محكمة قطر الدولية
ومركز تسوية المنازعات
QATAR INTERNATIONAL COURT
AND DISPUTE RESOLUTION CENTRE

In the name of His Highness Sheikh Tamim bin Hamad Al Thani,

Emir of the State of Qatar

Neutral Citation: [2022] QIC (F) 34

IN THE QATAR INTERNATIONAL COURT

FIRST INSTANCE CIRCUIT

Date: 28 December 2022

CASE NO: CTFIC0014/2021

AMBERBERG LIMITED

1st Claimant

PRIME FINANCIAL SOLUTIONS LLC (FORMERLY INTERNATIONAL FINANCIAL SERVICES (QATAR) LLC)

2nd Claimant

v

THOMAS FEWTRELL

1st Defendant

NIGEL THOMAS HOWARD PERERA

2nd Defendant

LOUISE JOAN KIDD

3rd Defendant

CHRISTOPHER IVINSON

4th Defendant

JUDGMENT

Before:

Justice Arthur Hamilton

Justice Fritz Brand

Justice Helen Mountfield KC

Order

1. With reference to the issues reserved for determination in these initial proceedings, it is declared that:

    a. In view of the provision in the Sale and Purchase Agreement ("**SPA**") which determined the date of the agreement as 28 November 2019, the issue as to the date on which the document was actually signed is of no consequence.

    b. The Fourth Defendant never became a party to the SPA, and in consequence he could not be in breach of the contract.

    c. The First, Second and Third Defendants were each in breach of the warranty in favour of the First Claimant under clause 9.3.2 of the SPA.

2. The claim, in so far as directed against the Fourth Defendant, is dismissed.

3. The claim, in so far as at the instance of the Second Claimant is dismissed.

4.

a. The First, Second and Third Defendants are liable, jointly and severally, for the reasonable costs incurred by the First Claimant in these initial proceedings, the quantum of such costs to be determined by the Registrar if not agreed upon.

b. The Claimants and the First Defendant are liable, jointly and severally, for the reasonable costs incurred by the Fourth Defendant in these initial proceedings, the quantum of such costs to be determined by the Registrar if not agreed upon.

c. The Second Claimant is liable for the reasonable costs incurred by the Defendants in these initial proceedings, with regard to their defence against the claim instituted and pursued by Second Claimant, the quantum of such costs to be determined by the Registrar if not agreed upon.

5. The parties are to file their proposals regarding the directions with reference to the further proceedings in this matter within 21 days from publication of this judgment.

Judgment

Introduction and overview

1. This is a claim for damages arising from an alleged breach of contract by the Defendants. The First Claimant, Amberberg Limited ("**Amberberg**"), is a company registered in the British Virgin Islands. It was represented at all times by its director and sole shareholder Mr Rudolfs Veiss, a Latvian national who is resident in the State of Qatar. The Second Claimant, Prime Financial Solutions LLC, formerly known as International Financial Services (Qatar) LLC ("**IFSQ**"), is registered in the Qatar Financial Centre. The First Defendant is Mr Thomas Fewtrell, the Second Defendant is Mr Nigel Perera, and the Third Defendant is Ms Louise Kidd, who is married to Mr Fewtrell. The Fourth Defendant is Mr Christopher Ivinson.

2. The Claimants' claims arise from a Sale and Purchase Agreement ("**SPA**") of the shares in the Second Claimant, IFSQ, which was concluded on either 12 December 2019 or 12 January 2020 between the First Claimant and some of the Defendants. The uncertainty about the exact date of conclusion and the precise identities of the parties who signed the SPA are among the many disputes between the parties to these proceedings. Pursuant to the SPA, the First Claimant, Amberberg, purchased the shares in the predecessor to the Second Claimant for the purchase price of £1.00. The five then shareholders and sellers in terms of the SPA were the four Defendants and International Financial Services PTE Ltd, a company incorporated in accordance with the laws of Singapore which played no part in these proceedings. Central to the claims of Amberberg are the warranties and undertakings in clauses 4.4, 9.3.1 and 9.3.2 of the SPA, while IFSQ's claim rests on a liability under clause 10.1 of the SPA.

3. Clause 4.4, which appears under the heading "*Pre-Closing Undertakings*" reads as follows in relevant terms:

> *... The Sellers further undertake that as of Closing the Company shall not have any third Party, related Party, or bank debt owed to or by any person other than those showed in the Audited Financial Statements and draft Audited Financial Statements in Schedule 2.*
>
> Schedule 2 refers solely to "*Audited Financial Statements for FY 2016 to FY 2018*".

4. Clause 9, which appears under the heading "*Sellers The Warranties*", is introduced by the following phrase: "*The Purchaser warrants to the Sellers as at the date of this Agreement and the Closing Date that: […]*". Read in context, it is clear, however, that this cannot be right and it is in fact common ground between the parties that the introduction should read "*The Sellers warrant to the Purchaser*". The date of the agreement is stated as 28 November 2019 while the Closing Date is defined in clause 6.1 as 15 February 2020 "*or on such later date as is approved by the purchaser in writing and notified to the Sellers*". With that introduction clauses 9.3.1 and 9.3.2 read as follows:

> *9.3.1 The Sellers warrant that the Audited Financial Statements and the draft Financial Statements for FY 2018 attached in Schedule 2 are true and accurate and once the audited financial statements for FY 2018 are complete, the Seller shall provide a copy of the same to the Purchaser promptly and no later than the Closing.*

9.3.2 The Sellers warrant that the Company shall not have pending financial, legal, regulatory claims or violations other than those disclosed to and acknowledged by the Purchaser in writing.

5. Clause 10.1 appears under the heading "*Company Claims*". It then proceeds:

10.1 The Sellers shall be jointly and severally liable for any Claims made against the Company at any time in the future and of any nature relating to the acts or missions (sic) of the Company, its Directors or its employees prior to the Closing, including the costs of defence of such claims." "Claim" (with a capital letter) is defined in Schedule 1 as meaning "any claim made by a third party…against the Company…post-Closing which relates to acts or omissions of the Sellers, Company, Company's directors or employees pre-Closing.

6. The essence of the Claimants' claims is that the Defendants as sellers have acted in breach of all these clauses, or at least in respect of some of them in that at both the date of the agreement, i.e. 28 November 2019 and the closing date, i.e. 15 February 2020:

   a. IFSQ was liable to Ms Aycan Richards in an amount of QAR 392,500.00;

   b. on 14 December 2020 this Court gave judgment against IFSQ in favour of Ms Richards for that amount, together with interest thereon and costs;

c. a claim related to this liability (or to a related liability) was not disclosed to Mr Veiss as representative of Amberberg before the SPA was entered into; and

d. this liability only became known to Mr Veiss as a fact when this Court gave its judgment referred to as *Aycan Richards v (1) Nigel Thomas Howard Perera, and (2) International Financial Services Qatar LLC* [2020] QIC (F) 17.

