



1 Tuesday, 9 June 2009

2 (10.00 am)

3 LORD GOLDSMITH: My Lord, I'm calling David Aim.

4 MR DAVID AIM (affirmed)

5 Examination-in-chief by LORD GOLDSMITH

6 LORD GOLDSMITH: Could you give your full names, please?

7 A. My full name is David Aim.

8 Q. An address, please?

9 A. I live in London.

10 Q. There are two witness statements, can you be shown,  
11 please, bundle B1, divider 3, tab 15.

12 A. Tab 15, yes.

13 Q. That has a signature on it. Is that your signature at  
14 page --

15 A. There is no signature.

16 Q. -- 1150?

17 A. Okay, yes, it is.

18 Q. There is a second statement which was signed yesterday?

19 A. Yes.

20 Q. Can that be shown to you as well. I am not sure if it's  
21 already in the bundle and, if so, what divider number it  
22 is. For the record, can we be told what divider number  
23 that is, please.

24 MR BOYLE: 25.

25 LORD GOLDSMITH: Thank you. Is that a statement you have

1 made too?

2 A. Yes, it is. I want to make sure. Yes, it is.

3 Q. Under a heading marked "Corrections/Clarifications",  
4 paragraph 15, you set out some corrections and  
5 clarifications to your first witness statement?

6 A. That's correct.

7 Q. Apart from those, so far as you can recall, having read  
8 the first statement, are there any other corrections or  
9 clarifications to make to the first statement?

10 A. Yes, there is one more correction in my witness  
11 statement, I think it's paragraph 38.

12 Q. Right, what's the change? This is about when you met  
13 Mr Kay?

14 A. Yes, when I met Mr Kay in the first witness statement,  
15 it states that he had told me that the sugar was his,  
16 and not Badri, and it came back to me only recently,  
17 because I revisited the meeting when I was introduced to  
18 Joseph and the sugar was always for Badri from the  
19 start, Joseph was just a broker on that, on the sugar  
20 ships.

21 Q. Let us look at paragraph 38 together and tell us what  
22 change you want to make?

23 A. It was in tab 15 before. Okay.

24 Q. Take your time, read it through and tell us what change  
25 you want to make to it.

1 A. (Pause). That Joseph told me that the sugar business  
2 was his own and that he implied that AP had nothing to  
3 do with it.

4 Q. You want to change that to what?

5 A. I want to say that AP had everything to do with it.

6 Q. This says that he implied that AP --

7 A. Yes, correction, I said that he didn't imply that from  
8 the start it was clear --

9 Q. You have to speak more slowly and more distinctly  
10 please, Mr Aim, because it is being taken down, quite  
11 apart from my hearing problems.

12 A. The correction is that from the start the sugar was  
13 always for Badri.

14 Q. I understand that.

15 A. And that he never implied it was his own, he implied it  
16 was for Badri.

17 Q. He implied it was for Badri. How did he do that?

18 A. Well, because I revisited the facts of that meeting,  
19 I was introduced to Joseph Kay by a gentleman called  
20 Richard Fitoussi and Richard Fitoussi had introduced me  
21 to Joseph because Joseph was looking to source sugar  
22 ships to go to Georgia and Richard had always told me  
23 that Joseph was Badri's assistant and -- or  
24 right-hand -- I correct that, right-hand man, and that  
25 he was looking for sugar ships and then I went to see

1           Joseph in his offices and I think where I got a bit  
2           confused, I don't know, I guess when I wrote the  
3           statement it's hard to compress five years.

4       Q.   You have still have not quite told us, so what was it  
5           Joseph said about the sugar --

6       A.   Joseph said that the ships were designed to Georgia for  
7           Badri because everything in Georgia was Badri; nothing  
8           was Joseph.

9       Q.   Any other corrections you want to make to the first  
10          statement?

11      A.   No.

12      Q.   What about the second statement?  You have recently  
13          looked at it.  Any changes you want to make to that?

14      A.   No, not the one from yesterday morning, no.

15      Q.   Subject then to the corrections that you make in the  
16          second statement to the first statement, and the one you  
17          have just made now, are these statements true?

18      A.   Yes.

19      LORD GOLDSMITH:  You will be asked some questions, please  
20          remain there.

21                           Cross-examination by MR STEINFELD

22      MR STEINFELD:  Mr Aim, could you just, so we get this out of  
23          the way first of all, look at paragraph 22 of your  
24          witness statement.

25      A.   Yes.

1 Q. Unless I say otherwise, when I refer to your witness  
2 statement, I mean this witness statement.

3 A. Okay.

4 LORD GOLDSMITH: First witness statement.

5 MR STEINFELD: Yes.

6 You say in paragraph 22 that:

7 "I have been retained by the AP family as  
8 a consultant to assist them with their efforts to  
9 identify, recover and then help with the management of  
10 assets" --

11 A. Potentially help.

12 Q. Potentially help?

13 A. Yes.

14 Q. "... with the management of assets that belonged to  
15 Badri before his death and in particular those that  
16 I now know to be held under the Valmore and Summit  
17 Trusts."

18 The assistance that essentially you have been able  
19 to give up to now is the witness statement that is in  
20 front of you, is it not?

21 A. The assistance that I have been able to give until now,  
22 yes, is the witness statement in front of me, yes.

23 Q. Could you tell us how much you are being paid --

24 A. I am sorry, one second, I would like to rectify  
25 something. When you say -- I mean, I may not have put

1 everything in this witness statement because there is  
2 too many facts.

