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Case Nos: CA-2025-000314 and 000359

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE, BUSINESS AND PROPERTY
COURTS OF ENGLAND AND WALES, INTELLECTUAL PROPERTY LIST (ChD)

Mr Justice Thompsell
[2024] EWHC 3264 (Ch)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21 November 2025

Before :

LORD JUSTICE ARNOLD
LORD JUSTICE NUGEE
and
LADY JUSTICE FALK

Between :

PLAYTECH SOFTWARE LIMITED

**Claimant/
Respondent**

- and -

(4) REALTIME SIA
(5) IGORS VELIKS

**Defendants/
Appellants**

**Tom Moody-Stuart KC and Maxwell Keay (instructed by Herbert Smith Freehills Kramer
LLP and Trowers & Hamlin LLP) for the Appellants**

Adrian Speck KC and Thomas Jones (instructed by Linklaters LLP) for the Respondent

Hearing date : 23 October 2025

Approved Judgment

This judgment was handed down remotely at 10.30am on 21 November 2025 by circulation
to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Arnold:

Introduction

1. This is an appeal by the Fourth and Fifth Defendants (“Realtime” and Igors Veliks) against an order made by Thompsell J on 24 January 2025 dismissing their challenge to the jurisdiction of the courts of England and Wales in respect of claims for alleged misuse of trade secrets and copyright infringement made by the First Claimant (“Playtech”) for the reasons given in his judgment dated 18 December 2024 [2024] EWHC 3264 (Ch). The principal issue on the appeal is which law applies to the claim for misuse of trade secrets. I granted Realtime and Mr Veliks permission to appeal.

Protection of trade secrets under English law

2. In my judgment in *Celgard LLC v Shenzhen Senior Technology Material Co Ltd* [2020] EWCA Civ 1293, [2021] FSR 1 I outlined the relevant principles concerning the protection of trade secrets under English law prior to European Parliament and Council Directive 2016/943/EU of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (“the Trade Secrets Directive”) at [20]-[25], set out the relevant provisions of the Trade Secrets Directive at [26]-[27] and considered the partial implementation of the Trade Secrets Directive by the relevant provisions of the Trade Secrets (Enforcement, etc) Regulations 2018 (SI 2018/597) (“the Regulations”) at [28]-[29]. I shall take that exposition as read and shall not repeat it.

Factual background

The parties

3. The Claimants are members of the Playtech Group of companies, which designs, develops and supplies online gambling games and associated software. The Second Claimant (“Euro Live”) is a Latvian company which is the entity within the group that is responsible for developing games and employs game developers for this purpose. Playtech is an English company which licenses games to operators of online gambling websites.
4. The First and Second Defendants (“Games Global”), which are both incorporated in the Isle of Man, are members of the Games Global Group of companies, which is a commercial rival of the Playtech Group in the supply of online gambling games. The Third Defendant (“MT”) and Realtime are part of the Realtime Group of companies, which develops online gambling games for the Games Global Group. Realtime is a Latvian company which develops the games, while MT is a Maltese company which carries out administrative and supporting functions.
5. Mr Veliks is a Latvian national who lives and works in Latvia. He was employed by Euro Live in Latvia between October 2020 and July 2021. He has been employed by Realtime since August 2021 and is currently based at Realtime’s offices in Riga.

Mr Veliks’ employment with Euro Live

6. In August 2020 Mr Veliks entered into a contract of employment with Euro Live which contained confidentiality obligations applying both during his employment and after

termination. This employment contract was governed by Latvian law and contained an exclusive jurisdiction clause in favour of the Latvian courts. In July 2021 Mr Veliks resigned from his role at Euro Live, and Mr Veliks and Euro Live entered into a contract terminating Mr Veliks' employment. This termination contract contained further confidentiality obligations. It did not contain any express choice of law provisions, but the uncontested expert evidence as to Latvian law is that it would be governed by Latvian law.

7. During his employment with Euro Live, Mr Veliks was provided with access to an online platform called Horizon which (according to the Claimants) hosts playable versions of the Claimants' games, including some games that have been publicly released and some games that have not yet been publicly released. The judge found that much of the content of Horizon is in the public domain, but that there was a sufficiently arguable case that some of the content comprised confidential information during the period of time between a game being made available via Horizon and it being publicly released.

