

10 MS. CARGILL: Right.

11 THE COURT: Why --

12 MS. CARGILL: And that's fine. If that was the

13 case, we would have produced it. We did not produce any

14 reports, because no such reports were in our possession.

15 THE COURT: That's fine.

16 MS. CARGILL: But, my Lord --

17 THE COURT: That's fine. Why can't that be

18 requested, that's what I'm asking?

19 MS. CARGILL: I can concede that that can be

20 requested, my Lord. But we've addressed that in our

21 List of Documents.

22 There are discussions with the Plaintiffs

23 explaining how the halt of trading came to be. There

24 are e-mails with the Plaintiffs setting out when the

25 halt of trading came about.

26 MS. STAROSTENKO: Objection, my Lord.

27 MS. CARGILL: There was a meeting with the

28 Plaintiffs, that explained this is why we're going to

29 maintain the halt of trading. We've complied.

30 THE COURT: That's fine. But if in fact

31 reports exist, they can ask for it. Assuming, you're

32 saying you don't -- assuming you're saying, that they

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1 are privilege between lawyer and client, that's a
2 different story. But I can't see why they can't ask
3 for --

4 MR. TURNQUEST: They can ask for it. But the
5 point is, that issue has been addressed.

6 THE COURT: But if they don't exist, then you
7 can say, they don't exist.

8 MS. CARGILL: We've addressed them. It's not
9 necessarily that -- I guess the point is, there's no
10 specific report, that exists.

11 But we've addressed the issues, that arose that
12 speaks about the halt of trading in our documents.

13 MS. STAROSTENKO: My Lord, this is our -- the
14 difference --

15 THE COURT: Either they exist or don't.

16 MR. TURNQUEST: Well, my Lord, the point --

17 THE COURT: Either it exist or it don't exist.
18 The disparity how it came about is a different story
19 altogether. If they exist, they exist. If they don't
20 exist, they state they don't exist.

21 A description won't make them exist or don't
22 exist any more or less.

23 MS. CARGILL: I'm guided, my Lord.

24 MS. STAROSTENKO: My Lord, you've given them
25 opportunity to verify by Affidavit, which is to find
26 these documents.

27 The meeting -- there were two meetings.

28 THE COURT: So, the documents, you're concerned
29 with, is the ones, that you -- in that list, that you
30 require, that you say is in the Order?

31 MS. STAROSTENKO: Yes.

32 MR. TURNQUEST: My Lord, there is the first

1 time we've seen this.

2 MS. STAROSTENKO: This is from -- we entitled
3 it as a Draft Order. But it's just a List of Documents
4 for particular --

5 THE COURT: I'm not concerned about the Order.
6 I'm concerned about the listing.

7 MS. STAROSTENKO: Yes, my Lord. That is list.
8 Yes, my Lord. And this --

9 THE COURT: And those come from your Notice to
10 Produce?

11 MS. STAROSTENKO: Yes, my Lord. Those are five
12 documents, very specific, used at every meeting, where
13 Ms. Cargill said, there were meetings.

14 There were two meetings. Where are Minutes of
15 those meetings? We have our e-mails. We don't need it.
16 We are asking specific disclosure. How it was made the
17 decision to halt trading? How --

18 THE COURT: They say, they have provided you
19 with Minutes of those meetings.

20 MS. STAROSTENKO: No, Minutes. My Lord, they
21 provided only 18th March, when 2014, one year and six
22 months later, when we made, after this surprise later,
23 we had four meetings before that.

24 And they provide only one Memorandum and only
25 only one Minutes. Out of this one meeting, we have
26 other three meetings. We want to see the Minutes of
27 these meetings.

28 Then we're asking them for decision making,
29 when they -- it's Point B of our Point 4B:

30 "The debit of \$526,323.49 standing to the First
31 Plaintiff's credit in its account."

32 THE COURT: Slow down. Slow down.

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1 So, you're saying, Ms. Cargill, that there were
2 -- the only Minutes you have is the one you gave?

3 MR. TURNQUEST: Yes.

4 THE COURT: There are no other Minutes?

5 MS. CARGILL: The only Minutes that our client
6 has produced to us, the ones that we have in our
7 possession.

8 THE COURT: So, they don't have any more?
9 That's their evidence -- that's their case?

10 MS. CARGILL: That's our understanding.

11 THE COURT: They're going to have to do --
12 they're going to have to swear that that's factual.

13 MS. STAROSTENKO: My Lord -- and that is very
14 important. For instance, we asking, to performance
15 reviews, warnings, feed back notes.

16 This performance review is something which
17 banks do internally.

18 MR. TURNQUEST: My Lord, sorry --

19 THE COURT: Slow down. Slow down. Slow down.

20 MS. CARGILL: My Lord, just to clarify, we

21 don't have the dates of these supposed meetings to
22 request -- just to be sure, that we're speaking to those
23 Minutes.

24 Can we have the dates of those meetings --

25 MS. STAROSTENKO: No problem. October 8th,
26 2013. September 18th, 2013 and -- September 18th,
27 2013, October 8th, 2013.

28 And they have it listed in Schedule 2 Number 21
29 on Page 4:

30 "23rd of August, 2012. 18th of September,
31 2013. 4th of October, 2012. 18th of September, 2013.
32 8th of October, 2013. 8th of March 2014."

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1 Well, 8th -- March actually is produced. They
2 give the wrong date. They put 14th of March. So, they
3 produce it, but they put 14th of March. They just mix
4 up date, but it was only way day. But the rest not
5 produced.

6 MR. TURNQUEST: My Lord --

7 THE COURT: She's calling off the dates, when
8 they said, that the meetings took place.

9 MS. STAROSTENKO: They are very important
10 dates. Because when the cameras with the trading
11 activity, the whole bundle of UBS, the whole industry
12 how it works, the broker has to make brief checks, the
13 client warning, all number of documents, which we are
14 requesting by industry standards, bank must have in
15 their possession.

16 They are absolutely fine if they just say that
17 they don't have it or if they have it, we need to see
18 it.

19 Those are the documents requested. If you
20 doctor you need to have your tools. If you banker, you
21 need to have your tool to review your client --

22 THE COURT: Your client say, they don't have
23 these documents?

24 MS. CARGILL: I'm sorry, my Lord, which --

25 THE COURT: Your client is saying, that the
26 meeting didn't take please?

27 MR. TURNQUEST: As far as -- I don't know the
28 specifics of Minutes. I know that there were one or two
29 copies of Minutes, that -- which were kept, that --
30 meetings with them, that we have produced.

31 As for these specific ones, I mean, we have to
32 double check, my Lord. But as far as I'm concerned, our

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1 clients said, listen, this is all the copies of the
2 Minutes they have now.

3 We could go back and ask them to verify these
4 specific dates. But I can't imagine, that they're going
5 to say, oh, well, you know --

6 MS. CARGILL: We now find them magically.

7 MR. TURNQUEST: They're going to magically
8 appear.

9 THE COURT: If they don't have them, then I
10 mean -- this is discovery. They have to be up front
11 with what they have. I mean --

12 MR. TURNQUEST: But, my Lord, I mean, our
13 client isn't trying to hide anything.

14 THE COURT: I appreciate that. But if they
15 don't have them, say they don't have them then. That
16 they have done a diligent search and they don't have
17 them.

18 MR. TURNQUEST: My Lord, then that's fine.

19 But, my Lord, the point -- this Point 1, and I feel like
20 I'm banging my head against the wall with this contract
21 note point.

22 We're not going to produce any other addition
23 contract to say that -- besides what we have already
24 produced.

25 THE COURT: So, all your client has to say,
26 that they -- that -- she has referred to whatever she
27 said before in whatever Affidavit. And that there are
28 no other documents or contract notes that they have.

29 MS. STAROSTENKO: Another example, very
30 important, my Lord, in our Schedule 3, we're asking
31 documents precisely about the products, which have been
32 sold. Real Estate Collateralized Loan.

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1 We're asking how many clients they have --

2 MR. TURNQUEST: My Lord, we're going on a
3 fishing expedition now?

4 MS. STAROSTENKO: Where we're going, if there's
5 no control --

6 THE COURT: That one is a -- I mean, that one
7 is not --

8 MR. TURNQUEST: It's a fishing expedition.

9 THE COURT: Yes.

10 MS. STAROSTENKO: Statistical data disclosure
11 is not a fishing expedition.

12 MR. TURNQUEST: It's a fishing expedition,
13 my Lord.

14 MS. STAROSTENKO: It's to show to the court --

15 THE COURT: Nor is it required unless they have
16 a -- unless there's some report or something in
17 existence. I don't require them to produce a -- some
18 spread sheet has to --

19 MS. STAROSTENKO: Well, my Lord, their evidence
20 is we were only one client of this so-called product.

21 And this product was borne -- we were only one of those
22 clients --

23 THE COURT: In terms of the request for the
24 document, am going to need some interrogatories. That's
25 not a request for --

26 MS. STAROSTENKO: Much obliged, my Lord.

27 THE COURT: That's not a document, that --
28 you're asking them to create something.

29 MS. STAROSTENKO: Well, yeah. It is very
30 statistical data. They said 63 clients invested in
31 The Bahamas. It's statistical data. But UBS has 63
32 clients. When they shut down it 63 accounts.