3 Q. Yes, I appreciate that.

4 A. Okay.

5 Q. Could you tell us how much you are being paid by the  
6 Badri family to give this assistance?

7 A. I am paid a consulting fee of \$30,000 a month.

8 Q. And --

9 A. But I am not -- I would like to precise also that this  
10 is not a full-time consultancy job. I am not full-time.

11 Q. How many months have you been working under this --

12 A. I have been working on this since February but it is  
13 very stipulated in my contract that I only have to  
14 allocate I think 60 per cent of my time to this, because  
15 it is not my sole source of revenues.

16 Q. Is there a bonus element in your consultancy agreement?

17 A. Is there a bonus? Yes. I will get part of my -- not my  
18 entire rights back from the past, but I get some part of  
19 my carried interest back.

20 Q. I am not sure I understand what that is. Could you  
21 explain?

22 A. Okay, what that is is that when I was working with  
23 Joseph Kay I had a 20 per cent carry agreement with him  
24 on all the upside on all the deals that I made. And so  
25 when I met with the Badri family, I told them that if

1 I was going to help them forward and identify the  
2 assets, that it would only be fair that I get my carried  
3 interest back, which is not 20 per cent and far from it.

4 Q. I will be coming to that, Mr Kay disagrees that it was  
5 20 per cent, he says in any event it was 10 per cent?

6 A. Well, I have two witnesses -- two people that can attest  
7 to that.

8 Q. We will come to that. What the Badri family are  
9 promising you is that they will give you the  
10 20 per cent, and is that conditional upon --

11 A. No, they are not giving me 20 per cent and far from the  
12 20 per cent, so if you would like, we can ask the  
13 question precisely.

14 Q. I may have misunderstood what you said. What I thought  
15 you had said was that the bonus was that you were going  
16 to get the interest which you should have got from Mr  
17 Kay?

18 A. I am not getting the interest I should have -- I had in  
19 my deal arrangement with Joseph.

20 MR JUSTICE DUDLEY: You are getting some?

21 A. But I would like to precise so that we are clear since  
22 we are approaching the subject of this financial deal.

23 Your Lordship, in January when actually before the  
24 Badri family spoke to me, Mr Joseph Kay himself called  
25 me and I have plenty of T-Mobile phone invoices to prove

1           our outgoing and incoming calls, and called me, and told  
2           me: "You are my son, I love you, et cetera, I will pass  
3           you the details, you and I are going to strike a home  
4           run together, why don't you come to Georgia and see me."

5           I then met with the Badri family and then had  
6           a decision -- financial was here on both sides and then  
7           I made the ethical choice because I know what really  
8           happened.

9           Q. Let's just examine what the financial deal is on the  
10          Badri family's side?

11          A. Financial deal, we have to make it clear that there was  
12          a financial deal on both sides.

13          Q. The bonus, if you could explain, you are going to get  
14          some, I think you said, of the interest that you should  
15          have had from Mr Kay; is that right?

16          A. That's correct.

17          Q. What is the "some", how much of interest?

18          A. Does this have to be revealed? 5 per cent.

19          Q. You are going to get 5 per cent of what exactly?

20          A. 5 per cent carried interest into the different --

21          Q. Are you going to get 5 per cent of the profits, because  
22          I think the deal that you say that you had with Mr Kay  
23          exactly in your witness statement --

24          A. Yes, I said on my witness statement the deal with Joseph  
25          was on the profits but since all the assets today are at



1 zero value, it comes to the same thing.

2 Q. I see, so would this be right: you will get 5 per cent  
3 of the value of all the assets which, with the  
4 assistance of your evidence, is recovered in these  
5 proceedings for the benefit of the Badri family?

6 A. That's correct, but 5 per cent of the assets today are  
7 at a zero value, that's why it was done this way,  
8 because they are at zero value.

9 Q. Yes. In addition, of course, to that, as I think you  
10 said in your witness statement, there is the prospect --  
11 I think is the way you put it in your --

12 A. Potentially.

13 Q. -- evidence today --

14 A. Yes.

15 Q. -- to manage the assets once they have been recovered?

16 A. Provided that I bring the right business management for  
17 the right capacities to do it.

18 Q. That could be the management of millions of dollars  
19 worth of assets?

20 A. That's correct.

21 Q. No doubt the usual terms would be an annual management  
22 fee plus a bonus, a percentage of any profits?

23 A. Well, no, since I am a carried interest, there wouldn't  
24 be a share, there wouldn't be any bonuses because  
25 I already have potentially shares in the underlying

1 assets.

2 Q. But if you are managing in the future, would you not  
3 expect a bonus of any profits?

4 A. No, not a bonus, I would expect a salary for my time but  
5 the bonus is covered by my carried interest.

6 MR JUSTICE DUDLEY: I see, what you are saying is that the  
7 5 per cent carried interest would not be in the form of  
8 a financial remuneration but rather that you would  
9 acquire a 5 per cent equity in the assets?

10 A. That's correct, my Lord.

11 MR JUSTICE DUDLEY: All right, I had misunderstood.

12 MR STEINFELD: I think I had too, yes.

13 Can I ask about yourself, Mr Aim. In paragraph 5 of  
14 your witness statement, you set out your history before  
15 you met Mr Kay.

16 A. One second, because -- sorry, I was in 14.

17 Q. Paragraph 5.

18 A. Yes.

19 Q. According to that, you say that at the age of 25 you  
20 already had, as you put it, significant experience in  
21 the world of banking and structured finance?

22 A. That's correct.

23 Q. Having spent a number of years as an introducing  
24 broker --

25 A. That's correct.