7. The contradictory version advanced by the First, Second and Third Defendants is that Mr Veiss was informed of IFSQ's liability to Ms Richards by no later than 25 November 2019. The Fourth Defendant's version is, in short, that he was not a party to the SPA; that he never signed the SPA; was unaware of the allegation that he was a party to the SPA until named in these proceedings; and that his signature to the document must be a forgery.

Procedural history

8. The procedural history of the matter can be summarised as follows:

a. The claim was originally brought against the First, Second and Third Defendants in May 2021.

b. These three Defendants contested the jurisdiction of this Court to entertain Amberberg's claim against them, but that jurisdictional challenge was dismissed in a judgment dated 7 March 2022 ([2022] QIC (F) 3).

c. On 27 March 2022, the Claimants sought and were eventually granted leave to join Mr Ivinson as the Fourth Defendant.

d. After the Claimants had filed their reply to the Defendants' statement of defence, the Defendants substantially amended that statement, which in turn led to a substantial amendment of the Claimants' reply. The pleadings still bear the scars of these amendments, which sometimes render them difficult to follow.

e. On 30 June 2022, this Court issued procedural directions which *inter alia* provided for:

> *1. …*
>
> *2. A preliminary hearing on the question of liability will be held on 16 and 17 October 2022 (with the possibility of extending into 18 October 2022 on the limited following questions:*
>
> > *(a) when the parties entered into the SPA Contract; and*
> >
> > *(b) whether any or all of the Defendants were in breach of contract.*
>
> *3. As to the issue of forgery raised by the fourth defendant, the Court at this stage presses no view to where the burden of proof on this issue lies.*
>
> *4….*

f. On 16, 17 and 18 October 2022, the matter was heard by way of a hybrid procedure – hybrid in the sense that, while the members of the Court, some of the representatives of the parties and some of the witnesses appeared in Court, others joined the proceedings virtually. In this way, Mr Paul Fisher appeared online for the Claimants, instructed by Mr Alexander Whyatt of Eversheds Sutherland (International) LLP, who was present in Court. The First, Second and Third Defendants were represented by Mr Thomas Williams of Sultan Al-Abdulla & Partners, who was in Court, while Mr Ivinson appeared in person, online.

g. Two witnesses were called on behalf of the Claimants, Mr Veiss who appeared in Court, and Ms Emma Vitor who testified online from the Philippines. The relevance of her evidence will presently transpire. The First and Second Defendants testified online in support of their case. A witness statement was filed pertaining to the evidence of Third Defendant, Mrs Kidd, but for medical reasons, she was unable to testify. From her witness statement it is clear, however, that her evidence would in any event not contribute much to the resolution of any dispute. In the circumstances we draw no adverse inference against the Third Defendant from her failure to testify. But the Third Defendant had signed the SPA, and in both the statement of defence (filed on behalf of First, Second and Third Defendants) and in her witness statement she firmly hitched her case to the version presented by Mr Perera and Mr Fewtrell. Hence her case must stand or fall by that version.

The disputes of fact

9. The background facts to Ms Richards' claim against IFSQ, which lies at the heart of the matter, are by now common ground. It can be summarised in the following way. On 7 February 2019 Ms Richards, a prospective purchaser of the shares in IFSQ at the time, entered into a personal loan agreement with Mr Fewtrell to advance £100,000.00 (the "**Loan Agreement**"). IFSQ was struggling to meet the minimum capital requirements imposed by the Qatar Financial Centre Regulatory Authority ("**QFCRA**"). Although Mr Fewtrell undertook personal liability for repayment of the loan, Ms Richards made the loan exclusively for the benefit of IFSQ. Accordingly, the sum of QAR 471,000.00, which was the equivalent of £100,000.00 at the time, was paid directly into the bank account of IFSQ. At the same time, IFSQ issued a cheque in favour of Ms Richards for an amount of QAR 471,000.00 as security for repayment of the loan (the "**Security Cheque**"). The further agreement between Mr Perera and Mr Fewtrell, on the one hand, and Ms Richards, on the other, was that in the event of Ms Richards acquiring shares in IFSQ, the amount of the loan would be deducted from the purchase price and the Security Cheque be cancelled. Conversely, if the sale fell through, the loan would be repaid by IFSQ by way of the Security Cheque.

10. On 14 March 2019, a Sale and Purchase Agreement was entered into between Ms Richards and the shareholders of IFSQ in terms whereof she acquired the shares. But for reasons which are not relevant, Ms Richards became dissatisfied with the transaction and in July 2019 she withdrew from the deal. Her capital contributions to the company were refunded and she returned the shares. But the £100,000.00 loan was not repaid. Despite her demands the repayment of the loan remained outstanding. On 25 November 2019, Ms Richards emailed Mr Fewtrell with the following warning:

Please note that having tried to communicate with you on several occasions without a success and heard nothing from either you or Nigel regarding the repayment plan of £100,000.00 that I had lent you back in February 2019, I have decided to take a legal action so you will shortly hear from my lawyer in the UK (Dentons) and from then on I will only communicate with you via my lawyer.

11. On 15 December 2019, Ms Richards deposited the Security Cheque. She was, however, informed by bank personnel that the cheque required two signatories whereas it contained only one. At the same time, she was told by the bank that according to its records, she was still reflected as an authorised signatory of IFSQ. So, she co-signed the cheque and her bank account was credited by the amount thereof. Thereafter, on the same day, Ms Richards informed Mr Fewtrell and Mr Perera of what she had done. Mr Perera thereupon informed the bank that the cheque had been fraudulently signed by Ms Richards who was no longer a signatory. In consequence, the bank cancelled the credit on Ms Richards' account and returned the cancelled cheque to her.

12. Ms Richards persisted in her demands for payment. IFSQ was unable to repay the amount immediately, but Mr Perera did not want IFSQ's liability to Ms Richards to be reflected as a loan on its balance sheet, because that would reduce the liquidity and the net asset value of the company below the level required by the QFCRA. In the circumstances, Mr Perera suggested to Ms Richards that they couch her claim against IFSQ in the form of a consultation agreement to which Ms Richards agreed. In the event, a consultation agreement was entered into between Ms Richards and IFSQ, represented by Mr Perera, on 26 December 2019 (the "**Consultancy Agreement**"). In terms of the Consultancy Agreement, it was agreed that:

a. Ms Richards would provide consultancy services to IFSQ for a period of six months in exchange for a retainer of QAR 78,500.00 per month.

b. If any retainer fee remained unpaid for 10 days after due date, all retainer fees outstanding at that time would become due and payable immediately.

c. Mr Perera provided a personal guarantee in respect of IFSQ's liability under the Consultancy Agreement.