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1 So, my recollect --

2 THE COURT: How --

3 MS. STAROSTENKO: Yes, my Lord?

4 THE COURT: And how does that relate to your
5 claim.

6 MS. STAROSTENKO: Excuse me?

7 THE COURT: How does that relate to your claim?

8 MS. STAROSTENKO: They have to disclose --

9 THE COURT: No, how does it relate to your
10 claim?

11 MS. STAROSTENKO: Our request about -- this
12 product is the best financial product never tasted
13 before. And they had no other clients out of yourselves
14 or if our clients would be, they would be in the same
15 position as us today.

16 That's why we asking for statistical data from
17 UBS bank. Some are privilege documents. How many
18 other clients do this type of bond. May be UBS is
19 famous, if other clients --

20 THE COURT: That's not a reason for the
21 production of these documents. It may be a
22 interrogatory, that you make of someone. But that's not
23 a --

24 MS. STAROSTENKO: I heard, my Lord. Thank you
25 very much.

26 So, they can address their lawyers. So, can
27 you make this Order for today, the Defendant, as you
28 said, will produce document, according to the Schedule.

29 MS. CARGILL: No, my Lord.

30 THE COURT: In terms of the document, they will
31 do an Affidavit verifying the list in the terms, that I
32 will give to them, that there are no other documents,

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1 that exist.

2 MS. STAROSTENKO: Verifying according to this
3 Schedule.

4 THE COURT: Other than the documents, that they
5 have identified in their list of documents.

6 MS. STAROSTENKO: Yes.

7 THE COURT: And if they're not prepared to do
8 that then -- if they're not prepared to do that, they
9 certainly they will produce whatever documents they have
10 before they settle their Affidavit.

11 MS. STAROSTENKO: Well, yes. Yes, they can
12 verify, my Lord. We're asking them to address this
13 Affidavit. They have mastered --

14 THE COURT: What about the Affidavit?

15 MS. STAROSTENKO: An Affidavit to address our
16 disputed List of Documents.

17 THE COURT: Yes.

18 MS. STAROSTENKO: To be precise, this Schedule
19 says, Order --

20 MR. TURNQUEST: But, my Lord --

21 THE COURT: I'm not going to ask them to
22 respond to every item on your list. Their issue is that
23 they don't have any other documents, other than what
24 they have produced.

25 So, it would make no sense to refer to every
26 single document on the list to say that they should say
27 that.

28 MS. STAROSTENKO: So, we will be satisfied if
29 they put an Affidavit, that they don't have -- that they
30 have never been in -- never made these documents. If
31 they don't have it, that will still be fine.

32 THE COURT: I think we're going over and over

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1 the same thing.

2 By when would this Affidavit be settled, the
3 Supplemental Affidavit of Ms. Raeber?

4 MR. TURNQUEST: My Lord, we say by the end of
5 next week.

6 THE COURT: I will give you 14 days.

7 MR. TURNQUEST: Much obliged, my Lord.

8 THE COURT: So, let me settle the terms of the
9 Order to be clear, so we don't have to come back.

10 MS. CARGILL: Yes.

11 THE COURT: Sorry, can I see the list that --
12 these Items in Schedule 4 and 5, these are documents
13 already on the list; aren't they?

14 These would be requests for any -- Schedule 4
15 says documents relating to the Defendant's financial
16 activities. And more particularly copy of Item 119 of
17 the Defendant's List of Documents.

18 So, if it's in their List of Documents I
19 mean --

20 MS. CARGILL: Which List of Documents?

21 MS. STAROSTENKO: I don't -- 119, they sent
22 e-mail with the documents. But this item was not in one
23 of those documents. It was missing.

24 THE COURT: Likewise, Schedule 5 speaks to --

25 MS. STAROSTENKO: Accepted Market Practices.

26 THE COURT: Something else referred to in their
27 Defence.

28 MS. STAROSTENKO: They address it in their
29 Defence. That's why we asking that they address it.
30 And more particularly --

31 THE COURT: I don't know if they have those
32 documents though.

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1 MS. CARGILL: It is not a document, standard
2 practice.

3 MS. STAROSTENKO: This is their document. This
4 is addressing --

5 THE COURT: Accepted Market Practice is not a
6 document.

7 MS. CARGILL: No, my Lord.

8 MS. STAROSTENKO: This is their document, which
9 they are addressing in their Defence, my Lord.

10 THE COURT: They're not saying it's a document.
11 They're saying that it's --

12 MS. CARGILL: No, my Lord.

13 MS. STAROSTENKO: Excuse me, my Lord.

14 THE COURT: As I understand it, they're not
15 saying there's a document. Their saying what the
16 practice is.

17 MS. STAROSTENKO: No, no, this is a document.
18 Accepted Market Practice is a kind of manual. And we're
19 asking a detailed description of the market practices.

20 MS. CARGILL: No, my Lord. There is no
21 document.

22 MS. STAROSTENKO: The identification of the
23 competent authority established as the Accepted Market
24 Practices.

25 THE COURT: I didn't understand it was a
26 manual.

27 MS. CARGILL: That's not what we -- in our
28 Defence it was the standard of practice, my Lord.

29 MS. STAROSTENKO: They rely on Accepted Market
30 Practices.

31 THE COURT: Right. And which would be
32 established by evidence.

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1 MR. TURNQUEST: By a trial.

2 THE COURT: By some -- by what some witness,
3 who will come and say, what the practice is.

4 MS. CARGILL: Yes.

5 THE COURT: It is not a document.

6 MS. STAROSTENKO: The Securities Industries
7 relative to trading, there are very precise documents,
8 on which they supposed to rely.

9 That's why we're asking, it will show how they
10 were conducting business. Like New York Stock Exchange,
11 they already admitted, that they don't have Contract
12 Note.

13 MR. TURNQUEST: My Lord, we did not admit, that
14 we don't have Contract Notes.

15 MS. STAROSTENKO: Accepted Market Practices, is
16 -- there are --

17 THE COURT: They say there's no manual. Their
18 -- they say, there is no manual. They say, there's no
19 manual.

20 They say what they referred to in Accepted
21 Industry Practices, which I automatically assumed was
22 that they will say what the practice is.

23 They will say what they think the Market
24 Practice is.

25 MS. STAROSTENKO: Well, they asking us in this
26 specific disclosure to address word by word everything.
27 This is already in the Statement of Claim.

28 If the Court will allow them this letter, which
29 is not even Application. They already made an
30 Application, we would ask please the Court to make an
31 Order for them so we can show what the Accepted Market
32 Practice is. This is a document.

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1 THE COURT: Yeah, that will come out in the
2 Witness Statements.

3 MS. STAROSTENKO: Oh. So, this is a kind of
4 interrogatories?

5 THE COURT: That will come out in the Witness
6 Statement, when we get there.

7 MS. STAROSTENKO: Yes, my Lord. Okay. So,
8 here we have two more Orders from January 4th, my Lord.
9 THE COURT: Hold on, hold on, hold on. Let's
10 stay focused.

11 MS. STAROSTENKO: My Lord, if they say, that
12 there is no documents, they can put an Affidavit saying
13 there is not such a document.

14 MS. CARGILL: No.

15 MR. TURNQUEST: My Lord, if they can't
16 understand the terms --

17 THE COURT: All right. So, this is the terms
18 of the Order, that I will make:

19 "That the Defendants do provide a Supplemental
20 Affidavit of Renate Raeber, verifying the Defendant's
21 List of Documents and confirming (1) that the Defendants
22 have no other documents in their possession relating to
23 the Action.

24 And (2), the following documents, referred to
25 in the Draft Order, provided by the Plaintiffs, either
26 do not exist or is privileged from disclosure:

27 (A) Schedule 1. (B) Schedule 2 subparagraph 1,
28 subparagraph 2, subparagraph 3, subparagraph 4 and
29 subparagraph 5 and Schedule 3 and this will be (C).

