Claim No: CL-2022-000190

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (QBD)

B E T W E E N :

BUTTONWOOD LEGAL CAPITAL LIMITED

Claimant

– and –

MR MOHAMED ABDEL RAOUF BAHGAT

Defendant

DEFENCE AND COUNTERCLAIM

---

1. In this Defence the Defendant adopts the abbreviations and headings used in the Particulars of Claim without making any admissions thereby. Save as otherwise indicated, references to numbered paragraphs are to paragraphs in the Particulars of Claim.

2. In outline, the Defendant's case is that the Loan Agreement and the Deed of Settlement are unenforceable against him, alternatively that they give rise to an unfair relationship between the Claimant and the Defendant, such that the Defendant's obligations thereunder are liable to be set aside or varied:

   (a) The Claimant is a BVI company which was used as a vehicle in the operation of a substantial Ponzi scheme. Its relationship to the Centaur Group of companies and the various persons who have purported to act on its behalf is unclear and insufficiently explained, and the Defendant requires the Claimant to prove that it was and is a party to and entitled to enforce both agreements.

   (b) The Loan Agreement, which was on uncommercial terms, was a regulated credit agreement under the Consumer Credit Act 1974 ("**CCA 1974**"). This was an express term of the Loan Agreement and was represented to be the case both before and after the Loan Agreement was signed.

   (c) The Claimant did not have, and could not have had, the necessary licences and/or authorisations to conduct a consumer credit business. As such the Loan Agreement was unenforceable against the Defendant. Direct claims under the

Loan Agreement are in any event out of time. The Deed of Settlement was itself a regulated credit agreement and is unenforceable on an analogous basis to the Loan Agreement.

(d) While certain sums were advanced under the Loan Agreement (allegedly by the Claimant, which is not admitted) and used to pay the Defendant's legal costs, those sums fell substantially short of the total sums payable by the lender under the Loan Agreement.

(e) The resulting funding shortfall left the Defendant unable to pay tribunal fees in the Proceedings, with the result that between March and May 2017 the Defendant had an urgent need to obtain further funding to avoid the Proceedings being struck out (with catastrophic personal and financial consequences).

(f) Further, a significant component of the funding package offered by the Claimant and/or its purported agents was an appropriate ATE Insurance Policy. No such policy was ever obtained or paid for, leaving the Defendant exposed to massive potential liabilities in the event that the Proceedings failed.

(g) The Deed of Settlement is not a good faith settlement of any dispute between the Claimant and the Defendant in the circumstances and is accordingly unenforceable on this basis alone:

(i) GTAL (purportedly on the Claimant's behalf) asserted claims under the Loan Agreement without any (or any reasonable) belief that the Claimant's rights under the Loan Agreement were enforceable.

(ii) GTAL knew that no third-party funder would be prepared to advance further funds to the Defendant without its consent and refused to consent to further funding being provided by Vannin (the only funder which the Claimant had introduced to the Defendant) unless the Defendant accepted the terms proposed in settlement of their dispute.

(iii) GTAL took cynical and unfair advantage of the Defendant and of the urgent situation created by the funding shortfall (which was itself created by the Claimant's failure to meet its obligations under the Loan Agreement). The Defendant had, and GTAL knew that he had, no alternative but to consent to whatever terms the Claimant demanded.

(iv) The terms of the Deed of Settlement are uncommercial and inconsistent with any good faith attempt to settle a dispute. GTAL refused to offer or agree to any meaningful concessions or reductions in the sums claimed and withheld under the Loan Agreement (including e.g. for litigation risk, or in recognition of the funding shortfall).

A PARTIES

3. Paragraph 1 is not admitted as it is outside the Defendant's knowledge. The Claimant is required to prove its identity generally and (so far as relied upon):

(a) its relationship to any other entity;

(b) the identity of its members and directors from time to time, and/or

(c) the authority of any other person to conduct its affairs, act on its behalf or otherwise bind it at any time.

References in this Defence to the Claimant having entered into the Loan Agreement or Settlement Deed or having made payments to the Defendant or third parties, or having done or not done any other act, are to its having done so ostensibly and/or as alleged and are subject to this paragraph.

4. Paragraph 2 is admitted.

B THE LOAN AGREEMENT

5. As to Paragraph 3:

(a) It is admitted that the Defendant sought funding for the purpose of the Proceedings in 2010 and 2011.

(b) Paragraph 3 above is repeated. The Claimant, "*Argentum Litigation Quantum Fund*", 1st Class Legal (IS) Ltd, Gable Insurance AG and Royal Luxembourg SOPARFI SA have each been the subject of public reporting relating to involvement with the Centaur Ponzi scheme (although the true nature and scope of any relationship between these entities and the Centaur scheme is not within the Defendant's knowledge). The commercial, or other, rationale for these entities having become involved in funding the Defendant's claim is opaque, as is the level and nature of their involvement.

6. Further as to paragraph 3:

(a) By October 2010, the Defendant had engaged Mr Subir Karmakar, an English solicitor then employed by Balsara & Co, to act for him in commencing, and obtaining funding for, the Proceedings.

(b) On 15 October 2010, a Ms Jane Kelsall, acting on behalf of a regulated UK insurance broker named 1st Class Legal (IS) Ltd, sent an outline proposal for funding for the Proceedings to Mr Karmakar by email. The proposal did not address the identity of the intended lender or the intended source of funds.

(c) By an email to Mr Karmakar dated 5 November 2010 (responding to a letter from Mr Karmakar to Ms Kelsall dated 4 November 2010), Ms Kelsall made the following representations:

(i) The lender under the agreement would be "*Argentum Litigation Quantum Fund*".