13. At the same time Mr Perera provided Ms Richards with six post-dated cheques signed on behalf of IFSQ for QAR 78,500.00 each, dated on the 15th of each consecutive month. The first of these cheques was presented for payment and was in fact paid out on 15 January 2020. Between 13 and 16 February 2020, Mr Perera sent WhatsApp messages and an email to Ms Richards requesting her to bring the cheques to the office of IFSQ to be counter-signed. On 17 February 2020, Ms Richards sent her assistant with the cheques to the office of IFSQ. Thereupon the operational manager of IFSQ, Ms Souad Nasser, took the cheques and simply shredded them. Arising from these facts, attorneys instructed by Ms Richards wrote a letter to IFSQ on 9 March 2020 in terms whereof demand was made for the full amount outstanding under the Consultancy Agreement. Failing compliance with the demand, Ms Richards instituted proceedings against IFSQ and Mr Perera in this Court for payment, jointly and severally, of the outstanding capital sum of QAR 392,000.00 together with interest and costs.

14. The defence raised by the defendants in that case, that is IFSQ and Mr Perera, was in summary that:

a. The Consultancy Agreement was null and void. It was a sham, never intended by the parties to be valid and enforceable in its terms, but constituted a fictitious and simulated transaction.

b. The amount of QAR 471,000.00, which constituted the aggregate of the six-monthly payments contemplated in the Consultancy Agreement was the equivalent of the £100,000.00 personal loan to Mr Fewtrell which was always intended to be repaid by him and not by IFSQ.

15. In support of that defence, Mr Perera then testified in the Richards case and we quote from paragraph 13 of this Court's judgment in that case:

> *I [NTH Perera] hereby confirm that the consultancy agreement dated 26 December 2019 concluded between Mrs Aycan Richards and IFSQ, a Qatari company established under QFCRA Rules … represented by myself in my capacity as authorised signatory in IFSQ, was a simulated agreement and both parties had no intention to execute this agreement and the real intention of this agreement was to repay the personal loan of amount GBP100,000.00 granted from Mrs Aycan Richards to Mr Thomas Paul Fewtrell and since IFSQ was not a party nor a guarantee to this loan agreement the consultancy agreement was concluded to establish a legal justification to bind IFSQ to repay the loan amount and this was upon the request of Mrs Richards as the past shareholder in IFSQ.*

16. However, the defence did not succeed. This Court held in favour of Ms Richards. Its reason for doing so is encapsulated by paragraph 18 of the judgment dated 14 December 2020, which reads:

> *In this light, the fact that the loan was initially made to Mr Fewtrell personally is of no consequence. The uncontroverted position is that IFSQ was the ultimate beneficiary of the loan and, more importantly, that IFSQ deliberately undertook to repay the amount of the loan. As we understand the evidence it was never intended that repayment should be made by Mr Fewtrell. The intention was that, if the sale was implemented, the amount of the loan would be deducted from the purchase price for the shares. Conversely, if the sale fell through, it would be repaid by IFSQ. Initially the arrangement was that this repayment would be effect by means of the security cheque. But when the cheque was cancelled the parties effectively agreed that repayment would be brought about by implementation of the consultancy agreement.*

17. This brings us to the involvement of Mr Veiss, acting on behalf of the First Claimant, Amberberg. In this regard, it is common ground that negotiations started in November 2019 between Mr Veiss and the erstwhile shareholders of IFSQ, represented by Mr Perera, with a view to Mr Veiss or a company controlled by him acquiring the share capital in IFSQ. At the time, IFSQ was in dire need of a capital injection to meet the requirements of the QFCRA. To this end Amberberg made three capital contributions: QAR 340,000.00 on 26 November 2019; QAR 133,395.00 on 27 November 2019; and QAR 360,000.00 on 12 December 2019.

18. The evidence of the parties is contradictory on what happened next, and it has proved necessary for us to determine whose evidence on this contested matter we prefer. According to Mr Veiss' evidence he was concerned, before the first payment was made on 26 November 2019, to see the financial records of IFSQ. Hence, he looked at the audited financial statement for the financial year ending 2018 as well as the monthly financial reports that IFSQ was compelled to render to the QFCRA at the time because it was under enhanced supervision by that authority. It is common ground that none of these financial records referred to IFSQ's liability to Ms Richards in any way. Moreover, so Mr Veiss testified, Mr Perera made no mention of this liability in any of the face-to-face meetings they had in November 2019. On this basis, he said, he entered into the SPA which was dated 28 November 2019 and proceeded to make the substantial capital contributions which essentially represented the price at which he acquired the shares, while all the legal paperwork was being completed.

19. What happened thereafter, according to Mr Veiss, was essentially the following:

    a. On 12 December 2019, he received the SPA signed by all the sellers electronically. The document was forwarded to him in an email by Mr Perera. He then signed the same document electronically. He printed out the document in that form and handed a hard copy to Mr Perera in person so as to enable him to complete all the formalities required by the QFCRA. At that stage, he said, he still had no knowledge whatsoever of any liability of IFSQ to Ms Richards.

    b. On 15 December 2019, Mr Perera called him and reported that Ms Richards had tried to withdraw QAR 471,000.00 from the IFSQ

account. According to Mr Veiss, Mr Perera then told him that, in doing so, Ms Richards was committing a fraud and that he had been successful in preventing the withdrawal which Ms Richards had no right to make.

c. At the same time, Mr Perera told him that Ms Richards "*could throw a spanner in the works*" by defeating their attempts to obtain approval from the QFCRA for implementation of the SPA. Accordingly, Mr Perea told him, they needed to resolve the dispute with Ms Richards although her claim was truly against Mr Fewtrell personally and not against IFSQ. To that end, Mr Perera suggested the Consultancy Agreement which he conveyed to Mr Veiss in draft by email on 17 December 2019. The short response by Mr Veiss to this email was "*Sounds good to me for the time being*". By email on 22 December 2019 Mr Veiss made various suggestions in relation to the proposed Consultancy Agreement. According to Mr Veiss, he derived comfort from the fact that Mr Perera was willing to undertake to stand surety for the obligations of IFSQ under the Consultancy Agreement.

d. Had he, as representative of Amberberg, been aware of any claim by Ms Richards against IFSQ, so Mr Veiss said, Amberberg would not have provided any further fund transfers or proceeded with the purchase of shares in IFSQ until the issues regarding the potential third party liability had been resolved.

e. On 12 January 2020, so Mr Veiss further testified, both he and Mr Perera signed the SPA in "*wet ink*". As far as he was concerned, this was just a formality because the agreement had already reached

finality on 12 December 2019. As to the signature of Mr Ivinson on the SPA, Mr Veiss testified, he was told by Mr Perera that this a genuine signature and he had no reason to think otherwise.

