

Filed on behalf of the: Fifth Defendant
Name of witness: Richard Philip Rocher
Number of witness statements: 1
Exhibit: RPR1
Dated: 25 February 2015

IN THE STAFFORD COUNTY COURT

CLAIM NO: A07YQ334

B E T W E E N:-

MR MARK ANTHONY TAYLOR

Claimant

-and-

(1) ANSHU JAIN
(2) DEUTSCHE BANK AG
(3) HSBC PLC
(4) BARCLAYS BANK PLC
(5) UBS AG
(6) JP MORGAN CHASE
(7) CITIGROUP
(8) ROYAL BANK OF SCOTLAND GROUP PLC

Defendants

WITNESS STATEMENT OF RICHARD PHILIP ROCHER

I, **RICHARD PHILIP ROCHER**, a partner of Gibson, Dunn & Crutcher LLP, Telephone House, 2-4 Temple Avenue, London EC4Y 0HB, **WILL SAY AS FOLLOWS:**

INTRODUCTION

1. My firm, Gibson Dunn & Crutcher LLP (“Gibson Dunn”), represents the Fifth Defendant (“UBS”) in these proceedings.

2. The facts contained in this witness statement are either within my own knowledge and are true, or are derived from the sources set out in this witness statement, in which case they are true to the best of my knowledge and belief. Attached to this witness statement is a bundle of documents marked '**RPR1**'. References to page numbers below refer to the pages of that exhibit.
3. This witness statement is filed and served in support of the application of UBS dated 25 February 2015 to: strike out the Claimant's claim (pursuant to CPR 3.4(2)(a) and/or (b) and/or (c)) and/or alternatively for summary judgment to be entered against the Claimant (pursuant to CPR part 24).
4. Nothing in this witness statement is a waiver of, or intended to waive, privilege over the legal advice that Gibson Dunn has provided to UBS.

PROCEDURAL BACKGROUND

5. On 28 January 2015, the Claimant ("Mr Taylor") posted his claim form addressed to "UBS AG" [**RPR1 / pp 1 to 2**]. The Claim Form stated that the Particulars of Claim were "to follow". In fact Mr Taylor had purported to service his Particulars of Claim on UBS by sending an email attaching the Particulars of Claim to Mr Sergio Ermotti, Group CEO of UBS, on 25 January 2015 [**RPR1 / pp 3 to 29**]. Neither UBS nor Gibson Dunn had indicated to Mr Taylor that UBS was willing to accept service by email. Accordingly, pursuant to paragraph 4.1 of Practice Direction 6A, Mr Taylor's purported service of the Particulars of Claim was ineffective.
6. Gibson Dunn, on UBS's behalf, wrote to Mr Taylor on 11 February 2015 informing him of the relevant CPR rules and Practice Direction and the defective purported service of his Particulars of Claim [**RPR1 / pp 30 to 32**]. Gibson Dunn, however, stated that in order to save time and costs UBS was willing to treat the Particulars of Claim as having been served at the same time as the Claim Form, namely on 30 January 2015.
7. Gibson Dunn filed an Acknowledgment of Service on 11 February 2015 stating that UBS intended to defend the whole claim.

8. UBS has not filed a Defence and has instead applied to strike out Mr Taylor's claim, or alternatively applied for summary judgment against Mr Taylor on the grounds that Mr Taylor's claim:
 - a. discloses no reasonable basis for bringing a claim against UBS, and/or is an abuse of the court's process, and/or fails to comply with a rule or practice direction; and/or
 - b. has no real prospect of success and there are no other compelling reasons that the case should be disposed of at trial.

SUMMARY OF MR TAYLOR'S CLAIM

9. Mr Taylor's Particulars of Claim are inadequately particularised and difficult to follow, however, UBS understands the essence of Mr Taylor's claim to be as follows:
 - a. Mr Taylor bought gold bullion, silver bullion and platinum bullion from the Second Defendant ("Deutsche Bank") (see paragraph 1 of the Particulars of Claim);
 - b. UBS, along with the other defendant banks, is alleged to have been part of a cartel (with Deutsche Bank) involved in suppressing the gold, silver and platinum price (see paragraphs 4, 5 and 6 of the Particulars of Claim);
 - c. The alleged cartel suppressed the market price of gold, silver and platinum causing Mr Taylor to lose money when he came to sell his bullion (see "Summary of Claim" section on page 1 of the Particulars of Claim).
10. Mr Taylor also appears to include a subsidiary claim in relation to alleged foreign exchange ("FX") manipulation (see paragraph 11 of his Particulars of Claim). Again this claim is inadequately particularised and difficult to follow, however, UBS understands Mr Taylor's claim to be as follows:
 - a. Mr Taylor bought and sold his gold, silver and platinum bullion in Euros (see paragraph 23 of his Particulars of Claim);