(ii) The lending agreement would be "*a straight forward* [sic] *lending agreement subject to the Consumer Credit Act"*.

(iii) As part of the funding brokered by 1st Class Legal (IS) Ltd, the Defendant's liability to repay the lender in the event that the proceedings were unsuccessful, as well as any future adverse costs orders and tribunal fees, would be insured by an ATE insurance policy "*to be issued by Gable Insurance AG*".

(iv) That the agreement needed to be limited in duration to 2 years "*because the fund structure is such that investors' subscription agreements are for 2 years only"*, but that "[i]*f the matter has not concluded within* [2 years], *then it would be refinanced at a relatively modest cost*".

(d) On or before 21 December 2010, Mr Karmakar sent to the Defendant an agreement in similar terms to the Loan Agreement (the "**Earlier Loan Agreement**"). The Defendant signed the Earlier Loan Agreement on 21 December 2010.

(e) The Lender under the Earlier Loan Agreement was defined as "*Argentum Litigation Quantum Fund Limited, Quastisky Building, PO Box 4389, Road*

Town, Tortola, British Virgin Islands". The relationship of this entity to 1st Class Legal (IS) Ltd (if any) is not within the Defendant's knowledge.

(f) On their face, the terms of the Loan Agreement and the Earlier Loan Agreement were identical, save in the following respects:

(i) The rate of interest was defined as 12% per annum fixed (as opposed to 16%).

(ii) The "Win Only Award Fee" was defined as 10% of the balance of award (as opposed to 9%).

(iii) The "Guarantee Premium" was defined as £410,529.00 (as opposed to £643,275.00).

(iv) The "Win Only Funding Fee" was defined as £519,147.00 (as opposed to £1,539,557.00).

(v) The Lender under the Loan Agreement was described as "*Argentum Associates Ltd*".

(g) The Defendant is unable to say whether, by whom, or when the Earlier Loan Agreement was executed by the lender or others on its behalf.

(h) On or before 12 January 2011, Mr Karmakar sent a draft of the Loan Agreement to the Defendant on terms that the lender required an amendment to the terms and that the Defendant was required to sign the document in order to secure funding. The Defendant signed the document and returned it to Mr Karmakar, who then sent it to 1st Class Legal (IS) Ltd.

(i) The signed document was counter-signed by Ms Kelsall and a Mr Bob Gordon, each a director of 1st Class Legal (IS) Ltd, purportedly on behalf of "*Argentum Litigation Quantum Fund*" (notwithstanding that the Lender as defined in the Loan Agreement was "*Argentum Associates Ltd"*).

(j) The signatures of Ms Kelsall and Mr Gordon were not witnessed, despite the fact that the document was expressed to be executed as a deed.

7. As to the first two sentences of paragraph 4:

(a) Without prejudice to paragraph 3 of this Defence, it is admitted that certain payments were made pursuant to the Loan Agreement. The Claimant is required to prove the dates and amounts of any payments it claims to have made pursuant to the Loan Agreement (whether to the Defendant or any third party).

(b) It is admitted that the Defendant paid arbitral fees in the Proceedings using funds advanced to him by litigation funders, including (without prejudice to paragraph 3 above) the Claimant. It is further admitted that if such arbitral fees were not paid the Proceedings could not have continued, and it is averred that if all relevant arbitral fees were not paid the Proceedings would have been struck out. The Defendant further avers that, at all material times, this was known to GTAL and the individual/s purporting to conduct the Claimant's affairs or act on its behalf.

(c) It is averred (subject to paragraph 3 above) that, to the extent the Claimant made any payments pursuant to the Loan Agreement, such payments fell short of the amount of credit which the Lender was obliged to provide on the face of the Loan Agreement by at least £886,047.57. In particular, the Claimant did not advance the following sums:

(i) £643,275.00, in relation to any ATE Policy within the terms of the Loan Agreement; and

(ii) £242,772.57 of the total cash drawdown.

(d) Both sentences are denied insofar as they are intended to allege that the Claimant facilitated the overall conduct of the Proceedings by making payments to the Defendant or third parties in accordance with its obligations under the Loan Agreement. The funding shortfall, and the urgent need for further funding, created by the Claimant (see paragraph 26 of this Defence) required the Defendant to seek alternative funding on adverse terms in order to avoid the Proceedings being struck out.

(e) The relevance of the Claimant's having consented to the advancement of any further funds to the Defendant by third parties is denied. As addressed below, the Claimant had no enforceable rights against the Defendant and had no proper

basis for objecting, or intimating any objection, to the advancement of funds to the Defendant for the purposes of the Proceedings by any other person.

8. Paragraph 4 is otherwise admitted.

9. Paragraph 5 is admitted.

10. As to paragraph 6, it is denied that the Loan Agreement, or any or each of the terms set out at sub-paragraphs a-b, was enforceable by the Claimant against the Defendant:

    (a) the Loan Agreement was a regulated credit agreement for the purposes of CCA 1974; and

    (b) the Claimant did not hold the necessary licences and/or approvals under CCA 1974 to conduct a consumer credit business.

11. It is admitted that the Loan Agreement contained the terms set out in subparagraphs a-c, except that it is denied that any term required the Defendant to pay "*An Arrangement Fee of £100,000*". Clauses 2.2, 3.3 and 4 of the Loan Agreement instead purported to permit the Lender to retain a "Fund Protection Fee", defined in schedule 1 as £100,000, out of the loan proceeds, and an equivalent sum was included within the "*Total Amount of Credit*" set out on page 1 of the Loan Agreement.