f. When Ms Richards instituted proceedings against IFSQ and Mr Perera on the basis of the Consultancy Agreement in July 2020, Mr Veiss said, he was assured by Mr Perera that the agreement was a sham and a simulated transaction entered into with the sole purpose of facilitating repayment of Mr Fewtrell's personal debt to Ms Richards. As new owner of IFSQ, so Mr Veiss testified, he defended the action on that basis.

g. On 8 February 2021, Amberberg entered into an agreement to sell its shares in IFSQ for QAR 1,834.00, but that deal fell through, primarily because at the time the Richards' judgment remained outstanding and the bank account of IFSQ was frozen. The judgment in favour of Ms Richards was then satisfied on behalf of IFSQ in May 2021. Thereafter, Amberberg succeeded in selling its shares, again for a purchase price of QAR 1,843.00 on 18 August 2021.

20. Mr Perera's version of the relevant background facts is directly contradictory to that of Mr Veiss in many respects. With regard to the loan by Ms Richards in February 2019, Mr Perera's evidence was that IFSQ was struggling at the time to maintain the minimum capital requirements imposed by the QFCRA. Ms Richards, who was interested in buying the shares in IFSQ, then agreed to lend an amount of £100,000.00 to IFSQ. Because of urgency, the transaction was structured as a personal loan to Mr Fewtrell. Although the loan recorded that Mr Fewtrell was liable to repay the amount involved, the understanding between all the parties

concerned was that if the sale to Ms Richards proceeded, the amount of the loan would be deducted from the price of the shares. But if the sale did not proceed the amount would be repaid by IFSQ. "*In other words*", so Mr Perera said, "*the parties understood and agreed that the loan was ultimately IFSQ's liability*".

21. On 11 February 2019, the amount of the loan was transferred by Ms Richards into the account of Mr Fewtrell who in turn transferred the equivalent amount of QAR 417,000.00 directly into the account of IFSQ (this matter at least was common ground). At the time, Mr Perera testified, he was instructed by Mr Fewtrell (then IFSQ's chairman) to issue the Security Cheque to Ms Richards which he did. He was convinced, Mr Perera testified, that the loan and the Security Cheque should be disclosed in IFSQ's financial statement for 2019 and in the reports to the QFCRA. But, so Mr Perera testified, the then financial manager of IFSQ, Ms Emma Vitor, took the view and advised him that the loan and Security Cheque need not be disclosed because, notwithstanding his own understanding to the contrary, the loan was documented as a personal loan to Mr Fewtrell and the Security Cheque was no more than security for a transaction between Ms Richards and Mr Fewtrell. Nonetheless, Mr Perera said, he never had any doubt that the liability for the repayment of the loan rested on IFSQ.

22. With regard to the communications between him and Mr Veiss, Mr Perera *inter alia* testified as follows:

    a. On 17 November 2019, Mr Veiss was still employed by Nexus Financial Services WLL which was located in the same building as IFSQ. He coincidentally met Mr Veiss who expressed an interest in

purchasing shares in IFSQ. According to Mr Perera, Mr Veiss explained that he was about to sign up some "*high worth clients*", and that if he bought IFSQ's shares he would not have to share his commission with his then employers. According to Mr Perera, he told Mr Veiss that IFSQ was not meeting the net asset value requirements of the QFCRA; that it had no new business for months; and that IFSQ had a loan liability of £100,000.00. But, so Mr Perera testified, this did not seem to bother Mr Veiss.

b. On 20 November 2019, Mr Perera said that he again met Mr Veiss. On that occasion he provided him with several documents, including the Loan Agreement, the Security Cheque and a copy of the IFSQ balance sheet as at 29 October 2019. At the meeting, Mr Perera testified, he disclosed the background of the loan and the Security Cheque to Mr Veiss and explained to him that IFSQ was liable to Ms Richards for repayment of the loan, but that the Security Cheque could not be relied upon by her because it was signed by one signatory only, instead of two. He also explained to Mr Veiss that the loan was not reflected in the financial records of IFSQ prepared in 2019 because of the view held by Ms Vitor that it was not necessary to do so.

c. Thereafter, he had several meetings with Mr Veiss at a restaurant called "Jones the Grocer" in the Gate Mall, Doha, during November 2019. During these meetings, they discussed Amberberg's capital contributions to IFSQ and made some minor amendments to a template share purchase agreement based on the one concluded with Ms Richards. At one of these meetings, which occurred on 25 November 2019, Mr Perera claims that he showed Mr Veiss the

email that he received from Ms Richards earlier that day in which she had threatened legal action against Mr Fewtrell and/or IFSQ. Mr Veiss, so Mr Perera testified, was dismissive of the threat, based on what he described as his "*connections in Doha*".

d. In December 2019, after he and Mr Veiss had agreed upon the terms of the SPA, Mr Perera testified, he sent the document to Mr Fewtrell to co-ordinate the signing by the other shareholders. On 12 December 2019, he received a copy of the signature page containing the signature of all the parties, except Mr Veiss and himself. On the same day he affixed his electronic signature to the document and emailed a copy to Mr Veiss. He did not on that day or thereafter receive any signed copy from Mr Veiss. Nor was he ever told that Mr Veiss had signed the agreement. As far as he was concerned that only happened on 12 January 2020.

e. On 15 December 2019, Ms Richards deposited the Security Cheque and the bank credited her account. When Ms Richards told him that she had done so, Mr Perera immediately spoke to the bank and told them that Ms Richards was no longer an authorised signatory whereafter both the credit to Ms Richards account and the cheque itself were cancelled.

f. On the same day, so Mr Perera testified, he told Mr Veiss what had happened. Mr Veiss, well knowing that the amount of the cheque was owing to Ms Richards by IFSQ, then said that they, i.e. Mr Veiss and Mr Perera, must find a solution to prevent Ms Richards from derailing their transaction. The following day, Mr Veiss indicated that although Amberberg was not in a position to advance the

amount of the loan to IFSQ at that stage, he was expecting commission from high net-worth clients and would therefore be able to facilitate the discharge of IFSQ's liability to Ms Richards in instalments. Mr Veiss then authorised him to discuss a repayment plan with Ms Richards on that basis which he did.

g. On 17 December 2019, so Mr Perera further testified, he had a meeting with Ms Richards during which she agreed to accept repayment of the amount owing to her by instalments. She was however not prepared to accept a series of post-dated cheques only, but insisted on a signed agreement securing payment. That is how he and Ms Richards came up with the Consultancy Agreement. He emailed Mr Veiss and informed him about the outcome of these discussions to which Mr Veiss responded, "*sounds good to me for the time being*".

