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: [2023] QIC (F) 41

IN THE QATAR FINANCIAL CENTRE

CIVIL AND COMMERCIAL COURT

FIRST INSTANCE CIRCUIT

Date: 7 September 2023

CASE NO: CTFIC0014/2021

AMBERBERG LIMITED

1st Claimant

~~**PRIME FINANCIAL SOLUTIONS LLC**~~

~~**2nd Claimant**~~

v

THOMAS FEWTRELL

1st Defendant

NIGEL PERERA

2nd Defendant

LOUISE KIDD

3rd Defendant

~~**CHRISTOPHER IVINSON**~~

~~**4th Defendant**~~

JUDGMENT

Before:

Justice Lord Hamilton

Justice Fritz Brand

Justice Helen Mountfield KC

Order

1. The First, Second and Third Defendants are jointly and severally liable to the First Claimant in the sum of QAR 5 as nominal damages for breach of warranty under clause 9.3.2 of the Share Purchase Agreement.

2. Costs to stand over for later determination

Judgment

Introduction

1. On 28 December 2022, this Court issued a judgment in which it held that the First to Third Defendants in this action were in breach of their warranty to the First Claimant. The Second Claimant's claims against the Defendants were not upheld ([2022] QIC (F) 34). The Fourth Defendant (who remains a named party to these proceedings, but merely as a formality because he was named in the initial pleadings) was found not to be liable to either of the Claimants.

2. The issue of liability was determined by the judgment of 28 December 2022, and a hearing to assess quantum of damages was held on 2 August 2023. The sole question before us at the quantum hearing was what loss, if any, was caused to the First Claimant as a result of the established breach of warranty by the First to Third Defendants, and the quantum of such loss.

3. The First Claimant's claim is for damages on the conventional measure, i.e. those which would place it in the position it would have been in had the warranty, which proved to be false, been true. An application by the First Claimant for a freezing order was withdrawn before the hearing took place.

4. We had decided to hold an in-person hearing on 2 August 2023 so that we could properly and conveniently ask questions of the witnesses as required to address the issues on quantum. However, before the hearing took place, the First to Third Defendants indicated that they did not intend to participate in the hearing on 2 August 2023. Their position, indicated in a letter to the Court from the First Defendant, was that they have no assets against which any judgment sum could be claimed, and could not afford legal representation. Other than that, they did not lodge any evidence of fact, or expert evidence, and so they have advanced no positive amended defence before us.

5. In those circumstances, the First Claimant continued to have the burden of proving its entitlement to recover for loss arising from the First to Third Defendants' established breach of contract. However, we had no positive case from the First to Third Defendants to rebut it, and the First Claimant's case was not challenged or tested through cross-examination. At the hearing the Judges, without objection from the First Claimant, asked certain questions of its witnesses. On 31 July 2023, counsel for the Claimant lodged a note with the Court in which he made reference to a recent decision of the Court of Appeal of England and Wales which he submitted might assist us on the approach to assessing damages. He also, very properly, drew attention to the submission on this which the First to Third Defendants might have made had they been represented.

6. Mr Veiss made an application to give his evidence remotely via video link because of a pressing family engagement abroad, and we gave him permission to do so on 23 July 2023.

Background

7. The factual basis to this quantum assessment is set out in the judgment of 28 December 2022. The First Claimant submits that during the course of 2019, it "*made a payment of QAR 1,561,209 and £1 UK sterling to acquire shares in the Second Claimant*", but that, unknown to either the First Claimant or its Director, Mr Rudolf Veiss, prior to the purchase of these shares, the Second Claimant had incurred a liability to a Ms Aycan

Richards in the sum of £100,000 (the '**Richards Liability**') which, after litigation, became a judgment debt (the '**Richards Judgment**').

8. Mr Veiss told us and we accept that, on or around 9 December 2019, the Second Defendant, Mr Perera, and Mr Veiss, the Director of the First Claimant, agreed a business plan which considered projected income for the Second Claimant over the next three-year period (the '**Business Plan**') on the basis of the investment by the First Claimant. Since it was not rebutted in any way by the First to Third Defendants, we are also prepared to accept the evidence of Mr Veiss that although the Business Plan related to a period of three years from the date of purchase of the First Claimant's shareholding, the intention was for its investment in the Second Claimant to be for a minimum of 10 to 15 years.