12. As to the term referred to at paragraph 6a:

    (a) clause 3.3 of the Loan Agreement required the Lender to pay (after deduction of the Fund Protection Fee) the amount of the "*Funded Premium*" to the "*Insurer"*, and the balance of the total credit to the statutory trust client account of 1st Class Legal (IS) Ltd under borrower reference ATE/5269;

    (b) the "*Funded Premium*" was defined as "*the portion of the Premium payable by the Borrower on the commencement of the ATE Policy, identified in Schedule 1"*.

    (c) the "*ATE Policy*" was defined as "*the after the event legal expenses policy or policies of insurance between the Borrower and the Insurer in a form acceptable to the Lender in its sole discretion, a copy of which is exhibited at Schedule 2*";

    (d) the "*Insurer*" was defined as "*Gable Insurance Company Ltd or such other insurer or guarantor as may be acceptable to the Lender in its sole discretion*";

(e) Schedule 2 of the Loan Agreement was blank;

(f) no ATE insurance policy was ever issued by Gable Insurance Company Ltd, or any other person (notwithstanding Ms Kelsall's representation set out at paragraph 6(c)(iii) of this Defence), in favour of the Defendant in respect of the Proceedings;

(g) as such no sums were ever payable by the Defendant "*on the commencement of the ATE Policy*", the "*Funded Premium*" was £0, and clause 3.3 (on its face) therefore required the sum of £2,209,336.14 to be paid by the Lender to the statutory trust client account of 1st Class Legal (IS) Ltd;

(h) by clause 3.6 of the Loan Agreement, 1st Class Legal (IS) Ltd were prohibited from releasing to the Lender, and the Lender was prohibited from receiving, funds credited to the 1st Class Legal (IS) Ltd statutory trust client account, except in order to meet the Defendant's solicitors' costs in accordance with a valid request under clause 3.5.

(i) the Defendant reserves the right to amend or supplement this Defence in relation to the Claimant's compliance with clause 3 of the Loan Agreement following disclosure as to the payments made and received by the Claimant and/or others on its behalf, and as to the relationship and instructions passing between the Claimant and 1st Class Legal (IS) Ltd.

13. Paragraph 7 is denied:

(a) On a proper construction, it was an express term of the Loan Agreement that it was regulated by CCA 1974.

(b) The Loan Agreement was not expressed to be regulated by CCA 1974 in error; the regulation of the Loan Agreement under CCA 1974 was expressly discussed between Mr Karmakar and Ms Kelsall (see paragraph 6(c)(ii) above). Alternatively, any such error on the part of the Claimant was unilateral and does not constitute a basis for rectification (if such is alleged).

(c) It is denied that the Loan Agreement (if validly executed on behalf of the Claimant) fell outside the spatial reach of CCA 1974:

(i) The governing law, the exclusive jurisdiction clause, and/or the express references to CCA 1974 brought the Loan Agreement within the territorial scope of CCA 1974 *per se*.

(ii) The Loan Agreement was advertised, negotiated and executed on the Claimant's behalf in the UK by a UK resident agent (and UK regulated insurance broker) acting by UK resident individuals.

(iii) Credit was extended under the Loan Agreement in the UK. The loan proceeds were required to be paid to a UK bank account for the purpose of paying invoices issued by English solicitors for the provision of legal services in England.

(iv) The Defendant will also rely on Ms Kelsall's representation set out at paragraph 6(c)(ii) of this Defence.

14. Paragraphs 7a, 7c and 7d are otherwise admitted so far as consistent with the remainder of this Defence, but their relevance is denied. The Claimant is required to prove paragraph 7b, the relevance of which is also denied.

15. Subparagraphs (1)-(3) of paragraph 8 are admitted, but the remainder of paragraph 8 is denied (save that the amount of credit is admitted to have exceeded £25,000).

16. The Loan Agreement was not entered into wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the Defendant:

(a) The proceeds of the loan were not used for any business venture; they were used to fund the Proceedings.

(b) The Proceedings were themselves not pursued wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the Defendant. The relief sought in the Proceedings comprised:

(i) Declarations that the Arab Republic of Egypt had breached provisions of various bilateral investment treaties in expropriating his personal investments, and for subjecting him to unfair and inequitable treatment in the course of his trial and imprisonment.

(ii) Personal compensation for the lost value of the Defendant's personal investment as a result of the breaches, and (separately) for his unfair and

inequitable treatment during the trial process and after being released, in respect of which awards totalling USD 4 million were made. The Defendant also claimed moral damages for the physical and mental suffering and reputational damage inflicted on him by the Egyptian authorities.

(iii) Interest and costs.

(c) The Defendant's involvement in the Aswan Project ceased following his imprisonment and the expropriation of his assets (when he returned to Finland permanently).

(d) No part of the Defendant's purpose in pursuing the Proceedings was to pursue claims on behalf of ADEMCO, AISCO, or any other entity connected with the Aswan Project; to further the Aswan Project in any other way; or to obtain funds for use in any business.

17. Further or alternatively, the Claimant is estopped from asserting that the Loan Agreement was an exempt agreement pursuant to section 16B of CCA 1974 or was outside the territorial scope of CCA 1974:

(a) It was an express term of the Loan Agreement that it was regulated by CCA 1974.

(b) By the email referred to at paragraph 6(c) of this Defence, Ms Kelsall represented to Mr Karmakar that any loan agreement brokered by 1st Class Legal (IS) Ltd would be a regulated credit agreement under CCA 1974.