h. After the terms of the Consultancy Agreement were agreed with Ms Richards, he and Mr Veiss discussed the situation and concluded that IFSQ's liability under the Loan Agreement was extinguished and replaced by a liability under the Consultancy Agreement. They were also satisfied that because the Consultancy Agreement did not create an immediately owing obligation, it did not affect IFSQ's net asset value, and on that basis the Consultancy Agreement was finalised.

i. On 12 January 2020, both he and Mr Veiss added their "*wet signatures*" to the SPA, and on 6 February 2020 the transfer of shares from the sellers to Amberberg was completed, thereby completing the transaction.

j. On 15 January 2020, the first of the six post-dated cheques under the Consultancy Agreement was presented for payment by Ms Richards and the cheque was honoured by the bank.

k. But at a meeting between him, Mr Veiss and Ms Souad Nassar, the operations manager of IFSQ at the time, Ms Nassar took the view that the Consultancy Agreement was not binding and enforceable against IFSQ. According to Mr Perera, he tried, however, to persuade Ms Nassar that she was wrong, and he thought that he had been successful in doing so. Ms Nassar then asked him to request Ms Richards to bring the unpaid post-dated cheques to IFSQ's office so they could be counter-signed, which he did. On 17 February 2020, he heard from Ms Richards' assistant that Ms Nassar had shredded the cheques. This led to Ms Richards' instituting action against IFSQ and himself as the guarantor.

23. In his evidence, Mr Fewtrell confirmed that although the Loan Agreement with Ms Richards was entered into by him personally, it was always intended that IFSQ would be responsible for repayment of the loan. As to the SPA with Mr Veiss, Mr Fewtrell testified that he was never involved in the preceding negotiations. Those, he said, were conducted by Mr Perera from whom he received regular updates as to what was going on. Inter alia, he was informed by Mr Perera that he had told Mr Veiss about IFSQ's liability to Ms Richards under the Loan Agreement and by virtue of the Security Cheque. On 27 November 2019 Mr Veiss telephoned him. According to Mr Fewtrell he then had a full and frank discussion with Mr Veiss during which he told him:

a. about the loan of £100,000.00 by Ms Richards for which IFSQ was liable;

b. that Ms Richards was in possession of a Security Cheque in the same amount in her favour; and

c. that on 25 November 2019, Ms Richards had threatened legal action against him and IFSQ for repayment of the loan. After that conversation, Mr Fewtrell said, he never spoke to Mr Veiss again.

24. Sometime during December 2019, so Mr Fewtrell further testified, Mr Perera asked him to co-ordinate with the sellers so as to obtain their signatures to the SPA. Accordingly, he obtained the signatures of all the sellers (except for that of Mr Perera) in "*wet ink*" and sent a copy of the signed signature page to Mr Perera on 12 December 2019.

25. It is important to note, which in our view goes to overall matters of credibility, that with reference to this statement, the Fourth Defendant, Mr Ivinson, denied that he ever signed the SPA. In fact, he testified, he never saw the document until it was shown to him in these proceedings.

The Fourth Defendant's liability

26. We propose to deal with the Fourth Defendant's liability first because it is confined to a discrete dispute. He, of course, could only bear any liability if, contrary to his assertions, he was a party to the SPA. As earlier narrated, Mr Ivinson was brought into this action by the Claimants sometime after 27 March 2022, because they understood from the signatures page of the SPA that he was a guarantor of it. However, the factual aspect of the

dispute arises from Mr Fewtrell's testimony that Mr Ivinson signed the SPA document while Mr Ivinson contends that he did not. Mr Fewtrell's evidence as to when and where the signing took place was vague in the extreme. Although he said that he remembered it happened in London, he thought it happened in a hotel but he could not remember which hotel. He remembered it occurred on 12 December 2019, but he could not remember what time. His recollection was that it was very early in the morning, but it could have been later.

27. Against that, Mr Ivinson's version is clearly supported by the inherent probabilities. His uncontroverted evidence is that in December 2019, he was with his in-laws in Yorkshire. Hence, to be in London on the morning of 12 December 2019, as Mr Fewtrell alleged him to be, he would have had to have left very very early in the morning in order to travel to London, at his own expense, to enter into a transaction which would be of no benefit to him whatsoever. On the contrary, while he would receive nothing for his shares, his position would change from one of having no liability for the debts of the company, to having taken on a liability by giving personal warranties and undertakings with reference to matters about which he had no knowledge and which could potentially have led to personal liability for substantial amounts of money. In addition, it is common ground that the relationship between Mr Fewtrell and Mr Ivinson had by then deteriorated to a stage where it had broken down. What Mr Fewtrell's proposal therefore amounts to is that, despite his scanty recollection of the details of how, when and where this happened, Mr Ivinson must have travelled to London at his own expense and inconvenience to enter into a transaction which could only be to his detriment, solely to do Mr Fewtrell a favour, despite their poor relationship. We agree with the contention by Mr Ivinson that it is extremely unlikely that he would have acted in this

way, and we find that he was telling us the truth when he said that he did not do so. We found Mr Ivinson to be an impressive witness, who gave his evidence in a measured and careful way. We were not favourably impressed by Mr Fewtrell's account, the substance of which was volunteered by him only in the course of his cross-examination on 19 October 2022, and without any supporting documents or detail, notwithstanding that Mr Ivinson's defence denying that he had signed the SPA had been filed on 22 May 2022. We do not know how Mr Ivinson's signature came to be on the SPA, but we accept that he did not sign it, and did not give authority for anyone to sign it on his behalf.

28. For these reasons we have no difficulty in finding that Mr Ivinson's version, that he never entered into the SPA, is to be preferred. This means that the Claimants' claim against him is bound to fail. As to the costs resulting from these claims, we hold the view that, because Mr Fewtrell's untruthfulness was contributory to the institution of the claim against Mr Ivinson, he should be held liable, jointly and severally with the Claimants for the costs that may have been incurred by Mr Ivinson in defending this claim. During the proceedings the question arose as to who bears the onus with regard to this dispute. In fact, that issue was specifically reserved for later determination in paragraph 3 of the Directions dated 30 June 2022. It arose from the Claimants' contention that because Mr Ivinson alleges that his signature on the SPA is a forgery, he bears the onus to establish that allegation. That is wrong. As we see it, the onus must be on the Claimants, who seek to hold Mr Ivinson liable in terms of the SPA, to show that notwithstanding his denial that he signed the document, he in fact did so. But, be that as it may, because of our factual finding that the evidence of Mr Ivinson is to be preferred to that of Mr Fewtrell, the question of onus does not arise. However, because the Claimants' misconception about the

onus also contributed to the institution of the claim against Mr Ivinson, we hold that the claimants must also take responsibility, jointly and severally with Mr Fewtrell, for the costs that Mr Ivinson may have incurred.