9. However, that shared understanding and expectation formed no part of the Share Purchase Agreement for the Second Claimant (the '**SPA**') which was concluded between the First Claimant and (inter alios) the First to Third Defendants on 12 December 2019, and which was expressed (in clause 23) to constitute the whole agreement between the parties to it.

10. The SPA included the following warranty:

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

11. In our judgment of 28 December 2022, this Court concluded that there had been a breach of this warranty on the fairly narrow basis that neither Mr Veiss nor anyone else on behalf of the First Claimant had acknowledged in writing any knowledge of any financial, legal or regulatory claims against the Second Claimant; but, that in fact, the Second Claimant did have a pending claim against it by Ms Richards. We did not need, therefore, to address precisely what Mr Veiss did or did not know or understand about the existence of the Richards Liability. However, having set out a series of inconsistencies in Mr Perera's evidence, we expressed the view that, had we needed to determine that issue for the purposes of establishing liability, we would have preferred the evidence of Mr Veiss to

the effect that he was not aware that the First Claimant itself had a liability to Ms Richards at the time when negotiations were happening, and when the First Claimant entered the SPA. We determined that clause 9.3.2 of the SPA was breached by the First to Third Defendants, because (at paragraph 43):

> *…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.*

12. The First Claimant's case before us is that following the purchase of the shares in the Second Claimant, the First Claimant and Mr Veiss became aware of the Second Claimant's liability to Ms Richards (£100,000, or about QAR 470,000). This liability, which was not properly recorded on the books of the Second Claimant, was at least one thing which, if declared, would have placed the Second Claimant in breach of its regulatory obligations concerning Capital Availability Requirements.

13. The First Claimant also submits that the Second Claimant lost much of its value as a result of this breach, because the liability to Ms Richards took the Second Claimant below the Net Asset Value requirements of the Qatar Financial Centre Regulatory Authority ('**QFCRA**'), which effectively stopped the Second Claimant from being able to operate as a going concern. There were two attempts by the First Claimant to sell the Second Claimant which both fell through.

14. On 6 June 2021, the First Claimant sold the shares in the Second Claimant to a Ms Mahmoud for QAR 1,834. The First Claimant's director, Mr Veiss, supported by an expert witness, Mr John Wilkinson whom the First Claimant had appointed as an independent quantum expert, asserted that this was the best available information as to the true market value of the shares in the Second Claimant, which was so devalued as to have become virtually worthless as a result of the facts including the Richards Liability and the Richards Judgment which were warranted not to have existed; and, as a result of the regulatory consequences of those matters, for the ability of the Second Claimant to operate consistently with regulatory requirements.

15. Paragraphs 24 to 28 of the third witness statement lodged on behalf of Mr Veiss on 20 March 2023 set out how, he says, the Richards Liability and the eventuating Richards

Judgment ultimately led to the diminution in the value of the First Claimant's shares in the Second Claimant, and also led to the loss of the business and prospects envisaged within the Business Plan which had accompanied the SPA.

The First Claimant's Case

16. We heard submissions from Counsel for the First Claimant on quantum, received Mr Wilkinson's report dated 20 March 2023, and a third witness statement of Mr Veiss, also dated 20 March 2023. We heard evidence from Mr Veiss, via video link, and had the opportunity to put questions to him and to Mr Wilkinson who appeared in person.

17. The First Claimant's case is that, had the warranty in clause 9.3.2 been true, the First Claimant's shares in the Second Claimant would not have been devalued by virtue of the existence of the Richards Liability, the Richards Judgment, and the attendant consequences of these events.

18. Since, as we have determined, the warranty was not true, the First Claimant asserts that it has suffered the following losses:

    i. **diminution in the value of its shares in the Second Claimant:** it is said that the First Claimant is entitled to the recovery of the diminution in the value of its shares in the sum of QAR 1,559,375, being the difference between the total price the First Claimant paid to acquire all the shares in the Second Claimant, including capital injections before, and to some extent after, the SPA was signed on the one hand, and the resale price to Ms Mahmoud in June 2021, on the other; or

    ii. **lost dividends:** it is said that, but for the Richards Liability, the First Claimant would have received dividends on its shares, in the sum of QAR 8,467,562; or

    iii. **loss of likely growth in value of the Second Claimant's business:** it is said that, but for the Richards Liability, the Second Claimant would have continued to grow in value, so that at the end of the anticipated 10-year investment it would have been worth an estimated QAR 10,701,132, from

which (Mr Wilkinson conceded) the sale price of the shares would have had to be deducted.