30 So, Schedule 1 is (A). Schedule 2: 1, 2, 3, 4
31 and 5 would be (B). And (C) would you Schedule 3 sub 1
32 and 2.

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*Witness
Statement*

Index

- 1 MR. TURNQUEST: Schedule 1, Schedule 2: 1, 2,
2 3, 4 and 5.
- 3 THE COURT: Schedule: 1 and 2.
4 Said Affidavit to be produced within 14 days.
5 MS. STAROSTENKO: Much obliged, my Lord.
6 Can we prepare a Draft Order?
7 THE COURT: Yes, you can prepare the Draft
8 Order. I would imagine this one would have no
9 difficulty.
- 10 MS. CARGILL: As long as the wording is kept as
11 is, my Lord.
- 12 THE COURT: Slow enough. And transcript will
13 be absolutely clear. But in any event, I have it here,
14 when you come back.
- 15 MR. TURNER: My Lord, this is another --
16 MS. STAROSTENKO: The Order from January 4th,
17 which we're asking please for this Court, one was
18 ordered to file an Affidavit in Response of 16th
19 Affidavit of Yuri Starostenko, which they filed. But it
20 was an Order of the Court and we're asking to perfect
21 it.
- 22 The second one --
- 23 THE COURT: Slow down. This was filed January
24 4th?
- 25 MS. STAROSTENKO: Yes, my Lord. There are two
26 Orders.
- 27 THE COURT: What's your objection,
28 Mr. Turnquest? I didn't make an Order.
29 MR. TURNQUEST: My Lord, they weren't Orders.
30 They were simply Directions from the Court.
31 MS. STAROSTENKO: It says, these are Orders to
32 make end of these delays of the different answers. This

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1 is the freedom to --

2 THE COURT: So, what's the Affidavit? For the
3 Defendant to file an Affidavit in Response to the 16th
4 Affidavit of Yuri Starostenko?

5 MS. STAROSTENKO: For interrogatories. Yes, my
6 Lord. They filed it. They filed it.

7 MR. TURNER: My Lord, these are Directions.
8 These are not Court Orders.

9 MS. STAROSTENKO: No, this is saying, it was
10 Ordered regarding the time. Because they already did
11 not respect the time you remember.

12 MR. TURNQUEST: My Lord --

13 THE COURT: All right, slow down, slow down.

14 MS. STAROSTENKO: That is Order, which give
15 time --

16 THE COURT: What's the term of Directions I
17 ordered?

18 MR. TURNQUEST: My Lord, it was a Direction,
19 that the stuff be filed.

20 THE COURT: If I make an Order of Directions,
21 isn't it an Order? I mean, I accept it may not be of
22 no moment.

23 But I mean, what's the objection to -- I didn't
24 make -- I didn't give these Directions at all?

25 MS. CARGILL: These Directions were made, my
26 Lord. But the point simply is that it's really, like
27 you said, of no moment, to have these formalized in an
28 Order.

29 These were simple Directions as to filing for
30 the documents for the upcoming here, that neither
31 parties complied with. Because I note that the
32 Plaintiffs make points of pointing out, when we file.

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1 But they also did not provide us with their documents,
2 on the date that it was required.

3 MS. STAROSTENKO: Never. It's not so.

4 MS. CARGILL: You were required to provide it
5 on the 28th. You provided on the 29th.

6 MS. STAROSTENKO: We always provide it. The
7 28th we came here. Because we were --

8 THE COURT: Okay, all right.

9 MS. STAROSTENKO: -- offering it before and it
10 has been denied.

11 THE COURT: All right.

12 MS. STAROSTENKO: I mean, if you want symptoms
13 of delay, check the present company.

14 MS. CARGILL: We object, my Lord.

15 MS. STAROSTENKO: You were just complaining on
16 the morning, because --

17 MS. CARGILL: Either way there was no
18 compliance.

19 MS. STAROSTENKO: -- actually they close at
20 4:40 -- at 3:45. And they didn't know because they come
21 here at 3:50. And I suppose it was still 4:00.

22 But the next morning, in the morning, we were
23 here. So, it's not our delay. But you delay six days.
24 And also --

25 MS. CARGILL: Objection, my Lord. Objection.

26 THE COURT: Just a minute. What's your
27 objection to the Order? I'm going to grant -- I'm going
28 to sign the Order, because I made the Order. No one
29 disputes, that I made it. But what's the urgency?

30 MS. STAROSTENKO: Yes, my Lord. We're very
31 confident, that we will find justice in this court.

32 However, the bank use to bring the things

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1 further. And it is so, that in Court of Appeal, along
2 with the case you're reading, what three of the judges
3 are going through, are Orders.

4 The Court of Appeal of The Bahamas is -- it
5 will be, we hope not, is very busy. The Privy Council
6 have 50 cases and may be 50 clerks.

7 The Court of Appeal have 500 cases and little
8 circle of clearance. They have no time to go through
9 all the transcripts.

10 That's why we asking for Order, to show if it
11 will be, we hope not, how the other side were behaving
12 in respecting or not the Order.

13 THE COURT: Sorry, what's the other -- "party
14 to respond to the time, the 28th of --

15 MS. CARGILL: And that's the problem. We can't
16 agree with the words.

17 MS. STAROSTENKO: It is granted in Page 68, my
18 Lord. And you say here, that will give two weeks --
19 THE COURT: First of all, why didn't you do all
20 of these Order?

21 MS. STAROSTENKO: Forgive me, my Lord.

22 THE COURT: Why didn't you do all these in one
23 Order? It's not as if we had three different hearings.

24 MS. STAROSTENKO: No, it was -- all two -- we
25 can put it in one Order, my Lord. We can put it in one
26 Order.

27 THE COURT: It's just Directions. I mean --

28 MS. STAROSTENKO: We can put it in one Order.
29 Yes, my Lord. We are going to make it together. Just
30 need time. We didn't have time to print it out and --

31 THE COURT: What's the other one, "parties
32 leave to respond?"

1 MS. STAROSTENKO: There are two Orders. We
2 made it in two, but one can do it in one. It was a big
3 discussion regarding our Affidavit 16th. It's two pages
4 of the transcripts regarding this interrogatories.

5 So, at the end, that's why we're saying, it is
6 more than simple Directions. It was ordered for other
7 side to respond to the 16th Affidavit, which they did.
8 There was another Order of the Court, very
9 clearly. Because we already have it in November. And
10 now --

11 THE COURT: All right. So, put this -- so,
12 just these two Directions?

13 MS. STAROSTENKO: Yes, my Lord. Just those
14 two.

15 THE COURT: You have an opposition to second
16 one?

17 MR. TURNQUEST: My Lord, they need to put it
18 together, so we can see it.

19 MS. CARGILL: Perhaps the wording, but beyond
20 that --

21 THE COURT: Listen, put it all together in one
22 Order, because it's a Directions Hearing. I mean --

23 MS. STAROSTENKO: Yes, my Lord.

24 MS. CARGILL: If it can be provided before
25 hand, my Lord.

26 MS. STAROSTENKO: My Lord, and now we go
27 further. We asking about the date, because 24th January
28 for Agreed Bundle of Documents, would not be possible to
29 be respected, because of the Defendants' continuous
30 credit.

31 MS. CARGILL: My Lord, we object to that,
32 my Lord.

- 1 MS. STAROSTENKO: Why is she screaming?
2 MS. CARGILL: To make sure that you hear me --
3 MS. STAROSTENKO: I can hear.
4 MS. CARGILL: -- because you have a problem
5 with stopping.
6 MS. CARGILL: It's a difference. You know I'm
7 not lying.
8 MS. CARGILL: My Lord, these accusations --
9 MS. STAROSTENKO: I just want to --
10 MS. CARGILL: This is ridiculous to this court.
11 MS. STAROSTENKO: January already slated. We
12 need this Agreed Bundle of Documents. It is part of
13 their --
14 MS. CARGILL: My Lord --
15 THE COURT: Okay, who was supposed to Agreed a
16 Bundle of Documents?
17 MS. CARGILL: My Lord, no, no, if I may?
18 THE COURT: We cant -- we're not to that point?
19 MS. CARGILL: We are at that point, my Lord.
20 I'm --
21 MS. STAROSTENKO: My Lord, I'm still speaking.
22 I can't hear what you have to say.
23 THE COURT: What's your objection, Ms. Cargill?
24 MS. CARGILL: The objection was to the claim
25 that the Defendants have delayed this process. We
26 provided the Plaintiffs with our proposed Agreed List of
27 Documents, which they do not agree.
28 So, my Lord, at this point we will be filing,
29 if -- it's the intention of the Defendants to file an
30 non-Agreed Bundle of Documents. And that's the route
31 that we intend to take.
32 THE COURT: Yes.