- b. Precious metals are USD denominated assets therefore his purchases and subsequent sales involved currency conversion (see paragraph 23 of his Particulars of Claim);
- c. The defendant banks are alleged to have been part of a cartel manipulating FX rates (see paragraphs 3 and 23);
- d. Mr Taylor has suffered losses due to “*his exposure to exchange rates which were not determined by a free market*” (see paragraph 23 of his Particulars of Claim).

11. Mr Taylor’s claim makes reference to violations of “*Article 101 of the Treaty on the functioning of the European Union*” and “*Competition Act 1998, Chapter 1 and Chapter 2*” (see paragraphs 7(c) and (d) of his Particulars of Claim). I note that CPR rule 30.8 states that if a party’s statement of case raises an issue relating to the application of Chapter I or II of Part I of the Competition Act 1998, the proceedings must be transferred to the Chancery Division of the High Court at the Royal Courts of Justice.

STRIKE OUT/SUMMARY JUDGMENT

Mr Taylor’s claim discloses no reasonable basis for bringing a claim and/or has no real prospect of success

12. The claims made against UBS and the other defendant banks for breaches of national and international competition law are extremely serious. It follows that the proof or evidence must be commensurately cogent and convincing. Mr Taylor’s claim falls far short of that standard.

13. Mr Taylor has used his Particulars of Claim as a means of setting out his theory about the alleged suppression of the price of precious metals by the defendant banks. His claim is based upon conjecture, speculation and assumption, rather than on any facts or evidence. That Mr Taylor’s claim is founded upon speculation rather than fact is illustrated by the way in which he pleads his case. For example:

- a. At paragraph 3 of the Particulars of Claim: “*We use the traits of Forex manipulation to deduce that gold manipulation is a cartel activity, and that gold manipulation by Deutsche Bank implies gold manipulation by the other leading market players.*” (emphasis added)

b. At paragraph 5(v) of the Particulars of Claim: “*No other theory, led by a posit for the motivation, fits the facts so well.*” (emphasis added)

c. At paragraph 6(a) of the Particulars of Claim: “*Since precious metals are assets valued in relation to gold, it is assumed that any party guilty of gold price manipulation is thus guilty of manipulating prices of all precious metals.*” (emphasis added)

14. Even if it were permissible (which it is not) to bring a claim founded merely on “theory” and “supposition”, the logical premise and underlying assumptions on which Mr Taylor’s claim relating to the alleged conspiracy to suppress the price of precious metals is founded are flawed. Mr Taylor has failed to plead sufficient facts to support his claim and provides no explanation of, or detail to shape, the concepts he regularly uses throughout the Particulars of Claim. For example, Mr Taylor fails to describe, even at a basic level, the means by which the defendants are alleged to have suppressed precious metals prices, which of course may have fallen for perfectly valid economic reasons.

15. Mr Taylor’s subsidiary claim relating to FX manipulation, is similarly hopeless. Mr Taylor’s claim appears to assume that the effect of any alleged manipulation of FX would be that he received less, when selling the gold, silver and platinum bullion, than he would otherwise have received had there been none of the alleged FX manipulation. Mr Taylor’s assumptions are flawed and he cites few facts to support this claim.

Pre-existing findings of regulatory investigations into UBS

16. In November 2014, UBS reached settlements with the UK Financial Conduct Authority (“FCA”) and the US Commodity Futures Trading Commission (“CFTC”) relating to its FX spot trading business. The Swiss Financial Market Supervisory Authority (“FINMA”) concluded enforcement proceedings at the same time. These authorities reached the view that certain traders at UBS had attempted to manipulate FX benchmarks against the interests of UBS’s clients.

17. Mr Taylor mischaracterises the FCA’s findings. He seeks to rely on consistent attempts to manipulate spot FX benchmarks in one direction only, namely downwards. In fact, the FCA Final Notices, like those of the other authorities, did not draw any conclusions on the overall direction of attempted manipulation. The FCA simply stated that traders

attempted to manipulate certain FX spot benchmarks and provided one example in each Notice of such attempted manipulation.