19. It was not clear before the hearing or from Mr Wilkinson's report, but became clear at the hearing, that these were alternative ways of valuing loss of value in the shares so as to quantify the First Claimant's loss, not cumulative claims.

Analysis

<u>The basis upon which damages should be assessed</u>

20. In its initial skeleton argument, the First Claimant submitted that it was entitled to be placed in the position in which it would have been had the warranty been true, and asserted that this position would have been:

    i. that the shares would not have diminished in value as, it is asserted, they had done;

    ii. that dividends would have been payable by the Second Claimant to the First Claimant, as shareholder, for at least ten years; and

    iii. that at the end of that period, the Second Claimant would have had a substantial business value which could have been realised through a sale.

21. In relation to the quantum of these three claims, the First Claimant relied upon the expert report of Mr Wilkinson.

22. However, shortly before the hearing, a note was lodged on behalf of the First Claimant on the basis of recent authority from the Court of Appeal of England and Wales, and at trial it appeared that this formed the basis of the approach which the First Claimant invited us to take. In short, the First Claimant maintained its position that the correct measure of damages for breach of a contractual warranty was to place the victim of the breach in the position it would have been in had the breach not occurred, but accepted that the way to determine this was to identify (firstly) the "*true value*" of the shares on the date of sale if the warranty which had been breached was true, (secondly) the actual

value of the shares on the same date given that the warranty was false, and then to determine the difference between these values.

23. While acknowledging that, as a matter of English common law, post-breach events were usually not treated as being relevant to that assessment, the First Claimant asserted that in this particular case, post-breach events were relevant to this exercise. The basis for this assertion was that it was said that the sale value of the shares in the Second Claimant was informed by a Business Plan which Mr Veiss and the Third Defendant had agreed. It was submitted that the information in this Business Plan should inform what the true value of the shares would have been had the warranty that there was no liability to Ms Richards been true.

24. The note lodged behalf of the First Claimant in this respect read as follows:

> *2. As set out in Amberberg's submissions, the correct measure of damages arising from the breach of warranty is to place the parties in the position they would have been had the warranty been true. Amberberg accepts that English common law authorities are not binding on this Court but notes that the Court has usually accepted that in applying the content of QFC Law it will have regard to international norms where they serve as the "best source of law" ((1) Obayashi Qatar LLC (2) HBK Contracting Co. WLL v Qatar First Bank LLC (Public) [2020] QIC (F) 5 at [90]).*
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> *3. In the specific circumstances where a warranty within a share purchase agreement has been breached, the following rule is applied by the English Courts:*
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> > *"...damages for breach of a warranty given on a sale of shares are determined by comparing the actual value of shares with the value they would have had if the warranty had been true."*
>
> *4. It is correct to say that the usual measure of damages would involve establishing the "True Warranty" value of shares and deducting the "False Warranty" value of shares, which leads to an assessment of the diminution in value.*
>
> *5. Ordinarily one does not take into account events subsequent to the date of assessment (i.e. the date of breach / sale in this case). There is recent English authority on the question of warranties and breach in MDW Holdings Ltd v Norvill (CA)[2023] 4 WLR 33, which considers these points (per Newey LJ at [49]) and which is cited at length below:*

"Supposing the position to be that the true value of some shares is depressed by a contingency, someone buying them at a higher figure will have paid more than they were worth even if the contingency never happens. Events subsequent to the purchase cannot affect the value at the time of the transaction. The price of a share could typically be said to be a product of a number of contingencies. If a particular risk does, or does not, occur, the price may rise or fall, but that will not retrospectively change the value of the share at an earlier date. In Bunge, Lord Sumption thought that the minority in The Golden Victory had been wrong to focus on the value of the charterparty itself, as opposed to the chartered service which would have been performed, observing that sections 50 and 51 of the Sale of Goods Act 1891 and the common law were alike concerned with "the value of the goods or services which would have been delivered under the contract", not "the value of the contract as an article of commerce in itself". In contrast, a share sale relates to an existing asset which is recognised as "an article of commerce in itself"; (v) If, none the less, there can be cases in which account can be taken of what happened subsequently as regards a contingency which existed on the date of assessment when determining what, if any, damages are payable for breach of a warranty on a share sale, they must be rare. They would doubtless involve situations in which the buyer might otherwise be said to have gained a "windfall", but the mere fact that the value of the relevant shares has increased since the date of assessment cannot demonstrate such a "windfall": it is inherent in the selection of a date of assessment that subsequent changes in value can fall to be disregarded. Still less could it be appropriate to categorise a post-assessment rise in value as a "windfall" if it were attributable to steps that the purchaser had itself taken since the transaction. Further, as Popplewell LJ said in Ageas, it would be "important to keep firmly in mind any contractual allocation of risk made by the parties"; (vi) There is no similar bar on using events subsequent to the date of assessment to cast light on events which had happened by that date.