The acts complained of

8. The essence of the Claimants' complaint is that Mr Veliks has, using log-in details provided to him by Euro Live for the purposes of his employment with Euro Live, accessed confidential information on Horizon after the termination of his employment and has thereby provided Realtime with access to confidential information on Horizon. The Claimants further allege that Mr Veliks and Realtime have used confidential information from Horizon in the development of two of Realtime's games, namely Travel Fever and Diamond Rush Roulette ("the Derivative Games"). The Claimants contend that the confidential information misused by Realtime and Mr Veliks constituted trade secrets.
9. The Claimants' original claim was primarily contractual. It was alleged that Mr Veliks had breached the confidentiality obligations in his employment contract and termination contract, and that MT and Realtime were liable for procuring or inducing the breaches. The Claimants also alleged breach of equitable duties of confidence and misuse of trade secrets by MT, Realtime and Mr Veliks. Games Global were alleged to be jointly liable for the acts of MT and Realtime.
10. In draft Amended Particulars of Claim served about three weeks before the hearing before the judge, the Claimants abandoned the contractual claim in its entirety and discontinued Euro Live's claim. The claim for misuse of trade secrets is now based solely on alleged equitable obligations of confidence owed to Playtech. Realtime is alleged both to be primarily liable for its own wrongs and vicariously liable for those of Mr Veliks.
11. Playtech relies on reports of 33 instances of alleged access to Horizon by Mr Veliks or other employees of Realtime. The reports include the IP addresses from which the access is said to have been made. These indicate that, in the vast majority of cases (around 94%), the alleged access took place from Latvia. In no case did the alleged access take place from the UK.
12. When it served its draft Amended Particulars of Claim Playtech also introduced a new claim for copyright infringement concerning a logo used in one of the Claimants' games

(Jet Set Racing Roulette), which is said to constitute an original artistic work in which Playtech owns UK copyright. It is alleged that Mr Veliks accessed the game on Horizon while in Latvia using his phone and took a screenshot. It is then alleged that Mr Veliks flew from Riga to London to attend a trade show, and that while in London he sent a copy of the screenshot to a colleague who was on the trip with him. Playtech infers that the screenshot would have included the logo, and alleges that Mr Veliks, and thereby Realtime, infringed the copyright in the logo by importing the screenshot into the UK and by possessing and distributing the screenshot while in the UK. Both Mr Veliks and his colleague returned to Latvia after a day or so.

Service out of the jurisdiction: the requirements

13. Since Realtime and Mr Veliks are in Latvia, Playtech must obtain the permission of the court to serve the claim form on them out of the jurisdiction. In order to obtain permission, Playtech must establish in respect of each claim it advances that: (i) there is a serious issue to be tried on the merits of its claim; (ii) it has a “good arguable case” that one of the jurisdictional gateways set out in paragraph 3.1 of CPR Practice Direction 6B applies; and (iii) England is the proper place in which to bring the claim (see CPR rule 6.37(3)).

Gateway 21

14. Gateway 21 is as follows:

“A claim is made for breach of confidence or misuse of private information where:

- (a) detriment was suffered, or will be suffered, within the jurisdiction; or
- (b) detriment which has been, or will be, suffered results from an act committed, or likely to be committed, within the jurisdiction;
- (c) the obligation of confidence or right to privacy arose in the jurisdiction; or
- (d) the obligation of confidence or right of privacy is governed by the law of England and Wales.”

Applicable law: the legal framework

15. It is common ground that Playtech’s claims fall within the scope of European Parliament and Council Regulation 864/2007 of 11 July 2009 on the law applicable to non-contractual obligations (“the Rome II Regulation”), which has been incorporated into domestic law with minor amendments by the Law Applicable to Contractual Obligations and Non-Contractual Obligations (Amendment etc.) (EU Exit) Regulations 2019, SI 2019/834. It is also common ground that the non-contractual obligation on which the claim for misuse of trade secrets is based arises out of an act of unfair competition within the meaning of Article 6 of the Rome II Regulation; and that Article 6(2) applies because Playtech’s claims are concerned with an act of unfair competition affecting exclusively the interests of a specific competitor, namely Playtech. In such

circumstances, Article 6(2) provides that “Article 4 shall apply”. Article 4 applies even though it is concerned with the law applicable to a non-contractual obligation arising out of a tort/delict, and, as a matter of English law, claims for breach of equitable obligations of confidence are not claims in tort: see *Kitechnology BV v Unicor GmbH* [1995] FSR 765 at 777 (Evans LJ).

16. Article 4(1) of the Rome II Regulation provides:

“Unless otherwise provided for in this Regulation, the law applicable to a non-contractual obligation arising out of a tort / delict shall be the law of the country in which the damage occurs irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occur.”