The claim as between the First Claimant and the First to Third Defendants

29. As to Amberberg's claim against Mr Fewtrell, Mr Perera and Ms Kidd (to whom we shall from now on refer to collectively as the "**Defendants**"), we find that the fatal flaw in the Defence lies in clause 9.3.2 of the SPA. For ease of reference, we shall repeat the wording of the clause. It reads:

> *The Sellers warrant that [as at the date of the agreement and the closing date] the Company does not have pending financial, legal or regulatory claims … other than those disclosed and acknowledged by the purchaser in writing.*

30. With reference to the wording of the clause it is quite clear – and indeed was not disputed – that Ms Richards' claim against IFSQ based on the Loan Agreement and the Security Cheque falls within the ambit of "*financial and legal claims*" as contemplated in the clause. Likewise, it cannot in our view be disputed that her claim against IFSQ was in existence as at the date of the SPA, which was 28 November 2019. Accordingly, the Defendants' argument, that as at the "closing date" this liability had been replaced and extinguished by the Consultancy Agreement, would in our view be of no consequence, even if found to be valid. We say that because the warranty as to disclosure of claims against IFSQ was given with reference to claims existing both on the date of the agreement, whenever that might have been, and the Closing Date, which was defined in it, and was 28 November 2019.

31. In all the written and oral evidence presented to us, there is no evidence of any disclosure, nor is there any acknowledgement *in writing* by Amberberg of any disclosure to it of Ms Richards' claim. Indeed, the Defendants do not contend that any such disclosure in writing ever happened. The Defendants' only answer to Amberberg's claim against them in respect of their non-compliance with clause 9.3.2 was that, as a matter of law, Amberberg was precluded from relying on a warranty of this kind if, as they contend Amberberg had, it had actual knowledge at the time of the agreement that, as a fact, the warranty was not true. In support of this defence, the Defendants relied on English authorities such as *Eurocopy plc v Teesdale and Others* [1992] BCLC 1067 (CA); *Infiniteland Ltd and Another v Artisan Contracting Limited and Another* [2005] EWCA Civ758 (CA); and *Equitix EEEF Biomass 2 Ltd v Fox and Others* [2021] EWHC 2531 (TCC).

32. However, the contractual provision involved in each of these authorities was in the form – or substantially in the form – of what was held in *Infiniteland* (paragraph 80) to be a standard clause in agreements of this kind. In essence, in each case, the clause relied upon provided for a warranty by the seller to the purchaser that, save as set out in a so-called disclosure letter, the company had no liabilities that might reasonably have been expected to influence the seller to enter into the agreement. The question that arose in those cases is whether a provision of that kind would preclude a purchaser from relying on a liability not disclosed in the disclosure letter but of which it had actual knowledge before the sale. The short answer given to that question, as formulated, e.g. in *Equitrix* (paragraph 311) was that, "*There is no liability for breach of warranty where the facts and circumstances giving rise to the claim are known to [the purchaser]*".

33. But as we see it, the wording of clause 9.3.2 distinguishes itself from the provisions of those standard clauses. What those standard clauses warrant or record is essentially that all relevant facts have been disclosed. It stands to reason that in that event a party would not be allowed to rely on such record if it knew that the recorded "fact" was wrong. What clause 9.3.2 amounts to, as we see it, is something different. It is an agreement in specific terms that any knowledge on the part of the purchaser other than that specifically disclosed and recorded by the sellers in writing, and acknowledged by the purchaser in writing, *cannot* be relied upon and will therefore be both irrelevant and inadmissible in evidence. The clear purpose of the clause in this form is precisely to avoid a dispute of fact such as the one that arose in this case as to whether or not the facts relied upon by the purchaser had been disclosed, by rendering irrelevant any disclosures save those specified in the clause. This clause is akin to the standard non-variation clause in contracts which precludes any reliance on an amendment of the contract which is not recorded in writing. Evidence of an amendment by oral agreement is thereby rendered irrelevant and therefore inadmissible. The purpose of such non-variation clause as acknowledged by authority is that it is to avoid disputes about whether or not there was in fact an oral agreement to amendment. This purpose has also been acknowledged by authority as being a legitimate one. In *Eurocopy plc*, Nourse LJ recognised (at page 1073b) that the terms of the contract might preclude the sellers from relying on a particular matter.

34. In this light, the answer to the question in paragraph 2(b) of the Directions of 30 June 2022 is therefore, in our view, that the First, Second and Third Defendants were in breach of clause 9.3.2 of the SPA.

35. It follows that the other issues regarding the liability of the Defendants to Amberberg become inconsequential. As they were fully argued before us, we have summarised our judgment on the other issues of substance as well. However, in the circumstances, we propose to do so less comprehensively than we would otherwise have done. Apart from clause 9.3.2, Amberberg also relied on clause 9.3.1 of the SPA. For ease of reference, we repeat the wording of the clause:

> *The Sellers warrant that the Audited Financial Statements and the draft Financial Statements for FY 2018 attached in schedule 2 are true and accurate and once the audited financial statements for FY 2018 are complete, the Seller shall provide a copy of the same to the purchaser promptly and no later than the Closing.*

36. It is common ground that IFSQ's liability to Ms Richards was never recorded in any of its financial statements or reports. Insofar as the audited financial statements for the financial year 2018 is concerned, the absence of such recording is not unexpected, since the 2018 financial year ended on 31 December 2018 while the Richards transaction was only entered into in February 2019. The reference to "*draft Financial Statements for FY 2018*" in clause 9.3.1 is self-evidently a nonsense. The contention on behalf of Amberberg is that it must be understood as a reference to "*Draft Financial Statements for FY 2019*". But, the uncontroverted evidence of Mr Perera, is that there were no draft financial statements for 2019 available in November 2019. This is unsurprising as it would not be expected that the financial statements for a particular year would be drafted until after the year end. In addition, Amberberg did not seek any rectification of clause 9.3.1. It is true that IFSQ's monthly financial reports to the QFCRA for certain of the months of 2019 did exist and were made

available to Mr Veiss prior to the conclusion of the SPA, and that these made no reference to Ms Richards' loan. But, the contents of these reports are not the subject matter of the warranty in clause 9.3.1. Hence, we find that the alleged breach of clause 9.3.1 had not been established. The inapplicability of clause 9.3.1 may be the result of the use as a template of an earlier agreement without due attention being given to changed circumstances, but that cannot justify rewriting the SPA.