6. *The questions for the court will be as follows: (i) is Amberberg fairly compensated for the breach of warranty by an assessment based solely*

on diminution in value; and (ii) is it entitled to take into account contingencies that would occur subsequent to the date of sale? In fairness to the Defendants, if they were represented at this hearing, they would no doubt respond in the positive to (i) and in the negative to (ii). Amberberg says otherwise for the following reasons:

a. Ordinarily the businesses' share price would reflect its potential profitability (i.e. the share price valuation would include some price attributable to anticipated value of the business and anticipated value of dividends distributed). However, the price paid for the shares in IFSQ were really a reflection of the fact that IFSQ required an injection of capital to meet the QFCRA CAR;

> *b. This is a "rare" case in which the parties specifically agreed to a concrete Business Plan that envisaged future dividends that have been verified (on a conservative basis) by Mr John Wilkinson. The True Warranty of the business (i.e. with the warranties being true) would have included its ability to trade successfully for at least 3 years subsequent to the share purchase and this was an important part of the purchase, but this would not properly have been reflected in the price paid for the shares; and*
>
> *7. The purchase price of the shares alone does not, therefore, reflect the "True Warranty" value of the business. It is the correct starting point, but does not properly compensate Amberberg for the breach of warranty.*

25. It is important to appreciate that this is a claim for breach of a contractual warranty, i.e. the warranty in clause 9.3.2 of the SPA that the Second Claimant had no claims against it other than those acknowledged in writing by the First Claimant, not some wider claim for misrepresentation. Accordingly, it was this warranty – set out in the SPA – which we found to have been breached; and it was this breach for which we are assessing damages, not for the consequences of any wider representations or misrepresentations which may have been made during the negotiation process.

26. It was acknowledged by the First Claimant that by virtue of clause 25.1, the SPA was governed by the laws of the Qatar Financial Centre ('**QFC**'). That means that the QFC Contract Regulations 2005 apply to the proper measure of damages for breach of a contractual warranty.

27. Article 101 of the QFC Contract Regulations 2005 provides:

> *The aggrieved party is entitled to compensation for loss sustained as a result of the breach so that he will be placed in the position he would have been in if the contract had been properly performed.*

28. As the First Claimant's note (cited above) properly observes, this Court will have regard to other international norms when considering how to assess how the law of the QFC will be applied, where these serve as the best source of the law: *(1) Obayashi Qatar LLC (2) HBK Contracting Co. WLL v Qatar First Bank LLC (Public)* [2020] QIC (F) 5 at paragraph 90).

29. And, as the First Claimant also notes, the usual approach in common law jurisdictions, which frequently informs the decisions of this Court, is – subject to special cases – to

identify the difference, if any, between the true value of the shares as warranted and their true value in fact, that assessment being made at the time of breach. The First Claimant cited *MDW Holdings Ltd* [2022] EWCA Civ. 883 as recent English Court of Appeal authority to that effect in the context of an agreement for sale and purchase of shares; but the principle is of long standing. It was clearly expressed by Lord Hoffmann, giving the judgment of the Privy Council, in *Lion Nathan Ltd v C-C Bottles Ltd and Others* [1996] 1 WLR 1438 at 1441 F-H (a New Zealand case), and has been repeatedly followed at first instance in England: see for example *Ageas (UK) Ltd v Kwik-Fit* [2014] EWHC 2178 QB at paragraph 14, and *Hut Group Ltd v Nobahar-Cookson* [2014] EWHC 3842 QB.