17. Article 4(3) provides:

“Where it is clear from all the circumstances of the case that the tort/delict is manifestly more closely connected with a country other than that indicated in paragraphs 1 or 2, the law of that other country shall apply. A manifestly closer connection with another country might be based in particular on a pre-existing relationship between the parties, such as a contract, that is closely connected with the tort/delict in question.”

18. It can be seen from Article 4(1) that the applicable law is the law of the country in which the damage occurs, not the country in which the event giving rise to the damage occurred or the country in which indirect consequences of that event occur. Thus the connecting factor is the direct damage caused by the wrongdoing: see recital (16) and Case C-350/14 *Lazar v Allianz SpA* [EU:C:2015:802].
19. In *Celgard v Senior* Celgard advanced a claim, referred to as the “Direct Claim”, that Senior was liable for breach of confidence by importing into, and marketing in, the UK battery separators whose design, characteristics, functioning and/or production benefitted from Celgard’s trade secrets. Celgard also advanced a claim, referred to as the “Vicarious Claim”, that Senior was vicariously liable for the wrongdoing of Dr Zhang (a former employee of Celgard and a current employee of Senior) in disclosing Celgard’s trade secrets to Senior in China in breach of an equitable obligation of confidence and/or regulation 3 of the Regulations.
20. This Court held for the reasons I gave at [55]-[64] that, since the act of unfair competition that was the subject of the Direct Claim was the importation into, and marketing in, the UK of infringing goods as defined in Article 2 of the Trade Secrets Directive, it followed that the UK was the market affected by that act of unfair competition and the country where the direct damage was sustained. Thus, applying Article 4(1) of the Rome II Regulation, the law applicable to the Direct Claim was English law.
21. As I discussed at [65]-[67], this was subject to the effect of Article 4(5) of the Trade Secrets Directive. This provides:

“The production, offering or placing on the market of infringing goods, or the importation, export or storage of infringing goods for those purposes, shall also be considered an unlawful use of a trade secret where the person carrying out such activities knew, or ought, under the circumstances, to have known that the trade secret was used unlawfully within the meaning of paragraph 3.”

22. The question is what law should be applied to determine whether “the trade secret was used unlawfully”. I said that this was a very difficult question, but my provisional view was that the applicable law remained that determined by the Rome II Regulation in accordance with the preceding analysis, and hence it was probable in that case that the applicable law was English law.
23. By contrast, for the reasons I gave at [68], the law applicable to the Vicarious Claim was Chinese law, because the direct damage caused by Dr Zhang’s alleged disclosure of trade secrets to Senior was sustained in China.

The appropriate forum: applicable principles

24. The third requirement means that Playtech must satisfy the court that in all the circumstances England “is clearly or distinctly the appropriate forum for the trial of the dispute, and that in all the circumstances the court ought to exercise its discretion to permit service of the proceedings out of the jurisdiction”: see *Altimo Holdings and Investment Ltd v Kyrgyz Mobil Tel Ltd* [2011] UKPC 7, [2012] 1 WLR 1804 at [71] (Lord Collins of Mapesbury).
25. The factors involved in identifying the proper forum were conveniently summarised by Lord Briggs of Westbourne in *Lungowe v Vedanta Resources plc* [2019] UKSC 20, [2019] 2 WLR 1051 at [66]:

“The best known fleshed-out description of the concept is to be found in Lord Goff of Chieveley’s famous speech in the *Spiliada* case [1987] AC 460, 475–484, summarised much more recently by Lord Collins JSC in the *Altimo* case [2012] 1 WLR 1804, para 88 as follows: ‘the task of the court is to identify the forum in which the case can be suitably tried for the interests of all the parties and for the ends of justice ...’ That concept generally requires a summary examination of connecting factors between the case and one or more jurisdictions in which it could be litigated. Those include matters of practical convenience such as accessibility to courts for parties and witnesses and the availability of a common language so as to minimise the expense and potential for distortion involved in translation of evidence. Although they are important, they are not necessarily conclusive. Connecting factors also include matters such as the system of law which will be applied to decide the issues, the place where the wrongful act or omission occurred and the place where the harm occurred.”