(c) If the Claimant proves that it was a party to the Loan Agreement and that the Loan Agreement was validly executed, it follows that Ms Kelsall and 1st Class Legal (IS) Ltd acted as its agents in respect of the negotiation and execution of the Loan Agreement.

(d) The Claimant is accordingly bound by Ms Kelsall's representation as if it had made the representation itself.

(e) Ms Kelsall's representation was continued until (at least) 11 January 2011.

(f) The express references to CCA 1974 in the Loan Agreement constituted further representations that the Loan Agreement was a regulated credit agreement.

(g) The Defendant relied on Ms Kelsall's representation and the express references to CCA 1974 in the Loan Agreement in signing the Loan Agreement.

(h) As such it is inequitable for the Claimant to resile from Ms Kelsall's representation and the express references to CCA 1974 in the Loan Agreement.

C THE SUBSEQUENT NEGOTIATIONS

18. Paragraph 9 is admitted subject to paragraphs 13, 16 and 17 of this Defence. The discussions referred to at paragraph 9 did not result in any concluded agreement between the Defendant or any other person.

19. It is averred that during the course of these discussions, Mr Khan represented to Mr Karmakar on behalf of the Claimant that funding in excess of the amount of credit under the Loan Agreement was available from the Claimant in principle, and that it would be made available to fund the Proceedings if the Defendant agreed to amendment of the Loan Agreement.

20. As to paragraph 10, it is admitted that letters were sent on behalf of the Defendant to Mr Khan in the terms and on the dates alleged. It is denied that any agreement resulted from or was constituted by such letters:

(a) At all material times, and in particular by Mr Karmakar's email of 14 June 2012 and at a meeting between Mr Khan and Mr Karmakar at Mr Karmakar's offices on 22 August 2012, the Defendant made clear to Mr Khan, and to all other relevant persons, that his agreement to any amendment, variation, novation, assignment, or settlement of the Loan Agreement was subject to increased funding (above the level set out in the Loan Agreement) being provided for the Proceedings on acceptable terms.

(b) The letters fall to be construed subject to Mr Khan's representation averred at paragraph 19 of this Defence and sub-paragraph (a).

(c) On a proper construction, the letters were subject to further agreement on the terms of any variation.

(d) No further agreement on the terms of variation or the provision of further funds was ever reached.

(e) By an email dated 31 August 2012, the Claimant received advice from Bristows that a waiver in the form of the letter dated 13 September 2012 would not be effective to remove the Loan Agreement from the scope of CCA 1974. As such, it is reasonable to infer, and it is inferred, that the Claimant required the Defendant to sign the letter dated 13 September 2012 without any belief that it would be effective.

(f) No consideration was provided to the Defendant under the terms of either letter.

(g) In any event, an agreement to vary the Loan Agreement so as to remove references to the CCA 1974 could not prevent the Loan Agreement from being a regulated credit agreement, and/or would constitute an unlawful contracting-out agreement.

(h) The parties treated any variation as subject to further agreement. In February and March 2013, Mr Khan sent to Mr Karmakar (on behalf of the Defendant) two draft deeds of variation which the Defendant did not agree to (and did not) execute.

21. Paragraph 11 is admitted. It is averred that the Bristows Advice was correct and was believed to be correct by the Claimant. Paragraph 12 is therefore denied. Reference is made to paragraph 13 of this Defence.

22. The first sentence of paragraph 13 is admitted. As to the second sentence, paragraph 7(a) of this Defence is repeated.

23. The first sentence of paragraph 14 is admitted. The second sentence of paragraph 14 and paragraph 15 are not admitted as they are not within the Defendant's knowledge. Paragraphs 2(a) and 3 of this Defence are repeated. It is noted that the Claimant alleges in paragraph 16 that GTAL purported to act on behalf of the Claimant prior to November 2014.

24. The first two sentences of paragraph 16 are admitted subject to paragraphs 18-20 of this Defence. The negotiations between the Claimant and the Defendant are not subject to without prejudice privilege, given that the Defendant relies on the content of the negotiations in relation to the validity and enforceability of the Deed of Settlement and its terms.

25. The first sentence of paragraph 17 is admitted. As to the second sentence of paragraph 17, Mr Fairley was not an employee of the Centaur Group. Mr Fairley was the Chief Operating Officer of Argentum Investment Management Limited based in London, with responsibility for sourcing cases for funding. If it is alleged that Mr Fairley had responsibility for the Claimant's relationship with the Defendant, that is denied. Mr Brendan Terrill and Mr Khan had responsibility for this relationship.

26. Paragraph 18 is admitted. The Defendant's need for further funding arose because:

    (a) As set out at paragraph 7(c) of this Defence, even ignoring the sums for which credit was to be given for any ATE Premium, there was a shortfall of at least £242,772.57 in funding which the Lender had been obliged to provide under the Loan Agreement. In the premises of the Claimant's case it had breached the Loan Agreement in failing to make these sums available to fund the Proceedings.

    (b) In the course of the Proceedings, the Arab Republic of Egypt unsuccessfully sought to resist the jurisdiction of the Permanent Court of Arbitration under the Egyptian-Finnish bilateral investment treaties by pursuing administrative proceedings in Finland seeking a declaration that the Defendant was not a Finnish national. The Proceedings were suspended on 25 September 2013 pending the outcome of the Finnish proceedings.

    (c) The Finnish proceedings were resolved by the Finnish Supreme Court in the Defendant's favour on 15 November 2016, and the stay was lifted on 3 February 2017.

    (d) As a result of the lifting of the stay, tribunal fees of €175,000 became payable by each party on 6 March 2017.