30. Counsel for the First Claimant sought to persuade us that this is a special case where the assumption that, if the Second Claimant's liabilities were as warranted, it would have been capable of operating for at least three years, would have generated substantial dividends for at least ten years, and would, at the end of that time, have had a substantial, and saleable, business value. In so far as he sought to claim these anticipated profits as damages incurred as a result of the breach of warranty, this approach seemed to us to be unjustified. But in oral argument, Mr Fisher fairly conceded that this was not the correct approach. Rather, he argued that the Business Plan, which Mr Veiss explained to us had been created to satisfy the QFCRA that the business was a going concern, was part of the context of which a reasonable investor at the date of the SPA would have been aware and would have formed part of its assessment of the value of the Second Claimant and consequently its share price.

31. The date of the SPA was 12 December 2019, and this was the date on which the false warranty had effect. It was common ground, therefore, that this was the date on which the assessment of the "*warranty true*" value of the shares in the Second Claimant should be assessed, and compared with the "*warranty false*" value of the shares.

32. This much we were prepared to accept. However, it was for the First Claimant to make out its case on the facts as to what the difference between these two values was. We had only the third witness statement of Mr Veiss and the report of Mr Wilkinson, and their oral evidence, to go upon in this respect.

33. We were not satisfied that, on any of the three alternative bases we were given to assess this diminution in the value of the shares in the Second Claimant as a result of the breach of warranty, we had a proper evidential basis to accept any of the alternative assessments of the difference between "*warranty false*" and "*warranty true*" value. We explain our reasoning on this below.

Diminution in Share Value

34. The first basis upon which we were invited to assess the First Claimant's loss was the difference between the market values ("*true*" and "*false*") of the shares in the Second Claimant on the date of the SPA, 12 December 2019.

35. We accept that this is, if properly applied, a reasonable, and indeed the proper, basis upon which to assess damages in a case of this kind. The shares had a particular market price on 12 December 2019 on the basis of what a reasonable purchaser would have known on that date. The fact of the Richards claim, which ultimately resulted in the Richards Judgment, was not known by the First Claimant on that date as a result of the breach of warranty. Had the warranty at clause 9.3.2 been true, the Richards Liability and Richards Judgment would not have existed, and would not, therefore, have affected the value of the shares in the Second Claimant which the First Claimant purchased as a result of the warranty.

36. The issue for us was how to assess the level of share value, which Mr Wilkinson said was not necessarily the same as "*market price*", which might be affected by a number of factors. However, notwithstanding this concession, both Mr Wilkinson and Mr Veiss nonetheless used the money which the First Claimant had invested, in broad terms to acquire the share capital in the Second Claimant, as a proxy for the market price with warranty true.

37. The First Claimant therefore asserted that, on this measure of damages, its entitlement was the difference between: (1) the capital it injected into the Second Claimant in return for shares (in the total sum of QAR 1,561,209); and (2) the diminished current value of those shares by virtue of the Richards Liability and/or the Richards Judgment and attendant consequences. The figure which the First Claimant sought to submit was the

"*diminished current value*" on 12 December 2019 was the sum realised on the sale of shares in June 2021, some eighteen months later

38. As to the "*warranty true*" value, Mr Wilkinson considered the payments made in return for shares in the Second Claimant and set this out in table 1 to his report. Mr Veiss also gave evidence, which was not rebutted, as regards the purpose of these payments at paragraphs 5 to 8 of his third witness statement**,** and these payments amounted to QAR 1,561,209. These payments were as follows:

Table 1: Total payments from Amberberg in respect of capital contributions to IFSQ and nominal value for purchase of shares under the SPA

Date	Amount in Foreign Currency	Amount (QAR)	
26 November 2019		340 000	First interim payment (capital injection)
27 November 2019		133 395	Second interim payment (capital injection)
12 December 2019		360 000	Loan to N Perera to be used to acquire shares in IFSQ as per Promissory Note dated 9 December 2019
30 December 2019		148 810	Loan to N Perera to be used to acquire shares in IFSQ as per Promissory Note dated 9 December 2019
26 January 2020		365 000	Third interim payment (capital injection)
31 January 2020	GBP 1	4	Payment to T Fewtrell as per SPA
9 November 2020	GBP 44 500	213 000	Increase in Share Capital
Total		**1 561 209**	

39. We accept the unrebutted evidence of Mr Veiss that payments were made to the persons shown in the table above, in the broad context of the SPA, and in return for shares in the Second Claimant, though only to some extent for the shares sold by the Defendants. We were not necessarily persuaded that these payments established that the "*warranty true*" value of the shares in the Second Claimant was QAR 1,561,209. In the first place, the payments on 26 and 27 November 2019 were made before any contractual warranty was given. Secondly, clause 5 of the SPA described the consideration as being "*1GBP*". The SPA was described as being a "*complete agreement*", so it is arguable that the price of the shares could be no more than the consideration so construed. Secondly, the payment on 9 November 2020 was in respect of an increase in share capital after the First Claimant had acquired 100% of the shares in the Second Claimant, and occurred long after the date of the SPA and indeed after the breach of warranty had been uncovered, so could not properly be regarded as part of the "*warranty true*" value of the shares; Mr Fisher conceded this in argument.