The judge's judgment

26. The judge held that there was no serious issue to be tried in respect of Playtech's claims against the Defendants other than Realtime and Mr Veliks. As regards Playtech's claims against Realtime and Mr Veliks, the judge held that the claims for misuse of trade secrets and for copyright infringement satisfied the test of disclosing a serious issue to be tried on the merits applying English law.
27. The judge held that the claims against Realtime and Mr Veliks did not pass through Gateway 2 (availability of an injunction) because there was no real prospect of an injunction being granted, but that the copyright claim satisfied Gateways 9 (claim in tort) and 11 (property within the jurisdiction) and the misuse of trade secrets claim satisfied Gateways 9 and 21 (breach of confidence).
28. The judge's reasons for holding that the misuse of trade secrets claim satisfied Gateway 9 were as follows:
 - "106. Playtech argues that damage has been sustained in the United Kingdom as it is based in the United Kingdom and trades from there and receives the revenues which may be damaged from unfair competition arising from these breaches in the United Kingdom. Whilst it has not identified competing specific imports, as was the case with the Direct Claim in *Celgard*, this is understandable as it is a different type of business that does not sell physical goods but instead sells intangible products. Nevertheless, it seems to me that it has got close enough to the Direct Claim in *Celgard* in that it has presented a strong case that it is facing competition to its business, which it conducts in the UK, in relation to its sales from at least one game that has a feature that has relied on its confidential information. This seems to me to be a good argument and a sufficient justification for the direct claims that Playtech is making against Mr Veliks and against Realtime Latvia to pass through this gateway.
 107. It may be argued that the claim against Realtime Latvia as regards vicarious liability should be treated differently, as this was the case in *Celgard* but I do not think this is so, or at least, not entirely so.
 108. In *Celgard* it seems that the claim for vicarious liability for the disclosure of trade secrets was being pursued on the basis that the damage was the disclosure itself which in that case took place in China. In the case before me, I understand the damage claimed for which there is vicarious liability is largely framed by reference to the same damage as for the direct claim (economic loss through unfair competition). It therefore passes the gateway in the same way as the direct claim.
 109. Insofar as Playtech is making a claim that the loss is the disclosure itself, then applying the principles applied in *Celgard* to that damage alone, Latvia should be seen as the place where the loss is incurred. However as the court needs to deal with the claim holistically, I consider that looking at the two aspects of the claim the court should give primacy to the direct claims where, as I have explained the losses are to be considered to be falling within the jurisdiction."

29. The judge held that the misuse of trade secrets claim also satisfied Gateway 21 for the same reasons.
30. Having held that the misuse of trade secret and copyright claims passed through those jurisdictional gateways, the judge held that England and Wales was the appropriate forum for those claims. One of the factors he relied upon in reaching that conclusion was that English law was the applicable law.

Grounds of appeal

31. Realtime and Mr Veliks appeal on two grounds. The first ground is that the judge was wrong to hold that Playtech's claim for misuse of trade secrets satisfies either Gateway 9 or Gateway 21 because he was wrong to hold that Playtech has a good arguable case that it has suffered direct damage in the UK by reason of the alleged misuse of trade secrets and wrong to hold that English law applies to the claim for the alleged misuse of trade secrets. The second ground is that the judge was wrong to hold that England and Wales is the appropriate forum for Playtech's claims. Realtime and Mr Veliks contend that the judge made a number of errors in his assessment of the appropriate forum, including that he proceeded on the wrong basis as to the law applicable to the trade secrets claim.

Ground 1: the law applicable to the claim for misuse of trade secrets

32. It is common ground that, for the reason explained in paragraph 15 above, the relevant gateway for breach of confidence claims, including claims for misuse of trade secrets, is Gateway 21, not Gateway 9, and that the judge was in error in so far as he relied on Gateway 9. It is also common ground that, although the judge did not expressly hold that the law applicable to Playtech's trade secrets claim is English law, this is implicit in his reasoning. It is also common ground that it is not necessary to distinguish between paragraphs (a) and (d) of Gateway 21 because both depend upon there being direct damage in England and Wales, and thus attention can be confined to the issue as to applicable law. (I would add that, if Realtime and Mr Veliks are correct that the judge was wrong to hold that the claim for misuse of trade secrets passes through Gateway 21 because there is no direct damage in the UK and the applicable law is Latvian law, it would follow that he was also wrong to apply English law to decide that the claim raised a serious issue to be tried.)
33. Since the judge's judgment, and in compliance with his order, Playtech has served a revised Amended Particulars of Claim which not only omits the claims abandoned by Playtech prior to the hearing before the judge, but also the claims which he held should not proceed in this jurisdiction. This has the advantage so far as this Court is concerned, which was not available to the judge, of making it clear precisely what Playtech's case against Realtime and Mr Veliks is, shorn of other distracting material.
34. As explained in paragraphs 8 and 11 above, Playtech's pleaded case of misuse of trade secrets is confined to acts of (i) accessing information on Horizon during the period when it was confidential and (ii) using such information to develop the Derivative Games. Most of the acts alleged to have been committed by Realtime and Mr Veliks took place in Latvia and none of them is alleged to have been committed in the UK. This is true both with respect to acts for which Realtime is alleged to be primarily liable and acts for which Realtime is alleged to be vicariously liable.