37. Amberberg also relied on an alleged breach by the Defendants of clause 4.4 of the SPA which reads in relevant part:

> *…The Sellers further undertake that as of Closing the Company shall not have any third Party … or bank debt owed to… any person, other than those shown in the Audited Financial Statements and draft Audited Financial Statements in Schedule 2.*

But, Schedule 2 refers to "*Audited Financial Statements for FY 2016 to 2018*" only. Since the debt to Ms Richards was incurred after the end of the 2018 financial year, no breach of this clause had been established by the existence of that debt.

38. Then there is the factual dispute as to whether or not Mr Veiss was told about the loan and the Security Cheque prior to the conclusion of the SPA. Unfortunately, the nature of the dispute leaves no room for mistake. Either Mr Veiss or Mr Perera and, to a lesser extent, Mr Fewtrell, was deliberately untruthful on this matter. On the narrow issue as to what and when Mr Veiss was told about the loan, there appear to be no inherent probabilities in favour of either version. A superficial approach may indicate that it is unlikely that Mr Veiss would have bought the shares if he knew about the

additional liability of IFSQ. But on Mr Perera's version, the reasons why Mr Veiss would do so seem to be plausible. Then there are the transcripts of the WhatsApp message exchange between the two of them on 15 December 2019 which seem to indicate that by then Mr Veiss was not surprised to hear about Ms Richards' claims and was not unduly perturbed by them. As to their general credibility, both these witnesses were criticised on good grounds in argument. But what counts heavily against Mr Perera in this respect is the direct and irreconcilable conflict between the version of events which he gave in this case, and the evidence that he gave in the Richards' case, in both instances under an affirmation of truth. In that case, he testified that Ms Richards' loan was indeed a personal loan to Mr Fewtrell, which obviously accords with what Mr Veiss says he told him. In this case, by contrast, he testified that he knew from the start and was never in doubt that IFSQ was liable for repayment of the loan. Both cannot be true. His explanation that in the Richards case he just, "*followed the line of defence*" suggested by Mr Veiss and his lawyer came across as no more than a lame excuse for a deliberate untruth. It certainly meant that we were not convinced that he would feel himself compelled to say what was true rather than what suited the "*line of defence*" in any particular case.

39. A further instance where Mr Perera was in our view untruthful relates to the factual dispute between him and Ms Vitor. Mr Perera's version in this regard is that he wanted to reflect the Richards loan as a liability in the financial statements of IFSQ during 2019 but that he was told by Ms Vitor not to do so. Ms Vitor's version, on the other hand, is that this never happened and that she would never have suggested this if she had been informed that in truth the loan was a loan to IFSQ, and not Mr Fewtrell personally. Again, there is no room for mistake. Having regard to the comparative performances of the two witnesses we are satisfied that it is

Ms Vitor who is telling the truth. Moreover, her version gained support from the inherent probabilities. It is clear that if the loan was to be reflected as a liability in the financial statements of IFSQ, the company would probably fail to meet the net asset value requirements of the QFCRA. This would have been of far greater concern to Mr Perera, who was chief executive officer and a shareholder of the company, than to Ms Vitor who was only an employee. In addition, Mr Perera started his career with the international firm of auditors, Ernst & Young, in 1997, and has been involved in financial management since then. The notion that he would be dictated by Ms Vitor to do something against his will and better judgement is inherently unlikely. Finally, while Ms Vitor has no interest in the outcome of this case, Mr Perera is directly involved.

40. The third aspect of Mr Perera's evidence we find unsatisfactory concerns Mr Veiss. It turns on the dispute between them as to whether or not Mr Veiss signed the SPA on 12 December 2019. Mr Veiss said he did and that he handed a hard copy to Mr Perera. Mr Perera says this did not happen. As it turned out, the resolution of the dispute thus arising will make no difference to the outcome. Since the date of the SPA was determined by express agreement as 28 November 2019, it is of no consequence when the document was actually signed. But as we see it, the ensuing factual dispute eventually impacted adversely on the credibility of Mr Perera. The dispute arose when the Defendants alleged in their amended pleading that the SPA was concluded on 12 January 2020 because it was signed by Mr Veiss on behalf of the purchaser on that date. The Claimants' amended reply then alleged that Mr Veiss signed the SPA on 12 December 2019 and that he provided a signed hard copy to Mr Perera on that day.

41. In confirmation of this allegation in the reply, Mr Veiss annexed a signature page of the SPA to his witness statement which reflects, on the face of it, that it was signed by all the parties, including Mr Perera and Mr Veiss on 12 December 2019. In response to this, the Defendants alleged that the document is a forgery created for the purposes of this litigation. Two reasons were advance for this bold allegation. Firstly, that if the document relied upon was genuine, it would have been produced much earlier, and secondly, that it is indicated by the metadata of the document that it came into existence on a later date. But the Claimants' case was right from the start that the date of the agreement was 28 November 2019 and that the date of signature does not matter. This renders the first reason unpersuasive. As to the second reason, Mr Veiss explained that the metadata relied upon by the Defendant does not reflect the date when the document was first created but the date on which the document was scanned, which was 30 April 2022. Since this explanation has not been gainsaid, the serious allegation of forgery has not been established.

42. We accept that Mr Perera could have forgotten that Mr Veiss had signed the document on 12 December 2019. But he preferred to adopt what counsel for the Claimants referred to as, "*the nuclear option*". He was prepared to make the serious allegation of forgery to support his case without any real grounds for this allegation and while he must have realised that in the circumstances that Mr Veiss' version could very well be true.

43. The contribution of Mr Fewtrell's evidence to the outcome of the dispute between the Claimant and the Defendants is of limited import. It is confined to the alleged telephone conversation between him and Mr Veiss on 27 November 2019 which Mr Veiss says never happened. Again, within the four corners of that narrow dispute the probabilities can go either way.

But we find his evidence in general unsatisfactory. In particular, we find his positive allegation that Mr Ivinson signed the contract in his presence to be blatantly untrue. While we obviously do not subscribe to the thesis of *falsus in uno falsus in omnibus* (one falsehood means that all must be false), both Mr Perera and Mr Fewtrell have demonstrated in our view that they are quite prepared to be blatantly untruthful so as to ward off a claim against them. And in the light of the general unreliability of their version, we find that their allegations regarding the disclosure of IFSQ's liability under the Loan Agreement to Mr Veiss, must be rejected. Thus, had the alleged oral communications of disclosure been relevant (which we hold that they were not), we would have preferred the testimony that there was no disclosure. However, as the contractual requirement that any claims be disclosed to and acknowledged by the purchaser in writing was manifestly not satisfied, we find for the First Claimant in its claim against the First, Second and Third Defendants on that basis.

The Second Claimant's claim

44. This brings us to IFSQ's claim against the Defendants. According to the amended statement of claim, this claim rests on two bases, namely (a) breach of clause 10 of the SPA, and (b) breach of directors' duties by Mr Perera and Mr Fewtrell imposed by article 55 of the Companies Regulations 2005.