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1 MS. STAROSTENKO: This is a real fishing
2 expedition, my Lord. Because in their Bundle of
3 Documents, we address it. We even proposed them.
4 MS. CARGILL: I disagree.
5 MS. STAROSTENKO: There's this Bundle of
6 Document in Word Format. There is a certain e-mail just
7 got it in a misleading way.
8 Secondly, the Bundle of Documents can be --
9 THE COURT: Okay.
10 MS. STAROSTENKO: -- only after --
11 THE COURT: The Order is usually that the
12 parties try and agree a Bundle of Documents.
13 MS. STAROSTENKO: Yes, my Lord.
14 THE COURT: If you -- are there no documents
15 you agree?
16 MS. STAROSTENKO: Some documents we agree, yes.
17 THE COURT: Okay, those documents that you
18 agree, you put in a Agreed Bundle of Documents.
19 MS. STAROSTENKO: Yes, my Lord.
20 THE COURT: The documents, that you do not
21 agree, each of you will file a not Agreed Bundle of
22 Documents.
23 MS. STAROSTENKO: Yes, my Lord.
24 THE COURT: And those two not Agreed Bundle of
25 Documents will only include the documents, that are not
26 included in the Agreed Bundle.
27 MS. STAROSTENKO: Yes, my Lord.
28 Can we have -- thank you, my Lord. Can we have
29 your Directions regarding -- for instance, there are a
30 number of documents in this -- 700 documents. I have it
31 as simply e-mails between us and UBS for Trade Orders.
32 Very simple e-mails. Those e-mails have names

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- 1 attributed by Defendants. Can we ask the Court please,
2 if they could just put it in as an e-mail document, we
3 are fine with it. We don't need new name.
4 Each e-mail, you know, my Lord, each e-mail has
5 subject. When they list --
6 THE COURT: What does it matter? I mean,
7 you're filing --
8 MS. CARGILL: Exactly.
9 THE COURT: You're going to file your -- what
10 documents, you can't agree, then everybody file their
11 own. I mean --
12 MS. STAROSTENKO: My Lord, I'm trying to
13 explain. We trying to avoid fishing expedition, in
14 which Defendants try to bring all the facts.
15 Why? As I said, out of this 500 e-mail, there
16 is nothing to dispute. These are e-mails.
17 THE COURT: Ms. Starostenko, it's their case.
18 And you have your case, they have their case.
19 MS. CARGILL: My Lord --
20 MS. STAROSTENKO: Excuse me, my Lord. The
21 e-mails are the same. The only thing that what I'm
22 asking is this e-mail will be filed in battle with the
23 name, which is the subject of those e-mails. Not any
24 new names, that they're inviting in their offices. We
25 don't need change of name.
26 THE COURT: But the entire bundle -- the entire
27 e-mail would be included in this document?
28 MS. CARGILL: Yes, my Lord.
29 THE COURT: The entire e-mail would be included
30 in the document.
31 MS. CARGILL: We're not changing anything.
32 MS. STAROSTENKO: No, they changing name of

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1 e-mail.

2 MS. CARGILL: My Lord, if I may?

3 THE COURT: But the entire e-mail would be
4 there. You can't change the name of the -- you're
5 saying they altering their e-mails?

6 MS. STAROSTENKO: They -- there are e-mails,
7 for instance, with our complaints against UBS practice.
8 How they make them.

9 We don't call this different complaints. You
10 just putting subject. For instance, where the subject
11 is e-mail, you put in List of Documents, you see. You
12 don't give a new name.

13 THE COURT: Right. But we're not -- the List
14 of Documents is different from the Bundle of Documents.
15 The Bundle of Documents is actual documents.

16 MS. STAROSTENKO: Yes. And in this Bundle of
17 Documents, there is -- the first page they send to us,
18 they send us name of the document.

19 So, we don't want it. This needs to be
20 messages. What we trying -- my Lord, there's 500
21 e-mails. The Court don't need 500 e-mails from us, 500
22 e-mails from them. It's the same e-mail.

23 THE COURT: Yes. So, wouldn't be agreed?
24 Wouldn't they be agreed?

25 MS. CARGILL: My Lord, if I may?

26 MS. STAROSTENKO: We only agree those things we
27 make.

28 THE COURT: I'm missing something.

29 MS. CARGILL: My Lord, we -- let me start by
30 saying, there is the Plaintiffs --

31 MS. STAROSTENKO: We make different e-mails,
32 my Lord.

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1 THE COURT: One second, Ms. Starostenko. I'm
2 not understanding what you're saying. May be Ms.
3 Cargill can help me.

4 MS. CARGILL: My Lord, there is the Plaintiffs
5 case. Notwithstanding that the Plaintiffs did not
6 prepare a proposed Agreed List of Documents, we went
7 ahead and prepared them, those List of Documents, which
8 we sent over.

9 The Plaintiffs' complaint is, that the
10 description of the documents, the descriptions of the
11 e-mails, that we have listed in index to the Agreed
12 Bundle of Documents, they don't agree with. And they
13 want them to be completely changed.

14 Our position at this point, since there are
15 issues with the index, that we've prepared, this is the
16 Plaintiffs' case. They ought to prepare the Agreed
17 Bundle.

18 So, we will allow them to prepare the Agreed
19 Bundle. So, we will not.

20 MS. STAROSTENKO: That is what we asking --

21 MS. CARGILL: -- they can provide the index.

22 And they can produce the Bundle of Documents for filing.

23 And they can serve those Bundles of Documents, the Agree
24 Bundle, on the Defendant.

25 And whatever is not agreed, we will produce our
26 own non-Agreed Bundle.

27 THE COURT: So, what's this issue of changing
28 names? I don't understand.

29 MS. CARGILL: There was no changing of names.

30 It was the description of the e-mail. So, for instance,

31 we may have described -- I don't have our proposed

32 agreed list with me.

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1 But we would have described the document,
2 e-mail regarding whatever trade it was with regards.
3 Whereas in the subject of the e-mail, that was sent, it
4 may have included a description, "Complaint as to
5 missing funds," or something for example sake.
6 But as opposed to using that description, we
7 would say, "e-mail regarding trade X." And they don't
8 agree that that's the description, that should have been
9 used.

10 MS. STAROSTENKO: We're asking that e-mail --

11 THE COURT: You're going to produce the Agreed
12 Bundle of Documents? *U.S.*

13 MS. CARGILL: Yes.

14 THE COURT: So, you identify it however you
15 want.

16 MS. CARGILL: Yes.

17 THE COURT: The Defendant will identify their
18 documents in -- which obviously will be a different
19 document. Because if it's agreed, it wouldn't be -- if
20 it's agreed, it would know be in the --

21 MS. CARGILL: As long as it's the same
22 document, we have no issue.

23 THE COURT: Yes.

24 MS. CARGILL: So long as they're preparing
25 them. If they intend to prepare them and serve them on
26 us --

27 THE COURT: They have to. They're the
28 Plaintiffs.

29 MS. CARGILL: Yes. We have no issue. We may
30 prepare our own list for our purpose, it comes with
31 index.

32 But they -- whatever is not agreed -- but we

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1 would only ask, my Lord, that they provide us with their
2 list, so we can indicate what's agreed and what's not
3 agreed. Because they haven't done that.

4 THE COURT: Yes. Did you send -- did you send
5 them a List of Documents, that you --

6 MS. STAROSTENKO: That is what I was waiting
7 for here. I send them e-mail on the 23rd January --

8 MS. CARGILL: That was our list.

9 MS. STAROSTENKO: And we ask of them to remove
10 from their list expired licences. And to cooperate in
11 order to make the index of e-mails --

12 THE COURT: Okay. You don't have to worry
13 about that. You're producing the list.

14 MS. STAROSTENKO: Yes.

15 THE COURT: So, you will identify it however
16 you want to identify it in the Agreed Bundle.

17 MS. STAROSTENKO: Yes.

18 THE COURT: And in your not Agreed bundle.

19 MS. STAROSTENKO: Yes.

20 THE COURT: In their documents, they will
21 identify their documents however they want to identify
22 them.

23 MS. STAROSTENKO: Yes, my Lord.

24 THE COURT: But you will have the Agreed Bundle
25 with the same -- you say, it's 500 that the same
26 document.

27 MS. STAROSTENKO: Same e-mails.

28 THE COURT: They may not have any of those
29 other documents -- once it's the same document and it's
30 being agreed, then they will not put that in their not
31 Agreed Bundle.

32 MS. STAROSTENKO: My Lady, you are always

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1 fighting for one side. I'm very simple. May I ask you
2 one more time, what I'm asking you only, that all
3 e-mails be listed in the List Bundle according to the
4 subject of the same e-mail.

5 THE COURT: But you're doing it.

6 MS. STAROSTENKO: Yes. But I don't want it to
7 come out we don't agreed with it. Because they're
8 different answers. This is what I'm asking them. This
9 is what I've asked of them.

10 THE COURT: If it's the same document, there
11 can't be a question of what someone call it as opposed
12 to what somebody else call it to determine whether it's
13 agreed or not agreed. It is the document that will be
14 in the bundle, right?