40. But, even assuming in its favour that the First Claimant had established a "*warranty true*" price in the sum claimed, the real problem it had in establishing its claim on this basis was that it provided no proper evidence about the "*warranty false*" value of the shares.

41. Mr Veiss and Mr Wilkinson sought to persuade us that the "*warranty false*" value of the shares was QAR 1,834. This was because this was the actual price at which the First Claimant sold its shares in the Second Claimant in June 2021, after a couple of earlier, abortive, attempts at sale. It was submitted to us that the sale price reflected the true open market value of these shares.

42. However, whether or not the sale price of the shares sold in June 2021 accurately reflected the actual value of the shares sold at that date, this said nothing about the actual value of the shares on a "*warranty true*" basis in December 2019. As Mr Veiss explained to us, 2020 was a bad year for the Second Claimant. The QFCRA became concerned about the affairs of the Second Claimant, not because of the existence of the Richards Liability which put the Second Claimant in breach of the Capital Asset Value requirements (which was unknown to the authorities at the time), but because of multiple other breaches of its regulatory requirements which were not cured. This meant that the Second Claimant's licence was suspended for much of this period and it could not trade. Markets, and the world, also changed in 2020 and 2021 as a result of the Covid-19 Pandemic. But neither of these supervening causes rested on the breach of warranty, and we were not satisfied that the sale value of the Second Claimant in June 2021 told us anything about its "*warranty true*" value in December 2019. As we put it in discussion with counsel, it was as if someone bought a house for $1 million which proved, as a result of a defective warranty as to the condition of the roof which would have cost $200,000 to repair, to be worth only $800,000. If, however, the house later became worth far less, as a result of some supervening cause (such as a failure to repair the roof, or a market crash, or a fire), the value after that event or those events had taken place would tell one nothing about the "warranty false" value of the house on the date of sale.

43. Accordingly, even if we had accepted the "*warranty true*" value of the Second Claimant on 12 December 2019, the date of the SPA, as being QAR 1,561,209, we could not have

established the level of damages owed on the basis of a "*warranty true*" value on 12 December 2019 from the evidence we had as to its value in June 2021, which was radically affected by a number of other supervening events. So, we rejected the relevance of Mr Wilkinson's conclusion on this issue (at paragraph 6.13 of his witness statement):

> *In my opinion, the requirement of IFSQ to recognise the Richards liability that had previously not been disclosed to Amberberg, the freezing orders that were applied on IFSQ and its funds related to the Richards claim for recovery of that liability, and the regulatory matters that pre-dated Amberberg's acquisition of the IFSQ shares contributed substantially, if not exclusively, to that diminution in value of the shares.*

44. We would further note that, despite Mr Wilkinson's avowal in evidence to the contrary, this basis appears not to be that applicable for breach of contractual warranty, but one which might have been applicable if the ground of action had been a claim in a common law jurisdiction, and of a tortious nature. That was not this case.

Loss of dividends

45. The second alternative way in which the First Claimant sought to quantify its claim for damages was to assess the loss of dividends in the Second Claimant which, it is said, it could have expected to receive as a shareholder in the Second Claimant had the warranty been true and therefore had there been no Richards Liability.

46. On the basis of Mr Wilkinson's report, the First Claimant values these expected dividends in the sum of QAR 8,467,562 over a ten-year period during which it was said it would have intended to retain the shares. We were very doubtful at this extrapolation of value given that the achievability or otherwise of the Business Plan was not part of what was warranted when the SPA was concluded; that as we have observed, the Second Claimant faced a number of other regulatory problems during 2020 which were unrelated to the breach of warranty; and losses caused by the unachievability of the Business Plan do not form part of the damages which can be claimed for breach of the warranty in clause 9.3.2 of the SPA.