45. Clause 10 of the SPA provides:

> *10.1 The Sellers shall be jointly and severally liable for any Claims made against the Company at any time in the future and of any nature relating to the acts or omissions of the Company, its*

Directors or its employees prior to the Closing, including the costs of defence of such Claims.

46. IFSQ is not a party to the SPA. Yet, despite the general principle of privity in contract, most legal systems recognise the phenomenon of a provision in a contract conferring benefits on a stranger to the contract. But a provision of this kind remains the exception not the rule. Whether a particular provision confers such a third-party benefit is a matter of interpretation.

47. Clause 10.1 makes no reference to claims by the company. It is confined to claims against the company made post-closing but arising from actions on behalf of the company prior to closing. From the company's perspective this is not a new liability. Despite the change in ownership, the company remains the same entity. What the clause does is to render the sellers liable to the third-party claimant, jointly and severally with the company and not to the company. It is there for the benefit of the other contracting party, the purchaser, since the company (under its new ownership) will have remedies against the sellers by virtue of their joint and several liability. It protects the purchaser against claims not covered by the warranties in clause 9.3, for instance because the claim was unknown to the sellers at the time of closing, or because it arose after closing, albeit from actions prior to closing. Thus understood, the claim by IFSQ under clause 10.1 is based on a misinterpretation of the clause.

48. But, in our view there is another reason why IFSQ's claim based on clause 10.1 of the SPA cannot succeed. Although the phrase "acts or omission" does not have an expressed qualitative character, it must in the context envisage wrongfulness of some kind. We say that because any other

interpretation would render the sellers liable post-closing for the salaries of employees under pre-closing contract and for rental under a pre-closing contract of lease. We accept, for the sake of argument, that breach of contract would constitute such wrongful act. The only breach of contract IFSQ could possibly rely on in the present context is the repudiation of the Consultancy Agreement by its directors or employees on its behalf prior to closing. But on the evidence, repudiation of the Consultancy Agreement occurred when Ms Nasser shredded the post-dated cheques providing for payment under the agreement. According to Mr Perera's testimony, that happened on 17 February 2020, which was two days after the closing date.

49. The question whether the Defendants' breach of clause 9.3.2 caused any relevant loss to Amberberg falls outside the ambit of the issues ringfenced for determination at this initial stage by the Directions of 30 June 2022. So does that part of IFSQ's claim which relies on the allegation that Mr Perera and Mr Fewtrell acted in breach of their duties under article 55 of the Companies Regulations 2005. But, because we find this claim unsustainable in any way, we shall deal with it briefly. As we see it, the only provisions of Article 55 which may be of relevance are.

> *55(2) A director shall:*
>
> *(A)Act honestly and in good faith with a view to the best interest of the LLC;*
> *(B)…*
> *(C) Exercise the care, diligence and skill that a reasonably prudent person with the knowledge, skill and experience which may reasonably be expected of a director in his position*

and any additional knowledge, skill and experience which he has would exercise in comparable circumstances.

50. Although the duty in article 55(2)(A) is referred to in the written submissions on behalf of the Claimants, there is nothing spelt out there in respect of lack of honesty or good faith. The only allegation relied on in the written submissions is that Mr Perera's decision, "*not to disclose by way of the FY2019 accounts the existence of the Loan liability to Ms Richards*" constituted "*a failure to exercise care, diligence and skill*". But, it was not put to Mr Perera in cross-examination that by doing so he acted dishonestly or in bad faith and not in the interests of IFSQ. As to article 55(2)(C), the undisputed background is that in early 2019, IFSQ was in serious financial difficulty. It hoped to be rescued by Ms Richards investing in it. The process of her acquiring shares was time-consuming and the situation urgent. A view was taken that the requisite capital funding could be more quickly be secured by way of a loan formally made to Mr Fewtrell with the side agreement that it would be repaid by IFSQ if the need arose to do so.

51. There may have been some risk in the use of this device if the QFCRA came to learn of it, by due reporting or otherwise. It might also have resulted in further restrictions being imposed by it on IFSQ's ability to trade. But none of this happened. IFSQ continued to trade on the same basis as before. No fines, as far as we were told, were imposed on the company for improper accounting or for failure to report. In these circumstances we cannot see that, at the time of the loan, there was any failure of reasonable care, diligence or skill on the part of the Defendants qua directors as regards IFSQ or that any loss was sustained as a result of such failure.

Rather, the company continued to have the opportunity to trade which it may otherwise have lost.

52. As to the reliance on Mr Perera's alleged failure to disclose the loan "*by way of the FY2019 accounts*", the first answer is that no FY 2019 accounts were in existence at any relevant stage. The second answer is that while any failure to disclose could constitute the breach of a contractual obligation owed to Amberberg, it did not in itself constitute a breach of duty towards IFSQ imposed by article 55. Moreover, there is no indication that Mr Perera's conduct complained of caused any loss to IFSQ. If (as has previously been decided) IFSQ was the true debtor in the loan, it was no worse off by being required to pay under the Richards judgment the principal sum due under the Consultancy Agreement. In so far as IFSQ sustained liability for interest and costs in that judgment, it was solely caused by the new owner's ill-founded resistance to her claim. In the result we hold that IFSQ's based on article 55 of the Companies Regulations 2005 is also bound to fail.

Costs

53. What remains are issues of cost. With regard to the costs (possibly) incurred by the Fourth Defendant we have already held that these should be borne by the Claimants and the First Defendant jointly and severally. For the rest, we believe that, in accordance with the general approach in this regard, costs should follow the event. Since the First Claimant has achieved substantial success in these initial proceedings against the First, Second and Third Defendants, we therefore propose to direct that these Defendants are liable for its costs, jointly and severally. The Second Claimant's claim, on the other hand, is to be dismissed and hence we hold

that it should be held liable for the costs incurred by the Defendants in defending that claim. It is true that the bulk of the proceedings turned on the First Claimant's claim, but that does not detract from the principle. Rather it could be a matter to be taken into account by the Registrar in the exercise of his discretion in determining the quantum of costs if not agreed upon between the parties.

By the Court,

[signed]

Justice Fritz Brand

A signed copy of this Judgment has been filed with the Registry.

Representation

The Claimants were represented by Mr Paul Fisher of 4 New Square (London, United Kingdom), instructed by Mr Alexander Whyatt of Eversheds Sutherland (Doha).

The First, Second and Third Defendants were represented by Mr Thomas Williams of Sultan Al-Abdulla & Partners (Doha).

The Fourth Defendant was self-represented.

DIGITALLY SIGNED AND VERIFIED
موقّع رقمياً ومعتمد