15 MS. STAROSTENKO: Yes, yes, yes.

16 THE COURT: And you will produce that Agreed
17 Bundle.

18 MS. STAROSTENKO: Yes, my Lord.

19 THE COURT: And you call it whatever you want
20 in your Bundle.

21 MS. STAROSTENKO: Yes, my Lord.

22 THE COURT: They can call their document
23 whatever they want to call it in their Bundle. And
24 they're going to produce the document, that are not
25 agreed.

26 I mean, a document is a document. Anybody can
27 call it whatever they want to call it.

28 MS. STAROSTENKO: Yes, my Lord. Is the Agreed
29 Bundle of Documents --

30 THE COURT: When will these Bundles be ready?
31 When are you prepared to provide them?

32 MS. STAROSTENKO: As soon as we have made --

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1 THE COURT: I guess, you have to agreed first.

2 MS. STAROSTENKO: When we made Affidavit, my

3 Lord --

4 MS. CARGILL: My Lord --

5 MS. STAROSTENKO: -- the Order, which you made
6 today for production of documents, as soon as it will be
7 done --

8 THE COURT: Well, I didn't order them to
9 produce any documents. I ordered them to produce an
10 Affidavit saying they don't have any.

11 MS. STAROSTENKO: Or they have may have some.

12 THE COURT: If they have some -- if they now
13 find, that they have something now they produce, then
14 you will get that within the next 14 days.

15 MS. STAROSTENKO: Yes, my Lord. So, after
16 this, we will need two weeks to complete it. Because if
17 they don't have any other documents, we can make it in
18 one week after this. If they have some documents, it's
19 two weeks. If you think it's reasonable.

20 MS. CARGILL: My Lord, just so that we're
21 clear, the Plaintiffs understand that Agreed Bundle
22 means, that they are to produce these documents for the
23 filing in the Registry for the Court.

24 MS. STAROSTENKO: Yes, of course.

25 MS. CARGILL: Enumerated and properly set out.

26 MS. STAROSTENKO: Of course. The problem was
27 the index itself that was in there --

28 MS. CARGILL: And served on the Defendant.

29 THE COURT: Let me put it this way: The way it
30 ought to work, you should produce the bundles --

31 MS. STAROSTENKO: Yes.

32 THE COURT: Send the bundle to the other side,

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- 1 so the other side can confirm, that these documents --
2 and the other side include Mr. Lundy as well --
3 MS. STAROSTENKO: Yes.
4 THE COURT: -- to indicate that these -- that
5 everyone agree, that there is no dispute as to these
6 documents.
7 MS. STAROSTENKO: Yes, my Lord.
8 THE COURT: And once that okay comes back from
9 both sides, then you can go ahead and file it.
10 MS. STAROSTENKO: Yes, my Lord.
11 THE COURT: And the same time, you can file the
12 ones, that is not agreed as well.
13 MS. STAROSTENKO: Yes. So, may be it would be
14 week after the Affidavit. One or two weeks -- two
15 weeks.
16 THE COURT: All right. The Affidavit is 14
17 days. Let's say 21 days then for the Agreed Bundle and
18 not Agree Bundle.
19 What are the other Directions? When do they
20 come up or their dates have past as well?
21 MS. CARGILL: No, my Lord. They have not past.
22 MR. TURNQUEST: My Lord --
23 MS. STAROSTENKO: And then, my Lord, because
24 before we had a Witness Statement on March 21st and
25 April 24th --
26 THE COURT: Yeah, that fine. Those dates
27 haven't arrived as yet.
28 MS. STAROSTENKO: I don't --
29 THE COURT: Those dates have not arrived as
30 yet. So, they can carry through as normal.
31 MS. STAROSTENKO: We asking to postpone it,
32 21st March and 24th April.

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- 1 THE COURT: To when?
2 MS. STARSTENKO: To -- well, we get two weeks
3 -- two months after the Agreed Bundle of Documents.
4 MS. CARGILL: No.
5 MS. STAROSTENKO: They made us lose all this
6 time --
7 THE COURT: This trial is set for September?
8 When is this trial set?
9 MS. STAROSTENKO: No, no, the trial is for
10 September.
11 THE COURT: Right.
12 MS. STAROSTENKO: The trial is for September.
13 THE COURT: So, we need get all -- we need to
14 ensure that these Directions carry through on time,
15 because they were all set to make sure it don't happen
16 -- it happens for September.
17 MS. STAROSTENKO: Yes, of course. We can make
18 like Witness Statement in May and next step in June.
19 Because with all those documents, with
20 probably the people, we actually don't know what UBS do.
21 Because our operation --
22 THE COURT: You're not getting any new
23 documents.
24 MS. STAROSTENKO: Well, they say, that they may
25 have it. And the two months, we were busy, my Lord,
26 with this ridiculous Application for marketing, which
27 they already did. They already did marketing.
28 MR. TURNQUEST: My Lord --
29 MS. STAROSTENKO: Now, they coming to the
30 Court telling the Court --
31 THE COURT: Slow down. Stop, stop. Witness
32 Statement is due 21st of --

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- 1 MS. STAROSTENKO: March.
2 THE COURT: March. When is the expert due?
3 MS. STAROSTENKO: 21st of April, my Lord.
4 We're asking to --
5 THE COURT: Why can't the Witness Statement be
6 done by the 21st of March?
7 MS. STAROSTENKO: Because we don't have --
8 THE COURT: That's a month away.
9 MS. STAROSTENKO: Yes. But we have no time to
10 prepare it for 21st of March. Because now, we have 21
11 days and just two of us. We have now to prepare -- it's
12 not clear, my Lord, if you're going to allow them this
13 Further and Better Particulars.
14 And we were busy very much with this Marketing
15 Sale Application, which kept us busy. We were awaiting
16 the documents before this hearing. So, we just started
17 to speak with the --
18 THE COURT: When -- after the -- okay, so the
19 Witness Statement -- the Witness Statement is in
20 March/April. What's the next --
21 MS. STAROSTENKO: Then we prepare for --
22 THE COURT: Statement of Facts and Issues is
23 next?
24 MS. CARGILL: I do not have the Order with me,
25 my Lord.
26 MS. STAROSTENKO: We're never going to process
27 this Order, my Lord.
28 THE COURT: So, what would be the -- what if I
29 push everything back a month, what's the indication? I
30 mean, Witness Statements now 21st of April.
31 MS. STAROSTENKO: We're asking to put --
32 THE COURT: The only date you have is the date

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- 1 of the -- everything else is not impacted. Ms. Cargill,
2 don't try that.
- 3 MS. CARGILL: I'm obliged, my Lord.
4 MS. STAROSTENKO: We are asking --
5 THE COURT: Everything will be pushed back.
6 Everything will be pushed back one month.
- 7 MS. STAROSTENKO: Thank you, my Lord.
8 THE COURT: So, Witness Statements 21st of --
9 MS. STAROSTENKO: April.
10 THE COURT: April. And the expert falls to the
11 following month.
- 12 MS. STAROSTENKO: Thank you, my Lord.
13 MR. TURNQUEST: My Lord, just for the record,
14 this is the Plaintiffs request, not the Defendant. Next
15 thing they turn around and say it was us that caused the
16 delay.
- 17 MS. STAROSTENKO: My Lord, this is for record.
18 This request from Plaintiff caused by Defendant
19 mastering to delay --
- 20 MR. TURNQUEST: My Lord --
21 MS. STAROSTENKO: And to not providing the
22 answer.
- 23 THE COURT: Thank you, Ms. Starostenko. Thank
24 you. 21st of April for your Witness Statement. And the
25 following month for the expert. Everything pushed back
26 one month.
- 27 MS. STAROSTENKO: Thank you, my Lord.
28 May we ask about our Application to
29 Cross-Examination?
30 MR. TURNQUEST: My Lord, there's no date.
31 There's no Application.
32 MS. STAROSTENKO: It was January 18th, we file

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1 it and ask --

2 THE COURT: Sorry, Application to Cross-Examine
3 who?

4 MR. TURNQUEST: And, of course, they don't have
5 the file now, my Lord.

6 MS. STAROSTENKO: Forgive me, My Lord. I can't
7 hear him.

8 THE COURT: You want an Affidavit to say -- I
9 see you applied to Cross-Examine.

10 MS. STAROSTENKO: Yes, my Lord. Yes, my Lord.

11 THE COURT: For what purpose?

12 MS. STAROSTENKO: For purpose of economy of
13 justice to save time and costs. Because once we will
14 cross-examine the person who is swearing Affidavits for
15 UBS, it will be very clear.

16 We already with our Application to Strike Out
17 certain paragraphs of Defence. We are ready. But there
18 are more than 200 of this.