47. However, the real problem with this evidence was that we were given no proper figure for the "*warranty false*" loss of dividends. Rather, we were invited to treat the "*warranty*

false" value of the Second Claimant on the market price basis, and assessed as at June 2021, as being the figure which should be deducted from the projected figure for dividends which might have been earned on a "*warranty true*" basis. We found it unsatisfactory for the First Claimant to seek to switch assessment bases mid-calculation in this way; and for reasons which we have already given, we did not find the June 2021 sale price was a satisfactory proxy for the "*warranty true*" market or actual value of the Second Claimant in December 2019. Accordingly, we found that the First Claimant did not make out the evidential basis for its claim on this basis either.

Business Value

48. The third approach which the First Claimant invited us to adopt in valuing its claim against the First to Third Defendants was to take the anticipated terminal value of the Second Defendant at the end of the anticipated 10-year investment period. This was by far the most speculative basis for valuing the claim.

49. On this, Mr Wilkinson arrives at a figure QAR 10,701,134 (section 7 of the report of Mr Wilkinson). Mr Wilkinson had applied what he told us was a "*conservative*" discount rate to year-on-year cashflows to determine the present value of those cash flows. He then assessed the terminal value of the business at the end of the anticipated 10-year period using the "Gordon Formula" (which calculates the terminal value of the business based on future cash flow earnings).

50. In the absence of the First to Third Defendants, the First Claimant was not cross-examined on this approach to ascertaining the true value of the Second Claimant as at the date of SPA. We considered it to be highly speculative.

51. However, we did not need to determine what the actual business value of the Second Claimant was on the date of the SPA, because again we were simply given no material which could enable us to determine what its actual business value would have been had the warranty that there was no Richards Liability been true on the same date. We do not consider that the loss of a wholly speculative increase in the value of the business after ten years could possibly flow from the breach of warranty. Accordingly, we dismiss this aspect of the claim.

52. Taking the First Claimant's assertion that it had paid QAR 1,561,209 (later restricted to QAR 1,348,209) for the Second Claimant, in a series of transactions between November

2019 and January 2020, and assuming in its favour that this was the market price on a "*warranty true*" basis; and assuming also in its favour that the business value of the Second Claimant on the same basis was QAR 10,701,134, it struck us as entirely implausible that a reasonable purchaser, learning (on the same date) that the warranty was false, and that the Second Claimant had an outstanding undeclared liability of £100,000, would have concluded that the true value – i.e. the reasonable purchase price – of the Second Claimant was only QAR 1,834.

53. Consequently, the First Claimant did not satisfy us on any of its three alternative bases for valuing the diminution in the value of the shares in the Second Claimant on the date of the SPA as a result of the breach of warranty.

The correct approach

54. We do not, however, consider that this is the end of the matter. We accept what we were told by counsel for the First Claimant that the diminution in value of the shares in the Second Claimant is to be assessed on the basis of the difference between the actual value of the shares in the Second Claimant on the date of the SPA, 12 December 2019, and what the reasonable purchaser, with knowledge of the true facts which formed the basis of a false warranty on that date, would have considered the shares were worth on the same date.

55. For these reasons, we hold that, to place it in the position which it would have been in if the breach of warranty had not occurred, the First Claimant is entitled to the difference in the actual value of the Second Claimant at the point of sale, and its value had the warranty not been breached.

56. We considered, without it being raised on behalf of the First Claimant, that a notional approach might be to calculate the First Claimant's damages at £100,000 on the basis that a reasonable purchaser, assessing the value of the Second Claimant as at 12 December 2019 on a "*true*" basis, would have arrived at a figure £100,000 less than whatever figure was assessed in ignorance of the Richards Liability. We see the logic, and potential justice, of assessing damages in that way in some cases. If the reasonable purchaser had sufficient confidence that the Second Claimant would, in reasonably early course after the purchase, make sufficient profits to absorb the figure of £100,000

without going into deficit, it might well value the shares on the basis of a corresponding adjustment of the expected profits.

57. However, based on what we know of the First Claimant's history, we are not persuaded on the evidence led before us that the reasonable purchaser would, in this case, have had that confidence.

58. A reasonable purchaser would be expected, in making its assessment of value and related matters, to have had due regard to the financial history of the company. It would, no doubt, be interested to see any business plan for the future which had been prepared. It would, we suspect, have been more interested in the company's past performance. The accounts of the Second Claimant to 31 December 2019 (prepared after the assessment date) show the equivalent figures for the previous year.