35. Playtech's pleaded case on damage is as follows:

"33. By reasons of the acts complained of, the Claimant has suffered loss and damage. Being a company registered in the United Kingdom all such damage is suffered in this jurisdiction, irrespective of the place where the acts leading to said damage occurred.

34. In particular, by its acts in breach of confidence and/or unlawful use of a trade secret, [Realtime] was able to develop the Derivative Games taking advantage of knowledge of a number of features of the Claimant's games sooner than it otherwise would have been able to. The same amounts to a springboard advantage to [Realtime] in a competitive commercial environment, an advantage which [Realtime] should be deprived of by way of injunctions. In particular:

- a. The Claimant is based in the UK and derives its licence revenues there.
- b. The online games business is highly competitive with suppliers seeking new and innovative games to attract licensees who in turn seek customers.
- c. [Realtime] has sought to accelerate the development of its live online games and on starting up its business.
- d. Any reduction in the time with which [Realtime] was able to offer new games has a negative impact on the licensing revenue of the Claimant."

36. This pleading is entirely concerned with the indirect consequences to Playtech of the acts complained of, and in particular with the reduction in the licensing revenue received by Playtech in the UK, not the direct damage caused by those acts. The mere fact that Playtech loses revenue in the UK is not sufficient for this purpose: cf. *Kitechnology* (cited above) at 779-780 and *AMT Futures v Marzillier* [2015] EWCA Civ 143, [2015] QB 399 at [31] (Christopher Clarke LJ) (both cases concerning Article 5(3) of the Brussels Convention and of Council Regulation 44/2001/EC, but the point is the same).

37. There is no allegation that either of the Derivative Games has been downloaded, or otherwise accessed, by anyone in the UK. It is no answer to this to argue, as counsel for Playtech did, that such acts are encompassed within the scope of Playtech's pleading. The pleading is wholly unspecific as to how and where the alleged loss of licensing revenue arose. Furthermore, the lacuna is not merely one of pleading: as counsel for Playtech accepted, Playtech has not adduced any evidence that either game has been downloaded, or otherwise accessed, by anyone in the UK. It has not even demonstrated that they were made available to consumers in the UK.

38. It follows that, contrary to the judge's view, there is no parallel between Playtech's claim for misuse of trade secrets and the Direct Claim in *Celgard v Senior* even if one

disregards the potential distinction between physical goods and intangibles when it comes to Article 4(5) of the Trade Secrets Directive. On Playtech's pleaded case, the only direct damage it has suffered was sustained in Latvia. Accordingly the applicable law is Latvian law. It follows that the claim does not satisfy Gateway 21 (and that English law cannot be applied to determine that the claim raises a serious issue to be tried).

39. This conclusion makes it unnecessary to consider whether the provisional view expressed in *Celgard v Senior* concerning Article 4(5) of the Trade Secrets Directive is correct. It also makes it unnecessary to consider Realtime and Mr Veliks' argument, raised before the judge but not addressed by him, that Latvian law applies by virtue of Article 4(3) of the Rome II Regulation.

Ground 2: applicable forum in respect of the copyright claim

40. The judge understandably did not consider whether England and Wales would be the appropriate forum for the copyright claim if it stood alone. We heard very little argument on this question, but in my judgment the answer to it is no. The copyright claim concerns a screenshot allegedly taken in Latvia. The unchallenged evidence of Latvian law is that Playtech could bring a claim in Latvia for infringement of Latvian copyright in respect of the taking of the screenshot, and that in those circumstances a Latvian court would be prepared to determine a claim in respect of subsequent acts of secondary infringement of UK copyright. This would not require the parties to adduce expert evidence as to UK law as the judge appears to have thought. The evidence is that a party citing a foreign law must provide a certified translation of the law's text into Latvian. If deemed necessary, the court may seek assistance from the Ministry of Justice to determine the content of the foreign law. Thus Latvia is an available forum for the copyright claim. Furthermore, even considered on its own, the centre of gravity of the copyright claim is Latvia. When the general background is taken into account, Latvia is plainly the appropriate forum.

Conclusion

41. For the reasons given above I would allow the appeal and set aside permission to serve the claim form on Realtime and Mr Veliks outside the jurisdiction.

Lord Justice Nugee:

42. I agree.

Lady Justice Falk:

43. I also agree.