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Practice and Procedure

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Practice and procedure

A v B [2019] 1 WLR 5832

BGC Brokers LP v Tradition (UK) Limited [2019] EWCA Civ 1937

- 2 cases raising interesting points of practice and procedure
- Both cases involve allegations of disclosure of confidential information by departing employees

A v B

A v B [2019] 1 WLR 5832

- SSOs obtained
- Imaging of electronic devices
- Who should search the electronic devices to find relevant documents?
- Competing arguments:
 - Order is incidental to SSO – A
 - Order is a disclosure/inspection order - R
- Mann J (Ch D):
 - SSOs are about preservation of evidence
 - Order is a disclosure/inspection order
 - Starting point is that R is responsible for disclosure/inspection

A v B

A v B [2019] 1 WLR 5832

- However, starting point can be overturned:
 - There may be serious allegations of misconduct extending to destruction of documents
 - A may be better placed to identify relevant documents
 - Speed – identification of other wrongdoers
 - Resources available to A may be greater
- As seeking SSOs:
 - Leave inspection regime over to return date?
 - Full and frank disclosure?

BGC v Tradition

BGC Brokers LP v Tradition (UK) Limited [2019] EWCA Civ 1937

- BGC employee alleged to have provided confidential information to Tradition
- Employee ‘spilled the beans’
 - Affidavits
 - Attendance at interviews
 - Email from employee’s solicitors
- Settlement Agreement (between BGC and employee) containing representations/warranties and exhibiting the documents
- Tradition sought disclosure of the Settlement Agreement including exhibited documents

BGC Brokers LP v Tradition (UK) Limited [2019] EWCA Civ 1937

- Not WP privilege
 - Negotiations are the subject of WP privilege, not concluded agreements
- Not litigation privilege
 - Dominant purpose of including the documents in the Settlement Agreement was not the litigation – it was to police the Settlement Agreement
- Don't append privileged documents to settlement agreements
- Use recitals to set out the basis on which the deal is done

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Please get in touch with our team to discuss what you need:

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