    (e) The deadline for payment of the tribunal fees was, exceptionally, extended to 24 May 2017 on 8 March 2017.

27. The matters set out in the immediately preceding paragraph were known to GTAL, Mr Jahani and Ms Gibb at all material times.

28. At all material times each of GTAL, Mr Jahani, Ms Gibb, Mr Fairley and the Defendant knew that it was highly unlikely that any third party funder would be willing to advance

sums for the Proceedings in circumstances where GTAL asserted rights in any arbitral proceeds on behalf of the Claimant and refused to consent or waive its priority. Further, the combination of the uncommercial terms of the Loan Agreement and the Claimant's involvement in the Centaur Ponzi scheme made it practically impossible to secure further funding.

29. Paragraphs 19 and 20 are not admitted, as communications between GTAL and Vannin are not within the Defendant's knowledge. To the extent that the information alleged to have been provided by the Claimant related to putative liabilities of the Defendant to the Claimant, the Claimant/GTAL did not have any (or any reasonable) belief that the Claimant's rights under the Loan Agreement were enforceable.

30. Paragraph 21 is admitted. The Defendant required funding for the reasons addressed at paragraph 26 of this Defence. As at 18 April 2017, Vannin was the only funder willing in principle to provide funding, and as a result the Defendant had no choice but to consent to Vannin's terms, comply with the Claimant's requirements and accommodate its requests.

31. Paragraph 22 is admitted. Paragraphs 28-30 above are repeated.

32. Paragraph 23 is admitted. If alleged, it is denied that Mr Fairley's email constituted any admission that sums were due to the Claimant.

33. Save that the discussions predated 20 April 2017, the first sentence of paragraph 24 is admitted. As stated in paragraph 24 above, the negotiations referred to are not subject to without prejudice privilege and the Defendant reserves the right to amend or supplement this Defence following disclosure by the Claimant of all relevant communications.

34. As to paragraph 25, it is admitted that the Deed of Settlement was executed by the Defendant on 25 May 2017. The Claimant is required to prove that it entered into the Deed of Settlement, and paragraph 3 of this Defence is repeated. It is denied, for the reasons set out in the following paragraphs, that the Deed of Settlement is an enforceable agreement.

35. The Deed of Settlement was entered into in bad faith by GTAL and/or the Claimant (subject to paragraph 3 of this Defence) and is accordingly unenforceable. GTAL took

cynical and unfair advantage of the Defendant and of the urgent and acute need for funding created by the funding shortfall:

(a) It is reasonable to infer, and it is inferred, that GTAL and the Claimant in fact believed that the Loan Agreement was unenforceable:

(i) At all material times GTAL and the Claimant were aware of the content of the Bristows Advice, and that it had been shown to the Defendant in June 2012.

(ii) Between 2012 and 2015, the Claimant sought repeatedly to have the Defendant sign a Deed of Variation changing the governing law of the Loan Agreement in accordance with the Bristows Advice.

(iii) The Defendant, or those acting on his behalf, referred to the fact that the Loan Agreement was unenforceable on (at least) the following occasions:

(1) During a telephone call between Mr Karmakar and Mr Khan on 3 July 2014.

(2) During a telephone call between Mr Karmakar, Mr Khan and Ms Gibb on 14 November 2014.

(3) In a without prejudice offer email sent by Mr Karmakar to Ms Gibb on 20 November 2014.

(4) In an email sent by Mr Karmakar to Ms Gibb and Mr Jahani on 26 February 2015.

(5) During a skype video call between the Defendant, Mr Jahani and Mr Fairley held on 7 March 2017.

(6) In an email sent by Mr Fairley to Mr McDonald and copied to Mr Jahani on 23 May 2017.

(iv) On none of the occasions listed in the preceding sub-paragraph did GTAL or the Claimant articulate any basis on which the Defendant's position was rejected and the Bristows Advice was said to be wrong, and/or on which the Loan Agreement was said to be enforceable

notwithstanding the Bristows Advice. The only bases ever put forward for the Claimant's apparent change of position were:

(1) That the Defendant had previously agreed that CCA 1974 did not apply to the Loan Agreement, by an email sent by Mr Jahani to Mr Karmakar on 20 March 2015. This was directly contrary to the Bristows Advice and was never repeated.

(2) That neither the Claimant nor the Defendant were present in the UK, during telephone calls between Mr Fairley and Mr Jahani on one occasion in February 2017 and on 24 May 2017. This explanation was also inconsistent with the Bristows Advice, and Mr Jahani declined to explain the basis of the assertion further or to reduce it to writing.

(v) During a telephone call on 22 May 2017 between Mr Fairley and a Mr Edward Downer of Morrison & Foerster LLP, a firm of solicitors acting for GTAL, Mr Downer represented to Mr Fairley that GTAL required the Deed of Settlement to be executed by Deed because in his view the Defendant was not providing consideration.

(b) Alternatively, if either GTAL or the Claimant held a genuine belief that the Loan Agreement was enforceable, such belief was unreasonable in the light of the Bristows Advice.

(c) Between March and May 2017, there was an imminent risk that the Proceedings would be struck out if funding could not be obtained to pay the tribunal deposits. GTAL knew this and knew the dates on which tribunal deposits became payable.

(d) Further, GTAL/the Claimant knew that the failure of the Proceedings would have catastrophic personal and financial consequences for the Defendant, including that the likely consequence of non-payment would be that the Proceedings would be struck out and that the Defendant would permanently lose any chance to recover his personal assets.