19 We received on 18th. 18th of February, which
20 is disregard Court Order. It supposed to be --

21 THE COURT: Ms. Starostenko --

22 MS. STAROSTENKO: Yes, my Lord.

23 THE COURT: You guys want this trial to happen?

24 MS. STAROSTENKO: Excuse me.

25 THE COURT: Do you guys want this trial to
26 happen?

27 MS. STAROSTENKO: Of course. What want this
28 have to happen based on fairness. The information makes
29 no sense.

30 We asking please -- you know, my Lord, I just
31 want to say, any party is entitled to cross-examine any
32 other party, who gives evidence in his witnesses.

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1 THE COURT: Yes. But that's for the purpose of
2 an Application. Those Applications, where those
3 witnesses filed those Affidavits, those Applications are
4 finished. I'm about to give a Decision on them.

5 MS. STAROSTENKO: Excuse me.

6 THE COURT: The Application who -- the
7 witnesses who give Evidence on Affidavit, those
8 Affidavits were in relation to the Applications, that
9 were made before me at the time, for which I have the
10 two outstanding Rulings.

11 MS. CARGILL: Yes.

12 THE COURT: If you're asking me to
13 cross-examine, you want to reopen the Application?
14 Because that's the only basis on which I could back and
15 cross-examine them on those Affidavits.

16 MS. STAROSTENKO: My Lord, we made an
17 Application to Strike Out the --

18 THE COURT: Which Application --

19 MS. STAROSTENKO: We made an Application to
20 Strike Out certain paragraphs of their Defence in our
21 17th Affidavit.

22 THE COURT: Right. They filed an Affidavit in
23 Support of your Application?

24 MS. CARGILL: In opposition.

25 THE COURT: In opposition, sorry.

26 MS. CARGILL: Which was provided to us on the
27 15th.

28 THE COURT: 15th of what?

29 MS. CARGILL: Of February.

30 THE COURT: Last week?

31 MS. STAROSTENKO: They made a 4th Affidavit in
32 answer to this. My Lord, in answer to this, they made a

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1 4th Affidavit of Renate Raeber, which is not an answer
2 at all to our 17th Affidavit. There is no answer.

3 There are only general accusations.

4 And then, there is only one statement, UBS
5 denies the Plaintiffs claim set out in --

6 THE COURT: You want to cross-examine
7 Ms. Raeber on that Affidavit?

8 MS. STAROSTENKO: Yes, my Lord. Yes, my Lord.
9 When she's stating there were different traders. Two
10 Affidavits.

11 MR. TURNQUEST: My Lord, we will never get the
12 trial heard.

13 MS. STAROSTENKO: We're asking to cross-examine
14 Ms. Raeber because it's two Affidavit. This one and
15 that one. Because it will save time.

16 My Lord, she's saying:

17 "Having regard to the foregoing, UBS reserves
18 its right to further Defence."

19 So, it's never been --

20 THE COURT: All right. Let me explain it to
21 you this way: It is open to you to ask to cross-examine
22 Ms. Raeber in support of your Application.

23 That Application -- obviously, she's not here.

24 MS. STAROSTENKO: No.

25 THE COURT: So obviously, I will have to set
26 down a time for you to cross-examine her.

27 MS. STAROSTENKO: Yes, my Lord. Thanks, my
28 Lord. We're very obliged, my Lord.

29 THE COURT: So, if that's going to happen, when
30 is the trial going to take place?

31 MS. STAROSTENKO: Well --

32 THE COURT: So, I'm going to have to push the

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1 Witness Statement again?

2 MS. STAROSTENKO: No, my Lord.

3 THE COURT: Push the experts again.

4 MS. STAROSTENKO: My Lord, if you can find
5 time, we can come in tomorrow. We have no problem to
6 cross-examine.

7 MR. TURNQUEST: My Lord --

8 MS. STAROSTENKO: May be trial will not need --

9 THE COURT: I don't have time like that.

10 MS. STAROSTENKO: I know, my Lord.

11 THE COURT: I'm sorry. I don't have time like
12 that.

13 MS. STAROSTENKO: My Lord, but what we wanted,
14 may be you can even allow us to take it before Registrar
15 to cross-examine, if you don't have time.

16 THE COURT: That's not possible, because I'm
17 the one who have to make the Decision on the hearing.

18 So, I have to conduct the cross-examination.

19 MS. STAROSTENKO: We're asking you as soon as
20 you will find a day to make this cross-examination.

21 THE COURT: I don't have it.

22 MS. STAROSTENKO: We're saying this
23 cross-examination is --

24 THE COURT: My trial dates are in September
25 next year. If someone wants a 1-day trial before me,
26 they're going to get that in September next year. I
27 don't think I going to find a day to cross-examine

28 MS. STAROSTENKO: I think half day will be
29 enough, my Lord. Half day --

30 THE COURT: To be truthful, it is usual for
31 someone to be cross-examined on an Affidavit in respect
32 of Striking Out parts of it.

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1 MS. STAROSTENKO: My Lord, it's very unusual
2 for someone to be thrown out of your house, when you won
3 Privy Council and we sit here and talk.

4 MS. CARGILL: That is not --

5 THE COURT: Well -- hold on, hold on.

6 MS. STAROSTENKO: This whole thing is unusual.

7 THE COURT: Well, that's not what the Privy
8 Council said. I read the judgment. And it's not
9 unusual for persons to be dispossessed of their home.

10 MS. STAROSTENKO: Excuse me.

11 THE COURT: It's not usual to have been
12 dispossessed of your home. I mean, I hear Mortgage
13 Applications every day. It's unfortunate, but it's not
14 unusual.

15 MS. STAROSTENKO: Well, without --

16 THE COURT: And the Privy Council -- as I
17 understand, the Privy Council did not order that you be
18 -- they just dealt with the jurisdiction.

19 MS. STAROSTENKO: They didn't went into the
20 matter. They only sent it back before understanding --

21 THE COURT: So, why are you saying, that the
22 Privy Council sent you back here?

23 MS. STAROSTENKO: It is unfair, because when
24 you got to the Privy Council, if you lose, you cannot
25 come back. If you win, you coming back.

26 Only in exceptional circumstances, Privy
27 Council, starting from 2015, they going to hear matter.

28 Normally Privy Council only dismiss you and
29 case is closed forever or just say something have to be
30 said and you're going back.

31 This was happening to us. And we come back.

32 And we went to Court of Appeal, which we discussing. We

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1 actually have a balance there, because we cannot pay
2 fees. All the Defence is based on Affidavit --

3 THE COURT: Ms. Starostenko, like I said, if
4 you're going to insist on cross-examining this woman, I
5 don't know where it's going to take us.

6 So, this trial -- I specifically gave you dates
7 in.

8 MS. STAROSTENKO: Yes.

9 THE COURT: -- I found date for you in
10 September.

11 MS. STAROSTENKO: My Lord, we insist to
12 cross-examining Ms. Raeber before trial absolutely. All
13 she has to say is based on this one Affidavit.

14 MR. TURNQUEST: She is suggesting this so she
15 could delay. That would be an abuse of process, my
16 Lord.

17 MS. STAROSTENKO: And the Affidavit of
18 Ms. Raeber is conflicting Affidavit. There are two many
19 questions during the trial. This is just one
20 Application to the statement she made. Because
21 Affidavit is --

22 THE COURT: Sorry, you're cross-examining her
23 on the qualifications in relation to an Application to
24 Strike Out portions of the Defence?

25 MS. STAROSTENKO: No, no, we're cross-examining
26 her and this how far she thinking. So, four Affidavits.
27 MR. TURNQUEST: My Lord, we will never get to
28 trial.

29 MS. STAROSTENIKO: We have asked -- we have
30 very serious, very founded questions, which are --

31 MR. TURNQUEST: My Lord, we could have decided
32 to cross-examine them to their Affidavit.

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1 MS. STAROSTENKO: We're absolutely asking if
2 they complete this information given provided by
3 themselves or provided by other documents.
4 And we want to cross-examine --
5 MR. TURNQUEST: My Lord, those are all issues
6 for trial, my Lord.
7 MS. STAROSTENKO: We're absolutely asking to
8 cross-examine before the trial, because this --
9 THE COURT: Okay, hold on, hold on.
10 MS. STAROSTENKO: Yes, my Lord. This isn't the
11 first trial will be completed without cross-examine this
12 person. We will say it would be impossible if the --
13 THE COURT: May I see the Affidavit?
14 MS. CARGILL: Yes, my Lord.
15 MR. TURNQUEST: My Lord, it's a simple
16 Affidavit.
17 MS. STAROSTENKO: Four Affidavits. They're not
18 simple Affidavits.
19 MS. CARGILL: That's my only copy. You should
20 have it. That's my only copy.
21 THE COURT: Filed on Friday?
22 MS. CARGILL: It was served on the Plaintiffs
23 on Friday. But a filed copy was served on the 18th.
24 But it was provided to the Plaintiffs on Friday. Just a
25 few days after the date.
26 MS. STAROSTENKO: Normal situation, she's
27 saying in her Affidavit all persons were updated. And
28 here, the Securities Commission says, no, there are only
29 persons.
30 MS. CARGILL: My Lord, they're referring to
31 another Affidavit, when they referred the fact, that
32 she's referring to the licence.