59. We have not been able to trace in the hearing bundle the 2018 accounts themselves, but it may be taken that the reasonable purchaser would have access to these. The figures for 2018 disclose a modest profit of QAR 112,614 for that year. Moreover, it appears from documents disclosed by the First Claimant that the company had sustained previous accumulated taxable losses. In short, and quite apart from difficulties about its capitalisation, it was clearly not in a healthy state.

60. By contrast, the Business Plan, the projections for which were never tested because of intervening events, forecast a surplus of $130,000 (circa QAR 600,000) for the first year (2020), with major increases in subsequent years. It can best be characterised as representing Mr Veiss' aspirations for the company, not the basis on which, exclusively, a reasonable purchaser would value it as at 12 December 2019.

61. Further, a reasonable purchaser, it must be assumed, would have had regard to such other known history of the company as might potentially impinge on its future prospects. It would have noted that, on 14 July 2019, the QFCRA had issued a public announcement in relation to the company. There it was stated that, on completion of an investigation, the QFCRA had identified that, during the period May 2016 to January 2018, the company had failed to establish and maintain the required internal policies, procedures, systems and controls ('**PPSC**') to prevent money laundering and terrorist financing; that it had also failed to appoint an independent person to undertake a review of the relevant framework and to test compliance of its PPSC with the relevant rules;

and that it had further failed in other related respects. It was also stated that in the end, a settlement had been agreed under which the QFCRA imposed on the company a financial penalty of $100,000 and ordered that it pay the QFCRA's reasonable costs of its investigation; and that the company, so the QFCRA had concluded, had demonstrated a commitment to settle the matter and undertake remedial steps to address the QFCRA's concerns.

62. For some six months in 2019 the company, while unable to trade, had lost significant revenue. It had also incurred significant costs in relation to the investigation. The reasonable purchaser, having knowledge of that history, must be assumed to have addressed the question of what significance, if any, that might have for the Second Claimant making significant profits, particularly in the period immediately following the purchase. If there was any significant risk of regulatory non-compliance in the future, such profits could be seriously affected.

63. In the event, in March and April 2020, very soon after the First Claimant's acquisition of the whole share capital of the company, the QFCRA again intervened on money laundering/terrorist financing concerns and again the company had to cease trading. Of course, the precise nature of what occurred in March and April 2020 would not be known to a purchaser in December 2019. However, the reasonable purchaser in December 2019 would be expected to have addressed with some care the questions as to why the company had failed in the respects identified in the QFCRA's investigation, whether effective steps had in fact been taken and maintained to prevent a repetition, and thus whether or not there was a risk of repetition. Its approach would be affected accordingly.

64. There was no evidence before this Court as to what steps, if any, had in fact been taken by the Second Claimant in furtherance of its undertaking to the QFCRA. Nor was there any evidence as to why, so soon after the First Claimant's acquisition of the whole shareholding, the QFCRA had seen fit again to intervene with like concerns and with draconian effect. It is unknown to the Court whether these problems were endemic to the company or wholly attributable to casual failures by its management from time to time.

65. Accordingly, and somewhat reluctantly given the unsatisfactory conduct of the First to Third Defendants in respect of this sale, we are not satisfied on the evidence led before us, written or oral, that a reasonable purchaser would have had sufficient confidence that the Second Claimant would in 2020 and the immediately succeeding years have absorbed the debt of £100,000 without going into deficit. It has not therefore been proved that the First Claimant sustained actual loss by the First to Third Defendants' breach of warranty. Its entitlement is only to nominal damages.

66. Accordingly, we are not satisfied on the evidence before us that the First Claimant had established any actual loss caused by the breach of warranty. But, as there had been a breach of contract, it is entitled to nominal damages in recognition of that breach. Those damages we assess at QAR 5.

Conclusion

67. For the reasons we have set out above, we conclude that the First Claimant is entitled to only nominal damages, namely QAR 5. In accordance with our earlier direction, the costs of these proceedings will stand over for later determination.

By the Court,

[signed]

Justice Helen Mountfield KC

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

Representation

The Claimant was represented by Mr Paul Fisher of Counsel (4 New Square, London, United Kingdom), and Mr Alexander Whyatt of Eversheds Sutherland (International) LLP (Doha, Qatar).

The First to Third Defendants were unrepresented and did not appear.

DIGITALLY SIGNED AND VERIFIED
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