(e) The personal and financial risk to the Defendant if the Proceedings failed was exacerbated by the Claimant's failure to fund any ATE Policy (without which, consistently with the representations made by Ms Kelsall set out at paragraph

6(c)(iii) of this Defence, the Defendant might be required to repay any liabilities to the Defendant from his own assets as well as any adverse costs orders).

(f) As set out at paragraph 26(a) of this Defence, at least £242,772.57 remained outstanding under the Loan Agreement as at 25 May 2017. This sum would have been sufficient for the Defendant to pay his share of the tribunal deposit and avoid the strike out of the Proceedings.

(g) As such, the Claimant's breaches of the Loan Agreement created, and were known by GTAL/the Claimant to have created, the Defendant's urgent and acute need for funding between March and May 2017.

(h) GTAL introduced Vannin to the Defendant. Pending disclosure of the communications between the Claimant/GTAL and Vannin, it is reasonable to infer, and it is inferred, that GTAL introduced Vannin to the Defendant on terms that it was a funder of the Proceedings with a legitimate financial interest in their outcome, and that its agreement was required for any further funding being provided.

(i) GTAL/the Claimant knew:

  (i) that the Defendant had no alternative but to comply with the requirements of any third party funder prepared to fund the Proceedings;

  (ii) that no third party funder would be willing to provide funding without the benefit of a waiver of priority from GTAL/the Claimant; and

  (iii) that Vannin, in particular, was unwilling to provide funding without the benefit of a waiver of priority from GTAL/the Claimant.

(j) The terms of the Deed of Settlement are uncommercial and inconsistent with any good faith attempt by GTAL/the Claimant to settle a substantial dispute with the Defendant:

  (i) The terms purportedly require the Defendant to repay 100% of the principal sums, interest, "*Win Only Funding Fee*" and "*Win Only Award Fee*" claimed under the Loan Agreement.

  (ii) No allowance whatsoever was made for the cost, delay and risk of litigation.

(iii) No allowance was made for the Claimant's breaches of the Loan Agreement. GTAL/the Claimant refused even to consider the Claimant's offer that a *pro rata* reduction in the "Win Only Funding Fee" and "Win Only Award Fee" should be made to reflect the fact that only part of the sums due under the Loan Agreement had been advanced.

(iv) The period in which the lender would be entitled to bring any claims under the Loan Agreement was extended by the length of the Proceedings plus six years, with no adjustment to the rate of interest accruing on the principal sums advanced.

(v) No allowance was made for the fact that the Claimant's capacity to support the claim as a litigation funder had been severely compromised by its involvement in the Centaur Ponzi scheme. For example, the schedule to the Deed of Settlement maintained the Claimant's claim to recover the "*fund protection fee*", notwithstanding its own breaches of the Loan Agreement.

(vi) No allowance was made for potential counterclaims by the Defendant against the Claimant.

(vii) While GTAL/the Claimant conceded that no amount should be repayable in respect of funds notionally credited for the purposes of an ATE policy, that concession was made on the basis that no ATE Policy within the terms of the Loan Agreement was ever provided. This was not in dispute between the parties and was insubstantial in the context of the Claimant's claim.

(viii) The terms were inconsistent with the Claimant's previous negotiating position. For example, on 11 February 2015, the Claimant made an offer to the Defendant on terms that the interest rate be reduced to 12% per annum.

(k) Instead, GTAL insisted repeatedly that it was unwilling to discuss any reduction in the sums claimed under the Loan Agreement.

(l) The final drafts of the Deed of Settlement and Deed of Priority were not circulated to the Defendant until 25 May 2017, by which date the deadline for payment of the tribunal deposit had already passed.

(m) The Defendant will also rely on the high-handed and intemperate tone of Mr Jahani's communications (and in particular emails sent to the Defendant on 23 May 2017 and to Mr Fairley on 26 April 2017), which were sent to the Defendant, who is elderly, at a time when he was known by Mr Jahani to be under extreme personal stress as a result of the urgent funding situation.

(n) GTAL/the Claimant were represented by experienced commercial lawyers. The Defendant was assisted by Mr Fairley, who was not legally qualified. The Defendant did not obtain any independent professional legal advice.

(o) Further, the extent (if any) to which GTAL and/or the JPLs have acted outside the scope of their authority under any relevant appointment order or made false assertions in relation to their interest in the claim or the Loan Agreement, will be relied upon in relation to the allegation of bad faith. Paragraphs 2(a) and 3 above are repeated. As to this, by a letter dated 22 December 2016, Mr Jahani stated that the Centaur Group of companies had "*a beneficial interest in the funding*" of the Proceedings and Mr Jahani subsequently referred to monies being pledged for the benefit of investors, while the order appointing the JPLs refers to the Claimant as Centaur Litigation SPC's "*investment adviser*".

36. Further or alternatively, the Deed of Settlement constituted a variation of the Loan Agreement, and/or an attempt to contract out of CCA 1974 in relation to the Loan Agreement, and is therefore unenforceable on the same basis as the Loan Agreement.

37. Further or in the further alternative, the Deed of Settlement was itself a regulated credit agreement for the purposes of the Financial Services and Markets Act 2000 ("**FSMA 2000**") and the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001/544 (the "**RAO**") in that (in the premises of paragraphs 32 and 39) it provided financial accommodation by extending the time for repayment by (at least) three years plus the remaining duration of the Proceedings, on terms that interest would continue to accrue on the principal sum until payment was made.