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1 That was the Affidavit filed --
2 THE COURT: What in this Affidavit you want to
3 cross-examine her on?
4 MS. STAROSTENKO: Which Affidavit, my Lord?
5 THE COURT: There's only one Affidavit. The
6 15th -- 18th of --
7 MS. CARGILL: There's also an Affidavit in
8 Interrogatories in Response --
9 THE COURT: No, but in support of -- what's
10 being used in support of this Application?
11 MS. CARGILL: That one, my Lord.
12 MS. STAROSTENKO: My Lord, she read -- she
13 makes false statement.
14 THE COURT: Which Affidavit -- sorry, which
15 Affidavit is being referred to for the --
16 MS. CARGILL: For the Strike Out?
17 THE COURT: For the Strike Out Application.
18 MS. CARGILL: That one. That one, my Lord.
19 THE COURT: So, only this Affidavit you should
20 be cross-examining on.
21 MS. STAROSTENKO: The Affidavit number or for
22 February 1st, Second Affidavit.
23 MS. CARGILL: That's the Interrogatories, my
24 Lord.
25 MS. STAROSTENKO: Of Renate Raeber. Then this
26 Affidavit she's saying:
27 "UBS denies the Plaintiffs' claim set out in
28 17th Affidavit."
29 THE COURT: Which paragraph you said.
30 MS. STAROSTENKO: It's Paragraph 5 in Page 2,
31 my Lord. Affidavit of 8th of February.
32 THE COURT: Yes.

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1 MS. STAROSTENKO: "The claims set out in 17th
2 Affidavit that its Amended Defence discloses no
3 reasonable Defence and is scandalous, frivolous,
4 vexatious or otherwise an abuse of the process of the
5 court.

6 UBS has a very strong Defence to the
7 Plaintiff's Statement of Claim."

8 THE COURT: So, what are you going to
9 cross-examine -- you're going to cross-examine her on
10 this?

11 MS. STAROSTENKO: No, she is going further:

12 "This action raises a number of complicated
13 issues." Amazing.

14 "The 17th Affidavit is replete with submissions
15 and contains no evidence at all to support the
16 Plaintiffs' statements in their Affidavit."

17 I have a big question: How she can say this?
18 The 17th Affidavit is -- it's Paragraph -- Point Number
19 7, my Lord. We submit it contains no evidence at all to
20 support.

21 In her Second Affidavit, my Lord, of February
22 3rd, she's saying --

23 MS. CARGILL: Which deals with the
24 Interrogatories, my Lord.

25 THE COURT: No, no. It's only this Affidavit
26 that you can cross-examine her on.

27 MS. STARSTENKO: We cannot, no? This is the
28 only one why --

29 THE COURT: But I'm not seeing what it is, that
30 you want to cross-examine her on.

31 MS. STAROSTENKO: My Lord, very simple. She's
32 saying that, no evidence at all supports the Plaintiffs'

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1 Statement of Claim.

2 Then she says:

3 "Generally, UBS's Defence as set out in its
4 Amended Defence is that at all times it acted
5 appropriately and in accordance with its contractual
6 obligations and industry standards in executing the
7 Plaintiffs' instructions.

8 The Plaintiffs however breached their
9 obligations under the Loan Agreement with UBS in failing
10 to keep a sum equal to 50 percent of the loan amount
11 under management with UBS, a fact to which the
12 Plaintiffs have admitted."

13 I want to cross-examine. I want to very much
14 cross-examine.

15 MS. CARGILL: Those documents are in evidence.

16 MS. STAROSTENKO: If I admit it, I would admit
17 it. She want this in Affidavit. I want to
18 cross-examine her about the submission.

19 Then there is another thing:

20 "Despite the Plaintiffs' claims to the
21 contrary, the Plaintiffs default was not as a result of
22 any failure on the part of UBS."

23 I want to cross-examine where she coming from.

24 Because in this Affidavit, there is no evidence of
25 default. She just stating all this general statements
26 and there is no worth. I want -- we need to
27 cross-examine her.

28 My Lord, but would you please direct us, why we
29 cannot -- why we cannot, because the only one answer to
30 our interrogatories is the Affidavit of Raeber, Second
31 Affidavit. Why we cannot interrogate on this.

32 She is stating that at on all times, that all

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1 persons had licenses.

2 THE COURT: So, you're asking me to reopen the
3 Interrogatories Application? Because that's the only --

4 MS. STAROSTENKO: We're saying --

5 THE COURT: That Affidavit was in response to
6 your Affidavit.

7 MS. STAROSTENKO: Yes.

8 THE COURT: And for the purposes of the
9 Interrogatories Application.

10 MS. STAROSTENKO: Yes, my Lord.

11 THE COURT: Which is finished. The only thing
12 left is for me to decide.

13 MS. STAROSTENKO: Yes.

14 THE COURT: Am I not correct?

15 MS. CARGILL: Yes, my Lord.

16 MS. STAROSTENKO: Yes, my Lord. So, that this
17 will assist court to show that the Affidavit is
18 withdrawn indirectly. It is very comprehensive. And
19 the Court shouldn't rely on this in reality.

20 The fact in this Affidavit will be clearer also
21 to the Court. She's providing certain statements, which
22 is not supported by documents. You know, they are not
23 supported.

24 We have no problem to cross-examine ourselves,
25 because we are saying truth. We're not mixed up. But
26 we need to cross-examine persons, who confirm these
27 things, which are not --

28 MR. TURNQUEST: My Lord --

29 THE COURT: But, Ms. Starostenko, aren't these
30 matters for trial?

31 MS. CARGILL: Yes.

32 MR. TURNQUEST: They're all matters for trial,

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1 my Lord.
2 MS. STAROSTENKO: My Lord, no. Before we come
3 to trial, we need to see what we examine. May be we
4 don't need no trial. Because then UBS bank may
5 understand that there is more to hold. It is --
6 MR. TURNQUEST: My Lord, this is an abuse of
7 process.
8 MS. STAROSTENKO: There is an abuse of process
9 by the -- demonstrate by Lennox Paton.
10 MS. CARGILL: Objection, my Lord.
11 MR. TURNQUEST: My Lord --
12 THE COURT: All right.
13 What are you reading?
14 MS. STAROSTENKO: From our files.
15 THE COURT: What are you reading from?
16 MS. STAROSTENKO: I'm reading from e-mail of
17 November 1st, 2018 coming from Securities Commission.
18 It says --
19 THE COURT: Is that -- that's in evidence
20 somewhere?
21 MS. STAROSTENKO: My Lord, this is official
22 evidence.
23 THE COURT: An e-mail from someone is official
24 evidence?
25 MS. STAROSTENKO: Yes, it's in our Affidavit.
26 THE COURT: Which Affidavit?
27 MS. STAROSTENKO: 16th. 16th Affidavit, the
28 one to which Ms. Raeber answered.
29 THE COURT: The 17th Affidavit.
30 MS. STAROSTENKO: 16, which is for
31 interrogatories, that you, my Lord, will give us your
32 Decision. That's why they want --

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1 THE COURT: Yeah, but if I've already heard it,
2 why are we going back onto that?

3 SKWRAO: Because you said that -- you said,
4 that you will make your Decision. But we are saying
5 that to this Court was submitted Affidavit, which cannot
6 be trustful, which conflicts with the evidence provided
7 by the Securities Commission Officer, which is in our
8 Affidavit Number 16.

9 That's why I ask this Court to address -- we're
10 simply asking, my Lord, to rearrange it to make
11 interrogatory and ask this person why she's swearing two
12 Affidavits, that all persons were updated and licenses
13 when she's not even producing them.

14 MR. TURNQUEST: My Lord, this has been
15 addressed in her Affidavit repeatedly.

16 MS. STAROSTENKO: This contradicts to the
17 e-mail of the Securities Commission and contradicts to
18 the evidence she provided. There is not valid licences.
19 That's all I'm saying.

20 THE COURT: Thank you, Ms. Starostenko.

21 MR. TURNQUEST: My Lord, in terms of that, that
22 Application --

23 THE COURT: Yes.

24 MR. TURNQUEST: My Lord, we will -- we would
25 object to that, my Lord. The Court's already -- we've
26 already put in Affidavit Evidence to that Submission.

27 Cross-examining her is not going to add
28 anything further to the situation, my Lord. She can't
29 say beyond what she's said in her Affidavit.