18. FINMA's report contained certain limited findings in relation to precious metals spot-trading at UBS (see paragraph 3.3.3 of FINMA Report), which UBS did not admit. FINMA's report noted that the precious metals spot desk at UBS, which was responsible for the bank's precious metals trading, was an organisational unit of the bank's FX spot desk, and identified conduct by UBS against the interests of its clients in the context of precious metals trading. FINMA did not find any scheme to suppress precious metals prices.

Claim for damages has no real prospect of success

19. Mr Taylor has failed to particularise properly how the defendants' alleged actions caused him loss and the extent of the loss which he claims has been caused. Mr Taylor also fails to provide any clarity as to which of the defendant banks he is claiming against in respect of the various heads of damages and the extent to which he considers each of those banks to be liable. For example, a large part of Mr Taylor's Particulars of Claim is directed at Deutsche Bank's conduct only (e.g. paragraphs 1 and 2) and Mr Taylor at paragraph 5 on page 24 of his Particulars of Claim suggests that UBS is less culpable than the other defendant banks: "*UBS, while being a small player...should pay at least a token in damages.*"
20. Even if Mr Taylor did have a cause of action against UBS or the defendant banks (which he does not), Mr Taylor's claim for damages has no real prospect of success. Mr Taylor has claimed:
 - a. In respect of the 40kg of silver bullion and 150g of platinum bullion which Mr Taylor alleges he was forced to sell at suppressed rates, Mr Taylor claims replacement quantities of silver and platinum from the defendants (see point 6 on page 17 of the Particulars of Claim).
 - b. "*Aggravated damages*" of £500,000 "*for stress resulting from obstructive procrastination, the unnecessary litigation which should have been settled on the first request, and the stress of living for two and a half years of poverty*" (see point 1 on page 17 of the Particulars of Claim).

- c. £250,000 for “*assets mispriced by illegal FX manipulation*. He explains “*this is punitive and does not require quantification*” (see point 2 on page 17 of the Particulars of Claim).
- d. £250,000 for “*suppression of the price of silver and platinum by manipulation in the electronic currency markets*”. He alleges that the £250,000 claimed “*accounts for loss in investment opportunities due to the frauds leading to [his] extended period of poverty. These again, are considered aggravated damages.*” (see point 3 on page 17 of the Particulars of Claim).
- e. Mr Taylor seeks payment of these amounts in “*platinum bullion*” (see point 4 on page 17 of the Particulars of Claim).

21. Mr Taylor would not be able to recover replacement quantities of silver and platinum from the defendant banks even if he was successful in proving that the defendant banks had been part of a cartel which suppressed the price of precious metals. If such an allegation were correct, Mr Taylor’s remedy would be limited to recovery of the difference in value between (i) the price he would have achieved on the sale of the gold, silver and the platinum, had the alleged cartel not been suppressing prices, as he claims it was, and (ii) the price he did in fact achieve upon sale. To the extent that Mr Taylor may also have bought the metals at a suppressed price, he would of course have to give credit for that when calculating his damages. In fact Mr Taylor has failed to plead what price he bought the metals at and at what price he sold them (see paragraphs 21 and 22 of his Particulars of Claim). It is therefore impossible on his current pleading to quantify his claim.

22. Mr Taylor’s claim for “aggravated” damages is equally misconceived and has no real prospect of success. However, it appears from paragraph 12 of his Particulars of Claim that this complaint, and the damages alleged to follow from it, is directed at Deutsche Bank only, not UBS.

23. Mr Taylor has failed to show that he suffered any loss as a result of the alleged manipulation of FX, and in any event his claim for “punitive damages” has no real prospect of success.


24. Mr Taylor’s demand for payment of damages in platinum bullion is similarly flawed.

Inadequate particularisation of claim

25. Even if, which UBS denies, the Particulars of Claim do disclose a reasonable basis for bringing a claim against UBS and/or have a real prospect of success, Mr Taylor's Particulars of Claim, as currently pleaded, are inadequate and should be struck out as an abuse of process or as a result of his failure to comply with the relevant rules and practice directions. Given the seriousness of the allegations made by Mr Taylor, such as fraud (see paragraph 3 of his Particulars of Claim), it is particularly important that Mr Taylor provides full and proper particulars to support his case. In its current format it would be extremely difficult to respond to Mr Taylor's claim by way of defence.

STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true.

Signature.....

Name: Richard Philip Rocher

Position: Partner, Gibson, Dunn & Crutcher LLP

Date: 25 February 2015