38. The Deed of Settlement is unenforceable:

(a) the assertion of rights under the Loan Agreement, and the negotiation and execution of the Deed of Settlement by GTAL and/or the Claimant, were regulated activities within the meaning of FSMA 2000 and the RAO on the basis that they constituted:

(i) entry into a regulated credit agreement;

(ii) exercising or having rights to exercise rights under a regulated credit agreement;

(iii) taking steps to procure the payment of a debt due under a credit agreement;

(iv) taking steps to exercise or enforce rights under a credit agreement;

(v) any similar activity concerned with the liquidation of a debt; and/or

(vi) credit-related regulated activities.

(b) at no point were the Claimant or GTAL authorised or exempt persons in relation to regulated activities under FSMA 2000;

(c) no permission to enforce the Loan Agreement has been obtained from the FCA or the Court pursuant to FSMA 2000 or CCA 1974 (as amended by the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013 and the Financial Services and Markets Act 2000 (Consumer Credit) (Miscellaneous Provisions) Order 2014); and as such

(d) the Deed of Settlement was entered into in breach of the general prohibition under FSMA 2000 and is unenforceable.

39. Alternatively, the amounts payable under the Loan Agreement and/or Deed of Settlement are liable to be set aside or reduced on the basis that the Loan Agreement and/or Deed of Settlement give rise to an unfair relationship between the Claimant and the Defendant under CCA 1974, ss140A-D (whether or not the Loan Agreement was an exempt agreement).

40. The Defendant will rely on the following factors (separately and cumulatively) in relation to the unfairness of the relationship:

(a) The matters referred to in this Defence at paragraphs 2, 10 and 35 above.

(b) The acute imbalance in bargaining power between the Defendant and GTAL in negotiating the Deed of Settlement.

(c) The uncommercial terms of the Loan Agreement, including:

(i) the "*win only award fee*", which by itself represents a return on investment of almost 85%;

(ii) the "*win only funding fee*", which by itself would represent a return of investment on success by a factor of 5-10;

(iii) the extremely high rate of interest;

(iv) the "*fund protection fee*", which appears to have been designed to further inflate the lender's recovery; and

(v) the incidence of all of these charges together.

(d) The opaque circumstances in which the Loan Agreement was concluded, operated and funded.

(e) The unsuitable nature of the contractual terms to the commercial context, not least given the short duration of the agreement and the lack of any clear facility for funding additional stages of the Proceedings except, as Ms Kelsall represented on behalf of 1st Class Legal (IS) Ltd, by raising more money from outside "*investors*". It is reasonable to infer, and it is inferred, that Ms Kelsall's reference to 'investors' was a reference to persons who were persuaded to contribute funds to the Centaur schemes.

(f) The fact that the Claimant was a wholly inappropriate party to act as lender under a litigation/arbitration funding agreement, let alone a regulated credit agreement.

(g) The lack of clarity over the appropriation and custody of funds under the Loan Agreement, with resulting uncertainty for the funding of the Proceedings.

(h) The failure by the Claimant and/or its agents to arrange or pay for any proper ATE Policy.

(i) The unexplained changes of the Claimant's position on the enforceability of the Loan Agreement.

(j) As set out at paragraph 42(i)-(k) of this Defence, the fact that the Deed of Settlement did not come into effect until (at least) after claims under the Loan Agreement had become statute barred.

41. The Settlement Deed is further unenforceable on the stand-alone basis that the Claimant took undue advantage of the situation of the Defendant and that it does not constitute a bona fide compromise of an existing dispute. Paragraph 35 above is repeated.

42. Save that it is denied as above that the Deed of Settlement is enforceable against the Defendant, as to paragraphs 26-30:

(a) Paragraph 26 is admitted.

(b) Paragraph 27 appears to refer to the Deed of Priority in error. Clause 3.1 of the Deed of Settlement provides that it is of no force and effect and remains a without prejudice communication in relation to the parties' dispute until notification of satisfaction or waiver by the Claimant.

(c) Paragraph 28 and sub-paragraph a are admitted.

(d) Paragraph 28b is denied insofar as it is alleged that the "*waterfall*" as set out in the Arbitration Funding Agreement had any application in a situation where the amounts recovered in the Proceedings exceed the total liabilities of the Defendant to parties with an interest in the Proceedings.

(e) Paragraphs 28c-d are admitted, but their relevance is denied.

(f) If it is alleged that the Claimant is entitled to enforce or rely on the Arbitration Funding Agreement, the same is denied.

(g) Paragraph 29 and sub-paragraphs a-b are admitted. If it is suggested that these were terms of the Deed of Priority, or that the Deed of Priority affected the rights or obligations of the Claimant and Defendant as against each other, that is denied. Clause 3.2 of the Deed of Priority provided that nothing in the Deed of Priority "*affects the rights of any Creditor as between it and*" the Defendant.

(h) Paragraph 29c is admitted save that clause 1.1 of the Deed of Priority and Clause 7.3 of the Arbitration Funding Agreement were not in identical terms. If it is alleged, it is denied that Clause 1.1 of the Deed of Priority has any application, on a proper construction, in a situation where the amounts recovered in the

Proceedings exceed the "*Deferred Receivables*" as defined in the Deed of Priority.

(i) Paragraph 30 is denied. Entry into the Deed of Priority would not constitute the Claimant "*giving its approval to clauses 7.3, 28.1 and 28.2 of the Arbitration Funding Agreement*", nor any waiver of the condition precedent in the Deed of Settlement, nor the notification of the same to the Defendant.

(j) At no time between 25 May 2017 and November 2021 did the Claimant notify the Defendant that the condition precedent had been satisfied or waived. The Deed of Settlement could not have had force or effect until November 2021 at the earliest.