30 My Lord, to reopen this whole thing again and
31 recall -- I mean, I've never been in a situation, where
32 somebody's has actually applied to cross-examine

1 somebody on an Interlocutory Application, my Lord.

2 THE COURT: Well, I've been there. There's
3 Notice to Amend.

4 MR. TURNQUEST: My Lord, if you set this
5 precedent now, every Application, every Affidavit, they
6 want to be cross-examination on.

7 And that's the problem with -- if you reopen
8 that door, my Lord, and that's what going to happen for
9 everything single Application, my Lord.

10 This matter, the Court needs to focus on trying
11 to get this to trial, get this done and dusted and over
12 with.

13 Because adding -- allowing -- my Lord, we
14 didn't even come here to argue this. But allowing

15 cross-examination would be an abuse of process, my Lord.

16 In very exceptional circumstances should the
17 Court go down that road. I mean, my Lord, in
18 interrogatories, we've already set out circumstances why
19 interrogatories should not even be allowed.

20 My Lord, the parties haven't even put in
21 Witness Statements. And also we're asking the Court to
22 examiner her on an Affidavit for --

23 THE COURT: Thank you, Mr. Turnquest.

24 MS. STAROSTENKO: My Lord, we contend that this
25 is absolutely exceptional circumstances.

26 MR. TURNQUEST: There's nothing exceptional
27 about this.

28 MS. STAROSTENKO: With truth and justice. That
29 without cross-examination, the Court will be unable to
30 finally dispose of -- to have all views about the
31 quality of their Defence.

32 And if this Court did not close yet

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1 interrogatories, because the last document came, is the
2 answer to our 16th Affidavit, where there are
3 contradictions.

4 It would be very useful. I will remind also my
5 Lord, that however the Court insist, our Application
6 for Committal -- for Leave to Committal Proceedings,
7 because you indicated, that when the Affidavits, the
8 Statement of Facts, put in is not true by us, then there
9 may be cross-examination.

10 THE COURT: During the course of the
11 Application though, not after I would have taken turns
12 -- not after the Application is finished.

13 MS. STAROSTENKO: Well, we made this request on
14 January 5th.

15 THE COURT: But I heard the Application -- I
16 heard the Application on the 4th -- no, I heard the
17 Application in December.

18 MS. STAROSTENKO: No, the Application -- no,
19 the interrogatories in December. But they made --
20 because we made Application for Committal. And it
21 wasn't granted.

22 So, we asking is it alternative to committal?
23 We asking cross-examination.

24 MS. CARGILL: There is no filed Application for
25 this though.

26 THE COURT: Thank you, Ms. Starostenko.

27 MS. STAROSTENKO: Because it is a question of
28 fact, that in the 16th Affidavit and 17th Affidavit,
29 both Affidavits of Yuri Starostenko, contains questions
30 of facts. 16th Affidavit and 17th Affidavit.

31 And then we go into -- because today was for
32 our Application for Strike Out. I hope you would grant

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1 us another date for Strike Out Defence. We are ready to
2 proceed even today with Strike Out Defence.

3 MR. TURNQUEST: My Lord, that's quite frankly
4 absurd.

5 MR. STAROSTENKO: There absolutely needs to be
6 -- all we asking --

7 THE COURT: Thank you, Ms. Starostenko.

8 MS. STAROSTENKO: Yes.

9 THE COURT: All right, I'll give you a Decision
10 on the 5th of March, at 9:00, in respect of whether I
11 will allow any cross-examination on these Affidavits.

12 And if I don't, I will likewise give you a
13 Decision on the question of the interrogatories.

14 MS. STAROSTENKO: Thank you, my Lord.

15 THE COURT: At the same time.

16 And hopefully by then, I can also give you a
17 Decision -- I will give you a Decision on the question
18 of the marketing for sale.

19 MS. STAROSTENKO: Yes, my Lord. But due to our
20 arrival, he has four Affidavits. One is for
21 interrogatories, three for Defence. So, it's not just
22 only one.

23 THE COURT: Well, you will get my Decision on
24 that.

25 MS. STAROSTENKO: Thank you my Lord.

26 THE COURT: I will see you all on the 5th.

27 MR. TURNQUEST: My Lord, sorry, this is an
28 Order that has been outstanding from last year, which
29 we're trying to get perfected.

30 THE COURT: Which Order is that?

31 MR. TURNQUEST: The first Application, that
32 your Lordship heard. And for some reason, it's been on

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- 1 your desk. Remember they were applying --
2 MS. STAROSTENKO: What is this Application?
3 THE COURT: This is just the Summons for --
4 MR. TURNQUEST: That's the Summons we were
5 trying to get --
6 MS. CARGILL: The stay.
7 MR. TURNQUEST: The stay.
8 MS. STAROSTENKO: That was refused and costs
9 were ordered.
10 THE COURT: A stay.
11 MR. TURNQUEST: Yes, my Lord. You had written
12 the actual --
13 MS. CARGILL: A Ruling.
14 MR. TURNQUEST: A Ruling on that, my Lord.
15 MS. STAROSTENKO: Yes, my Lord. That's when
16 you said, we don't have to --
17 THE COURT: What's the dispute on this one?
18 MS. CARGILL: We sent it up to Mr. Bethel. And
19 I think it just got confused in the documents.
20 MR. TURNQUEST: It's been sent to them.
21 MS. CARGILL: There are multiple copies.
22 MR. TURNQUEST: It's just that the Summons was
23 dismissed with costs to the Plaintiffs.
24 MS. STAROSTENKO: And we ordered, that you
25 stated clearly the judgment of Justice Evans permitting
26 sales as part of Order. It was only phrase that we
27 don't agree with.
28 THE COURT: Sorry, what did I say Justice Evans
29 said?
30 MS. STAROSTENKO: Can I read the transcripts,
31 one second? It's the transcripts from the -- the
32 transcripts from the hearing, which was May 29th, 2018.

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1 THE COURT: The Summons was dismissed?
2 MS. CARGILL: Yes, my Lord.
3 MS. STAROSTENKO: And you say:
4 "The Defendants say that they are concerned is
5 that the Plaintiff may sell their home, subject to the
6 mortgage, without their knowledge, prior to the
7 conclusion of these proceedings and will seek to recover
8 costs awarded prior to the conclusion of the action on
9 the appeal."
10 They what they trying to do actually now.
11 Following this, in the recent Order, you said,
12 my Lord, dated 21st of December, 2018 --
13 THE COURT: I remember now.
14 MS. STAROSTENKO: And we were --
15 THE COURT: Is that part of the Order though?
16 MR. TURNQUEST: No.
17 MS. CARGILL: No.
18 MS. STAROSTENKO: This is the Court Ruling.
19 MS. CARGILL: That's the transcript, that
20 you're reading from.
21 THE COURT: Yeah, but the Order was that I
22 dismissed the Summons, based on which, that I mentioned
23 that you were concerned about an issue, that did not
24 arise, without having to come back to the court.
25 MS. STAROSTENKO: This what happened. Without
26 having to come back -- prior to the conclusion of these
27 proceedings.
28 And we seek to refer the Court prior to the
29 conclusion of the action of the Court of Appeal. That's
30 exactly what's happening now.
31 And we asking only if this Order to be edit one
32 phrase, no sell before conclusion of this hearing before

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1 the Court of Appeal.

2 MS. CARGILL: No, my Lord.

3 MS. STAROSTENKO: If they need to sell, they
4 need to appeal Justice Evans' Decision a year ago, not
5 come in here now.

6 THE COURT: Justice Evans never granted a stay.

7 MS. STAROSTENKO: They already took a position.

8 THE COURT: Right. I mean, hold on.

9 Justice Evans never granted a stay. Justice Evans said,
10 that no sale could take place without approval of the
11 Court.

12 MS. STAROSTENKO: Which means, without -- this
13 is his Order in Supreme Court.

14 THE COURT: Right.

15 MS. STAROSTENKO: Once they not agree, they can
16 go take up possession. But -- and they already took up
17 possession. So, they are fine. They can enjoy
18 possession.

19 But hold the sale. He said, not until partial
20 Order. What does this mean? This is Order of Supreme
21 Court. They say, they will not agree.

22 For instance, we did not agree with the part of
23 this Order regarding stay of possession. So, we
24 appealing this part. They suppose to appeal their part
25 regarding prohibition to make any sale. They did not
26 appeal.

27 They come now to take your time. They supposed
28 to appeal this part regarding the sale. We made an
29 Application also to dismiss the Order, because the
30 Order, that Justice Evans signed at last moment, I will
31 explain it to you, it was before Christmas. He was
32 moving to the Court of Appeal --

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1 THE COURT: That's not evidence.
2 MS. STAROSTENKO: So --
3 THE COURT: Thank you, Ms. Starostenko.
4 MS. STAROSTENKO: Thank you, my Lord.

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