(k) As such, the limitation period for any claim allegedly settled by the Deed of Settlement expired prior to the commencement of the Deed of Settlement.

43. Paragraph 31 is admitted. The relevance of the matters alleged at paragraph 31 is denied. If it is alleged that the Defendant has admitted liability to the Claimant by so doing, that is denied.

D CLAIM PURSUANT TO THE DEED OF SETTLEMENT

44. Paragraph 32 is denied for the reasons set out at paragraph 42 of this Defence.

45. Paragraph 33 is admitted subject to paragraph 3 of this Defence.

46. The first sentence of paragraph 34 is admitted. Paragraph 34 is otherwise denied for the reasons set out in this Defence.

47. Paragraph 35 is denied:

(a) The Deed of Settlement is unenforceable for the reasons set out at paragraphs 35-36, 38 and 41 of this Defence. An Acceleration Notice cannot cause an unenforceable debt to become enforceable.

(b) In any event, paragraph 35 is defective as an allegation of breach in that it fails to plead the information it is alleged had been provided to Vannin as at the time of Mr Fietta's email.

(c) On a proper construction neither Clause 9.1(a) or (b) have any application:

(i) Clause 5.2 is not a "*warranty made or repeated by*" the Defendant for the purposes of Clause 9.1(a).

(ii) The alleged breach was not material for the purposes of Clause 9.1(b), and in any event the Claimant did not give the Defendant 7 days' notice requiring him to remedy the breach prior to purporting to issue an Acceleration Notice.

48. If it is alleged that the Defendant is liable under any of the provisions of the Deed of Settlement referred to in Paragraph 36, the same is denied for the reasons set out at paragraphs 35-36, 38 and 41 of this Defence. Further, reference is made to paragraph 55(d) below.

E CLAIM PURSUANT TO THE LOAN AGREEMENT

49. In the premises of paragraph 10 of this Defence, paragraphs 37, 39 and 40 are denied.

50. Further or alternatively, in the premises of paragraph 39 of the Particulars of Claim, any sums owing became payable in full by no later than 12 January 2013. The limitation period for any claim under the loan agreement expired on 12 January 2019.

51. As to paragraph 38, the Claimant is put to strict proof as to the dates and amounts of sums advanced under the Loan Agreement.

52. It is denied that the Claimant advanced sums on the Defendant's behalf to Royal Luxembourg SOPARFI SA in respect of any ATE Premium. No policy of after the event insurance in favour of the Defendant was ever obtained from Royal Luxembourg SOPARFI SA. GTAL accepted (purportedly on the Claimant's behalf) that no sums had been paid under the agreement by way of ATE Premium in the course of negotiations prior to the Deed of Settlement, and no amounts in respect of any ATE Premium were included in schedule 1 to the Deed of Settlement.

53. Further, it is in any event denied that the Claimant would have been entitled to advance sums to Royal Luxembourg SOPARFI SA in respect of an ATE Premium under the Loan Agreement:

(a) As set out at paragraph 12(f) of this Defence, no ATE Policy was in place as at 13 January 2010 or exhibited to the Loan Agreement, and no sums were payable to any Insurer by way of Funded Premium (as defined).

(b) No ATE Policy (as defined in the Loan Agreement) was ever obtained from Royal Luxembourg SOPARFI SA in favour of the Defendant.

(c) On a proper construction, Royal Luxembourg SOPARFI SA was not an "Insurer" as defined in the Loan Agreement. It is incorporated in Luxembourg and has been connected with the Centaur Ponzi scheme. It was not a provider of ATE Insurance, nor could any reasonable lender have considered that it was a provider of ATE Insurance.

54. Alternatively (as set out at paragraphs 39-40 of this Defence), the obligations of the Defendant under the Loan Agreement are liable to be set aside or the amounts payable under the Loan Agreement are liable to be reduced on the basis that the Loan Agreement gives rise to an unfair relationship between the Claimant and the Defendant under a credit agreement (whether or not the Loan Agreement was an exempt agreement).

55. In the premises of paragraphs 39-40 and 54 above, the Defendant seeks an order reducing the interest payable by the Defendant (or the payment in respect of that interest) under the Loan Agreement and/or Settlement Deed to a fair rate and discharging the following sums (or payments in respect of those sums), or setting aside or discharging the obligations of the Defendant to pay such sums:

(a) the Win Only Funding Fee;

(b) the Win Only Award Fee;

(c) the Fund Protection Fee of £100,000; and

(d) any obligation (such as there is) to indemnify the Claimant in respect of any costs;

alternatively an order varying the Defendant's obligations under the Loan Agreement and/or Settlement Deed on such terms as the Court considers fair under s.140B of the CCA 1974.

COUNTERCLAIM

56. By way of counterclaim the Defendant repeats the Defence herein and counterclaims:

(a) a declaration that the Loan Agreement and/or Settlement Deed are unenforceable as against the Defendant; alternatively

(b) the making of an order under s.140B of the CCA 1974 in accordance with paragraph 55 above

LISA LACOB

ANDREW GURR

Statement of Truth

I believe that the facts stated in this Defence are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Mohammed Abdel Raouf Bahgat

Date: 8 July 2022

Served on 8 July 2022 by Peters & Peters Solicitors LLP, 15 Fetter Lane, London EC4A 1BW, solicitors for the Defendant.

(b) the making of an order under s.140B of the CCA 1974 in accordance with paragraph 55 above

LISA LACOB

ANDREW GURR

Statement of Truth

I believe that the facts stated in this Defence are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed.....

Mohammed Abdel Raouf Bahgat

Date: 8 July 2022